

# TITLE 1

## CITY GOVERNMENT

### Chapter Index

- 1.1 Mayor and Alderman
- 1.2 Appointive Officers
- 1.3 Wards and Precincts
- 1.4 City Council Meetings

### **CHAPTER 1.1      MAYOR AND ALDERMEN**

#### 1.101 Salaries of Mayor and Aldermen

The Mayor and Aldermen shall be allowed compensation and necessary expenses incurred while traveling on official duties, as set by resolution of the City Council. Such compensation and expenses shall be paid at such times as decided upon by the Council. (SDCL 9-12-13)

### **CHAPTER 1.2      APPOINTIVE OFFICERS**

#### 1.201 Appointive Officers: Salaries

The following officers or positions of employment of the City of Emery, South Dakota are hereby created, and the annual salaries and compensation of the appointive officers shall be set by resolution from time to time by the City Council: (SDCL 9-14-1, 9-14-28)

City Finance Officer  
City Treasurer  
Chief of Police  
Superintendent of Streets and Water  
City Attorney

### **CHAPTER 1.3      WARDS AND PRECINCTS**

#### 1.301 Ward Boundaries

Wards and Precincts. The City shall be divided into three wards, which shall be combined and consolidated into one election precinct, and shall be designated respectively as Wards One, Two and Three. The wards shall be described by setting for the certain street or avenue designations or other landmarks that divide and border the wards. Any reference to street or avenue below shall mean an imaginary line running down the approximate middle of each street or avenue. The wards of the City of Emery are as set forth below and the map thereof. Any discrepancies shall be resolved by reference to the map rather than the physical descriptions set forth herein.

Ward One: The first ward shall be all that part of the City of Emery, South Dakota, lying north of 4th Avenue, and east of 3rd Street to 7th Street. It shall also include the east one-half portion of the block (split line drawn North/South) between 3rd Street and 4th Street and 3rd Avenue and 4th Avenue, and then all that part of the City of Emery, South Dakota, lying north of 3rd

Avenue and east of 4th Street to 7th Street. Also, it shall include all that part of the City of Emery, South Dakota, lying north of 2nd Avenue and east of 4th Street to 7th Street.

Ward Two: The second ward shall be all that part of said city bounded on the east by 3rd Street, north of the Railroad Right-of-Way and shall include all that part of the city lying south of said railroad right-of-way.

Ward Three: The third ward shall be all that part of the City of Emery, bounded on the north by 3rd Avenue, on the west by 3rd Street, on the south by the Railroad Right-of-Way, and on the east by the city limits. It shall also include the west one-half portion of the block (split line drawn North/South) between 3rd Street and 4th Street and 3rd Avenue and 4th Avenue.

#### 1.302 Voting Precincts

The total number of legal voters in all three (3) wards of the City not exceeding 350 at the last annual election, the three (3) wards are hereby consolidated into one (1) voting precinct for all voting purposes. (SDCL 9-13-16)

### **CHAPTER 1.4 CITY COUNCIL MEETINGS**

#### 1.401 City Council Meetings

The council shall hold its regular meetings on the second Monday of each month, but may change the date for any monthly meeting by resolution. Special meetings shall be called by the mayor or by any two aldermen at any time, to consider only such matters as shall be mentioned in the call for such meeting, by written notice thereof given to each alderman. (SDCL 9-8-8)

# TITLE 2

## BUILDING CODE

### Chapter Index

#### 2.1 Regulation and Permits for the Moving of Buildings

#### **CHAPTER 2.1 Regulation and Permits for the Moving of Buildings**

##### 2.101 Permit Required

No person shall move any building or part of a building into, along or across any public street, alley or ground within the City without having first obtained a moving permit. (SDCL 9-30-02)

##### 2.102 Applications

Written application for a moving permit shall be filed with the Finance Officer, and shall include the name of the applicant, the name of the owner of the building, a description of the lot on which such building is standing and the location to which it is to be moved, the route along which it is proposed to move such building, the date the move will occur, and the length of time which may be consumed in such move. Any application so filed shall be considered by the City Council for approval, and any other conditions to be compiled with by the applicant, shall be stated and followed.

##### 2.103 Permit Fee

Upon filing an application for a moving permit, the applicant shall pay to the Finance Officer of the City of Emery, an amount determined by the City Council. The Finance Officer shall issue a receipt to the applicant showing proof of such payment of permit fee.

##### 2.104 Surety Bond

No building moving permit shall be granted until the applicant shall file with the Finance Officer a bond in favor of the City in the penal sum to be established by the City Council, with sufficient surety, and conditioned on the applicant promptly repairing and making-good, to the satisfaction of the City Council and at the expense of the applicant, any and all damage to any pavement, sidewalk, crosswalk, hydrant, street, alley, or other property, done or caused by the applicant or the applicant's employees, in moving such building or part thereof, or in connection with the moving thereof. Surety shall also be conditioned on the applicant promptly filling in basement areas left open as a result of such moving and to restoring such site(s) to a safe and sanitary condition. The applicant shall indemnify and save harmless the City against any and all liability for damages, costs and expenses, arising or which may arise or be incurred in favor of any person by reason of any conduct by the applicant or the applicant's agents or employees, in connection with the moving of such building or part thereof, or the use of any public ground for such purpose. (SDCL 9-29-13)

##### 2.105 Standing Buildings

No building or part of a building being moved, shall be allowed to stand still in any public

street or any public ground for more than twenty-four (24) consecutive hours.

2.106 Permission of Property Owners

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

2.107 Penalty

Any person or persons, firms or corporation violating any of the provisions of this ordinance or failing to comply with any of the provisions thereof, shall be deemed guilty of a misdemeanor.

2.108 Conflicting Ordinances Repealed

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

2.109 Unconstitutionality

Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional, or invalid for any reason, the remainder shall not be affected thereby.

# TITLE 3

## FIRE CODE

### Chapter Index

3.1 Fire Limits

3.2 Fire Department

3.3 Fire Regulations

### CHAPTER 3.1 FIRE LIMITS

#### 3.101 Building Permits

Any person desiring to erect, alter or repair or remove any buildings within the limits of the city shall apply to the City Council as a whole for a permit for such purpose and furnish with such application, a plan and specification sufficient to determine whether such building, alteration or repair is in compliance with the provisions of the ordinance relating thereto, and if within the provisions of the ordinance it shall be the duty of such council to grant such application, whereupon a formal permit, at a sum to be determine by the City Council, shall be issued, signed by the Mayor and Finance Officer. Provided, however, that the City Council of the City of Emery may grant permission for the erection of buildings within said fire limits other than provided for by said ordinance, but such permit must be granted in writing by the Council to the person erecting such building. (SDCL 9-33-2)

#### 3.102 Building Specifications

No person shall erect, or cause to be erected, or place within the limits of the City of Emery, any structure without first obtaining a permit, and no permit shall be granted unless the entire structure complies with South Dakota State Law (SDCL 9-33-2).

#### 3.103 Penalty/Fine

Any violation of this Section shall be sufficient cause for revocation of the building permit and in addition thereto he/she shall be guilty of a misdemeanor and subject to fine.

### CHAPTER 3.2 FIRE DEPARTMENT

#### 3.201 Fire Department Established

The Fire Department of the City of Emery, South Dakota, shall consist of volunteer firemen who shall elect a fire chief and one assistant fire chief and such other officers as the Fire Department may desire. (9-33-13)

#### 3.202 Duties of Fire Chief

The Fire Chief shall be responsible for the discipline and proper conduct of the Fire Department, the enforcement of all laws and regulations pertaining thereto, and for the care and condition of the property of the Department. He shall have command of all members of the Fire Department. In case of the absence or inability of the Fire Chief, the Assistant Fire Chief

shall have the same powers as the Fire Chief would have.

### 3.203 Powers of Chief

The Fire Chief may prescribe limits in the vicinity of a fire within which no person except those residing therein, members of the Fire Department, Police force, members of the Commission, and those admitted by the Chief or his subordinate, shall be permitted to come. The Chief or officer having charge at any fire may call upon any person present to assist the firemen in their duties.

### 3.204 Chief may Remove Buildings

The Fire Chief during the progress of any fire, whenever in his judgment it becomes necessary to check or control the same, shall have power to order any fence building, or structure of any kind to be torn down and removed. He shall have power to cause any building or structure to be blown up for the purpose of checking or extinguishing a fire.

### 3.205 Interfering with Department

No person shall willfully hinder or interfere with any City officer or fireman in the performance of his duty at, going to, or returning from any fire, or while attending to his duty as a member of the Fire Department, nor willfully or negligently drive any motor vehicle or other vehicle across or upon any hose, nor willfully cut, deface, destroy, or injure any of the property belonging to or connected with the Fire Department or fire alarm system.

### 3.206 False Alarm of Fire

No person shall knowingly make a false alarm of fire by ringing any fire alarm, nor shall any person meddle with any fire alarm, except for the purpose of giving an alarm of fire.

## **CHAPTER 3.3 FIRE REGULATIONS (SDCL 9-33-1)**

### 3.301 Open Burning

#### (a) Definition of Terms.

1. Garbage: All solid and semi-solid, putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, storing, and consuming of food or of material intended for use as food, and all offal, excluding useful, industrial by-products, and all such substances from the public and private establishments and from all residences.
2. Refuse: Putrescible and non-wastes, including, but not limited to garbage, rubbish, ashes, incinerator ash, incinerator residues, street cleanings, market and industrial solid waste and sewage treatment wastes in dry or semi-solid form.
3. Rubbish: Non-putrescible solid waste consisting of combustible and non-combustible wastes, including but not limited to: ashes, paper, card board, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind.
4. Rubble: Stone, brick, or similar inorganic material.
5. Solid Waste: Garbage, refuse, and other discarded materials resulting from industrial, commercial, agricultural, and, community or residential activities.

(b) Open Burning.

1. No person within the corporate limits of the City shall burn or otherwise dispose of any garbage refuse, rubbish, rubble, or solid waste material by the use of fire.
2. The preceding paragraph shall not apply to the destruction or disposal of such garbage, refuse, rubbish, rubble, or solid waste material by fire where said fire is contained in a stove or similar item located within a residential or business structure.

3.302 Rubbish or Bonfire in Fire Zone

No person shall keep any shavings, sawdust, excelsior, wrappings, paper waste or other waste material inside of a building in Fire Zone except in a metal container.

3.303 Storing Gasoline and Volatile Products

(a) No person shall keep or store or cause to be kept or stored in any building or within twenty (20) feet of any building with in Fire Zone gasoline, benzene, benzoyl, naphtha or other light or volatile products of petroleum or crude petroleum, in quantities greater than five (5) gallons, except that said oils and their products be kept in underground tanks, the top of which tanks shall be at least two (2) feet below the surface grade, and if said tanks are placed in the basement or cellar, the top of said tanks shall be at least six (6) inches below the floor of said basement or cellar, and the oils from said tanks shall be withdrawn by pumps. Such pumps and tanks shall be so equipped that all surplus oil shall be drained back into the tank through a pipe connecting with the tank at least three (3) inches below the top of said tank.

(b) No person shall leave any tank or container used for storage of above described petroleum products underground for a period longer than thirty (30) days after use of same has been discontinued. Such container shall be taken above ground and demolished, made harmless, or shall be kept in a safe place and plainly marked to show it to be dangerous.

3.304 Regulations by City Council

The City Council may make such provisions from time to time as it sees fit for the cleaning up of streets, alleys and public buildings in order to prevent fires and any person refusing to remove any substance or material which may be on such person's premises and which poses an unreasonable danger of fire shall upon being notified by the City Council, remove the same within twenty-four (24) hours after such notice is given.

# TITLE 4

## HEALTH AND SANITATION

### Chapter Index

- 4.1 General Provisions: Officials
- 4.2 Sanitation
- 4.3 Nuisances

### **CHAPTER 4.1 GENERAL PROVISIONS: OFFICIALS**

#### 4.101 Health Officer Appointment

At the first meeting of the City Council in the month of May of each year, there shall be appointed by the Mayor with the consent of the Council a Health Officer who shall hold office until his successor has been duly appointed and qualified.

#### 4.102 Health Officer: Power and Duties

The Health Officer shall give the Mayor and City Council all such advice and information as they may require in regard to the public health; and it shall be the duty of the Health Officer to advise the proper city officials on the enforcement of the provisions of this Title and the laws of the State relative to health and sanitation, and to bring to the attention of said officials any condition in this city which exists contrary to the provisions of this Title. He shall have such specific powers or duties as are provided in this Ordinance or are provided in later ordinances or resolutions of this City. For the purpose of carrying out the foregoing requirements, he shall be permitted at all times, during daylight hours, to enter into any house, store, stable, or other building or premises, and do whatever is necessary to be done in order to make a thorough examination of cellars, vaults, sinks, drains, yards, and all other items provided for in this Ordinance in relation or maintaining healthful and sanitary conditions.

#### 4.103 Contagious Diseases

The Health Officer shall have power and authority to enter any premises in the City of Emery in search of contagious diseases, and shall have power and authority to quarantine any premises within the City of Emery wherein is located or situated any person suffering with an infectious or contagious disease, and may remove there from any person who is found to be suffering from, suspected to be suffering from or has been exposed to any infectious or contagious disease, and said Health Officer may placard the said premises as aforesaid with the placard of such design and color as shall be determined by the said officer and which shall warn all persons within said premises not to leave the same, and all other persons whomsoever not to enter said premises without the written consent of the Health Officer. The City Health Officer may require every physician practicing within the corporate limits of the City of Emery to immediately report by telephone or otherwise to the City Health Officer every case of any designated contagious or infectious disease arising in his practice. Said physician shall within twenty-four (24) hours thereafter make a written report of such case to the City Health Officer stating the name, age, sex, and address of such case, the name of the disease, the source of contagion, if known.



## CHAPTER 4.2      SANITATION

### 4.201 Privies

No person shall build or maintain in city limits or cause to be built or maintained any privy, privy vault, upon any lot within the city limits.

### 4.202 Rubble Site

The City dumping grounds are hereby located on Northwest quarter (NW 1/4) of the Northeast quarter (NE 1/4) of Section Twenty-five (25) township One Hundred Two North (102N), Range Fifty-Seven (57) West of the Fifth (5th) Prime Meridian, Hanson County, South Dakota. All manure, ashes, leaves and other rubbish which may be removed from any public or private grounds in this City shall be hauled and deposited and the above described dumping ground at a place thereon to be designated by the Chief of Police and it shall be unlawful for any person to deposit any manure or other rubbish upon any place upon said dumping ground other than that designated by said Chief of Police. It shall be unlawful for any person or corporation to deposit on said dumping grounds any carrion or other animal matter, filth from any privy, privy vault, privy box, cesspool or filthy garbage of any kind. (SDCL 9-32-11)

### 4.203 Burial of Dead Animals

No dead horses, mules, cattle or other large animals shall be buried within the city limits or in any of the City dump grounds. (SDCL 9-32-1)

### 4.204 – Animal Waste Disposal

All animal owners and keepers are required to immediately and properly dispose of their animal's solid waste deposited on any property, public or private, not owned or possessed by that person. Any owner or keeper who requires the use of a disability assistance animal shall be exempt from the provisions of this Section, while such animal is being used for that purpose. Any person(s) found to be in violation of the provisions of this Ordinance shall be subject to a fine of \$50.00 for each and every violation. This fine shall be enforced by the City of Emery. However, if said fine is not paid within 30 days of issuance, the fine shall be doubled. If a hearing is required, the penalty shall be established by the Court. For purposes of this Ordinance, the following definitions shall apply:

- a. "Immediately" shall mean that the animal's solid waste is removed at once, without delay;
- b. "Owner or keeper" is a person who shall possess, maintain, house or harbor any animal, or who shall otherwise have custody of any animal, whether or not he/she is the owner of such animal;
- c. "Properly dispose" shall mean placement in a designated waste receptacle, or other suitable container, and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector; or placement in a disposal system designed to convey domestic sewage for proper treatment and disposal.

## CHAPTER 4.3      NUISANCES

### 4.301 Nuisances Defined and Prohibited (SDCL 9-29-23)

A. No person shall create, commit, maintain, permit to be created, committed, or maintained

any nuisance as defined herein.

1. Permitting weeds to grow to maturity on any private property, including, but not limited to, Canada thistle, sunflowers, ragweed, cocklebur, burdock, black mustard, sweet clover, and bull thistle. Also, allowing the dense growth of any vegetation including brush or grass, without proper trimming or mowing, which may constitute a health, safety, or fire hazard.
  2. Any excavation, trench or open basement in which stagnant water is permitted to collect or which may jeopardize the life, limb or safety of the general public.
  3. Maintaining, or causing or permitting the same, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building, if such conditions or defects thereby annoy, injure or endanger the comfort, repose, health, or safety of others, or if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the public or its occupants are jeopardized:
    - a) Whenever any building or structure is (i) vacant and unoccupied for the purpose for which it was erected and; (ii) the building is unfit for occupancy as it fails to meet minimum housing standards and (iii) the building has remained substantially in such condition for a period in excess of six (6) months.
    - b) Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence thereby depresses the market value of surrounding properties.
- B. Any condition dangerous to human health, including the following specific acts and conditions, each of which declared to constitute nuisances:
1. Imperfect plumbing - Any imperfect, leaking, unclean or filthy sink, water closet, urinal or other plumbing fixture in any building used or occupied by human beings.
  2. Garbage and refuse - Depositing, maintaining or permitting to be maintained or to accumulate upon any public or private property any household waste, water, sewage, garbage tin cans, offal, or excrement, any decaying fruit, vegetables, fish, meat, or bones, any oyster or clam shells, or any foul, putrid, or obnoxious liquid or substances.
  3. Manure - The accumulation of manure unless it be in a properly constructed fly-proof pit, bin, or box.
  4. Breeding places for flies - The accumulation of garbage, or anything whatever in which flies breed.
  5. Weeds - Permitting weeds to grow to maturity on any private property, including a vacant lot.
  6. Dead Animals - For the owner of a dead animal to permit it to remain undisposed longer than twenty-four (24) hours after its death.
  7. Polluting Waters - Throwing or leaving any dead animal or decayed animal or

vegetable matter or any filth whatever, either solid or fluid, into any pool of water.

8. Slaughtering - No person shall slaughter or cause to be slaughtered in this city, or within one mile of its corporate limits, any cattle, swine, sheep or other poultry, unless performed within the course of a duly licensed business lawfully conducted.

#### 4.302 Nuisances: How Abated

The City Council shall cause written notice to be given to any person creating, permitting, or maintaining any nuisance to abate such nuisance forthwith, and if any person shall fail to do so within a reasonable time after such notice, such person shall be deemed guilty of a violation of this Chapter. The City Council shall cause to be removed or abated any such nuisance upon the expiration of a reasonable time after the serving of such notice; and the City may recover the expenses so incurred from the person maintaining such nuisance in a civil suit instituted for such purpose, or may levy an assessment against the property and called the same.

The City Council shall cause to be published all assessments of costs of removal or abatement of nuisances, together with a notice that said assessments shall be considered by the City Council at the regular October meeting of each year, at which time and place any person may appear and be heard. Such notice shall be published once in the official newspaper, and at least ten (10) days prior to the October meeting.

Within ten (10) days after the assessment has been approved by the City Council, a certified copy of the same shall be filed with the Finance Officer, and shall be due and payable to the City. If the assessment is not paid within sixty (60) days of filing, a penalty cost of ten (10) percent shall be added in addition to an annual interest rate at the allowed by law on the unpaid balance.

#### 4.303 Scattering Papers

It shall be unlawful for any person to throw into, deposit upon or in any manner permit to get in any street, alley or passage way of this City, pieces of paper, newspapers, excelsior, handbills, posters, building paper, lithographs used for advertisement upon bill boards, or any other materials likely to be carried about by the winds.

#### 4.304 Prohibiting Piling of Scrap Material and Lumber

No person shall cause scrap iron, lumber scrap material or building material to be piled on the ground outside of a building within the City unless the material is placed on a platform or other device, at least six (6) inches from the ground and unless evenly stacked in a neat and orderly manner. Provided, however, this provision shall not apply to persons placing building materials upon the ground temporarily pending construction but it shall not be considered temporary when no substantial construction has taken place on the premises where the material has been placed for a period of thirty (30) continuous days. A violation of this ordinance shall constitute a public nuisance.

#### 4.305 Where Dumping Prohibited

It shall be unlawful for any person to bury or dump garbage, cans, bottles, or other rubbish upon any street, alley, public place or private place within the City of Emery, within one mile of the city limits or outside of the area designated by the city as the dumping grounds, as provided by 4.203, except as provided in 4.306.

#### 4.306 Abandoned Vehicle

No person shall abandon any vehicle or trailer within the City of Emery for such time and under such circumstances as to cause such vehicle or trailer reasonably to appear to have been abandoned.

No person shall park or store any partially dismantled, non-operating, wrecked, or junked vehicle or trailer of any kind or type without current license plates (if plates are required to operate the vehicle or trailer upon a public roadway), on any street, public, or private property within the City.

No person in charge or control of any property within the City of Emery, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any partially dismantled, non-operating, wrecked, junked, or discard vehicle or trailer to remain on such property longer than twenty-four (24) hours; except that this Ordinance shall not apply with regard to a vehicle or trailer in an enclosed building a vehicle or trailer on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise and subject to permit fees and regulations by the City Council; or a vehicle or trailer in an appropriate storage place or depository maintained in a lawful place and manner by the City.

The first offense will have a fee of \$100.00, any subsequent offenses will be assessed a fine of \$500.00. In addition, the City Council shall be authorized to remove or have removed any vehicle or trailer left at any place within the City which reasonably appears to be in violation of this Ordinance or is lost, stolen, or unclaimed. Such vehicle or trailer shall be impounded until lawfully claimed or until the City disposes of the vehicle or trailer in any lawful manner. A storage charge as determined by the City Council shall be assessed each vehicle or trailer until such is claimed.

The City Council may also contract with a removal agency (public or private), to tow the offending vehicle or trailer, and impound the same until all towing fees and costs are paid to such agency. In this event, the vehicles or trailer may be removed by such agency to a garage or place of safety. Such agency may then retain the vehicle or trailer (until fees and costs are paid) as provided for by South Dakota law. Nothing in this section precludes law enforcement from immediately removing a vehicle that constitutes an imminent health, safety or fire hazard.

#### 4.307 Trimming Trees

The occupant or owner of any premise abutting upon any street shall keep all trees standing upon such premises or between the same and the center of the adjoining streets so trimmed that no bough or branch thereof shall hang lower than (8) feet above the surface of any sidewalk and fifteen (15) feet above the surface of the street or any alley thereon, and so as not to interfere with any wire, post or equipment of the City or of a public utility installed in the street or alley under franchise or grant from the City.

#### 4.308 Injury to Trees by Moving

No person shall move any building along any street in such way as to interfere with or injure any tree in such street without permission of the owner of said tree.

#### 4.309 Permit to Remove or Injure Trees

No person shall in any way remove, destroy, cut, or deface, trim or in any way injure or interfere with any tree or shrub on any street, parkway or boulevard without a permit from the City Council, excepting only to properly trim or remove diseased, broken or dead limbs or branches.

#### 4.310 Obstructing View for Traffic

No person shall plant, maintain or permit to grow in any street, parkway boulevard, any tree, shrub, hedge, or vegetation in such a way as to obstruct the view of the drivers of vehicles approaching within fifty (50) feet of any street intersection.

#### 4.311 Dangerous Trees Removed

The owner of any property upon which, or in the abutting right-of-way, there is located any tree constituting a hazard to persons or property shall remove the same at the owner's own expense. In case such owner shall neglect or refuse to remove such a tree upon notice by the City, the same may be removed by the City and the cost thereof shall be assessed to the owner in the same manner set forth in Chapter 4.3 relating to nuisances.

#### 4.312 Definition of Weeds (SDCL 9-32-12)

The following named weeds and plants shall be deemed noxious, dangerous, and unhealthful vegetation and are hereby declared to be nuisances: ragweed, parsley, pigweed, nettle, thistle, sunflower, goldenrod, tumbleweed, burdock, cockle burrs, wild oats, sticktight, milkweed, mustard greens and all other weeds suffered or allowed to grow during the growing season.

#### 4.313 Duty to Cut Weeds and Grass Within the City Limits When Exceeding Eight Inches in Growth.

No person shall allow grass or weeds to grow over eight (8) inches high upon any private property. In the event grass or weeds grow to a height in excess of eight inches, it shall be the duty of the occupant, person in charge of, or owner of said property to cut such vegetation or take such other steps as may be necessary to prevent its growth.

Any owner or occupant who desires to permit grass to exceed eight inches in growth for purposes of haying or other reason (at the City Council's discretion), may apply, in advance, to the city council for a special permit. Applications for such a permit must be filed by April 1, of each year, and shall specify, fully, the reasons for such request. Any such permit shall also be accompanied by a \$20 application fee. Permit applications will be reviewed by the city council at the regular May monthly meeting. Any permit granted shall automatically expire December 1st of the year such application is made.

#### 4.314 Notice to Cut Weeds

If any owner or occupant of real estate allows grass or weeds to exceed eight (8) inches, notice shall be given to the owner or occupant of such property, requesting that such growth be cut so as to bring the property into compliance. After such notice has been given, the property owner or occupant shall have five (5) working days to bring the property into compliance.

#### 4.315 Weeds or Grass to Be Cut By City After Notice.

If a property owner or occupant fails to cut grass or weeds, following notice as specified in Section 4.314, the city shall proceed to mow the property where necessary, in order to bring the property into compliance. The property owner or occupant shall be billed at the rate of up to \$75 per hours for mowing performed by the city. (This rate shall apply to a first offense.) For all subsequent offenses, the rates are doubled up to \$150 per hour.

#### 4.316 Recovery of Expenses for Weed and Grass Cutting.

In the event the City Cuts weeds or grass in violation of this chapter, and the bill related to mowing is not paid within 30 days, the city may recover the expenses so incurred from the person in a civil suit instituted for such purpose, or it may levy an assessment against such

property and collect the same.

In the event the city seeks to levy an assessment against such property, the finance officer shall prepare a statement related to the city's expense in cutting weeds and grass, including therein the expense of levying such special assessment against each lot. Such abatement shall be submitted to the city council for its approval on or before the first day of January of each year. The finance officer shall cause to be published in the official newspaper, a notice of the time and place when the city council will meet for the purpose of approving such statement, with notice to be published once, not less than one week before such hearing. Upon the day so named, the city council shall meet, and if they find said statement to be correct, they shall approve the same by resolution, or incorrect, they shall correct and modify the same and approve the same as modified or corrected, and file such assessment role with the finance officer. From the date of such approval and filing such assessment role with the finance officer, the same shall become a special lien against the various parcels of property, described in said assessment role, and shall be collected in like manner as special assessments for public improvements are now collected.

If the assessment is not paid within sixty (60) days of filing, a penalty cost of ten (10) percent shall be added in addition to an annual interest rate at the highest rate allowed by law on the unpaid balance.

#### 4.317 Junk or Salvage Yards Defined.

1. The term "junk dealer" as used in this division shall mean any person who is engaged in business as a dealer, trader, collector, buyer or seller of junk, old metals, rags, wastepaper, old automobiles or other articles or things from which its worn condition renders it useless for the purpose for which it is made, or who stores or maintains a storage place for such articles or things.
2. "Junk," old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;
3. "Automobile graveyard," any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;
4. "Junk yard," an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. The term includes garbage dumps and sanitary fills;
5. "Interstate system," that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the department, and approved by the United States secretary of transportation, pursuant to the provisions of Title 23, United States Code;
6. "Primary system," that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the department and approved by the United States secretary of transportation pursuant to the provisions of Title 23, United States Code;
7. "Department," the South Dakota Department of Transportation.

**License required.**

No person shall do business in the city as a junk dealer without first obtaining a license therefor as provided in this division.

**Application for license.**

Each applicant for a license required by this division shall, in addition to the matters required in the general form for license applications state the length of time the applicant has resided in the city; his previous places of employment; his reason for leaving; whether he is married or single; whether he has been convicted of a felony or misdemeanor and, if so, what offense, when and in what court; and the exact dimensions of the space to be occupied in any manner in the conduct of his business.

**License fee.**

The fee for a license required by this division shall be two hundred dollars (\$200.00) per year for each established place of business.

**When fencing is a prerequisite to a license.**

In all cases where the business of a junk dealer is to be conducted on a vacant lot or lots or in a partially enclosed structure, no license required by this division shall be granted until the applicant therefor shall have enclosed his premises properly with a properly painted, tight board fence, at least seven (7) feet high and erected in such a manner as to obliterate the junk from view, which fence shall at all times be properly maintained and kept in regular repair by the licensee.

**Approval of license.**

If the finance officer is satisfied that all of the requirements of this division and of any other applicable section of the Code of Ordinances have been met, a license may be issued to the applicant by majority vote of the governing board.

**Time for making new application when license is denied.**

No applicant to whom a license required by this division has been refused shall make further application until a period of at least twelve (12) months shall have elapsed since the last previous rejection, unless he can show that the reason for this rejection no longer exists.

**Location restrictions.**

No junk dealer shall carry on his business at or from any other place than the premises designated and described in the application for license filed pursuant to this division, and all junk of all kinds and description shall be kept wholly within the boundaries of such premises.

**Prohibited practices.**

- a) *Bones.* The handling, storing and keeping of old bones of any description by any person licensed under this division is prohibited.
- b) *Burning of junk.* It shall be unlawful for any junk dealer to burn old cars or other refuse on the premises covered by his license or at any other place in the city.
- c) *Wrecking of cars.* The wrecking and dismantling of old cars for the purpose of junking the bodies and securing old parts, shall be done wholly inside the building occupied by the junk dealer or within the enclosure provided for in this division, and shall not, in any event, be done upon the highways, streets, alleys or other public property in the city or outside the premises described in the application for a license.

**Purchasing junk from persons under eighteen.**

It shall be unlawful for any person to purchase or receive from any person under the age of eighteen (18) years, any article, goods or thing commonly known and classed as junk, any bottle, pipe or pipe fittings, lead, iron or brass, tools or implements, any goods or wares of a secondhand nature or any rubbers, overshoes, boots or rubber goods of any nature, without the written consent of such minors' parents or guardian for each such sale, which consent must

describe the article so sold, and which consent shall be kept by such junk dealer and be subject to the inspection of any police officer of the city.

**Fees for offenses.**

Each offense of this ordinance shall be set at \$500.00.

**SDCL 31-30 JUNK OR SALVAGE YARDS**

31-30-3. Nonconforming junk yards prohibited--Proximity to highway--Screening. No person may establish, operate, or maintain a junk yard, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate or primary highway, except the following:

- (1) Those which are screened by natural objects, plantings, fences, or other appropriate means so as to be obscured from the main-traveled way of the system;
- (2) Those located within areas which are zoned for industrial use under authority of law;
- (3) Those located within un-zoned industrial areas, which areas shall be determined from actual land uses as defined by the Transportation Commission by rules adopted pursuant to chapter 1-26;
- (4) Those which are not visible from the main-traveled way of the system.

No junk or salvage yard may continue as a nonconforming use for a period of more than one (1) year after the effective date of this chapter, except that a junkyard may continue as a nonconforming use in the commercial or industrial district if within that period it is completely enclosed within a building or within a continuous solid fence of such height as to screen the operations of the junk or salvage yard. Plans for such building or fence must be approved by the governing board or designee before the same is erected.

31-30-1. Regulation of junk yards adjacent to interstate and primary highways--Nonconforming junk yards as public nuisances. For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junk yards in areas adjacent to the interstate and primary systems within this state. The Legislature hereby finds and declares that junk yards which do not conform to the requirements of this chapter are public nuisances.



# TITLE 5 LICENSES

## Chapter Index

- 5.1 General Provisions as to Licenses
- 5.2 Peddlers, Solicitors and Transient Merchants
- 5.3 Vaccination and Control of Animals
- 5.4 Franchises
- 5.5 Municipal Sales and Services Tax and Use Tax
- 5.6 Alcoholic Beverages

### **CHAPTER 5.1 GENERAL PROVISIONS AS TO LICENSES**

#### 5.101 Payment of License Fee

Except as otherwise provided an applicant for license shall first pay the amount of the license fee to the Treasurer taking his receipt therefore showing the kind of license for which the fee was paid and the amount paid. Such receipt shall be presented to the Finance Officer or other licensing officer to whom application for the license is made.

#### 5.102 Application for License

Except as otherwise provided an applicant for license shall make and file application in writing with the Finance Officer. Such application shall contain information as required by the licensing authority and must show that the applicant is eligible for the license for which application is made. If required the applicant shall verify the application.

#### 5.103 Issuance of License

Except as otherwise provided, all licenses shall be issued by the City, if the applicant has complied with all requirements for issuance.

#### 5.104 Approval of Bonds

Any bond, liability, insurance, or deposit required shall be subject to the approval of the Council and in case the Council deems the security inadequate, it may require new or additional security.

#### 5.105 Term of License

Unless otherwise provided, all licenses shall take effect when issued and shall terminate on December 31st in the year for which issued. Except as otherwise provided, the license charged shall be paid on the basis of a full year.

#### 5.106 License Posted or Exhibited

Every person to whom a license is issued by the City shall keep the same posted in a conspicuous place of business or vehicle, then he shall exhibit the license to any person in authority or to any person who may deal with the licensee when required to do so.

#### 5.107 Revocation

The Council shall have power to suspend or revoke any license issued by the City for failure of the licensee to comply with any ordinance or regulation of the City or State law respecting such license or the manner of exercise thereof or for other good cause after hearing upon notice to the licensee.

Upon conviction of a violation of any ordinance of the City by a licensee relating to the exercise of such license, the Court, in addition to other penalties imposed, may enter its judgment canceling such license.

#### 5.108 License Required

No person shall engage in any activity for which a license is required without first having obtained a license therefore as required by ordinance.

#### 5.109 Change of Name

If a licensee changes the name or form of organization under which he does business, the license may be so changed without payment of an additional fee except as otherwise provided by law.

### **CHAPTER 5.2      PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS** **(SDCL 9-34-7, 9-34-8)**

#### 5.201 Definitions

- (a) Peddler: A person engaged in the selling of is personal property by going about from place to place or house to house to sell the same and who carries with him such property for delivery at the time of sale is a peddler.
- (b) Solicitor: A person engaged in going about from place to place or house to house soliciting orders for, or offering to sell personal property for future delivery is a solicitor.
- (c) Transient merchant: A person engaged in selling goods, wares, and merchandise, who does not have a regular established place of business.

#### 5.202 Entry upon Private Resident's Property

The practice of going upon private resident's property by solicitors or peddlers who have not previously been requested or invited so to do by the owner or occupant thereof for the purpose of soliciting orders for the sale of personal property or offering to sell personal property for future delivery or for the purpose of selling or disposing of personal property thereon is declared to be a nuisance and is prohibited, and no person licensed as a solicitor or peddler hereunder shall thereby be deemed authorized to go upon any private residents property except with the prior request, invitation or consent of the owner or occupant thereof. The provisions of this ordinance shall not apply to the following:

This section shall not apply to the distribution or sale of religious, political, economic or education tracts, pamphlets, papers, or periodicals where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to the distribution or sale of personal property where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to the peddling or soliciting of orders for any agricultural product or article raised or manufactured by such peddler or solicitor in this state, except that no person shall go upon any private residential property for any of such purposes where the owner or occupant thereof has requested such person not to come thereon or has placed on the premises

in a conspicuous position near the entrance thereof a sign indicating that such solicitors are not permitted.

#### 5.203 Exceptions to Licensing and Bonding Provisions

The provisions of this chapter with reference to the bonding and licensing of peddlers and solicitors shall not apply to traveling salesman doing business exclusively with retailers, merchants, manufacturers, jobbers or with public officials, nor to the peddling or soliciting of orders for any agricultural producers or manufactured goods raised or manufactured in this State by the person selling or soliciting the sale of the same, nor to any solicitor who does not demand or accept payment of money or any deposit in advance, nor to any solicitor whose terms do not require payment of any money or deposit on delivery without the privilege of examination nor to the distribution or sale of newspapers, nor to distribution or sale of personal property where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to the distribution or sale of religious, political, economic or educational tracts, pamphlets or periodicals where the proceeds are to be used exclusively for religious, charitable or benevolent purposes.

#### 5.204 License Fee Required

No person shall deal as a peddler, solicitor or transient merchant as defined by this chapter without having procured license as herein required and no two or more persons shall deal under the same license as partners, agents or otherwise. No such license shall be issued to any person unless such person shall have resided in this state for a period of at least six (6) months, immediately preceding the issuance of such license. The license fee for a solicitor, peddler or transient merchant shall be twenty-five dollars (\$25.00) a day.

#### 5.205 Application for License

The application for license shall state the name of the applicant, permanent address of applicant, length of residence in the State, whether he transacts business for himself or someone else and if someone else, the name and address of person, firm, or corporation he represents, the nature and character of the property to be sold, whether he sells and delivers the property directly to the purchases or whether he solicits or takes orders for it by carrying samples or catalogs, the manner in which he intends to use in traveling, copies of the contracts and agreements he intends to make with the customers, and how he intends to operate within the City.

#### 5.206 Bond Required from Solicitors, Peddlers or Transient Merchants

Every solicitor, peddler or transient merchant before receiving a license shall file in the office of the City Finance Officer a bond in the penal sum of \$500.00 for the faithful performance and obligation of such solicitor or peddler arising in connection with his business, and for the payment of all claims for damages for which he may become liable through fraud, deceit, or otherwise in the course of his business as such solicitor, peddler or transient merchant.

### **CHAPTER 5.3 VACCINATION AND CONTROL OF ANIMALS**

#### 5.301 Definitions

(a) At Large: An animal when off the premises of the owner and not under the control of the owner, possessor, keeper, agent, servant, or member of the immediate family by a leash. An animal, when on the premises of the owner, possessor, keeper, agent, or servant and not attended by a competent person unless the animal is chained, restrained, enclosed, or confined

in a manner preventing it from leaving the premises or from reaching the sidewalk.

(b) Leash: A cord, thong, or chain, not to exceed six feet in length, by which an animal is controlled by the person accompanying it.

(c) Owner: Any person harboring or keeping an animal or who is head of the household or owner or manager of the premises where such animal remains.

#### 5.302 Running at Large Prohibited

No owner of any dog, cat, or other animal held as a domestic pet in the City shall permit such animal to run at large at any time, and any such animal found at large may be impounded as hereinafter provided. An owner reclaiming an impounded animal shall pay the actual cost of impoundment plus the following fee: First impoundment shall be \$25.00; second impoundment within a twelve-month period shall be \$50.00; any subsequent impoundment within a twelve month period shall be \$100.00. Upon impounding, the owner of such animal may at any time within three (3) days after the same shall have been impounded, reclaim the animal by paying the expense of keeping such animal, in addition to the fee prescribed by this Section. If any animal so impounded shall not be reclaimed within three (3) days and reasonable efforts to locate the owner have failed, the City is authorized to destroy, sell, or otherwise dispose of such animal.

Any domestic animal shall be required to wear a tag, when so given by the veterinarian, when such animal is off the premises of the owner.

Allowing an animal to run at large as defined in the provisions of this section, shall also constitute a misdemeanor. Notwithstanding any other provision, any animal not having a visible tag and running at large may be deemed a stray and destroyed immediately.

#### 5.303 Impoundment

The City Council shall be authorized to enter into a contract with some person, association, or Humane Society to establish, operate, and maintain an Animal Pound for the City. Such contract shall provide for the enforcement of this Chapter, for the impounding, destroying, and disposal of animals, for a schedule of fees to be charged for services rendered, and for a monthly amount to be paid by the City. The City may, in lieu of the provisions of this Section, maintain its own impoundment area or quarters, under the supervision of the City Council.

No person shall hinder, delay, or obstruct any law enforcement officer or other authorized official when engaged in capturing, securing, or impounding any animal.

#### 5.304 Compulsory Immunization of Animals for Rabies

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

Any owner acquiring a dog, cat, or other animal shall have such animal immunized against rabies within one month following acquisition or when the animal reaches the age of six months.

Any animal impounded shall not be released to any person until the animal has been immunized against rabies, or such record of immunization can be presented.

### 5.305 Responsibility of Owner to Place Animal for Observation

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

At the end of the ten-day observation period, the animal shall be examined by a licensed veterinarian and if cleared by the veterinarian, may be reclaimed by the owner upon paying all the expenses incurred.

Any animal impounded or placed for observation, showing active signs of rabies, suspected of having rabies, or know to have been exposed to rabies, shall be confined under competent observation for such time as may be deemed necessary to determine a diagnosis.

No person shall knowingly harbor or keep any animal infected with rabies or any animal known to have been bitten by an animal known to have been infected with rabies.

Any person within the City receiving information or reports of suspected rabies in wild animals or domestic animals shall immediately and by quickest means available, report such information to a law enforcement officer.

### 5.306 Vicious Animals

Animals deemed to be vicious are prohibited. It shall be unlawful for any person to keep, maintain, have possession of, or under their control, within the city, any vicious animal.

Vicious animals shall be defined as the following:

1. According to records of the appropriate authority has inflicted serious injury on a human being.
2. According to records of the appropriate authority has killed or seriously injured a domestic animal while OFF the owners' property.
3. Any animal owned or harbored primarily or in part for the purpose of fighting, or any animal trained for fighting.
4. Any animal which chases or approaches a person upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack.
5. Any animal of a known propensity, tendency, or disposition to attack, to cause injury, or to otherwise threaten the safety of human beings or animals.

Animals that are provoked are exempt. No animal shall be declared vicious if any threat, injury, or damage was sustained by a person who:

1. At the time, was committing a willful trespass upon the premises occupied by the owner or keeper of the animal;
2. Was teasing, tormenting, abusing, or assaulting the animal;
3. Has, in the past, been observed or reported to have teased, tormented, abused, or assaulted the animal; or
4. Was committing or attempting to commit a crime.

Any animal involved in an unprovoked attack which results in serious injury to any human, shall be impounded and if unable to be captured, any law enforcement officer is authorized to destroy the animal to prevent further danger to human life. Any such incident may cause a vicious animal to be euthanized, or at the discretion of the city, be placed in a home outside of the city. Unless permitted by the city, no vicious animal shall be returned to reside in the city.

Because of the danger involved in housing a vicious animal, the owner must show cause in court within five days of impoundment, as to why the animal should not be destroyed.

It shall be unlawful for any person own, keep, have in their possession, or harbor any poisonous reptile or any other dangerous animal. A dangerous animal is any wild mammal, reptile, or fowl which is not naturally tame or gentle, but is of a wild nature or disposition, and which because of its characteristics, would constitute danger to human life or property if it escaped from secure quarters.

#### 5.307 Disturbance of Peace by Animals

The owner of an animal shall not allow such animal to disturb the peace and quiet of the neighborhood, through barking or any other manner. Upon filing a complaint with a law enforcement officer, and notification given to owner by such officer, the owner shall abate such nuisance. If convicted, upon failure to abate such nuisance, said owner may be fined a sum of fifty (\$50.00) dollars by the city for the first violation. If a second violation occurs within a twelve (12) month period, said owner may be fined a sum of seventy-five (\$75.00) dollars. If a third violation occurs within a twelve (12) month period, said owner may be fined a sum of one hundred (\$100.00) dollars.

#### 5.308 Cruelty to Animals

No person shall willfully or negligently maltreat, abuse, or neglect in a cruel or inhumane manner any animal or fowl. It shall be unlawful for any person to willfully or maliciously administer poison of any sort to any animal, or to maliciously place any poison where the same is accessible to any such animal.

#### 5.309 Licensing of Dogs and Cats

Any owner or keeper of a dog or cat of the age of six months and older, shall be required to have such animal(s) registered with the City Finance Officer.

#### 5.310 Limit in the Number of Dogs and Cats

It shall be unlawful for any person or persons, or household, in the limits of the City of Emery to own or possess more than four dogs and four adult cats. Of the four dogs that can be owned or possessed, only two of the dogs can weigh more than twenty-five pounds. It is the intent of this ordinance to set an aggregate limit to the number of dogs that may be legally owned by one family, household, or cohabitants of any kind. This ordinance does not apply to litters of dog puppies or kittens from the time of their birth until they are eight weeks old.

### **CHAPTER 5.4      FRANCHISES**

#### 5.401 Cable Television

##### (a) Definitions.

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

1. “City” shall mean the City of Emery, South Dakota.
2. “City Council” shall mean the City Council of Emery, South Dakota.

3. "Cable Television System", "Cable System", or "CATV": shall mean a system utilizing coaxial cable and certain electronic and other components which deliver to subscribing members of the public various communications services.
4. "FCC" shall mean Federal Communications Commission.
5. "Person" shall mean any person, firm, partnership, association corporation or organization of any kind and any other legally recognized entity.
6. "Grantee" shall mean Emery Cablevision, an affiliate or successor in accordance with the provision of this Franchise by Grantee.
7. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Franchise by Grantee.
8. "Cable Television Reception Service" shall mean the simultaneous delivery by the Grantee to television receivers or any other suitable type of audio-video communications receivers.
9. "Affiliate" or "Affiliated Company" means a corporation, partnership or other business entity which is wholly owned by the same person or persons who own Emery Cablevision or its parent company.

(b) Qualifications of Grantee and Grant of Nonexclusive Authority.

WHEREAS, the City has approved of the legal, character, financial, technical and other qualifications of the Grantee and the adequacy and feasibility of the Grantee's construction arrangements as part of a full public proceeding affording due process, including notice to all interested persons and members of a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, poles, wire cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable Television System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways, and public places and all manner of easements for the purposes here set forth.

(c) Duration and Acceptance of Franchise.

The franchise granted the Grantee herein shall terminate fifteen (15) years from date of grant, subject to renewal for periods of reasonable duration on the same terms and conditions as contained herein or on such different or additional terms and conditions as may be lawfully specified by the City and as are consistent with the requirements of Rule 76.31 or other applicable rules of the Federal Communications Commission. No renewal hereof shall be granted unless authorized by the City following a public hearing. Grantee shall be awarded a franchise renewal provided its application shows that its CATV service during the preceding franchise period has reflected material compliance with the terms of this Franchise Ordinance and a good-faith effort to serve the needs and interests of the service area.

(d) Compliance with Applicable Laws, Regulations, Ordinances and Codes.

1. The Grantee shall, at all times, operate and maintain its Cable Television System in full

compliance with the rules, regulations and standards of the FCC and any applicable rules, regulations and standards of the State of South Dakota.

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

(e) Territorial Area Involved.

This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise. During the term of this Franchise Ordinance, Grantee shall offer CATV service upon request at its then established normal installation and monthly rates to any permanent dwelling or other building within the then territorial limits of the City, subject to application of established credit and other business policies of Grantee.

(f) Liability and Indemnification.

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

1. Workers Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Emery.
2. Property Damage Liability insurance required.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workers Compensation law which may be caused by the erection, maintenance, use or removal of any of their attachments, poles, or other undertakings, within the City, or by any action or grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance at-it deems necessary to protect it from all claims under the Workers Compensation laws in effect that may be applicable to Grantee. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder.

(g) Operation Maintenance of System.

1. The Grantee shall make arrangements for a collection in the City for the receipt of sums due by its subscribers and shall provide for regular billing of accounts, have local telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time.
2. The Grantee shall render safe and efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
3. The Grantee shall provide for safe, adequate, and prompt service for its facilities.

(h) Service to School and City.

The grantee shall provide service to the elementary and secondary school location within



the City (one terminal junction) for educational purposes upon request by the City or the school system and no cost to the City or to the school system. This shall mean only an energized cable to such buildings. The cost of any internal wiring shall be borne by the institution.

Grantee shall also provide the City, for connections to a building to be selected by the City Council of the City, without charge, and one junction terminal to said building at a location therein to be selected by the City.

(i) Emergency Use of Facilities.

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

(j) Safety Requirements.

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

(k) Other Business Activities.

The Grantee hereunder shall not engage in the business of selling, repairing, or installing extension services, radio receivers or accessories for such receiver within the City of Emery during the term of the Franchise.

(l) New Developments.

It shall be the policy of the City liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

(m) Limitations of Rights Granted.

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places, and said poles or fixtures shall be removed by Grantee whenever, in the opinion of the City Council the same restrict or obstruct the operation or location of any future streets or public places in the City.
2. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any installations of the City or of a public utility serving the City or to interfere with new improvements the City may deem proper to make.
3. In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction

or addition to its facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

4. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City Council, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.
5. If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
6. All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practices, and of sufficient height to comply with all existing City regulations, ordinances, and state laws so as not to interfere in any manner with the right of the public or individual property owner, and any equipment installed in a public way or place shall not interfere with the usual travel on such public way or usual use of such public place by the public and during the construction, repair, or removal thereof, shall not obstruct or impede traffic.
7. The Grantee shall, on the request of any person, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
8. The Grantee shall have the authority to trim trees overhanging upon the streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
9. In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, the Grantee shall in the future place its wires, cables, or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.
10. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; Provided, however, that Grantee shall in all such cases have the privileges to abandon any property of Grantee in place as hereinafter provided.
11. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property have

been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.

12. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

(n) Removal of Facilities Upon Request.

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

(o) Transfer of Franchise.

The Grantee shall not assign or transfer any rights granted under this Ordinance to any person, company or corporation without the prior approval of the City Council, which approval shall not be unreasonably withheld provided the Grantee shall have the right to assign its rights under this Ordinance to an affiliated company without further approval of the City Council.

(p) Payment to the City.

During the term of the franchise granted hereunder and so long as Grantee or its successors or assigns operate the Cable Television System, commencing from the date of institution of service to subscribers, Grantee shall pay to the City annually the following percentages of the "annual gross subscriber revenue," as defined herein, of said Cable Television System as compensation for the said franchise: For each year of actual operation: 3%.

"Gross subscriber revenues" shall include those revenues derived from the monthly service charge paid by subscribers for basic Cable Television reception service. Subscriber revenues shall not include any state or federal taxes relating to services provided by or fees charged by Grantee, or revenues received as installation charges and fees for reconnections, inspection, repairs or modifications of any installment.

Such payments by Grantee to City shall be in lieu of an occupation tax, license tax, or similar levy, and shall be paid annually. Nothing herein contained, however, shall in any way relieve Grantee or its assigns or successors from the obligation of paying property taxes to the City or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the State of South Dakota on the operation of the Grantees. Such payment also does not affect the responsibility of Grantee to collect state and local sales tax on the service provided.

Grantee shall file with the city, within ninety (90) days after the expiration of any fiscal year of Grantee during the term of the rights granted hereunder, a statement prepared by a Certified Public Accountant showing the gross subscriber revenue as defined herein. It shall be the duty of Grantee to pay to the city within fifteen (15) days after the time for filing such statement the amount due for the fiscal year covered by such statement. In no event

shall any such payments be due and payable until the system is actually in operation with paying subscribers.

(q) Erection, Removal and Common Use of Poles.

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to locations, height, type or any other pertinent aspect. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.
2. There is hereby granted to the extent that the City is authorized to so do, the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment, and facilities from any and all holders of public licenses and franchises within the corporate limits of the City, including telephone and electric service franchises, to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City that all other holders of public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee joint usage of its poles and pole-line facilities whenever possible or wherever such usage does not interfere with the normal operation of said poles and pole lines so that the number of new or additional poles constructed by Grantee within the City may be minimized.
3. Grantee shall grant to the City, free of expense, joint use of any and all poles owned by it for any proper municipal purpose acceptable to grantee, insofar as it may be done without interfering with the free use and enjoyment of Grantee's own wires and fixtures, and the City shall hold Grantee harmless from any and all claims, action, causes of action, or damages caused by the placing of the City's wires or appurtenances upon the poles of Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the city shall compensate Grantee for such additional expense.

(r) Rates.

1. Grantee shall at all times maintain on file with the Municipal Finance Officer or City Finance Officer a schedule setting forth all rates and charges to be made to subscribers for CATV service, including installation charges.
2. The rates and charges for services to subscribers shall be initially set by Grantee, subject to any applicable rules and regulation of federal and state agencies. Before putting into effect any changes in the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the Municipal Finance Office or City Finance Officer of the City of Emery the new proposed rate change at least thirty (30) days in advance of the proposed effective date for such initial rates or rate change. If the City Council takes no action to set the rate change for hearing said proposed rate changes may become effective upon the expiration of the thirty (30) day notice.
3. If the City Council sets the rate change for hearing, said proposed rate change will not become effective until the City Council has taken action by means of a resolution. Any changed rates and charges shall be set in accordance with lawful rate setting procedures in amounts calculated to yield revenues at least sufficient to enable Grantee

to pay and discharge all expenses of operation, including taxes and fees, when due, and also to make any payments with respect to principal and interest on indebtedness plus an amount sufficient to enable Grantee to earn a reasonable return on its investment in cable television facilities and related properties.

4. This provision does not limit the right of Grantee to pass along to the subscribers' state and local sales tax or any specific copyright fees.

(s) Complaint Procedures.

Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint it may then be directed to the Municipal Finance Office or City Finance Officer for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position. The Municipal Finance Officer or City Finance Officer shall attempt to resolve the complaints but, if this cannot be achieved, he shall submit a recommendation to the City Council, recommending that: (1) the complaint be dismissed, or (2) corrective action be taken by Grantee. Appeal from the City Council's action may be made to the appropriate judicial or administrative forum.

(t) Construction Schedules and Standards.

1. Within sixty (60) days after the effective date of this Ordinance, the Grantee shall file with the appropriate governmental authorities all initial papers, applications, contracts and other documents necessary to obtain any and all necessary waivers, consents and licenses and to permit the commencement of construction and operation of the Cable Television System and shall thereafter make diligent efforts to obtain the proper execution, delivery of such documents and any amendments thereto. In the event that all necessary waivers, consents and licenses are not obtained within one year after the effective date of this Ordinance, this Franchise Ordinance may be repealed at the option of the City by the adoption of an appropriate repeal ordinance.
2. Within sixty (60) days after all necessary waivers, consents and license have been obtained, the Grantee shall commence the construction of the Cable Television System and pursue such with diligence.
3. The Grantee shall commence operation on or before December 1, 1983, or this Franchise shall be subject to repeal as prescribed in subparagraph (1) above herein. (See Section 5.402C)
4. Delays in the performance of Grantee's obligations under this ordinance which are caused by strikes, equipment shortages, and state of war, acts of God or other circumstances beyond the control of Grantee, shall not be construed to be violations of the provisions of this ordinance, and reasonable extensions of the time shall be granted therefore.
5. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all applicable state and local codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with all applicable codes, including the provisions of the electrical code. All of the Grantee's plant and equipment shall be installed, constructed, repaired, maintained and operated in accordance with good engineering practices. The Grantees shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or

nuisance to the public.

(u) Grantee Rules.

1. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions covering the conduct of this business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Ordinance.
2. All such rules, regulations, terms and conditions promulgated under the subsection (1) above shall not be in conflict with the provisions hereof, or applicable federal or state law or rules promulgated by the City in the exercise of its regulatory authority granted hereunder.
3. One copy of all such rules, regulations, terms and conditions promulgated under subsection (1) above, together with any amendments, additions or deletions thereof, shall be kept currently on file with the Municipal Finance Officer or City Finance Officer, and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City; no such rules, regulations, terms, conditions or amendments, additions, or deletions thereto shall take effect unless and until so filed and maintained.

(v) Termination of Franchise.

The City reserves the right to terminate any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of:

1. Noncompliance by the Grantee with any provision of this Ordinance, Amendment hereto, or of any supplemental written agreement entered into by and between the City and the Grantee.
2. The Grantee becomes insolvent, enters into receivership or liquidation, files an application for bankruptcy or for composition of creditors, is unable to pay its debts as they mature or is in financial difficulty of sufficient consequence so as to jeopardize the continued operation of the network.
3. Violation by the Grantee of any FCC or applicable state order ruling or the order or ruling of any other governmental body having jurisdiction over the Grantee, unless the Grantee is lawfully contenting the legality or applicability of such rule or order.

Upon the occurrences of any of the above-listed events, the City Council may, after hearing, upon thirty (30) days written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the thirty (30) day period, the cause shall be cured to the satisfaction of the City Council, the City Council may declare the notice to be null and void if the Grantee fails to remedy the cause within the time specified after hearing, the City Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the City Council.

(w) Unauthorized Cable Tapping.

It shall be unlawful for any person or persons to obtain any Cable Television services from any cable television company, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of said Cable Television Company unless the same is done with the knowledge of and with the permission of the Cable Television

Company. Any person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor.

(x) Separability.

1. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
2. Should any provision of this Franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provision hereof shall not be affected thereby.

(y) Publication.

Grantee shall pay to the City a sum of money sufficient to reimburse it for all expenses incurred by it in connection with the publication and passage of this Ordinance and the rights granted to Grantee hereunder. Such payment shall be made by Grantee to City within thirty days after City shall furnish Grantee with a written statement of such expense.

## **CHAPTER 5.5 MUNICIPAL SALES AND SERVICE TAX AND USE TAX**

### 5.501 Purpose.

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

### 5.502 Enactment of Tax.

Section 1. PURPOSE. The purpose of this ordinance is to provide additional needed revenue for the Municipality of Emery, Hanson County, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. From and after the first day of January, 2006, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 2% on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Emery, Hanson County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

Section 3. USE TAX. In addition, there is hereby imposed an excise tax on the privilege of use, storage, and consumption within the jurisdiction of the municipality of tangible personal property or services purchased from and after the first of January, 2006, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL 10-46, and acts amendatory thereto.

Section 4. COLLECTION. Such tax is levied pursuant to authorization granted by SDCL 10-52 and acts amendatory thereto, and shall be collected by the South Dakota Department of

Revenue and Regulation in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue and Regulation of the State of South Dakota shall lawfully prescribe.

Section 5. INTERPRETATION. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto, and the South Dakota Use Tax, SDCL 10-46 and acts amendatory hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

Section 6. PENALTY. Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$200 or imprisoned in the municipal jail for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

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

#### 5.503 Use Tax.

In addition, there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchased, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use tax Act, SDCL 10-46, and acts amendatory thereto.

#### 5.504 Collection.

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

#### 5.505 Interpretation.

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

#### 5.506 Penalty.

It is a violation of this ordinance to refuse to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied. In addition to any penalty impose pursuant to these ordinances, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.



5.507 Separability.

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

**CHAPTER 5.6 ALCOHOLIC BEVERAGES**

5.601 License Required.

No person shall sell, offer for sale, exchange, distill, manufacture, produce, bottle, blend or otherwise concoct within the City, any alcoholic beverage as defined by statute, without having a license therefore as required by these Ordinances and the statutes of the State of South Dakota as amended or as authorized by such title as amended.

5.602 Time of Closing.

Every “on-sale” alcoholic beverage licensee shall flash the lights of his/her place of business at 1:45 o’clock a.m. each day as a warning that within 15 minutes, the place of business will close. At 2:00 o’clock a.m. every “on-sale” dealer shall clear the premises of customers and patrons and shall lock all doors to the premises. The “on-sale” dealer and any employees shall leave the place of business or premises, except for cleanup, restocking or other ordinary duties.

5.603 Number of Licenses.

The City of Emery does hereby authorize such number of on-sale and off-sale licenses for alcoholic beverage sales, as is authorized by South Dakota State Law. Licensees shall be allowed to sell alcoholic beverages on Sundays and Memorial Day.

5.604 License Fees.

The annual fee for each on-sale or off-sale license shall be determined by resolution of the City Council.

5.605 Establishment of a Special Event Permit.

1. License Requirements. Any person intending to sponsor a public gathering at which alcoholic beverages will be available for consumption shall be required to purchase a permit from the City of Emery at least fourteen (14) days prior to event. The cost of the permit shall be determined by resolution of the City Council.
2. Security Requirements. At any public gathering at which alcoholic beverages will be available for consumption, the licensee may, at the Council’s direction, be required to have security guards in attendance.
3. Age Identification. All individuals attending the public gathering intending to partake of any alcoholic beverages shall provide proof that they are at least twenty-one (21) years of age, and shall then affix a wrist band to his or her hand.
4. Pursuant to SDCL 35-4-124 and SDCL 35-4-125, the City of Emery shall regulate and restrict permits for special alcoholic beverage licenses issued in conjunction with special events in the following manner:
  - A. Any license issued pursuant to SDCL 35-4-124 shall be issued for a period of time

established within the sole discretion of the City Council, not to exceed three consecutive days.

- B. A public hearing is required before approval and issuance of any license.
- C. No person or organization may be issued a permit pursuant to SDCL 35-4-124 more than 10 times in any calendar year.
- D. The license must comply with the regulations set forth on the application and all applicable state laws and City Ordinances concerning the consumption of alcoholic beverages.
- E. No alcoholic beverages will be permitted to be served after 1:00 a.m.
- F. The fee for a license issued pursuant to SDCL 35-4-124 and SDCL 35-4-125 and this ordinance shall be on a per day basis, in the amount established by the Council by resolution which fee must accompany the special alcoholic beverage license application.

# TITLE 6

## OFFENSES

### Chapter Index

- 6.2 Offenses Against Public Welfare
- 6.3 Gambling
- 6.4 Animals
- 6.5 Fireworks, Firearms and Explosives

### CHAPTER 6.2 OFFENSES AGAINST PUBLIC WELFARE (SDCL 9-29-3)

#### 6.201 Intoxication

No person shall become intoxicated in any private house or place to the annoyance of any person. No person shall be or remain in a state of intoxication in any public place.

#### 6.202 Disturbing the Peace

No person shall disturb the peace of the City or of any person by violent, tumultuous or offensive conduct, or by loud or unusual noises, or by profane, obscene, indecent, violent or threatening language, or by assaulting, striking or attempting to assault or strike another person, or inviting or defying another person to fight or quarrel, or by willfully and maliciously destroying or attempting to destroy or injure any property belonging to another, or by engaging in a fight with another.

#### 6.203 Indecency (SDCL 9-29-9)

It shall be unlawful for any person within the city to:

1. Knowingly disseminate, distribute or make available to the public any obscene materials.
2. Knowingly engage or participate in any obscene performance made available to the public.
3. Knowingly engage in commerce for commercial gain with materials depicting and describing explicit sexual conduct, nudity, or excretion utilizing displays, circulars, advertisements and other public sales efforts that promote such commerce primarily on the basis of the prurient appeal.
4. Appear in any public place in a state of dress intended to make any indecent exposure of his or her person.

#### 6.204 As used in this Section, the following definitions shall apply:

1. "Obscene" - To the average person applying contemporary community standards, taken as a whole, that the predominant appeal of the matter appeals to the prurient interests and (i) depicts or describes patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (ii) depicts or describes patently offensive representations or descriptions of masturbation, excretory functions, or lude exhibits of the genitals; and which, taken as a whole, lacks serious literary, artistic, political or scientific value.

2. "Prurient Interest" - Shameful or morbid interest in nudity, sex or excretion which goes substantially beyond customary limits of candor in description or representation.
3. "Material" - Any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statute or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines.
4. "Dissemination" - To transfer possession of, with or without consideration.
5. "Knowingly"- Being aware of the character and content of the material.
6. "Promote" - To cause, permit, procure, counsel or assist.

6.205 All such obscene matter is declared to be a nuisance and any police officer is authorized to seize any such obscene matter found in the possession of any person arrested for a violation hereof, and upon conviction of a violation of this section, the court shall order as a part of the judgment in addition to the other penalties prescribed, that the officer having custody of such obscene matter shall destroy the same.

### **CHAPTER 6.3 GAMBLING (SDCL 9-29-5)**

#### 6.301 Gambling Defined

Keeping Gambling Establishment Letting Building for Gambling – Misdemeanor. No person shall engage in gambling in any form with cards, dice, or other implements or devices of any kind wherein anything valuable is wagered upon the outcome, or keep any establishment, place, equipment, or apparatus for such gambling or any agents or employees for such purpose, nor shall any person knowingly permit any establishment, structure, place, equipment, or apparatus that person owns or controls to be used for such gambling, except where permitted under state law.

### **CHAPTER 6.4 ANIMALS**

#### 6.401 Cruelty of Animals (SDCL 9-29-11)

No person shall beat, torture, or injure any domestic animal, nor overload any working animal, nor shall any person willfully or negligently maltreat or abuse or treat or neglect, in a cruel or inhuman manner any such animal.

#### 6.402 Animals Running at Large (SDCL 9-29-12)

No person shall allow any horse, cattle, swine, sheep or goat to run at-large. Any police officer or officer or agent of the Humane Society finding any animal maltreated, neglected or abused shall cause the same to be taken care of and the charges thereof shall be a lien upon said animal to be collected thereon as a pledge.

#### 6.403 Livestock or Fowl in the City (SDCL 9-29-12)

No person shall keep livestock including, but not limited to, horses, cattle swine, sheep, and goats; or keep fowl including, but not limited to, ducks, geese, and chickens, without a permit issued by the city. The limit on fowl will be a maximum of 6 with no roosters allowed.

## **CHAPTER 6.5 FIREWORKS, FIRE ARMS AND EXPLOSIVES (SDCL 9-33-1)**

### **6.501 Fireworks Prohibited**

The use, throwing, lighting or firing of fireworks within the City shall be authorized only in accordance with SDCL 34-37 and these Ordinances. The provisions of this Section shall not apply to any person, firm or corporation duly-licensed by the City Council to discharge fireworks for public entertainment at any public celebration in the City.

No fireworks are to be used, exploded, set off or fired (at any time) if there is a danger of fire due to dry conditions, and/or if there is a burn ban established in Hanson County.

It shall at all times be unlawful to throw at or from moving vehicles, any type of fireworks and there shall be NO firing or use of fireworks from midnight until 8:00 am, and it shall be unlawful for a person to discharge fireworks in the City after the fifth day of July or prior to the twenty seventh day of June, unless a special permit is approved by the Emery City Council.

It shall at all times be unlawful to discharge fireworks on "Main Street", which is a portion of 3<sup>rd</sup> Street commonly known as the business district, between Hanson Street and 2<sup>nd</sup> Avenue. Nor shall it be allowed to discharge any fireworks within 300' (one city block) of any grain elevator equipment or structure, fuel pumps, or where other highly flammable objects may exist. Any violation of this Section shall be a misdemeanor.

### **6.502 Discharging Weapon**

No person shall discharge any pistol, gun, revolver, or other firearm, or any device capable of firing a projectile either by air or compressed gas or any other means which would likely cause injury to any person, or discharge any dangerous weapon, within the City limits. Law enforcement officers in the performance of their duties are exempted. The City Council may grant exceptions for special events or activities after a public hearing. Any violation of this Section shall be a misdemeanor.

### **6.503 Discharging Fire Arms**

No person shall discharge or shoot off any gun, pistol, air gun or other firearm. This section shall not apply to licensed shooting galleries.

### **6.504 Explosives on Car Tracks**

No person shall place on any railway tracks or the tracks or ways of any public transportation carrier any dynamite caps, cartridges, torpedoes, powder or other explosives of any kind.

### **6.505 Transporting Explosive Substances**

No person shall transport on the streets or in public places any quantity of explosive substances or blasting powder so as to endanger the safety of the public.

### **6.506 Storing Gun or Blasting Powder**

No person shall keep in store any gun or blasting powder or other like substance, except in such place or magazine as shall have been approved by the City Council for that purpose, provided, that any person engaged in retailing powder may keep for purpose of retailing only a

quantity of gun powder not to exceed 200 pounds at any one time at his place of business in fireproof boxes or containers out of doors, remote from fires and open flames, and so that it can be readily removed in case of fire.

# TITLE 7

## PUBLIC WAYS, PLACES AND IMPROVEMENTS

### Chapter Index

- 7.1 Name, Grades and Width of Streets
- 7.2 Public Improvements
- 7.3 Excavations in Public Places
- 7.4 Use of Streets and Public Places
- 7.5 Sidewalk Construction
- 7.6 Removal of Snow from Sidewalks

### **CHAPTER 7.1 NAMES, GRADES AND WIDTH OF STREETS (SDCL 9-30-02)**

#### 7.101 Names of Streets and Avenues

The names of the streets and avenues in the City heretofore designated are hereby fixed and adopted in accordance with and as shown by the map of the City now on file in the office of the Finance Officer, which is hereby designated and adopted as the official map of the City.

#### 7.102 Street Grades

The grades of the streets and alley City heretofore established in accordance with and shown by the Street Profiles on file in the office of the Finance Officer are hereby established and designated as the grades of the streets and alleys for the City; the records are incorporated herein by reference and adopted as the official record of the grades of the street and alleys in the City.

#### 7.103 Roadway Widths

The width of the roadways between curb lines for vehicular traffic and the various streets in the city heretofore established are hereby fixed and established in accordance with the official record of the width of roadways in the City on file in the office of the Finance Officer, which record is incorporated herein by reference and is designated and adopted as the official record of the width of roadways in the City.

### **CHAPTER 7.2 PUBLIC IMPROVEMENTS**

#### 7.201 Paving, Grading and Curbing

The paving, grading and curbing of alleys, streets, avenues or public ways shall be done under the direct supervision of the City Council. Such public improvements shall be done strictly in accordance with the specifications therefore adopted by the City Council and on file in the office of the Finance Officer.

#### 7.202 Sewers and Sewer Connections and Construction

The construction of all public sewers and sewer connections shall be done under the direct supervision of the City Council. Such public improvements shall be done strictly in accordance

with specifications therefore adopted by the City Council and on file in the office of the Finance Officer.

#### 7.203 Water Connections and Construction

The construction of all water connections in the streets shall be done under the direct supervision of the Superintendent of Water Works. Such water connections shall be constructed strictly in accordance with specifications therefore adopted by the City Council and on file in the office of the Finance Officer.

#### 7.204 Duties of Engineer

The duties of the Engineer shall include the preparing of all plans and specifications for and supervision over all contract work ordered by the City Council relating to sewerage, street and alley grading, paving, curb and sidewalk construction, sewer and water connections, and such other public improvement works as the City Council may designate.

#### 7.205 Interference with Contractors

No person shall interfere with or obstruct any person in carrying out in a lawful manner any lawful contract entered into with the City for paving, grading or constructing sidewalks or curbs or any other public improvements or public works.

#### 7.206 Interfering with Barricades, Etc.

No person shall move, interfere with, break, destroy, or carry away any barricades or lanterns used by any contractor or person in guarding unsafe or dangerous places in the work, or in otherwise carrying out a contract.

### **CHAPTER 7.3 EXCAVATIONS IN PUBLIC PLACES**

#### 7.301 Permit Required

No person shall make or cause to be made any excavation in or under any street, parking lot, sidewalk, alley or public ground or remove any earth, soil, paving, gravel or material there from without first having obtained a permit therefore from the City Council.

#### 7.302 Application and Bond

Any person before receiving permit to make excavations or remove any soil, earth, paving, gravel or material from any street, parking lot, alley, sidewalk or public ground shall first deposit with the Finance Officer not less the one hundred dollars (\$100.00) or such larger sum as deemed necessary by the City Council.

If at any time the work for which the deposit was made has not been properly refilled, the depositor shall be notified in writing that the work must be put in satisfactory condition within three (3) days and if the depositor fails to comply with the terms of the notice, then the City shall cause such work to be done in a proper and satisfactory condition and shall charge the expense therefore to the sum deposited. The unexpended balance shall be returned to the depositor.

#### 7.303 Guarding Excavations

Any person receiving a permit to make excavations in or upon any street, alley, sidewalk or



public ground shall during the progress and continuance of the work, erect and maintain around the same, both by day and night, suitable guards, fences, lanterns, and signals so as to prevent injury to persons, animals or vehicles on account of such excavations. Such lanterns shall be kept lighted from sundown until sunrise.

#### 7.304 Refilling Excavations

Any person making such excavation shall, when the same shall be completed, promptly and without delay refill the same as herein provided. In refilling any excavation the earth shall be thoroughly settled as the refilling progresses by flushing with water, or if water is not available, the earth shall be thoroughly tamped in successive layers of approximately six (6) inches, in such a manner that all the earth shall be replaced in the excavation, leaving the surface in its original condition. In making connection to fire hydrants for flushing excavations, all rules and regulations of the Water Department relating thereto shall be observed.

#### 7.305 Cutting Blacktop

When it is necessary to cut the street blacktop in making any street excavation, there shall be deposited with the Finance Officer before any permit is issued, an amount equal to the repair for each square yard of blacktop removed. The deposit shall be credited to the General Fund and be used by the Department of Streets in replacing said blacktop.

#### 7.306 Excavation Near Street

It shall be unlawful for any person, owner, or occupant of any lot to make or cause to be made any excavation on said lot adjacent to any street, alleys public ground or traveled road, or roadway, except the same be securely guarded so as to prevent the injury of any person or animal passing upon or along the same.

### **CHAPTER 7.4 USE OF STREETS AND PUBLIC PLACES (SDCL 9-30-2)**

#### 7.401 Ashes, Dirt, or Waste Materials on Streets Prohibited

No person shall place, throw, or deposit or cause to be placed, thrown or deposited any dirt, ashes, cinders, refuse, garbage, metal, plastic or glass articles, or any offensive or waste material or matter in any street, alley or public ground or into any stream or body of water or upon the banks of any stream or body of water in such proximity that such substance may be washed into said stream or body of water within the City.

#### 7.402 Vehicles or Obstructions in Street, Sidewalk, and Public Places

No person shall place, leave, or keep upon any street, road, alley, sidewalk or other public ground any vehicle, tractor, farm machinery or trailer, except when the same is in actual use. Likewise, no person shall place any other article or material in such a manner which obstructs the free use of said street, road, alley, sidewalk or public ground. For purposes of this Section (7.402) only, the term "sidewalk" shall not include any portion of a sidewalk which is part of a driveway.

#### 7.403 Construction Material

The mayor is authorized to grant permission for time therein limited and in no case to exceed three consecutive months, to any person to place and keep building materials in any street adjacent to the lot whereon such material is about to be used in the construction or repair of any building or other improvement; but such permit shall not authorize the obstruction with

any such building material or otherwise of more than one-third (1/3) in width of the sidewalk or of the street adjacent to such lot, nor shall such materials be so placed or kept as to obstruct the free flow of water in the gutters of such street.

#### 7.404 Stair Railings

Any owner having a stairway leading from an adjoining sidewalk to the cellar or basement of a building shall guard such stairway with a substantial railing not less than three (3) feet high, and the entrance to such stairway shall be at right angles to the street from which entry is made.

#### 7.405 Eave Pipes

No person shall place or maintain any pipe leading from the eaves of any building in such position that the water discharged thereby may flow upon or over any public sidewalk.

#### 7.406 Hindering Street Improvements

No person shall hinder or obstruct any employee or official of the City in lawfully making any improvement in any street or on any public ground, nor shall any person without proper authority tear up, break or injure any pavement, cross-walk, sidewalk or other improvement in any street or public ground.

#### 7.407 Tractors and Engines on Blacktop

No person shall drive or move or cause to be driven or moved, whether by its own power or otherwise, any traction engine or tractor, except one weighing less than thirty thousand pounds and having smooth tread wheels or rubber tires across any of the blacktop streets or public grounds, unless such traction engine or tractor is driven or moved upon planks so as to completely protect the surface of pavement from injury and damage.

#### 7.408 Railroads Must Construct and Maintain Crossings

Any railroad company maintaining or operating any railroad over or across any street or alley within the City shall construct thereat a crossing as required by the City, and shall keep and maintain such street crossing in a state of proper repair.

#### 7.409 Penalty

Any person violating any of the provisions of this Chapter shall, in addition to other penalties, be liable for any damages caused by such violation.

#### 7.410 Golf Carts

For the purposes of this Ordinance, the term golf cart means a three or four-wheeled vehicle originally and specifically designed and intended to transport one or more individuals and golf clubs for the purpose of playing the game of golf on a golf course.

The City of Emery hereby permits the use of golf carts on the municipal streets of the City of Emery, are subject to the following:

1. The golf cart be insured.
2. The person operating the golf cart shall hold a valid driver license.

3. The golf cart shall be required to display a slow-moving vehicle emblem in accordance with SDCL 32-15-20 or a white or amber warning light in accordance with SDCL 32-17-46.
4. The operator of said vehicle and all occupants must always be seated. There cannot be more people in or on said vehicle than the vehicle seating capacity.

No person may operate a golf cart on a state or county highway except for crossing from one side of the highway to the other. A golf cart may cross the highway at a right angle, but only after stopping and yielding the right-of-way to all approaching traffic and crossing as closely as possible to an intersection or approach.

The operator of a golf cart is required to obey the same traffic laws of the state and ordinances of the city, including street and road signs, as the operators of all other motorized vehicles are required to obey.

No person shall operate a golf cart within the city limits except during daylight hours unless the golf cart has at least one operating taillight and headlight.

Failure to abide by this ordinance shall be deemed a class 2 misdemeanor. ***Offenders may be issued a POA ticket, with the fine and costs being set at: \$50.00 plus such court costs as apply to City Ordinance violations at the time the ticket is issued***

## **CHAPTER 7.5      SIDEWALK CONSTRUCTION (SDCL 9-30-2)**

### 7.501 Specifications

The construction of all sidewalks within the City shall be done strictly in accordance with specifications for sidewalks adopted by the City Council and on file in the office of the Finance Officer. The construction of all sidewalks shall be according to lines and grades.

### 7.502 Width of Sidewalks

The width of all sidewalks in the residential districts shall be four (4) feet and in business district shall be from the curb line to the property line.

## **CHAPTER 7.6      REMOVAL OF SNOW FROM SIDEWALKS (SDCL 9-30-5)**

### 7.601 Remove Snow

It shall be the duty of the owner or person in possession of any lot abutting any sidewalk, to keep such sidewalk free from snow and (within forty-eight hours after any fall of snow) to cause such snow to be removed from so much of the sidewalk as adjoins the lot.

### 7.602 City Shall Remove

If the owner or person in possession of said lot fails or refused to remove the snow from such sidewalks within the time above specified, it shall be the duty of the Committee of Streets to have the snow removed and to charge the cost thereof against the abutting property each time the snow is so removed.

#### 7.603 Cost Assessed

The Finance Officer shall cause an account to be kept against each lot for the removal of snow from the sidewalk each year. He shall prepare an estimate of the assessment against each lot for the removal of snow, for the preceding winter and submit the same to the City Council for its approval on or before the first day of May of each year, and shall publish in the official newspaper a notice to property owners of the time and place when the City Council will meet for the purpose, of approving such estimate. Upon the day so named, the City Council shall meet, and if they find said estimate correct, shall approve the same, or if not correct, they shall correct or modify the same and approve the same as modified and corrected and file such assessment with the county Treasurer. From the date of such approval and filing the same there shall be a special lien against the various parcels of property described in said assessment and shall be collected in like manner special assessments are now collected for public improvements.

# TITLE 8 TRAFFIC

## Chapter Index

- 8.1 Definitions and General Provisions
- 8.2 Regulations as to Operation of Vehicles
- 8.3 Speed Regulations
- 8.4 Parking and Stopping
- 8.5 Snowmobiles

## CHAPTER 8.1 DEFINITIONS AND GENERAL PROVISIONS

### 8.101 Definitions

- (a) Authorized Emergency Vehicle. Vehicles of the Fire Department, police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the Chief of Police.
- (b) Business District. The territory contiguous to a highway or streets when fifty percent (50%) or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business.
- (c) Crosswalk. That portion of a roadway ordinarily included within the prolongation of curb and Property lines at intersections, whether for pedestrian crossing by lines or other markings on the surface.
- (d) Curb. The extreme edge or lateral boundary of a roadway, whether marked by curbing or not so marked.
- (e) Department. The Police Department of the City of Emery.
- (f) Diagonal Parking. That a vehicle shall be drawn up to the curb, gutter or sidewalk on the right-hand side of the street at an angle of forty-five (45) degrees with the curb line thereof, such vehicle to be parked within six (6) inches of the curb, gutter or sidewalk on and along said street upon which such vehicle is parked, and no vehicle shall be parked nearer than one (1) foot to any other vehicle.
- (g) Farm Tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, other implements of husbandry.
- (h) Highway or street. Every major place of whatever nature opened to the use of the public, as a matter of right for purposes of vehicular travel. The term "highway or street" shall not be deemed to include a roadway or driveway upon grounds owned by private persons, colleges, universities or other institutions.
- (i) Intersection. The area embraced within the prolongation of the lateral curb lines or, if none then of the lateral boundary lines of two (2) or more streets or highways which join one another at an angle whether or not one such street or highway crosses the other; but such area in the case of the point where an alley and a street meet, shall not be deemed an intersection.

- (j) Loading Zone. The space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.
- (k) Motorcycle. Every motor vehicle designed to travel on not more than three (3) wheels in contact with the ground, except any such vehicle as may be included within the term "tractor" as herein defined.
- (l) Motor Vehicle. Every vehicle, as defined herein, which is self-propelled.
- (m) Official Traffic Signals. All signals, not inconsistent with this Title, placed or erected by authority of a public body or official having jurisdiction, for the purpose of directing, warning or regulating traffic.
- (n) Official Traffic Signs. All signs and markings, other than signals, consistent with this Title, placed or erected by a public body or official having jurisdiction, for the purpose of guiding, directing, warning, or regulating traffic.
- (o) Operator or Driver. Any person who is in actual physical control of a vehicle.
- (p) Owner. A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Title.
- (q) Parallel Parking. That all motor vehicles or other vehicles shall be drawn up parallel to other curb, gutter or sidewalk on the right-hand side of the street, the hub of both wheels on the right-hand side of the vehicle to be within one (1) foot of the curb, gutter or sidewalk on and along the street upon which such vehicles are parked, and no vehicle shall be parked nearer than three (3) feet of the front or rear of any other vehicle.
- (r) Parking. The standing of a vehicle whether attended or unattended upon a roadway or street otherwise than temporarily for the purpose of and while actually engaged in loading or unloading, or in obedience to traffic regulations or traffic signs or signals.
- (s) Pedestrian. Any person afoot.
- (t) Person. Any natural person, firm, co-partnership, association, or corporation.
- (u) Private Road or Driveway. Every road or driveway not open to the use of the public for purposes of vehicular travel.
- (v) Residence District. The territory contiguous to a highway or street not comprising a business district when the frontage on such highway or street for a distance of three hundred (300) feet or more is mainly occupied by dwellings or by dwellings and buildings in use for residence.
- (w) Right of Way. The privilege of the immediate use of the street or highway.
- (x) Road Tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.
- (y) Roadway. That portion of a street or highway between the regularly established curb lines

or that part devoted to vehicular traffic.

- (z) Semitrailer. Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.
- (aa) Sidewalk. That portion of a highway or street between the curb lines and adjacent property lines.
- (bb) Traffic Control Signal. Any device using colored lights, or words, or any combination thereof, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- (cc) Trailer. Every vehicle without motive power designed for carrying property or passenger wholly on its own structure and for being drawn by a motor vehicle.
- (dd) Truck Tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
- (ee) Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks; provided that for the purposes of this Title, a bicycle or a ridden animal shall be deemed a vehicle.

## **CHAPTER 8.2 REGULATIONS AS TO OPERATION OF VEHICLES**

### **8.201 U-Turns at Intersections**

At any intersection where traffic is controlled by traffic control signals or by a police officer, or when warned by an official traffic control sign displaying the words: "No U-Turn" or "No Left Turn", it shall be unlawful for the operator of a vehicle to turn such vehicle at the intersection in a complete circle, so as to proceed in the opposite direction.

Vehicles making a lawful U-Turn at any intersection in this City shall grant the right-of-way to all vehicles and motor vehicles approaching and entering such intersection for any purpose other than making a U-Turn.

### **8.202 U-Turn Prohibited**

No person shall make a U-Turn by operating a motor vehicle in the middle of any block or at any other place other than at an intersection where said U-Turns are not prohibited.

### **8.203 Slow Driving**

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

### **8.204 Stealing Rides and Trailing Sleds**

It shall be unlawful for any person to cause to be attached or to permit and sled of any kind occupied by children to be trailed behind any vehicle or motor vehicle in the City limits of this City, and no person shall ride, trespass upon, seize hold of, or drag, slide, or in any manner trail

behind or alongside any vehicle, with the following exception: That snowmobiles may tow a sled or other device which must have a solid tow bar.

#### 8.205 Dynamic Engine Braking Device

It shall be unlawful to operate a dynamic engine braking device on any motor vehicle in the City of Emery, South Dakota, except for the aversion of imminent danger. This device converts the internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.

The City may impose a fine of \$100.00 to any person who operates a dynamic engine braking device within the City of Emery, South Dakota.

### **CHAPTER 8.3      SPEED REGULATIONS**

#### 8.301 General Provisions

It shall be unlawful for any person, to drive a vehicle on a highway, street, or alley located in this City at a speed greater than is reasonable and prudent under the conditions then existing or at speeds in excess of those fixed by this Chapter or established by the City Council as hereinafter set forth.

#### 8.302 Speed Limits

Where no special hazard exists on any section of a highway, street, or alley which section is not zoned and posted by action of the City Council, the following speeds shall be lawful, but any speed in excess of said limits shall be unlawful, and shall be prima facie evidence that the speed is not reasonable or prudent.

- (a) Twenty (20) miles an hour on all highways and streets within the City limit unless otherwise posted.
- (b) Thirty (30) miles an hour on South Dakota Highway 262.
- (c) The speed limits set out in this Section shall not apply to authorized emergency vehicles when responding to emergency calls provided that drivers thereof sound audible signals by siren or horn and display two lighted red lights to the front, or one beacon light visible 360 degrees. This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street nor shall it protect the driver or any such vehicle from the consequence or a reckless disregard of the safety of others.
- (d) The speed limit on the streets surrounding the Emery school should always (at all times of the day or night) be fifteen (15) miles an hour.

### **CHAPTER 8.4      PARKING AND STOPPING**

#### 8.401 Vehicles Must Stop at Certain Thru Highways or Streets

The City Council shall by authorizing the placement of octagonal shaped "Stop" signs, determine at what intersections vehicles shall come to a complete stop. It shall be unlawful not to obey said signs.



#### 8.402 Vehicles Must Yield at Certain Thru Highways or Streets

The City Council shall, by authorizing the placement of triangular shaped “Yield Right of Way” signs determine at what intersections certain vehicles shall have a preferential right of way. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions, or shall stop if necessary, and shall yield the right of way to any pedestrian legally crossing the roadway on which he is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. Said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection shall yield to the vehicles so proceeding.

#### 8.404 Parking or Stopping on Streets or Highways

(a) All vehicles parked or stopped in the business district must be diagonally parked in the lanes designated or parking by appropriate signs on the pavement or curb areas which the Police Department may designate under authority and direction of the City Council by proper signs as “No Parking” and wherever said Police Department has so designated “No Parking” it shall be unlawful for any person to fail to comply therewith.

(b) No person shall park or leave standing any truck except a pickup truck on Third Street and no person shall park a truck on any street or alley in the City in such a manner so as to impede traffic or so as to be dangerous or likely to be dangerous to other persons traveling on such street or alley.

#### 8.405 Snow Removal and Street Cleaning

In order that the street department may efficiently clean the streets and highways in the City of Emery, signs will be placed on streets designated as snow routes. Any vehicle parked on said streets when snow removal is necessary or street cleaning is in progress, shall be towed or ticketed by law enforcement.

#### 8.406 Removal of Cars Illegally Parked

All vehicles found to be in violation of this Chapter may be summarily removed by the Police Department and all charges or expenses incident to such removal including any storage for such vehicle, shall be assessed by the Court having jurisdiction over any offense brought hereunder against the owner or driver of such vehicle in addition to the other penalties provided for in this Chapter.

#### 8.407 Parking of Trucks

No truck, as that term is hereinafter defined, may be parked within the limits of the City of Emery unless it is parked entirely on private property

The provisions of this Section shall not apply to light delivery trucks delivering goods, garbage trucks when collecting refuse, school buses, emergency vehicles; of any fire department, any public utility vehicles where actually engaged in the performance of emergency duties necessary to be performed by said public departments or public utilities, any vehicle owned by or performing work for the City, the United States of America, or the State or any of its political subdivisions.

A truck, as that term is hereinbefore used, shall mean any motor vehicle, weighing more than 30,000 pounds, which has twin screws, tag axles, or tandem axles, designated or operated for the transportation of property, including a vehicle directly connected to a trailer.

**CHAPTER 8.5 SNOWMOBILES (SDCL 32-20A-9)**

8.501 Definition

Any type of motor-powered sled, skills, or other snow vehicle.

8.502 Operator

Shall not Drive on Sidewalk No person shall lawfully operate a snowmobile on the sidewalks or any private property without property owner's permission.

8.503 Hours Snowmobiles may be Operated

No snowmobiles shall be operated within the City limits between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. except in case of emergency.

# TITLE 9 SEWERS

## Chapter Index

9.1 Sewer Connections

9.2 General Provisions

### CHAPTER 9.1 SEWER CONNECTIONS

#### 9.101 Sewer Permit Required

No person shall make connections, attach to, or tap any lateral sanitary sewer or trunk sewer, or make excavations in the streets, alleys or public property or under the sidewalks for the purpose of making such connections or attachments to any sewer, without first having obtained a permit therefore from the City Council. Any such person who will perform these tasks shall be required to have the proper plumbing license.

#### 9.102 Permission to Tap Sewers

No person shall break into or tap any lateral or trunk sewer at any other place than where a “Y” has been placed for the connecting of the service sewers, except upon written permission from the City Council. When an opening is made in any lateral or trunk sewer at any place other than where a “y” is left for such purposes, it shall be made under the supervision of the Superintendent of Sewer Department.

All sewer main taps to be the same diameter or larger than sewer pipe connected. No obstructions from main tap to protrude into the main city sewer system or possibility of such so as to facilitate full main size boring or cleaning. All sewer main taps to be firmly attached to service sewer taps either by main saddles and straps or cement protected by a bituminous tar compound (tar, tarred jute packing or tar rope) to discourage root penetration into city main. All connections or sewer pipes to dwelling to be solvent weld P.V.C. rubber ring connections or other, approved by the South Dakota State Plumbing Code. No Portland cement joints.

When discontinuing use of a sewer line it shall be plugged at basement entrance with tar or tarred jute and cement to eliminate entrance of soil, tree roots and surface water. In the event the owner fails to do so, after ten days' notice, the city may do so and assess costs in the manner set forth in Chapter 4.3 relating to nuisances.

#### 9.103 Sewer Connections at Owner's Expense

All sewer connections from the lateral or trunk sewers laid in the streets of alleys shall be laid and constructed from such lateral or trunk sewers at the expense of the owners of the property abutting upon said lateral or trunk sewers in front of such connections.

### CHAPTER 9.2 GENERAL PROVISIONS (SDCL 9-32-9)

#### 9.201 Unlawful to Connect with Storm Sewer

No person shall connect any house drain or house sewer service pipes with any storm water sewers or break into such storm water sewer pipe for making such connections

9.202 Waste Oils and Solid Refuse Materials in Sewers Prohibited

No person shall deposit or cause to be deposited any waste oils, grease, kerosene, gasoline, acids or solid refuse materials such as garbage, hair, rags, ashes or other solid refuse matter into any sewer, sewer inlet, or sewer catch basin which is connected either directly or indirectly with the sewer system or place any such waste or solid refuse materials so that the same may be washed or carried into the sewer system.

9.203 Use of Municipal Sewer Required

- A. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City of Emery or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within the City of Emery, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with Title 9 of these Ordinances.
- C. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.
- D. The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the further be located a public sanitary sewer of the City, is hereby required at his/her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper sewer in accordance with the provisions of this ordinance, within ninety (90) days after date of official notice to do so and in a manner consistent with the provisions found within Title 9 of these Ordinances, provided that said public sewer is within four hundred (400) feet of the property line.

# TITLE 10

## WATER DEPARTMENT CODE

### Chapter Index

10.1 Water Department and Regulations

10.2 Water Rates

10.3 Sewer Rates

10.4 Garbage Collection and Regulations

### CHAPTER 10.1 WATER DEPARTMENT AND REGULATIONS (SDCL 9-32-8)

#### 10.101 Definitions

The term “Water Department” as used in this Section shall be construed to mean that department of the City government having charge and control of the municipal water plant and system of the City. The term “Water Committee” shall mean those members of the City Council of the city having under their special charge the Water Department of the City.

#### 10.102 Rules and Regulations

The following rules and regulations are hereby established for the Government of the Water Department and the control of all persons doing any plumbing work in and upon any of the mains, connections and appliances appertaining to the city water works.

- (a) The City Waterworks shall be the sole source of water for residential and commercial use, and the sinking of wells for water usage or the presence, existence or use of any other distribution system, public or private, within the City Limits of Emery, South Dakota, shall be prohibited.
- (b) Applications for connection to the City Waterworks must be made by the consumer to the Finance Office, stating in writing the legal description of the premises to be served, the name of the occupant, the name of the owner (if other than occupant) and the physical address of the premises.
- (c) The cost of all labor and materials for the tapping and connecting with the city water mains from the curb stop to the main, within the corporate limits of the City of Emery, South Dakota, shall be paid for by the City of Emery. The customer shall pay to the Finance Officer the amount of seventy-five dollars (\$75.00), which shall also serve as a deposit on account, which may or may not be refundable, the amount shall be placed in the City Water Deposit Fund. Any new person requiring water service shall remit this fee prior to them receiving any water service from the City. New renters moving into homes in the City of Emery shall also be required to pay the Finance Officer seventy-five (\$75.00) to serve as a deposit on their water account.

Within sixty days (60) of the water service being disconnected and upon request by the customer, the seventy-five dollar (\$75.00) water deposit may be returned to the customer, but only if the customer account balance has been paid in full. The water deposit amount may be applied to the customer open balance, at the discretion of the City Finance Officer.

- (d) The owner of any property where water service is supplied by the City of Emery will be held ultimately responsible for the payment of all water bills. Any bill for water which is not paid, will then revert back to the owner of the property. The owner and tenant will be notified when any such bill becomes delinquent.
- (e) The replacement of water or sewer service lines from the mains to the dwelling or structure shall be the cost of the owner. Failure to pay for work done within 30 days will result in shut-off procedures by the city.
- (f) All service pipes from the point of connection with the water main to the meter must be type K copper or flexible plastic pipe rated at 200 P.S.I. service use. All mechanical connections to be of red brass. Curb Box shutoffs to be blocked or protected to eliminate twisting action that would break or cause to break connections to them. All curb boxes shall be on a firm block or base, either rock or concrete.

Curb box risers shall be located in sidewalk or next to sidewalk in boulevard area. If this is not possible, it shall be clearly marked and surrounded by cement, at least 18" square and 9" thick - all curb box risers to be installed plumb and straight to facilitate easy curb wrench accessibility.

- (g) No trees or structures above ground to be closer than 12" from curb box center. Any damage occurring to curb box or riser due to snow removal, etc. shall be corrected by owner at his expense, to the city's approval.
- (h) Water main taps shall be an approved saddle only - No threaded taps on water main. Four inch mains up to one and three-fourths tap only - all larger mains up to two inch taps.

Ball or gate valve shut off to be installed in water service line before the water meter and shall have a flow rate to equal or exceed the service line pipe.

All pipes between the curb stop and the meter shall be subject to the inspection by the Superintendent of Waterworks and if found defective, the water shall be shut off until the consumer shall repair the same at his own expense.

There shall be a brass stop-cock and waste in each service connection at the sidewalk line, under the exclusive control of the Superintendent of Waterworks and no person without authority in writing from the Superintendent shall open or close or otherwise interfere with said stop-cock and the same shall be fitted with an adjustable service box at least one and one-half (1½) inches in inside diameter to fit an approved curb stop. The cover shall be on a level with the sidewalk. There shall be a stop-cock and waste in the cellar or basement of each premises served, situated below the first line and so the water can be conveniently shut off and drained from the pipes and meter to prevent freezing. Connection to the water main shall be made with a brass corporation stop.

- (i) All water sold or furnished by the City of Emery, South Dakota, shall be paid for at meter rates as herein provided. All meters shall be purchased by the City and all meters shall be located in frost-proof basements or cellars. Provided that if there is no accessible basement or cellar or if the same is not frost proof, the owner shall install a frost proof meter box. The owner or occupant of premises where a water meter is located shall keep the meter accessible during all reasonable hours of the day for the purpose of reading, inspecting or repairing the same, and shall pay for all repairs necessitated by the freezing of a meter.
- (j) No person, unless properly authorized by the Superintendent of Waterworks shall connect, disconnect, remove, repair or otherwise disturb any water meter, nor turn on, cause to be turned on, shut off or otherwise interfere with the water supply in any locality served by

the City waterworks, under penalty of a fine as hereinafter specified; any person who shall willfully damage any part or parts of said waterworks or shall in any manner whatsoever obstruct or pollute the city water shall be punished by a fine as hereinafter specified.

- (k) The word “person” used in this ordinance includes individuals, partnerships, and corporations.
- (l) No person shall use city water through a hose or hydrant during a fire, except in fighting the fire or protecting property from it and it shall be the duty of the persons occupying or premises to see that all hydrants, hose attachments and faucets or other fixtures or devices used for obtaining water from the waterworks are shut off and to forthwith shut off any which may be open.

## **CHAPTER 10.2 WATER RATES (SDCL 9-32-8)**

### 10.201 Rates for Water Usage

- (a) Each month, for all water sold by the City during the preceding month through the municipal water system to consumers within the city, the city shall make charges to such customers at rates varying with the quantities of water furnished, and hereinafter fixed pursuant to resolution of the City Council, of which sum will be credited to the Water Fund.
- (b) Apartments and/or multi-dwelling houses shall be assessed a minimum charge per unit, with usage thereafter charged at the rate fixed pursuant to resolution of the City Council.
- (c) The sum for usage during the preceding period, shall be due on the tenth (10th) day of the month that follows the receipt of the invoice; with a late payment fee determined by the City Council added for all bills paid, or postmarked, after the tenth (10th). If the tenth (10th) falls on Saturday, Sunday or a holiday, the penalty for late payment will not be assessed until after the following bank working day. Any water payment not received by the fifteenth (15th) of the same month will be considered delinquent and water service will be disconnected without further notice. In addition to full payment, a \$50.00 reconnection fee will be required in order to restore water service.
- (d) The owner or person in possession may be requested by the City to self-read their meter and mail or deliver to the City the water meter reading and payment.
- (e) The City shall be authorized to read the meters.
- (f) The City may shut off the water to any premises when the water bill shall have become delinquent. When water shall have been so shut off, it shall be turned on again only after all arrears shall have been paid, together with an additional sum, to be determined by the City Council, to cover the expense of shutting off and turning on the water.
- (g) If discontinuing water service, that it be shut off at curb box 100% and plugged at basement entrance. If replacing a water service, the old service shall be shut off at city main and old pipe disconnected. Shut off to be 100% or plugged in approved manner. All lead lines to be cut and shut off at water main. Failure to do so will result in city execution of same and cost billed to owner.

## **CHAPTER 10.3 SEWER RATES**

### 10.301 Rates for Sewer Usage

- (a) The City shall make charges to customers at rates fixed pursuant to resolution of the City Council, for 1,000 gallons water used over a minimum per month for each consumer connected to the Municipal Sewer System, which sum shall be credited to the Sewer Fund.
- (b) Apartments and or multi-dwelling houses, shall be assessed a minimum charge per unit, at rates fixed pursuant to resolution of the City Council, of water used over the minimum for each unit connected to the Municipal Sewer system, which shall be credited to the Sewer Fund.

## **CHAPTER 10.4      GARBAGE COLLECTION AND REGULATIONS**

### 10.401 Storing Garbage Prior to Collection.

All garbage shall be placed in either sealed water-tight bags or inside garbage containers and set to the curb or accessible alley on days of pickup.

Whenever the premises in which garbage and rubbish accumulates are adjacent to a street or alley; the garbage and rubbish containers for such premises shall be kept in a location convenient and accessible to such street or alley; if pre-premises are not adjacent to a street or alley, the garbage and rubbish containers shall be kept on the premises in such a location that they will be readily accessible to the nearest street or alley without being unsightly.

The proprietor or operator of each duplex, apartment house, or similar multiple family dwelling shall furnish and maintain for the use of the tenants a sufficient number of garbage containers to hold all garbage and rubbish that accumulates upon such premises in the course of a week, or he shall require the tenants upon said premises to furnish such containers. The place where the garbage and rubbish containers are located shall be kept clean and in a sanitary condition at all times.

Every owner or person in charge of any restaurant, hotel, grocery store, wholesale or food processing establishment or any other business or commercial place having garbage or rubbish shall furnish and provide for use in connection there with, a garbage or refuse container. Such container shall have covers for all openings, and shall be emptied often enough to prevent the same from giving off any odor or stench.

### 10.402 Collection

The collection of garbage and refuse in the City may be made by private operators or the City of Emery, either of whom shall be subject to all local ordinances as well as all state and federal regulations. Collections shall be made at least once a week, unless otherwise required by the City Council.

### 10.403 City Not Liable

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

### 10.404 Equipment

Every garbage collector shall use equipment which will not permit any leakage or spilling and such truck or trailer shall be so covered that trash, garbage, rubbish or waste will not be dropped or spilled in transit to any place in the City, and any violation of this Section shall be



sufficient cause for revocation of the collector's agreement, and in addition thereto he shall be guilty of a misdemeanor and subject to fine.

#### 10.405 Garbage Collection Rates/Billing

All garbage collection rates for occupants, families and commercial businesses residing within the City limits will be established and revised as appropriate by the City Council. All garbage collection charges will be billed monthly by the City.

#### 10.406 Rates for Garbage Collection

- (a) Each month, for all garbage collection provided by the City of Emery for each residential dwelling or customer, excluding apartments and or multi-dwellings houses and business customers, which sum shall be paid with the regular water and sewer payments and be credited to the General Fund. The City shall make charges to such customers at rates fixed pursuant to resolution of the City Council.
- (b) Apartments and or multi-dwelling houses and business customer are to be contracted with the Private Contractor or Operator, who have been approved by the City Council.

#### 10.407 Rates for Garbage Collection

Each month, for all garbage collection provided by the City of Emery or private contractors retained by the City, for each residential dwelling or customer, including apartments and or multi-dwellings houses and business customers, a sum shall be billed with the regular water and sewer and paid in accordance with the City's billing procedures and be credited to the appropriate fund. Each and every location where water and sewer service is supplied will be charged a garbage rate. The City shall make charges to such customers at rates fixed pursuant to resolution of the City Council.

# Title 11

## GENERAL PROVISIONS

### Chapter Index

- 11.1 Definitions
- 11.2 General Provisions
- 11.3 General Penalty
- 11.4 Legislative Effect and Repeal

### **CHAPTER 11.1     DEFINITIONS**

#### 11.101 Definitions

References and terms as used in this ordinance, unless the context otherwise plainly requires, shall have the meanings hereinafter provided:

- (a) “Person” includes natural person, partnerships, associations, and corporations.
- (b) Masculine gender includes the feminine and neuter.
- (c) Words used in the singular number include the plural and the plural singular.
- (d) “City” or “municipality” refers to the City of Emery and the area within the territorial limits of the City of Emery, South Dakota.
- (e) The provisions, regulations, restrictions, requirements and prohibitions contained in this ordinance apply to the extent and geographic area permitted by South Dakota law.
- (f) Reference to any office or officer is to an office or officer of the City of Emery, unless otherwise specifically provided.
- (g) The powers conferred on an officer may be exercised by his duly authorized deputy, representative, or employee acting under him unless otherwise provided.
- (h) “Street” includes alley, avenue and traveled road.
- (i) “Lot” includes tract or parcel of ground.

### **CHAPTER 11.2     GENERAL PROVISIONS**

#### 11.201 Title of Ordinance

These ordinances may be cited by their ordinance numbers and as the Updated or Revised Ordinances of Emery.

#### 11.202 Numbering of Ordinances

Each section number is divided by a decimal point. The number to the left of the decimal always indicates the title number. The last two-digit positions to the right of the decimal indicate the section number within the Title and Chapter, and “0” being placed before the section number from 1 to 9. The chapter number within the Title is immediately to the right of the decimal point, occupying the first digit position for chapters 1 to 0 and two-digit positions for higher numbers.

11.203 Numbering of Amendments and Additions

In so far as practical, amendments of and additions to these ordinances may be numbered as sections, chapters or titles of this ordinance. Generally, additions relating to the subject matter of a given chapter may be added as additional numbered sections at the end of the chapter. A new chapter may be added at the end of the title to which it relates. A new title may be inserted in the title arrangement in alphabetical order by using the title number of the preceding title followed by a letter, as for example “12a.l” for chapter number and “12a10.1” for section number within the new title following title 11.

**CHAPTER 11.3 GENERAL PENALTY**

11.301 General Penalty

Any person violating any of the provisions of this ordinance for failing to comply with any of the provisions thereof, shall upon conviction therefore be punished by a fine and/or jail time not to exceed the maximum penalty set forth in SDCL 22-6-2(2) (a State Law Class 2 Misdemeanor).

11.302 Violation by Agent

Whenever any person shall; as clerk, servant, agent or employee or any other person or of a firm or corporation, violate any of the provisions of this ordinance, he/she shall be deemed guilty as a principal and shall be punished as herein provided.

11.302(a) State Law Violations – Bond Schedule

For all state code violations committed within the City of Emery, municipal law enforcement shall apply the fine and bond schedule promulgated by the First Judicial Circuit, State of South Dakota, in effect on the date of any such state code violation.

11.302(b) Municipal Ordinance Violations – Bond Schedule

With respect to Municipal Ordinance Violations, the following schedule of offenses sets forth a listing of those offenses for which a Court Appearance is required. The schedule also includes a listing of fines and costs which may be paid, by power of attorney.

<u>City Code</u>	<u>Offense</u>	<u>Fine</u>	<u>Costs</u>	<u>Total</u>
2.101	Moving Building Without Permit	Court	Appearance	
2.105	Standing Building Without a Permit	Court	Appearance	
3.102	Building Structure Without a Permit	Court	Appearance	
3.205	Interfering With Fire Department	200.00	72.50	272.50
3.206	Making False Fire Alarm	200.00	72.50	272.50
3.301(b)(1)	Open Burning	100.00	72.50	172.50
3.302	Keeping Waste Materials in Fire Zone	Court	Appearance	
3.303	Improper Product Storage	Court	Appearance	

4.201	Installing Privy within City Limits	Court	Appearance	
4.202	Violating Rubble Site Rules	100.00	72.50	172.50
4.203	Improper Burial of Animals	100.00	72.50	172.50
4.301 (A)	Maintaining Public Nuisance	Court	Appearance	
4.303	Scattering Papers	100.00	72.50	172.50
4.304	Piling Scrap Material	100.00	72.50	172.50
4.305	Unlawful Dumping	100.00	72.50	172.50
4.306	Abandoning Vehicle	Court	Appearance	
4.307	Failure to Trim Trees	100.00	72.50	172.50
4.308	Injury to Trees	100.00	72.50	172.50
4.309	Removing Trees Without Permit	100.00	72.50	172.50
4.310	Obstructing Traffic View with Trees	Court	Appearance	
4.311	Failure to Remove Dangerous Trees	Court	Appearance	
4.313	Failure to Remove Noxious Vegetation	Court	Appearance	
5.106	Failure to Display License (Vendor)	Court	Appearance	
5.108	Engaging in Business Without License	Court	Appearance	
5.202	Enter Private Prop./Soliciting without a License	200.00	72.50	272.50
5.204	Peddling or Soliciting without a License	200.00	72.50	272.50
5.302	Permitting Animal to Run at Large	100.00	72.50	172.50
5.303	Hindering Collection of Animal at Large	100.00	72.50	172.50
5.304	Failure to Immunize Animal	100.00	72.50	172.50
5.305	Harboring Infected Animal	100.00	72.50	172.50
5.306	Keeping Vicious Animal	200.00	72.50	272.50
5.307	Disturbance of Peace by Animal	100.00	72.50	172.50
5.309	Failure to License Dog or Cat	100.00	72.50	172.50
5.506	Sales Tax Violation	Court	Appearance	
5.601	Selling Alcohol Without a License	Court	Appearance	
6.201	Public Intoxication	100.00	72.50	172.50
6.202	Disturbing the Peace	100.00	72.50	172.50
6.203	Public Indecency	100.00	72.50	172.50
6.205	Possession Of Obscene Material	100.00	72.50	172.50
6.301	Gambling	100.00	72.50	172.50
6.401	Cruelty to Animals	100.00	72.50	172.50
6.402	(Large) Animals Running at Large	100.00	72.50	172.50
6.403	Keeping Livestock or Fowl in the City	100.00	72.50	172.50
6.501	Fireworks Violation	100.00	72.50	172.50
6.502	Discharging Firearm	200.00	72.50	272.50
6.504	Placing Explosives on Tracks	Court	Appearance	
6.505	Transporting Explosive Substances	Court	Appearance	
6.506	Improper Storage of Guns or Powders	100.00	72.50	172.50
7.205	Interference with Contractors	Court	Appearance	
7.206	Interfering with Barricades, etc	Court	Appearance	
7.301	Excavating without Permit	Court	Appearance	
7.303	Failure to Guard Excavation	Court	Appearance	
7.304	Failure to Refill Excavation	Court	Appearance	
7.306	Excavating Near Street	Court	Appearance	
7.401	Dumping Material on Street	200.00	72.50	272.50
7.402	Obstructing Street with Vehicle	200.00	72.50	272.50
7.403	Unauth. Placing Construction Material	200.00	72.50	272.50
7.404	Improper Stair Railing	100.00	72.50	172.50
7.405	Improper Placement of Eave Pipes	200.00	72.50	272.50
7.406	Hindering Street Improvements	Court	Appearance	

7.407	Driving tractor on Black Top	Court	Appearance	
7.501	Improper Construction of Sidewalk	Court	Appearance	
7.601	Failure to Remove Snow – Sidewalk	100.00	72.50	172.50
8.201	Fail to Yield During U-Turn	100.00	72.50	172.50
8.202	Improper U-Turn	100.00	72.50	172.50
8.203	Slow Driving	100.00	72.50	172.50
8.204	Stealing Rides an Trailing Sleds	100.00	72.50	172.50
8.205	Dynamic Engine Braking	200.00	72.50	272.50
8.301	Speeding	100.00	72.50	172.50
8.401	Failure to Stop	100.00	72.50	172.50
8.402	Failure to Yield	100.00	72.50	172.50
8.404	Parking on Street	100.00	72.50	172.50
8.405	Failure to Remove Vehicle During Snow Event	200.00	72.50	272.50
8.407	Improper Truck Parking	100.00	72.50	172.50
8.502	Unlawful Operation of Snowmobile	100.00	72.50	172.50
8.503	Snowmobile Operation After Hours	100.00	72.50	172.50
9.101	Tapping Sewer Without Permit	Court	Appearance	
9.102	Improper Tapping Sewer	Court	Appearance	
9.201	Unlawful Connection with Storm Sewer	Court	Appearance	
9.202	Illegal Dumping in Sewer	Court	Appearance	
9.203	Fail to Comply with Municipal Sewer Use	Court	Appearance	
10.102	Failure to Abide by Municipal Water Regulations	Court	Appearance	
10.401	Improper Storage of Garbage	100.00	72.50	172.50
10.404	Improper Garbage Collection	100.00	72.50	172.50

#### 11.302(c) Court Costs

Court Costs (as set forth in the bond schedule above) are initially set at 72.50; but such cost amount is subject to change from time to time. The amount due for court costs shall be the same as that set by the South Dakota Unified Judicial System, for municipal offenses.

#### 11.303 Permitting a Violation

Whenever any person shall authorize, direct or knowingly permit a violation of any of the provisions of this ordinance by any clerk, servant, agent, or employee under his/her control as to the act constituting such violation, he/she shall be deemed guilty of such violation and shall be punished as herein provided.

#### 11.304 Separate Offenses

Each and every violation of the provisions of this ordinance shall constitute a separate offense.

### **CHAPTER 11.4 LEGISLATIVE EFFECT AND REPEAL**

#### 11.401 Validity

Should any section, paragraph, sentence, clause or phrase of these ordinances be declared invalid or unconstitutional for any reason, the remainder shall not be affected thereby.

#### 11.402 Vested Rights

Nothing in these ordinances shall be construed to impair any vested right or valid obligation existing when it takes effect.

#### 11.403 Franchises

Ordinances heretofore adopted granting any franchise right-of-way, easement or contract right shall not be affected by these ordinances.

#### 11.404 Appropriations

Ordinances providing for appropriations shall not be affected by this ordinance.

#### 11.405 Repeal

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or relating to the subject matter or these ordinances and not re-enacted as a part of these ordinances except as stated in this chapter, are hereby repealed.

#### 11.406 Publication and Effect

These ordinances shall be printed and published in book form and shall take effect as provided by law.

# Title 12

## LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS

### Chapter Index

- 12.101 Purpose and Intent
- 12.102 Definitions
- 12.103 License Required
- 12.104 License Application
- 12.105 Issuance of License
- 12.106 City Neutrality as to Applicants
- 12.107 Number of Cannabis Dispensaries
- 12.108 Expiration of License and Renewal
- 12.109 Suspension
- 12.110 Revocation
- 12.111 Suspension and Revocation Process
- 12.112 Appeal
- 12.113 Licenses Not Transferrable
- 12.114 Hours of Operation for Dispensaries
- 12.115 Liability and Violations
- 12.116 Penalties

#### 12.101: PURPOSE AND INTENT

The City Council of the City of Emery enacts the following licensing ordinances in order to ensure that cannabis establishments within the municipal boundaries of the City operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

#### 12.102: DEFINITIONS

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL 34-20G-1.

**Cannabis (or Marijuana):** all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

**Cannabis Cultivation Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

**Cannabis Dispensary:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports,

sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

**Cannabis Establishment:** cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

**Cannabis Product Manufacturing Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

**Cannabis Products:** any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

**Cannabis Testing Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

**Department:** the South Dakota Department of Health

#### 12.103: LICENSE REQUIRED

- (a) No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment license issued by the city pursuant to this article. A violation of this provision is subject to the general penalty provision in Section 12.116. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in Section 12.116. Each day of the violation constitutes a separate offense.

#### 12.104: LICENSE APPLICATION

- (a) An application for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered.
- (b) The applicant must submit the following:
  - 1. Application fee of \$3,000.00. The City will reimburse \$2,000.00 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
  - 2. An application that will include, but is not limited to, the following:
    - i. The legal name of the prospective cannabis establishment;
    - ii. The physical address of the prospective cannabis establishment that meets all zoning requirements, as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.
    - iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.



iv. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.

v. Any additional information requested by the city.

#### 12.105: ISSUANCE OF LICENSE

(a) The city will issue a license unless:

1. The applicant has made a false statement on the application or submits false records or documentation; or
2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
3. Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction;
4. The proposed location does not meet all applicable zoning requirements; and the proposed location is not within 500 feet of a public park or daycare;
5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
7. Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the city or a registration certificate revoked by the state; or
8. An applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
9. The applicant will not be operating the business for which the license would be issued.

(b) In the case of an application for a cannabis dispensary license, the city will reject the application if the limit on the number of cannabis dispensaries has been reached.

(c) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

#### 12.106: CITY NEUTRALITY AS TO APPLICANTS

(a) Upon request from the Department as to the City's preference of applicants, the City will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the City will abstain from endorsing any application as beneficial to the community.

#### 12.107: NUMBER OF CANNABIS DISPENSARIES

(a) No more than one (1) cannabis dispensaries shall be allowed to operate in the City at any time.

#### 12.108: EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license expires one year from the date of issuance and may be renewed only by Making application as provided in Section 12.104. Application for renewal must be submitted at least sixty (60) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (b) The renewal fee is \$3,000.00. The City will reimburse \$2,000.00 for applicants who fail to obtain a renewal of their registration certificate from the Department.
- (c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the city may order closure of the cannabis establishment.
- (d) If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

#### 12.109: SUSPENSION

- (a) A license may be suspended if the license holder or an employee or agent of the license holder:
  - 1. Violates or is otherwise not in compliance with any section of this article.
  - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
  - 3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- (b) A license may be suspended if the license holder has its Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.
- (c) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

#### 12.110: REVOCATION

- (a) A license may be revoked if the license is suspended under Section 12.109 and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section 12.109 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.
- (c) A license is subject to revocation if a license holder or employee of a license holder:
  - 1. Gave false or misleading information in the material submitted during the application process;
  - 2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on The premises;
  - 3. Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;

4. Repeated violations of Section 12.109;
5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;
7. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G; or
8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
9. The license holder allows a public nuisance to continue after notice from the City.

#### 12.111. SUSPENSION AND REVOCATION PROCESS

- (a) The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the city's intention to suspend or revoke the license. The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested to the physical address of the cannabis establishment.
- (b) If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Mayor, Finance Officer, and member of the public, appointed by Mayor.
- (c) A suspension will be for thirty (30) days and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises its rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- (d) A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- (e) The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective.

#### 12.112: APPEAL

An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the City Council by submitting a written appeal within ten (10) days of the postmark on the notice of denial, non-renewal, suspension, or revocation. The written appeal must be submitted to City Hall PO Box 38, Emery, South Dakota, 57332. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

#### 12.113: LICENSES NOT TRANSFERRABLE

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.

#### 12.114: HOURS OF OPERATION FOR DISPENSARIES

No cannabis dispensary may operate on Sunday or between the hours of 6:00 p.m. and 9:00 a.m. on Monday through Saturday.

#### 12.115: LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.

#### 12.116: PENALTIES

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

**Severability.** The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.