

CHAPTER 11
BUILDING REGULATION

- 11-000 PLANNING AND ZONING COMMISSION ESTABLISHED.**
There is hereby established a Planning and Zoning Commission for the City of Philip, South Dakota and for land within its corporate city limits.
- 11-001 MEMBERSHIP**
The membership of the Planning and Zoning Commission shall consist of the Mayor and City Council. The members of the Planning and Zoning Commission shall be resident electors of Philip, South Dakota qualified by knowledge or experience to act in matters pertaining to the development and administration of the Comprehensive Land Use Plan. The Mayor may appoint administrative officials of the City as ex-officio members of the Commission.
- 11-002 TERMS OF MEMBERS**
Elected Members: The term of each member of the Planning and Zoning Commission shall coincide with the respective terms of office held by the Mayor and City Council.
- 11-003 DUTIES OF PLANNING AND ZONING COMMISSION**
It shall be a function and duty of the Planning and Zoning Commission to propose a plan for the physical development of the City, within its planning jurisdiction which, in the commission's judgment bears relation to the planning of the municipality. It shall also be a function and duty of the Planning and Zoning Commission to develop and adopt a zoning ordinance for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by law may be included as an adjunct to the comprehensive plan. It is also the function and duty of the Planning and Zoning Commission to adopt regulations governing the subdivision of land within its jurisdiction. The Planning and Zoning Commission may from time to time propose amendments, extensions, or additions to the comprehensive plan, zoning ordinance, and subdivision regulations. It shall also be a function and duty of the Planning and Zoning Commission to act as the Board of Adjustment. Said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions, conditional uses permits or grant variances to the terms of the ordinance with general or specific rules therein contained.
- 11-004 COMPENSATION**
All members of the Planning and Zoning Commission shall serve as such without compensation.
- 11-005 ORGANIZATION, RULES, STAFF AND FINANCES.**
The City Council shall elect its chairman from its membership for a term of one year with eligibility for re-election, and may fill such other offices as it may create in a manner prescribed by the rules of such Commission. The Commission shall meet during the regular City Council meetings and/or as needed. During said meetings, they shall adopt rules for transaction of its business and keep a record of its resolutions, transactions, and findings and determinations which shall be a public record as recorded and maintained within the City Council proceedings. The Planning and Zoning Commission may contract with planners, engineers, architects and other consultants for such services as it may require. The expenditures of the Commission, exclusive of those made from funds by gift,

shall be within the amount appropriated for the purpose by the City Council which shall provide funds, equipment and accommodations necessary for the Commission's work.

Resolution #2009-15, Adopting a Comprehensive Plan for the City of Philip, Haakon County, South Dakota, as provided for in SDCL 11-6 is inclusive with said Ordinance and a copy of the Comprehensive Plan shall be attached.

All ordinances and parts of ordinances in conflict herewith are hereby repealed insofar as the conflicting portions thereof are concerned.

Ord. #2009-16, adopted 12/29/09, sections 11-000 to 11-005

11-101 DEFINITIONS

For the purposes of this Ordinance certain terms are defined as follows:

Words used in the present tense include the future; words in the singular include the plural number; and words in the plural include the singular number; the word "building" includes the word "structure"; and the word "shall" is mandatory and not directory. Any words not herein defined in the "Building Code" or "Ordinance" of the City of Philip, South Dakota, now in effect or which may be hereafter adopted.

Accessory Building – An accessory building is a subordinate building, or a portion of the main building the use of which is incidental to that of the main building, or to the use of the premises.

Alley – An Alley is a public thoroughfare typically twenty feet in width.

Apartment House – An apartment house is a multiple dwelling.

Boardinghouse – A boardinghouse is any dwelling other than a hotel where meals or lodging are furnished and served for compensation.

Building – A building is any structure for the shelter, support or enclosure of persons, animals, chattels or moveable property of any kind; and when separated by party walls without openings, each portion of such building, so separated shall be deemed a separate building.

Building Depth or Buildable Depth – The buildable width or buildable depth of a lots is the width or depth of that part of the lot not included within the open spaces required by provisions of this Ordinance under yards or setbacks.

Dwelling – A dwelling is any house or building or portion thereof which is occupied in whole or in part as a home, residence or sleeping place of one or more human beings either permanently or transiently.

Dwelling, Class of – For the purpose of this Ordinance, dwelling is divided into the following classes:

- a) Private dwellings,
- b) Two family dwellings,
- c) Multiple dwellings

Dwellings, Private – A private dwelling is a detached or semi-detached dwelling occupied by one family.

Dwellings, Two-family – A two-family dwelling is a detached or semi-detached dwelling occupied by two (2) families.

Dwellings, Multiple – A multiple dwelling is a dwelling occupied otherwise than a private dwelling or two-family dwelling.

Family – A family is any number of individuals occupying a single housekeeping unit not herein defined as a boardinghouse, apartment hotel, rooming house, hotel or tourist pay camp.

Garage, Private – A private garage is a garage with the capacity of not more than four (4) power driven vehicles for storage only. A private garage may exceed the four (4) vehicle capacity provided the area of the lot whereon such garage is to be located shall not contain not less than twelve hundred (1200) square feet for each vehicle stored.

Garage, Public – A public garage is any premises except those described as a private garage, used for the housing or care of power driven vehicles or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

Grade – The finished grade of a premises improved by a building is the finished grade of the ground adjoining the building. The established grade of the premises, whether vacant or improved, is the grade of the sidewalk as fixed or to be fixed by ordinance of the city, and as shown on the official grade profiles of the City Engineer's office. Where the finished grade is below the level of the established grade the established grade shall be used for all purposes of this Ordinance.

Hotel – A hotel is every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food and or sleeping accommodations are offered for pay to transient guests and having one or more dining rooms or cafes, where meals or lunches are served to such transient guests, such sleeping accommodations and dining room being conducted in the same building in connection therewith shall, for the purposes of this Ordinance, be deemed a hotel.

Roominghouse – A roominghouse is every building or other structure kept, used or maintained as a place where sleeping accommodations are furnished for pay for public guests, including as such guests, transients, tourists, old-age recipients and county poor farm recipients, which said building or structure does not maintain therein dining rooms or cafes under the same management, and in which the accommodation of such persons are solicited or where such accommodations are advertised and/or held out to the public for such use, shall for the purpose of this ordinance deemed a roominghouse. Nothing in this Ordinance shall be construed to prevent the use of any name the proprietor of such roominghouse may desire to apply, including the word "hotel".

Tourist Pay Camp – Every building or group of buildings or other structure or group of structures kept, used, maintained or advertised, or held out to the public to be a place where sleeping accommodations are offered for pay to transient guests, not otherwise classified as a hotel or roominghouse, and offering more than one cabin for accommodation of such guests shall for the purpose of this Ordinance be deemed a tourist pay camp. For the

purpose of this Ordinance the words “tourist pay camp” shall be construed to include the words “motor court”, “cabin camp”, “motor lodge”, “tourist camp”, “motor hotel” and “tourist park”.

Lot – A lot for the purpose of this Ordinance is a parcel of land or premises occupied, or which it is contemplated shall be occupied by one building with its usual auxiliary buildings or uses customarily incident to it, and shall be of a size not less than 6000 square feet.

Lot, Corner – A corner lot is a lot of which at least two (2) adjacent sides abut for their full length upon a street.

Lot Area – The lot area is the land area in square feet within the lot lines.

Lot, Interior – An interior lot is a lot other than a corner lot.

Through lot – A through lot is an interior lot having frontage on two (2) streets.

Lot depth – The depth of a lot is the mean or average length, measured from the front to the back or rear line, in the general direction of the longest sides of same.

Lot lines – The lot lines are the lines bounding a lot as defined herein.

Mixed uses – Where a building is occupied or used for more than one purpose, one of which is the use defined as a residence or dwelling, that portion of such building so used as a residence shall be deemed a residence for the purpose of this Ordinance.

Nonconforming use – A nonconforming use is the use of a building or premises that does not conform with the regulations of the use district in which it is situated.

Office Building – an office building is any building, structure or edifice designed for offices, where service is rendered or business is transacted and is used for management, record keeping, consultation and clerical work of an establishment. Retail businesses and outlets are specifically excluded.

Public Space – A park or public square shall be deemed the only public space existing under this ordinance, and then only when the same are under the control of the park board or the City Council of the City.

Setback or Building Line – The setback or building line is the minimum horizontal distance between the street line and the front wall of the building, or any projection thereof, other than steps, terraces and unenclosed porches; provided however, that an entrance vestibule, porch or window bay may project beyond the building line or wall not more than three and one-half (3 ½) feet, if the same has not more than thirty (30) feet area.

Street – A street is a public thoroughfare used for foot and vehicle traffic or a roadway other than an alley as herein defined. The street lines are the lines dividing the street from the lot, and the front lines shall be deemed to be the street line.

Story – A story is that portion of a building included between the surface of any floor and the surface of the floor above it; or in case there be no floor above it, then the space between such floor and the ceiling or roof next above it.

Structural Alteration – A structural alteration is any change in the supporting members of a building, such as bearing walls, columns, beams or girders, not including otherwise permitted openings in bearing walls, except those changes or alterations required by law to insure the safety of the building for the lawful use hereof.

Tenement House – A tenement house is a multiple dwelling.

Rear Yard – A rear yard is an open, unoccupied space on the same lot with the building, situated between the rear wall of the building and the rear line of the lot produced, and unoccupied except by accessory buildings.

Front Yard – A front yard is an open, unoccupied space on the same lot with the building, situated between the street wall of the building and the front line of the line produced.

Side Yard – A side yard is an open, unoccupied space on the same lot with a building, situated between the building and the side line of the lot and extending through the front yard to the rear yard of a lot. Any lot line not a rear or a front line shall be deemed a sideline.

11-102 CONSTRUCTION STANDARDS

(Amended & Adopted 2021 Building Codes, Ord. 2023-07, Approved 06/05/2023)

11-102.1 BUILDING CODE ADOPTED

The common council hereby adopts the 2021 International Residential Code for One- and Two-Family Dwellings, Chapters 1-10 and 12-24 and 44 and the 2021 International Building Code as published by the International Code Council. A copy of the code shall be on file in the City Office.

11-102.1.1 AMENDMENTS TO THE INTERNATIONAL RESIDENTIAL CODE (IRC)

The following amendments to the International Residential Code for One- and Two-Family Dwellings adopted by section 6-26 are made and incorporated into the code:

**CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA
City of Philip, SD**

Ground Snow Load	40
Wind Speed (mph)	115
Seismic Design Category	A
Subject to Damage From:	
Weathering	Severe
Frost Line Depth	42"
Termite	None to Slight
Decay	None to Slight
Winter Design Temperature (f)	- 7

Ice Shield Under-underlayment Required	Yes
Flood Hazards	NFIP
Air Freezing Index	3000
Mean Annual Temperature	42

IRC Chapter 1, Section R105 Permits.

1. IRC Chapter 1, Section 105.1 Required is hereby amended to read as follows: Any owner or owner's authorized agent who intends to construct, enlarge, move, or change the occupancy of a building or structure shall first make application to the city of Philip and obtain the required permit.

2. *IRC Chapter 1, Section R105.2 Work exempt from building permit* is hereby amended to read as follows: Building Permits shall not be required for the following. Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.
 1. One-story detached accessory structures provided the floor area does not exceed two hundred (200) square feet. Setback requirements from zoning are still required to be met.
 2. Fences not over seven (7) feet high.
 3. Retaining walls that are not over four (4) feet in height measured from grade on the exposed side to the top of the wall, unless supporting a surcharge.
 4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to one 1.
 5. Sidewalks and driveways.
 6. Painting, papering, tiling carpeting, cabinets, countertops and similar finish work.
 7. Above ground prefabricated swimming pools.
 8. Swings and other playground equipment.
 9. Window awnings supported by an exterior wall which do not project more than 54 inches from the exterior wall and do not require additional support.
 10. Replacement of similar siding materials.
 11. Replacement of similar roofing materials.
 12. Gutters, downspouts, and storm windows.
 13. Window replacement where the rough opening is not altered.
 14. Structures or work performed on properties of the government of the United States of America or the State of South Dakota.
 15. Decks that are not more than 30 inches above grade at any point.
 16. Interior remodeling.

3. *IRC Chapter 3, Section R302.5.1 Opening protection.* Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1 3/8 inches in thickness, solid or honeycomb-core steel doors not less than 1 3/8 inches thick, or 20-minute fire-rated doors. Doors shall be equipped with a self-closing device.

4. *IRC Chapter 3, Section R302.13 Fire protection of floors* is hereby deleted.

5. *IRC Chapter 3, Section 313 Automatic fire sprinkler systems* is hereby deleted. *IRC Chapter 3, Section R313.2.1 Design and installation* is hereby amended. When installed an Automatic residential fire sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.
6. *IRC Chapter 4, Section 403.1.4.1 exception 1*. Frost Protection of freestanding accessory structures with an area of 1,024 square feet or less, of light-framed construction, with an eave height of ten (10) feet or less shall not be required.
7. *Chapter 11 Energy Efficiency*. Chapter 11 is hereby deleted and not adopted by the city.

11.102.1.2 2021 INTERNATIONAL BUILDING CODE (IBC)

The following amendments to the International Building Code hereby adopted and incorporated into the code:

1. Section 105 Permits.

(1) *IBC Chapter 1, Section A105.1 Required* is hereby amended to read as follows: Any owner or owner's authorized agent who intends to construct, enlarge, move, or change the occupancy of a building or structure shall first make application to the city and obtain the required permit.

(2) *IBC Chapter 1, Section R105.2 Work exempt from permit* is hereby amended to read as follows: Permits shall not be required for the following. Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

- a. One-story detached accessory structures provided the floor area does not exceed one hundred twenty (200) square feet.
- b. Fences not over seven (7) feet high.
- c. Retaining walls that are not over four (4) feet in height measured from grade on the exposed side to the top of the wall, unless supporting a surcharge.
- d. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to one 1.
- e. Sidewalks and driveways.
- f. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
- g. Above ground prefabricated swimming pools.
- h. Swings and other playground equipment.
- i. Window awnings supported by an exterior wall which do not project more than 54 inches from the exterior wall and do not require additional support.
- j. Gutters, downspouts, and storm windows.
- k. Window replacement where the rough opening is not altered.
- l. Replacement of similar siding materials.
- m. Replacement of similar roofing materials.
- o. Structures or work performed on properties of the government of the United States of America or the State of South Dakota.
- p. Interior remodeling and repairs.

(3) *IBC Chapter 1, Section 113 Board of Appeals* is hereby amended to read as follows: The board of adjustment shall be the Board of Appeals.

11-102.2 DEFINITIONS IN CODE

(a) Whenever the word "jurisdiction" is used in the code adopted by section 11-102.1, it shall be held to mean the City of Philip, South Dakota.

(b) Whenever the term "corporate counsel" is used in the code, it shall be held to mean the city attorney.

11-102.3 CONFLICTS

In the event of any conflict between the provisions of the code adopted in section 11-102.1 and applicable provisions of this Code of Ordinances, state law or city ordinance, the provisions of this Code of Ordinances, state law, or city ordinance shall prevail and be controlling.

11-102.4 INTERNATIONAL EXISTING BUILDING CODE ADOPTED

The common council hereby adopts the 2021 International Existing Building Code published by the International Code Council.

11-102-5 INTERNATIONAL FIRE CODE ADOPTED

The common council hereby adopts the 2021 International Fire Code published by the International Code Council.

11-103 CONFLICTS

In the event of any conflict between the provisions of the Code adopted by this article and applicable provisions of this code of Ordinances, State Law or City Ordinance, rule or regulations shall prevail and be controlling.

11-104 DEFINITIONS

Whenever the word "municipality" is used in the code adopted by this article, it shall be held to mean the City of Philip, South Dakota.

11-201 USE DISTRICT REGULATIONS

In order to regulate the location and use of buildings erected or altered for specified purposes, the City of Philip is hereby divided into use districts, of which there shall be five (5) classifications known as follows:

- a) Residence District
- b) Multiple Dwelling District
- c) Commercial District
- d) Industrial District
- e) No Use District

The City of Philip, South Dakota, is hereby divided into the five (5) districts aforesaid and the boundaries of such districts are shown upon the map attached hereto and made a part of this ordinance, being designated as the "Use District Map", and said map and all the notations, references and other things shown thereon shall be as much a part of this Ordinance as if the matters and things set forth by said map were fully described herein. Except as hereinafter provided, no building shall be erected or structurally altered nor shall any building or premises be used for any purpose other than is permitted in the use district in which each building or premises is located.

a) CLASS "A" RESIDENCE DISTRICT

In the residence district, unless otherwise provided in this Ordinance, no building or premises shall be used and no building shall hereafter be erected or structurally altered except for one or more of the following uses:

1. Private dwellings.
2. Two-family dwelling.
3. Multiple dwellings, in residence districts.
4. Churches or schools accessory thereto, including nameplates and bulletin boards relative thereto.
5. Libraries, museums, schools, colleges, parks, playgrounds, public fire stations and necessary public utility buildings, recreational and community buildings owned and controlled by the municipality, telephone exchange or other necessary public utility stations or substations, bus line passenger and truck freight stations and right-of-way.
6. Truck gardening.
7. Nurseries and greenhouses for the propagating and cultivation of plants only, provided however, that at the time the permit is issued, there shall be on file in the office of the Building Inspector the written consent of the owners of at least sixty (60) percent of the area of all real estate within one hundred and fifty (150) feet of any part of the premises, excluding streets and alleys.
8. Accessory buildings including one private garage when located not less than twenty-five (25) feet from the front line, nor less than five (5) feet from any other lot line, or a private garage constructed as a part of the main building. Provided, however, that the City Council or Board of Adjustment may at its discretion, prohibit the erection of other structures, if in its judgement the same may become a nuisance or offensive or affect the value of adjoining property.
9. Uses customarily incident to any of the above uses, including home occupation when located on the same lot and not involving the conduct of a business. Also the office of a physician, surgeon, dentist, musician or artist, beauty shop or barbershop or such other profession as may be permitted at the discretion of the Board of Adjustments, when situated in the same building, provided no nameplate, exceeding one (1) square foot in area, no bulletin boards or signs exceeding three (3) square feet in area appertaining to the lease, hire or sale of a building or premises nor advertising signs of any other character shall be permitted in any residence district.
10. Reserved. (Previous Ordinance Deleted, Ord. #2023-07, 06/05/2023)
11. The construction of cesspools are prohibited within the City of Philip, except where the City Sewage System is not available; then a permit may be issued for the construction of cesspools upon proper application to the Zoning Board of Adjustment or the City Council. Outdoor water closets or privy vaults are

prohibited within the City limits of the City of Philip and it shall be unlawful for any person, firm or corporation to construct, keep or maintain any outdoor water closet or privy vault.

12. No permit shall be issued to move any building or residence structure which may be located within or without the limits of the City of Philip into any class of residence district within the City of Philip unless the same has an actual value of the residential class in which said building is to be placed.

b) CLASS "B" MULTIPLE DWELLING DISTRICT

In the multiple dwelling district, no building or premises shall be used and no building shall be hereafter erected or structurally altered unless otherwise provided in this Ordinance, except for one or more of the following uses:

1. Any use permitted in the residence district, under "A".
2. Multiple dwellings.
3. Hotels and apartment hotels.
4. Private clubs and lodges, excepting those, the chief activity of which, is a service carried on as a business.
5. Boarding houses.
6. Hospitals and clinics.
7. Institutions of an educational, philanthropic or eleemosynary nature.
8. Accessory buildings customarily incident to any of the above uses, including garages for storage only, when located on the same lot and not less than twenty-five (25) feet from the front line and not less than five (5) feet from any side street line, and not involving the conduct of a business.
9. Public garages for storage purposes only, when not an accessory building and where neither repair facilities nor salesrooms are maintained.
10. Uses customarily incident to any of the above uses where located on the same lot and not involving the conduct of a business, except wherein the same building to which the use may be accessory, there shall be allowed concession and service, access to such uses to be only from within such building.
11. A nameplate for each tenant, or sign appertaining to the use, lease, hire or sale of the building or premises, provided no such sign shall be more than three (3) square feet. No advertising sign or display or any other character shall be permitted in the multiple dwelling district.
12. Rules governing the erection or structurally altering of single, double or multiple-dwelling residences in the multiple dwelling district, shall be the same as given in paragraph nine (9) under residence districts. Before a building of any nature can be erected or structurally altered, the owner thereof must, in addition

to submitting plans and specifications as provided in paragraph nine (9) under residence district, also not only secure the written approval of the Building Inspector of the City, but must also secure the written consent of the Board of Adjustment.

13. No private dwelling or two-family dwelling shall be erected hereafter in multiple-dwelling districts which do not conform in every respect to residences permitted to be erected in class "A" residence districts.
14. Any multiple-dwelling erected in the multiple dwelling district shall be of a character to conform structurally and architecturally with other buildings in the district.

Permitted uses of office buildings:

1. Medical, optical, dental offices.
2. Law, insurance, real estate, account offices.
3. Corporate Offices.
4. Government Offices.
5. Uses customarily incident to any of the above uses and not involving the conduct of a retail business.
6. Other uses allowed in the Class "B" multiple dwelling district.
7. Off street parking facilities for any of the above uses.

No signs relating to office buildings and intended to be read from off the premises shall be permitted except:

1. No intermittent flashing type signs are allowed.
2. One temporary on-site sign, non-illuminated, no greater than twelve (12) square feet in area and advertising the lease, rent or sale of property.
3. Signs incorporated as part of the building façade, or signs attached to buildings in buildings in a manner deemed adequate for the protection of public health or safety.
4. Signs for individual establishments shall not exceed twelve (12) square feet in size, except that one sign may be erected to advertise the presence of the district, which shall not exceed a size of thirty – two (32) square feet.
5. All spaces between buildings, parking, loading, access and service area shall be shall be adequately illuminated at night. All lighting including sign lighting shall be arranged so as to protect the streets and adjoining property from direct glare or hazardous interference of any kind.

c) CLASS “C” COMMERCIAL DISTRICT

In the commercial district all buildings and premises, except as otherwise provided in this Ordinance, may be used for any use permitted in the multiple-dwelling district and residence district, or for any other use except the following:

Bakery (strictly wholesale); blacksmith or horseshoeing shops; building material storage yard, machinery storageyard; coal, coke or woodyard; livery stable; lumber yard (except those in which 50% or more of the premises are housed in substantial buildings); machine shop; wholesale milk distributing station; all uses excluded from manufacturing district; any kind of manufacture or treatment of products clearly incidental to the conduct of a retail business conducted on the premises; slaughterhouses or poultry dressing establishments; oil refineries; planing mills, but not prohibiting carpenter or cabinet shops; all other occupations or businesses of such a nature as to become offensive or obnoxious to the occupants of adjoining property by reason of the emission of odors, fumes, gases, dust smoke, noise or vibrations.

The erecting, altering or enlarging of buildings in the commercial district shall be governed by building ordinances now in effect or to be hereafter put into effect.

All house trailer court and mobile home parks within the City of Philip shall be included in the district map as a commercial district designated as class “C” commercial residence district, and the values thereof shall be determined by the City Assessor, to be approved by the Board of Adjustment.

d) CLASS “D” INDUSTRIAL DISTRICT

In the industrial district, such industries and factories shall be permitted as are not obnoxious or offensive by reason of emission of odor, dust, smoke, gas or noise; nor unsightly. Prohibited industries shall include:

Abattoirs; asphalt manufacture or refining; brick, tile, or terra-cotta manufacture; crematory; distillation of bones, coal or wood; dyestuff manufacture; exterminator and insect poison manufacture; fertilizer manufacture; incinerator; reduction or dumping of garbage, dead animals, offal or refuse; refining of petroleum products and explosive derived therefrom; commercial sauerkraut manufacture; soap manufacture; slaughtering of animal; storage or bailing of scrap iron, bottles, paper, rags, or junk; tanning, curing, or storage of rawhides; canning factory; cider mills.

e) CLASS “NU” NO USE DISTRICT

General Description – This status is applicable to certain lands in which the construction of permanent structures is prohibited pending study and survey of the lands by the governing body. The Status is a temporary designation for the purpose of permitting proper investigation and study of land uses of lands composing this status.

This status shall be applied to all newly annexed land areas, and it shall be applied to any lands rezoned to business purposes in which no business development has occurred within two (2) years after rezoning.

Newly Annexed Lands – All lands annexed by the City shall, upon annexation, be placed in a “NU” No Use District status until the governing body has completed an investigation and study of the proposed land use of the area. In the event that such investigation and study have been made prior to the annexation, these lands may be rezoned to their proper use

after thirty (30) days. Otherwise, upon the written request of the owners of annexed land, the governing body shall investigate and determine the proper zoning of such land, and such rezoning shall take place within one hundred and twenty (120) days from the date of the written request. In no event shall lands newly annexed to the city be retained in a “NU” No Use status for a period in excess of one year from the effective date of annexation.

Land Remaining Undeveloped for Two Years After Rezoning to Business Use – Land rezoned for business use after the effective date thereof shall revert to “NU” No Use status in the event that within two (2) years from the effective date of such zoning: (1) such land is not devoted to the permitted use; or (2) the construction of improvements for a permitted use has not been commenced, as evidenced by issuance of a building permit and construction pursuant thereto. In the event that at this time a valid building permit has been issued but construction has not begun, the land shall remain zoned for business unless such building permit expires without construction. In this case, such land shall revert to “NU” status upon expiration of the building permit.

Procedure on Reversion – As land reverts to “NU” status, the governing body shall make an investigation and study of proper land use thereon and shall initiate action within sixty (60) days. In no event shall lands reverting to “NU” status be retained in this status for a period in excess of one hundred and eighty (180) days.

11-301 NON CONFORMING USES

The lawful use of any building, structure or land existing at the time of the enactment of this Ordinance may be continued, although such use does not conform with the provisions of this Ordinance, provided the following conditions are met:

- a) **Unsafe Structures.** Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition any portion of a building or structure declared unsafe by a proper authority.
- b) **Alterations.** A non-conforming building or structure may be altered, improved or reconstructed, provided such work is not to an extent exceeding in aggregate cost thirty (30) percent of the assessed value of the building or structure, unless the building or structure is changed to a conforming use.
- c) **Extension.** A non-conforming use shall not be extended, but extension of a lawful use to any portion of a non-conforming building or structure, which existed prior to the enactment of this Ordinance, shall not be deemed the extension of such non-conforming use.
- d) **Changes.** No non-conforming building, structure or use shall be changed to another non-conforming use.
- e) **Construction Approved Prior to Ordinance.** Nothing herein contained shall require any change in plans, construction or designated use of a building or structure for which a building permit has been issued and the construction of which shall have been diligently prosecuted within six (6) months of the date of such permit, and the ground story framework of which, including the second tier of beams shall have been completed within ninety (90) days of the date of the permit, and which entire building shall be completed according to such plans as filed within six (6) months from date of this Ordinance.

- f) Restoration. Nothing in this Ordinance shall prevent the reconstruction, repairing, rebuilding and continued use of any non-conforming building or structure damaged by fire, collapse, explosion or acts of God, subsequent to the date of this Ordinance, wherein the expense of such work does not exceed one hundred (100%) percent of the value of the building or structure at the time such damage occurs.
- g) Wear and Tear. Nothing in this Ordinance shall prevent the reconstruction, repairing or rebuilding of a non-conforming building, structure or part thereof existing at the effective date of this Ordinance, rendered necessary by wear and tear, deterioration or depreciation; provided that cost of such work shall not exceed thirty (30) percent of the assessed value of such building or structure at the time such work is done.
- h) A non-conforming use of a building or premises which has been abandoned shall not thereafter be returned to such a non-conforming use. A non-conforming use shall be considered abandoned:
 - 1. When the intent of the owner to discontinue the use is apparent, or
 - 2. When the characteristic equipment and the furnishings of the non-conforming use have been removed from the premises and have not been replaced by similar equipment within one year, unless other facts show intention to resume the non-conforming use, or
 - 3. When it has been replaced by a conforming use, or
 - 4. When it has been changed to another use under permit issued from the zoning board of adjustment.
- i) Displacement. No non-conforming use shall be extended to displace a conforming use.
- j) Cessation, Junk and Wrecking Yards. No junk or automobile wrecking yard not within an enclosed masonry building and not within a heavy industrial or unrestricted industrial district shall be operated or maintained for more than six (6) months after a zoning change to a use district within such years is not permitted except that in a light industrial district, where the board of appeals determined that is impractical to roof over a large area containing junk material or an automobile wrecking yard, the board may permit the construction around such area of an eight (8) foot high masonry wall or substantial, slightly tight or semi-tight fence, whichever in its opinion is the more appropriate in the surroundings of the property and may then permit, for a specific time, the continued use of such property for such purposes.
- k) Unlawful Use Not Authorized. Nothing in this Ordinance shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of this Ordinance.
- l) Certificate of Non-conforming Use. Upon the effective date of this Ordinance the secretary of said Zoning Board shall issue a "certificate of non-conforming use", to all

owners of property, the use of which does not conform to the provisions of the use zone in which the property is located.

1. In accordance with the provisions of the section no use of land, buildings or structures shall be made other than specified on the “certificate of non-conforming use”, unless said use shall be in conformity with the provisions of the use zone in which the property is located.
 2. A copy of each “certificate of non-conforming use”, shall be filed with the office of the City Finance Officer. No permit or license shall be issued to any property for which a “certificate of non-conforming use” has been issued until said permit or license has been approved by the Planning Commission.
- m) District Changes. Whenever the boundaries of a district shall be changes so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any non-conforming uses existing therein.

11-401

FRONT YARDS

- a) Except as otherwise provided, no building shall be so erected or altered in any residence district as to place it’s front wall or setback less than twenty-five (25) feet from the street line, and no building shall be erected or altered, in any multiple-dwelling residence district as to place it’s front wall or setback less than fifteen (15) feet from the street line.
- b) In any residence district or multiple-residence district, where two (2) or more lots in any block frontage are occupied by buildings which existed at the time of the passage of this Ordinance, the average of the distances that the street walls of such building are from the street line shall be the established building line for such block frontage.
- c) In any residence or multiple-residence district, where a building shall be erected or altered between two (2) existing buildings on immediately adjacent lots, the required depth of the front yards shall not exceed the depth of the front yard of that one of the existing buildings farthest from the street.
- d) In any residence or multiple-residence districts, on any corner lot, no street wall of a principle building other than it’s front wall, shall be required to be further from the corresponding street line than one-half (1/2) of the distance that would be required by the provisions of this section were such street line the front lot line.
- e) In any residence or multiple-residence district, no building shall be so erected or altered on any through lot as to be nearer to the rear lot than would be permitted were such lot line, a front lot line.
- f) In any residence or multiple-residence district, where a lot adjoins a commercial district or industrial district the front yard of any such lot, for a distance of not more than fifty (50) feet from the district boundary line shall not be required to have a depth of more than one-half (1/2) the depth required by this section for the residence portion of the same block frontage.

11-501 REAR YARDS

- a) In any residence or multiple-residence district, a rear yard not less than twenty-five (25) feet in depth is required on each interior lot, and not less than twenty (20) feet in depth on any corner lot; provided that where a lot is more than one hundred (100) feet in depth, one-half (1/2) of the additional depth shall be added to the required depth of the rear yard and where a lot is less than one hundred (100) feet in depth at the time of the passage of this Ordinance, one-half (1/2) of such deficiency in depth shall be subtracted from the required depth of the rear yard; provided that no rear yard shall be less than ten feet in depth.
- b) In any commercial district, any single-family or two-family dwelling, or any apartment house, shall have a rear yard as required in residence districts. A building not used as a dwelling and abutting on a rear alley shall not require a rear yard; where there is no such alley, such building shall have a rear yard not less than ten (10) feet in depth; where a portion of a building is used for a dwelling on an interior lot, such portion shall be provided with a rear yard not less than fifteen (15) feet in depth. No hotel shall require a rear yard.

11-601 SIDE YARDS

- a) In all residence districts and multiple-residence districts there shall be a side yard on each side of each principle building of not less than five (5) feet.
- b) One (1) side yard may be omitted entirely where two (2) semi-detached houses are built with a common party wall on one (1) side or more lots at one time, provided that the side of each house opposite the common party wall, have a side yard of at least fifty (50) percent in excess of the minimum width specified in this paragraph.
- c) In any commercial or industrial district, no side yards are required.
- d) In the case of a church, school, library, museum, club, social center or community building, hospital or similar institution in a residence district or in any multiple-residence district, the minimum width of the side yard shall be fifty (50) percent in excess of those stipulated for the district in which the building is located.

11-602 FENCES, HEDGES AND WALLS

- A) As used in this ordinance, fence or wall shall include a fence, wall, column, pier, post, latticework, screen or any similar structure or any combination of such structures.
- B) No person shall erect or maintain within the City of Philip, South Dakota, a fence wall unless it meets the following conditions:
 - 1. Be set back in accordance with the boulevard area as defined in Ordinance #7-101(b).
 - 2. When a fence and/or wall is to be constructed on side yards, it may be constructed on the property line, with the exception of construction on a corner lot, in which case Section B (01) will apply.
 - 3. Be constructed and maintained at a height and in area where such structure will not obstruct a clear vision of intersecting roadways or otherwise constitute a traffic hazard.

4. Be thirty-six (36) inches or less in height if such structure is solid or closed so as to prevent vision, and is located in the front yard. Open vision type structure, such as chain link fences shall be forty-eight (48) inches in height or less when placed in a front yard.
5. Be eight (08) feet or less in height when located in a back yard or side yard. When a corner lot is involved, the property owner must limit the length of fence or wall at the eight (08) foot height or less to insure that the structure does not violate Section three (03) of this ordinance.
6. Be constructed and maintained in good condition so as to serve the purpose for which such structure was originally constructed, so that it shall not become unsightly to the neighborhood or otherwise constitute a nuisance.
7. Prior to the construction of any such fence, it will be required that whoever is constructing such fence obtain a building permit from the City.
8. Barbed wire or other sharp, pointed or electrically charged fence is prohibited as outlined in Ordinance #15-506.
9. The use of boxes, sheet metal, old or decayed wood, broken masonry blocks or other like unsightly materials to build a fence or wall is prohibited.
10. Fencing around athletic facilities and public property shall be exempt from the requirements of this ordinance.

Ord.#2008-02; 04/07/08

11-701 MISCELLANEOUS PROVISIONS

No lot area shall at any time be so reduced or diminished that the front, rear or side yard shall be smaller than prescribed in this Ordinance, unless it is authorized in writing by the Board of Adjustment.

11-801 BOARD OF ADJUSTMENT

A Board of Adjustment is hereby established. The word "Board", as used in this Ordinance, shall be construed to mean the Board of Adjustment. The Board shall consist of the Mayor and all members of the City Council, and shall act and perform all duties and exercise the powers of such Board of Adjustment. The Mayor shall be the Chairman of the Board of Adjustment; shall preside at all meetings and shall have no vote except in case of a tie. The concurring vote of at least two-thirds (2/3) of all members of such Board as so composed shall be necessary to reverse any order requirement, decision or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under this Ordinance or to effect any variation in such Ordinance. The City Finance Officer shall be the secretary of the Board.

11-802 RULES OF MEETINGS

Robert's Rules of Order are hereby adopted as the rules to govern meetings of the Board of Adjustment insofar as applicable.

11-803 MEETINGS

Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine, and the Chairman shall call a meeting upon the written request of three (3) members. Such Chairman or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses at the meetings of the Board. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or of the absent members or members failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be public record. The Board shall adopt rules in accordance with the provisions of this Ordinance. The presence of four (4) members shall be necessary to constitute a quorum.

11-804 APPEALS

Appeals to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the City of Philip affected by any decision of the Administrative Officer. Such appeal shall be taken within ten (10) days after such decision, by filing with the officer from whom the appeal is taken and with the secretary of the Board of Adjustment, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the secretary of the Board all papers constituting the records upon which the action appealed from was taken.

The Board of Adjustment shall fix a time for the hearing of the appeal within twenty (20) days from the date of filing with the secretary, give public notice thereof by publishing notice of hearing at least one (1) week in the official newspaper, and mailing a copy of such notice to the parties in interest and decide the same at the time and place filed for such hearing. Upon the hearing, any party may appear in person or by agent or attorney.

11-805 JURISDICTION

The Board of Adjustment shall have the following powers:

- a) To hear and decide appeals where it is alleged there is error of any order, requirement, decision or determination made by the Building Inspector in the enforcement of this act or any ordinance adopted pursuant thereto.
- b) To hear and decide special exceptions to the terms of the Ordinance upon which such Board is required to pass under such Ordinance.
- c) To authorize upon appeal in specific cases such variance from terms of the Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.

In exercising the above mentioned powers such board may reverse or affirm, wholly or partly, or may modify the order, requirement and decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all powers of the officer from whom the appeal is taken.

The concurring vote of two-thirds (2/3) of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, or to

decide in favor of the applicant, on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

Any person or persons, jointly or severally aggrieved by any decision of the Board of Adjustment under the provisions of this act, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of records, a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board, as provide by law.

11-901 CERTIFICATE FOR OCCUPANCY - GENERALLY

No vacant land shall be occupied or used except for agricultural use and no buildings hereafter erected, or altered, shall be occupied or used before and/or until a certificate for occupancy shall have been issued by the building inspector.

11-902 CERTIFICATE FOR OCCUPANCY OF A BUILDING

Certificate for occupancy of a new building or the alteration of an existing building shall be applied for co-incident with the application for a building permit, and said certificate shall be issued within three (3) days after the request for same shall have been made in writing to the Building Inspector, after the erection or alteration of such building or part thereof shall have been completed in conformity with the provisions of these regulations. Pending the issuance of a regular certificate, a temporary certificate for occupancy during the completion of the alterations or during partial occupancy of a building pending its completion.

Such temporary certificate shall not be construed in any way as altering the respective rights, duties or obligations of the owners or of the City relating to the use or occupancy of the premises or any other matter covered by this Ordinance, and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants.

11-903 CERTIFICATE FOR OCCUPANCY OF LAND

Certificate for occupancy for the use of vacancy land or the change in the use of land as herein provided, shall be applied for before any such land shall be occupied or used, and a certificate for occupancy shall be issued within ten (10) days after the application has been made, provided such use is in conformity with the provisions of these regulations.

Certificate for occupancy shall state that the building or proposed use of a building or land, complies with all the building and health laws and ordinances and with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Building Committee, and copies shall be furnished, on request to any person having a proprietary or tenancy interest in the building affected.

No permit for excavation for any building shall be issued before application has been made for certificate for occupancy.

11-1001 PLATS

All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size of the building to be erected and such other information as may be necessary to provide for the enforcement

of these regulations. A careful record of such applications and plat shall be kept in the office of the City Finance Officer.

11-1101 INTERPRETATION, PURPOSE AND CONFLICT

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the safety, health, convenience, comfort, prosperity and general welfare. It is not intended by this Ordinance to interfere with, or abrogate or annul any easements, covenants or other agreements between parties; provided, however that where this Ordinance imposes a greater restriction upon the use of a building or premises or upon height of building, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or permits, or by easements, covenants or agreements the provisions of this Ordinance shall govern.

11-1201 BOUNDARIES OF DISTRICTS

Where uncertainty exists with respect to the boundaries of the various districts as shown on the maps accompanying and made a part of this Ordinance, the following rules shall apply:

- a) The district boundaries are either streets or alleys unless otherwise shown, and where the designation on the maps accompanying and made a part of this Ordinance indicating the various districts are approximately bounded by a street or alley line, said street or alley shall be construed to be the boundary of such district.
- b) Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the districts boundaries shall be construed to be lot lines, and where the designations on maps accompanying and made a part of this Ordinance indicating various districts are approximately bounded by lot lines, said lot lines shall be construed to be the boundary of such district, unless said boundaries are otherwise indicated on maps.
- c) In subdivided property, the district boundary lines on the maps accompanying and made a part of this Ordinance shall be determined by use of the scale contained on such maps.

11-1301 CHANGES AND AMENDMENTS

The City Council may, from time to time, on its own motion or on petition, after public notice and hearings as provided by law, and after report by the Board of Adjustments, amend, supplement or change the boundaries or regulations herein or subsequently established. Whenever the owners of sixty (60) percent or more of the area of all real estate in any district, or part thereof, present a petition duly signed and verified to the Council, requesting an amendment, supplement or change in the regulations prescribed for such district, or part thereof, it shall be the duty of the Council to vote upon said petition within ninety (90) days after the filing by the petitioners with the City Finance Officer in case the proposed amendment, supplement or change be disapproved by the Board of Adjustment, or a protest be presented, duly signed by the owners of forty (40) percent, or more either of the area of lots included in such proposed change, or of those immediately adjacent in the rear thereof extending the depth of one lot or not to exceed two hundred (200) feet therefrom, or of those directly opposite thereto extending the depth of one (1) lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots, or those on the side thereof in the same block, or not to exceed two hundred (200) feet; such amendment shall not become effective except by the favorable vote of at least two-thirds (2/3) of all the members of the City Council.

11-1401 VALIDITY
Should any chapter, clause or provision of this Ordinance be declared by the court to be invalid, the same will not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

11-1501 ENFORCEMENT
It shall be the duty of the Building Committee to see that this Ordinance is enforced. Appeal from the decisions of the Building Committee of the City council may be made to the Board of Adjustment as provided by Chapter 11-801.

Any ordinance or part of an ordinance in conflict herewith be and the same is hereby repealed.

11-1601 FIRE LIMITS
The fire limits of the City of Philip shall begin at the center line of Howard Avenue where it intersects the center line of Railroad Street; thence north along said line to the point where it intersects the center line of Pine Street; thence east along said line of where it intersects the center line of Larimer Avenue; thence north along said line to a point opposite the southwest corner of Lot 9, Block 2; thence east along south line of said Lot 9, Block 2 and along the south line of the alley running east and west in Block 2 to the center line of Center Avenue; thence north along said line to the point where it intersects the center line of the alley running east and west through Block 3; thence east along said center line of the alley running east and west to the point where it intersects with the center line of the alley running north and south in Block 3; thence south along to the point where it intersects the center line of Pine Street; thence east along said center line to the point where it intersects the center line of Wood Avenue; thence south of said line to the point where it intersects the center line of Railroad Street; thence southwesterly along said center line to the point of the beginning, except the City Park property.

All new building construction within the Fire Limits heretofore designated shall be constructed with brick, block or stone front, ethically consistent with other buildings located within said district and designed and built in a manner to prevent or reduce the spread of fire to adjacent buildings. Existing structures are exempted from these previous provisions, but all replacement structures or additions to structures shall be subject to this Ordinance.

11-1602 RESERVED (Previous Ordinance Deleted, Ord. #2023-07, 06/05/2023)

11-1603 RESERVED (Previous Ordinance Deleted, Ord. #2023-07, 06/05/2023)

11-1701 RESERVED (Previously Ordinance Deleted, Ord. #2023-07, 06/05/2023)

11-1801 EXCAVATIONS FOR SERVICE SEWERS – PERMITS
No person shall make any excavation in the streets, alleys, public property or lay any service sewer therein without first obtaining a permit therefore from the sewer superintendent or Public Works Director.

11-1802 ISSUANCE OF PERMITS – SEWER
The sewer Public Works Director may issue permits for excavations or laying of service sewer as provided in the foregoing section only after compliance with the following:

- a) Application shall be made, in writing, to the Public Works Director showing the applicant's name, address, type of construction, material to be used, estimated time of completion, location of proposed excavation and such further information as may be required by the water and sewer committee, City Council or the Public Works Director.
- b) Payment of tapping fee (set from time to time by resolution from City Council) to the city finance officer shall be made in order to secure such permit. The permit shall entitle the owner to have a tap of the public sewer made or supervised by the Public Works Director as well as entitle the owner thereof to perform the acts therein authorized. If such use is for residential purposes, the application shall state the number of families or residents to be served thereby, and said tap and sewer use shall be limited to the number of families or residences served thereby as set forth in said application.

11-1803 SPECIFICATIONS FOR GRANTING A SEWER PERMIT

The Public Works Director at the time of granting a sewer permit shall furnish minimum specifications and regulations to be followed in laying the sewer.

11-1804 INTERFERENCE WITH NATURAL DRAINAGE

No person shall construct or alter any building or other construction over, upon or immediately adjacent to any natural drainage except upon the written approval of the Public Works Director who may require such provisions for the natural drainage as may appear to be necessary.

11-1900 MANUFACTURED HOMES

11-1900.1 DEFINITIONS

A. Manufactured Homes – A moveable or portable dwelling which is fabricated in one or more sections at a location other than the home site, constructed and towed on its own permanent chassis, designed for year-round occupancy, primarily to be used without a permanent foundation, but which may sit on a permanent foundation, and designed to be connected to utilities. If designed with more than one section, they are separately transportable, but designed to be joined together into one integral unit. They are also known and referenced as a mobile home. Manufactured homes are built according to the US Department of Housing and Urban Development (HUD) Construction and Safety Standards.

The following shall not be included in this definition:

- 1) Travel trailers, pickup coaches, motor homes, camping trailer, or other recreational vehicles: and,
 - 2) Modular housing which is constructed in accordance with or exceeding the adopted building code regulations, substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.
- B. Type I Manufactured Home – A manufactured home as defined above with more than seven hundred (700) square feet of occupied space in one or more sections.
- C. Type IA Manufactured Home – A manufactured home as defined above with more than three hundred fifty (350) square feet of occupied space in one section. Also known as a Park Model home.

- D. Type II Manufactured Home – A manufactured home as defined above with more than one thousand two hundred (1,200) square feet of occupied space. Shall consist of more than one sections.
- E. Manufactured Home Park – Any area, tract, site or plot of land which has three (3) or more lots which are under common ownership and which manufactured homes are to be placed or located for year-round occupancy.
- F. Manufactured Home Lots – A privately owned plot of land which manufactured homes are to be placed or located for year-round occupancy.

11-1901 MANUFACTURED HOME PARKS – TYPE I & TYPE IA MANUFACTURED HOMES (Ord. #2019-18, Repealed 1901-1918 & Established 1900-1903, 10/2/19)

11-1901.1 PURPOSE

The purpose of manufactured home parks for Type I and Type IA Manufactured Homes is to preserve and enhance property values in the City by providing designated, distinctive areas in which manufactured homes may be situated as a residential dwelling. The principal use of land is for Type I and Type IA Manufactured Homes in which individuals rent their lots.

Exception: Travel trailers, pickup coaches, motor homes or camping trailers may be allowed in a designated tourist pay camp area of the manufactured home park as approved by the City Council.

11-1901.2 DESIGNATED AREAS

The following areas are defined and classified as Manufactured Home Parks:

1. Outlot P, 14-1-20, Philip Acreage, City of Philip, Haakon County, SD
2. Outlot A-1, Rivercrest Addition, City of Philip, Haakon County, SD.
3. N555.6' of Lots 1 and 2 EX 25' Easement and N400' of N555.6' of Lots 3, 4 and 5, Block 4, Russells Addition, City of Philip, Haakon County, SD.

11-1901.3 ACCESSORY USES AND STRUCTURES

The following accessory uses and structures shall be permitted in a manufactured home park:

1. Garages;
2. Accessory buildings;
3. Decks;
4. Open and enclosed additions;
5. Home occupations;
6. In home daycares;
7. Signs, directional on-site and off-site;
8. Signs, real estate;
9. Signs, name and address plate; and,
10. Signs, easement and utility.

11-1901.4 PROHIBITED USES AND STRUCTURES

No part of any park shall be used for nonresidential purposes, except such uses that are required for the direct servicing and well being of park residents and for the management and maintenance of the park.

11-1901.5 MINIMUM YARD REQUIREMENTS

All yards must meet the following criteria as measured from the lot line. This section shall apply to all buildings and structures, including but not limited to decks, patios, additions (open and enclosed), accessory buildings and garages:

1. Each lot shall have a minimum area of not less than four thousand (4,000) square feet.
2. The minimum distance required for the separation of a manufactured home from side and rear lot lines shall be six feet (6'). The minimum distance between two manufactured homes shall be a minimum of fifteen feet (15') from side to side and ten feet (10') from end to end.
3. The minimum setback distance required from a private drive, public right-of-way or corner lot shall be twenty feet (20'); and,
4. Garages, accessory buildings and additions shall not encroach on minimum yard requirements. Shall include decks and be no closer than eight feet (8') from another manufactured home.
 - a. Any existing garages, accessory buildings, additions and decks not in compliance with the minimum yard requirements at the time of enactment of this ordinance are considered a preexisting nonconformance use. Once removed, they shall not be replaced unless they meet the minimum yard requirements set forth herein.

11-1901.6 REGULATIONS

- A) Manufactured home park developments should be located to avoid the need for excessive traffic movement from the park to pass through an existing residential area or area suitable for future residential development; and,
- B) Access and Street Requirements:
 1. All manufactured home spaces must be served from internal private streets within the manufactured home park and there shall be no direct access from a manufactured home space to a public street or alley;
 2. Internal private streets must be graveled at a minimum and kept in good repair to prevent excessive potholes or pooling of water;
 3. A minimum of two (2) off-street parking spaces shall be provided for each manufactured home lot;
 4. No internal private street access to public streets shall be located closer than fifty feet (50') to any public street intersection;
 5. Stop signs shall be placed at all public street intersections and Yield signs placed appropriately on internal private streets;
 6. Entrance to manufactured home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such public roads; and,
 7. Streets should be of adequate width to accommodate the contemplated parking and traffic load in accordance with the type of street with twelve feet (12') minimum moving lanes for collector streets, twelve feet (12') minimum moving lanes for minor streets, and eight feet (8') minimum lanes for parallel parking.
- C) Other requirements:
 1. Type I manufactured homes may be of single or multiple sections and shall not be less than fourteen feet (14') in width as assembled on the site, as measured across the narrowest portion;
 2. Type IA manufactured homes may be of single section and shall not be less than twelve feet (12') in width as assembled on the site, as measured across the narrowest portion;

3. Provided with skirting material which is not highly combustible and installed around the perimeter of the home from the bottom of the manufactured home to the ground within thirty (30) days of placement;
4. The hitch shall be removed;
5. Any open or enclosed additions to the home must match the exterior of the home including that of the skirting and requirements as outlined in Section 2 above;
6. Each manufactured home shall be supplied with electric services;
7. Each manufactured home shall be connected to the City water and sewer systems with individual utility service lines and valves as approved by the Public Works Director.
8. If individual garbage collection points are not available, each manufactured home park shall provide screened areas or enclosed containers accessible for garbage collection of an adequate size for the number of units served; and, will be collected by the City's residential contractor;
9. Each manufactured home shall be anchored to the ground to resist tipping and lateral movement in the manner contemplated by the manufactured design and per HUD regulations;
10. Not less than ten percent (10%) of the gross site park area shall be devoted and maintained as recreational facilities for occupant needs;
11. No manufactured home shall occupy more than seventy percent (70%) of the area of the lot on which it is situated;
12. A landscaped buffer area of ten feet (10') in width shall be provided and maintained around the perimeter of the park, except where walks and drives penetrate the buffer;
13. Each manufactured home shall meet or exceed the federal HUD Construction and Safety Standards.
14. Each manufactured home located in the designated flood plain must comply with Chapter 16, Section 5.0.
15. Additional development requirements may be prescribed as conditions for approval when determined to be necessary to ensure protection of the neighboring property's character, compatibility with land uses, and health and safety of manufactured home park occupants.

11-1901.7 LICENSING AND APPLICATION REQUIREMENTS

No person shall establish or maintain a manufactured home park, as defined herein, without first obtaining a license therefor from the governing body of the City of Philip, and agreeing, in writing, to comply with the terms of this Ordinance, provided that a plot ground upon which unoccupied manufactured homes are located for the purpose of sale or trade shall not be construed to be a manufactured home park, nor shall said situated manufactured homes be used at any time for the housing or sleeping of persons. All manufactured home parks in existence upon effective date of this ordinance (see 11-1901.2) are licensed and in all other respects comply fully with the requirements of this ordinance,

Application Process

Any real property owner desiring to establish, maintain or operate a manufactured home park shall make application in writing to the governing body of the City of Philip. The application shall include a detailed site development plan incorporating the regulations established herein. The plan shall be drawn to scale and indicate the following:

- A) Location, legal description and topography of the proposed manufactured home park, including adjacent property owners and proximity to state highways, and to city and county roads;

- B) Exterior and interior property or individual lot lines with dimensions and square footage of the proposed park;
- C) Location and dimensions of all easements and right-of-ways;
- D) Proposed lot layout, including parking and recreational areas;
- E) General street and pedestrian walkway plan;
- F) General utility, water and sewer plan with proximity and proposed connection to municipal and/or private utilities;
- G) Site drainage plan and development impact on culverts, etc.;
- H) Storm water pollution prevention plan and State issued permit; and,
- I) Certificate of compliance with all ordinances and regulations regarding manufactured home park licensing and zoning, health, plumbing, electrical, building, fire prevention, flood prevention and all applicable ordinances and regulations.

Before a license is granted, all applications shall be examined by the Building Committee, Public Works Director and Chief of Police. The applicant, premises and proposed plan shall be inspected to ensure compliance with all provisions of the City Ordinances and laws of the State of South Dakota regarding safety and sanitation. The findings shall be submitted to the City Council for action.

The City Council reserves the right to revoke any license issued pursuant to this Ordinance, if after due hearing, it determines that the holder thereof has violated any of the provisions of this Ordinance or that any manufactured home or manufactured home park becomes a nuisance or is being maintained in any unsanitary or unsafe or unlawful manner.

11-1902 MANUFACTURED HOME LOTS – TYPE I MANUFACTURED HOMES

11-1902.1 PURPOSE

The purpose of manufactured home lots for Type I Manufacture Homes is to preserve and enhance property values in the City by allowing manufactured homes to be situated as a residential dwelling. The principal use of land is for Type I Manufactured Homes in which individuals own their lots.

11-1902.2 DESIGNATED AREA

The following area is defined and classified as Manufactured Home Lots for Type I and II Manufactured Homes:

1. Lots 1 thru 24, Hoags Valley Addition, City of Philip, SD

11-1902.3 ACCESSORY USES AND STRUCTURES

The following accessory uses and structures shall be permitted on a manufactured home lot:

1. Garages: one or two car permitted;
2. Accessory buildings: one (1) shed of 144 square feet or less permitted;
3. Decks;
4. Open and enclosed additions;
5. Home occupations;
6. In home daycares;
7. Signs, real estate;
8. Signs, name and address plate; and,
9. Signs, easement and utility.

11-1902.4 PROHIBITED USES AND STRUCTURES

No part of the manufactured home lot shall be used for nonresidential purposes.

11-1902.5 MINIMUM YARD REQUIREMENTS

All yards must meet the following criteria as measured from the lot line. This section shall apply to all buildings and structures, including but not limited to decks, patios (open and enclosed) and garages:

1. Each lot shall have a minimum area of not less than six thousand (6,000) square feet.
2. Each lot shall maintain a front yard of ten feet (10’); side yards of five feet (5’); and, rear yard of ten feet (10’). The minimum distance between two manufactured homes shall be a minimum of fifteen feet (15’) from side to side and ten feet (10’) from end to end.
3. Garages and accessory buildings shall not encroach on minimum yard requirements. Shall include decks and be no closer than eight feet (8’) from another manufactured home.

11-1902.6 REGULATIONS

A) Access and Street Requirements:

1. A minimum of two (2) off-street parking spaces shall be provided on each manufactured home lot;

B) Other requirements:

1. Manufactured homes may be of single or multiple sections and shall not be less than fourteen feet (14’) in width as assembled on the site, as measured across the narrowest portion;
2. Provided with skirting material which is not highly combustible and installed around the perimeter of the home from the bottom of the manufactured home to the ground within thirty (30) days of placement. This also applies to open and enclosed additions;
3. The hitch shall be removed;
4. Any open or enclosed additions to the home must match the exterior of the home including that of the skirting and requirements as outlined in Section 2 above;
5. Each manufactured home shall be supplied with electric services;
6. Each manufactured home shall be connected directly to the City water and sewer systems as approved by the Public Works Director.
7. Each manufactured home shall be anchored to the ground to resist tipping and lateral movement in the manner contemplated by the manufactured design;
8. No manufactured home shall occupy more than seventy percent (70%) of the area of the lot on which it is situated;
9. Each manufactured home shall meet or exceed the federal HUD Construction and Safety Standards.
10. Each manufactured home located in the designated flood plain must comply with Chapter 16, Section 5.0.
11. Additional requirements may be prescribed as conditions for approval when determined to be necessary to ensure protection of the neighboring property’s character, compatibility with land uses, and health and safety.

11-1902.7 PLACEMENT OF TYPE I MANUFACTURED HOMES ON LOT OUTSIDE OF DESIGNATED AREA

Type I Manufactured Homes existing on residential lots outside the designated area defined in City Ordinance 11-1902.2 at the effective date of this ordinance, may be replaced if the following requirements are met:

A) Access and Street Requirements:

1. A minimum of two (2) off-street parking spaces shall be provided on each manufactured home lot;
- B) Other requirements:
1. Manufactured home may be of single section and shall not be less than fourteen feet (14') in width as assembled on the site, as measured across the narrowest portion;
 2. The running gear and hitch must be removed;
 3. Anchored to a foundation and permanent footing as follows:
 - a. Installed per HUD regulations;
 - b. Foundation around the perimeter shall be continuous from the footing to the bottom of the home; and, constructed with poured concrete or masonry block (8"x8"x16"), unpierced except for ventilation and access.
 - c. Permanent footing around the perimeter shall be a minimum of eight inches (8") thick by sixteen inches (16") wide poured concrete with the bottom at ground level and backfilled to the top of the footing for drainage.
 4. Siding material of a type customarily used on site-constructed residences;
 5. Gabled roof with a pitch of at least 2/12; and, roofing material of a type customarily used on site-constructed residences;
 6. The age of the manufactured home may not exceed three (3) years from the date of manufacture;
 7. The replacement of the Type I Manufactured Home must be completed within sixty (60) days of removal of the existing structure; or, it may not be replaced.
 8. Any open or enclosed additions to the home must match the exterior of the home and comply with the anchoring and foundation requirements in Section 3 above.
- C) Other requirements:
1. Comply with City Ordinances and Building Codes applicable to private dwellings.
 2. Each manufactured home shall meet or exceed the federal HUD Construction and Safety Standards.
 3. Each manufactured home located in the designated flood plain must comply with Chapter 16, Section 5.0.
 4. Additional requirements may be prescribed as conditions for approval when determined to be necessary to ensure protection of the neighboring property's character, compatibility with land uses, and health and safety.

11-1903 MANUFACTURED HOME LOTS – TYPE II MANUFACTURED HOMES

11-1903.1 PURPOSE

The purpose of manufactured home lots for Type II Manufactured Homes is to preserve and enhance property values in the City by allowing they be situated as a permanent residential dwelling. The principal use of land is for Type II Manufactured Homes in which individuals own their lots.

11-1903.2 ACCESSORY USES AND STRUCTURES

The following accessory uses and structures shall be permitted on a manufactured home lot:

1. Garages;
2. Accessory buildings;
3. Decks;
4. Open and enclosed additions;
5. Home occupations;
6. In home daycares;
7. Signs, real estate;

8. Signs, name and address plate; and,
9. Signs, easement and utility.

11-1903.3 PROHIBITED USES AND STRUCTURES

No part of the manufactured home lot shall be used for nonresidential purposes.

11-1903.4 MINIMUM YARD REQUIREMENTS

All yards must meet the setback requirements for residential districts as outlined in Ordinances 11-401, 11-501 and 11-601.

11-1903.5 REGULATIONS

- A) Comply with City Ordinances and Building Codes applicable to private dwellings.
- B) Access and Street Requirements:
 1. A minimum of two (2) off-street parking spaces shall be provided on each lot;
- C) The placement of Type II Manufactured Homes shall meet or exceed the following installation regulations:
 1. Consist of two or more sections and shall not be less than twenty feet (20') in width as assembled on site, as measured across the narrowest portion;
 2. The running gear and hitch must be removed;
 3. Anchored to a foundation and permanent footing as follows:
 - a. Installed per HUD regulations;
 - b. Foundation around the perimeter shall be continuous from the footing to the bottom of the home; and, constructed with poured concrete or masonry block (8"x8"x16"), unpierced except for ventilation and access.
 - c. Permanent footing around the perimeter shall be a minimum of eight inches (8") thick by sixteen inches (16") wide poured concrete with the bottom at ground level and backfilled to the top of the footing for drainage.
 4. Siding material of a type customarily used on site-constructed residences.
 5. Gabled roof with a pitch of at least 2/12; and, roofing material of a type customarily used on site-constructed residences.
 6. The age of the manufactured home may not exceed three (3) years from the date of manufacture.
 7. Any open or enclosed additions to the home must match the exterior of the home and comply with the anchoring and foundation requirements in Section 3 above.
- D) Other requirements:
 1. Each manufactured home shall meet or exceed the federal HUD Construction and Safety Standards.
 2. Each manufactured home located in the designated flood plain must comply with Chapter 16, Section 5.0.
 3. Additional requirements may be prescribed as conditions for approval when determined to be necessary to ensure protection of the neighboring property's character, compatibility with land uses, and health and safety.

11-2001 EXCAVATION CODE – ADOPTED

This chapter shall be known as the Excavation Code and is hereby adopted by the city for the regulation of excavations within the city.

- 11-2002 DEFINITIONS**
Whenever the work “excavation” or form or tense thereof is used in the code adopted by this article, it shall be held to mean excavation, dirt moving, earth moving, trenching, digging, land filling or otherwise disturbing the natural lay of the land.
- 11-2101 COMPLIANCE WITH REGULATIONS**
It shall be the duty of all excavation contractors to comply with all ordinances relating to the construction of building or other structures, to the construction of streets or sidewalk pavements, to trenching and excavating, and all laws and ordinances pertaining to regulating the activities engage in.
- 11-2102 GUARDING EXCAVATIONS**
No excavation in any public place shall be left open overnight, unless appropriate barriers are provided, and unless approved by the Public Works Director of water unless said excavation is in an alley way or street, in which case approval must first be obtained from Street Public Works Director.
- 11-2201 EXCAVATION – PERMIT REQUIRED**
No person may excavate, trench, move dirt or otherwise conduct himself in an activity, as defined in Chapter 11-2002, without having first obtained a permit from the municipality.
- 11-3000 WIND ENERGY SYSTEMS - PURPOSE**
The purpose of this ordinance is to ensure that the placement, construction and modifications of a Wind Energy System (WES) facility is consistent with the City’s land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the citizens.
- 11-3001 FEDERAL AND STATE REQUIREMENTS**
All WES facilities shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WES facilities.
- 11-3002 DEFINITIONS**
- 1) Large Wind Energy System or LWES – All WES facilities excluding Small Wind Energy Systems.
 - 2) Small Wind Energy System or SWES – A WES facility with a single tower height of less than seventy-five (75) feet and a swept area of thirty (30) feet or less used primarily for on-site consumption of power.
 - 3) Tower Height – The height above grade of the fixed portion of the tower, excluding the wind turbine itself.
 - 4) System Height – The height above grade of the tallest point of the WES, including the rotor radius.
 - 5) Turbine – The parts of the WES including the blades, generator and tail.

- 6) Wind Energy System or WES – A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:
 1. Tower or multiple towers, including foundations;
 2. Generator(s);
 3. Blade(s);
 4. Power collection systems, including padmount transformers;
 5. Access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and,
 6. Electric interconnection systems or portion thereof dedicated to the WES.
- 7) Wind Tower – The monopole, freestanding or guyed structure that supports the energy capture, conversion, storage and transfer components of a WES. These wind towers are not attached to any building.

11-3003

REQUIREMENTS FOR SITING SMALL WIND ENERGY SYSTEMS (SWES):

- 1) Standards: A Small Wind Energy System as defined in 11-302(2) shall be a permitted use in all zoning districts subject to the following requirements:
 - A) Setbacks. The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, meteorological towers, primary communication towers, public roads and dwellings shall be no less than the total height of the SWES, unless written permission is granted by each affected person. This minimum setback distance is measured from the base of each tower.
 - B) Access. All ground mounted electrical and control equipment shall be labeled and totally and permanently enclosed by a security fence of at least six (6) feet high. No fence is required if the climbing apparatus is enclosed inside the wind tower and the entry is secured, or if the climbing apparatus is located at least twelve (12) feet above the ground level.
 - C) Lighting. A SWES shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
 - D) Noise. SWES facilities shall not exceed fifty-five (55) dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.
 - E) All SWES shall be equipped with a manual and automatic braking device capable of halting operation.
 - F) All wiring for SWES shall be buried.
 - G) All outbuildings/cabinets associated with a SWES shall meet all setback requirements for the zoning district in which the SWES is located.
 - H) Appearance, Color, Finish. The SWES shall be a non-reflective, neutral color. It shall remain painted or finished the color of finish that was originally applied by the manufacturer.

- D) Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWES visible from any public road shall be prohibited.
 - J) Code Compliance. A SWES shall comply with all applicable local, state and national construction and electrical codes, and relevant national and international codes.
 - K) No SWES shall be installed in any location where its proximity with fixed broadcast, retransmission or reception antenna for radio, airport RF signals, television or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
 - L) Utility Notification. No SWES shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- 2) Permit Requirements:
- A) Building Permit. A building permit shall be required for the installation of a SWES in accordance with Ord. 11-1602.
 - B) The building permit shall be accompanied by a plot plan which includes the following:
 - 1) Property lines and physical dimensions of the property;
 - 2) Location, dimensions and types of existing major structures on the property;
 - 3) Location of the proposed SWES;
 - 4) The right-of-way of any public road that is contiguous with the property;
 - 5) Any overhead utility lines;
 - 6) Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed);
 - 7) Tower foundation blueprints or drawings;
 - 8) Tower blueprint or drawing;
 - 9) Proof of notification to the utility in the service territory in which the SWE is to be erected, consistent with the provisions of ; and,
 - 10) That status of all necessary interconnection agreements or studies.
 - C) Expiration. A permit issued pursuant to this ordinance shall expire if the SWES is not installed and functioning within twelve (12) months from the date the permit is issued.
- 3) Abandonment:
- A) A SWES that is out-of-service for a continuous twelve (12) month period will be deemed to have been abandoned. The City Council may issue a Notice of Abandonment to the owner of a SWES that is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from the date the notice is received. The Council shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the SWES has not been abandoned.

B) If the SWES is determined to be abandoned, the owner of the SWES shall remove the wind generator from the tower at the owner's expense within three (3) months from the date the Notice of Abandonment is received. If the owner fails to remove the wind generator from the tower, the Council may pursue legal action to have the wind generator removed at the owner's expense.

4) Violations. It is unlawful for any person to construct, install or operate a SWES that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance.

5) Severability. The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

11-3004

LARGE WIND ENERGY SYSTEMS (LWES):

The City of Philip prohibits any and all LWES as defined in 11-302(1) within the City limits.

Ord. #2009-01, 02/21/09, Section 3000 Adopted.