

REVISED

MUNICIPAL ORDINANCES

CITY OF IRENE, SOUTH DAKOTA

Ordinance # 071111

Effective Date: August 17, 2011

AN ORDINANCE IN REVISION OF THE MUNICIPAL ORDINANCES
OF THE CITY OF IRENE, SOUTH DAKOTA

*Revised under the direction of the City Council of the City of Irene
Prepared by the South Eastern Council of Governments*

ORDINANCE # 071111

AN ORDINANCE IN REVISION OF THE MUNICIPAL ORDINANCES OF THE CITY OF IRENE, SOUTH DAKOTA

BE IT ORDAINED BY THE CITY OF IRENE, SOUTH DAKOTA:

Pursuant to SDCL 9-19-16, this Ordinance in Revision of the Municipal Ordinances of the City, revising regulations as set forth in the document titled "Revised Municipal Ordinances," is hereby read, approved, and adopted as follows:

First Reading:	June 6, 2011
Second Reading and Adoption:	July 11, 2011
Publication Dates:	July 21, 2011 & July 28, 2011
Effective Date:	August 17, 2011

Mayor

ATTEST:

Finance Officer

Seal

NOTICE OF ADOPTION

AN ORDINANCE IN REVISION OF THE MUNICIPAL ORDINANCES OF THE CITY OF IRENE, SOUTH DAKOTA

Notice is hereby given Ordinance # 071111, an Ordinance in Revision of the Municipal Ordinances of the City of Irene, was duly adopted by the City Council on July 11, 2011, and shall become effective August 17, 2011, according to South Dakota law.

The Ordinance revises the Municipal Ordinances of the City heretofore adopted, and repeals all ordinances or parts of ordinances in conflict therewith. The Ordinance does not repeal special ordinances, appropriation ordinances, levying ordinances for the issuance of bonds, and other special ordinances of like character. Such ordinances not included in the revision and still having force and effect may be found in the Finance Office.

A copy of the Revised Municipal Ordinances is available for public inspection at the Irene City Hall and may be viewed during normal business hours.

Casey Van Beek
Finance Officer

(Publication Dates: July 21, 2011 & July 28, 2011)

SUMMARY AND GENERAL INFORMATION

These Ordinances are a Revision of Ordinances adopted by the City of Irene, except appropriation Ordinances, levying Ordinances for the issuance of bonds, zoning and subdivision Ordinances, and other special Ordinances of like character.

Such Ordinances not included within this revision and still having force and effect may be found in the Finance Office.

Reference has been made for each Section whenever applicable to appropriate state statutes from South Dakota Codified Laws.

In the construction of this Ordinance, the following definitions shall apply, unless otherwise provided:

1. City or Municipality - The City of Irene, South Dakota.
2. City Council - The governing body of the City.
3. He, His or Him - Words imparting masculine gender shall extend and be implied to females and to firms, partnerships, associations, corporations, organizations and other legally recognized entities, as well as to males.
4. May - Permissive.
5. Person - Any individual, firm, partnership, association, corporation, organization or other legally recognized entity.
6. Shall - Mandatory.

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TITLE 1 - ADMINISTRATIVE CODE

Chapter 1.01 - Municipal Employees

Chapter 1.02 - Mayor and City Council

Chapter 1.03 - Police Department

Chapter 1.04 - Fire Department

Chapter 1.05 - Volunteer Ambulance Service

Chapter 1.06 - Financial Regulations

CHAPTER 1.01 - MUNICIPAL EMPLOYEES

- 1.0101 Appointment of Officers. All appointive officers shall be appointed by the Mayor with the majority vote of the City Council at the first regular meeting in May, and shall hold office until their successor shall be appointed and qualified.
- 1.0102 Appointive Officers, Salaries, Bonds. The following offices or positions of the City, as hereinafter created, are continued, and the amounts of salaries to and bonds to be furnished by them shall be fixed by resolution of the City Council and shall be adjusted as deemed necessary by resolution of the City Council and said amounts shall be on file at the office of the Finance Officer: City Attorney, Chief of Police, Finance Officer, and such other officers as may be prescribed by ordinance or state statute.
- The salaries of such designated officers or employees shall be paid biweekly.
- 1.0103 Employees Other Than Appointive. In addition to appointive officers, the Mayor with the majority vote of the City Council shall hire such other personnel, professional and otherwise, required and necessary for municipal purposes. The compensation of such employees shall be fixed by resolution at anytime regardless of the time when any employee may have been hired.
- 1.0104 Personnel Policies. Vacation, sick leave, and other employment policies in effect are on file in the office of the City Finance Officer.

CHAPTER 1.02 - MAYOR AND CITY COUNCIL

- 1.0201 Composition. The City Council of the City of Irene shall consist of a Mayor and four (4) Aldermen, two elected from and by the electors of each ward of the City. The Mayor and City Council shall have such authority and perform such duties as are prescribed by the statutes of the State of South Dakota and ordinances of the City of Irene.
- 1.0202 Regular Meetings. The regular monthly meetings of the City Council shall be held at City Hall on the first Monday after the first Wednesday of each month at 7:00 p.m. except when Monday is a legal holiday, and in that case the meeting shall be held on another specified date. Meetings may be held on other specific dates as set by the Mayor with the majority vote of the City Council.

1.0203 Special Meetings. Special meetings of the City Council may be held at any time on call of the Mayor, or in case of absence or inability to act, then by the President of the City Council; or if the Mayor and President of the City Council refuse to act, then by two (2) of the aldermen.

It shall be the duty of the Finance Officer to contact the Aldermen before the time specified for such meetings, and this may be done by telephone.

1.0204 Committees. The mayor may appoint such committees of the members of the City Council as he deems desirable to accomplish an efficient division of the work and duties to be performed by the City Council.

1.0205 Salaries of Mayor, Council and Board or Commission Members. The salaries of the Mayor and City Council members shall be fixed by resolution and said amounts shall be placed on file in the office of the City Finance Officer. Compensation for board or commission members shall be fixed by resolution which shall be placed on file in the office of the City Finance Officer.

CHAPTER 1.03 - POLICE DEPARTMENT

1.0301 Chief of Police. Under the direction of the Mayor and City Council, the Chief of Police is responsible for planning, organizing, and directing the functions of the police department. The Chief of Police determines policies to be followed by personnel in the department with respect to public relations, and enforcement of law and ordinances. The Chief of Police coordinates municipal law enforcement activities with those of other agencies, analyzes budgetary problems and submits an annual budget, administers personnel policies and training requirements, and makes recommendations on all appointments, promotions, discipline, and dismissals made in the department. The Chief of Police maintains a liaison with municipal officials, civic groups, and citizens on law enforcement concerns.

CHAPTER 1.04 - FIRE DEPARTMENT

1.0401 Establishment. There shall be established for the City a Volunteer Fire Department which shall consist of a Chief, Assistant Chief, Secretary-Treasurer, and such other members as may be from time to time determined by the Fire Department. (SDCL 9-33-13)

1.0402 Constitution and Bylaws. The Fire Department may adopt such constitution and bylaws and rules for its regulation and government, subordinate to the ordinances of the City, as it may deem best calculated to accomplish the object of its organization.

1.0403 Members. The members of the Fire Department shall be able bodied persons of good moral character, duly elected by a majority of the active members of the Fire Department.

1.0404 Terms of Office. The Chief, Assistant Chief, and Secretary-Treasurer shall be the head of the Fire Department and shall hold office for a term of one year and until their successors shall be appointed and qualified.

1.0405 Appointment of Officers. The officers shall be nominated by the active members of the Fire

Department and elected by a majority of members present at the annual meeting of the Fire Department on the first Monday in January of each year; the names of such officers shall be reported to the City Council and confirmed by them.

- 1.0406 Meetings. The Fire Department shall meet at least once a month upon call of the Fire Chief and any member not responding to such call unless absent from the City, or upon other good cause shown to the satisfaction of the Chief of the Fire Department may be dismissed from said Department.
- 1.0407 Appropriation. The City Council shall in its annual appropriation, appropriate such amounts as they deem necessary for the purpose of maintaining such Fire Department including equipment, ladders, trucks, hoses and other apparatus, and providing such necessary articles of clothing as they may deem necessary for the members of said Department. (SDCL 9-33-12)
- 1.0408 Equipment. The equipment, trucks, implements and all apparatus shall be kept at such place as may be approved and directed by the City Council and shall at all times be ready for immediate use. (SDCL 9-33-11)
- 1.0409 Duties of Chief. The Fire Chief shall have sole charge and control over all the members of the Fire Department at fires. The Chief shall, at all times, have the general direction and management of all hoses, chemicals, engines, and other apparatus belonging to the Department.
- 1.0410 Fire Zone. The Chief, or acting Chief in command, may prescribe limits around any fire, and it shall be unlawful for any person, except those who reside therein, or firemen, law enforcement officers and those given admission by any officer of the Fire Department, to enter therein.
- 1.0411 Investigation of Cause of Fire. The Chief shall inquire into and investigate the cause of each fire that occurs in the City as soon as possible, and make a record of such proceedings and file the same or a copy thereof with the Secretary of the Fire Department.
- 1.0412 Financial Estimate. The Chief shall prepare in detail and submit to the Finance Officer on or before the first day of August in each year, an estimate of the entire cost and expense of providing and maintaining the Fire Department during the current fiscal year, and shall present such estimate to the City Council with an annual budget estimate for the following year.
- 1.0413 Command in Absence of Chief. If the Chief is absent from any fire call, the Assistant Chief or the Secretary Treasurer shall take charge of the organization and shall have and exercise all the powers of Chief.
- 1.0414 Vacancy. In case of a vacancy occurring in the office of Chief, the Assistant Chief shall discharge the duties of the Chief until such vacancy is filled.

CHAPTER 1.05 - VOLUNTEER AMBULANCE SERVICE

- 1.0501 Voluntary Ambulance Service. There is hereby established a Volunteer Ambulance Service for the City to be composed of not less than five members.

- 1.0502 Bylaws. The Ambulance Service shall have the power to formulate and adopt bylaws for its government not inconsistent with the bylaws of this chapter. These bylaws and any subsequent revision thereof shall be submitted to the City Council for prior approval.
- 1.0503 Officers. The officers of the Ambulance Service shall be; President, Vice President, Secretary-Treasurer and member at large, who shall be elected in accordance with the bylaws of the Ambulance Service. The Secretary, after the election of officers, shall file a list of such officers as well as a list of the members of the Ambulance Service, in the office of the City Finance Officer. The City Council shall have the right to approve or disapprove any officer so elected.
- 1.0504 Members. The members of the Ambulance shall be able-bodied men and women of good moral character, elected by a majority vote of the members of the Service and shall be approved by the City Council.
- 1.0505 Removal of Officers. The City Council shall have the power to remove a member of the Ambulance Service when it deems it in the best interest of the City, but such removal shall only be made after a hearing at which the accused officer may appear and show cause why he should not be removed. The charges brought against the member shall be put in writing and filed in the office of the Finance Officer, who shall present the same to the City Council at its next regular meeting. The Council shall fix a day of hearing and cause the due notice to be given to such officer of said hearing and serve upon him a copy of the charges brought against him. If the charges at such hearing are substantiated, the member may be removed by the Council.
- 1.0506 Duties of the President. The President shall have the supervision of the property used by the Ambulance Service and shall see to it that the same is kept in good working condition and is available at all times to care for patients. He shall be responsible to purchase all necessary equipment and repairs, but no major expenses shall be incurred without approval of the Council. He shall from time to time advise the City Council of any changes in the Ambulance Service or its equipment. He shall submit annual reports to the City Council and file an inventory of the property used by the ambulance service.
- 1.0507 Members' Compensation. The members of the Ambulance Service shall receive compensation from the City for services rendered to the City as licensed ambulance attendants as provided by the City ordinances.
- 1.0508 Age of Members. No person shall become a member of the Ambulance Service who has not attained the age of 18. Those age 16-18, who are Certified 81 Hour EMT's, may act as a third attendant.
- 1.0509 Ambulance Equipment. Equipment of the Ambulance Service shall not be used for private or municipal purposes except in cases of emergency, and then only under the direction of the Ambulance President, to the end that such equipment and apparatus shall at all times be available and ready for such Ambulance Service call. Such equipment shall be kept in good workable condition, and shall meet as far as possible the requirements and regulations of the State and Federal Governments.

Every member of the Ambulance Service, by joining the Ambulance Service, voluntarily assumes the hazards of injury and accidents in the service, and the City will not assume the responsibility of such accidents or injuries. However, the City shall carry Workman's

Compensation Insurance for its members and also carry malpractice insurance for its members.

- 1.0510 Ambulance Committee. The operation of the Ambulance Service shall be under the direct supervision of the Ambulance Committee appointed by the Mayor. The chairman of said committee shall attend Ambulance Service meetings on a regular basis and shall submit to the City Council the Annual Ambulance Service Reports and Budget and such other reports as requested by the City Council.
- 1.0511 Ambulance Service Fees. The City Council shall by resolution establish the fees to be paid by users of the Ambulance Service, which fees shall be collected and paid to the City Finance Officer.

CHAPTER 1.06 - FINANCIAL REGULATIONS

- 1.0601 Revenues and Special Funds. All money belonging to the City from taxation, licenses, fines, permits, the operation of utilities, or from any other source, shall be paid into the City treasury, and the City Council shall designate by ordinance to what fund of funds such money shall be applied. The Finance Officer shall keep full, true and just accounts of all financial affairs of the City and shall keep such accounts and furnish in such form and in such manner from time to time as required by the South Dakota Department of Revenue. (SDCL 9-14-18)
- 1.0602 Records Retention and Destruction. The Records Retention and Destruction Schedule Manual, authorized for South Dakota municipalities by the Office of Records Management, Bureau of Administration, State of South Dakota, shall be adopted by the City Council, and a printed copy of such manual shall be filed with the Finance Officer.

TITLE 2 - BOUNDARIES, WARDS, AND VOTING PRECINCTS

Chapter 2.01 - Boundaries

Chapter 2.02 - Wards and Voting Precincts

CHAPTER 2.01 - BOUNDARIES

- 2.0101 Boundaries. The corporate limits of the City are declared to be such as have been legally established and amended by law and ordinances of the City as shown on the official map on file in the office of the Finance Officer. Such map shall be incorporated in this ordinance by reference and adopted as the official map showing the boundaries and limits of the City. (SDCL 9-3-2, SDCL 9-4-1)

CHAPTER 2.02 - WARDS AND VOTING PRECINCTS

- 2.0201 Wards Boundaries. The ward boundaries of the City of Irene are declared to be such as have been legally established and amended by ordinance as shown on a map on file in the office of the Finance Officer.

The City shall be divided into two wards. The wards shall be designated as Ward One and Ward Two. First Ward will encompass all that portion of the City lying within Turner County. Second Ward will encompass all that portion of the City lying within the boundaries of Clay and Yankton Counties.

- 2.0202 Voting Precincts. The City shall be comprised of one voting precinct for the purpose of holding municipal elections. City Hall shall be the voting place. (SDCL 9-13-16)

TITLE 3 - HEALTH AND SANITATION

Chapter 3.01 - Nuisances

Chapter 3.02 - Collection of Garbage and Recyclables

CHAPTER 3.01 - NUISANCES

3.0101 Definitions. For the purpose of this Chapter, the following terms are hereby defined.

- A. “Garbage” - The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
- B. “Solid Waste” - Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities including, but not limited to wood and other construction materials, appliances, yard waste, tires, scrap iron, chemicals or fuel. (SDCL 34A-6-1.3)
- C. “Wastewater” - The spent water of a community. From the standpoint of source it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.
- D. “Abandoned property” - Any junk car, car bodies or equipment of any type, except in an authorized junk yard, or any accumulations of other unsightly trash or junk which would constitute a health hazard, a rodent harborage, a breeding area for insects or rodents, a dangerous place for children to play in and around or which tends to be unsightly and which does or tends to lower the value of adjacent real property because of its unsightliness.
- E. “Abandoned vehicle” - Any vehicle that is left unattended or stored on any public property in the same or substantially same place within the City for a longer period than 24 hours.
- F. “Inoperable vehicle” - Any vehicle which is not in operating condition due to damage, removal or inoperability of one or more tires and/or wheels, the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto unexpired license plates, or which constitutes an immediate health, safety, fire or traffic hazard.
- G. “Nuisance” - Unlawfully doing an act, or omitting to perform a duty, which act or omission either: (1) annoys, injures, or endangers the comfort, repose, health, or safety of others; (2) offends decency; (3) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway; (4) in any way renders other persons insecure in life, or in the use of property; and in addition the specific acts, conditions and things listed in Section 3.0102 are hereby declared to constitute public

nuisances, but such acts, conditions and things shall not be deemed to be exclusive. (SDCL 21-10-1)

- H. "Private property" - Any real property within the City that is privately owned and which is not public property.
- I. "Public property" - Any street, alley or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means any other publicly owned property or facility.
- J. "Removal agency" - Any public body, private or nonprofit organization authorized, hired or appointed by the City to remove and salvage vehicles.
- K. "Unightly trash or junk" - Property which is deteriorated, wrecked or derelict property in unusable condition, having no value other than nominal scrap or junk value, if any, and which is left outside of a permanent, enclosed structure and which shall include, without limitation, motors, lawn mowers, campers, refrigerators and other household appliances, furniture, household goods and furnishings, scrap metals or lumber or other similar articles in such condition.
- L. "Vehicle" - Any conveyance, whether or not self-propelled, and which is designed to travel along the ground or in or on the water and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, pull trailers, go-karts, golf cars, boats, jet skis, campers and trailers.
- M. "Litter" - Garbage, rubbish, waste material or animal waste improperly disposed of by discarding, abandoning, allowing to accumulate, scattering or depositing the same outside an approved container.
- N. "Yard waste" - Grass clippings, garden waste, and leaves.

3.0102 Acts, Omissions and Conditions Prohibited. No person, whether an owner, occupant, tenant or other person in charge of any real property within the corporate limits of the City shall create, commit, maintain, or permit to be created, committed, or maintained, any public nuisance, to include, without limitation, the following specific acts, conditions and things, each and all of which are hereby declared to constitute a nuisance: (SDCL 9-32-1)

- A. Depositing, accumulating, or permitting to be accumulated upon any public or private property, any household wastewater, sewage, garbage, refuse, rubbish, offal, excrement, decaying fruit, vegetables, fish, meat, bones; any fowl, putrid, or obnoxious liquid substance; any chemical or hazardous material; or putrescible and nonputrescible animal or vegetable wastes or solid wastes, or any other waste material which constitutes or tends to create a danger to public health, safety, and welfare. (SDCL 9-32-10, SDCL 34A-7-9)
- B. The accumulation of manure, garbage, or anything whatsoever which may be breeding areas for flies, mosquitoes, or rodents. (SDCL 9-32-10)
- C. For the owner of a dead animal to permit it to remain undisposed of longer than twenty-four (24) hours after its death. (SDCL 9-29-13)

- D. Any excavation, trench, or open basement in which stagnant water is permitted to collect or which may jeopardize the life, limb, or safety of the general public. (SDCL 9-29-13)
- E. Throwing or letting fall on or permitting to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel or wood while engaged in handling or removing any such substance. (SDCL 9-32-10)
- F. Keeping or maintaining any building or enclosure where livestock or fowl are kept unless a special permit is requested and such is approved by the City Council. (SDCL 9-29-13)
- G. Disposing of garbage, waste, or refuse by open burning, or causing, allowing, or permitting the conducting of a salvage operation by open burning in the City. The following types of open burning shall be permissible for a specific purpose when conducted in conformity with the subsections set forth below:
 - 1. Fires set for the elimination of a fire hazard, which cannot be abated by any other means when authorized by the City Council.
 - 2. Fires purposely set by the City maintenance personnel for the purposes as authorized by the City Council.
 - 3. Fires purposely set by the Irene Fire Department personnel and authorized by the City Council for the purpose of training and conducted in accordance with live fire-training standards.
 - 4. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, and for outdoor preparation of foods.
- H. 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, property, value of property or safety of the public or its occupants are jeopardized.
 - 1. 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 months.
 - 2. Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence thereby depresses the market value of surrounding properties.
- I. Maintaining or permitting to be maintained on any private or public property any abandoned property or unsightly trash or junk, abandoned vehicle, or inoperable vehicle or parts thereof. It shall be unlawful to keep or place any of such vehicles or vehicle parts:

1. Upon public streets or property except on an emergency basis.
2. Upon the private property of any person owning, in charge of, or in control of any real property within the City, whether as an owner, tenant, occupant, lessee or otherwise, for longer than 14 days unless it is within a fully enclosed building or structure. A carport, tarpaulin, tent or other similar temporary structure shall not be deemed to satisfy the requirements of this section.

In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept or located on any real property.

J. The requirements of paragraph I shall not apply to the following:

1. One inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. If this inoperable vehicle is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway longer than 14 days.
2. Filling stations, automobile repair shops or any other motor vehicle related businesses in compliance with applicable City ordinances may place inoperable vehicles being repaired or offered for sale on the premises.
3. Junkyards operated and maintained in compliance with applicable City ordinances.
4. One vehicle specifically designed and used for operation on drag strips or raceways that remains on private property.
5. Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City or authorized by the City.

3.0103 Diseased Vegetation. Any owner, occupant, or person in charge of any property under the jurisdiction of the City shall remove at his own expense any trees, brush, wood, or debris infected with Dutch Elm disease or other infestations or infectious disease found thereon when so notified by the City to do so. The City Council shall cause to be mailed by certified mail, return receipt requested, or by personal service to such owner, occupant, or person, written notice that they may appear before the said City Council at an appointed time not less than fourteen (14) days from the date of mailing of said written notice to show cause why said trees, brush, wood, or debris should not be declared a public nuisance.

At said meeting the City Council may resolve and declare the same to be a public nuisance and may order its removal by said owner, occupant, or person within twenty-one (21) days from the date of service of said resolution and order on said owner, occupant, or person.

Any diseased vegetation stored in the City shall be debarked or covered with four (4) to six (6) mil clear plastic from April 1st to October 1st, such plastic to be sealed by placing all edges in a three to four-inch trench covered with soil. In addition, any diseased vegetation which is removed and not stored in accordance with the provisions of this Section shall be properly disposed of by burning or burying in a designated disposal site. (SDCL 9-32-12)

3.0104 Vegetation Nuisance.

A. Definitions. For the purposes of this section, the following terms, phrases, words, and their derivations shall have the meanings given herein.

1. “Developed lot or area” means a lot or area with a finished building or building under construction.
2. “Noxious weeds” means all actively growing plants declared to be statewide noxious weeds by the South Dakota Weed and Pest Control Commission.
3. “Undeveloped lot or area” means a vacant lot or area with no structure on it.
4. “Weeds” means any plants growing uncultivated and out of context with the surrounding plant life when such plant has a seed head formed or forming and with a height of eight (8) inches or more, except as otherwise provided in this section.

B. Nuisances.

1. Each owner and each person in the possession or control of any land shall cut or otherwise destroy, in whatever manner prescribed by the City, all noxious weeds thereon and shall keep said lands free of such growth.
2. Each owner and each person in possession or control of any property shall be responsible to keep said lot, place, or area or upon any sidewalk abutting the same free of any noxious weeds and to keep grasses and weeds on said lot mowed so that grass and weeds are less than eight (8) inches in height. However, grass and weeds located on undeveloped and unplatted property located more than 100 feet from developed or platted property shall be mowed so that grass and weeds are less than twelve (12) inches in height. This does not apply to vegetation which is being grown as a crop, livestock pasture or wildflower display garden.
3. Each owner and each person in the possession or control of any lands shall not allow any plant growth of any sort to remain in such a manner as to render the streets, alleys or public ways adjoining said land unsafe for public travel or in any manner so as to impede pedestrian or vehicular traffic upon any public place or way.

C. Notice to Abate and Abatement by City. The Finance Officer shall annually on or before May 1 of each year publish once a week for two consecutive weeks a Notice to Property Owners generally setting forth the duty to control weeds and other vegetation which might be a nuisance in violation of this Section. The Finance Officer or his or her designee may cause a Notice to Abate Nuisance to be served, by posting of notice on such property within view of the public, upon any property owner who fails to comply with the published notice or any person who at any other time has weeds or other vegetation. Upon failure, neglect or refusal of any owner, agent or occupant so notified to comply with said notice within five (5) days, thereof the Finance Officer or his or her designee is hereby authorized and empowered to provide for the cutting, destroying or removal of the weeds, grass or other noxious matter and stabilize the soil

if necessary. The City may defray the cost of the work, including administrative costs, by special assessment against the property as set out in Section 3.0104 (D).

- D. Costs Recovered. The Finance Officer shall cause an account to be kept against each lot upon which work is done pursuant to Section 3.0104 (C) and shall after completion of the work, bill the owner of the property for such work and if not paid within thirty (30) days thereafter, the Finance Officer shall thereupon add such assessment to the general assessment against said property. The Finance Officer shall certify such special assessment together with the regular assessment to the County Auditor to be collected as municipal taxes for general purposes.

Said assessment shall be subject to review and equalization the same as assessments or taxes for general purposes. In lieu of special assessment, the City Council may institute a civil action against the owner or occupant of such property to recover said account.

- E. Habitual Violators. If the owner or person in control of any land that has previously received a notice to abate nuisance relating to weeds within the preceding 24 months, then, the notice to abate nuisance may include notice that such owner or person in control of said property will be considered to be an habitual violator of this section and that if the nuisance is not abated within the allowed time, the City will consider the property to be subject to having a contract let by the City for mowing property as needed up to a weekly basis for the next following 24-month period of time and that the full cost of said contract together with an administrative fee of two hundred dollars (\$200.00) will be assessed against the property.

3.0105 Littering in Public Places. No person shall throw or deposit litter in or upon any street, sidewalk, or other public place within the City except in authorized public or private receptacles. The following further identifies acts and conditions that constitute nuisances and are therefore prohibited:

- A. No person shall sweep into or deposit in any gutters, streets, or other public place within the City, the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property or places of business shall keep the sidewalk in front of such premises free of litter.

For purposes of this Ordinance, a public nuisance shall also include snow and ice when deposited or allowed to accumulate in conflict with the provisions of this Section.

- B. No persons, while a driver or passenger in a vehicle, shall throw or deposit litter or yard waste upon any street or other public place or upon private property within the City.

No person shall drive or move any truck or other vehicle within the City unless such vehicle is so constructed or loaded as to prevent any load, contents, or litter from being blown or deposited upon any street, alley, or public place.

- C. No person shall throw or deposit litter on any occupied, open, or vacant private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being deposited upon any streets, sidewalk, or other public place or upon any private property.

- 3.0106 Removal of Abandoned or Inoperable Vehicles - Public Property. Whenever the City or any law enforcement officer for the City finds an abandoned or inoperable vehicle on public property within the City, a written notice shall be placed on the vehicle that it will be removed to a garage or place of safety unless the owner removes the vehicle from public property within 24 hours of the giving of the notice. After the expiration of the 24-hour period, the vehicle may be removed by a removal agency to a garage or place of safety. Nothing in this Section precludes the City or any law enforcement officer for the City from immediately removing a vehicle that constitutes an imminent health, safety or fire hazard.
- 3.0107 Disposition of Unclaimed Vehicles. The removal agency shall have the rights and obligations conferred upon it by SDCL Ch. 32-36 in regard to titling or disposition of such unclaimed, abandoned or inoperable vehicle, except that, if not otherwise provided by state law, it shall have a possessory lien upon any vehicle removed under provisions for this article for the costs in taking custody of and storing such vehicles.
- 3.0108 Notice Procedure. A written notice shall be placed on the abandoned or inoperable vehicle by the City or by any law enforcement officer for the City requesting the removal of such motor vehicle in the time specified in this Chapter. Written notice shall also be placed on the front door of any dwelling located on the private property requesting the removal of such motor vehicle in the time specified in this article. In the event the owner and the occupant or tenant of the real property are not the same person, written notice shall be given to the owner by certified mail requesting the removal of such motor vehicle in the time specified in this Chapter. In the event the private property is not occupied, written notice shall be given to the owner by certified mail, return receipt requested, requesting the removal of such motor vehicle in the time specified in this Chapter. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail.
- 3.0109 Responsibility for Removal. Upon notice having been given, the owner of the abandoned or inoperable vehicle and the owner or occupant of the private property on which the vehicle is located, either or all of them, shall be responsible for its removal.
- 3.0110 Content of Notice. The notice in section 3.0108 shall request removal of the abandoned or inoperable vehicle within 14 days after the date of the posting or mailing of such notice, and the notice shall advise that failure to comply with the notice to remove shall be a violation of this Chapter, that the City may take steps to abate the same, and that in addition to abatement directly or by civil action, the City may pursue criminal fines and penalties against the owner, occupant, tenant or other person in charge of the real property as provided in this Chapter. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail.
- 3.0111 Public and Private Nuisance Defined. A public nuisance is one that affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal. Every other nuisance is private. (SDCL 21-10-3)
- 3.0112 Remedies Against Nuisances. The remedies against any nuisance shall be: (1) A civil action; (2) Abatement; and (3) In cases of public nuisance only, the additional remedy of indictment or information as prescribed by the Ordinance or by the South Dakota Codified Laws, and the rules relating thereto. (SDCL 21-10-5)

3.0113 Abatement. A public nuisance may be abated without civil action by the City Council or by any officer authorized thereto by law. Any private person may likewise abate a public nuisance which is especially injurious to him or her, or any private nuisance injurious to him or her in a manner by removing, or, if necessary, destroying that which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his or her land, reasonable notice shall be given to him before entering to abate it. The City may defray the cost of abating a public nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred. When the nuisance abated is an unsafe or dilapidated building, junk, trash, debris or similar nuisance arising from the condition of the property, the City may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment. (SDCL 21-10-6)

3.0114 Notice.

- A. Initial notice. The Finance Officer or his or her designee, is authorized and empowered to notify, in writing, the owner of any lot, place or area within the City, or the agent of the owner, or the occupant of the premises, to remedy or abate a public nuisance on the property and to prevent future violation of this Chapter. The notice may be hand delivered or sent by certified mail, return receipt requested, addressed to the owner of record, agent or occupant at his or her last known address, and said notice shall notify the owner, agent, or occupant to remedy or abate a public nuisance within 14 days of the date the notice was delivered or mailed.
- B. Subsequent notices. Upon any subsequent violation of this Chapter in the same calendar year after notice has been given as provided above, notice of a second or subsequent violation of the same or similar nature as the first violation, shall require the owner to remedy the nuisance within 3 days of delivery or mailing.

3.0115 Public Nuisance Penalty and Remedy. Any person who creates, commits, maintains or fails to abate a public nuisance as required under the provisions of this Ordinance shall be subject to a fine not to exceed the fine established by SDCL 22-6-2(2), by imprisonment not exceeding thirty days, or by both the fine and imprisonment, unless otherwise specifically provided. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition, the City may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through 21-10-9.

CHAPTER 3.02 - COLLECTION OF GARBAGE AND RECYCLABLES

3.0201 Storing Garbage Prior to Collection. All garbage shall be placed in either sealed water-tight bags or inside garbage containers.

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 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 therewith, 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.

3.0202 Private Operators. The collection of garbage and refuse in the City shall be made by private contractors or operators, who shall be subjected to all local ordinances as well as all state and federal regulations. Collections shall be made at least once a week in residential areas and on each business day in the business district, unless otherwise required by the City Council.

3.0203 License for Commercial Collectors. It shall be unlawful for any person, firm or corporation to use the streets for the collection, removal or disposal of any garbage or rubbish for a fee or charge without having first entered into a contract with the City to perform such services. Any license entered into for such services shall be approved by the City Council before it is issued and shall be for such term and consideration and subject to such conditions as the City Council shall from time to time determine in accordance with this Chapter and SDCL 9-32-11.

3.0204 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)

3.0205 Collection Vehicles. All trucks collecting or transporting rubbish or mixed garbage and rubbish within the City of Irene shall be covered. The coverage shall be a clean tarpaulin securely tied down over the entire load, or such other cover as will prevent spilling. All trucks collecting or transporting rubbish mixed with garbage shall be of watertight construction.

Trucks transporting, but not collecting garbage unmixed with rubbish shall be equipped with watertight metal tanks and shall be covered by a suitable metal cover or covered by other satisfactory and acceptable methods approved by the City of Irene. All persons transporting garbage shall clean and disinfect all equipment so used at least once weekly or as often as needed.

Trucks collecting garbage from residential occupants will have a watertight metal tank and shall be covered so that not more than one-half (1/2) of any truck can be uncovered at any one time. The cover shall be fully closed while the truck is traveling between place of collection and place of transfer disposal. At all times, the trucks shall obey all weight limits imposed on them by state law while driving on City streets, including any seasonal load limits. All persons collecting garbage shall clean and disinfect all equipment as needed to prevent health hazards.

TITLE 4 - LICENSES

Chapter 4.01 - General Provisions

Chapter 4.02 - Transient Merchants, Peddlers

Chapter 4.03 - Alcoholic Beverages

CHAPTER 4.01 - GENERAL PROVISIONS

4.0101 Licenses Required. It shall be unlawful for any person, persons, firm or corporation to engage in any activity for which a license is required without first having obtained a license as hereinafter provided. The City Council may at any time expand the general provisions of this Chapter by requiring any person, persons, firm or corporation engaging in any trade, business or occupation within the City which is not specified by this ordinance to obtain a license as deemed necessary.

4.0102 Application for License. Any person, persons, firm or corporation requesting a license as herein provided, shall make written application to the City Council. The application shall state the name and address of the applicant, purpose of the activity, the length of time for which said license is requested, and the location at which said license is to be used.

Except as otherwise provided, fees for all licenses shall be fixed by the City Council and filed with the Finance Officer, and all license fees shall be paid in full at the time of application in such manner as approved by the City Council.

4.0103 License Expiration. Any annual licenses granted under the provisions of this Chapter shall expire on the 31st day of December next following the granting thereof, except as otherwise provided, and shall not be granted for any sum less than the annual rate, and there shall be no rebate made on an early termination of the activity for which said license was issued.

4.0104 Revocation. The City Council shall have the authority at any time after first giving notice and holding a public hearing on said matter, to suspend or revoke any license granted under the provisions of this Chapter whenever the Council shall be satisfied upon written complaint that the activity for which the license was issued, has been made or conducted in an improper or illegal manner, and in case of such revocation, the City Council may refund to the holder of such license such proportionate amount of money paid therefore as the Council shall deem just. The licensee affected thereby has a right to appeal the decision of the City Council pursuant to Section 4.0107 of this ordinance.

4.0105 Issuance of License. Except as otherwise provided all licenses shall be issued by the Finance Officer after the application has been approved by the City Council and the applicant shall have complied with all requirements for issuance of such license. Unless otherwise provided, all licenses shall be signed by the Finance Officer and shall have affixed thereto the official seal of the City.

4.0106 Record of Licenses. The Finance Officer shall keep a record of all licenses issued by the City stating when, to whom, for what purpose, for what length of time, for what location the license was issued, and the amount of money paid for said license. (SDCL 9-34-1)

4.0107 Appeal. Any person aggrieved by the action of the Finance Officer in the denial of an application for permit or license, or through revocation of a license as provided in section 4.0104 shall have the right of appeal to the City Council. Such appeal shall be taken by filing with the Finance Officer a written statement fully describing the grounds of the appeal within fourteen (14) days following the action complained of. The City Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant. The decision and order of the City Council on such appeal shall be final and conclusive unless within thirty (30) days thereafter, the person affected appeals to circuit court pursuant to SDCL 1-26.

CHAPTER 4.02 - TRANSIENT MERCHANTS, PEDDLERS

4.0201 Definitions. For the purpose of this Chapter, the following terms are hereby defined:

- A. "Peddler" - any person, whether a resident of this City or not, traveling from place to place, from house to house, or from street to street for the purpose of selling, or soliciting for sale goods, wares, merchandise, or services, including food and beverages, and shall also mean and include any person transacting a temporary business within the City.
- B. "Temporary business" - means the sale of goods, wares, merchandise, or services, including food and beverages, sold by a person, business, or other entity for fewer than 90 days within any period of 12 consecutive months, or from a car, truck, other motor vehicle, trailer, or any structure other than a permanent building.

4.0202 Exceptions to Chapter. The provisions of this Chapter shall not apply to the following:

- A. Solicitations, sales or distributions made by charitable, educational, or religious organizations.
- B. Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.
- C. Persons selling jams, jellies, vegetables, fruits, or flowers grown or produced by them and not purchased by them for resale.
- D. Bona fide garage, rummage, yard, or moving sales which do not occur at the same location more than four times per year, for more than four days each time.

4.0203 Refusing to Leave. It shall be unlawful for any peddler who enters upon premises owned or leased by another to fail to promptly leave the premises after having been notified by the owner or possessor of the premises, or his agent, to leave the premises. (SDCL 22-35-5 and 22-35-6)

4.0204 Entrance to Premises Restricted. It shall be unlawful for any peddler to enter upon any private premises when the premises is posted with a sign stating "No Peddlers Allowed," "No Soliciting," or words to that effect.

4.0205 Misrepresentation. No peddler shall make false or fraudulent statements concerning the quality or nature of their goods, wares, merchandise, or services for the purpose of inducing

another to purchase the goods, wares, merchandise, or services.

- 4.0206 Hours of Operation. No peddler shall peddle door-to-door between the hours of 8:00 p.m. and 9:00 a.m. the following morning, except by specific appointment with or invitation from the prospective customer.
- 4.0207 Prohibited Conduct. Any peddler selling or soliciting for sale goods, wares, merchandise or services by traveling from place to place, house to house, or street to street shall not remain in any one place for a period longer than necessary to make a sale after having been approached or stopped for that purpose.
- 4.0208 Permit Required. It shall be unlawful for any person to engage in business as a peddler within this City without first obtaining a permit to do so from the City Finance Officer.
- 4.0209 Application for Permit. The application for a permit required by the provisions of this article shall specify:
- A. A statement as to whether or not the applicant has been convicted of any crime, whether state or federal law or municipal ordinance or code other than minor traffic offenses; the nature of the offense; the punishment or penalty assessed therefore, if previously convicted; and the place of conviction.
 - B. Whether the applicant, upon any sale or order, shall demand, accept or receive payment, or deposit of money in advance of final delivery.
 - C. The period of time the applicant wishes to engage in business within the City.
 - D. The local and permanent addresses of the applicant.
 - E. The local and permanent addresses and the name of the entity, if any, that the applicant represents.
 - F. The kind of goods, wares, merchandise, or services the applicant wishes to peddle within the City.
 - G. The last five municipalities wherein the applicant has worked before coming to this City.
 - H. The applicant's date of birth and social security account number or other identifying number.
 - I. Proof of a current South Dakota Sales Tax License.
- 4.0210 False Information. No person shall give any false or misleading information in connection with his or her application for a permit required by this chapter.
- 4.0211 Fee. Before any permit shall be issued under the provisions of this chapter, the applicant shall pay a fee of \$50.00. This fee may be adjusted by resolution by the City Council.
- 4.0212 Issuance Restricted. No peddler's permit shall be issued to a corporation, partnership or other impersonal legal entity, unless that entity is operating a temporary business at a fixed

location, but each individual person engaging in the business of peddling from door-to-door or street-to-street within the City shall be required to have a separate permit, whether acting for himself or herself or as an agent or representative of another.

- 4.0213 Display. Every peddler having a permit issued under the provisions of this chapter and doing business within the City shall display his permit upon the request of any person, and failure to do so shall be a violation of this Chapter.

CHAPTER 4.03 - ALCOHOLIC BEVERAGES

- 4.0301 Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverage, wine, malt beverage and distilled spirits and other such words and terms mean the same as the definitions given them by SDCL 35-1-1.

- 4.0302 Traffic in Alcoholic Beverages. No person shall produce, transport, store or sell within the City, or within one mile of its territorial limits, any alcoholic beverage, except as authorized by SDCL Title 35.

- 4.0303 Application for License to Conduct Business Pursuant to this Chapter. Any person desiring to enter into the alcoholic beverage business in the City shall submit an application for a license under the provisions of SDCL Title 35, Alcoholic Beverages, to the City Finance Officer.

- 4.0304 Action by City Council. The City Council may approve or disapprove an application for a license depending on whether the City Council deems the applicant a suitable person to hold the license and whether the City Council considers the proposed location suitable. The City Council may, in their discretion, require the applicant to appear personally at any meeting of the City Council and to answer any question which may be asked pertaining to the applicant or the place of business which may in any way pertain to the carrying on of the business applied for. (SDCL 35-2-1.2)

- 4.0305 Violation as Ground for Revocation or Suspension of License. The City Council may revoke or suspend any license issued under this chapter and SDCL Title 35 upon proof of violation by the licensee, the licensee's agents or employees, or by the manager or contractual operators of retail establishments and their agents or employees operating under a City license, or any of the following:

- A. Any provision of SDCL Title 35;
- B. Any rule promulgated pursuant to SDCL Title 35; or
- C. Any ordinance or regulation relevant to alcoholic beverage control that has been adopted by the City.

For any licensee with multiple alcoholic beverage licenses for the same premises, upon suspension or revocation of any license issued pursuant to this chapter or SDCL Title 35, such licensee shall cease operation under all alcoholic beverage licenses held by such licensee for the same premises for the same period as the suspension or revocation.

4.0306 Annual Additional License Fee for Video Lottery Machines on Licensed Premises. Any person who is licensed pursuant to SDCL § 35-4-2(4), (6), (11), (12), (13), or (16), and who is issued a video lottery establishment license pursuant to SDCL § 42-7A-41 must pay an additional annual fee for locating video lottery machines on the licensed premises. The fee is established at fifty dollars (\$50.00) for each video lottery machine and the fee shall be paid at the same time and in the same manner as the fees paid on licenses issued pursuant to SDCL § 35-4-2. All fees received under this section shall be deposited into the general fund of the City. (SDCL 35-4-103)

4.0307 On-Sale and Off-Sale Service and Consumption Restricted.

- A. No on-sale or off-sale licensee, licensed under SDCL § 35-4-2(3), (4), (5), (6), (9), (11), (13), or (18), may sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages, between the hours of 2:00 a.m. and 7:00 a.m. or at any time on Christmas Day. Such licensees are permitted to sell, serve, or allow to be consumed alcoholic beverages on Sunday and on Memorial Day, except between the hours of 2:00 a.m. and 7:00 a.m.
- B. No licensee licensed under SDCL 35-4-2(12), (16), (17), (17A), and (19) may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m.

4.0308 Consuming, Blending, Possessing Alcoholic Beverages in Public Places; Disposal of Containers Containing Alcoholic Beverages Restricted.

- A. It is unlawful for any person to consume any alcoholic beverage upon the premises of a licensed on- sale dealer if the alcoholic beverage was not purchased from the on-sale dealer.
- B. It is unlawful for any person to consume any distilled spirits in any public place, other than upon the premises of a licensed on-sale dealer.
- C. For the purposes of this section the term “public place” means any place, whether in or out of a building, commonly and customarily open to or used by the general public, and any street or highway.
- D. Exceptions to this subsection are provided for in Section 4.0309.

4.0309 Open Container Permitted. Notwithstanding anything herein to the contrary:

- A. No regular on-sale malt beverage licensee may sell or allow to be consumed any malt beverage outside the building of the licensed premises unless the licensee’s business operates out of a permanent structure and the consumption of the malt beverage occurs in an outdoor designated area located on the premises of the licensee which is approved by the City Council.
- B. The sales and consumption of alcoholic beverages on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises, provided that the license holder derives more than fifty percent (50%) of its gross receipts from the sale of prepared food for consumption on the licensed premises. The sidewalk or walkway subject to a public right- of-way shall be immediately adjacent to and abutting the licensed

premises. This provision does not apply to any federal aid-eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid.

- C. The City Council may, in its discretion, for community designated events, permit open containers in public places upon such terms and conditions the City Council may impose.

4.0310 Malt Beverages Allowed. The possession and consumption of malt beverages shall be allowed at municipal parks unless otherwise provided by the City Council. No glass containers are allowed. (SDCL 35-1-5.3)

TITLE 5 - OFFENSES

Chapter 5.01 - Offenses Against Public Welfare

Chapter 5.02 - Animals

Chapter 5.03 - Fireworks and Firearms

Chapter 5.04 - Minors

CHAPTER 5.01 - OFFENSES AGAINST PUBLIC WELFARE

- 5.0101 Disorderly Conduct. A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, he willfully does any of the following acts in a public place:
- A. Engages in fighting or in violent or threatening behavior, including, but not limited to, the use of obscene or profane language directed at a person present;
 - B. Makes unreasonable noise;
 - C. Operates amplified sound equipment at an unreasonably high volume;
 - D. Disturbs any lawful assembly or meeting of persons without lawful authority;
 - E. Obstructs vehicular or pedestrian traffic;
 - F. Resists or obstructs the performance of duties by a law enforcement officer or other authorized official;
 - G. Addresses abusive language or threats to any law enforcement officer, or any other authorized official of the City who is engaged in the lawful performance of his duties, or any other person when such words have direct tendency to cause acts of violence. Words merely causing displeasure, annoyance or resentment shall not be prohibited; or
 - H. Commits any act which tends to corrupt the public morals or outrages public decency, is guilty of disorderly conduct which is hereby prohibited.
- 5.0102 Open Containers. It shall be unlawful to consume any beer or alcoholic beverage or to possess any glass, can or other container containing beer or any alcoholic beverage on which the seal has been broken, in any public place, vacant building, automobile, street, alley, sidewalk or place of amusement or business establishment not authorized to sell beer or alcoholic beverages, unless approved by the City Council. (SDCL 35-1-5.3 and SDCL 35-1-9.3)
- 5.0103 City Parks and Public Buildings Closed to the Public at Specified Times. For the purpose of preservation and protection to the City park facilities and public buildings it shall be unlawful for any person or persons to enter or remain in such public places after closing hours as specified by the City Council. This section shall not apply to City staff or other authorized persons.

- 5.0104 Indecency. No person shall willfully and lewdly expose his or her person, or the private parts thereof, in any public place where there are present other persons to be offended or annoyed thereby.
- 5.0105 Public Urination and Defecation Prohibited. Any person who urinates or defecates on any public street, alley, sidewalk, or floor of any public building or of any building where the public gathers or has access, or in any other place, whether public or private, where the act could be observed by any member of the public, except in the place that has been designated as a restroom is guilty of an offense and in violation of this section.
- 5.0106 Roller Skates and Skateboards Prohibited in the Business District. No person shall ride upon, in or by means of roller skates, coasters, go-karts, skateboards or other similar wheeled device upon a sidewalk in any business district. (SDCL 9-32-1)
- A. Definition as used in this Section:
- "Business District" - An area in which 50% or more of the street footage for a distance of 200 ft. or more is occupied by buildings used for business commercial, educational, governmental or religious purposes and/or is used for parking vehicles as a parking lot
- B. Exception. Provisions of this Section do not apply to:
1. Physically handicapped persons who have been disabled in such a manner as to make it difficult and burdensome to walk and who use a wheelchair or other wheeled device on the sidewalk.
 2. A wheeled vehicle used to transport a person under five (5) years of age.

CHAPTER 5.02 - ANIMALS

- 5.0201 Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. At Large.
 - a. An animal when off or away from the premises and not under the control of the owner, possessor, keeper, agent, servant, or a member of his immediate family by a leash.
 - b. An animal when on the premises of the owner, possessor, keeper, agent, or servant if not attended by a competent person unless the animal is chained, restrained, enclosed, or confined in a manner preventing it from leaving the premises.
 2. Leash. A cord, thong, or chain, not to exceed six feet in length, by which an animal is controlled by the person accompanying it.
 3. Owner. Any person harboring or keeping an animal and who is the head of the household of the residence or the owner or manager in charge of the establishment or

premises at which an animal remains or returns to.

- 5.0202 Running at Large Prohibited. It shall be unlawful for any person to have any animal which is owned, kept, harbored, or allowed to be habitually in or upon the premises occupied by him or under his or their control to be at large and to go in or upon the private premises of others or upon any public property. The fine for an animal running at large is \$50.00. The owner of the animal found in violation of this Section may, within 72 hours of the time when the notice of violation was given, pay to the office of the City Finance Officer, as fine for and in full satisfaction of the violation, the sum of \$50.00. If the owner fails to pay the sum within the 72-hour period, he or she may pay to the office of the City Finance Officer, within the next 2 weeks from the date of violation, as a fine for and in full satisfaction of the violation, the sum of \$75.00. Upon failure of the owner to pay either of the sums to the office of the City Finance Officer within the time periods indicated, and upon conviction of a violation of this Section, the owner shall be fined not less than \$100.00 plus court costs, which fine shall be collected by the Magistrate Court. The owner also has the right to contest the charges or plead “not guilty”, and have the matter transferred to Magistrate Court. The penalties in this Section may be adjusted by resolution of the City Council.

Allowing an animal to run at large as defined in the provisions of this section, shall also constitute a violation of this Ordinance, per Section 11.0101. Notwithstanding any other provision, any animal not having a visible tag and running at large may be deemed a stray and destroyed immediately.

- 5.0203 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 shelter 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.

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 (12) month period shall be \$50.00; any subsequent impoundment within a twelve (12) month period shall be \$100.00. Upon impounding, the owner of such animal may at any time within five (5) working 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 five (5) working days and reasonable efforts to locate the owner have failed, the City is authorized to destroy, sell, or otherwise dispose of such animal.

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

- 5.0204 Compulsory Vaccination of Animals for Rabies. Every dog, cat or other animal susceptible to rabies, held as a domestic pet in the City, six months of age or older, shall be vaccinated against rabies by a licensed veterinarian. Vaccination 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 by purchase, gift, birth or otherwise, shall have such animal vaccinated 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 such animal has been vaccinated against rabies; provided, however, no animal so impounded shall be vaccinated if the owner can present a certificate of a current vaccination.

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

5.0205 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 (24) hours place the animal under the care and observation of the animal control officer or a licensed veterinarian for a period of not less than ten (10) days.

At the end of the ten (10) day observation period, the animal shall be examined by a licensed veterinarian and if cleared by the veterinarian, may be reclaimed by the owner upon paying the expenses incident thereto.

Any animal impounded or placed for observation, showing active signs of rabies, suspected of having rabies, or known to have been exposed to rabies, shall be confined under competent observation for such time as may be deemed 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 who shall suspect that any animal in the City is infected with rabies, shall report the animal to the animal control officer, the City, or other health authority, describing the animal and giving the name and address of the owner if known.

Whenever the animal control officer, a law enforcement officer or other authorized official shall have determined that there is danger of the existence or spread of rabies in the City, such facts shall be made known to the City Council in writing. The City Council, upon receipt of said facts, may by proclamation, in the interest of public safety and general welfare of the citizenry, order all animals muzzled when off the premises of the owner. Forty-eight (48) hours after the proclamation is issued, all animals found off the premises of the owner unmuzzled shall be seized and impounded or may be immediately destroyed if all reasonable efforts to seize said animals fail. All animals seized and impounded shall be held for observation as hereinbefore provided for, not less than ten (10) days, and if cleared by a licensed veterinarian, may be claimed by the owner upon paying the expenses incidental thereto. Any animal not claimed may be disposed of as hereinbefore provided.

5.0206 Vicious Animals.

A. An animal may be declared to be vicious by the animal control officer, a law enforcement officer or other authorized official, under the following guidelines:

1. An animal which, in a vicious or terrorizing manner approaches in an apparent attitude of attack, or bites, inflicts injury, assaults or otherwise attacks a person or other animal upon the streets, sidewalks, or any public grounds or places; or
 2. An animal which, on private property, in a vicious or terrifying manner, approaches in an apparent attitude of attack, or bites, or inflicts injury, or otherwise attacks a mailman, meter reader, serviceman, journeyman, delivery person, or other employed person, or any person or animal who is on private property by reason of permission of the owner or occupant of such property or who is on private property by reason of a course of dealing with the owner of such private property.
 3. No animal may be declared vicious if the injury or damage is sustained to any person or animal who is committing a willful trespass or other tort upon premises occupied by the owner or keeper of the animal, or who was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime.
- B. When the animal is declared to be vicious, the City shall notify the owner of such declaration in writing. Said notice shall be sent by certified mail, return receipt requested, or by hand delivery. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Notice is deemed completed at the time it is mailed and said period to reply or abate begins to run from the date of mailing.
- C. Any mammal, reptile or fowl which is not naturally found in a domestic setting, and because of its size or other characteristic would constitute danger to human life or property is automatically deemed vicious.
- D. The owner of an animal that has been deemed vicious shall comply with the following:
1. Register the animal as vicious with the City and present proof of rabies vaccination within five (5) days of receiving the notice and presenting proof of rabies vaccination on or before March 1 of each and every year thereafter.
 2. Whenever the animal is outdoors and attended, the animal shall be muzzled, on a leash no longer than six (6) feet, and under the control of a person over sixteen (16) years of age.
 3. When the animal will be outdoors and unattended, the animal must be locked in an escape-proof kennel approved by the City. Minimum standards shall include the following:
 - a. Fencing materials shall not have openings with a diameter of more than two (2) inches.
 - b. Any gates within such pen or structure shall be lockable and of such design to prevent the entry of children or the escape of the animal.
 - c. The required pen or structure shall have secure sides and a secure top. If

the pen or structure has no permanent bottom secured to the sides, the sides shall be imbedded into the ground or concrete.

- d. The pen or structure may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects.
- 4. A universal sign denoting a vicious animal shall be displayed on the kennel or enclosure and on a place visible from the sidewalk or road adjacent to the property where the animal is kept.
- E. The vicious animal shall be impounded by animal control at the owner's expense until all provisions of Section D are complied with. If the conditions in Section D are not complied within 10 days after receiving notice, the animal shall be euthanized in a humane manner and proof of euthanasia filed with the City.
- F. If a vicious animal has been running at large, or bites a person or bites another animal, the animal control officer, a law enforcement officer or other authorized official shall seize the animal by using such means as are necessary and summon the owner to appear in court to show cause why this animal shall not be destroyed. If the animal cannot be captured, it may be destroyed.

This section shall not be construed to apply to zoological parks, performing animal exhibitions, or circuses.

- 5.0207 Cruelty to Animals. No person shall maltreat or abuse or neglect any animal or fowl. Any animal control officer, law enforcement officer or authorized official finding an animal or fowl mistreated as described in this section shall have the power to lawfully enter the premises where the animal is kept and demand to examine such animal and to take possession of such animal, when in his opinion, the animal requires humane treatment.
- 5.0208 Poisoning Animals. It shall be unlawful for any person to willfully or maliciously administer or cause to be administered, poison of any sort whatsoever to any animal, the property of another, with the intent to injure or destroy such animal, or to willfully or maliciously place any poison or poisoned food where such is accessible to any such animal. (SDCL 9-29-11)
- 5.0209 Stray, Abandoned, or Unkept Animals. No person shall harbor or keep any stray animals or abandon any animal within the City. Animals known to be strays shall be immediately reported to the animal control officer, a law enforcement officer or authorized official. (SDCL 9-29-12)
- 5.0210 Number of Pets Limited. It shall be unlawful for any person to have or to keep more than four domestic pets over the age of six months, except birds and fish, on any lot or premises in the City, unless such person residing on or in the lot or premises has a valid kennel license issued by the City. Humane societies, veterinarian offices, and retail pet stores are exempt from the provisions of this section.
- 5.0211 Licensing of Dog Required. Each owner or keeper of a dog of the age of six (6) months or over shall within thirty (30) days after the acquisition of such animal or within thirty (30) days after the time such animal becomes six (6) months old, cause such animal to be licensed by the City.

5.0212 Application for License. Every owner or keeper of a dog or cat within the City must submit an application for an animal license for each such animal owned six (6) months old or older and a renewal application within one year and annually from the month of the first license. The application shall be furnished by the Finance Officer. All applications for license certificates must be accompanied by a rabies immunization certificate and the appropriate fee, as shown in Section 5.0213.

A certificate and tag shall be issued upon receipt of a proper application for license. The certificate at all times must be in the possession of the owner. The owner shall contact the Finance Officer to report change of ownership, loss or death of a licensed animal. If a tag or certificate is lost, either may be replaced for a fee of one dollar (\$1.00). The tag must be worn by all dogs and cats.

5.0213 License Fee Schedule. The fee for licenses shall be as follows:

Neutered/Spayed dog	\$5.00
Unneutered/Unspayed dog	\$10.00

The most current fee schedule specifically addresses dog licenses. Documentation from a veterinarian or other sufficient medical proof must be provided when licensing a neutered or spayed dog. The City Council may revise any or all license fees by resolution. The City Council may in special instances, after a hearing, exempt the license fee in individual cases.

5.0214 License Fee Exemptions. The licensing provisions of this chapter shall not apply to dogs in the custody of a veterinarian, or animal shelter or animal rescuer, or whose owners are nonresidents temporarily within the City for a period not exceeding 30 days. Also, when a blind person, physically disabled or hearing impaired person requests that no fee be charged to license his/her guide dog, or service dog, no fee shall be charged, upon submission of medical documentation attesting to said disability and/or service animal certification from a bona fide and recognized authority.

5.0215 Kennel Licenses Issued. The City Finance Officer, upon receipt of an application showing the owner's name and address, the name, breed, age, color and sex of each dog kenneled by the owner, a certificate signed by a qualified veterinarian that each dog has been vaccinated and payment of the appropriate license fee, as established by the City Council, shall issue a kennel license to the owners of dog kennels. All dogs housed in a licensed kennel shall be exempt from the other licensing provision of this ordinance.

5.0216 General Prohibitions and Duties.

- A. No person shall aid or cause any animal, whether owned by such person or not, to escape confinement or impoundment, whether such confinement or impoundment be upon the such person's property or that of another, by opening any gate, door or window, by making an opening in any fence, enclosure or structure, or by unleashing such animal.
- B. It shall be prohibited for any person to permit or allow an animal owned by that person or under that person's custody or control to defecate upon public property, park property, public right-of-way, or the property of another.
- C. It shall be the duty of every person owning or having the custody or control of an

animal to clean up, remove and dispose of the feces deposited by such animal upon public property, park property, public right-of way, or the property of another.

- D. It shall be the duty of every person owning or having the custody or control of an animal to physically restrain the animal within an enclosure or upon a leash when such animal is left unattended outside or is not at heel. The animal must be restrained so as to prevent the animal from leaving the premises of its owner or from coming in contact with public right-of-way or the property of another.
- E. It is unlawful for a person, owning or having the care or custody or control of an animal to permit such animal to disturb the peace and quiet of the neighborhood by barking, howling, whining, or making any other loud or unusual noise. Leaving an animal unattended who subsequently disturbs the peace and quiet of the neighborhood shall be in violation of this Chapter.
- F. In the event an animal is making any noise to the disturbance of the peace and quiet of the neighborhood and the person owning or having the care or custody or control over the animal cannot be found to remedy the situation or if found refuses to do so, the animal may be impounded. A notice of the impoundment must be left with the person or in an obvious place on the premises where the dog was removed. A written notice of impoundment must also be sent by certified mail, with return receipt requested, as soon as possible to the licensed owner of the animal if known; or the lessee of the premises upon which the animal was found, if known; or the record owner of the premises. Notice is deemed completed at the time it is mailed and said period to reply or abate begins to run from the date of mailing. The animal may be claimed on any regular work day during regular work hours. The impoundment fee will be assessed prior to release of the animal.
- G. It shall be prohibited for any person in any manner to interfere with any employee or designated representative of the City so as to hinder, delay or prevent his or her executing his or her duties pursuant to this Chapter.
- H. No person may set traps in the City for the purpose of apprehending wild or domesticated animals. This section does not prohibit:
 - 1. Trapping mice, rats or other household vermin;
 - 2. The setting of traps to destroy moles and other underground pests so long as the traps used may be triggered only by subsurface action; or
 - 3. The setting of traps in the line of duty by an animal control officer or with written permission from and under supervision of an animal control officer or licensed pest-control operators.

CHAPTER 5.03 - FIREWORKS AND FIREARMS

- 5.0301 Fireworks Prohibited, Authorized Permit Required. No person shall discharge or shoot any fireworks or firecrackers of any kind, within the City of Irene. Public display of fireworks is permitted at any time with the written consent of the City Council.

Fireworks shall be defined as those fireworks classified by the US Department of Transportation as Class C (Common) Fireworks (C.F.R. Title 49 - Transportation, Part 173.100 (r)) effective on January 1, 1983, including but not limited to those fireworks designed primarily to produce visible effects by combustion, that must comply with the construction, chemical composition, and label regulations promulgated by the US Consumer Products Safety Commission (C.F.R. Title 16 -Commercial Practices, Part 1507), effective on January 1, 1983.

- 5.0303 Discharging Firearms or Air Rifles Prohibited. It shall be unlawful for any person, except a police officer in the performance of an official act, to discharge or fire any gun, air rifle, sling shot, or other dangerous weapon within the corporate limits of the City of Irene.

CHAPTER 5.04 - MINORS

- 5.0401 Curfew Hours and Exceptions. No minor under the age of eighteen (18) years shall be or remain in or upon the public streets, alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, vacant lots, or other unsupervised public places within the city between the hours of 11:00 p.m. and 4:00 a.m. of the following day, unless accompanied by his parent, guardian or other adult person having the care and custody of the minor or where the minor is upon an emergency errand or legitimate business directed or authorized by his parent, guardian or such other adult person having the care and custody of the minor.
- 5.0402 Responsibility of Officers. It shall be the right of any authorized officer or person to arrest and detain any minor violating the curfew and to keep the minor detained until the parent, guardian or custodian is notified, when the minor may be released upon the giving of a promise by the minor and his parent or guardian or custodian that such minor together with his parent, guardian or custodian will appear at a stated time before the proper authority to answer to the charges.
- 5.0403 Responsibility of Parents or Guardians. It shall be unlawful for the parents, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to knowingly permit such a minor to be or remain in or upon the public streets, alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, vacant lots or other unsupervised public places within the City between the hours of 11:00 p.m. and 4:00 a.m. of the following day, except when the minor is accompanied by his parent, guardian or other adult person having the care and custody of the minor or when the minor is upon an emergency errand or legitimate business directed or authorized by his or her parent, guardian or other adult person having the care and custody of the minor.

TITLE 6 - STREETS AND SIDEWALKS

Chapter 6.01 - Street Names and Addresses

Chapter 6.02 - Streets, Sidewalks, Curb and Gutter

Chapter 6.03 - Snow Removal

Chapter 6.04 - Moving Buildings

Chapter 6.05 - Municipal Trees

CHAPTER 6.01 - STREET NAMES AND ADDRESSES

- 6.0101 Names of Streets and Avenues. The names of all streets and avenues in the City shall be fixed and adopted in accordance with the official map of the City on file in the Finance Office. Other streets shall be named in accordance with guidelines included in the City subdivision regulations. Any such act of naming, establishing, or vacating any street, alley or other public way in the City shall be so designated on such map. (SDCL 9-45-2)
- 6.0102 Numbering Plan. A numbering plan for residences and businesses shall be maintained by the City Council. A listing of the assigned numbers and a map showing the location of addresses shall be maintained and filed in the Finance Office. The Finance Officer shall be responsible for assigning new numbers and updating the listing of such numbers and the location map. (SDCL 9-45-2)
- 6.0103 Duty of Numbering. That all houses and lots within the corporate limits of City of Irene, South Dakota, shall be numbered in accordance with the provisions of 6.01. It shall be the duty of the owner of such houses and lots to so place and construct such numbers as to be easily visible from the street and said numbers shall be not less than four (4) inches in height. If the owner of any dwelling house, building, business establishment or lot fronting on a street or avenue within the City shall fail, refuse or neglect to place the number, or replace the number when necessary, an authorized agent of the City may cause to be mailed by certified mail, return receipt requested, or by hand delivery a notice to the last known address ordering him to do so. In case of failure of such owner to comply with such notice within ten (10) days after the date of such notice, the authorized agent may cause the same to be done, and assess the cost thereof against the property or premises numbered. (SDCL 9-45-2)

CHAPTER 6.02 - STREETS, SIDEWALKS, CURB AND GUTTER

- 6.0201 Street Surfacing. The hard surfacing of streets shall be at the expense of the owners of the property abutting the street(s) to be surfaced, with materials to be approved by the City Council. Total cost of the street improvements including legal, engineering, grading and any other costs related to the improvement, shall be assessed against the property on a frontage foot basis. The cost of each street or alley intersection shall be assessed on a front footage basis to all lots or property included within a project area. (SDCL 9-45-31)
- 6.0202 Street Excavations. No person shall make or cause to be made any excavation except as hereafter provided, in or under any street, sidewalk, alley, or public ground or remove any earth, soil, paving, gravel or materials therefrom without first having called One Call and

having had any underground utilities identified. Application for such approval shall state where such excavation is to be made, the extent thereof, and the purpose of such excavation.

- 6.0203 Excavation Permits. Applications for excavations other than emergency situations may require a deposit in such sum as deemed necessary by the City Council to ensure proper replacement and refilling of any such excavation or to cover the costs of any damages which may be caused by such excavation.

Any required deposit shall be paid to the City before approval of an application is made and any unused portion of said deposit shall be refunded to the applicant upon recommendation and approval of the City Council.

- 6.0204 Excavation Repairs. Approval for any excavation covered by this Chapter shall be issued only upon the express condition that the applicant shall refill such excavation in accordance with the requirements of the City, and shall restore the pavement or surfacing, as the case may be, to its former condition. The City Council may adopt and amend as necessary such requirements which shall set forth the manner in which various types of excavations shall be backfilled or refilled and the manner in which any street surfacing shall be replaced. Applicant shall be responsible to the City for any such excavation for a period of two years.

- 6.0205 Excavation Inspections. It shall be the duty of authorized City personnel to inspect all authorized excavation work at any stage of construction and to ensure compliance with approved requirements. If all backfilling, refilling, or surfacing is not completed in accordance with approved requirements, notice thereof in writing shall be given to the applicant, who shall put the same in proper order within a maximum of ten (10) days. If the applicant fails after such notice to complete all requirements, the City Council may authorize the necessary repairs and such applicant shall pay the cost thereof.

- 6.0206 Excavation Barriers. Any person receiving approval to make excavations in or upon any street, alley, sidewalk or public ground shall, during the progress and continuance of the work, erect and maintain around the same both day and night signs, fences, or signals so as to prevent injury to persons, animals, or vehicles on account of such excavations. No open trench shall be left open for any more time than considered absolutely necessary or reasonable.

- 6.0207 Sidewalks. Unless otherwise determined by the City Council, the inside of the sidewalk shall be the property line. Sidewalk construction shall include base material of three inches in thickness, of approved materials. Sidewalks shall be no less than four (4) inches in thickness, of Portland Cement Construction, and not less than four (4) feet nor more than five (5) feet wide in residential areas, with slope toward street of one-fourth inch per foot. When considered necessary and advisable for the peace, welfare, and safety of the people, the City Council may direct that new sidewalk be constructed and assessed to any abutting property owner in accordance with SDCL 9-46.

- 6.0208 Driveway Approaches. No driveway approaches shall protrude or extend into the streets beyond the curb line, unless otherwise so authorized by the City Council. Concrete driveway approaches shall be of five (5) inch Portland Cement Construction, with the slope gradual to accommodate modern vehicles. On gravel thoroughfares driveway approaches constructed shall permit flow of surface water without drainage interference and shall permit proper blading and maintaining of streets.

- 6.0209 Curb and Gutter. Curb and gutter shall be of Portland Cement Construction, not less than three thousand (3,000) PSI, with curb six (6) inches in width, and extending six (6) inches above the gutter. Gutter shall be of six and one-half (6.5) inch thickness, extending twenty-four (24) inches into the street and shall include two (2) No. 4 Rebar centered on pan. The City Council may direct that curb and gutter be constructed and the cost assessed against any abutting property owner. (SDCL 9-45-5)
- 6.0210 Permits. When constructed separately from an over all construction project, property owners or their agents shall submit applications for permits for approval by the City for sidewalks, driveway approaches, curbs, or curb and gutter. When these improvements are constructed simultaneously or as one project, only one application is necessary to include all improvements, and where any or all are part of new construction projects, only one permit for the overall construction shall be issued. All improvements, installations, and engineering recommendations shall be in conformance with specifications or recommendations approved by the City Council.
- 6.0211 Barrier-Free Construction. Whenever any person, firm or corporation makes new installations of sidewalks, curbs or gutters, in both business and residential areas, it shall be required that they install ramps at crosswalks, so as to make the transition from street to sidewalk easily negotiable for handicapped persons in wheelchairs and for blind persons. All such ramps shall be constructed or installed in accordance with design specifications according to the most current American National Standards Specifications published by the American National Standards Institute. (SDCL 9-46-1.2)
- 6.0212 Permission to Deposit Materials. No person shall deposit, place, store, or maintain, upon any public place of the municipality, including street rights-of-way, any dumpster, container, stone, brick, sand, concrete or any other materials, unless approved by the City.

CHAPTER 6.03 - SNOW REMOVAL

- 6.0301 Duty to Remove Snow. It shall be the duty of the owner, tenant, or person in possession of any property abutting on any sidewalk to keep such sidewalk free from snow and to cause any accumulated snow to be removed within twenty-four (24) hours after the termination of any snowfall, or snow accumulation. When it is impossible to take snow and ice from such walk by reason of its being frozen to the sidewalk, the owner or occupant or person in charge of such lot shall sprinkle or spread some suitable material upon the same to prevent the walk from becoming slippery and dangerous to travel.
- 6.0302 Disposal of Snow. It shall be the duty of the property owner, tenant, or person in possession of any public or private driveway, parking lot or parking area to dispose of accumulated snow upon such property in such manner that any snow when removed shall not be deposited upon any sidewalk, within or upon any public street or alley, after such public street or alley has been cleared of snow by the grading of such snow away from the curb or the picking up and carrying away of such snow by the City, or in a manner that will obstruct or interfere with the passage or vision of vehicle or pedestrian traffic.
- 6.0303 Removal Costs Assessed. In the event any owner, tenant, or person in possession of any property shall neglect or fail to or refuse to remove such snow or ice within the time provided, any authorized officer of the City may issue a citation for such violation and may

authorize such removal with the costs to be assessed against the abutting property owner.
(SDCL 9-30-5)

CHAPTER 6.04 - MOVING BUILDINGS

- 6.0401 Permit Required. No person shall move any building or part of building into, along or across any public street, alley, or grounds in the City without having obtained a moving permit.
(SDCL 9-30-2)
- 6.0402 Applications. Written application for a moving permit shall be filed with the City 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 lot to which it is to be moved, if such location shall be within the City. The application shall also specify the route along which it is proposed to move such building, and the length of time likely to be consumed in such moving. Any application so filed shall be considered by the City Council for approval, and any other conditions to be complied with by the applicant, shall be stated.
- 6.0403 Surety Bond. No 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, 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. 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 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.
- 6.0404 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.
- 6.0405 Permission of Property Owners. No 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)
- 6.0406 Removal, Demolition or Relocation of Structures. Upon the removal, demolition or relocation of structures from or on any lot within the City of Irene, the foundation of such structure removed, demolished or relocated must be removed from the property and the basement or excavation remaining after removal of the foundation must be filled with good, clean, fill dirt.

If a house is removed from the property then all other outbuildings and other structures which are not being used must be removed together with all sidewalks (except along the street). Upon removal, demolition or relocation of the house or other structures, the lot shall be leveled and left in a good, clean, sanitary condition. Upon the property owner's failure to comply with the provisions of this Section, the property shall be deemed a public nuisance which may be abated and the cost thereof assessed against the property pursuant to laws of

the State of South Dakota.

6.0407 Approval and Fee. No moving permit shall be issued unless the appropriate nonrefundable fee, established by resolution of the City Council, is paid to the Finance Office.

6.0408 Safeguards. It shall be the duty of the person, firm or corporation moving any building through the streets to do the same with proper care for the safety of persons and property. Warning barricades and lights shall be maintained wherever necessary for the protection of pedestrians or traffic.

6.0409 Protecting Pavement. Where a building or structure is being moved over a street, but is not carried on another vehicle or on a unit equipped with tires, the street surface shall be protected by planking or other device effective to prevent injury to the roadway.

CHAPTER 6.05 - MUNICIPAL TREES

6.0501 Authority and Jurisdiction. The City Council shall have the authority to regulate the planting, maintenance, and removal of trees along public streets and other publicly owned property to insure the public safety and to preserve the aesthetics of such public sites. The City Council shall also have the authority to determine the type and kind of trees to be planted upon municipal streets or in parks and may assist in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the corporate limits or within the area over which the City has jurisdiction, whether the same be on private or public property, and to make recommendations from time to time as to desirable ordinances concerning the tree program and activities for the City. (SDCL 9-38-2)

Certain species of trees shall not be planted in the street right-of-way for any of the following reasons: high susceptibility to disease, production of large or messy fruit, and growth habit.

Any person or persons planting prohibited trees or shrubs in street right of way area shall be given notice to remove the trees or shrubs, within a reasonable time to be specified in the notice. Failure to remove within the specified time shall constitute a violation of this Chapter, and in such case, in addition to any other penalty provided by law, the City is authorized to remove such plants and assess the owner of the property for the removal costs.

6.0502 Duties of Property Owners. It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersections, except where such services are provided for by utility firms. The minimum clearance of any overhanging portion thereof shall be ten (10) feet over all sidewalks and fourteen (14) feet over all streets, unless otherwise determined by the City Council.

6.0503 Abuse of Trees. Unless otherwise specifically authorized by the City Council, no person shall intentionally damage, cut, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous liquid or solid substance which is harmful to such tree to come in contact with them, or set fire to or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.

- 6.0504 Removal of Hazards. Where any tree branches or hedges protrude or overhang on any thoroughfare within the City so as to be determined as in violation with this Chapter or affecting motor vehicle traffic and good maintenance practices, notification shall be given by the Finance Officer to the property owner to remove such obstructions or undesirable branches or hedges within seventy-two (72) hours. The notification shall be sent by certified mail, return receipt requested, or by hand delivery. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, and any period to reply or abate begins to run from the date of mailing. (SDCL 9-38-2)
- 6.0505 Removal Costs Assessed. In the event any owner, tenant, or person in possession of any property shall neglect or fail to or refuse to remove such obstructions or undesirable branches or hedges within the time provided, the City may issue a citation for such violation and may authorize such removal with the costs to be assessed against the abutting property owner. (SDCL 9-30-5)

TITLE 7 - TRAFFIC CODE

- Chapter 7.01 - General Provisions**
- Chapter 7.02 - Operation of Vehicle**
- Chapter 7.03 - Vehicle Equipment**
- Chapter 7.04 - Speed Restrictions**
- Chapter 7.05 - Parking, Stopping**
- Chapter 7.06 - Trucks**
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CHAPTER 7.01 - GENERAL PROVISIONS

- 7.0101 Definitions. When in this Title the following terms are used they shall have the meanings respectively ascribed to them in this Chapter or Title.
- A. Authorized Emergency Vehicle - Vehicles of any fire department, police vehicles and such ambulances and emergency vehicles of municipal department or public service corporations as are designed or authorized by the Chief of Police.
 - B. Crosswalk - That portion of a roadway ordinarily included within the prolongation of curb and property lines at intersection, whether marked or not, or any other portion of a roadway clearly indicated for pedestrian crossing by lines or other markings on the surface of the street.
 - C. Curb - The extreme edge of lateral boundary of a roadway, whether marked by curbing or not.
 - D. Department - The police department of the City of Irene.
 - E. Double Parking - The standing of a vehicle upon a street at the rear of another vehicle which is parked diagonally at the curb, or the standing of a vehicle upon the street alongside and parallel at the curb.
 - F. Driver or Operator - Any person who is in actual physical control of a vehicle.
 - G. Left Hand Side of a Street - The side to the left of the vehicle as it moves forward.
 - H. Motor Vehicle - Every vehicle which is self-propelled.
 - I. Parking - The standing of a vehicle, whether attended or unattended upon a roadway, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading passengers.
 - J. Pedestrian - Any person afoot.

- K. Private Road or Driveway - Every road or driveway not open to the use of the public for vehicular travel.
 - L. Right Hand Side of Street - The side on the right of the vehicle as it moves forward.
 - M. Right-of-Way - The privilege of the immediate use of the street.
 - N. Roadway - That portion of a street devoted to vehicular traffic.
 - O. 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.
 - P. Sidewalk - That portion of the street between the curb line and the adjacent property lines.
 - Q. Street - The term street shall mean any street, avenue, boulevard, alley, highway, or public place set apart for the public vehicular traffic.
 - R. Street Intersection - That portion of a street where it joins another at an angle, whether or not it crosses the other street, and shall include the full width of the street between the curb lines, extended, of the intersection streets.
 - S. Through Streets - Streets, or parts thereof, that have been so designated and marked, by order of the city council.
 - T. Trailer - Every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle.
 - U. Vehicle - Every device in, upon, or by which any person or property is or may be transported or drawn upon a street, provided that for the purpose of this title a bicycle or an animal that is being ridden, driven, or led shall be deemed a vehicle.
- 7.0102 Duty to Enforce. It shall be the duty of the Chief of the Police Department and all police officers to enforce all the regulations and requirements of this Title. (SDCL 9-29-19)
- 7.0103 Directing Traffic. Police officers shall direct traffic in conformance with traffic laws and ordinances, provided that in the event of a fire or other emergency, or to expedite traffic or safeguard pedestrians, members of the police or fire department may direct traffic as conditions may require. (SDCL 9-29-19)
- 7.0104 Obedience to Police. It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal, or direction of the police department. (SDCL 9-29-19)
- 7.0105 Exemptions to Authorized Emergency Vehicles. The provisions of this Title regulating the movement, parking and standing of vehicles shall not apply to authorized emergency vehicles while the operator of such vehicle is operating the same in an emergency in the necessary performance of public duties. This exemption shall not, however, exempt the driver of any such vehicle from the consequence of a reckless disregard of the safety of others.
- 7.0106 Application to Workers and Equipment. The provisions of this Title shall not apply to

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

- 7.0107 Authority to Install Traffic Control Devices. The City Council shall place and maintain traffic control signs, signals and devices when and as required under this Title to make effective the provisions of said Title, and may place and maintain such additional traffic control devices as may be necessary to regulate traffic. When or where necessary the Maintenance Superintendent and the City Engineer shall utilize the Manual on Uniform Traffic Control Devices (MUTCD) guidelines. (SDCL 32-14-5)
- 7.0108 Obedience to Traffic Control Devices. The operator of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed or held in accordance with the provisions of this Title unless otherwise directed by a law enforcement officer subject to the exceptions granted the driver of an authorized emergency vehicle in this Chapter.

CHAPTER 7.02 - OPERATION OF VEHICLES

- 7.0201 Drive on Right Side of Street. Upon all streets, except upon one-way streets, the operator of a vehicle shall drive the same upon the right half of the street and shall drive a slow moving vehicle as closely as possible to the right hand edge or curb of a street unless it is impracticable to travel on such side of the street, and except when overtaking and passing another vehicle subject to the limitations applicable in overtaking and passing set forth in this Title.

The foregoing provision of this section shall not be deemed to prevent the marking of lanes for traffic upon any street and the allocation of designated lanes to designated speeds.

- 7.0202 Overtaking and Passing. The driver of any vehicle overtaking another vehicle proceeding in the same direction shall first give audible warning of his intention to pass and shall then pass within the speed limit and at a safe distance to the left thereof, but only when such left side is clearly visible and is free from oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety and shall not cut in front of the overtaken vehicle until safely clear of same, and in no case shall a vehicle pass another vehicle in a street intersection. The driver of a vehicle shall move to the right of the roadway a sufficient distance to allow passing when so signaled from a vehicle behind desiring to pass, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. Vehicles shall not travel two (2) abreast on any street.
- 7.0203 Motor Vehicles Left Unattended, Brakes to be Set. No person driving or in charge of a motor vehicle shall allow such vehicle to stand on any street unattended without first setting the brakes or placing an automatic transmission in park when standing upon any grade, turning the front wheel to the curb or side of the roadway.
- 7.0204 Backing Around Corners or into Intersection Prohibited. It shall be unlawful for the operator of any vehicle to back such vehicle around a corner at an intersection or into an intersection of public streets. (SDCL 32-30-20)

- 7.0205 Right-of-Way at Intersection. Subject to the exception stated in the next succeeding Section, the right-of-way rule as between vehicles at intersections is hereby declared as follows:
- A. The operator of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has fully entered the intersection;
 - B. When two vehicles approach an intersection at approximately the same time, the operator of the vehicle on the left shall yield the right-of-way to the vehicle on the right;
 - C. The operator of any vehicle traveling at an unlawful speed shall forfeit any right-of-way which he may otherwise have hereunder.
- 7.0206 Exceptions to Right-of-Way. The operator of a vehicle entering a public street shall yield the right-of-way to authorized emergency vehicles when the latter are operated upon official business and the operators thereof sound audible signal by bell, siren, or exhaust whistle. This provision shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall it protect the operator of any such vehicle from the consequences of an arbitrary exercise of such right-of-way.
- 7.0207 Stop Required Before Operator Entering From Alley or Private Driveway. The operator of a vehicle emerging from a alley, driveway, or garage shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alleyway. (SDCL 32-29-2.2)
- 7.0208 Turning Around at Intersections Prohibited. At any intersection where traffic is controlled by traffic control signals or by a law enforcement officer, or where 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, or so as to proceed in the opposite direction or to make a left turn.
- 7.0209 Right-of-Way, Left Turn. The operator of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. The operator having so yielded and having given a signal when and as required may make such left turn and the operators of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn. (SDCL 32-26-18)
- 7.0210 Turning Around in Midblock Prohibited. The operator of a vehicle shall not turn such vehicle so as to park or move in the opposite direction except at an intersection. (SDCL 32-26-25)
- 7.0211 Action Required at Stop Sign. Except when directed to proceed by a law enforcement officer or traffic control signal, every operator of a vehicle approaching a stop intersection indicated by a stop sign shall come to a full stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the operator shall yield the right-of-way to any vehicle which has entered or is approaching the intersection from another highway and shall not proceed into the intersection until certain that

such intersecting roadway is free from oncoming traffic which may affect safe passage. (SDCL 32-29-2.1)

- 7.0212 Action Required at Yield Sign. The operator of a vehicle approaching an authorized sign bearing the word “Yield” or “Yield Right-of-Way” shall in obedience to such sign slow down to a speed reasonable for the existing conditions or shall stop if necessary and shall yield the right-of-way to any pedestrian legally crossing the roadway on which such operator is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. Said operator having so yielded may proceed and the operators of all other vehicles approaching the intersection shall yield to the vehicle so proceeding. (SDCL 32-29-3)
- 7.0213 Pedestrian’s Right-of-Way. The operator of any vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at the end of a block, except at intersections where the movement of traffic is being regulated by law enforcement officers or traffic control signals. Whenever any vehicle has stopped at a marked crosswalk or at any intersection to permit a pedestrian to cross a roadway, it shall be unlawful for the operator of any other vehicle approaching from the rear to overtake and pass such stopped vehicle. (SDCL 32-27-1)

CHAPTER 7.03 - VEHICLE EQUIPMENT

- 7.0301 Lights Required. A motor vehicle upon a highway within the state during the period from a half (1/2) hour after sunset to a half (1/2) hour before sunrise and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred (200) feet shall be equipped with at least two (2) lighted lamps on the front and (2) on the rear of such motor vehicle, such lamps to conform to SDCL 32-17, provided that a motorcycle or motor bicycle shall be required to display but one (1) lighted lamp in front and one (1) in the rear.
- 7.0302 Head Lights Dimmed. No person shall use head lights or side lights upon any vehicle on any street unless the same are dimmed in such a way as to prevent the light being dazzling or blinding to persons using the streets.
- 7.0303 Brakes. Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicles shall be equipped with brakes in compliance with the requirements of SDCL 32-18.
- 7.0304 Muffler, Excessive Smoke and Noise. No person shall operate or drive any motor vehicle unless such motor vehicle is provided with an adequate muffler, which shall at all times be kept closed so that the exhaust is effectively muffled. No person shall operate a motor vehicle in such manner as to emit unnecessary or excessive smoke or noise from the motor of such vehicle or to needlessly sound the horn or other noise-making device.
- 7.0305 Vehicles with Lugs Prohibited. No person shall operate or move any tractor or vehicle equipped with mud lugs, ice spurs, or spikes upon or across any street that is surfaced with portland cement concrete or surfaced with bituminous material or any other hard surfacing material without first laying planks at least two (2) inches in thickness over the surface of such street in a manner so as to protect such street surface from any damage.

- 7.0306 Pneumatic Tires with Metal Studs Prohibited. It shall be lawful to operate, upon the streets of the City of Irene, motor vehicles equipped with pneumatic tires in which there are embedded metal studs or wires of tungsten or other similar metal from October 1 to April 30 as provided by the state law.
- 7.0307 Projecting Loads. No person shall drive any vehicle upon any street with any load or part of a load projecting more than four (4) feet beyond the rear end or front ends or more than two (2) feet beyond the sides of the body, or carrying part of such vehicles unless there be attached to the extreme ends and sides of such projecting load some warning sign or signal plainly discernible to other drivers and clearly indicating the projecting parts of such load.
- 7.0308 Protection of Load. No motor vehicle shall be driven or moved on any street unless such vehicle is so constructed or loaded as to prevent any of its load from dripping, sifting, leaking or otherwise escaping there from except that sand may be dropped for the purpose of securing tractions or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway. No person shall operate on any street any vehicle with any load unless said load and any covering is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

CHAPTER 7.04 - SPEED RESTRICTIONS

- 7.0401 General Restrictions. Any person driving a vehicle on a street or highway shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface, and width of the street or highway and to any other conditions existing.
- 7.0402 Speed Limitations. It shall be unlawful for any driver to drive any vehicle upon a highway or streets of the city or in any municipal park at a greater rate of speed than the following:
- A. Fifteen (15) miles an hour when approaching within fifty (50) feet of a railroad grade crossing when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last two hundred (200) feet of his approach to such crossing he does not have a clear and uninterrupted view of such crossing and of any traffic on such railway for a distance of four hundred (400) feet in such direction from such crossing.
 - B. Fifteen (15) miles an hour when passing a school during a school recess or while children are going to or leaving school during the opening or closing hours.
 - C. Fifteen (15) miles an hour when approaching within fifty (50) feet and in traversing an intersection of streets when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last fifty (50) feet of his approach to such intersection he does not have a clear and uninterrupted view of such intersection for a distance of two hundred (200) feet from such intersection.
 - D. Except as provided above, twenty (20) miles per hour on all streets, or as otherwise designated.
 - E. Fifteen (15) miles per hour in the City parks.

CHAPTER 7.05 - PARKING, STOPPING

- 7.0501 Parking Prohibited in Certain Places. At any time it shall be unlawful to permit any vehicle to stop, stand or park in any of the following places, except where necessary to avoid conflict with other traffic or in compliance with the directions of a law enforcement officer or traffic control sign or signal:
- A. Within an intersection;
 - B. On a crosswalk;
 - C. Within fifteen (15) feet of a fire hydrant;
 - D. In front of a private driveway;
 - E. Within 10 feet of a residential mailbox, between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Saturday;
 - F. Within fifteen (15) feet of the driveway entrance to any fire station, or directly across the street from such entrance;
 - G. On a sidewalk;
 - H. Within fifteen (15) feet of inside boundary line of the sidewalk, or if no sidewalk is in place, within twenty-five (25) feet of the intersecting roadway, except that this provision shall not apply to alleys;
 - I. Parking against direction of traffic on through streets.
- 7.0502 Standing for Loading or Unloading Only in Certain Places. It shall be unlawful for the operator of a vehicle to stop, stand, or park said vehicle for a period of time longer than is necessary for the actual loading or unloading of passengers, or the unloading and delivery or pick up and loading of materials in any place marked as loading zone. The City Council shall have authority to determined the location of passenger zones and loading zones as described herein, and shall cause to be erected and maintained appropriate signs indicating the same.
- 7.0503 Parking Zones. The City Council may designate by resolution any street, avenue, or alley in the City of Irene, as necessity requires, as parking zones for the parking of motor vehicle or vehicles of any nature and description or the storage of any material of any kind, nature, or description; provide the length of time for day and night parking; the hours that constitute day and night; and provide for marking with proper signs setting forth the manner, form, and hours of parking. Such parking zones shall be delineated on a map filed in the office of the finance officer.
- The driver or person in charge of any vehicle parked in such a limited time zone shall comply with such time limit for parking as shown on the signs or marked on the curb where such vehicle is parked.
- 7.0504 Penalty. The offending automobile or other vehicle will be tagged with a tag, listing the date of the offense, license number of the vehicle, make, violation number, and location of offense

with reference to street. Whenever a notice is left by any member of the police department in or on any vehicle which has violated the parking regulations, the person in charge of such vehicle shall pay the amount of the assessment described thereon by taking such notice and amount of the assessment to the city finance office and depositing the same with the city finance officer. The assessment for each violation shall be twenty-five dollars (\$25).

If the owner or operator fails to comply within seven (7) days from the date of notice of violation, then in that case, a summons will be issued and the assessment shall be raised to thirty-five dollars (\$35) for the violation. The increased assessment can be paid at the City Finance Office within the above time frame. If the summons is not complied with, a warrant may be issued to bring the owner or operator of the vehicle into court and a fine of fifty dollars (\$50) will be assessed by the court for the violations.

Any vehicle parked in violation of this Chapter may be removed from the streets by the police department and placed in public or private storage and the owner thereof, in addition to the fines and penalties provided in this Chapter, shall pay the charges for towing and storage of said vehicle so removed by the police department. All money so collected by the police department shall be immediately deposited with the City Finance Officer to be paid into the general fund.

7.0505 Non-Parking Areas. The City Council may from time to time by resolution establish and cause to be designated and marked, non-parking areas along street curbs. No vehicle shall be parked at any time or for any period except to load or unload passengers or merchandise in such place so designated and marked.

7.0506 Obstruction of Traffic. No vehicle shall be operated or allowed to remain upon any street under the jurisdiction of the City in such a manner as to form an unreasonable obstruction to traffic. Whenever any police officer finds a vehicle which constitutes an obstruction to traffic, such officers shall be authorized to provide for the removal of such vehicle by towing, if necessary, at owner's expense, with no liability to the City. (SDCL 32-30-1, 2, 3, 4)

7.0507 Parking During Snow Removal.

A. Definitions. For the purposes of this Section, the following terms and words shall have the meaning given herein:

1. Snow Removal Alert. Such times as there is a snow accumulation on the public streets of 2 inches or more, or such times as the Maintenance Superintendent or his or her designee declares that snow removal operations on the public streets will commence and that the provision of this Chapter in regard to parking on public streets during snow removal operations are effective and will be enforced.

2. Street. The entire width of any public roadway within the City, and it shall not be limited to those roadways designated as a *Street* but shall include all other names by which public roadways are designated.

B. Declaration of Snow Removal Alert. When the Maintenance Superintendent or his or her designee determines that snow removal from the public streets will commence, the Maintenance Superintendent or his or her designee will announce through local news media and whatever other sources are available that there has been declared a snow removal alert and that the provisions of this Chapter will be effective and be enforced,

designating a particular date and time when the alert shall commence. The determination to declare a snow removal alert will be based on the then existing weather conditions, and the amount of snow then on the ground or expected according to forecasts from the National Weather Service.

- C. Termination of Snow Removal Alert. After a snow removal alert has been declared, there will be no declaration of its termination, but the alert shall terminate and the provisions of this Section become not effective nor enforceable as to any particular street or portion of a street, as soon as that street or portion thereof has been plowed and cleared of snow accumulation, curb-to-curb, and the snow removal equipment is no longer operating in that area, after which normal parking may be resumed until the next declared snow removal alert.

- D. Violation of Snow Removal Alert. Parking contrary to and in violation of this Section shall be deemed prohibited parking and any vehicle or trailer parked in violation shall be subject to a fine of \$25.00. The owner or operator of the vehicle found in violation of this Section may, within 72 hours of the time when the notice of violation was attached to the vehicle, pay to the office of the City Finance Officer, as a fine for and in full satisfaction of the violation, the sum of \$25.00. If the owner or operator fails to pay the sum within the 72-hour period, he or she may pay to the office of the City Finance Officer, within the next 2 weeks from the date of violation, as a fine for and in full satisfaction of the violation, the sum of \$50.00. Upon failure of the owner or operator to pay either of the sums to the office of the City Finance Officer within the time periods indicated, and upon conviction of a violation of this Section, the owner or operator shall be fined not less than \$75.00 plus court costs, which fine shall be collected by the Magistrate Court. The owner or operator also has the right to contest the charges or plead “not guilty” within the time periods indicated above, and have the matter transferred to Magistrate Court. The penalties in this Section may be adjusted by resolution of the City Council.

7.0508 Ticketing and Towing Vehicles. Any authorized City official or law enforcement officer shall be authorized to ticket and tow away, or have removed and towed away by any commercial towing service, any car or vehicle illegally parked in any place where such parked vehicle creates or constitutes a traffic hazard, blocks the use of a fire hydrant, or obstructs or may obstruct the movement of any emergency or snow removal vehicle, or in any way is in violation with the provisions of this Title. Cars towed away for illegal parking shall be stored in a place designated by the City Council and shall be returned to the owner or operator of such vehicle upon payment of the penalty under Section 7.0504. (SDCL 32-30-13, 14)

7.0509 Abandoned Vehicles. The abandonment of a motor vehicle or other vehicle or any part thereof on any street in the City shall be subject to action and penalties as provided for in this Title and under Chapter 3.01. The abandonment of a motor vehicle or other vehicle or any part thereof on private or public property, other than a street, in view of the general public, anywhere in the City shall be prohibited except as specifically allowed under Chapter 3.01. (SDCL 32-30-12.1)

7.0510 Parking and Storage of Certain Vehicles. Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially zoned property other than in a completely enclosed building.

7.0511 Towing Costs. When a vehicle is removed from either public or private property as authorized by order of the City Council, the owner of the vehicle shall be responsible for all towing costs in addition to the penalty for violation. In addition the City shall not be liable for any damages to property or persons incurred as a result of such towing or storage.

CHAPTER 7.06 - TRUCKS

7.0601 Definitions. When in this Title the following terms are used they shall have the meanings respectively ascribed to them in this Section.

- A. Person - Any individual, association, company, corporation, firm, partnership or organization.
- B. Truck - Any motor vehicle designated or operated for the transportation of property which has a body weight or body and load weight which exceeds three (3) tons per axle.
- C. Motor Vehicle - All machines propelled by any power other than muscular used upon the streets or highways for the transportation of property.
- D. Trailer - A vehicle of the trailer type, without a power unit of its own, designed and used in conjunction with a motor vehicle for the transportation of property.
- E. Truck Route - Streets and highways designated as truck routes by the City Council.
- F. Streets - All other streets with the City which are not designated as truck routes.

7.0602 Truck Routes. The City Council, by resolution, may designate streets and highways within the City of Irene as truck routes.

7.0603 Detours. Trucks may operate on any officially established detour of a truck route or street unless such detours are posted prohibiting such operation by trucks.

7.0604 Operation of Trucks. All trucks, as defined, may not operate on any City street or highway other than designated truck routes, unless otherwise permitted by this article.

7.0605 Owner's Responsibility. In addition to the driver or operator, the owner of any truck being operated with such owner's permission and/or consent is liable for any violation of this Ordinance.

7.0606 Load Limits. If load limits have to be imposed with weather changes, these load limits would coincide with state and/or county, whichever is lesser, load limits when they are necessary.

7.0607 Exceptions to Use of Truck Routes. There shall be the following exceptions to the use of truck routes:

- A. A truck arriving at the end of any designated truck route may be driven over the most direct course to the nearest truck route which extends in the same general direction.
- B. The provisions of this Ordinance relating to the operation of trucks shall not apply to

emergency vehicles of the Police Department, Fire Department or to any public utility vehicles where actually engaged in the performance of emergency duties necessary to be performed by said public departments or public utilities, nor to any vehicle owned by or performing work for the City, the United States of America or the State or any of its political subdivisions.

- C. Any contractor, or material supplier, while engaged in the repair, maintenance, and construction of improvements within the City.
- D. Whenever any truck route has been established and identified, any person driving a truck having a gross weight of or more than ten thousand (10,000) pounds shall drive such truck on such routes and none other, except when it is impracticable to do so or where it becomes necessary to traverse another street or streets to a destination for the purpose of loading or unloading commodities, or for the purpose of towing a disabled or damaged motor vehicle to or from public or private property, and then only by such deviation from the nearest truck route as is reasonably necessary.

7.0608 Truck Route Signs. The Maintenance Superintendent shall cause all truck routes to be clearly marked to give notice that this Chapter is in effect.

7.0609 Enforcement of Truck Routes. The police department shall keep and maintain accurate maps setting out truck routes and streets upon which traffic is permitted. The maps shall be kept on file in the office of the Finance Officer and made available to the public.

Any police officer having reason to believe that the weight of a vehicle and load is unlawful shall require any person driving or in control of said vehicle to proceed to any public or private scale available for the purpose of weighing and determining whether this Chapter has been complied with provided that such vehicle is driven to the nearest scale but in no event more than five (5) miles. It shall be unlawful for any person driving or in control of any such vehicle to fail to comply with their requirement.

Nothing in this Chapter shall be construed to modify or change any of the regulations of the state highway department or the statutes of the state with reference to the gross weight permitted upon any highways within the City.

CHAPTER 7.07 - SNOWMOBILES

7.0701 Definitions. The following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them:

- A. Operate - to control the operation of a snowmobile.
- B. Owner - any person, other than a lienholder, having the property in or title to a snowmobile and entitled to the use or possession thereof.
- C. Private Property - means and includes any and all real property, or land within the City, which has not been opened or dedicated for public use or as a public thoroughfare.
- D. Snowmobile - any engine-driven vehicle of a type, which utilizes sled type runners,

wheels or skis with an endless belt tread or similar means of contact with the surface upon which it is operated.

- 7.0702 Operators License Required. No driver shall operate a snowmobile on a public street in the City without having in his or her possession a valid driver's license.
- 7.0703 Traffic Laws Applicable. The operator of a snowmobile 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.
- 7.0704 Hours of Operation. No person shall operate a snowmobile on private property of their own or another or upon public highways, streets and alleys within the City between the hours of 11:00 p.m. and 7:00 a.m. the following day.
- 7.0705 Permission of Property Owner Required for Operation. No person shall operate a snowmobile on private property of another without the express permission to do so by the owner or occupant of such property.
- 7.0706 Operation on Public Ground and Streets Prohibited. No person shall operate a snowmobile on any public school grounds, public sidewalks, park property, park, roads, playgrounds and recreational areas within the City. Snowmobiles may be operated over snow-covered highways, streets and alleys within the City limits but only for emergency use as defined in 7.0711 or when the operator must travel upon such for purposes of leaving the City and/or when returning to his residence from outside the City. The operator when using any public street, highway or alley in accordance with the above restrictions, shall use the most expeditious and direct route.
- 7.0707 Crossing Streets at Right Angles. Persons operating snowmobiles are permitted to cross streets at right angles but only may do so after stopping and yielding the right-of-way to all approaching traffic and crossing as closely as possible to an intersection or approach.
- 7.0708 Speed. No person shall operate a snowmobile at a speed greater than is reasonable or proper, under all existing circumstances. But in no event shall the speed be greater than the maximum limits allowed in Section 7.0403.
- 7.0709 Careless, Reckless or Negligent Operation Prohibited. No person shall operate a snowmobile in a careless, reckless or negligent manner so as to be likely to endanger the person or property of another or cause injury or damage thereto.
- 7.0710 Loud Noises Prohibited. No person shall operate a snowmobile in such manner as to create any loud unnecessary or unusual noise likely to disturb or interfere with the peace and quiet of any other person.
- 7.0711 Emergency Use.
- A. The City Council may declare that road or weather conditions are such as to constitute emergency travel conditions authorizing use of a snowmobile.
 - B. A snowmobile may also be used when such vehicle is necessary as an emergency vehicle to protect the health, safety and welfare of any individual.

- C. The operator of a snowmobile under emergency conditions shall be subject to all existing traffic ordinances of the City and traffic laws of the State.
- 7.0712 Equipment Required. All snowmobiles operated in the City shall have the following equipment.
- A. Mufflers which are properly attached and which reduce the noise of operations of the vehicle to the minimum noise necessary for operating the vehicles and no person shall use a muffler cutout, bypass or similar device on such vehicle.
 - B. Adequate brakes in good working condition.
 - C. A safety or “deadman” throttle in operating condition such being a device which when pressure is removed from the accelerator the throttle causes the motor to disengage from the driving tract.
 - D. At least one headlight and one tail light in good working condition.
 - E. A brightly colored vehicle flag hung or suspended at least six (6) feet high and is firmly attached to the snowmobile.
- 7.0713 Unattended Vehicles. No owner or operator of a snowmobile shall leave or allow the snowmobile to be or remain unattended on public property or streets while the motor is running, or where the keys for starting the vehicle are left in the ignition.
- 7.0714 Sidewalk Operation Prohibited. No person shall operate a snowmobile upon any public sidewalk in the City or bike/walking trail.
- 7.0715 Operation Under the Influence. The operator of a snowmobile shall be deemed the driver or operator of a motor vehicle and be subject to South Dakota law relating to driving while under the influence of intoxicating liquor, drugs or otherwise therein provided and such operator shall be punishable for any violation of such laws.
- 7.0716 Towing. No person operating a snowmobile shall tow any person or object behind such snowmobile except when such person or object is situated upon a conveyance, which is attached to such snowmobile by means of a rigid hitch or tow bar.

CHAPTER 7.08 - MISCELLANEOUS PROVISIONS

- 7.0801 Duty Upon Striking Animal. The operator of any vehicle which collides with any dog or domestic animal causing injury thereto shall stop and attempt to ascertain the owner of such animal and notify a law enforcement officer of such accident.
- 7.0802 Manner of Arrest. Except in cases of driving while intoxicated or under the influence of intoxicating liquor or any exhilarating drug and except in the more serious and aggravated cases of speeding or careless and reckless driving, and except when reasonably necessary to secure appearance, a person charged with a violation of this Title by a police officer need not be arrested in the regular manner but may first be given an opportunity, after notice, to appear voluntarily to answer for such traffic violation.

- 7.0803 Notice to Appear. A person charged with violation of a traffic ordinance shall be given a notice to appear before the circuit court magistrate or the county clerk of courts at the time stated in such notice, which shall be written within ten (10) days from the time of the offense; and that in event of failure to do so, a warrant will be issued for his arrest. The notice shall state the name and address of the offender, if known; the license number and make of the vehicle involved in the violation; the nature, date, and location of the offense; and the time and place where the offender is to appear to answer to the charges. The notice shall be made in duplicate and the portion of the original stating the offense and the place and time to appear shall be given to the owner or driver charged with the offense or left in or upon the vehicle involved in the violation.
- 7.0804 Appearance and Deposit for Fine. A person who has received a notice of a traffic violation as provided in the preceding section shall appear at the time and place specified in such notice. In cases of parking violations and other minor traffic violations for which the person charged has been ordered to appear before the circuit court magistrate or county clerk of courts; he may make a deposit for the fine as authorized by the court and sign a statement authorizing a circuit court magistrate or county clerk of courts to enter his plea of guilty to the offense, then he shall not be required to appear in court. Any person who has been guilty of three (3) or more violations of the provisions of the traffic ordinances of this city shall not be permitted to deposit the fine as herein above authorized, but must post a bond for his appearance in court at the time specified by the department, said bond to be in an amount set by the city council and on file at the office of the finance officer.
- 7.0805 Failure to Appear. Upon failure of a person to appear in response to a notice of a traffic violation as herein provided, he shall be subject to arrest in the manner otherwise provided by law.

CHAPTER 7.09 - GOLF CARTS

- 7.0901 Definitions. For purposes of this Chapter, the following words shall have the following meanings:
1. “Golf Cart” - A 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. (SDCL 32-14-13)
 2. “Operator” - Every person who operates or is in actual physical control of a golf cart.
- 7.0902 Golf Cart Operation. Golf carts shall not be allowed to operate within the City except as authorized by state statute or by this Chapter. Golf carts properly permitted pursuant to this Chapter shall be allowed to travel on the roadway portion of public streets, alleys and other roadways within the City except those highways where golf carts are prohibited by state statute. An operator of a golf cart shall comply with all City and state traffic rules and regulations applying to vehicles generally, and except that a golf cart shall not be required to have a bell, horn or directional signals.
- 7.0903 Operation of Golf Cart on State or County Highway or Bike/Walking Trail Prohibited. 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 or on the bike/walking trail. A golf cart may cross the state or county 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. (SDCL 32-14-15)

- 7.0904 Operator's License and Insurance. No person may operate a golf cart on the streets, alleys, roadways or other public places within the City limits unless the operator has a valid driver's license and proof that the golf cart is covered by a policy of liability insurance.
- 7.0905 Permit. It shall be unlawful to operate a golf cart within the City unless the same is permitted in the City of Irene. Upon submittal of proper application, the Finance Officer shall issue a permit sticker that shall be displayed in a readily identifiable location upon the golf cart. Permit fees and durations shall be set by resolution by the Irene City Council.
- 7.0906 Slow-Moving Vehicle Emblem or White or Amber Warning Lights. Golf carts permitted by the City shall display a slow-moving emblem in accordance with SDCL 32-15-20 or a white or amber warning light in accordance with SDCL 32-17-46.
- 7.0907 Violation of Golf Cart Operation. Operating contrary to and in violation of this Chapter shall be deemed prohibited and any operator in violation shall be subject to a fine of \$25.00. The operator of the golf cart found in violation of this Section may, within 72 hours of the time when the notice of violation was given, pay to the office of the City Finance Officer, as a fine for and in full satisfaction of the violation, the sum. If the operator fails to pay the sum within the 72-hour period, he or she may pay to the office of the City Finance Officer, within the next 2 weeks from the date of violation, as a fine for and in full satisfaction of the violation, the sum of \$50.00. Upon failure of the owner or operator to pay either of the sums to the office of the City Finance Officer within the time periods indicated, and upon conviction of a violation of this Section, the owner or operator shall be fined not less than \$75.00 plus court costs, which fine shall be collected by the Magistrate Court. Any person claimed to be in violation also has the right to contest the charges or plead "not guilty" within the time periods indicated above, and have the matter transferred to Magistrate Court. The penalties in this Section may be adjusted by resolution of the City Council.

TITLE 8 - MUNICIPAL UTILITIES

Chapter 8.01 - General Provisions

Chapter 8.02 - Water Provisions

Chapter 8.03 - Sewer Provisions

CHAPTER 8.01 - GENERAL PROVISIONS

- 8.0101 Utility Service - Application Required. Any person desiring any utility service furnished by the City shall make application for the same to the City Council. Such application shall contain the applicant's name, address and the uses for which such service is desired. A separate application shall be made for each premise to be served. The applicant shall abide by the rules and regulations established by the City relative to utility service in effect at the time of such application and as they may be revised from time to time in addition to conditions and agreements as the City Council shall deem advisable.
- 8.0102 Deposit. Any applicant for City utility service shall make a cash deposit in an amount set by the City Council. The deposit is also an indemnity against theft, misplacement, or injury to City equipment. The deposit shall be returned when the consumer shall give due notice of discontinuing utility service and is free from indebtedness to the City.
- 8.0103 Rates. Rates for the use of utilities furnished by the City shall be established by resolution by the Irene City Council.
- 8.0104 Consumer's Bills - Water. All meters shall be read near the beginning of each month and following such reading, any amount due for water used shall be payable on or before the fifteenth (15th) day of the same month. Failure of property owners to comply with the time of payment of water bills shall subject them to a penalty for late payment which shall be established at 10% of current bill amount in addition to termination of water service. If not paid by the fifteenth (15th) of the month, they become delinquent. If the bill remains unpaid on the fifteenth (15th) day of the month in which it becomes due, the consumer is notified by mail that if the account is not paid in full ten (10) days from the date of notice, disconnection of service will be effected without further notice, unless the consumer requests a hearing before the City Council to answer as to why the bill has not been paid. The City Council may at its discretion enter into agreements with consumers as to mutually satisfactory payment plans for delinquent bills. Should no payment plan be reached or the delinquent consumer fails to show cause why service should not be terminated, the City Council shall order that the service be terminated without further notice to the consumer. Termination of service may be accomplished at any time, day, or month of the year for cause as determined by the City Council.
- 8.0105 Restoration of Service. All utilities disconnected for nonpayment must pay a reconnect fee as set by the City Council plus payment in full of the account before any utilities will be reconnected. Reconnections will be made only during business hours, 9:00 a.m. to 3:00 p.m., Monday through Friday. Utilities voluntarily disconnected shall also require a reconnect fee as set by the City Council and on file in the office of the Finance Officer.
- 8.0106 Owner, Lessee Liable. The owner of property, which is serviced by municipal utilities from

the City, shall, as well as the lessee or occupant of the property, be liable to the City for the utility bills set forth in 8.0104, which may be recovered in an action against such owner, lessee or occupant or against any or all of them, jointly or severally. The provisions contained in 8.0104 and 8.0105 shall equally apply to the owner of the property as they do to the consumer/lessee or occupant.

8.0107 Tampering With City Equipment. Should the City discover damage to its equipment or an attempt to tamper with such equipment or an attempt to falsify the amount of water, sewer, or electric current used, or the amount due the City for utility service, the City may serve notice upon the consumer of a hearing that is to be held where the consumer may show cause why service should not be discontinued. This notice shall state the reason for the hearing and the time and place it is to be held.

Should the City Council find that a violation of this section has occurred and that there is no justification for said violation, the City Council may order immediate termination of service and service shall be reinstated only upon conditions established by the City Council.

8.0108 User Responsible for Operation and Maintenance of Water and Sewer Lines. Each occupied residence must have a usable water and sewer service. The City of Irene shall be responsible for the maintenance and proper operation of the water mains, sewer mains and water service line from the main to and including the curb stop. Any other water or sewer line shall be the exclusive responsibility of the property owner. All owners must, at their own expense, keep their equipment in good working order and properly protected from frost and other damage. In the event that a property owner must excavate to repair a line, it shall be his responsibility to fill in such excavation to the satisfaction of the City. It shall be the responsibility of the City to replace the pavement displaced by such excavation at the cost of the property owner.

8.0109 City Not Liable for Damage. No claim shall be made against the City by reason of the breaking of any service pipe or equipment, or for any other damage that may result from shutting off water for repairing or any other purpose, or for any variation in pressure, or ram of water from mains, and no reduction will be made from regular rates because of leaking pipes or fixtures. The City shall not be liable for damage or injury to person or property whether caused by fire, interruption of service, downed lines, blackouts, brownouts, discontinuance of service, or other utility-related problems which shall arise from mechanical breakdowns, electricity supply reductions, and act of God, or other cause beyond the control of the City.

8.0110 Powers and Authority of Inspectors. Maintenance superintendents and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties upon reasonable notice for the purposes of inspection, observation, measurement, sampling, and testing pertinent to utility service to the community system in accordance with the provisions of this Ordinance.

8.0111 Damage, Trespass of Equipment. It shall be unlawful for any person, not having authority to do so, to open any water hydrant or tamper with any utility service equipment or apparatus furnished by the City to consumers, or to in any other way molest, damage or trespass upon any equipment or premises belonging to the City connected with any such service.

CHAPTER 8.02 - WATER PROVISIONS

- 8.0201 Permit. Any person desiring water service from the City shall make application to the Finance Officer and shall furnish a hookup fee in an amount set by the City Council with that application as evidence that he or she will comply with all ordinances pertaining to such service. Upon the filing of the application and the payment of the permit fee and deposit, a permit shall be issued authorizing the connection to be made at the place provided for therein. No tap shall be made until a permit is issued therefore.
- 8.0202 Inspections. The maintenance superintendent or such person as he may direct shall be authorized to enter and have free access at all reasonable hours to premises to ascertain the location and condition of all hydrants, pipes, or other fixtures attached to the water works; and in case he finds water is wasted on account of negligence or for want of repairs and if such waste is not immediately remedied, the water leading to such premises shall be turned off. It shall also be the duty of said officer in case he discovers any defect in a private pipe in the street to give notice in writing to be left at the premises, and if necessary repairs are not made within forty-eight (48) hours thereafter, the water shall be shut off and shall not be turned on again until the repairs have been made and a reconnection fee has been paid to the Finance Officer.
- 8.0203 Meter Required. All places supplied with water shall be metered by a meter of a type approved by the City Council installed at the cost of the owner or user. All meters shall be tested before installation.
- 8.0204 Repair and Return of Meters. The City will make all necessary repairs to meters and all repairs to the meters shall be made at the expense of the City, unless the homeowner has misused or caused damaged in which case the homeowner shall be responsible for repair or replacement costs.
- 8.0205 Replacing of Meters. The maintenance superintendent shall determine if water meters which are no longer working properly need to be replaced. The City shall provide a new replacement meter and install said meter at the owner or user's expense. Any additional repairs needed on the property owner's pipes or property to install such meter will also be at the expense of the property owner.
- Any new or replacement encasement for underground meters must be of metal, concrete, or poly-vinylchloride (PVC) with an outside dial for guaranteed accessibility to City employees.
- 8.0206 Testing Meters. If the consumer doubts accuracy of any meter, he may have the meter tested by the City. If the meter is more than three (3) percent fast, proper deductions will be made from the bill for the preceding period. If the meter is more than three (3) percent slow, the proper amount will be added to the bill. If after testing the meter is shown to be accurate, a minimum twenty dollar (\$20) service charge will be paid by the property owner.
- 8.0207 Water Lines How Laid. All service lines shall be at least six (6) feet below the established grade of the street, avenue, or alley in which they shall be laid, and in all places at least six (6) feet below the surface of the ground, unless otherwise authorized by the City Council. All plumbing fixtures, piping, or apparatus shall be installed with such material as to withstand safely the perils surrounding their conditions of operation and use.

When service pipes are found disconnected at the corporation stop at any main, they may be

reconnected only by the City or on its order. No water main or service may be laid in the same trench with gas mains or other foreign conduits. Special permission may be granted, however, when deemed advisable by the City Council, for laying of water lines in trenches with sewer lines, and then only with the placement of water lines well above sewer lines to prevent subsequent possible contamination of water mains.

- 8.0208 Water Line Requirements. All water mains shall be at least six (6) inch PVC with gasket joints, service lines shall be a minimum of one inch copper or PVC to the property line and 3/4 inch copper or PVC to the meter, and hydrants shall be six (6) inch, with two or three way openings unless otherwise approved by the City Council.
- 8.0209 Water - Restrictions. The City may limit or prohibit temporarily the use of water from the City distribution system for any purpose, except domestic purposes within the dwellings of consumers or in business establishments, during emergencies, in the event of plant breakdown, prolonged drought or shortage of water supply for any reason in order to maintain maximum fire protection efficiency. The Mayor shall authorize the imposition of these restrictions. The City will attempt to notify affected utility customers if time permits of any such limitation. Any person violating the terms of such prohibition or restriction after such notice shall upon conviction thereof be subject to the penalties provided in this ordinance (Section 12.0101). Water service to the premises involved may be discontinued entirely during emergency.
- 8.0210 Penalty. Any person violating any of the provisions of this Chapter shall, in addition to the ordinary penalties prescribed for violation of this Ordinance, be subject to having water service turned off to the premises of such consumer, and service shall not be restored until there has been full compliance of this Chapter and the payment of such fees for restoring service as may be provided by this Chapter.

CHAPTER 8.03 - SEWER PROVISIONS

- 8.0301 Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

Biochemical Oxygen Demand. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standards of laboratory procedures in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter.

Building Drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from the soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

Building Sewer. The extension from the building drain to the public sewer or other place of disposal, also called house connection.

Combined Sewer. A sewer intended to receive both wastewater and storm or surface water.

Easement. An acquired legal right for the specific use of land owned by others.

Floatable Oil. Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in a an approved pretreatment facility.

Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

Industrial Wastes. The wastewater from industrial processes, trade, or business as distinct from domestic or sanitary waste.

May. Whenever the word "may" appears, it is permissive.

Natural Outlet. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

Person. Any individual, firm, company, association, society, corporation, or group.

pH. The logarithm of the reciprocal of the hydrogenion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogenion concentration of 10^{-7} .

Properly Shredded Garbage. The wastes from the preparation, cooking, and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.

Public Sewer. A common sewer controlled by a governmental agency or public utility.

Sanitary Sewer. A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

Sewage. The spent water of a community. The preferred term is "wastewater."

Sewer. A pipe or conduit that carries wastewater or drainage water.

Shall. Whenever the word "shall" appears, it is mandatory.

Slug. Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during the normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

Storm Drain or Storm Sewer. A drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.

Superintendent. The superintendent of wastewater facilities, and/or superintendent of public works of the City of Irene, or his authorized deputy, agent, or representative.

Suspended Solids. Total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.

Unpolluted Water. Water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater. The spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and stormwater that may be present.

Wastewater Facilities. The structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and disposes of the effluent.

Wastewater Treatment Works. An arrangement of devices and structures for treatment wastewater, industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."

Watercourse. A natural or artificial channel for the passage of water either continuously or intermittently.

8.0302 Use of Public Sewers Required.

- A. It shall be unlawful for any person to place, deposit, or permit to be placed or deposited in any unsanitary manner on public or private property within the City of Irene, or in any area under the jurisdiction of the 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 Irene, 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 subsequent provisions of this Chapter.
- 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 wastewater.
- D. The owner of a house or building, used for human occupancy, employment, or recreation, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the City, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Chapter, within one hundred twenty (120) days after date of official notice to do so, provided that the public sewer is within two hundred (200) feet of the property line.
- E. The procedure for determining equitable sewer charges to be levied on all users which discharge wastewater to the City wastewater system is established by ordinance and kept on file in the office of the Finance Officer.

8.0303 Private Wastewater Disposal.

- A. Where a public sanitary sewer is not available under the provisions of section

8.0302(D), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this section (8.0303.)

- B. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the superintendent. A permit and inspection fee of twenty-five (\$25) dollars shall be paid to the City at the time the application is filed.
- C. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the superintendent.
- D. The type, capacity, location, and layout of a private wastewater disposal system shall comply with all the recommendations of the department of public health of the State of South Dakota. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than 43,560 square feet (1 acre). No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- E. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in section 8.0303(D), a direct connection shall be made to the public sewer within sixty (60) days in compliance with this chapter, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
- F. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the City. The City may notify the owner upon receipt of a complaint and the owner must comply within forty-eight (48) hours.
- G. No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by the health officer.

8.0304 Sanitary Sewers, Building Sewers, and Connections.

- A. No unauthorized person shall uncover, make any connections with or open into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent.
- B. There shall be two (2) classes of building sewer permits: (1) for residential and commercial service; and (2) for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee for a residential, commercial or industrial building sewer permit shall be paid to the City at the time the application is filed. The amount of the fee shall be set by resolution of the City council, which is on file at the finance office.

- C. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- D. A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another or an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway. The building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.
- E. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this chapter.
- F. The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be use in excavating, placing of the pipe, jointing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or applicable rules and regulations of the City and the State of South Dakota. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in the appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.
- G. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- H. No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the superintendent and the South Dakota State Department of Health for purposes of disposal of polluted surface drainage.
- I. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City, and the State of South Dakota, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.
- J. The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent or his representative.
- K. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks,

parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

8.0305 Use of Public Sewers.

- A. No person(s) shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, groundwater, roof runoff, subsurface drainage, or cooling water to any sewer, except stormwater runoff from limited areas, which stormwater may be polluted at times, may be discharged to the sanitary sewer by permission of the superintendent and the South Dakota State Department of Health.
- B. Stormwater other than that exempted under section 8.0305(A) and all other unpolluted drainage shall be discharged to such sewers as specifically designated as storm sewers, or to a natural outlet approved by the superintendent and the South Dakota Department of Health. Unpolluted industrial cooling water or process waters may be discharged, on approval of the superintendent, to a storm sewer or natural outlet.
- C. No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:

- 1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- 2. Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, to constitute a hazard to humans or animals, to create a public nuisance, or to create any hazard or adverse effect on the waters receiving any discharge from the treatment works.

Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the Irene treatment works shall pay for such increased costs.

- 3. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- D. The following described substances, materials, waters, or waste shall be limited in discharges to municipal systems to concentration or quantities which will not harm either the sewers, the sludge of any municipal system, or the wastewater treatment process or equipment, nor have an adverse effect on the receiving stream, nor otherwise endanger lives, limb, public property, or constitute a nuisance. The superintendent may set limitations lower than the limitations established in the regulations below, if, in his opinion, such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the superintendent will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process

employed, capacity of the wastewater treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the superintendent are as follows:

1. Wastewater having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65 degrees Celsius).
 2. Wastewater containing more than twenty-five (25) milligrams per liter of petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin.
 3. Wastewater from industrial plants containing floatable oils, fat, or grease.
 4. Any garbage that has not been properly shredded (see section 8.0301, definitions). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
 5. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the superintendent for such materials.
 6. Any waters or wastes containing odor- producing substances exceeding limits which may be established by the superintendent.
 7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.
 8. Quantities of flow, concentrations, or both which constitute "slug" as defined herein.
 9. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amendable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
 10. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.
- E. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 8.0305(D) of this chapter, and which in the judgement of the superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may:

1. Reject the wastes;
 2. Require pretreatment to an acceptable condition for discharge to the public sewers;
 3. Require control over the quantities and rates of discharge and/or;
 4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of section 8.0305(K) of this Chapter. If the superintendent permits the pretreatment or equalization of waste flow, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent and the South Dakota State Department of Health.
- F. Grease, oil, and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in section 8.0305(E) (3), or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the superintendent and the South Dakota State Plumbing Code, and shall be located so as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates and means of disposal which are subject to review by the superintendent. Any removal and hauling of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.
- G. Where pretreatment or flow-equalization facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
- H. When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the superintendent. The structures shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.
- I. The superintendent may require a user of sewer services to provide information needed to determine compliance with this chapter. These requirements may include:
1. Wastewater's discharge peak rate and volume over a specified time period.
 2. Chemical analyses of wastewaters.
 3. Information on raw materials, processes, and products affecting wastewater volume and quality.
 4. Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control.
 5. A plot plan of sewers on the user's property showing sewer and pretreatment facility location.
 6. Details of wastewater pretreatment facilities.
 7. Details of systems to prevent and control the losses of materials through spills to

the municipal sewer.

- J. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the superintendent.
- K. No statement contained in this section (8.0305) shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment.

8.0306 Destruction of Property. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

8.0307 Powers and Authority of Inspectors.

- A. The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing pertinent to discharge to the community system in accordance with the provisions of this chapter.
- B. The superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage of competitors.
- C. While performing the necessary work on private properties referred to in section 8.0307(A), the superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City employees, and the City shall indemnify the company against loss or damage to its property by the City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in section 8.0305(H).
- D. The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

8.0308 Penalties.

- A. Any person found to be violating any provision of this chapter except section 8.0306 shall be served by the City with written notice stating the nature of the violation and providing notice to the offender to permanently cease all violations with ten (10) days.
- B. Any person who shall continue any violation beyond ten (10) days shall upon conviction thereof be subject to the penalties provided in this ordinance (Section 12.0101). Each day in which any such violation shall continue shall be deemed a separate offense.
- C. Any person violating any of the provisions of this Chapter shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violations, including attorney fees incurred to enforce these provisions.

TITLE 9 - PLANNING AND ZONING

Chapter 9.01 - Planning Commission

Chapter 9.02 - Zoning Regulations

Chapter 9.03 - Subdivision Regulations

Chapter 9.04 - Flood Damage Prevention

CHAPTER 9.01 - PLANNING COMMISSION

- 9.0101 Created. The Irene Planning Commission is hereby created pursuant to SDCL 11-6 for the City of Irene, South Dakota.
- 9.0102 Number, Appointment and Tenure of Planning Commission Members. The Irene Planning Commission shall consist of not less than five (5) members appointed by the Mayor and subject to approval by the City Council. The term of each of the appointed members shall be five years except when the Planning Commission is first appointed, at least three members shall be appointed for four years and the balance of the members shall be appointed for five years. Thereafter appointments of each member shall be for terms of five years so that there will be an overlapping of tenure. Administrative officials of the City may be appointed as ex-officio members of the Planning Commission.
- 9.0103 Vacancies. Any vacancy in the membership of the Planning Commission shall be filled for the unexpired term in the same manner as for appointment.
- 9.0104 Organization. The Planning Commission shall elect a Chairman from among its members for a term of one year with eligibility for re-election and shall also elect a Vice Chairman and Secretary in a manner prescribed by the rules of the members. The Planning Commission shall hold at least one regular meeting each month and shall adopt rules for transaction of its business and keep a record of its resolutions, transactions, findings and determinations which shall be a public record. The Planning Commission may appoint such employees as it may deem necessary for its work and may also contract with planners, engineers, architects and other consultants for such services as it may require, provided however, that such appointments and contracts shall be approved by the City Council.
- 9.0105 Removal for Cause. The Mayor, with confirmation of the City Council, shall after public hearing have the authority to remove any member of the Planning Commission for cause, which cause shall be stated in writing and made a part of the record of such hearing.
- 9.0106 Powers and Duties of Commission. The Irene Planning Commission, its members and employees, shall have all such powers as may be necessary to enable it to perform its functions, promote planning and carry out all the purposes and powers enumerated in SDCL 11-4 and 11-6 and acts amendatory thereof.
- 9.0107 Preparation of Comprehensive Plan. The Planning Commission of Irene shall propose a comprehensive plan for the physical development of the City pursuant to the terms of SDCL 11-4 and 11-6. The general purpose of the comprehensive plan shall be to guide and accomplish a coordinated and harmonious development within the City. After the comprehensive plan has been adopted according to law, no substantial amendment or

modification thereof shall be made, without the proposed change first being referred to the Planning Commission for its recommendations.

9.0108 Zoning Regulations. It shall be a duty of the Planning Commission to recommend the boundaries of zoning districts and appropriate regulations to be enforced therein, in accordance with the comprehensive plan. The Planning Commission shall prepare regulations governing land uses and building or set-back lines in accordance with SDCL 11-4 and 11-6. All applications and proposals for changes in or amendments to the zoning regulations shall first be submitted to the Planning Commission for its recommendations.

9.0109 Subdivision Plans and Regulations. All plans, plats or re-plats or subdivisions or resubdivisions of land within the jurisdiction of the City shall first be submitted to the Planning Commission for its recommendation before approval by the City Council. The Planning Commission shall prepare and recommend to the City Council regulations governing the subdivision of land within its jurisdiction. No amendments or changes thereto shall be made without recommendation by the Planning Commission.

CHAPTER 9.02 - ZONING REGULATIONS

(See Appendix 1)

CHAPTER 9.03 - SUBDIVISION REGULATIONS

(See Appendix 2)

CHAPTER 9.04 - FLOOD DAMAGE PREVENTION

9.0401 Statutory Authorization, Findings of Fact, Purpose and Methods.

- A. Statutory Authorization. The Legislature of the State of South Dakota has in SDCL 9-36 and 7-18-14 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Irene, SD does ordain as follows:

The City of Irene elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid act, provides that areas of the city having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. The National Flood Insurance Program was broadened and modified with the passage of the Flood Disaster Protection Act of 1973 and other legislative measures. It was further modified by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Program is administered by the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security.

- B. Findings of Fact.

1. The flood hazard areas of Irene are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
 2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.
- C. **Statement of Purpose.** It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
1. Protect human life and health;
 2. Minimize expenditure of public money for costly flood control projects;
 3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 4. Minimize prolonged business interruptions;
 5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
 6. Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
 7. Insure that potential buyers are notified that property is in a flood area.
- D. **Methods of Reducing Flood Losses.** In order to accomplish its purposes, this ordinance uses the following methods:
1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
 2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
 4. Control filling, grading, dredging and other development which may increase flood damage;
 5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

9.0402 **Definitions.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its' most reasonable application.

Area of future-conditions flood hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood-related erosion hazard is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area; in preparation for publication of the FIRM, Zone E may be further refined.

Area of special flood hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) - Is the water surface elevation of the one (1) percent annual chance flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building--see structure.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Erosion means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

Existing construction means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the

manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing structures--see existing construction.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
 3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

Flood elevation determination means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study or Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood plain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway--see regulatory floodway.

Floodway encroachment lines mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic reservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior or
 2. Directly by the Secretary of the Interior in states without approved programs.

Levee means a man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor;

Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Sec. 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle means a vehicle which is:

- a. Built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Special flood hazard area: see “area of special flood hazard”.

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Structure, for insurance purposes, means:

1. A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
2. A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
3. A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

2. Any alteration of a “historic structure”, provided that the alteration will not preclude the structure's continued designation as a “historic structure.”

Variance means a grant of relief by a community from the terms of a flood plain management regulation.

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in **Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5)** of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

9.0403 General Provisions.

- A. Lands to Which this Ordinance Applies. The ordinance shall apply to all areas of special flood hazard within the jurisdiction of Irene.
- B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Yankton County, SD," dated July 6, 2010, with accompanying Flood Insurance Rate Maps (FIRM), dated July 6, 2010 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.
- C. Establishment of Development Permit. A Development Permit shall be required to ensure conformance with the provisions of this ordinance.
- D. Compliance. No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.
- E. Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- F. Interpretation. In the interpretation and application of this ordinance, all provisions shall be:
 1. Considered as minimum requirements;
 2. Liberally construed in favor of the governing body; and
 3. Deemed neither to limit nor repeal any other powers granted under state statutes.
- G. Warning and Disclaimer or Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur

and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

- H. Severability. If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

9.0404 Administration.

- A. Designation of the Floodplain Administrator. The Mayor is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.
- B. Duties and Responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:
 - 1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
 - 2. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
 - 3. Review, approve or deny all applications for development permits required by adoption of this ordinance.
 - 4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
 - 5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
 - 6. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management (OEM), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - 7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
 - 8. When base flood elevation data has not been provided in accordance with Section 9.0403(B), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Section 9.0405.
 - 9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative

effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

10. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

C. Permit Procedures. Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
3. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 9.0405(B)(2);
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
5. Maintain a record of all such information in accordance with Section 9.0404 (B)(1). Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
 - a. The danger to life and property due to flooding or erosion damage;
 - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - c. The danger that materials may be swept onto other lands to the injury of others;
 - d. The compatibility of the proposed use with existing and anticipated development;
 - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - h. The necessity to the facility of a waterfront location, where applicable;
 - i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - j. The relationship of the proposed use to the comprehensive plan for that

area.

D. Variance Procedures.

1. The City Council shall act as the Appeal Board to hear and render judgment on requests for variances from the requirements of this ordinance.
2. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency and the State Office of Emergency Management upon issuing a variance.
5. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection C(2) of this Section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
6. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Section 9.0401(C)).
7. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
8. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
9. Prerequisites for granting variances:
 - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. Variances shall only be issued upon:
 1. Showing a good and sufficient cause;
 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - c. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
10. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

- a. the criteria outlined in Section 9.0404(D)(1)-(9) are met, and
- b. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

9.0405 Provisions for Flood Hazard Reduction.

A. General Standards. In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- 1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- 2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- 3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- 4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- 6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- 7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

B. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 9.0403(B), (ii) Section 9.0404(B)(8), or (iii) Section 9.0405(C)(3), the following provisions are required:

- 1. Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 9.0404(C)(1), is satisfied.
- 2. Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall

certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

3. Enclosures - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
4. Manufactured Homes –
 - a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

C. Standards for Subdivision Proposals.

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Section 9.0401(B)(C)(D) of this ordinance.
2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Section 9.0403(C); Section 9.0404(C); and the provisions of Section 9.0405 of this ordinance.
3. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 9.0403(B) or Section 9.0404(B)(8) of this ordinance.
4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
5. All subdivision proposals including the placement of manufactured home parks

and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

- D. Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Any person who violates this Chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than 30 days or both such fine and imprisonment. Each and every day of the continued violation may constitute a separate offense. In addition to any fine and imprisonment for each violation, violators shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Irene from taking such other lawful action as is necessary to prevent or remedy any violation.

TITLE 10 - TAXATION

Chapter 10.01 - Municipal Sales and Service Tax and Use Tax Chapter 10.02 - Gross Receipts Tax

CHAPTER 10.01 - MUNICIPAL SALES AND SERVICE TAX AND USE TAX

- 10.0101 Purpose. The purpose of this Chapter is to provide additional revenue for the City of Irene, Turner, Clay, and Yankton Counties, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted by the State of South Dakota by SDCL 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.
- 10.0102 Effective Date. From and after the first day of January, 2004, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by two percent (2%) on the gross receipts of all persons engaged in business within the jurisdiction of the City of Irene, Clay, Turner, and Yankton Counties, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.
- 10.0103 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 day of January, 2004, 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.
- 10.0104 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.
- 10.0105 Interpretation. It is declared to be the intention of this Chapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto and the South Dakota Use Tax, SDCL 10-46 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to the tax.

CHAPTER 10.02 - GROSS RECEIPTS TAX

- 10.0201 Purpose. The purpose of this Chapter is to provide additional needed revenue for the Municipality of Irene, Clay, Turner and Yankton Counties, South Dakota, by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52A, and acts amendatory thereto.
- 10.0202 Effective Date. From and after the first day of January, 2012, there is hereby imposed a municipal gross receipts tax of One Percent (1%) upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites or other lodging accommodations within the

municipality for periods of less than twenty-eight (28) consecutive days, the sale of alcoholic beverages as defined in SDCL 35-1-1, establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic and cultural events. The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Irene, Clay, Turner and Yankton Counties, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

- 10.0203 Collection. Such tax is levied pursuant to authorization granted by SDCL 10-52A 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 of the State of South Dakota shall lawfully prescribe.
- 10.0204 Interpretation. It is declared to be the intention of this Chapter 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 Tax, SDCL 10-45 and acts amendatory hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.
- 10.0205 Use of Revenue. Any revenues received under this Chapter may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic center, auditoriums or athletic facility buildings, including the maintenance, staffing and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions and activities.

TITLE 11 - GENERAL PROVISIONS

Chapter 11.01 - Penalties and Repealing Clause

CHAPTER 11.01 - PENALTIES AND REPEALING CLAUSE

- 11.0101 Penalty in General. Except in cases where a different or additional penalty is imposed by this ordinance or by some existing provision of law, every violation of any of the provisions of this ordinance shall be punishable by a fine not exceeding two hundred dollars (\$200.00) or by imprisonment for a period not exceeding thirty (30) days or both such fine and imprisonment. Each day in which a violation of this Code or other ordinance continues shall constitute a separate offense. (SDCL 9-19-3)
- 11.0102 Conflicting Ordinances Repealed. All former ordinances or parts of former ordinances in conflict with the provisions of this ordinance or relating to the subject matter of this ordinance, except as stated in this chapter, are hereby repealed; provided however, that nothing herein shall be construed as repealing any special ordinances, appropriation ordinances, franchise ordinances establishing fees and charges, levy ordinances for the issuance of bonds, or special ordinances of like character, nor shall this ordinance repeal or modify the provisions of any zoning ordinances or any other ordinances requiring a special method of adoption, nor shall this ordinance repeal or modify the provisions of any resolution heretofore adopted by the City of Irene unless the provisions of this ordinance either modify, repeal, or amend such resolution; and all such ordinances and resolutions shall remain in full force and effect.
- 11.0103 Unconstitutionality. Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.
- 11.0104 Publication and Effect. This ordinance shall take effect immediately upon its adoption and publication of the notice of such adoption as provided by SDCL 9-19-17.