

REVISED

MUNICIPAL ORDINANCES

CITY OF MONTROSE, SOUTH DAKOTA

Ordinance # 11-309

Effective Date: September 1, 2011

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

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

ORDINANCE # 11-309

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

BE IT ORDAINED BY THE CITY OF MONTROSE, 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:	May 10, 2011
Second Reading and Adoption:	June 14, 2011
Publication Dates:	August 5, 2011 & August 12, 2011
Effective Date:	September 1, 2011

Mayor

ATTEST:

Finance Officer

Seal

NOTICE OF ADOPTION

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

Notice is hereby given Ordinance # 11-309, an Ordinance in Revision of the Municipal Ordinances of the City of Montrose, was duly adopted by the City Council on June 14, 2011, and shall become effective September 1, 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 Montrose City Hall and may be viewed during normal business hours.

Linda Hentges
Finance Officer

(Publication Dates: August 5, 2011 & August 12, 2011)

SUMMARY AND GENERAL INFORMATION

These Ordinances are a Revision of Ordinances adopted by the City of Montrose, 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 Montrose, 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 - Finance Regulations

CHAPTER 1.01 - MUNICIPAL EMPLOYEES

- 1.0101 Appointment of Officers. At the regular meeting of each July, there shall be appointed a Finance Officer, Maintenance Superintendent, and such other officers as may be provided by ordinance to hold office until the appointment and qualifications of successors. All such appointments shall be made by the City Council. The City Council may, by resolution, enter into a contract pursuant to SDCL 9-14 with an attorney to provide legal services to the City as the City Attorney. (SDCL 9-14-3)
- 1.0102 Salaries. The salaries of all appointive officers and employees of the City shall be approved by the City Council by special ordinance or resolution and shall be paid monthly unless otherwise provided. The Finance Officer shall be bonded in such sum to be approved by the City in accordance with state law, conditioned for the faithful performance of the duties of such office. (SDCL 9-14-1, SDCL 9-14-28)
- 1.0103 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 number of City Council members will consist of the mayor, elected at large, and four aldermen, two to be elected from each Ward. The Mayor shall be elected to serve a 2 year term and each City Council member shall be elected for a term of two years. (SDCL 9-8-4)
- 1.0202 Regular Meetings. The regular monthly meetings of the City Council shall be held at City Hall on the second Tuesday of each month at 7:00 p.m. except when that Tuesday 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 Supervision of Departments. The Mayor, with the approval of the Council, at the first meeting in July of each year, shall appoint one or more members of the Council to act in a supervisory capacity in the Departments of Water, Street, Police, Fire and any other departments of the City, and such Council, so appointed, shall have supervision over the Department to which they are named as supervisors, and shall from time to time and as requested by the Council, report as to the condition and matters in said department.
- 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 - FINANCE REGULATIONS

- 1.0301 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 or 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)
- 1.0302 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 Ward Boundaries. The City shall be divided into two wards, which shall be combined into one election precinct, and shall be designated respectively as Ward One and Ward Two. The ward boundaries of the City of Montrose are declared to be such as have been legally established and amended by law and ordinances of the City. A map illustrating the boundaries and location of each ward is kept on file with the Finance Officer.
- A. First Ward will encompass all of that part of the City south of State Street located between 451st Avenue and Cook Avenue. It shall also encompass all of that part of the City south of Elder Street located between Cook Avenue and Church Street. It shall also encompass all of that part of the City south of Walker Street located between Church Avenue and Second Street. It shall also encompass all of that part of the City south of Montrose Street located between Second Street and First Street.
 - B. Second Ward will encompass all of that part of the City north of State Street located between 451st Avenue and Cook Avenue. It shall also encompass all of that part of the City north of Elder Street located between Cook Avenue and Church Street. It shall also encompass all of that part of the City north of Walker Street located between Church Avenue and Second Street. It shall also encompass all of that part of the City north of Montrose Street located between Second Street and First Street. It shall also encompass all of that part of the City north of Dakota Street located between First Street and the eastern city limits of the City.

(Amended: Ordinance No. 2025-003, (Effective 9/10/2025))

- 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 - City Restricted Use Facility

Chapter 3.03 - Collection of Garbage

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. “Unsightly 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 carts, 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, 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 health or safety of the 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 fowl are kept unless a special permit is requested and such is approved by the City Council. (SDCL 9-29-13)

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

- 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 purposely set by the Montrose Fire Department personnel and authorized by the Fire Chief for the purpose of training and conducted in accordance with live fire-training standards.
 - 2. Fires set for the elimination of a fire hazard which cannot be abated by other means when authorized by the Fire Chief.
 - 3. Fires purposely set by city maintenance personnel for the purposes as authorized by the Fire Chief.
 - 4. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of foods. (SDCL 9-33-1)
- 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 exist to the extent that the life, health, property, value of property or safety of the occupants or the public 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 6 months.

2. Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence 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.
 - i. 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 J 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 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 other 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 street, sidewalk or other public place or upon any private property.

- 3.0104 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.
- 3.0105 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.
- 3.0106 Removal of Abandoned or Inoperable Vehicles - Private Property. 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, return receipt requested, 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. 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.

- 3.0107 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.
- 3.0108 Content of Notice. The notice in section 3.0106 shall request removal of the abandoned or inoperable vehicle within 14 days after the date of the posting, mailing or delivery 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.
- 3.0109 Diseased Vegetation. Any owner, occupant, or person in charge of any property under the jurisdiction of the City shall remove at his or her own expense any trees, brush, wood, or debris infected with Dutch Elm disease or other infestations or infectious disease found thereon when so notified by the City to do so. The City Council shall cause to be mailed by certified mail, return receipt requested, or by hand delivery to such owner, occupant, or person, written notice that they may appear before said City Council at an appointed time not less than fourteen (14) days from the date of mailing or delivery of said written notice to show cause why said trees, brush, wood, or debris should not be declared a public nuisance. 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 at such from the date of mailing.

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)

- 3.0110 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 each year and August 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 3.0110 (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 3.0110 (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 McCook 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.

- 3.0111 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. 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.
- 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 - CITY RESTRICTED USE FACILITY

3.0201 Definitions. For the purpose of this Chapter, the following terms are hereby defined:

- A. “Restricted Use Facility” shall mean any facility which has received authorization under the General Permit for Restricted Use Solid Waste Disposal, as defined and issued by the State of South Dakota.
- B. “Restricted Use Waste” shall mean any materials which are allowed by the State of South Dakota to be disposed, temporarily stored or composted at a site which is operating under the General Permit for Restricted Use Solid Waste Disposal.

3.0202 Location. The City Council shall select and establish a site outside the City Limits for the operation of a Restricted Use Facility.

3.0203 Use of Facility. The City’s Restricted Use Facility may be used only for the following purposes:

- A. Disposal of rubble, tree limbs, wood products, construction debris and demolition debris;

- B. Periodic burning, under direction of the City, of tree limbs and wood products;
- C. Composting of yard waste, including grass clippings and leaves.

No person living outside the City and no firm or corporation located outside of the City, shall use said Restricted Use Facility, unless a permit to do so is secured in advance from the City Council.

- 3.0204 Signs. At the Restricted Use Facility, the City shall erect adequate signs directing places where refuse shall be deposited and the manner in which it shall be disposed. Any disregard of such signs shall be considered a violation of this Ordinance.

CHAPTER 3.03 - COLLECTION OF GARBAGE

- 3.0301 Storing Garbage Prior to Collection. All garbage shall be placed in either sealed water-tight bags of inside garbage containers, except leaves and grass which are to be just bagged, and set to the curb or accessible alley not more than 24 hours prior to scheduled pickup. All residents shall comply with the terms of the city garbage collection agreement and this ordinance, including but not limited to the maximum amount of garbage allowed to be set out for pickup at one time.

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 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 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 odors or stench.

- 3.0302 Refuse Removal. All garbage, rubbish, rubble, and refuse created, produced, or accumulated in or about a dwelling house or place of human habitation in the City limits of the City of Montrose shall be removed from the premises at least once each week. The City may require a greater number of collections per week.

The City shall contract for lowest bid to a solid waste hauler for a period of one to three (1-3) years. The City shall bill all residents on their monthly utility statements. No billing will be done by the private hauler.

The rates to be charged for garbage, rubbish, rubble, and refuse shall be as established by resolution of the City Council and on file in the office of the Finance Officer.

As per state law (SDCL 34A-6-29), garbage, rubbish, rubble, and refuse fees take precedence over all other utility charges.

- 3.0303 City Not Liable. The City shall not be liable for any expense incurred through the failure of a contactor 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)
- 3.0304 Equipment. Every garbage collector shall use equipment which will not permit any leakage and such equipment shall be covered so garbage will not be dropped or spilled in transit to any place in the City.

TITLE 4 - LICENSES

Chapter 4.01 - General Provisions

Chapter 4.02 - Transient Merchants, Peddlers

Chapter 4.03 - Alcoholic Beverages

Chapter 4.04 - Licensing Cannabis Establishments

(Amended: Ordinance No. 008-2021, Published: 12/31/21)

CHAPTER 4.01 - GENERAL PROVISIONS

- 4.0101 Licenses Required. No person shall engage in any activity for which a license is required, or for which a fee is prescribed, by this Chapter or other Ordinance, without first having obtained such license. 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 licenses as deemed necessary.
- 4.0102 Application for License. Any person, persons, firm or corporation wishing to obtain a license as herein provided, shall make written application to the City Council stating the name of the applicant, address, purpose of the activity, the length of time for which said license is wanted, and the particular place at which said license is to be used.
- Fees for all licenses shall be fixed by the City Council where not specified in this Chapter, 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. Unless otherwise provided, all licenses shall take effect when issued and shall terminate on December 31 in the year for which issued. Except as otherwise provided, the license fee or charge shall be paid on the basis of a full year. There shall be no rebate made on the termination of said calling, vocation, or kind of business for which said license was issued.
- 4.0104 Revocation. The City Council shall have the authority at any time to suspend or revoke any license granted under the provision of this Chapter whenever the City Council shall be satisfied upon written complaint that such calling, vocation, or kind of business for which said license has been issued, has been made or conducted in an improper or illegal manner.
- 4.0105 Issuance of License. Except as otherwise provided, all licenses shall be issued by the Finance Officer after issuance of the license has been approved by the City Council and the applicant shall have complied with all requirements for issuance of such license. Unless otherwise provided, all licenses shall be signed by the Finance Officer and shall have affixed thereto the official seal of the City.
- 4.0106 Record of Licenses. The Finance Officer shall keep a record of all licenses issued by the City stating when and to whom issued, for what purpose and for what length of time, the amount of money paid for said license, and the place where such activity is to be carried on. (SDCL 9-34-1)

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 cities or towns 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.
- 4.0214 Revocation. Any permit issued under the provisions of this chapter may be revoked for the violation by the permittee of any provision of this Title, state law, or city ordinance by the City Finance Officer. Upon such revocation, such permit shall immediately be surrendered, 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 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 Full-Service On-Sale Restaurant Licenses.

A. Definitions.

"Bar," any permanently installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages.

"Full-service restaurant," any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at table, booths, or the bar. Any restaurant that only serves fry food orders or foodstuffs such as sandwiches, hamburgers, or salads is not a full- services restaurant;

"Restaurant," any area in a building maintained, advertised, and held out to the public as a place where individually priced meals are prepared and served primarily for consumption in such area where not more than 40 percent of the gross revenue of the restaurant is derived from the sale of alcohol or alcoholic beverages. The restaurant shall have a dining room or rooms, a kitchen, and the number and kinds of employees necessary for preparing, cooking, and serving of meals.

- B. License Application Requirements. An application for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality with an application form provided by the municipality to prove that the primary source of revenue from the operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

- C. Advertising Restrictions. A restaurant that has a full-service restaurant on-sale license may only be advertised or held out to the public as primarily a food eating establishment.
- D. Annual Reports. The full-service restaurant on-sale licensee shall submit an annual report and supporting documentation that at least sixty percent of gross revenue from the preceding twelve months operation of the full-service restaurant was derived from the sale of food and nonalcoholic beverages. The full-service restaurant on-sale licensee shall include an oath verifying the validity of the information provided in the report. The report and the supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross revenues of the licensee for the following two categories:
 - 1. Food and nonalcoholic beverage gross revenues; and
 - 2. Total gross revenues
- E. License Renewals. When renewing a full-service restaurant on-sale license, the City shall condition the license renewal upon receiving documentation that not more than 40 percent of gross sales from the preceding 12 months operation of the full-service restaurant is derived from the sale of alcohol or alcoholic beverages.
- F. Only Retail. On-Sale Services Permitted. A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premise consumption in the bar and dining room area of the restaurant.
- G. Smoking Prohibited. No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises.
- H. Full-Service Restaurant License Fees.
 - 1. As required by State law, the license fee charged for a full-service restaurant on-sale license shall be one dollar for each person residing within the municipality as measured by the last preceding decennial federal census.
 - 2. The renewal fee for the license is established by the City Council via resolution. As per State law the renewal fee may not exceed fifteen hundred dollars.

(Amended: Ordinance No. 2024-002, Effective 03/06/24)

CHAPTER 4.04 - LICENSING CANNABIS ESTABLISHMENTS

- 4.0401 Purpose and Intent. The City Council of the City of Montrose enacts the following licensing ordinances in order to ensure that cannabis establishments within the municipal boundaries of the City operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership

and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

4.0402 Definitions. Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL 34-20G-1.

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

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

Cannabis Dispensary: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

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

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

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

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

Department: the South Dakota Department of Health

4.0403 License Required.

- A. No cannabis establishment may be located or operate in the City without the appropriate valid and current cannabis establishment license issued by the City pursuant to this article. A violation of this provision is subject to the general penalty provision in Section 4.0416. Each day of the violation constitutes a separate offense.

- B. No cannabis establishment may be located or operate in the City without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in 4.0416. Each day of the violation constitutes a separate offense.

4.0404 License Application.

- A. An application for a cannabis establishment license must be made on a form provided by the City. No other application form will be considered.
- B. The applicant must submit the following:
 - 1. Application fee of five thousand dollars (\$5,000.00). The City will retain one thousand (\$1,000.00) dollars and reimburse the balance of the application fee to applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
 - 2. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective cannabis establishment;
 - ii. The physical address of the prospective cannabis establishment that meets the zoning requirements in Chapter 16 of the Montrose Zoning Regulations as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.
 - iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.
 - iv. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
 - v. Any additional information requested by the City.

4.0405 Issuance of License.

- A. The City will issue a license unless:
 - 1. The applicant has made a false statement on the application or submits false records or documentation; or
 - 2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
 - 3. Any owner, principal officer, or board member of the applicant has been convicted of

a violent felony offense in the previous ten (10) years in any jurisdiction;

4. The proposed location does not meet the applicable zoning requirements under Chapter 16 of the Montrose Zoning Regulations;
 5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
 6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
 7. Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the City or a registration certificate revoked by the State; or
 8. An applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
 9. The applicant will not be operating the business for which the license would be issued.
- B. In the case of an application for a cannabis dispensary license, the City will reject the application if the limit on the number of cannabis dispensaries has been reached.
- C. The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

4.0406 City Neutrality as To Applicants.

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

4.0407 Number of Cannabis Dispensaries.

- A. No more than three (3) cannabis dispensaries shall be allowed to operate in the City at any time.

4.0408 Expiration of License and Renewal.

- A. Each license expires one year from the date of issuance and may be renewed only by making application as provided in Section 4.0404. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.

- B. The renewal fee is one thousand five hundred (\$1,500.00) dollars. The City will reimburse one thousand two hundred (\$1,200.00) dollars to applicants who fail to obtain a renewal of their registration certificate from the Department.
- C. Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the City may order closure of the cannabis establishment.
- D. If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

4.0409 Suspension.

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

4.0410 Revocation.

- A. A license may be revoked if the license is suspended under Section 4.0410 and the cause for the suspension is not remedied.
- B. A license may be revoked if the license is subject to suspension under Section 4.0410 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.
- C. A license is subject to revocation if a license holder or employee of a license holder:
 - 1. Gave false or misleading information in the material submitted during the application process;
 - 2. Knowingly allowed possession, use, or sale of non-cannabis-controlled substances on the premises;

3. Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;
4. Repeated violations of Section 4.0411;
5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the City, County, or State for any taxes or fees related to the cannabis establishment;
7. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G; or
8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
9. The license holder allows a public nuisance to continue after notice from the City.

4.0411 Suspension and Revocation Process.

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

establishment license for one year from the date the revocation became effective.

- 4.0412 Appeal. An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the City Council by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City Hall at 302 E. 4th Street, Montrose, South Dakota, 57022. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.
- 4.0413 Licenses Not Transferrable. No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.
- 4.0414 Hours of Operation for Dispensaries. No cannabis dispensary may operate between the hours of 10 P.M. and 7 A.M. on any day of the week.
- 4.0415 Liability for Violations. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.
- 4.0416 Penalties. Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred (\$500.00) dollars. Each day a cannabis establishment so operates is a separate offense or violation.

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

(Amended: Ordinance No. 008-2021, Published: 12/31/21)

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 5.05 - Prohibiting Public Nudity and Regulating Strip Dancing

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, 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 registered overnight campers, 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 either as a parking lot or a parking ramp.
- 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:
- A. At Large.
1. 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.

- 2. 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.
- B. Leash. A cord, thong, or chain, not to exceed six feet in length, by which an animal is controlled by the person accompanying it.
- C. Owner. Any person harboring or keeping an animal 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.
- D. Kennel. Any premises, or portion thereof, where dogs, cats, and other household pets are maintained, boarded, bred, or cared for, in return for remuneration, or are kept for the purpose of sale.

(Amended: Ordinance No. 2023-004, Effective 11/08/23)

- E. Fowl. Chickens, ducks, turkeys, and other similar domesticated birds.
- F. Livestock. Any animal traditionally associated with agriculture including, but not limited to, hogs, cattle, sheep, alpacas, horses, and goats. This definition does not include fowl as defined above.
- G. Pet. Any domesticated animal traditionally kept in or near a household for the primary purpose of companionship for members of the household and/or companionship for other such animals. This includes, but is not limited to, dogs, cats, guinea pigs, hamsters, rats, mice, rabbits, ferrets, fish, and other animals that a reasonable person would consider a pet. Livestock and fowl shall not be considered pets for purposes of this chapter.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

- 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, whether licensed or unlicensed, to be at large or go in or upon the private premises of others or upon any public property. Animal shall be deemed running at large when the animal is not confined to the premises of the owner. An animal on a leash in the hands of the owner or attendant is not deemed to be running at large.

Any police officer, city personnel, or authorized agent may capture and place an animal running at large into a holding kennel. The police officer, city personnel, or authorized agent will either take the animal to the Humane Society or will call the Humane Society to pick up the animal within twenty-four (24) hours.

The owner of the animal found in violation of this Section will receive a notice of violation and must pay the fine, as established via Resolution of the City Council, in the office of the Finance Officer. If, after thirty (30) days of receiving the notice of violation, the owner of the animal does not pay the fine and upon conviction of a violation of this Section, the owner shall pay the fine plus court costs which shall be collected by the Magistrate Court. If done within the time limitations set forth above, the owner has a 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.

(Amended: Ordinance No. 2023-006, Effective 1/10/24)

- 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. The 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, 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 any applicable fees as established via Resolution of the City Council. Upon impounding, the owner of such animal may, at any time within five (5) working days after animal was impounded, reclaim the animal by paying the expense of keeping the animal in addition to the fee prescribed in this section. If any animal so impounded is not 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 the animal.

No person shall hinder, delay, or obstruct any police officer, city personnel, or authorized agent when engaged in capturing, securing, or impounding any animal.

(Amended: Ordinance No. 2023-006, Effective 1/10/24)

- 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:

- i. Fencing materials shall not have openings with a diameter of more than two (2) inches.
 - ii. 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.
 - iii. 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.
 - iv. 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 Wild Animals and Livestock Prohibited. It shall be unlawful for any person to keep, maintain, or have in their possession or under their control any wild animal or livestock within the City of Montrose. Animal shelters, veterinarian offices, and persons temporarily transporting such animals through the City are exempt from the provisions of this chapter.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

5.0211 Keeping of Fowl Limited.

A. Chickens and ducks may be kept within the City subject to the following requirements:

1. A maximum of six (6) such animals may be kept on a lot within the City. This is a cumulative maximum. The total number of chicken and/or ducks shall not exceed six (6).
2. Every owner or keeper of fowl shall obtain an annual license from the City Council. A license shall only be issued if the applicant demonstrates that the area the animals are to be kept is appropriate for such purpose and the possession of the fowl will not annoy the comfort, health, safety, or repose of neighboring properties. The City Council may deny any such request when it determines that the allowance of such a permit is not in the best interests of the City. License fee shall be set by resolution of the City Council.

Note: Nothing in this section shall be interpreted as waiving or removing the requirement that an applicant obtain a special permit from the City Council that allows for the keeping and maintaining of a building or enclosure where the fowl are kept. See 3.0102(F).

3. Roosters are prohibited.

B. All other fowl:

1. Turkeys and geese are prohibited.
2. Other breeds of smaller fowl may be considered upon application for an annual license. A license shall only be issued if the applicant demonstrates that the breed to be kept is similar in size and nature to a chicken or duck and that area the animals are to be kept is appropriate for such purpose and the possession of the fowl will not annoy the comfort, health, safety, or repose of neighboring properties. The City Council may deny any such request when it determines that the allowance of such a permit is not in the best interests of the City. License fee shall be set by resolution of the City Council.

Note: Nothing in this section shall be interpreted as waiving or removing the requirement that an applicant obtain a special permit from the City Council that allows

for the keeping and maintaining of a building or enclosure where the fowl are kept. See 3.0102(F).

3. Roosters are prohibited.

- C. It shall be unlawful for any person to have any fowl 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. See 5.0202.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

5.0212 Number of Pets Limited. It shall be unlawful for any person to have or to keep more than six 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.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

5.0213 Licensing of Dogs and Cats Required. Each owner or keeper of a dog or cat 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.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

5.0214 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.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

5.0215 License Fee Schedule. The fee for licenses shall be as follows:

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

The most current fee schedule specifically addresses dog and cat licenses. Documentation from a veterinarian or other sufficient medical proof must be provided when licensing a neutered or spayed dog and/or cat. 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.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

5.0216 License Fee Exemptions. The licensing provisions of this chapter shall not apply to dogs and cats 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.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

5.0217 Kennel Licenses Issued.

- A. License Required. No person shall own, operate, or maintain a kennel within the City without first obtaining a license from the City Council.
- B. Application. A person applying for a license pursuant to the provisions of this chapter shall provide such information as reasonably requested by the City Finance Officer, which may include, but is not limited to, the following:
 - 1. Applicant's name, address, and telephone number;
 - 2. Name, address, and telephone number of the entity, if any, that the applicant represents;
 - 3. Address and legal description of the property upon which the kennel is proposed to be located;
 - 4. General description, including site plan, of the types of enclosures and their locations on the premises in which animals will be stored or kept at the kennel;
 - 5. Statement as to whether the applicant of the entity that he or she represents is currently charged with, anticipates being charged with, or has ever been convicted of any felony, misdemeanor, or municipal violation involving the custody or care of animals. If so, describe the nature of the offense, the punishment or penalty assessed, and the location of the charges or convictions that are applicable;

6. Valid South Dakota sales tax license number.
- C. License Fee. As part of the license application, an administrative fee shall be assessed in an amount set by resolution of the City Council. The City Council shall not approve or deny an application until the license fee has been paid in full.
- D. Application Review. The City Council shall review the completed Application at the next regularly scheduled meeting. To approve the application, a majority of the City Council must determine that the application as presented: (1) does not present an unreasonable danger or nuisance to the public; and (2) does not violate any local ordinance, including the City's zoning regulations.
- E. Building Plan Review. Prior to approval of a kennel license, the applicant must submit a completed plan and specifications for the building to the City before the kennel is either constructed or an existing structure is converted into a kennel. The completed plan must include:
1. Types of animals kept;
 2. Proposed indoor or outdoor facility layout, including mechanical equipment, heating, lighting, plumbing, and boarding areas;
 3. Description of and types of materials used for walls, floors, fencing, kennels, runs, animal enclosures, drains, and the dimensions for any enclosures;
 4. Description of waste disposal, sewage disposal, and indoor/outdoor animal waste disposal;
 5. Any other information that the City may require for review of the proposed construction, conversion, or remodeling to ensure compliance with this Chapter.
- F. License Duration. Each license issued is effective from January 1 through December 31 of the year applied for, regardless of the time of year such license is approved. Each license expires at 11:59:59 P.M. on December 31 unless, prior to the expiration, the City Council approved a new license for the following calendar year pursuant to this chapter.
- G. Transfer or Modification of License. No license shall be transferred or modified except with the approval of the City Council.
- H. Revocation. A lawfully issued kennel license may be revoked by the City Finance Office or any member of the City's contracted police department on behalf of the City Council if the permittee or entity the permittee represents either (1) knowingly or negligently withholds material information on the application; (2) provides false information on the application; or (3) violates any provision of the City's municipal code, another City's municipal code, state law, or federal law involving the custody or care of animals. Upon such revocation

being communicated to the permittee or the entity the permitted represents, the kennel shall immediately cease operations, except for making arrangements for any animals under their custody or care to be removed from the premises.

- I. Animals Running at Large Prohibited. All animals kept in the custody of the kennel shall be confined in a substantial enclosure on the premises at all times, except when the animal is on a leash in the custody of the permittee or the permittee's agent or employee.
- J. Commercial Kennels, General.
 1. All kennel operators must meet the requirements of this Section and must receive a Kennel License in accordance with this.
 2. Structure. Facilities for dogs and cats must be designed and constructed so that they are structurally sound. The facilities must be kept in good repair and must protect the animals from injury, contain the animals securely, and restrict other animals from entering.
 3. Condition. Facilities and areas used for storing animal food and bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area and fixtures or equipment necessary for proper practices.
 4. Surfaces.
 - i. The surfaces of facilities must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs and cats must:
 - a. Be free of excessive rust that prevents the cleaning and sanitization, or that affects the structural strength of the surface, and
 - b. Be free of jagged edges or sharp points that might injure the animal.
 - ii. All surfaces must be maintained on a regular basis. Surfaces of facilities that cannot be readily cleaned and sanitized must be replaced when worn or soiled.
 - iii. Hard surfaces with which dogs or cats come in contact with must be spot cleaned daily and sanitized to prevent accumulation of excreta and reduce disease hazards. Areas with dirt, sand, grass, or similar materials must be raked or spot cleaned frequently to ensure all animals may avoid contact with excreta. All other surfaces must be cleaned and sanitized when necessary.

- iv. Interior floors, walls, and ceilings of the facility must be impervious to moisture.
- 5. Temperature. Facilities must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being.
- 6. Ventilation. Facilities must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well being, and to minimize odors. Ventilation must be provided by windows, fans, vents, or air conditioning.

K. Outdoor Areas.

- 1. All fencing or restraining methods shall be of sufficient strength and construction to contain and control all animals. Fences shall be installed to prevent animals from escaping by digging underneath or by jumping or climbing over the top.
- 2. Outdoor areas must provide sufficient shade from the sun to prevent overheating or discomfort for animals.
- 3. Kennels must provide a suitable method to remove dog excrements.

L. Watering.

- 1. Potable water must be continuously available to dogs, unless restricted by the attending veterinarian.
- 2. If potable water is not continuously available to cats, it must be offered to the cats as often as necessary, but not less than twice daily for at least 1 hour each time unless otherwise restricted by a veterinarian.

M. Inspections. After presenting identification credentials, an Authorized Agent of the City is authorized to enter and conduct inspections of any kennel during normal business hours, hours of operation, and other reasonable times to determine compliance with this chapter, including the conditions of any permit granted. The kennel owner must allow the Authorized Agent to enter and inspect the establishment, and any records required to be maintained, including the conditions of any permit granted. During an inspection, the Authorized Agent will document:

- 1. Administrative information about the kennel, including the business name, location, name of owner or operator, inspection date, and permit status;
- 2. The inspection findings, including factual observations of violations, nonconformance with this Chapter, or any other violations that require correction by the kennel;

3. Failure, if any, of the owner, operator, or employee to allow the Authorized Agent access to the premise or to inspect records;
4. Notification of violations that require correction and a time period to complete the corrections;
5. Notification of an opportunity to review the inspection findings upon a written appeal of the inspection report within ten (10) days following the date of inspection; and
6. Any other information the Authorized Agent deems necessary to include in the inspection report.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

(Amended: Ordinance No. 2023-004, Effective 11/08/23)

5.0218 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. No person owning any dog, cat, or other animal, licensed or unlicensed, confined on the premises or otherwise, shall permit such animal to disturb the peace and quiet of the neighborhood by making loud and/or unusual noises.
- F. Upon signed complaint at the office of the Finance Officer that any person is keeping or harboring any dog, cat, or other animal which disturbs the peace as herein set forth, it shall be the duty of said Finance Officer to notify the owner of said animal in writing of said complaint, and after such owner has been given forty-eight (48) hours notice of such habit,

any law enforcement officer or person of proper authority is hereby authorized and empowered to impound such dog, cat, or other animal so disturbing the peace if said act continues. In addition to the costs of impounding of such animal or other penalties prescribed, the owner thereof shall be subject to a fine not to exceed one hundred dollars (\$100).

- 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.

(Amended: Ordinance No. 2020-005, Adopted 7/14/2020)

- 5.0219 Disturbing the Peace. The owner or custodian of an animal shall not allow the animal to create a disturbance by making loud or unusual noises any time of the night or day. Any police officer, city personnel, or authorized agent may remove and impound any animal which is disturbing the peace after providing the owner forty-eight (48) hour written notice of violating this section and the violation is continuing. In addition to the costs of impounding the animal, including the cost of kenneling or other penalties prescribed, the owner shall be subject to a fine as established via Resolution of the City Council.

(Amended: Ordinance No. 2023-006, Effective 1/10/24)

CHAPTER 5.03 - FIREWORKS AND FIREARMS

- 5.0301 Fireworks Prohibited. The use, throwing, lighting, firing, display, or sale of fireworks within the City shall only be authorized in accordance with SDCL 34-37. The provisions of this Section shall not apply to any person, firm or corporation duly licensed by the City Council in accordance with Chapter 4.01 of this ordinance, to discharge fireworks for public entertainment at any public celebration in the City. The fine for a violation of this Section shall be \$50.00. Any person 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 person 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 person 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 person shall be fined not less than \$100.00 nor more than \$125.00 plus court costs, which fine shall be collected by the Magistrate Court. If done timely or within the time limitations set forth above, the person 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. (SDCL 9-33-1, SDCL 34-37)

- 5.0302 Discharging Weapon. No person shall discharge any pistol, gun, revolver, or other firearm, or any bow and arrow, or any device capable of firing a projectile either by air or compressed gas or any other means which would likely cause injury to any person, or discharge any dangerous weapon, within the City limits.

The following uses are exempt from this section:

- A. Proper use of weapons in a licensed shooting gallery.
- B. Use by law enforcement or animal control officers in the discharge of their official duties, or to persons who are authorized by the City Council.
- C. Use by persons engaged in instructional courses using air guns, BB guns, or bows and arrows if the course has obtained a permit from the City Council, is conducted by a certified instructor, is covered by adequate liability insurance, and has been approved by the supervising unit if conducted on city property. The City Council may establish conditions for granting a permit to protect the health, safety, and well-being of the general public.
- D. The owner or inhabitant of a parcel of real estate within the City of Montrose may use air guns or BB guns to control predators or pests on such property, provided all such activities comply with South Dakota Statute.
- E. Use of any air guns, BB guns or bow and arrow to shoot at an object, such as a padded disk with a marked surface, or other objects such as cans, wood, debris or the like, for the purpose of testing a person's skill or accuracy in the use of an air gun, BB gun, bow and arrow, or other weapon or device.

It shall be a defense to a charge of violation of this section that a person was engaged in lawful self defense, as set forth in SDCL 22-5-1, SDCL 22-5-9, and SDCL 22-18-4.

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.

CHAPTER 5.05 - PROHIBITING PUBLIC NUDITY AND REGULATING STRIP DANCING

- 5.0501 Prohibited Generally. It is a violation of this Chapter for any person to knowingly or intentionally, in a public place:
- A. Engage in sexual intercourse;
 - B. Engage in deviant sexual conduct;
 - C. Appear in a state of nudity; or
 - D. Fondle the genitals of himself, herself or another person.
- 5.0502 Definitions.
- A. Nudity or State of Nudity - The showing of the bare human male or female genitals, anus or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of the areola; or the showing of the covered male genitals in a discernibly turgid state.
 - B. Public Place - Any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit) and whether open to the public at large or where entrance is limited by a cover charge or membership requirement, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by an religious, social, fraternal or

similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place. Public place shall not include movie theaters, enclosed single sex public rest rooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor shall it include a person appearing in a state of nudity in a modeling class operated by: (1) a proprietary school licensed by the State of South Dakota; a college, junior college or university supported entirely or partly by taxation; or (2) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation, or an accredited private college.

- 5.0503 Operations. It shall be unlawful for any person or entity maintaining, owning or operating any public place to operate and knowingly, or with reason to know, permit or allow any person to appear nude in such public place or to permit unlawful touching as prohibited in Section 5.0504 hereof.
- 5.0504 Physical Contact. It shall be unlawful for any male or female dance, stripper or performer to engage in any physical contact with patrons or customers while dancing or performing, to include but not limited to, placing of money in the dancers' or strippers' wearing apparel. All such dancers or performers shall be confined to a stage or designated area separate and apart from the seating area for patrons and customers.
- 5.0505 Refuse Admittance. It shall be a violation of this Chapter for any person or entity to refuse admittance without fee to any law enforcement officer at any time when patrons or customers remain in said premises.
- 5.0506 Underage Admittance. No person under twenty-one (21) years of age shall be permitted access to any public place defined herein which shall permit nude dancing, which otherwise complies with the provisions hereof.
- 5.0507 Conduct. The contents of this Chapter shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.
- 5.0508 Violations. Operation of an establishment in violation of this Ordinance shall constitute a public nuisance and in addition to all other remedies provided herein, the City Attorney may, by civil process, seek permanent abatement of said nuisance.

TITLE 6 - STREETS, SIDEWALKS AND PUBLIC PLACES

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 6.06 - Municipal Parks

Chapter 6.07 - Municipal Swimming Pool

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.
- 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 Montrose, 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)

The City will pay the first one thousand dollars (\$1,000.00) per block for gravel, with the remaining costs to be prorated to the abutting property owners.

- 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 obtained approval from the City Council. 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 the 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 Council, and shall restore the pavement or surfacing, as the case may be, to its former condition. The City Council shall 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.
- 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 costs 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 suitable guards, fences, flares, and signals so as to prevent injury to persons, animals, or vehicles on account of such excavations. No open trench shall be left open for any more time than considered absolutely necessary or reasonable.
- 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 three and one-half inches in thickness, of Portland Cement Construction, and not less than four feet nor more than five 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.

When existing sidewalk is removed for any reason it shall be replaced, according to the provisions of this section. The City Council, in its sole discretion, may approve a variance from the sidewalk requirements.

- 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 four-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. The installation and maintenance of culverts shall be the responsibility of the property owner.
- 6.0209 Curb and Gutter. Curb and gutter shall be of Portland Cement Construction, not less than 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. 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 overall construction project, property owners or their agents shall submit applications for permits for approval by the City Council for sidewalks, driveway approaches, curbs, or curb and gutter. When these improvements are constructed simultaneously or as one project, only one application is necessary to include all improvements, and where any or all are part of new construction projects, only one permit for the 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 9-46-1.1, 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. 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.

- 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 the City Council 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 any building into, along or across any public street, alley, or grounds in the City without first having obtained a moving permit. (SDCL 9-30-2)
- 6.0402 Applications. Written application for a moving permit shall be filed with the Finance Officer, and shall include the name of the applicant, the name of the owner of the building, a description of the lot on which such building is standing and the lot to which it is to be moved, if located in the City, the route along which it is proposed to move such building, and the length of time which may be consumed in such moving. Any application 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 license shall be granted until the applicant shall file with the Finance Officer a bond running to the City in the penal sum to be established by the City Council, with sufficient surety, and conditioned the applicant will promptly repair and make good, to the satisfaction of the Council, any and all damage to any pavement, sidewalk, crosswalk, hydrant, street, alley, or other property, done or caused by himself or his employees, in moving such building or part thereof, or in connection with the moving thereof. The applicant shall indemnify and save harmless the City against any and all liability for damages, costs and expenses, arising or which may arise or be incurred in favor of any person by reason of any negligence or misconduct or act on his part or the part of his agents or employees, in connection with the moving of said building or part thereof, or the use of any public ground for 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 license 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)

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 whenever practicable, and twelve (12) feet over all streets except truck thoroughfares where the clearances shall be fourteen (14) to sixteen (16) feet, 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 or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.
- 6.0504 Permission to Deposit Materials. No person shall deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, and fertilizer to the roots of any tree growing therein, except by permission of the City Council.
- 6.0505 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

Maintenance Superintendent 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)

- 6.0506 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)

CHAPTER 6.06 - MUNICIPAL PARKS

- 6.0601 Unauthorized Use. It shall be unlawful for any person to use the City parks and any structures, equipment or facility thereon in any manner contrary to public policy and the purposes for which the parks, structures, equipment or facilities thereon are intended, unless so authorized by the City Council.
- 6.0602 Property Damage. No person shall maliciously, willfully or negligently break, damage, destroy, deface or tamper with any structure, equipment, improvements or facilities which are a part of the City parks. Any person violating this provision shall be subject to immediate arrest under the charge of disorderly conduct.

Any person violating any of the provisions of this ordinance shall be liable to the City for any expense, loss, or damage occasioned the City by reason of such violation in addition to any fine levied.

- 6.0603 Camping in Montrose Campground.
- A. Montrose campground will be open May 1st to October 1st; weather permitting and council advised.
 - B. Montrose Campground procedures for site reservation and payment process at the campground are as follows:
 - 1. Visit the city website to make camping reservations or visit city hall during regular business hours to book a reservation with city staff.
 - 2. To claim first-come, first-served sites, campers must place an appropriate camping unit on the site (i.e. camper, motor home, or erected camping tent). Reservations are taken for the current year and can only be made for one year in advance. All reservations are made online either with the Campground Host or through City hall with payment due when the reservation is made.

3. City of Montrose has a cancellation/refund policy that can be reviewed within the camp spot reservation link or a request can be made for a copy of the policy through city hall during regular business hours.
4. Nightly camping terms and conditions must be reviewed and signed by camping patrons prior to their stay, This prompt is part of the reservation process within the software.
5. Seasonal camping patrons must go through city hall for seasonal site reservations and payment. The Seasonal camping patron policy must be reviewed and signed by April 1st. Full payment must be made no later than April 1st to the city finance officer.

C. Montrose Campground general policies are as follows:

1. All seasonal rates, nightly rates, and picnic shelter rental rates are set forth by the city council, via current rate resolution.
2. Campers must be 18 years of age or older to register for a campsite.
3. Adults registering for a site will be responsible for any violation occurring on that site including non-registered guests.
4. No campsite is open for camping until previous camping party has checked-out.
5. Quiet time is 10:30 p.m. until 6:00 a.m.
6. Only one camping unit is allowed per site. The only exceptions are screen houses and children under 18 with their own tents.
7. Campers will not be allowed to stay for more than 14 consecutive days, unless special approval is received from the Montrose Finance Officer. After 14 days a camper is required to be away from the campground for at least 48 hours.
8. Water use is for camping activities only (i.e. no washing vehicles or camping units).
9. Campers must keep their camping unit on the site at all times.
10. Campsites must be cleaned daily by campers and waste deposited in containers provided.
11. There is a three (3) pet limit allowed in the park. Animal waste must be picked up and disposed of in a proper manner by the owner. Pets, when out of a camper, must be on a leash at all times. Pets must not become a nuisance to other campers.
12. Open campfires are allowed only in spots designated for such use by the City. All fires must be attended at all times. All fires shall be extinguished at any time when

they are unattended. Portable gas (i.e. propane), gasoline, charcoal, and oil camp stoves may be used if in safe, operating condition. Persons utilizing and maintaining outdoor fires or the above listed equipment shall be responsible for any liability resulting from damages caused by such use of misuse.

13. Guests must rent sites for a minimum of 2 days on Federal Holidays.
14. If an electric vehicle is being charged in the campground, then a fee set forth by the city council, via current rate resolution will be required per vehicle, per day.

(Amended: Ordinance No. 2024-001, Effective 03/06/24)

(Amended: Ordinance No. 2024-007, Effective 07/03/24)

CHAPTER 6.07 - MUNICIPAL SWIMMING POOL

- 6.0701 Unauthorized Use. It shall be unlawful for any unauthorized person to enter within the confines of the swimming pool area for the purpose of swimming or loitering except during the days and hours when the swimming pool area shall include the area enclosed by the swimming pool fence and the swimming pool bathhouse.
- 6.0702 Property Damage. No person shall maliciously, willfully or negligently break, damage, destroy, deface or tamper with any structure, appurtenance or equipment which is part of the swimming pool or bathhouse. Any person violating these provisions shall be subjected to immediate arrest under the charge of disorderly conduct.
- 6.0703 Penalty for Violation. Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation in addition to any fine levied.

TITLE 7 - TRAFFIC CODE

Chapter 7.01 - General Provisions

Chapter 7.02 - Operation of Vehicles

Chapter 7.03 - Vehicle Equipment

Chapter 7.04 - Speed Restrictions

Chapter 7.05 - Parking, Stopping

Chapter 7.06 - Trucks

Chapter 7.07 - Snowmobiles

Chapter 7.08 - Miscellaneous Provisions

Chapter 7.09 - Golf Carts

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 law enforcement.
- 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 Montrose.
- 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 law enforcement 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 law enforcement. (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 Driver's License Required. It shall be unlawful for any person to drive or operate upon any of the streets or highways within the City any motor vehicle without first having secured and having in their possession a valid license or permit to do so.
- 7.0202 License Plates. No person shall operate or drive a motor vehicle within the City without having conspicuously displayed thereon number license plates as required by state law, securely fastened, and which shall be kept free from mud, dirt or other obstruction so that the numbered license plates shall be clearly legible by other persons upon the highway.
- 7.0203 Drive on Right Side of Street. Upon all streets the operator of a vehicle shall drive the same upon the right half of the street and shall drive a slow-moving vehicle as closely as possible to the right-hand edge or curb of a street unless it is impractical to travel on such side of the street, and except when overtaking and passing another vehicle subject to the limitations applicable to overtaking and passing set forth in this Title. (SDCL 36-26-1)
- 7.0204 Vehicles Shall Not Be Driven on Sidewalk. The operator of any vehicle except bicycles shall not

drive within any sidewalk area except at a permanent or temporary driveway. (SDCL 32-26-21.1)

- 7.0205 Operation of Vehicles on Approach of Authorized Emergency Vehicle. Upon the approach of any authorized emergency vehicle or vehicles giving audible signal by lights or siren, the operator of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb of the street, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle or vehicles shall have passed, unless otherwise directed by a law enforcement officer. (SDCL 32-31-6)

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

- 7.0206 Unsafe Backing Up. It shall be unlawful for the operator of any vehicle to unsafely back such vehicle around a corner at an intersection or into an intersection of public streets. (SDCL 32-30-20)
- 7.0207 Reckless Driving. Any person who drives any vehicle upon a street, avenue, or alley carelessly and heedlessly in disregard of the rights or safety of others, or without due caution, and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.
- 7.0208 Careless Driving. Any person who drives any vehicle carelessly and without due caution, at a speed or in a manner so as to endanger any person or property, not amounting to reckless driving as defined in the previous Section, shall be guilty of careless driving.
- 7.0209 Exhibition Driving. Any person who drives any vehicle within the limits of the City in such a manner that creates or causes unnecessary engine noise, tire squeal, skid or slide upon acceleration or stopping; or that simulates a temporary race, or that causes the vehicle to unnecessarily turn abruptly or away, shall be guilty of exhibition driving.
- 7.0210 Right-of-Way at Intersection. 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 at 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 or she may otherwise have hereunder. (SDCL 32-26-12)
- 7.0211 U-Turn at Intersection. At any intersection where warned by a traffic control sign displaying the

words “No U-Turn,” it shall be unlawful for the operator of a vehicle to turn such vehicle at the intersection in a half circle so as to proceed in the opposite direction.

7.0212 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.

7.0213 Turning Around in Midblock Prohibited. The operator of a vehicle shall not turn such vehicle so as to Park in the opposite direction except at an intersection.

7.0214 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.

7.0215 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.

7.0216 Stop Required Before Operator Entering From Alley, Building or Private Road. The operator of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where said operator has a view of approaching traffic thereon.

7.0217 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.

- 7.0218 Following Too Closely. The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and condition of the street.

CHAPTER 7.03 - VEHICLE EQUIPMENT

- 7.0301 Warning Tickets. Any authorized law enforcement officer, upon reasonable belief that a vehicle is being operated in violation of any provision of this Title or applicable state law or is in such unsafe condition as to endanger any person, may require the driver of the vehicle to stop and submit to inspection of the vehicle and its equipment, license plates and registration card, and is hereby authorized to issue a warning ticket to any driver whose vehicle is in such violation. Such warning ticket shall clearly designate the provisions which are being violated and shall provide for notification to law enforcement officials when such violation is corrected, by the time specified on the warning ticket.
- 7.0302 Lights Required. A motor vehicle in motion, during the period from half an hour after sunset to half an hour before sunrise, shall display at least two (2) lighted lamps on the front and one on the rear of such motor vehicle, such lamps to conform to the state law; provided that a motorcycle or a motor bicycle shall be required to display but one lighted lamp in front and one in the rear.
- 7.0303 Headlights Dimmed. No person shall use headlights 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.
- 7.0304 Warning Devices. Every motor vehicle operated or driven in the City shall be provided with a suitable or adequate horn or other signaling device which shall be in good working order at all times such vehicle is operated on the streets of the city.
- 7.0305 Emergency Vehicle Warning Device. Every law enforcement and Fire Department vehicle and every ambulance used for emergency calls shall be equipped with lights and siren. It shall be unlawful for any other vehicle to be equipped with such equipment.
- 7.0306 Red and Blue Lights. Except as to law enforcement or Fire Department vehicles, or tow trucks or wreckers operating under such circumstances as may be provided by law, any person who drives or moves any vehicle in the City with any red or blue light thereon visible from directly in front or to the sides thereof shall be guilty of a misdemeanor.
- 7.0307 Brakes. Every motor vehicle shall be provided with foot pedal brakes in good working order and sufficient to control such motor vehicle at all times when same is in use.
- 7.0308 Mufflers. No person shall drive a motor vehicle on any street within the City unless such vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke. It shall be unlawful for any person to use a muffler cut-out on any motor vehicle within the City.

- 7.0309 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 end, or more than two (2) feet beyond the sides of the body, or carrying part of such vehicle, 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.
- 7.0310 Weight and Size of Vehicle and Loads. No person shall drive or operate any motor vehicle upon any street the gross weight of which including the load or the size of which do not comply with the requirements of the state law governing such vehicle.
- 7.0311 Windshields Must be Unobstructed. It shall be unlawful for any person to drive any motor vehicle upon any street with the front windshield obstructed or with any sign, poster, or other non-transparent material upon the front windshield, side wings, side, or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law or other temporary driving instruction placed thereon by the manufacturer.
- 7.0312 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 therefrom, except that sand may be dropped for the purpose of securing traction, 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-five (25) 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 fifteen (15) feet of the driveway entrance to any fire station, or directly across the street from such entrance;
- F. On a sidewalk;
- G. 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;
- H. 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 determine 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 Montrose, 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 law enforcement 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 law enforcement 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 nor more than \$100.00 plus court costs, which fine shall be collected by the Magistrate Court. If done timely or within the time limitations set forth above, the owner or operator 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.

- 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 3.0104. 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 3.0104. (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.
- 7.0512 **Parking of Recreational Vehicles on Public Streets, Alleys, and Other Property.**
- A. Definitions. For the purposes of this section, the following terms shall have the meaning given herein.
1. “Park,” “parking,” “stored,” and “storage” mean on-street parking for a continuous period more than twenty-four hours.
 2. “Motorized Recreational Vehicle” means a motorhome built on a truck or bus chassis or a van chassis.
 3. “Non-Motorized Recreational Vehicle” means an open or enclosed towable recreational vehicle, combining transportation and temporary living quarters that can be unhitched. Including but not limited to: travel trailers, folding camping trailers, and utility trailers. Also includes, but not limited to: boats, horse trailers, utility trailers for storing recreational vehicles and equipment, and trailers used to store motorcycles, personal watercrafts, or all-terrain vehicles.
 4. “Recreational vehicle” means motorized and non-motorized vehicles that combine transportation and living quarters for travel, recreation, and camping.

- B. A recreational vehicle parked on a public street, alley, or other publicly owned land shall not be occupied or used for living or sleeping purposes.

This provision shall not apply to recreational vehicles lawfully parked or stored on designated campgrounds within the City of Montrose.

- C. A recreational vehicle parked in the same or substantially the same location on a public street, alley, or other publicly owned land for a period of greater than twenty-four (24) hours shall be considered an abandoned vehicle for the purposes of Chapter 3.0104 of the Revised Municipal Ordinances of the City of Montrose.

This provision shall not apply to the recreational vehicles lawfully parked or stored on designated campgrounds within the City of Montrose.

- D. The recreational vehicle shall not be connected to city water or sewer services or an external source of electricity unless it is actively being cleaned or some other maintenance service is being performed.

This provision shall not apply to recreational vehicles lawfully parked or stored on designated campgrounds within the City of Montrose.

- E. All recreational vehicles stored or parked on a public street, alley, or other publicly owned land must have a current license plate affixed thereto and visible at all times. Any vehicle without a current valid license plate shall be declared an inoperable vehicle and subject to Chapter 3.01 of the Revised Municipal Ordinances of the City of Montrose.

- F. Penalty.

1. The City's Authorized Agent will provide a notice of violation to any vehicle or component thereof parked or stored in violation of this ordinance. The vehicle or component thereof must be moved within twenty-four (24) hours from the date of the notice of violation.
2. Any vehicle not moved within twenty-four (24) hours from the date of the notice of violation will be towed at owner's expense.

(Amended: Ordinance No. 2022-002, Effective 05/29/22)

(Amended: Ordinance No. 2022-005, Effective 02/08/23)

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 Montrose 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. 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 their possession a valid drivers 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. No person shall operate a snowmobile on any public property, including, but not limited to public school ground, park property, park roads, playgrounds, and recreational areas.
- 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 fielding 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.
- 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 to 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 vehicle, 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 identification 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.
- 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 towbar.
- 7.0717 Exception. Notwithstanding the provisions of any other Section, any governmental official in charge of public school ground, park property, playgrounds, public golf courses, or parking lots shall have authority to supervise and regulate events or programs conducted thereon or to designate areas under his charge and supervision as recreation areas that he shall deem available for use of snowmobiles, and the hours of such use.

CHAPTER 7.08 - MISCELLANEOUS PROVISIONS

- 7.0801 Clinging to Moving Vehicles. No person traveling upon any bicycle, motorcycle, coaster, sled, roller skates, or any other tow vehicles shall cling to or attach himself or such vehicle to any other moving vehicle upon any street.
- 7.0802 Riding on Outside of Vehicle. No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers. This provision shall not apply to persons riding within truck bodies in space intended for merchandise.
- 7.0803 Tampering with Vehicles. Any person who shall tamper with the motor vehicle of another, with intent to injure the same or cause inconvenience to the owner thereof, or who shall take and

operate the motor vehicle of another without the consent of the owner or person lawfully in charge thereof, under such circumstances as not to constitute larceny, shall be guilty of a misdemeanor.

- 7.0804 Immediate Notice of Accident. The operator of a vehicle involved in an accident resulting in injury to or death of any person, or resulting in any property damage, shall immediately by the quickest means of communication give notice of such accident to a law enforcement officer.
- 7.0805 When Driver Unable to Report. An accident report shall not be required from any person who is physically incapable of making such report during this period of incapacity. Whenever the operator of a vehicle is physically incapable of making such report or is physically incapable of giving an immediate notice of an accident and there is another occupant in the vehicle at the time of the accident capable of doing so, such occupant in the vehicle at the time of the accident shall cause to be given the notice not given by the operator.
- 7.0806 Duty to Give Information, Render Aid. The operator of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and if applicable the license number of the vehicle he is driving and his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with. The operator shall also render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.
- 7.0807 Personal Injury. The operator of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 7.0806. (SDCL 32-34-7)
- 7.0808 Property Damage. The operator of any vehicle involved in an accident, resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 7.0806. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.
- 7.0809 Unattended Vehicle, Property. The operator of any vehicle which collides with any vehicle or other property which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall attach securely in a conspicuous place in or on the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. Such driver shall without unnecessary delay notify a law enforcement officer of such accident. (SDCL 32-34-4)

- 7.0810 Duty Upon Striking Fixtures. The operator of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a street shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's license and shall make report of such accident when and as required in Section 7.0808.
- 7.0811 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.
- 7.0812 Manner of Arrest. Except in cases of driving while intoxicated or under the influence of intoxicating liquor or any stupefying or 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 law enforcement 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.
- 7.0813 Notice to Appear. A person charged with violation of this Title by notice shall be given notice to appear before the court of competent jurisdiction at the time or within the time stated in such notice, and that in event of failure to do so a warrant will be issued for his arrest.

The notice shall state the name, description and address of the offender, if known, the nature and date of the offense and a description of the vehicle involved in the violation by trade name and license number. The notice shall be signed by the law enforcement officer executing it.

The notice shall be made in triplicate, one copy to be given to the owner or driver charged with the offense or to be left in or upon the automobile or vehicle involved in the violation, one copy to be filed with the law enforcement officer and one copy to be filed with the court. If the person charged with the offense is available he shall be given an opportunity to sign an agreement to appear to answer the charge at the time and place specified in the notice which form of agreement shall be a part of the notice, and if he shall refuse to sign such agreement, then he shall be placed under arrest for the offense in the manner otherwise provided by law.

- 7.0814 Appearance and Deposit for Fine. A person who has received a notice of traffic violation shall at or within the time specified in such notice, appear before the court of competent jurisdiction to answer to the charge set forth therein according to the procedure of that court.

In cases of non-moving violations, and cases of failure to stop at a stop street, sign or signal which are not serious and aggravated cases, the person charged shall appear at the office of the Clerk of Courts and upon making the deposit for fine as authorized by the court and a statement authorizing the Clerk of Courts to enter his plea of guilty to the offense he shall not be required to appear in court.

- 7.0815 Attest on Failure to Appear. Upon the failure of a person to appear in response to a notice of traffic violation, 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:
- A. “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)
 - B. “Owner” – Any person having legal title, an ownership interest in, or who is entitled to the use or possession of a golf cart.
 - C. “Operator” – Any person who is operating or otherwise in physical control of a golf cart.
- 7.0902 Driver’s License Required. Any person operating a golf cart on any public street within City shall hold either a valid driver’s license or learner’s permit issued by the State of South Dakota or another jurisdiction. No golf cart permit shall be issued by the Finance Officer to any person that fails to meet this requirement.
- 7.0903 Insurance and Permit Required.
- A. Proof of financial responsibility, as provided in SDCL 32-25, is required for all golf carts operated on public streets within the City.
 - B. No person shall operate a golf cart on any street or highway within the City without having first obtained a golf cart permit from the Finance Officer. At a minimum, the permit application form shall require the following information: the applicant’s name, contact information, a copy of the applicant’s driver’s license or learner’s permit, proof of financial responsibility, and the make, model, and serial number of the golf cart for which the permit is sought. Upon receipt of an application, the Finance Officer shall review it and either: (1) inform the applicant in writing of the specific reasons why the application is incomplete or (2) deem the application complete and issue the golf cart permit.
- 7.0904 Application Fee. The fee for a golf cart permit shall be established by resolution of the City Council.
- 7.0905 Permit Term/Expiration. A golf cart permit shall be valid only for the year in which it is issued. For purposes of this section, a year begins February 1st and ends January 31st.
- 7.0906 Transfer. A golf cart permit shall not be transferred from either one (1) golf cart to another or from the permittee to a new owner. A permit issue for a golf cart that is no longer in use shall be surrendered to the City or destroyed.
- 7.0907 Revocation. A permit issued pursuant to this Chapter may be revoked by the Finance Officer if he or she determines the licensee has violated any applicable provisions of this code, state law, local ordinance, or for other good cause including, but not limited to, providing false information on the permit application or failing to maintain the required financial responsibility.

- 7.0908 Slow Moving Emblem Required. A slow-moving vehicle emblem shall be mounted on the rear of a golf cart in such a position and condition as to be clearly visible. (SDCL 32-14-14)
- 7.0909 Golf Cart Operation.
- A. No person may operate a golf cart on a state or county highway located within the City except for crossing from one (1) side of the highway to the other. A golf cart may cross the highway at a right angle but only after stopping and yielding the right-of-way to all approaching traffic and crossing as closely as possible to an intersection or approach. (SDCL 32-14-15)
 - B. No person may operate a golf cart within the City on a public street during the time between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise unless the golf cart is equipped with a rearview mirror, horn, headlights, tail lights, and brake lights.
 - C. The operator of a golf cart shall comply with all municipal and state regulations related to the operation of motor vehicles on public streets and highways.
- 7.0910 Violation. A violation of this Chapter is a Class 2 Misdemeanor and shall be punishable by a fine of up to and not exceeding \$100.00.

(Amended: Ordinance No. 2020-008, Effective 10-01-20)

TITLE 8 - WATER AND SEWER

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 consumer desiring any utility service furnished by the City, including water or sewer service, shall make application for the same to the City Council. Such application shall contain the applicant's name, address and the uses for which such service is desired. A separate application shall be made for each premise to be served. The applicant shall abide by the rules and regulations established by the City relative to utility service in effect at the time of such application and as revised from time to time in addition to conditions and agreements as the City Council shall deem advisable.
- 8.0102 Same - Not Available to Debtors. The City may decline or fail or cease to furnish utility service to any person who may be in debt to the City for any reasons, except ad valorem taxes and special assessments.
- 8.0103 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.
- 8.0104 Rates. Rates for the use of utilities furnished by the City shall be established by resolution by the Montrose City Council.
- 8.0105 Consumer's Bills. Water utility bills rendered are net, due and payable on or before the 15th day of the month. If bills are not paid by the due date, an additional late fee set by resolution shall be assessed. Provided, however, when a due date falls on a weekend or holiday, bills will not be delinquent until the close of business the next following work day. Bill payments mailed to the City must be received by the City on the due date. Postmarks shall not be considered.

(Amended: Ordinance No. 004-2018, Effective 01-01-19)

- 8.0106 Unpaid Bills. If a bill for utility services is not paid in full as provided in 8.0105, the customer shall consider the monthly bill as notice of unpaid balance on the account and will be considered delinquent if not paid by the 15th day of the following month. Water services will be shut off on the 16th day of the following month in which payment in full was not received. For example: January usage is due February 15th – if not paid in full by March 15th, the water will be shut off and the disconnect and reconnect fees, which are set by resolution, will be imposed. If the 16th falls on a Friday or the day before a holiday, water will not be shut off until the next business day.

Notice of past due amount will be provided on the monthly bills which will show a past due amount plus the current bill total. No additional notices or letters will be mailed or hand delivered. No extensions or exceptions will be made except as specified in Ordinance 8.0108. Water will be shut off and remain shut off until payment of the entire account balance plus the disconnect and reconnect fees are paid in full.

(Amended: Ordinance No. 004-2018, Effective 01-01-19)

8.0107 Disconnect. The City may disconnect utility service for any of the following reasons:

- A. Failure to pay all charges and penalties;
- B. Default on an agreement to liquidate a continuing debt;
- C. Failure to grant the City access to read and inspect meters;
- D. Customer tampering.
- E. Failure to obtain a Certificate of Occupancy from the City.

8.0108 Extension. A single 30-day extension shall be allowed before disconnection of service upon receipt of a physician's certificate or notice from a public health or social service official that a disconnection of utility services will aggravate an existing medical condition of the customer or other permanent resident of the premises.

8.0109 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, 7:30 a.m. to 4:00 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.

8.0110 Owner, Lessee Liable.

- A. 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, which may be recovered in an action against such owner, dwelling owner, lessee or occupant or against any or all of them, jointly or severally. The provisions for payment shall equally apply to the owner of the property as they do to the consumer/lessee or occupant.
- B. If water shut off is not requested at the time a business or residence is sold or the tenant changes, monthly charges will continue to the last known tenant and property owner of such business or residence until notice is received, and legal collection efforts will be pursued.
- C. All properties will be charged the minimum base rates, per meter, for water and sewer whether vacant or occupied. If vacant, the bill will be incurred by the property owner. In

cases where the land and dwelling are separately owned, the provisions for payment shall equally apply to the owner of the land and dwelling.

- D. The minimum base rates, per meter, for water and sewer will be charged even when service has been turned off for non-payment.
- E. All ordinances/resolutions and parts of same in conflict with the provisions of this ordinance are hereby repealed.

(Amended: Ordinance No. 005-2018, Effective 08-26-22)

- 8.0111 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.

- 8.0112 User Responsible for Operation and Maintenance of Water and Sewer Lines. Each occupied residence must have a usable city domestic water and sanitary sewer service. The City of Montrose shall be responsible for the maintenance and proper operation of the domestic water mains, sanitary sewer mains and domestic water service line from the main to the curb stop. Any domestic water service line past the curb stop or sanitary sewer service line from the sanitary sewer main to the structure, shall be the exclusive responsibility of the property owner. Owners at their own expense must keep and maintain their sanitary sewer service lines, from the point of connection at the main line, and all other equipment in good working order and properly protected from frost and other damage. Owners at their own expense must keep their domestic water service line from the point of connection at the curb stop to the structure in good working order and properly protected from frost and other damage. Thirty (30) days after written notice from the Maintenance Superintendent, if the repair has not been replaced, the Maintenance Superintendent shall cause such repairs to be made and the cost of these repairs shall be assessed against the property. In the event that a property owner must excavate to repair a line, it shall be his sole responsibility to fill in such excavation to the satisfaction of the Maintenance Superintendent. It shall be the responsibility of the City to replace the gravel base course and asphalt pavement displaced by such excavation at the cost of the property owner.

- 8.0113 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.

- 8.0114 Construction of Sewer and Water Connections. That whenever a property owner or developer shall deem it necessary to construct sewer and water service connections from the mains to the curb line on any street, highway, alley or public place, in advance of the permanent improvement of such street, highway, alley or public place, it shall be the duty of the owners of property fronting thereon to make such service connections at the cost of the property owner. If no mainline sanitary sewer or domestic waterlines exist in front of said property, it is and shall be the sole responsibility of the property owner to pay for all costs of extending said utilities. All costs associated with the extension and connection of utilities including but not limited to surveying, engineering, road replacement, pipe materials, valves, and miscellaneous items will be the sole responsibility of the property owner.
- 8.0115 Written Notice for Owners. Whenever the City Council shall have ordered, by resolution, any such connections to be made, it shall serve written notice on the owners of said property, either by hand delivery or by certified mail, return receipt requested, or by posting on the property, to make said connections by a date fixed, which shall not be less than ten (10) days after such notice is given, or to show cause in writing, filed with the City Finance Officer within said time, why such connections should not be made. At the expiration of the time fixed, the City Council shall consider all the objections so filed and if over-ruled, shall thereupon, by resolution, order the making of such connections as they shall deem necessary. 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.
- 8.0116 City Initiated Work and Assessment of Property Owners. When any such connections are ordered, as herein provided, the City Council shall cause the work to be done, and the cost thereof shall be collected from the owners of the property where such connections are made or assessed as a special tax against such property in the manner provided for assessing the cost of constructing sidewalks, so far as applicable.

CHAPTER 8.02 - WATER PROVISIONS

- 8.0201 Connection With City Watermain. No person shall make any connection with any City watermain or tap the same or conduct water therefrom upon his premises or use any water therefrom without first making application therefore to the Maintenance Superintendent.
- 8.0202 City Engineer Prescribing Connections. All connections hereafter made with the city water mains shall be at the expense of the person desiring the same and shall be made under the supervision of the City Engineer; in all such cases the City Engineer may prescribe the place where and the manner in which the connection shall be made, the size of the service pipe to be used, the place where the valve box and fire hydrant shall be placed and the manner and materials in which the plumbing shall be done.

- 8.0203 Meter Installation. All persons hereafter making application to be furnished with water shall be required to install a meter for the measurement of the amount of water used and shall pay for such water used at the rate hereinafter specified but two or more premises will not be supplied with water measured by the same meter unless one person is liable for the payment for the whole of such water furnished; such meter shall be so placed as to measure all water used. When a meter is placed on a pipe connected to a boiler or other hot water apparatus a check valve must be placed between such meter and boiler or other hot water apparatus to protect meter from back pressure of steam or hot water; in case of the breakage of any pipe or meter or if there be a leak in the same, the water shall be shut off until such breakage or leak is repaired.
- 8.0204 Meter Requirements. All meters shall be of the kind prescribed by the City Council and shall be placed as to be easily read and charged monthly.
- 8.0205 Meter Tests. Customers may have their meters tested upon payment of the actual cost for test. If the meter is found to be in error, the fee shall be refunded. If the test of the meter shows that it fails to register correctly within 2%, the Utility Superintendent shall make a charge or allow a credit in proportion to the error, for all water registered in excess of the minimum amounts allowed by the established rates, the same to be retroactive for three (3) billing periods only.
- 8.0206 Unnecessary Waste of Water. It shall be the responsibility of all consumers of water paying the rates mentioned to prevent unnecessary waste of water and to keep all water outlets closed when not in actual use; unpermissible uses; not to permit other persons or families to use water from any of their faucets, hydrants or pipes.
- 8.0207 Connection to Water Mains. It shall be unlawful for any person, firm or corporation to connect any water pipe or pipe of any kind to any of the water mains of the municipal water works system of the City of Montrose or to in any manner tamper with or bore into said water mains for any purpose whatever, except as hereinafter provided.
- 8.0208 Exceptions. The City of Montrose, through the Maintenance Superintendent may allow connections to the water mains of said system upon application of any person desiring the same and shall make such connections only on streets where said mains may be located and bring the water to the curb along said street in which said water mains may be located and shall make said connections at the expense of the applicant desiring connection. The Maintenance Superintendent, through the City Engineer, will review and approve plans and specifications for the utility extension. The applicant shall be responsible for all construction and engineering costs associated with the project.
- 8.0209 Standard Workmanship. The connections so made to the City of Montrose utility as aforesaid shall be of standard workmanship of pipe and made according to the provisions of the ordinances of said City heretofore enacted as to size and quality of pipe, material and workmanship, including curb box and other attachments as approved by the City Engineer.

CHAPTER 8.03 - SEWER PROVISIONS

- 8.0301 Sanitary Sewer Required. A separate and independent sanitary sewer shall be provided for every

building, except where one building stands at the rear of another on an interior lot and no sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the sewer from the front building may be extended to the rear building and the whole considered as one sanitary sewer. Multiple hookups in all cases shall be as prescribed by the City Council.

- 8.0302 Existing Sewer Connections. Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the Maintenance Superintendent, to meet all requirements of this Chapter.
- 8.0303 Disconnection. When a disconnection from the sanitary sewer is made, the sewer service shall be closed to the satisfaction of the Maintenance Superintendent. Closure shall be at the curb line on residential property and at the property line on commercial property.
- 8.0304 Sewer Pipe Requirements. All sanitary sewer shall be vitrified clay sewer pipe, or PVC, or other suitable material approved by the City Council. Additional requirements may be provided when any part of the building sewer is located near a water service pipe, or where the sewer is exposed to damage by tree roots or unstable ground.

The size and slope of sanitary sewer shall be subject to the approval of the City Council, but in no event shall the diameter be less than four (4) inches. The slope of such pipe shall be not less than four-tenths of one percent. Whenever possible the sewer shall be brought to the building at an elevation below the basement floor. No sewer shall be laid parallel to or within three (3) feet of any bearing wall, which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The sewer shall be laid at uniform grade and in straight alignment in so far as possible. Changes in direction shall be made only with properly curved pipe and fittings.

- 8.0305 Certain Acts Prohibited. No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer, including discharging of sump pumps into floor drains.

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

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

The fine for a violation of this Section shall be \$250.00. Any person 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 \$250.00. If the person 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 \$275.00. Upon failure of the person 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 person shall be fined not less than \$300.00 nor more than \$325.00 plus court costs, which fine shall be collected by the Magistrate Court. If done timely or within the time limitations set forth above, the person 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.

- 8.0306 Private Disposal System. No connection from any private sewage disposal system shall be made with any public sanitary sewer system under the jurisdiction of the City. (SDCL 9-48)

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 Creation of Planning Commission. The Montrose Planning Commission is hereby created pursuant to SDCL 11-6 for the City of Montrose, South Dakota.
- 9.0102 Membership and Terms. The Planning Commission created under the terms of this ordinance shall consist of not less than three (3) members appointed by the Mayor, and subject to approval by the City Council. The term each member shall serve shall be for five years, except when the Planning Commission is first appointed, at least one (1) member shall be appointed for three (3) years, and the balance of the members shall be appointed for five (5) years. Thereafter, appointments of each member shall be for terms of five (5) years so that there will be an overlapping of tenure. Administrative officials of the City may be appointed as ex-officio members of the Planning Commission.
- (Amended: Ordinance No. 002-2019, Effective 08-10-19)*
- 9.0103 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.
- 9.0104 Territorial Extent of Powers. The Planning Commission may exercise the comprehensive planning and zoning powers granted in SDCL 11-4 and 11-6, and acts amendatory thereof, not only within the corporate limits of Montrose, South Dakota, but also within an area of up to three miles of the corporate limits as provided by law.
- 9.0105 Preparation of Comprehensive Plan. For the purpose of making a comprehensive plan for the development of the City, the Planning Commission shall make or cause to be made careful and comprehensive studies of present conditions and future growth of the City, including any land outside the City which bears relation to the comprehensive plan. The comprehensive plan shall

be made with the general purpose of guiding and accomplishing a coordinated and harmonious development of the City and its environs.

After such comprehensive plan has been adopted according to law, no substantial amendment or modification thereof shall be made, without such proposed change first being referred to the Planning Commission for its recommendations.

9.0106 Zoning Regulations. It shall be the 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. All applications and proposals for changes in or amendments to the zoning regulations shall first be submitted to the Planning Commission for its recommendations.

9.0107 Subdivision Plats and Regulations. All plans, plats, or re-plats of subdivisions or re-subdivisions of land within the jurisdiction of this ordinance 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.

9.0108 Powers and Duties. The Planning Commission, its members and employees, shall have all powers as may be necessary to enable it to fulfill and perform its functions, and to carry out all the purposes and powers provided in SDCL 11-4 and 11-6, and acts amendatory thereof.

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 11-2-13 and 11-4-1 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Montrose, SD does ordain as follows:

(Amended: Ordinance No. 11-311, Effective 05-14-13)

The City of Montrose 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 (NFIP) is a voluntary program administered by the Federal Emergency Management

Agency (FEMA), a component of the U.S. Department of Homeland Security, and the City of Montrose's community officials have elected to join the program, participate, and enforce this Flood Damage Prevention Ordinance and the requirements and regulations of the NFIP. The NFIP, established in the aforesaid act, provides that areas of the City of Montrose having a special flood hazard be identified by FEMA, and that floodplain management measures be applied in such flood hazard areas. Furthermore, the City of Montrose may elect to administer the Flood Damage Prevention Ordinance to areas not identified as Special Flood Hazard Areas (SFHAs) by FEMA on the community's effective Flood Insurance Rate Map (FIRM), if the community has documentation to support that there is an inherent risk of flooding in such areas.

- B. Findings of Fact. The flood hazard areas of the City of Montrose are subject to periodic inundation by flood waters, which results in potential 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 of the inhabitants of the City of Montrose.

These potential flood losses are caused by:

1. The cumulative effect of obstructions in floodplains that are known to cause increases in flood heights and velocities;
2. The occupancy of flood hazard areas by structures vulnerable to floods because they are inadequately elevated or otherwise unprotected from flood damages; and
3. Uses deemed unsuitable for floodplain areas or that do not account for the increased flood risk.

- C. Statement of Purpose. It is the purpose of this Chapter 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 damage to public infrastructure, including but not limited to utilities, streets, and bridges that are susceptible to flooding;
3. Minimize prolonged business interruptions caused by flooding;
4. Minimize public expenditures on flood control projects;
5. Minimize the need for rescue and relief efforts associated with flooding and are generally undertaken at the expense of the public;
6. Protect and safeguard the welfare and safety of first responders should an emergency response is needed;

7. 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
 8. Promote that potential buyers are notified if properties are in a flood area.
- D. Methods of Reducing Flood Losses. To accomplish the purposes outlined in 9.0401(C), this ordinance applies to the following Methods:
1. Restricts or prohibits land uses that are dangerous to health, safety, or property in times of flooding, or cause excessive increases in flood heights or velocities;
 2. Requires that land uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
 3. Controls the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
 4. Controls filling, grading, dredging and other developments that may increase flood damage; and
 5. Prevents or regulates the construction of flood barriers that will unnaturally divert floodwaters or 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.

100-Year Flood means a flood having a recurrence interval that has a 1-percent change of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms “100-hundred-year flood” and “1-percent-annual-chance flood” are synonymous. The term does not imply that the flood will necessarily happen once every 100 hundred years. Mandatory flood insurance requirements may apply.

100-Year Floodplain means the area of land susceptible to being inundated due to the occurrence of a 1-percent-annual-chance flood.

500-Year Flood means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-annual-chance flood). The term does not imply that the flood will necessarily happen once every 500 years and mandatory flood insurance requirement generally does not apply.

500-Year Floodplain means the area of land susceptible to being inundated due to the occurrence of a 0.2-percent-annual-chance flood.

Accessory Structure is a structure that is on the same parcel of property as a principal structure.

Its use is incidental to the use of the principal structure the ownership of the accessory structure is the same owner as of the principal structure. An accessory structure is a non-residential structure of low value that is used solely for the parking of vehicles and storage of tools, materials, or equipment. No human habitation is allowed within an accessory structure.

Addition is any improvement that expands the enclosed footprint or increases the square footage of an existing structure. This includes lateral additions added to the side, front, or rear of a structure; vertical additions added on top of a structure; and enclosures added underneath a structure.

Alluvial Fan Flooding means flooding occurring on the surface of an alluvial fan or similar landform that originates at the apex. It is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant Structure - see *Accessory Structure*.

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, or AR/AH, 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 FIRM, 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, 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 1-percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) – is the water surface elevation of the 1-percent-annual-chance flood event. It is 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. It is also the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, AI- A30, AR, VI-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1-percent chance of equaling or exceeding that level in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides. A walkout basement that does not require a step up to grade is not considered a basement.

Best Available Data is existing flood hazard information adopted by a community and reflected on an effective FIRM, FBFM, FHBM and/or within an FIS report; or draft or preliminary flood hazard information supplied by FEMA or from another source. Other sources may include, but are not limited to, state, other federal agencies, or local studies, the more restrictive of which would be reasonably used by the community.

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. Any walls below the lowest floor in a building in a V or VE Zone should give way under wind and water loads without causing collapse, displacement, or other damage to the elevated portion of the building or the supporting pilings or columns. Breakaway walls apply only to V or VE Zones.

Building – see *Structure*.

Channelization means the artificial creation, enlargement, realignment, or alteration of a stream channel's slope, shape, or alignment. Streambank restoration may be deemed as channelization.

Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, and/or the SFHA. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

Conditional Letter of Map Revision Based on Fill (CLOMR-F) is FEMA's comment on a proposed structure or property. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be removed from the floodplain.

Crawlspace means an under-floor space that has its interior floor area (finished or not) no more than 4 feet from the bottom floor joist the next higher floor elevation, designed with proper

openings that equalize hydrostatic pressures of flood water, and is not used for habitation. Reference: 9.0405(B.4 Crawlspace).

Critical Facility means a facility or building where even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, schools, storage of critical records, assisted living and similar facilities.

Deed Restriction refers to a clause in a deed that limits the future use of the property in some respect. Deed restrictions may impose a vast variety of limitations and conditions. For example, they may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or from being used at all.

Detached Garage is a building that is used solely for storage of materials or vehicle parking for up to four housing occupants. If a detached garage is designed or used for habitation or conducting business, or has multiple stories, then the building is not considered a detached garage under the NFIP.

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

Elevated Building is a non-basement building built, in the case of a building in Zone AI-30, AE, A, A99, AR, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (post and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of a building in Zone AI-30, AE, A, A99, AR, AO, AH, B, C, X and D, an "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Enclosure refers to an enclosed walled-in area below the lowest floor of an elevated building. Enclosures below the BFE may only be used for building access, vehicle parking, and storage.

Erosion means the process of the gradual wearing away of land masses by wind, water, or other natural agents.

Existing Construction refers to 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. It 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:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides (i.e., mudflows) that are proximately caused by flooding as defined in this ordinance 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.
 - d. 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 this ordinance.

Flood Insurance Manual is the document FEMA produces twice a year and is used to write flood insurance policies underwritten by the NFIP. The document contains definitions, policy rates, coverage and limitations, application and insurance policy forms.

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

Flood Insurance Study (FIS) 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.

Floodplain Development Permit is a community issued permit or document that is used for any development that occurs within an SFHA identified by FEMA or the community. It is used to

address the proposed development to ensure compliance with the community's ordinance.

Flood plain or Flood-Prone Area means any land area susceptible to being inundated by water from any source whether or not identified by FEMA (see definition of ***Flooding***).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, mitigation plans, and floodplain management regulations.

Floodplain Management Regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for flood damage prevention and reduction.

Flood Opening refers to an opening in the wall of an enclosed structure that allows floodwaters to automatically enter and exit the enclosure. Refer to FEMA Technical Bulletin 1.

Flood Protection System means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to an SFHA and to reduce the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized, flood modifying works are those constructed in conformance with sound engineering standards. FEMA only accredits levees, both private and public, that have been certified by a professional engineer or firm in which the certification shows that the levee have met and continue to meet the minimum regulatory standards cited in Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR 65.10).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents. Floodproofing can either be accomplished in the form of dry floodproofing in which the structure is watertight below the levels that need flood protection, or wet floodproofing in permanent or contingent measures applied to a structure that prevent or provide resistance to damage from flooding, while allowing floodwaters to enter the structure or area.

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

Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. In AO Zones, the highest adjacent grade is utilized by comparing the lowest floor elevation to that of the highest adjacent grade and the depth of the AO Zone.

Historic Structure means any structure that is:

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

Letter of Map Amendment (LOMA) means an official amendment, by letter, to an effective FIRM. A LOMA establishes a property's location in relation to the SFHA. It is usually issued because a property or structure has been inadvertently mapped as being in the floodplain, when the property or structure is actually on natural high ground above the BFE.

Letter of Map Revision (LOMR) means FEMA's modification or revision to an entire or portion of the effective FIRM, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, or the SFHA.

Letter of Map Revision Based on Fill (LOMR-F) means FEMA's amendment, by letter, to an effective FIRM where fill was brought in or used to elevate a property, portion of property or structure above the BFE.

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 that 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 Adjacent Grade (LAG) means the lowest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. For an existing structure, it means the lowest point where the structure and ground touch, including but not limited to attached garages, decks, stairs, and basement windows.

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 Section 60.3.

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"; however, a manufactured home may be used for both residential and non-residential use.

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 FHBM or the FIRM for a community issued by FEMA.

Mean Sea Level means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BFEs shown on a community's FIRM are referenced.

Mixed Use Structures are structures with both a business and a residential component, but where the area used for business is less than 50 percent of the total floor area of the structure.

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. 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.

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.

No-Rise Certifications are formal certifications signed and stamped by a professional engineer licensed to practice in the state, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that a proposed development will not result in any increase (0.00 feet) in flood levels within the community during the occurrence of a base flood event.

Physical Map Revision (PMR) is FEMA's action whereby one or more map panels are physically revised and republished.

Recreational Vehicle means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. 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.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, creek, etcetera, which can be intermittent or perennial.

Section 1316 refers to the section of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any property that the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Section 1316 is issued for a property, not a property owner, and remains with the property even after a change of ownership.

Special Flood Hazard Area - see ***Area of Special Flood Hazard***.

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, culvert, bridge, dam, or 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 insurance purposes, "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 its pre-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:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
Any alteration of a "historic structure", if 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. Reference: 9.0404(E, Variance Procedures).

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 Sections 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies, such as the I-percent-annual-chance flood event, in the flood plains of coastal or riverine areas.

Watercourse means the channel and banks of an identifiable water in a creek, brook, stream, river, ditch or other similar feature.

9.0403 General Provisions.

- A. Lands to Which This Ordinance Applies. The ordinance shall apply to all areas of special flood hazard identified by FEMA in 9.0403 (B.1. Use of Best Available Data), areas of identified and documented flood risk supported using Best Available Data within the jurisdiction of the City of Montrose.
- B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by FEMA in a scientific and engineering report entitled, "The Flood Insurance Study for McCook County, South Dakota and Incorporated Areas" dated March 11th, 2025, accompanying FIRMs, and any Letters of Map Change including Letters of Map Amendment, Letters of Map Revision based on Fill, and Letters of Map Revision, thereto are hereby automatically adopted by reference and declared to be a part of this ordinance.

(Amended: Ordinance No. 11-311, Effective 05-14-13)

- C. Use of Best Available Data. The community has elected to adopt Best Available Data, defined in 9.0403 (A. Lands to Which this Ordinance Applies), to regulate floodplain development in addition to utilizing the effective FIRMs, FHBM, FIS, and/or FBFM. Where Best Available Data contradicts the FIRMs, FHBM, FIS, and/or the FBFM, the more restrictive data shall be utilized.
- D. Establishment of Floodplain Development Permit. A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.
- 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 human- 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 community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.
- 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.
- I. Compliance. No structures or developments including buildings, recreation vehicles, or manufactured homes 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. Nothing herein shall prevent the City Council of Montrose from taking such lawful action as is necessary to prevent or remedy any violations.
- J. Stop Work Order.
1. Authority. Whenever the floodplain administrator or other community official discovers any work or activity regulated by this ordinance being performed in a manner contrary to the provision of this ordinance, the floodplain administrator is authorized to issue a stop work order.
 2. Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.
 3. Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed

by local or state law including but not limited to the penalties outlined in 9.0403(K, Penalties for Noncompliance).

- K. Penalties For Noncompliance. In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the NFIP regulation, to qualify for the sale of federally subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions." In accordance with Section 60.l(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally- enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e. mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or codes."

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. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 or imprisoned for not more than 30 days, or both, for each violation assessed daily, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Montrose from taking such other lawful action as is necessary to prevent or remedy any violation.

9.0404 Administration.

- A. Designation of the Floodplain Administrator. City of Montrose's Finance Officer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of the NFIP Regulations and 44 CFR pertaining to floodplain management.
- B. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:
1. Uphold the goals of the community and the NFIP to reduce risk when possible and increase the community's resistance to future disasters.
 2. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation of the lowest floor (including basement or crawlspace) of all new or substantially improved structures and any floodproofing certificates, including the data supporting such certificates.
 3. Maintain and hold open for public inspection maps that identify and locate the boundaries of the SFHAs to which this ordinance applies, including, but not limited to, the FIRM.

4. Review development proposals to determine whether a proposed building site, including sites designed for the placement of manufactured homes, will be reasonably safe from flooding.
5. Review, approve, or deny all applications for development permits required by adoption of this ordinance.
6. Ensure 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 and the Endangered Species Act of 1973) from which prior approval is required.
7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
8. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
9. 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.
10. When BFE data has not been provided by FEMA, the Floodplain Administrator shall obtain, review, and reasonably utilize any BFE data and floodway data available from a federal, state, or other source including data provided by the applicant, in order to administer the provisions of this ordinance.
11. When a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones AI-30, AE, and AH 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 1.00 foot at any point within the community.
 1. Under the provisions of 44 CFR Chapter 1, Section 65.12 of the NFIP Regulations, a community may approve certain development in Zones AI-30, AE, and AH on the community's FIRM, which increases the water surface elevation of the base flood by more than 1.00 foot, provided that the community first meets the requirements of Section 65.12 for a conditional FIRM revision through FEMA's CLOMR process.

12. In addition to utilizing the effective FIRMs, FIS, Flood Boundary and Floodway Map, all permit reviews will utilize Best Available Data. Reference 9.0403(B.1 Use of Best Available Data).
13. If the project is determined or reasonably believed to cause an adverse effect on the BFE(s), boundaries of the floodplain or any insurable structures, technical justification for the proposed development shall be submitted and the community may require a CLOMR or LOMR to be submitted prior to the permit approval or as a requirement of the permit.

C. Requirement to Submit New Technical Data.

1. The property owner or developer shall notify FEMA by submittal of a LOMR within 6 months of project completion when an applicant had obtained a CLOMR from FEMA or when development altered a watercourse, modified floodplain boundaries, or modified BFE.
2. The property owner or developer shall be responsible for preparing technical data to support the CLOMR or LOMR application and paying any processing or application fees to FEMA. The property owner or developer is responsible for submitting the CLOMR and LOMR to FEMA and shall provide all necessary data to FEMA if requested during the review process to ensure the CLOMR or LOMR is issued.
3. The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this ordinance and all applicable state federal, and local laws.

D. 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;

1. Duplicated plans drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations.
2. Duplicated plans drawn to scale showing the location, dimensions, and elevation of existing and proposed structures, including the placement of manufactured homes.
3. Location of the foregoing in relation to SFHAs.
4. Elevation (in relation to mean sea level), of the lowest floor (including basement and crawlspace) of all new and substantially improved structures, if applicable;
5. Elevation (in relation to mean sea level), to which any nonresidential structure (if applicable) shall be floodproofed.

6. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure (if applicable) shall meet the floodproofing criteria of this ordinance and the NFIP Regulations.
7. Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development, if applicable.
8. At the community's discretion, the community may charge a fee for issuance of floodplain development permits.
9. Copies of all floodplain development permits and the associated documents shall become property of the community and a permanent record.

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:

1. The danger to life and property due to flooding or erosion damage.
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
3. The danger that materials may be swept onto other lands to the injury of others.
4. The compatibility of the proposed use with existing and anticipated development.
5. The safety of access to the property in times of flood for ordinary and emergency vehicles.
6. 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.
7. 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.
8. The necessity to the facility of a waterfront location, where applicable.
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
10. The relationship of the proposed use to the comprehensive plan for that area.

E. Variance and Appeal Procedures.

1. Variance

- a. An application for a variance must be submitted to the Finance Officer on the form provided by the City of Montrose and include at a minimum the same information required for a development permit and an explanation for the basis for the variance request.
 - b. Upon receipt of a completed application for a variance, the variance request will be set for public hearing at the next City Council meeting in which time is available for the matter.
 - c. Prior to the public hearing, Notice of the hearing will be published in the official newspaper to the City at least 15 days prior to the hearing. In addition to the newspaper publication, written notice shall be provided to all adjoining property owners.
 - d. The burden to show that the variance is warranted and meets the criteria set out herein is on the applicant.
2. Criteria For Variances.
- a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
 - b. Variances shall not be issued within a designated floodway if an increase in flood levels during the base flood discharge would result.
 - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d. Variances may be issued upon;
 - i. A showing by the applicant of good and sufficient cause;
 - ii. A determination that failure to grant the variance would 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 and ordinances.
 - e. Variances pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods.

3. Variance Decision. The decision to either grant or deny a variance shall be in writing and shall set forth the reasons for such approval or denial. If the variance is granted, the property owner shall be put on notice along with the written decision that the permitted building will have its lowest floor below the Flood Protection Elevation and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.
4. Appeals. The City Council shall hear and decide appeals from the interpretations of the Administrator.
 1. An appeal must be filed with the Finance Officer within fourteen (14) days of the date of any permit denial or interpretation of the Administrator. Failure to timely file an appeal shall be considered a failure to exhaust the administrative remedies. The appeal must set out the interpretation of the Administrator and narrative setting forth the facts relied upon by the appellant and the appellants claim regarding the error in the interpretation.
 2. Upon receipt of a completed appeal, the appeal will be scheduled for the next available City Council meeting to be heard. In ruling on an appeal, the City Council shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this ordinance, including:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual landowner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity of the facility to a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flooding for ordinary and emergency vehicles;

- j. 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; and
 - k. The cost of providing government services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. Decision. The City Council's decision on appeal shall be in writing and set out the facts, technical information, and the legal basis for the decision.

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.
 - 7. On-site waste disposal systems shall be designed or located to avoid impairment to them or contamination from them during flooding.
- A.1. Substantial Improvement. Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, if the cumulative cost of the entire

project equals or exceeds 50 percent of the market value of the structure only (not of the structure and land value combined) before the improvement or repair is started then the work shall be considered as substantial improvement. If the structure has sustained substantial damage, any repairs are considered substantial improvements regardless of the actual repair work performed. For Substantial Damage, refer to 9.0405(A.2. Substantial Damage). The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

A.2. Substantial Damage. Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure only before the damage occurred. This term also applies to structures which have incurred any damage that equals or exceeds 50 percent of the structure's market value regardless of the actual repair work performed. When a structure or building has been determined as substantially damaged, any work or repair on said structure or building will be considered as substantial improvement and will be required to meet the development requirements set forth within this ordinance for substantial improvement.

A.3. Substantial Improvement and Substantial Damage Determination. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the applicable community officials and staff, shall:

1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure only, not of land and building, before the start of construction of the proposed work. In the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.
3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the 9.0405(A.1. Substantial Improvement).

4. Utilize FEMA's Substantial Improvement/Substantial Damage Desk Reference when making any determination on Substantial Improvement and/or Substantial Damage.
 5. The substantial improvement regulations apply to all of the work that is proposed as the improvement, even if multiple permits are issued. Therefore, the determination of the cost of the improvement should consider all costs of all phases of the work before issuance of the first permit.
 6. Notify the applicant that if it is determined that the work constitutes substantial improvement or repair of substantial damage, that compliance with the floodplain management ordinance is required.
- B. Specific Standards. In all SFHAs, and 9.0403 (B.1. Use of Best Available Data) areas of known or suspected flood risk areas, the following provisions are required:
- B.1. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to the BFE, a registered professional engineer, architect, or land surveyor shall submit certified elevations to the Floodplain Administrator that the standards of this ordinance are satisfied.

In AO/AH Zones, new and substantially improved residential structures must have their lowest floor (including basement) above the highest adjacent grade at least one foot above the FIRM's depth number (at least three feet if no depth number is specified). In AO/AH Zones, adequate drainage paths around structures on slopes are required to guide flood waters away from proposed structures.

- B.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 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 that includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. If the use or occupancy of the building changes in the future to residential, then the dry floodproofing of the structure cannot be used when determining compliance of the structure to the residential construction of this ordinance, 9.0405(B.1. Residential Construction). As such, the building will not be grandfathered into compliance and will be required to be brought into compliance with the residential construction requirements of this ordinance.

In AO/AH Zones, new and substantially improved non-residential structures must have their lowest floor (including basement) above the highest adjacent grade at least one foot above the FIRM's depth number (at least three feet if no depth number is specified). In AO/AH Zones, adequate drainage paths around structures on slopes are required to guide flood waters away from proposed structures.

- B.3. Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are to be used solely for parking of vehicles, building access, or storage in an area other than a basement, and are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:

1. A minimum of two openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
2. The bottom of all openings shall be no higher than 1 foot above grade.
3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

The development and construction of the structure must conform with the provision in FEMA/Federal Insurance Administration (FIA)-Technical Bulletins 1 and 2. Certification and documentation from a professional, licensed engineer or architect is required if the structure's lowest floor is built below the BFE.

- B.4. Crawlspace. New construction and substantial improvements built on a crawlspace or sub-grade (below grade) crawlspace may be permitted if the development is designed and meets or exceeds the standards found in FEMA's Technical Bulletins 1, 2, and 11, which include but are not limited to the following:

1. The structure must be affixed to a permanent foundation, designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than 5 feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
2. The crawlspace is an enclosed area below the BFE and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than 1 foot above the LAG.
3. The crawlspace enclosure must have proper openings that allow equalization of hydrostatic pressure by allowing automatic entry and exit of floodwaters. To achieve

this, a minimum of 1 square inch of flood opening is required per 1 square foot of the enclosed area subject to flooding.

4. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, piers, or other materials that extend below the BFE. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
5. Any building utility systems within the crawlspace must be elevated above the BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
6. The interior grade of a crawlspace below the BFE must not be more than 2 feet below the LAG.
7. The height of the below-grade crawlspace, measured from the lowest interior grade of the crawlspace floor to the bottom of the floor joist of the next higher floor cannot exceed 4 feet at any point.
8. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event.
9. Buildings with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation at or above the LAG.

B.5. Manufactured Homes

1. 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 that 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.
2. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites outside of a manufactured home park or subdivision;) in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least 1 foot above the BFE, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

3. In A-1-30, AH, AO and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at least 1 foot above the BFE; or the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.
- B.6. Recreational Vehicles. Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
1. Be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use;
 - a. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
 2. Or meet the permit requirements of 9.0404(D, Permit Procedures), and the elevation and anchoring requirements for "manufactured homes" of this section.
- C. Standards for Subdivision Proposals.
1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
 2. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
 3. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
 4. BFE 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, or whichever is lesser.
 5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall minimize flood damage.
 6. 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. Floodways. Floodways located within SFHAs are extremely hazardous areas due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

1. Designate a regulatory floodway that will not increase the base flood level more than 1 foot.
2. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase greater than 0.00 feet in flood levels within the community during the occurrence of the base flood discharge.
3. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V in this ordinance.
4. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applied for a conditional LOMR and floodway revision through FEMA.

(Amended: Ordinance No. 11-311, 08-09-11)

(Amended: Ordinance No. 11-311, Effective 05-14-13)

(Amended: Ordinance No. 2025-001, Effective 03/12/25)

TITLE 10 - TAXATION

Chapter 10.01 - Municipal Sales and Service Tax and Use Tax

CHAPTER 10.01 - MUNICIPAL SALES AND SERVICE TAX AND USE TAX

- 10.0101 Purpose. The purpose of this Chapter is to provide additional needed revenue for the Municipality of Montrose, McCook County, South Dakota, by imposing a municipal sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.
- 10.0102 Effective Date and Enactment of Tax. From and after the first day of July, 2005, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 2% on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Montrose, McCook County, 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 July, 2005, 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 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 hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

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 to exceed \$200.00 (two hundred dollars), as established by SDCL 22-6-2(2), or by imprisonment not exceeding thirty days, or by both the 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 Montrose 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, sub-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 there by.
- 11.0104 Publication and Effect. This ordinance shall take effect upon its adoption and publication of the notice of such adoption as provided by SDCL 9-19-17.