

TITLE SEVENTEEN ZONING

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CHAPTER 17-1 PURPOSE AND INTENT

17-1-1

PURPOSE

To promote the general welfare of the population through sound policies of land development and land management, to preserve natural beauty and ecological balance; to this end this title will prevent overcrowding of the land with population and structures, and provide for adequate sanitation, transportation, and other community facilities.

Authority:

SDCL § 11-4-1; Compare SDCL §§ 11-7-43, 9-12-13, 11-6-11 and 11-8-29

Opinions of Attorney General:

Enforcement of powers within three miles of municipal corporate limits, Opinion No. 81-4.

Board of regent's property not subject to local zoning ordinances, since the suit is prohibited by the State immunity doctrine, Opinion No. 77-13.

17-1-2

INTENT

To place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the general land use plan.

Authority:

SDCL § 9-12-13

Collateral References:

82 Am Jur 2d, Zoning and Planning, §§7,8.

101A CJS, Zoning and Land Planning, §§10,29.

CHAPTER 17-2 DEFINITIONS

17-2-1 GENERAL DEFINITIONS

For the purpose of this title, certain terms or words used herein shall be interpreted as follows, except where the context would plainly indicate a different intent:

The word **shall** is mandatory; the word **may** is permissive.

The words **used** or **occupied** include the words intended, designed, or arranged to be used or occupied.

The word **lot** includes the words plot or parcel.

Accessory Use or Structure is a use or structure on the same lot with, and of a nature customarily incidental and subordinate to the principal use or structure.

Apartment House: An apartment house is a detached dwelling designed for, or occupied by, four or more family units.

Automobile Service Station: Buildings and premises where gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail. This definition does not include storage, body repair or auto salvage operations.

Building: The word "building" includes the word "structure" and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings.

District: A section of the municipality for which the regulations governing the construction and location of buildings and occupancy of buildings and premises are the same.

Dwelling, Single Family: A detached residential dwelling unit other than a mobile home, designed for and occupied by one family only.

Dwelling, Multiple Family: A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Two Family: A residential building designed for or occupied by two families. The number of families in residence shall not exceed the number of dwelling units provided.

Dwelling Unit: One room, or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Family: One or more individuals living, sleeping, cooking or eating on the premises as a single housekeeping unit, but it shall not include a group of more than three individuals not related by blood or marriage.

Farm Unit: An area of ten (10) acres or more on which is raised farm products of a value of one thousand dollars (\$1,000.00) or more each year. For purposes of this title, all land in like ownership being operated as a single economic unit shall be considered to be part of a single farm unit.

Feed Lot: A feed lot is defined as a parcel of land whereon there is contained an operation of feeding or raising animals in excess of ten (10) animal units per acre or in excess of five hundred (500) animal units per parcel of land.

Front Yard: A yard extending between side lot lines across the front of a lot adjoining a public street. In case of through lots, unless the prevailing front yard pattern of adjoining lots indicates otherwise, the front yards shall be provided on all frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the administrative official may waive the requirements for the normal front yard and substitute therefore a special yard requirement which shall not exceed the average of the yards provided on adjacent lots.

In the case of corner lots which do not have reversed frontage, a front yard of the required depth shall be provided in accordance with the prevailing yard pattern and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of reversed frontage corner lots, a front yard of the required depth shall be provided on either frontage and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of corner lots with more than two frontages, the administrative official shall determine the front yard requirements, subject to the following limitations:

1. At least one front yard shall be provided having the full depth required generally in the districts;
2. No other front yard on such lot shall have less than half the full depth required generally.

Depth of required front yards shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot lines, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear front yard lines shall be parallel.

Height of Buildings: The vertical distance from the established average sidewalk grade or street grade, or finished grade at the building lines, whichever is the highest, to the highest point of the building.

Junk Yard: The use of more than fifty (50) square feet of any land, building, or structure, whether for private or commercial purposes, or both, where waste discarded or salvaged materials such as scrap metals, used-building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, machinery, etc., or parts thereof with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

Lot: A lot is any plot or parcel of ground under one ownership, occupied by one principal building or unit group of buildings, and the accessory buildings customarily incidental to such principal building or buildings and including all open spaces required by this title.

1. Lot Area: The lot area is the land in square feet, within the lot line.
2. Lot Depth: The depth of a lot is the mean distance from the street line of the lot to its rear line, measured in the general direction of the side line of the lot.
3. Lot Width: The width of a lot is the mean distance between side lot lines measured at a point fifty (50) feet back from the street line thereof.

Mobile Home: A portable unit originally designed and built to be towed on its own chassis to point of use, and designed to be used without a permanent foundation for continuous year round occupancy as a dwelling; or two or more such units separately towable, but designed to be joined together at the point of use to form a single dwelling, and which is designed for removal to, and installation or erection on, other sites.

Mobile Home Park: A tract of land in single ownership which has been developed with all the necessary facilities and services in accordance with a site development plan meeting all the requirements of this title and which is intended for the express purpose of providing a satisfying living environment for residents of at least four (4) mobile homes on a long term occupancy basis.

Mobile Home, Permanent:

1. The running gear and hitch have been removed.
2. Has been anchored to a permanent footing and foundation.
3. The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade.
4. The foundation shall be eight (8) inches poured concrete or concrete block.
5. Prior to placement of home on the foundation must be inspected and approved by the county Zoning Officer.

Non-Conforming Buildings or Structures: A non-conforming building or structure is a building or structure, the use of which, in whole or part, does not conform to the regulations of the District in which the same is located.

Non-Conforming Use: The non-conforming use is the use of any building or structure which does not conform to the use regulations of the District in which the use exists.

Parking Space, Off Street: An off street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with related access to a public street or alley, and maneuvering room. For purposes of rough computation, an off street parking space may be estimated at three hundred (300) square feet.

Plat: The map, drawing or chart on which the subdivider's plan of subdivision is legally recorded.

Rear Yard: The yard across the whole width of the lot, extending from the rear line of the building to the rear line of the lot.

Set Back: The set back of a building is the minimum horizontal distance between the front lot line or street line and the nearest edge of any building or any projection thereof, except cornices and enclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3½) feet from the building and not more than fifty (50) square feet in area, and which do not extend above the first story of the building.

Side Yard: A yard between the building and the adjacent side line of the lot which separates it from another lot, extending from the front lot line to the rear yard.

Street Line: A right of way line of a street.

Structure: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include, but are not limited to buildings, mobile homes, walls, fences, billboards, and poster panels.

Wetlands: Any area where ground water is at or near the surface at least six (6) months of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

Yard: An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line.

Authority:
SDCL §§ 9-12-13, 11-4-1

CHAPTER 17-3 ESTABLISHMENT OF ZONING

17-3-1 ZONING DISTRICTS

For the purpose of this title, the incorporated areas of Hosmer, South Dakota are hereby divided into the following Zoning Districts:

- A. **Agriculture Land District:** Agricultural Land District is primarily for the preservation of open space, land currently used for agriculture and considered not to be yet ready for further development, and land subject to periodic flooding or land used for single family farming units of one or more acres.(GREEN)
- R₁. **Single Family Residential District:** Single Family Residential District of comparatively low concentration of development together with certain public facilities and customary home occupations and professional offices.(YELLOW)
- R₂. **General Residential District:** General Residential District of single-family residences, mobile home and multiple family dwellings as well as other uses permitted in R₁ zone.(YELLOW)
- R₃. **Mobile Home Park:** General Residential District for any type of mobile home residence allowable in the defined areas.(LIGHT BLUE)
- C. **Central Commercial District:** Central Commercial District for business establishments oriented to the pedestrian shopper.(RED)
- C₁. **Commercial Industrial District:** Commercial and Industrial District to accommodate industrial uses able to meet performance standards and commercial uses not compatible with the Central Commercial District.(DARK BLUE)
- I. **Industrial District:** Industrial District for all types of manufacturing which cannot meet performance standards for the Commercial Industrial District.
- FP. **Flood Plain District:** The intent of this district is to protect from encroachment, watershed areas, subject to flooding, backwater spreading and flood water or overflow of streams or rivers. Land use within the district shall be those of a type not endangered by periodic or occasional inundation, or shall not produce unsanitary or unsafe living conditions.

Authority:
SDCL §§ 9-12-13, 11-4-1

17-3-2 UNIFORM APPLICATION

The regulations set forth by this title within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

Authority:
SDCL §§ 9-12-13, 11-4-1

Law Reviews:
Zoning: Non-Conforming Uses and the
"Amortization" Solution, 4 SD LRev

Collateral References:
Boundaries, 39 ALR2d 766.

180 (1959).
Constitutional Implications, Restrictive
Zoning, 17 SD LRev 203 (1972)

17-3-3 USE OF BUILDINGS

No building or any part thereof shall be erected, constructed, reconstructed, converted, altered, enlarged, extended, raised, moved or used, and no premises shall be used for any purpose other than a purpose except as hereinafter provided.

Authority:
SDCL §§ 9-12-13, 11-4-1

Collateral References:
Architectural Restrictions, 47 ALR3d
1232; 41 ALR3d 1397.
Boundaries, 39 ALR2d 766.
Estoppel, Right of Municipality to
Enforce, 119 ALR 1509.
Exclusionary Zoning, 48 ALR3d, 1210.
Height of Buildings, Validity of
Regulations, 8 ALR2d, 963.

17-3-4 DISTRICTS

There may be one or more districts of each class and where more than one district of a class exists, such districts may be entirely separate and distant from other districts of the same class.

Authority:
SDCL §§ 9-12-13, 11-4-1, 11-4-2

Collateral References:
Architectural Restrictions 47 ALR 3d 1232;
41 ALR3d 1397.
Boundaries, 39 ALR2d 766.
Estopped, right of municipality to enforce
119 ALR 1509.

Exclusionary zoning, 48 ALR 3d 1210.
Height of Buildings, validity of regulations, 8
ALR2d 963.

17-3-5 SEWERS

All structures used for human habitation or commercial use must be connected to a sewage disposal system approved by the zoning commission. Minimum requirements include water tight septic tank connected to a drain field; drain field to be not closer than eighty (80) feet to the shoreline of lakes and rivers and no drain area to be deeper than five (5) feet. If a public sewer is available within two hundred (200) feet, all such structures must be connected.

Authority:
SDCL §§ 11-4-1, 11-4-3

CHAPTER 17-4 DISTRICT REQUIREMENTS

17-4-1 EXTENT OF THE REQUIREMENTS

The requirements as set forth below for each of the Use Districts listed as part of this title in Chapter Three shall govern the development within the said Districts as outlined on the Official Zoning Map for the incorporated areas of Hosmer.

*Authority:
SDCL §§ 9-12-13, 11-4-1*

17-4-2 AGRICULTURAL LAND DISTRICT

The following uses for the Agricultural Land District are defined as:

A. Uses Permitted

1. Animal husbandry services.
2. Field crops and grasslands.
3. Fisheries services.
4. Game propagation areas.
5. Government grain storage sites.
6. Horticultural services.
7. Institutional farms.
8. Orchards and tree farms.
9. Public parks and recreation areas.
10. Truck gardening.
11. Botanical gardens (nurseries and greenhouses).
12. Residential farms and estates of two or more acres with a minimum lot width of one hundred and sixty-five (165) feet.
13. Veterinarians offices and animal hospitals.
14. Schools and churches.
15. Governmental services.

B. Uses Permitted by Special Permit

1. Airports and airstrips.
2. Cemeteries.
3. Commercial public entertainment enterprises not normally accommodated in commercial areas.
4. Livestock and poultry farms.
5. Private clubs.
6. Stables.
7. Sewage treatment plants, but not within 80 rods of a residence.
8. Uses which in the opinion of the City Zoning Commission are not of a conflicting nature or will not be detrimental to the environment of the District.
9. Permanent mobile homes.
 - a. Must have signatures by petition of all landowners within three hundred (300) feet.
 - b. A permanent mobile home must contain a minimum of six hundred

(600) square feet.

- c. Must be placed on a lot with the minimum requirements the same as outlined under "R2" Zone.
 - d. All lots shall front on and have ingress and egress by means of public right of way.
 - e. Front, side and rear yard requirements shall be the same as outlined under "R1" Zone.
 - f. Must conform with the National Mobile Home Association Code and must show evidence thereof (Plaque of Affidavit).
 - g. Must be connected to sewer system approved by Zoning Officer. Minimum requirements include water tight septic tank connected to a drain field, drain field not to be closer than eighty (80) feet to the shoreline of lakes or streams and no drain area to be deeper than five (5) feet.
10. Requests for permits covered under this section shall be substantiated by architectural drawings of floor plans, elevations, plot plan showing building locations, parking facilities, ingress and egress and internal site circulation.

Authority:

SDCL §§ 11-4-1, 11-4-2, 11-4-3, 11-4-4, 9-12-13

Collateral References:

*Limiting Fences, hedge or walls, 1 ALR4th 373.
Territory annexed to a municipality, what
zoning regulations are applicable to, 41 ALR2d
1463.*

*Protest or petition by property owners, 4 ALR2d 335.
Application of statutes outside municipal limits, 131
ALR 1055.*

17-4-3

AGRICULTURAL LAND USE LOT REQUIREMENTS

Minimum lot requirements for the Agricultural Land District are:

- A. The minimum lot area for permitted uses shall be one acre.
- B. The minimum lot width for permitted uses shall be one hundred fifty (150) feet.
- C. Uses permitted by special exception shall have a minimum lot area and width as determined by the City Zoning Commission.
- D. The location of any structure contained in the permitted uses must be located seventy-five (75) feet from any public road or street right of way.

Authority:

SDCL §§ 11-4-1, 11-4-2, 11-4-3, 11-4-4, 9-12-13

Collateral References:

*Limiting Fences, hedge or walls, 1 ALR4th 373.
Territory annexed to a municipality, what
zoning regulations are applicable to, 41 ALR2d
1463.*

*Protest or petition by property owners, 4 ALR2d 335.
Application of statutes outside municipal limits, 131
ALR 1055.*

17-4-4

STRUCTURAL HEIGHTS WITHIN THE AGRICULTURE LAND DISTRICT

Maximum height of all structures shall not exceed fifty (50) feet.

Authority:

SDCL §§ 9-12-13-, 11-4-1, 11-4-2, 11-4-3

17-4-5

R₁ SINGLE FAMILY RESIDENTIAL DISTRICT

The following uses for the Single Family Residential District are defined as:

A. Uses Permitted

1. One family dwelling and their normal accessory buildings, but not to include mobile homes.
2. Offices of recognized professions providing such profession is carried on in their respective residence, and there is no display carried on in their respective residence, and there is no display nor advertising excepting a small professional name plate.
3. Home occupations engaged in by the occupants of a dwelling provided there is no display of goods visible from the streets, and no exterior advertising other than a small announcement sign not lighted and not more than four hundred and thirty-two (432) square inches in area, and further provided that no more than twenty-five (25) percent of the total floor area, including basement area of the building, shall be used for this purpose.
4. A sign not more than four hundred and thirty-two (432) square inches in area, appertaining to the lease, hire or sale of a building or premises. A renewable permit for one year periods for the erection and maintenance of larger signs for real estate purposes may be issued upon approval of the City Zoning commission.
5. Churches and parish houses providing they meet lot requirements section of this ordinance.

B. Uses Permitted By Special Permit

The City Board of Adjustment may grant the following uses provided the written consent of more than fifty (50) percent of the property owners within three hundred (300) feet of any property line of the premises is obtained.

1. Accessory building other than private garages, except stables.
2. Public libraries, museums and schools.
3. Hospitals, nursing homes and homes for the aged. Any building approved for such use shall be set back not less than fifty (50) feet from the street on which it fronts and shall have side and rear set backs of not less than thirty (30) feet and shall meet other requirements of this ordinance.
4. Duplexes.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

17-4-6

BUILDING HEIGHT LIMITS IN THE SINGLE FAMILY RESIDENTIAL DISTRICT

No dwelling shall exceed thirty-five (35) feet or two and one half (2½) stories in height, within the R₁ district.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

Collateral References:

Height of buildings, validity of regulation, 8 ALR2d 963.

17-4-7

LOT REQUIREMENTS IN THE SINGLE FAMILY RESIDENTIAL DISTRICT

The following lot requirements are specified as mandatory:

- A. No dwelling together with its accessory buildings shall be hereafter erected upon a lot of less than 5,760 square feet or width of not less than forty-eight (48) feet and depth of not less than 120 feet.
- B. All lots shall have access to public right of way.
- C. Front Yard: There shall be a set back of not less than twenty-five (25) feet from the front lot line as to all buildings provided that when a greater or lesser set back distance than twenty-five (25) feet has been established in any block then no building shall approach nearer any street lot line than a general average of this set back distance as determined by the Zoning Officer.
- D. Side Yard: There shall be a side yard of not less than seven (7) feet in width on each side of every building.
- E. Rear Yard: There shall be a rear yard having a minimum depth of twenty-five (25) feet; however, accessory buildings may abut dedicated alleys.
- F. Lot Coverage: All dwelling and accessory buildings on any lot shall not cover more than forty (40) percent of the lot area. Lot coverage shall be computed to include a minimum area of 180 square feet of building area or lot area for automobile storage.
- G. No two-family dwelling, together with its accessory buildings, shall be hereafter erected upon a lot of less than 12,000 square feet and width of not less than 100 feet and depth of not less than 120 feet.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

Collateral References:

Light and air space, building regulations, 9

ALR3d 1018.

Maximum percentage of residential lot area, 96

ALR2d 1396.

Width and frontage of residential lots, 96 ALR2d 1367.

17-4-8

R₂ RESIDENTIAL DISTRICT

The following uses for the Residential District are defined as:

- A. Uses Permitted
 - 1. Single family dwellings and their normal accessory buildings.
 - 2. Offices of recognized professions providing such profession is carried on in their respective residence, and there is no display nor advertising excepting a small professional name plate.
 - 3. Home occupations engaged in by the occupants of a dwelling provided there is no display of goods visible from the street, and no exterior advertising other than a sign, not more than six (6) square feet in area, and further provided, that no

- more than twenty-five (25) percent of the total floor area, including basement area, of the building shall be used for this purpose.
- 4. A sign not more than six (6) square feet in area, appertaining to the lease, hire or sale of a building or premise. A renewable permit for one year periods for the erection and maintenance of a larger sign for real estate purposes may be issued upon approval of the City Zoning Commission.
- 5. Churches and parish houses providing they meet lot requirements section of the ordinance.
- 6. Permanent mobile homes.

B. Uses Permitted By Special Permit

The City Board of Adjustment may grant the following uses provided the written consent of more than fifty (50) percent of the property owners within three hundred (300) feet of any property line of the premises is obtained.

- 1. Accessory building other than private garages, except stables.
- 2. Public libraries, museums and schools.
- 3. Hospitals, nursing homes and homes for the aged. Any building approved for such use shall be set back not less than thirty (30) feet from the street on which it fronts and shall have side and rear set backs of not less than thirty (30) feet and shall meet other requirements of this ordinance.
- 4. Mobile home parks.
- 5. Two family dwellings.
- 6. Multiple family dwellings.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3, 11-4-4

17-4-9

BUILDING HEIGHT LIMITS IN THE R₂ RESIDENTIAL DISTRICT

No dwelling in the R₂ district shall exceed thirty-five (35) feet or two and one half (2½) stories in height.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3, 11-4-4

Collateral References:

*Height of buildings, validity of regulation,
8 ALR2d 963.*

17-4-10

LOT REQUIREMENTS IN R₂

The lot requirements of the R₂ Residential District are as follows:

- A. No single family dwelling, together with its accessory buildings, shall be hereafter erected or placed upon a lot of less than 5,706 square feet and width of not less than forty eight (48) feet and depth of not less than 120 feet.
- B. No two family dwelling, together with its accessory buildings, shall hereafter be erected or placed upon a lot of less than 12,000 square feet and width of 100 feet and depth of less than 120 feet.
- C. All lots shall have access to public right of way.
- D. Front Yard: There shall be a set back of not less than twenty-five (25) feet from the front

lot line as to all buildings, provided that when a greater or lesser set back distance than twenty-five (25) feet has been established in any block then no building shall approach nearer any street lot line than a general average of this set back distance as determined by the Zoning Officer.

- E. Side Yard: There shall be a side yard of not less than seven (7) feet in width on each side of every building.
- F. Rear Yard: There shall be a rear yard having a minimum depth of twenty-five (25) feet; however, accessory buildings may abut dedicated alleys.
- G. Lot Coverage: All dwelling and accessory buildings on any lot shall not cover more than forty (40) percent of the lot area. Lot coverage shall be computed to include a minimum area of 180 square feet of building area or lot area for automobile storage.
- H. Lot requirements for special permits shall be determined by the Zoning Commissioner.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3, 11-4-4

Collateral References:

Light and air space, building regulations, 9

ALR3d 1018.

Maximum percentage of residential lot area, 96

ALR2d 1396.

Width and frontage of residential lots, 96 ALR2d 1367.

17-4-11 CENTRAL COMMERCIAL

The following uses for the Central Commercial District are defined as:

A. Uses Permitted

- 1. Retail establishments.
- 2. Service establishments.
- 3. Entertainment services.
- 4. Financial institutions.
- 5. Local, state and federal offices and services.
- 6. Newspaper and printing firms.
- 7. Offices.
- 8. Parking lot and/or garages.
- 9. Apartments using the upper floors of commercial buildings.

B. Uses Permitted by Special Permit

- 1. Other uses, which in the opinion of the City Zoning Commission are of the same general character and not detrimental to permitted uses in the "C" District as outlined, except that no use listed in the following paragraph (Uses Not Permitted) shall be permitted.

C. Uses Not Permitted

- 1. Blacksmith shops.
- 2. Coal or lumber yards.
- 3. Metal working shop, tinsmith or plumbing shop employing more than five (5) workers on the premises.
- 4. Milk or soft drink bottling or distributing stations employing more than ten (10) workers.

5. Poultry or livestock killing, dressing or live storage.
6. Manufacturing of any kind except by special permit.
7. Oil stations, auto cleaning establishments or automobile, truck, or machinery sales when located within a radius of 150 feet of church edifice, hospital, or public school.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3, 11-4-4

Collateral References:

*Zoning, 82 AmJur2d, Zoning and Planning, §§7, 8.
 Boundaries, 39 ALR2d 766.
 Enterprise or activity, what's permissible in a business zone, 128 ALR 1214.
 Right of municipality to enforce, 119 ALR 1509.
 Exclusion of industry inconsistent with residential character, 9 ALR2d, 683.
 Exclusionary zoning, 48 ALR3d 1210.
 Landlord and tenants, 37 ALR3d 1018.
 Population validity of classifications based on population, 98 ALR3d, 679.
 Public facilities, municipal bans on construction with regards to, 92 ALR3d 1073.
 Regulations as to building areas, 27 ALR 443.
 Statutory notice requirements, 96 ALR2d, 449.
 Waste disposal, 59 ALR3d, 1244.
 Zoning laws passed to avoid industrial nuisance, 173 ALR 271.*

Opinions of the Attorney General:

Authority of municipal powers within three miles of corporate limits, Opinion No. 81-4.

17-4-12 BUILDING HEIGHT LIMIT WITHIN THE CENTRAL COMMERCIAL DISTRICT

The maximum height of all buildings and structures shall be thirty five (35) feet if located within the Central Commercial District.

Authority:

SDCL § 11-4-1, 11-4-3

Collateral References:

Height of buildings, validity of regulation, 8 ALR2d 963.

17-4-13 LOT REQUIREMENTS WITHIN THE CENTRAL COMMERCIAL DISTRICT

Permitted uses shall have a minimum lot area of three thousand five hundred (3,500) square feet and a minimum lot width of twenty-five (25) feet. Uses permitted by special exception shall have a minimum lot area and width as determined by the City Zoning Commission.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

Collateral References:

Light and air space, building regulations, 9 ALR3d 1018.

17-4-14 MINIMUM YARD REQUIREMENTS OF THE CENTRAL COMMERCIAL DISTRICT

No yard shall be required in the Central Commercial District provided, however, that all buildings located on lots adjacent to a residential district shall observe a yard requirement equivalent to the minimum yard requirements of the residential district on the side or sides adjacent. Uses permitted

by special exception shall have a minimum yard requirement as determined by the City Zoning Commission.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

17-4-15 MAXIMUM LOT COVERAGE OF THE CENTRAL COMMERCIAL DISTRICT

The maximum lot coverage for all permitted uses shall not exceed ninety (90) percent. The maximum lot coverage for all uses permitted by special exception shall be as determined by the City Zoning Commission.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

Collateral References:

*Light and air space, building regulations,
9 ALR3d 1018.*

17-4-16 COMMERCIAL INDUSTRIAL DISTRICT

The following uses for the CI Commercial Industrial District are defined as:

A. Permitted Uses

1. Horticulture and the raising of field crops.
2. Automobile filling stations.
3. On-site signs.
4. Utility substations.
5. Wholesale or Retail sales of lumber and other building materials, farm equipment, motor vehicles, marine crafts, mobile homes, trailers, farm and garden supplies, fuel and ice, motor vehicles and automobile equipment, drugs, chemicals, all allied products, dry goods and apparel, groceries and related products, electrical goods, hardware, plumbing, heating and equipment and supplies, machinery, equipment and supplies, beer, wine and distilled alcoholic beverages, paper and paper products, furniture and home furnishings, lumber and construction materials.
6. General farm products, household goods and refrigerated warehousing and storage.
7. Motor freight terminals, garaging and equipment maintenance.
8. Mortuaries.
9. Contract construction services.
10. Off site signs.

B. Uses Permitted by Special Permit

1. Food lockers, provided that any slaughtering, killing, eviscerating, skinning, or plucking be done indoors.
2. Other industrial or commercial uses determined by the City Zoning Commission to be consistent with the intent of this district.

C. Prohibited Uses

- 1 All uses and structures not specifically permitted or not permitted by special exception shall be prohibited in the Commercial Industrial District.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

Collateral References:

Zoning, 82 AmJur2d, Zoning and Planning, §§7,8.

Boundaries, 39 ALR2d 766.

Enterprise or activity, what's permissible in a business zone, 128 ALR 1214.

Right of municipality to enforce, 119 ALR 1509.

Exclusion of industry inconsistent with residential character, 9 ALR2d, 683.

Exclusionary zoning, 48 ALR3d 1210.

Landlord and tenants, 37 ALR3d 1018.

Population validity of classifications based on population, 98 ALR3d, 679.

Public facilities, municipal bans on construction with regards to, 92 ALR3d 1073.

Regulations as to building areas, 27 ALR 443.

Statutory notice requirements, 96 ALR2d, 449.

Waste disposal, 59 ALR3d, 1244.

Zoning laws passed to avoid industrial nuisance, 173 ALR 271.

Opinions of the Attorney General

Authority of municipal powers within three miles of corporate limits, Opinion No 81-4.

17-4-17 MINIMUM LOT REQUIREMENTS FOR THE COMMERCIAL INDUSTRIAL DISTRICT

- A. The minimum lot area for permitted uses shall be fifteen thousand (15,000) square feet. The minimum lot width for permitted uses shall be one hundred (100) feet. The minimum lot area and width for uses permitted by special exception shall be as determined by the City Zoning Commission.
- B. Permitted uses shall have a minimum front yard of twenty feet (20) feet, minimum side yards of ten (10) feet, and a minimum rear yard of twenty (20) feet.
- C. The maximum lot coverage for all buildings and structures shall not exceed seventy five (75) percent of the total lot area.

Authority:

SDCL §§ 9-12-13, 11-4-1, 11-4-2, 11-4-3

Collateral References:

Light and air space, building regulations, 9

ALR3d 1018.

17-4-18 MAXIMUM HEIGHT WITHIN THE COMMERCIAL INDUSTRIAL DISTRICT

The maximum height of all buildings and structures shall not exceed fifty (50) feet within the Commercial Industrial District.

Authority:

SDCL §§ 11-4-1, 11-4-2, 11-4-3

Collateral References:

Height of buildings, validity of regulation,

8 ALR2d 963.

17-4-19 INDUSTRIAL DISTRICT

The following uses of the Industrial District are defined as:

A. Uses Permitted

1. All uses permitted in the Commercial Industrial Area, and which, upon application to the City Zoning Commission, are granted by Special Permit, except that the following uses shall be approved by the City Zoning Commission **after Public Notice and Hearing.**

B. Uses Permitted by Special Permit

1. Slaughterhouses.
2. Crematory.
3. Explosive manufacture or storage.
4. Fertilizer manufacture.
5. Junk yards, including the storage of or baling of scrap paper, iron, bottles, rags or junk.
6. Soap manufacture.
7. Tanning of leather, rawhide or skins.
8. And in general, those uses which have been declared a nuisance in any court of record, or which may be noxious or offensive by reason or odor, dust, gas, smoke, or noise.
9. Livestock sales or auction barns and yards.

Authority:

SDCL §§ 11-4-1, 11-4-2, 11-4-3, 11-4-4

Collateral References:

*Zoning, 82 Am.Jur2d, Zoning and Planning, §§7, 8.
Boundaries, 39 ALR2d 766.
Enterprise or activity, what's permissible in a business zone, 128 ALR 1214.
Right of municipality to enforce, 119 ALR 1509.
Exclusion of industry inconsistent with residential character, 9 ALR2d, 683.
Exclusionary zoning, 48 ALR3d 1210.
Landlord and tenants, 37 ALR3d 1018.
Population validity of classifications based on population, 98 ALR3d, 679.
Public facilities, municipal bans on construction with regards to, 92 ALR3d 1073.
Regulations as to building areas, 27 ALR 443.
Statutory notice requirements, 96 ALR2d, 449.
Waste disposal, 59 ALR3d, 1244.
Zoning laws passed to avoid industrial nuisance, 173 ALR 271.*

Opinions of the Attorney General:

Authority of municipal powers within three miles of corporate limits, Opinion No. 81-4.

17-4-20 BUILDING HEIGHT LIMIT OF THE INDUSTRIAL DISTRICT

The maximum height of all buildings and structures within the Industrial District shall be fifty (50) feet.

Authority:

SDCL §§ 11-4-1, 11-4-2, 11-4-3

Collateral References:

Height of buildings, validity of regulation,

17-4-21 LOT REQUIREMENTS OF THE INDUSTRIAL DISTRICT

Same as outlined under Lot Requirements for the Commercial Industrial Zone. And in addition, all storage within five hundred (500) feet of a residential district must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stock pile which fence shall be maintained in safe and good repair.

Storage yards for junk shall be set back a minimum of one hundred (100) feet from any adjoining street line and thirty (30) feet from any other property lines, and shall be screened by a solid wall at least two (2) feet above the highest stock pile and maintained in a state of good repair. Further provided, that no storage yard for junk shall be allowed on any lot in an Industrial Zone which is within five hundred (500) feet of a residential zone.

Authority:

SDCL § 9-12-13; See Also Chapter 11-4 generally

Collateral References:

Light and air space, building regulations, 9

ALR3d 1018.

Attack on validity of zoning statute, 50 ALR2d, 1083.

Open side or rear yards, validity of the requirement,

71 ALR2d 568.

Alterations etc., 64 ALR 920.

Architectural restrictions, 42 ALR3d 1232;

ALR 3d 1397.

Boundaries, 39 ALR2d 766.

17-4-22 FLOOD PLAIN DISTRICT

The following uses of the Flood Plain District shall be defined as:

A. Permitted Uses

Open spaces uses shall be permitted within the Flood Plain District provided they do not require structures, landfill or storage of materials or equipment. In addition, no use shall adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.

1. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.
2. Industrial commercial uses such as loading areas, parking areas and airport landing strips.
3. Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.

B. Uses Permitted on Review

No permit shall be issued for the construction of any building or structure including railroads, streets, buildings and utility lines or for any use within the Flood Plain District

until plans for construction have been submitted to the Planning Commission and approval is given in writing after the other provisions of this title have been fulfilled. In its review of plans submitted, the Zoning Commission shall be guided by the following standards, keeping in mind that the purpose of this district is to prevent encroachment into the floodway which will unduly increase flood levels and endanger life and property.

1. Any structures or filling of land permitted shall be of a type not appreciably damaged by floodwaters.
2. Any use permitted shall be in harmony with and not detrimental to the uses permitted in the adjoining district.
3. Any permitted structures or the filling of land shall be designed, constructed and placed on the lot so as to offer the minimum obstruction to and effect upon the flow of water.
4. Any structure, equipment or material permitted shall be firmly anchored to prevent it from floating away and thus damaging other structures and threatening to restrict bridge openings and other restricted sections of the stream.
5. The storage or processing of materials that are in time of flood buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited.
6. Any structure shall be constructed on fill so that the first floor is above the regulatory flood protection elevation. The fill, which shall include the access to the structure from a public street, shall have an elevation no less than one foot below the regulatory flood protection elevation for the particular area, and the fill shall extend no less than ten (10) feet beyond the limits of any structure or building erected thereon. Where existing streets or utilities are at elevations which make compliance with this provision impractical or in other special circumstances, the Zoning Commission may authorize other techniques for elevation.
7. Any structure may, in special circumstances, be protected by other flood proofing measures to a point at or above the regulatory flood protection elevation.
8. Where in the opinion of the Zoning Commission topographic data, engineering and other studies are needed to determine the effects of flooding on a proposed structure or fill and/or the effect of the structure or fill on the flow of water, the Zoning Commission may require the applicant to submit such data.
9. The granting of approval of any structure or use shall not constitute a representation, guarantee or warranty of any kind by the Zoning Commission or by any officer or employee thereof, of the practicality or safety of any structure or use proposed and shall create no liability upon or cause action against such public body, officer or employee for any damage that may result pursuant thereto.

Authority:

SDCL § 9-12-1-3; See Also Chapter 11-4 generally.

Collateral References:

Light and air space, building regulations, 9 ALR3d 1018.

Collateral References (continued. . .)

Attack on validity of zoning statute, 50 ALR2d, 1083.

Open side or rear yards, validity of the requirement, 71 ALR2d 568.

Alterations etc., 64 ALR 920.

Architectural restrictions, 42 ALR3d 1232; 41 ALR3d

Boundaries, 39 ALR2d 766.

DISTRICT

Any structure or use permitted shall comply with the minimum area, height and parking regulations established for such structure and height, and parking regulations established for such structure and use in the most restrictive of the adjacent zoning districts and with other parts of this title which regulate the use of its normal accessory uses.

Authority:

SDCL § 9-12-13-, 11-4-1, 11-4-2, 11-4-3

Collateral References:

*Height of buildings, validity of regulation,
8 ALR2d 963.*

CHAPTER 17-5 GENERAL REQUIREMENTS

17-5-1

PURPOSE

Pursuant to the purposes of this title are certain General Requirements that are not provided for under Chapter Four's District Requirements. These requirements are set forth under this Chapter.

Authority:
SDCL Chapter 11-4 generally.

17-5-2

VISIBILITY AT INTERSECTIONS IN RESIDENTIAL DISTRICTS

On a corner lot in any residential district, nothing shall be erected, placed, planted or allowed to grow in such a manner as materially to impede vision between a height of two and one half (2½) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection.

Authority:
SDCL § 9-12-13; See Also Chapter 11-4 generally

Collateral References:
Zoning ordinances prohibiting or limiting fences,
hedge or walls, 1 ALR4th 373.

Height regulations, 8 ALR2d 963.
Exclusionary zoning, 48 ALR3d 1210.

17-5-3

FENCES, WALLS AND HEDGES

Notwithstanding other provisions of this ordinance, fences, walls and hedges may be permitted in any required yard, or along the edge of any yard, provided that no fence, wall or hedge along the sides or front edge of any front yard shall be over six (6) feet height.

Authority:
SDCL § 9-12-13; See Also Chapter 11-4 generally

Collateral References:
Zoning ordinances prohibiting or limiting fences,
hedge or walls, 1 ALR4th 373.

Height regulations, 8 ALR2d 963.
Exclusionary zoning, 48 ALR3d 1210.

17-5-4

REFUSE AND MOWING

In all Zoning Districts, refuse (rubbish, garbage, trash, waste or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lots shall be responsible for keeping their property mowed and free of trash.

Authority:
SDCL Chapter 11-4 generally

Collateral Reference:
Waste disposal zoning, 59 ALR2d 1367.

17-5-5

UNLICENSED VEHICLES

Vehicles not in use and without a current license may not be kept in any uncovered area other than designated junk or salvage yard.

Authority:
SDCL Chapter 11-4 generally

17-5-6**PARKING AREAS**

Except in the Commercial District, off street motor vehicle parking and loading spaces shall hereafter be provided on the same lot as, and in the number stated, for each use set forth in the Schedule of Minimum Off Street Parking and loading requirements below. In the event of the minimum number of spaces specified cannot be reasonably provided on the same lot as the principal use for which the spaces are required, the Zoning Commission may permit such spaces to be provided on other off street property within four hundred (400) feet of the entrance to such principal use.

<u>Use or Structure</u>	<u>Minimum Off Street Parking Requirements</u>	<u>Minimum Off Street Loading Requirements</u>
Bowling alleys	Four (4) spaces per alley	One (1) space per establishment
Churches	One (1) space for each four seats in the main seating area	None
Eating and drinking Places	One (1) space for each three customer seating spaces	One (1) space per establishment
Hospitals	One (1) space for each three beds	Three (3) spaces per establishment
Hotels	One (1) space for each two rental rooms	One (1) space per establishment
Industrial Uses	One (1) space for each two employees on the maximum working shift	Two (2) spaces per establishment
Libraries	One (1) space for each five hundred (500) square feet of floor area	One (1) space per establishment
Lodging and boarding houses	One (1) space for each rental unit	None
Medical or dental clinics	One (1) space for each exam or operating room plus one space for each doctor and employee	None
Mobile home parks	Two (2) spaces for each mobile home	None
Motels	One (1) space for each guest room	None
Mortuaries and funeral homes	Five (5) spaces for each reposing room Minimum Off Street	Two (2) spaces per establishment Minimum Off Street

<u>Use or Structure</u>	<u>Parking Requirements</u>	<u>Loading Requirements</u>
Nursing, convalescent and rest homes	One (1) space for each five beds	One (1) space per establishment
Private clubs, lodges social or fraternal organizations	One (1) space for each one hundred (100) square feet or one space for each three seats at bars or dining tables which ever is greater	One (1) space per establishment
Residential uses	Two (2) spaces for each dwelling unit	None
Retail sales establishments	One (1) space for each three hundred (300) square feet of floor area	One (1) space per establishment
Schools	One (1) space for each twenty-five (25) students	One (1) space per establishment
Service establishments	One (1) space for each three hundred (300) square feet of floor area	One (1) space per establishment
Theaters, auditoriums, and places of public assembly	One (1) space for each four seats of design capacity	One (1) space per establishments
Wholesale and distribution establishments	One (1) space for each two employees on the maximum work shift	Two (2) spaces per establishment

Authority:
SDCL Chapter 11-4 generally

17-5-7

NON-CONFORMING USES

All prior and existing non-conforming uses shall be governed by the following rules and regulations:

- A. Any non-conforming building or land use existing at the time of the passage of this title may be continued even though such building, structure or land use does not conform with the provisions of this title for the District in which it is located. Any such existing non-conforming use may hereafter be extended throughout any part or parts of a building which were manifestly arranged or designed for such use at the time of the passage of this title. Any such existing non-conforming land use may be expanded throughout any contiguous land area under the same ownership at the time of the adoption of this title except when such non-conforming land use by its expansion enters into an area with a different zoning classification.
- B. No non-conforming use, building, structure or premises, if once changed to conform to the requirements of this title for the district in which it is located, shall never be changed

back so as to be non-conforming. No non-conforming use which shall have been discontinued for a period exceeding twelve months, shall be resumed or replaced by any other non-conforming use.

- C. Nothing in this title shall prevent the restoration of any wall or other portion of a building declared unsafe by an authorized public official.
- D. Whenever any building existing in any of the districts as a non-conformity is condemned by an authorized public official, it cannot be rebuilt for a non-conforming use. If any non-conforming building is destroyed or damaged by any casualty, such building may be repaired or replaced and use continued providing said reconstruction shall not add to the non-conformity or add to the cubic contents of said building as the same existed at the time of such casualty; and provided further that such repair or reconstruction of such building shall begin within six months after such casualty and completed within a reasonable time thereafter; however, if the damage caused by such casualty is such as to cause a loss in value exceeding sixty (60) percent of the value immediately prior to such casualty then it cannot be rebuilt for a non-conforming use. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.
- E. The foregoing provision of this Section (17-5-7) shall apply to buildings, structures, land or uses, except those buildings, land or uses, which are agricultural in nature which may hereafter become non-conforming by reason of the rezoning of the area in which the same may be situated.
- F. Nothing contained in this statute shall be so construed as to abridge or curtail the powers of the City Zoning Commission as set forth elsewhere in this title.
- G. Nothing contained in this section or elsewhere in this title shall restrict or prevent remodeling, replacing, or rebuilding a dwelling heretofore erected upon a lot area of less than six thousand (6,000) square feet, upon conditions that such remodeling, replacing or rebuilding each dwelling shall be done in such a manner as to not conflict with provisions of this section relating to matters other than lot area any farther than the dwelling now upon said premises so conflicts.

Authority:

SDCL Chapter 11-4 generally

Law Reviews:

Zoning, non-conforming uses and the amortization solution, 4 SD LRev 180 (1959).

Collateral References:

Exclusion of industrial activities inconsistent with residential character, 9 ALR2d 683.

17-5-8

MOBILE HOME DISTRICT DEFINED

It shall be unlawful for any person to place any trailer house or mobile home used for human habitation or to use any trailer house or mobile home for living, sleeping, or business purposes on any premises except in an authorized mobile home court. Said mobile home court may be located in District R₃ as outlined on the map entitled "Zoning Use Districts".

Authority:
SDCL Chapter 11-4 generally

Collateral References:
Trailers, defining dwelling houses, commercial uses in residential districts, renting, see City of Sioux Falls v. Cleveland, 75 SD 548 70 NW2d 62 (1955).

17-5-9 MOBILE HOME COURT DEFINED

No mobile home court shall be constructed or maintained with less than four (4) mobile home spaces provided that the land area used or occupied by one trailer or other housing unit as a mobile home court shall be no less than thirty-five (35) feet by one hundred (100) feet and the same shall be defined by markers at each corner. No trailer or other living unit together with any appendages such as covered entrances or rooms or porches shall be placed within ten (10) feet of its individual lot line, fifteen (15) feet of one another side to side, and not less than thirty (30) feet end to end, nor within thirty (30) feet of any street or exterior boundary line of the court.

Authority:
SDCL Chapter 11-4 generally

Collateral References:
Trailers, defining dwelling houses, commercial uses in residential districts, renting, see City of Sioux Falls v. Cleveland, 75 SD 548 70 NW2d 62 (1955).

17-5-10 MOBILE HOME PARKING SPACE

One (1) off street automobile parking space shall be provided for each individual mobile home lot. Such off street parking spaces shall be set aside on a location convenient to the occupants of the mobile home unit and shall have ingress and egress by means of a public way. Where parking areas are provided adjacent to a public street, ingress and egress thereto shall be made accessible only through driveways or openings on the curb line of said street.

Authority:
SDCL Chapter 11-4 generally

17-5-11 MOBILE HOME COURT FACILITIES

Each mobile home court shall provide the following minimum facilities on the site for the common use of all trailer occupants.

- A. One refuse collection station shall be provided for each twelve (12) mobile homes or fractions thereof, conveniently located to serve tenants not more than one hundred fifty (150) feet from any trailer unit served, and be conveniently located for collection. Said refuse collection station shall be provided with one twenty (20) gallon can or more capacity for each family unit and provided that each refuse collection station shall have a concrete floor and be screened from public view.
- B. Each trailer or camping facility shall be connected with an approved sanitary sewerage and water system. Laundry facilities shall be connected to an approved water supply add sanitary sewerage system.

- C. Site lighting shall be provided and used to supplement street lighting and shall be effectively related to toilet and laundry facilities, plantings, walks, steps or ramps. Illumination should be of conservative intensity but sufficiently distributed to eliminate dark areas, especially at steps. Lights may be attached to toilet and laundry facilities.
- D. Each mobile home court shall provide on site management by the owner or his representative at all times to supervise the management, repairs, maintenance and janitorial work connected therewith and to see that all provisions of this section are complied with.

Authority:
SDCL Chapter 11-4 generally

17-5-12 BUILDINGS MOVED IN; PREREQUISITES FOR

Rules and regulations for buildings being transported are as follows:

- A. Any building, except those covered under section 17-8-1, moved into any use district must secure a special permit from the City Council.
- B. Any residence moved into any use district must have signatures by petition of seventy-five (75) percent of the landowners within 300 feet.

EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location shall not require adjoining landowner's approval.

Authority:
SDCL Chapter 11-4 generally

Collateral References:
Height regulations, 8 ALR2d 963.

17-5-13 FILLING, GRADING, LAGOONING AND DREDGING; GENERAL RULES

Filling, grading, lagooning or dredging which would result in substantial detriment to natural waters by reason of erosion, sedimentation, or impairment of fish and aquatic life is prohibited.

Authority:
SDCL Chapter 11-4 generally

Collateral References:
Conservation, validity, construction and application of enactments restricting land development by dredging or filling, 46 ALR3d 1422.

17-5-14 PERMITS REQUIRED FOR FILLING, GRADING, LAGOONING AND DREDGING

A permit shall be required for any filling or grading of any area which is within three hundred (300) feet horizontal distance of a natural water and which has surface drainage toward the water and in which there is:

- A. Filling of more than five hundred (500) square feet of any wetland which is contiguous to the water.

- B. Filling or grading on all slopes of twenty (20) percent or more. This does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.
- C. Where more than ten thousand (10,000) square feet of the bank of a natural body of water is exposed by grading.
- D. A permit shall be required before constructing, dredging, or commencing work on an artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within three hundred (300) feet of the high water mark of a natural body of water or where the purpose is the ultimate connection with such body of water. This requirement does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.

Authority:
SDCL Chapter 11-4 generally

CHAPTER 17-6

GENERAL PROVISIONS AND ENFORCEMENT

17-6-1 REQUIREMENTS FOR CHANGE

Whenever the public necessity, safety and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the City Zoning Commission as provided herein, the City Council may change zone district boundaries, use groups or the regulations established under this title; provided that such modification or repeal in each instance is presented to the City Council in the same manner and upon the same notice as required for the adoption of this entire City code.

Authority:
SDCL § 11-4-8

Collateral References:
Boundaries, validity of zoning regulations with respect to uncertainty and indefiniteness of district boundary lines, 39 ALR2d 766.

Opinions of the Attorney General:
Zoning commissions, Report 1963-64, p. 256.

Case Law:
Vested rights: See, Title v. City of Sioux Falls, 82 SD 411, 147 NW2d 128 (1966).

17-6-2 INITIATION OF CHANGE

A proposed change of zone district boundaries or regulations may be initiated by the City Council, City Zoning Commission, or by application of one or more of the owners of property within the area requested to be changed.

Authority:
SDCL §§ 11-4-8, 11-4-9

Case Law:
Vested rights: See, Title v. City of Sioux Falls, 82 SD 411, 147 NW2d 128 (1966).

17-6-3 PUBLIC HEARING

Every three months or at the discretion of the City Zoning Commission, the Commission will set an informal hearing to consider requested changes or amendments to the zoning ordinance or zoning map. The hearing shall be held not less than fifteen (15) days after the proposed amendment has been published in a newspaper of general circulation in the City.

Authority:
SDCL Chapter 11-4 generally

17-6-4 RECOMMENDATIONS

The Zoning Commission may recommend approval or disapproval of a requested change, either in whole or in part. Recommendations for changes shall be presented to the City Council.

Authority:
SDCL Chapter 11-4 generally

Opinions of the Attorney General:
Legal status of zoning commission, Report 1963-64, p. 256.

17-6-5

ADOPTION

The City Council shall thereafter by resolution either adopt or reject the proposed amendment, which if adopted shall take effect upon the twentieth day after its publication by the City Council in the official Hosmer newspaper.

Authority:

SDCL Chapter 11-4 generally

17-6-6

SITE PLAN AND SCHEDULE

All requests for change in the zoning map shall be accompanied by the following:

- A. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.
- B. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.
- C. A proposed time schedule for beginning and completion of development.

Authority:

SDCL Chapter 11-4 generally

17-6-7

FEES AND EXPENSES

All requests for changes in the Zoning Ordinance or Map, except those initiated by the City Council or City Zoning Commission shall be accompanied by deposit of twenty (\$20.00) dollars which shall be used to defray expenses for the administrative preparation for consideration of the request. The fee for submitting a request for a Building Permit shall be set by the City Council.

Authority:

SDCL Chapter 11-4 generally

CHAPTER 17-7 ADMINISTRATION

17-7-1 ENFORCEMENT

The City Council shall enforce the provisions of this title. It shall be their duties to examine all applications for permits, issue permits only for construction and uses which are in accordance with the requirements for this title, record and file all applications for permits with an accompanying plan and documents. Permits for construction or use which are a special exception or variance to requirements of this title shall be issued only upon order by the City Council.

***Authority:**
SDCL Chapter 11-4 generally*

***Cross References:**
Injunction proceedings, SDCL Chapter 21-8.
Nuisances, remedies against, SDCL Chapter 21-10.*

17-7-2 CONSTRUCTION UNDERWAY

Nothing herein contained shall require any change in plans or construction or lawful use, the construction of which is started before the effective date of this title and which is completed within one (1) year of the effective date of this title.

***Authority:**
SDCL Chapter 11-4 generally*

***Case Law:**
Vested rights: See, Title v. City
Of Sioux Falls, 82 SD 411,
147 NW2d 128 (1966).*

17-7-3 VIOLATION AND PENALTIES

Any person, firm, or corporation who fails to comply with, or violates any of these regulations shall be subject to a fine of two hundred dollars (\$200.00) for each lot sold or otherwise disposed of, leased or offered for sale or lease. In addition to the penalties described above, the City Council may institute an appropriate action or proceedings to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation.

***Authority:**
SDCL Chapter 11-4 generally*

***Opinions of the Attorney General:**
Imprisonment for failure to pay fine,
Report 1967-68, p. 105.*

CHAPTER 17-8 PERMITS

17-8-1 BUILDING PERMITS

A building permit shall be obtained from the City Council for any of the following:

- A. Occupancy and use of a building hereinafter constructed, enlarged, relocated, reconstructed, or structurally altered.
- B. Any change in the use of an existing building.
- C. Occupancy and use of vacant land, or change in the use of the land except for any use consisting primarily of tilling the soil.
- D. No such occupancy, use of change of use shall take place until a building permit therefore has been issued by the City Council. No building permit shall be issued unless the proposed occupancy is in full conformity with all the provisions of this title.
- E. A building permit shall be deemed to authorize and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such buildings and the use thereof or the use of such land is in full conformity with the provisions of this title and any requirements made pursuant thereto. However, on the serving of a written notice by the City Council of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the building permit for such use shall thereupon without further action be null and void, and a new building permit shall be required for any further use of such building or land.

Authority:

SDCL Chapter 11-4 generally

Cross References:

Housing and redevelopment projects subject to ordinances and regulations, see SDCL § 11-7-43.

17-8-2 APPLICATION FOR PERMITS

Applications for building permits shall be made to the City Council in writing upon forms approved by the City Council and such forms shall be filled in by the owner, or authorized agent, and shall be accompanied by plans and other requirements of this title. Such plans and data shall be final and conclusive and a deviation there from shall require a new building permit.

Authority:

SDCL Chapter 11-4 generally

17-8-3 APPEALS

Appeals from the decisions of the City Council may be made to any court of law.

Authority:

SDCL §§ 11-4-25, 11-4-26

17-8-4 PERMITS POSTED

Building permits shall be posted in a conspicuous place upon the premises, visible from a public right of way, at all times from the beginning until the completion of such construction, alteration, repair or occupancy.

Authority:

SDCL Chapter 11-4 generally

Collateral References:

For destruction of public records, see SDCL § 1-27-19, 11-4-6.

CHAPTER 17-9 BOARD OF ADJUSTMENT

17-9-1

BOARD OF ADJUSTMENT

The City Council and Mayor shall act as the Board of Adjustment.

Authority:

SDCL §§ 11-4-13, 11-4-24

Collateral References:

*Legislative authority of the boards, see
Graves v. Johnson, 75 SD 261 63 NW2d (1954)
City of Madison v. Clarke, 188 NW2d 312
(1980).*

*Necessity of board and board of adjustment has no power
to rezone, see City of Sioux Falls v. Bessler, 68 SD 635 5 NW2d
633 (1942).*

17-9-2

POWERS OF THE BOARD OF ADJUSTMENT

The City Council and Mayor, acting as the Board of Adjustment shall be governed by these statutory regulations and/or have the authority to do the following:

- A. The majority vote of the members shall be necessary for approval of any action by the Board of Adjustment.
- B. Special Exceptions. The City Council shall have the authority to hear and decide applications for special exceptions as specified in this title and to pass decisions on any special questions upon which this Board of Adjustment is specifically authorized to pass.
- C. Variance. The City Council shall have the authority to hear and decide applications for variance based upon circumstances involving unnecessary hardship under the terms of this title. Before any variance is granted the following conditions must be shown as present:
 - 1. The conditions and circumstances are peculiar to the land, structure, or building and do not apply to neighboring lands, structures or buildings in the same district.
 - 2. Strict application of the provisions of this title would not deprive the applicant of reasonable use of the land, structure or building equivalent to the use made of neighboring lands, structures or buildings in the same district and permitted under the terms of the title.
 - 3. The peculiar conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of this title.
- D. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
- E. The Board does not possess the powers to permit a use which is not permitted in the district involved.
- F. In granting a variance, the Board may attach thereto any conditions and safeguards it deems necessary or desirable in furthering the purposes of this title. Violation of any of these conditions or safeguards shall be deemed a violation of the title itself.

Authority:

SDCL Chapter 11-4 generally; More specifically § 11-4-13

Collateral References:

Legislative authority of the boards, see Graves v. Johnson, 75 SD 261 63 NW2d (1954) City of Madison v. Clarke, 188 NW2d 312 (1980).

Necessity of board and board of adjustment has no power to rezone, see City of Sioux Falls v. Bessler, 68 SD 635 5 NW2d 633 (1942).

17-9-3

APPEALS

Decisions of the Board in respect to the aforementioned shall be subject to appeal to the court of proper jurisdiction within the same prescribed by statute.

Authority:

SDCL § 11-4-25, 11-4-26

Collateral References:

Special conditions governing appeals, City of Madison v. Clarke, 288 NW2d 312 (1980).

CHAPTER 17-10 ZONING SUBDIVISIONS

17-10-1 DEFINITIONS

The following definitions apply to the Hosmer zoning subdivision statutes.

Alley: A minor public way having a narrow right of way and affording a secondary means of access to abutting properties.

Finance Officer: The duly appointed Finance Officer of the City of Hosmer.

City Council: The duly elected City Council of the City of Hosmer.

Comprehensive/Development Plan: Any legally adopted part or element of the Comprehensive/Development Plan of the City of Hosmer. This may include but is not limited to zoning ordinances, subdivision chapters, community facility plans, major street plans, capital improvement programs and land use plans.

Easement: A right to land generally established in a real estate deed or on a recorded plat to permit the use of land by the public, a corporation, or particular persons for specified uses.

Engineer: The duly designated engineer acting in behalf of the City Council.

Final Plat: A plat of a tract of land which meets the requirements of these regulations and is in form for recording in the officer of the Register of Deeds.

Lot: A parcel of land intended for transfer of ownership or for building development.

Major Street Plan: The Major Street Plan adopted as an element of the Comprehensive/Development Plan.

Mayor: The duly elected Mayor of the City of Hosmer.

Preliminary Plat: The map or maps of a proposed subdivision and specified supporting materials, drawn and submitted in accordance with the requirements of this ordinance, to permit the evaluation of the proposal prior to detailed engineering and design.

Register of Deeds: The duly designated Register of Deeds of Edmunds County.

Sketch Plan: The sketch map or maps of a proposed subdivision, drawn and submitted in accordance with the requirements of this chapter to evaluate feasibility and design characteristics at an early state in the planning.

Street: A tract of land, dedicated to public use, which affords the primary means of access to the abutting property, but excluding private driveways serving only one (1) parcel of land.

Subdivider: The person(s), firm(s) or corporation(s) owning land in the process of creating a subdivision of said land.

Subdivision: The ordinance adopted by the City of Hosmer to regulate the subdivision of land so as to provide coordination of streets with other subdivisions and the major street plan, adequate areas set aside for public uses, water and sanitation facilities, drainage and flood control and conformity with the comprehensive plan of the city. The divisions of any tract or parcel of land into two (2) or more lots, sites or other divisions for the purpose, whether immediate or future of sale or building development, and includes re-subdivision.

Utilities: Municipal and franchised utilities.

Zoning Officer: The duly designated zoning officer of the City of Hosmer.

Zoning Ordinance: The Zoning Ordinance of the City of Hosmer.

***Authority:**
SDCL Chapter 11-4 and 11-3 generally*

17-10-2 PURPOSE

Chapter 17-10 has been adopted to provide for the harmonious development of the City of Hosmer and its environs; for the coordination of streets within subdivisions with other existing or planned streets or with other features of the comprehensive plan; for adequate open spaces for traffic, recreation, light and air; and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, and convenience through the provisions for an adequate scale of street, sanitary, water, utility, and other improvements as land is subdivided.

***Authority:**
SDCL Chapter 11-4 and 11-3 generally*

***Opinions of the Attorney General:**
Legal status of comprehensive plan and zoning ordinance adopted by governing body, Report 1963-1964, p. 256.*

***Collateral References:**
Change of name of platted portion of municipality, SDCL §§ 21-37-6 to 21-37-10.
Fees to Register of Deeds, see SDCL § 7-9-15.*

17-10-3 APPLICABILITY

All subdivision regulations shall apply to all subdivisions of land, as defined herein, located within the City of Hosmer.

***Authority:**
SDCL Chapter 11-4 and 11-3 generally*

17-10-4 AMENDMENTS

Any provisions in this chapter may from time to time be amended, supplemented, changed, modified, or repealed by the City Council according to statutory law.

Authority:
SDCL Chapter 11-4 and 11-3 generally

Opinions of the Attorney General:
Legal status of comprehensive plan and zoning ordinance adopted by governing body, Report 1963-1964, p. 256.

Collateral References:
*Change of name of platted portion of municipality, SDCL §§ 21-37-6 to 21-37-10.
Fees to Register of Deeds, see SDCL § 7-9-15.*

17-10-5 VARIANCES

Exceptional Conditions:

- A. General. The City Council may grant variances from the provisions of these regulations, but only after determining that:
 - 1. There are unique circumstances or conditions affecting the property.
 - 2. The variance is necessary for the reasonable and acceptable development of the property in question.
 - 3. The granting of the variance will not be detrimental to the public welfare or injurious to adjacent property.
 - 4. The variance will not permit or encourage uses contrary to the Zoning Regulations.
- B. Conditions. In approving variances, the City Council may require such conditions as will, in its judgement, secure substantially the objectives of the standards or requirements of these regulations.
- C. Procedures. A petition for any such variance shall be submitted in writing by the subdivider at the time when the preliminary plat is filed for the consideration of the City Council. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.

Authority:
SDCL Chapter 11-4 and 11-3 generally

Opinions of the Attorney General:
Rerecording plat, fees allowed for, Report 1931-32, p. 524.

Collateral References:
Fees of Register of Deeds generally, SDCL § 7-9-15.

17-10-6 ENFORCEMENT UNDER CHAPTER TEN

Generally:

- A. It shall be the duty of the Zoning Officer to enforce these regulations and to bring to the attention of the City Council any violations or lack of compliance herewith.
- B. No owner or agent of the owner of any parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a plat of such subdivision has been approved by the City Council, in accordance with the provisions of these regulations, and filed with the appropriate County Register of Deeds.
- C. No building permit shall be issued for the construction of any building or structure located on a lot or plat subdivided or sold in violation of the provisions of these regulations, and no excavation of land or construction of any public or private improvements shall take place or be commenced except in conformity with the

regulations.

- D. The subdivision of any lot or any parcel of land, by the use of metes and bounds description for the purpose of sale, transfer, or lease with intent of evading these regulations, shall not be permitted. All such described subdivisions shall be subject to all of the requirements contained in these regulations.

Authority:

SDCL Chapter 11-4 and 11-3 generally

Collateral References:

Uniform action required, no arbitrary decisions,

See City of Mobridge v. Brown, 39 SD 270 164

NW 94 (1917).

17-10-7

VIOLATIONS AND PENALTIES WITHIN CHAPTER TEN

Any person, firm or corporation who fails to comply with, violates, any of these regulations shall be subject to a fine of two hundred dollars (\$200.00) for each lot sold or otherwise disposed of, leased or offered for sale or lease. In addition to the penalties described above, the City Council may institute an appropriate action or proceedings to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation.

Authority:

SDCL Chapter 11-4 and 11-3 generally; See Also § 9-19-3

17-10-8

INTERPRETATION, CONFLICT AND SEPARABILITY

- A. Interpretation: In their interpretation and application, these regulations shall be held to be minimum requirements for the promotion of the public health, safety and general welfare.
- B. Conflict: Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.
- C. Separability: Should any article, section, subsection, or provision of these regulations be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the subdivision chapter as a whole or any part thereof, other than the part so declared to be invalid or unconstitutional.

Authority:

SDCL Chapter 9-12 and 1-19 generally

17-10-9

GENERAL PROCEDURES WITHIN THE SUBDIVISION PROCESS

The procedure for review and approval of a subdivision plat shall consist of three separate steps, in sequence: an informal discussion meeting with the City Council, preparation and submission of a preliminary plat of the proposed subdivision and preparation and submission of a final plat of the subdivision.

Authority:

SDCL Chapter 11-3 and 11-4 generally

17-10-10 ADVISORY MEETING WITH CITY COUNCIL

Before filing a preliminary plat, the subdivider shall consult with the City Council for advice regarding general requirements, minimum standards of design and required improvement as set forth in this chapter. A sketch of the proposal shall be submitted. The subdivider shall also submit a location map showing the relationship of the proposed subdivision to existing or platted streets and existing community facilities. This informal review should prevent unnecessary costly revisions in the layout and development of the subdivision. The informal advisory meeting does not require formal applications, fees, or filing of plats with the City Council.

Authority:
SDCL Chapter 11-3 and 11-4 generally

17-10-11 PRELIMINARY PLAT APPROVAL

After meeting informally with the City Council, the subdivider shall prepare a preliminary plat prior to the making of any street improvements or prior to the installation of any utilities.

Generally:

- A. Two (2) copies of the preliminary plats and the required supplemental material shall be filed with the Finance Officer who shall transmit them to the City Council. Such filing shall take place at least ten (10) days prior to the meeting of the City Council when it is to be considered.
- B. Following a hearing and due consideration of the preliminary plat, the City Council shall approve, disapprove, or modify the plat and shall impose those requirements or grant those variances in conformance with this ordinance deemed necessary and appropriate by the City Council for final approval. The action of the council, together with all modifications, requirements, variances and reasons thereof, shall be noted on all copies of the preliminary plat application. One (1) copy shall be returned to the subdivider and one copy retained by the Finance Officer.
- C. Approval of the preliminary plat by the City Council shall not constitute acceptance of the final plat. The approval of the preliminary plat shall lapse unless a final plat, based thereon, is submitted within two (2) years from the date of such approval. An extension of time may be applied for by the subdivider and granted by the council.

Authority:
SDCL Chapter 11-3 and 11-4 generally

Collateral References:
Posting of notice, SDCL Chapter 17-3.
Publication of notice, SDCL Chapter 17-2.

17-10-12 PRELIMINARY PLAT INFORMATION

The preliminary plat shall meet the standards of design as set forth in later statutes, and shall show the following information:

- A. Names of subdivision, names and addresses of the owners, and engineer or surveyor, and the owners of adjacent property.
- B. Date, north point and scale. Scale shall not be less than one (1) inch equals one hundred (100) feet.

- C. Location of property lines, roads, existing utilities with size of lines, and other underground installations.
- D. Acreage of land to be subdivided.
- E. Proposed utility system.
- F. Contours at an interval of not greater than five (5) feet; also, the locations of water courses, bridges, wooded areas, and such other topographic features as may be pertinent to the subdivision.
- G. Lot lines, lot numbers and minimum building setback lines.
- H. Location of proposed culverts and other drainage provisions.
- I. Proposed improvements and grading.
- J. Proposed easements, dedications and reservations of land to be considered for sale or dedication to public use.
- K. Names of new streets.

Copies of proposed deed restrictions, if any, shall be attached to the preliminary plat.

Authority:
SDCL Chapter 11-3 and 11-4 generally

17-10-13 PLAT REVIEW FEE

A fee shall be levied for the examination and approval or disapproval of every plat reviewed by the council. At the time preliminary plats are filed with the Finance Officer, the subdivider shall pay to the Finance Officer the amount of ten dollars (\$10.00) for each plat and one dollar (\$1.00) for each lot shown on each plat.

Authority:
SDCL Chapter 11-3 and 11-4 generally

17-10-14 FINAL PLAT APPROVAL

The final plat shall conform substantially to the preliminary plat as approved; provided however that it may constitute only a portion of the preliminary plat which the subdivider proposes to record and develop.

Authority:
SDCL § 9-33-6; See Also § 9-12-13 Chapter 11-4 and 11-3

17-10-15 PROCEDURE FOR FINAL PLAT APPROVAL

Approval of the final plat shall be governed by the following rules and regulations:

- A. Three (3) copies of the final plat and required supplemental material shall be filed with the Finance Officer, who shall transmit them to the City Council. Such filing shall take place at least ten (10) days prior to the meeting of the council at which it is to be considered.
- B. The City Council shall study the said final plat to see if it is consistent with the minimum standards set forth in this title. Following a hearing, the council shall approve, disapprove, or suggest modifications and give reasons thereof.

- C. When the final plat has been approved by the council, one (1) copy shall be returned to the subdivider with the approval of the council certified thereon, for filing with the appropriate County Register of Deeds as an official plat of record within ninety (90) days. Another copy certified by the council will be transmitted to the appropriate Director of Equalization for his/her records.

Authority:

SDCL Chapter 11-4 and 11-3 generally

17-10-16 FINAL PLAT INFORMATION

The following is required for final plats of subdivisions:

- A. The original or reproducible final plat shall be drawn in black ink upon tracing cloth or tracing vellum and shall be of a uniform size, fifteen (15) inches by twenty-six (26) inches or eight and one half (8½) inches by fourteen (14) inches. The scale shall be one (1) inch equals one hundred (100) feet or larger.
- B. The final plat shall show the following information:
1. Date, title, name and location of subdivision, graphic scale, and true north line.
 2. All dimensions, angles, bearings and similar data on the plat shall be tied to primary control points. Locations and descriptions of said control points shall be given. Except where deemed clearly unreasonable or infeasible by the City Council, these control points shall be the located section corners of the coordinate system of the State of South Dakota.
 3. Name and right of way width of each street, easement or other right of way.
 4. Lot numbers, lot lines and frontage dimensions.
 5. Location and description of monuments.
 6. Names of adjoining properties.
 7. Purpose for which sites are dedicated or reserved.
- C. The final plat shall be accompanied by:
1. Certification on plat of title showing that the applicant is the owner, that the making of the plat receives his consent and is in accordance with his desires, and a statement by such owner dedicating streets, rights of way and other sites for public use.
 2. Certification on plat by registered engineer as to the accuracy of survey and plat.
 3. Certification that the subdivider has complied with one of the following alternatives:
 - a. All improvements have been installed in accordance with the requirements of this title; or
 - b. A security bond or certified check has been posted with the Finance Officer in sufficient amount to assure such completion of all required improvements.
 4. Protective covenants shall either be placed directly on the final plat or attached thereto in form for recording.
 5. Certification on file by the City Council that the plat has been approved for recording in the office of the County Register of Deeds.

6. A copy of the certificate of the county director of equalization that he/she has received a copy of such plat.
7. Endorsed on plat or attached to it the certificate of the county treasurer stating that all taxes which are liens upon any land are included.

Authority:

SDCL Chapter 11-4 and 11-3 generally; Specifically §11-3-1.

Collateral References:

Posting of notice, SDCL Chapter 17-3.

Publication of notice, SDCL Chapter 17-2.

17-10-17 GUARANTEES IN LIEU OF COMPLETED IMPROVEMENT

No final subdivision plat shall be approved by the City Council or accepted for record by the Register of Deeds until the required improvements have been installed in accordance with the preliminary plat and approved by the council; or in lieu of such prior construction, the council may accept a security bond in an amount equal to the estimated cost of installation of the required improvements, whereby improvements may be made and utilities installed without cost to the City of Hosmer in the event of default of the subdivider.

Authority:

SDCL Chapter 11-4 and 11-3 generally.

17-10-18 GENERAL REQUIREMENTS IMPOSED

The City Council shall impose all the necessary general requirements of a comprehensive plan and compel all subdividers to comply with the principles of design in the layout of all subdivisions.

Authority:

SDCL Chapter 11-4 and 11-3 generally.

17-10-19 SUITABILITY OF LAND FOR SUBDIVISION DEVELOPMENT

If the council finds that land proposed to be subdivided is unsuitable for subdivision development due to flooding, bad drainage, steep slopes, rock formations, and other such conditions as may increase the danger of health, life or property or aggravate erosion or flood hazards; and if from adequate investigations, conducted by all public agencies concerned, it has been determined that in the best interest of the public, the council shall not approve the land for subdivision unless adequate methods are formulated by the subdivider for meeting the problems that will be created by the subdivision and development of the land.

Authority:

SDCL §11-4-1.

Collateral References:

Light and air space, building regulations, 9 ALR3d 1018.

Alternations etc., 64 ALR 920.

Architectural restrictions, 42 ALR3d 1232; 41 ALR3d 1397.

Attack on validity of zoning statute, 50 ALR2d 1083.

Boundaries, 39 ALR2d 766.

Open side or rear yards, validity of the requirements, 71 ALR2d 568.

Exclusion of industrial activities inconsistent with residential character, 9 ALR2d 683.

17-10-21 STREET EXTENSIONS

All street extensions within the City limits are to be governed by the following:

- A. The arrangement, character, extent, location and grade of all streets shall be in accordance with good planning principles and shall be considered in their relation to existing and planned streets, topographical conditions, to public convenience and safety, and in appropriate relation to the proposed uses of land to be served by such streets.
- B. Where, at the determination of the council, it is desirable to provide street access to adjoining properties, proposed streets shall be extended by dedication to the boundaries of such properties. Where the council deems it necessary, such dead end streets shall be provided with a temporary turn around having a radius of at least fifty (50) feet.
- C. The street system for the proposed subdivision shall provide for extending existing streets at the same or greater width, but in no case shall a street extension be of less width than the minimum width required in these regulations for a street in its category.

*Authority:
SDCL §11-3-12.1*

17-10-22 DEDICATION OF RIGHT OF WAY AND ROADWAY WIDTHS

The following conditions shall govern the designation and minimum street right of way and roadway widths:

- A. A minimum width of highways, arterial streets, residential collector streets, local residential streets and marginal access to be dedicated to the City shall be indicated on the Major Street Plan and where not shown thereon shall not be less than as follows:

<u>Street Types</u>	<u>Minimum Dedicated Right of Way Width</u>
Arterial	100 feet
Collector	80 feet
Minor	66 feet
Marginal Access	52 feet
Alleys	16 feet

- B. In underdeveloped or vacant areas, the council shall have the discretion to identify or classify a street as a collector street.
- C. Subdivisions which abut, or include within the proposed area to be subdivided, any highway or arterial street, shall provide:
 - 1. A marginal access street; or,
 - 2. Reverse frontage with screen planting contained in a non-access reservation along the rear property lines; or,
 - 3. Deep lots with rear service drives; or,
 - 4. Other treatment as may be necessary to adequately protect residential properties and to afford separation of through and local traffic.

D. Minimum roadway widths:

<u>Street Types</u>	<u>Pavement Width (Measured from Curb Faces)</u>
Arterial	60 feet
Collector	44 feet
Minor	32 feet
Marginal Access	26 feet

Authority:
SDCL Chapter 11-3 and 11-4 generally.

17-10-23 INTERSECTIONS

The following conditions shall govern all intersections found within the Hosmer City limits:

- A. Streets shall intersect as nearly possible at right angles, and no intersection shall be at an angle of less than seventy (70) degrees.
- B. Street curb intersections shall be rounded by radii of at least twenty (20) feet when the smallest angle of the street intersection is less than ninety (90) degrees, the council may require curb radii of greater length.
- C. No lot or other parcel of land which abuts on and has access to either a collector or a minor street shall have a service drive, curb cut, or other means of access to an arterial street within seventy-five (75) feet of the right of way of any street which intersects such arterial street on the side on which such lot or parcel is located.
- D. Street jogs with center line offsets of less than one-hundred and twenty-five (125) feet are declared illegal.

Authority:
SDCL §9-45-1; Chapter 11-3 and 11-4 generally

Collateral References:
Preparation of general development plan, a comprehensive plan is required, SDCL §§11-6-4, 11-6-15.

17-10-24 STREET GRADES AND ELEVATIONS

The following rules and regulations shall govern street grades and elevations within the City limits:

- A. Street grades shall conform to the following:

<u>Street Type</u>	<u>Maximum Percent Grade</u>
Arterial	7
Collector	8
Minor	10

- B. Minimum grades of any roadway shall not be less than 0.5 percent unless otherwise approved by the council.

Authority:
SDCL §9-45-1; Chapter 11-3 and 11-4 generally.

Collateral References:

Municipal housing and redevelopment law, SDCL Chapter 11-7.

Collateral References (continued. . .)

Validity, construction and effect of statutes providing for urban redevelopment by private enterprises, 44 ALR2d 1414.

General obligation bonds of municipalities, SDCL Chapter 9-26.

17-10-25 DEAD END STREETS (CUL-DE-SACS)

Minor terminal or dead end streets or courts which are designed so as to have one end permanently closed shall not be longer than five hundred (500) feet and shall be provided at the closed end with a turnaround having a diameter at the outside of the pavement of at least seventy-five (75) feet and a diameter at the outside of the right of way of at least one hundred (100) feet.

Authority:

SDCL §9-45-1; Chapter 11-3 and 11-4 generally.

17-10-26 PRIVATE STREETS, RESERVE STRIPS AND ALLEYS

The following regulations shall govern private streets, reserve strips and alleys:

- A. There shall be no private streets platted within the subdivision;
- B. There shall be no reserve strips in a subdivision except where their control is definitely vested in the City of Hosmer under conditions approved by the City Council as authorized by this title.
- C. Alleys shall not be provided in residential blocks except in cases where the subdivider produces evidence of the need for alleys which is satisfactory to the council. Alleys may be required in commercial and industrial districts, except that the council may waive this requirement where other definite and assured provisions are made for service access. Such alleys shall be dedicated to the public.

Authority:

SDCL §9-45-1; Chapter 11-3 and 11-4 generally.