

## ORDINANCE NO. 356

### TEMPROARY ZONING ORDINANCE

#### 1-1: Jurisdiction

1-1-1. Authority. The City of Alexandria has the authority to adopt the temporary zoning ordinance pursuant to SDCL 11-4 and SDCL 11-6.

1-1-2. Purposes. The purpose of this zoning ordinance is to promote the safety, health, convenience and general welfare; to encourage the use of lands and natural resources in the City in accordance with their character, adaptability, and suitability for particular purposes; to conserve social and economic stability, property values and the general character and trend of community development; to prevent excessive concentration of population; to lessen congestion on the public streets and highways; to facilitate adequate provision of streets and highways, sewerage and drainage, water supply and distribution, educational, and other public resources, by establishing standards for community development and by providing for the enforcement of the standards.

1-1-3. Necessity. This Ordinance is necessary for the immediate preservation of the public health and safety, and an emergency exists.

#### 1-2: Application of District Regulations

1-2-1: Nonconforming Uses. A nonconforming use existing at the time this Ordinance takes effect may be continued. If it is voluntarily discontinued for one year or more, it will be deemed abandoned and future use must be in conformity with the district.

#### 1-3: Districts Established

1-3-1: Planning Commission Recommendations. The Planning Commission will recommend boundaries for the various original districts and appropriate regulations for them. The Planning Commission will make a preliminary report and hold a public hearing thereon before submitting its final report, and the City Council will not hold its

public hearing or take action until it has received the final report of the Planning Commission.

1-3-2: Districts Created. For the purpose of this ordinance, there are hereby created four (4) types of districts by which the jurisdiction area defined in Section 1-3-1 shall be divided.

R Residential

B Business and Commercial

A Agriculture

F Floodplain

#### **1-4: Official Zoning Map and Boundary Interpretation**

1-4-1. General. The City is hereby divided into districts as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance.

1-4-2. Zoning Map Changes. If changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, the changes will be entered on the Official Zoning Map promptly after the amendment has been approved by the City Council, with an entry on the Official Zoning Map as follows: *“on (date), by official action of the City Council, the following (changes) changes were made in the Official Zoning Map: (brief description of nature of change),”* and signed by the Mayor of the City and attested by the Municipal Finance Office. No amendment to this ordinance which involves matter portrayed on the Official Zoning Map will become effective until the change and entry have been made on the map.

Regardless of the existence of purported copies of the Official Zoning Map which may be made or published, the Official Zoning Map located in the office of the Zoning Administrator will be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the City.

The Official Zoning Map is attached hereto as Exhibit "A", and by this reference incorporated herein as though set forth verbatim herein.

1-4-3. Zoning Map Replacement. If the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may, by resolution, adopt a new Official Zoning Map which will supersede the prior Official Zoning Map.

The new Official Zoning Map will be identified by the signature of the Mayor and attested by the Municipal Finance Office, and bear the seal of the City under the following words:

1-4-4. Rules for Interpretation of District Boundaries. Where uncertainty exists as to the boundaries of districts as shown by the Official Zoning Map, the following rules apply:

(a) Boundaries indicated as approximately following the center lines of streets, highways, or alleys will be construed to follow the center lines; and

(b) Boundaries indicated as approximately following platted lot lines will be construed as following the lot lines

### **1-5: Residential District (R)**

1-5-1. Intent. Residential Districts (R) provide for the residential uses of varying types and other compatible uses in a pleasant and stable environment.

1-5-2. Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in Residential Districts (R):

(a) single-family dwellings;

(b) horticulture uses and the raising of crops.

1-5-3. Permitted Accessory Uses and Structures.

- (a) Home occupations and professional offices: and
- (b) Accessory uses and structures normally appurtenant to the permitted uses and structures when established within spaces limited of this district.

1-5-4. Other Uses. All other uses are prohibited unless authorized by a conditional use permit.

1-5-5. Minimum Lot Requirements. The minimum lot area will be seven thousand (7,000) square feet for a single-family dwelling unit. The minimum lot area for a multi-family dwelling unit will be three thousand five hundred (3,500) square feet per unit, and two thousand (2,000) square feet for each efficiency dwelling unit. The minimum lot width will be fifty (50) feet, for dwelling units.

1-5-6. Maximum Height. The height of all buildings and structures will not exceed thirty-five (35) feet.

#### **1-6: Business and Commercial District (B)**

1-6-1. Any use permitted in an R district is be permitted in a B district.

1-6-2. Any normal business, industrial or manufacturing use, providing the use is not noxious, dangerous or offensive by reason of emission of odor, dust, smoke, gas, noise, flame or vibration, except uses specifically prohibited in this resolution.

#### **1-7: Agriculture District (AG)**

1-7-1. Land located in the agriculture district may be used for any agriculture purpose not prohibited herein.

1-7-2. No animal confinement operations of any type will be conducted within the City limits.

1-7-3. Any use permitted in the residential or business and commercial districts are also permitted in the Agricultural district, subject to the same conditions and

requirements as established in the residential or business and commercial district regulations for that use.

## **1-8: Floodplain District (FP)**

1-8-1. Intent. The floodplain district is an overlay district that adds additional restrictions to any other zoning district regulations that apply in an area.

1-8-2. Purpose. The purpose of this district is to protect open spaces and natural drainage courses on their capacity to carry runoff water and to limit use of land in areas subject to flooding, in order to promote the health and safety of the general public, and prevent the destruction or pollution of valuable and irreplaceable natural resources and prevent encroachment of use which would reduce the future potential of these resources.

1-8-3. Distinction Between Floodplain District and Floodplain Ordinance. The City of Alexandria Floodplain Ordinance (Ordinance 343) is not affected by the Floodplain District Regulations. All land regulations the jurisdiction of the Floodplain Ordinance will take precedence over the Floodplain District Regulations.

1-8-4. Flood Hazard Boundary Map Utilized as Basis for FP District Designation. The Flood Hazard Boundary Map (FHBM) prepared by the U.S. Department of Housing and Urban Development, Federal Insurance Administration is the basis for the Floodplain District designation.

The Flood Hazard Boundary Map is attached hereto as Exhibit "B", and by this reference incorporated herein as though set forth verbatim herein.

1-8-5. Permitted Principal Uses and Structures. Permitted uses will be consistent with uses permitted in the zoned district through which the water course traverses.

1-8-6. Floodway Restriction. There will be no new construction, substantial improvements, fill, or other developments in the flood hazard area unless a technical evaluation demonstrates that encroachments will not in any increase in flood levels during the occurrence of the base flood discharge and all other state and federal laws will be adhered to.

1-8-7. Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within these areas will be free from flooding or flood damages. This article does not create liability on the part of the City of Alexandria, any officer or employee thereof, the Federal Insurance Administration for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

1-8-8. Development Plan. The Development plan will show, but is not limited to, the following: land contours, location of structures, description of intended use, and an accurate, to scale, site plane.

### **1-9: Supplementary District Regulations**

1-9-1. Visibility at Intersections. On a corner lot in all districts, except Commercial and Agricultural, nothing will be erected, placed, planted or allowed to grow in a manner that materially impedes vision between a height of two and one-half (2 ½) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of the corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection.

SETBACKS. //////////////////////////////////////

1-9-2. Erection of More than One Principal Structure on a Lot. In any district, more than one structure housing a permitted or permissible principal use may be erected on a single lot, provided, that yard and other requirements of this ordinance are met for each structure as though it were on an individual lot.

1-9-3. Conditional Uses to Height Regulations. The height limitations contained in this ordinance do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, domes, chimneys, grain elevators, and other accessory agricultural structures or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

1-9-4. Structures to Have Access. Every building erected or moved will be on a lot adjacent to a public street and all structures will be located on lots which provide safe and convenient access for servicing, fire protection, and off-street parking.

1-9-5. Parking, Storage or Use of Major Recreational Equipment. No major recreational equipment shall be parked or stored on any public street right-of-way for more than 72 hours. No major recreational equipment can be parked or stored on any public alley right of way. No major recreational equipment can be parked or stored where it blocks a fire lane. No equipment will be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for this use for more than seven (7) days.

1-9-6. Parking and Storage of Certain Vehicles. Motorized vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residential zoned property other than in completely enclosed buildings.

## **1-10: Nonconformance**

1-10-1: Nonconforming Activities. All activities on any property regulated by this Zoning Ordinance are hereby determined to be a public nuisance.

1-10-2: Each day a violation. Each day that a use of property does not conform to the requirements of this Zoning Ordinance, will be deemed a separate violation. Each day starts at midnight.

## **1-11: Administrative Procedure and Enforcement**

1-11-1. Provision for Zoning Administrator. An administrative official who is as the Zoning Administrator, and who will be designated by the City of Alexandria Commission, will administer and enforce this ordinance. They may be provided with the assistance of such other persons as the City Council may direct.

If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, they will give written notice the person responsible for violations, indicate the nature of the violation and order the action necessary to correct it. They will order

discontinuance of illegal use of land, buildings or structures or illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or can take any other action authorized by the ordinance to insure compliance with or to prevent violation of its provisions.

1-11-2. Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Zoning Administrator or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises an ordinance violation, the Zoning Administrator or an authorized representative may enter the building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Zoning Administrator by this ordinance, provided that if the building or premises and request entry. If entry is refused, the Zoning Administrator or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Administrator or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Zoning Administrator or an authorized representative for the purpose of inspection and examination pursuant to this ordinance.

1-11-3. Alexandria Planning Commission. The Alexandria City Council will appoint a Planning Commission of three members; the total membership of which shall be an uneven number and not more than 2 members may be council members. The term of each appointed member of the Planning Commission is first appointed the lengths of the terms will be varied so that no more than one-third of the terms expire in the same year. Meetings will be regularly scheduled and held at the call of the Chairman, at such other times as the Planning Commission may determine. The Chairman, or in their absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings are open to the public.

Upon notification of a proposed revision, modification, change or amendment to the zoning ordinance the Planning Commission will schedule a public hearing. The public hearing will not be held less than ten days after notice has been published in a



newspaper of general circulation in the area affected. Any person may appear and request or protest the proposed change.

The Planning Commission will keep a record of all proceedings, including minutes showing the vote of each member upon each question, if absent or failure to vote indicating this fact, and will keep records and be immediately filed with the Zoning Administrator. The Planning Commission will adopt, subject to the approval of the City Council, the rules and regulations as it deems necessary for the conduct of its affairs and to carry the provisions of this ordinance into effect.

1-11-4. Alexandria Board of Adjustment. The City Council will serve as the Board of Adjustment. The board of Adjustment is hereby designated to hear all requests for variances, conditional uses and zoning appeals. The Board of Adjustment may, in specific cases to avoid unwarranted hardship which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, make upon an affirmative vote of two-thirds of the full membership of the Board of Adjustment, conditional uses or grant variances to the terms of the regulations or controls, subject to appropriate conditions or safeguards being adopted by the County Commission.

The Municipal Finance Officer will act as secretary to the Board of Adjustment when acting in zoning cases, but will take no part in deliberations. Meetings of the Board of Adjustment acting in zoning cases will be held at the call of the Chairperson, or his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

1-11-5. Alexandria City Council. The City of Alexandria Commission may amend, supplement, change, modify, or repeal any regulation, restriction, boundary, or enforcement provision established in the comprehensive plan or adjuncts there to. The City Council will forward a copy of the proposed changes to the Planning Commission for public review. Upon receipt of the comments from the Planning Commission the City Council will thereafter either adopt or reject the amendment, supplement, change, modification, or repeal. If adopted the City Council will direct the municipal Finance Officer to have the summary published once in the official newspaper.

1-11-6. Burning Permits Required. No building or other structure can be erected, moved, added to, or use changed without a permit issued by the Zoning Administrator.

No building permit can be issued by the Zoning Administrator except in conformity with the provisions of this ordinance unless they received a written order from the Board of Adjustment in the form of an administrative review, conditional use, or variance as provided by this ordinance.

1-11-7. Application for Building Permit. All application for building permits must be signed or approved in writing by the owner of record. In the event the owner of record has a binding purchase agreement contingent on the approval of the building permit, the potential purchaser may submit and sign all documents required for application. All building permit applications must be accompanied by a site plan including but not limited to the following items; drawn to scale, including a north arrow, showing the property lines, actual dimensions and shape of the lot to be built upon, the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. Refer to document entitled Site Plan Requirements for a detailed example of site plan requirements.

The application will include such other information as may be lawfully required by the Zoning Administrator, including: existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, rental units, or animal units the building is designed to accommodate; conditions existing on the lot; and other matters as may be necessary to determine conformance with, and provide for the enforcement of this ordinance.

One copy of the plans will be returned to the applicant by the Zoning Administrator after the plans have been marked as either approved or disapproved and attested to the same by a signature on the copy. If a building permit is refused, the Zoning Administrator will state the reasons for refusal in writing. The original and one copy of the plans, similarly marked, will be retained by the Zoning Administrator. The issuance of a building permit does not waive any provisions of this ordinance.

1-11-8. Expiration of Building Permit. If the work described in any building permit has not begun within one hundred and eighty (180) days or is not substantially completed within two (2) years of the date issuance thereof, the permit expires; it will be canceled by the Zoning Administrator and written notice thereof will be given to persons affected. The notice will state that further work as described in the canceled permit cannot proceed until a new building permit has been obtained.

1-11-9. Construction and Use to be as Provided in Application, Plans, Permits, and Application for Zoning Compliance. Building permits issued on the basis of plans and application approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in the approved plans and applications. Use, arrangement, or construction at variance with what authorized is a violation of this ordinance.

1-11-10. Schedule of Fees, Charges, and Expenses. The City Council will establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, variances, conditional uses, amendments, appeals and other matters pertaining to this ordinance. The schedule of fees will be posted in the office of the Zoning Administrator and may be altered or amended by the Alexandria City Council. No action will be taken on any application or appeal, until all application fees, charges, and expenses have been paid in full.

1-11-11. Building Permit in a Conspicuous Place. All building permits issued by the Zoning Administrator must be placed in a conspicuous location on the building site for the duration of the construction of the work described.

1-11-12. Bad Actor Legislation. The City Council may reject an application for any permit, variance, and conditional use or otherwise for the reasons and other grounds set forth in SDCL 1-40-27, as revised and amended. This rejection will be based upon a specific finding by the Commission that the applicant has engaged in the activity identified in the statute. The standard to make this specific finding is by preponderance of the evidence.

## **1-12: Planning Commission**

1-12-1. Powers and Duties. The Planning Commission has the power to hear the requests for amendments, changes in zones, and appeals of a decision rendered by the Zoning Administrator.

1-12-2. Additional Duties. The Planning Commission is responsible to gather the necessary information, conduct public hearings, and make recommendations to the City Council for changes in this Zoning Ordinance.

### **1-13 Board of Adjustment**

1-13-1. The City Council will act as the Board of Adjustment under this Ordinance.

1-13-2. The Board of adjustment has all powers, authority and duties authorized under South Dakota Law and by this ordinance.

### **1-14: City Council**

1-14-1. Powers and Duties. The City Council has the power to hear appeals, requests for rezoning, amendment of the Zoning Ordinance, and will act as the Board of Adjustment.

### **1-15: Duties of Zoning Administrator, Board of Adjustment, City Council, and Courts on Matters of Appeal**

1-15-1. Duties of Zoning Administrator, Board of Adjustment, City Council and Courts on Matters of Appeal. The intent of this ordinance is to have all questions of interpretation and enforcement first presented to the Zoning Administrator. Questions will be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, and these questions will be presented to the City Council only on appeal from the decision of the Board of Adjustment, and recourse from the decision of the City Council will be to the Courts as provided by law.

### **1-16: Amendments**

1-16-1. Amendments. This Ordinance may be amended in any manner authorized under the laws of the State of South Dakota.

### **1-17: Violations, Complaints, Penalties, and Remedies**

1-17-1. Complaints Regarding Violations. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a complaint. The complaint will state the causes and basis thereof and will be filed with the Zoning Administrator.

The Zoning Administrator will record the complaint with the Board of Adjustment and investigate and take action thereon as provided by this ordinance.

If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he/she will notify, the person responsible for the violations, in writing by certified mail with return receipt, indicating the nature of the violation and ordering the action necessary to correct it. The party responsible for the violation must respond within seven (7) working days from receipt of the letter; otherwise, they will be considered in violation.

1-17-2. Penalties for Violations. The owner or agent of a building or premises in or upon which a violation of any provision of this ordinance has been committed or exists, or lessee or tenant of any entire building or entire premises in or upon which violation exists, is guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, may be ordered to pay all costs and expenses involved in this case.

Any architect, builder, contractor, agent or other person, who commits, participates on, assists in or maintains a violation may each be found guilty of a separate offense and suffer the penalties herein provided.

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this ordinance, the city may institute any appropriate action or proceedings to prevent unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct or abate the violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about the premises.

1-17-3. Injunction Proceedings to Prevent or Abate Violations. If there is a violation or a threatened violation of this ordinance, the City Council or any member thereof, in addition to other remedies, may institute an appropriate action or proceedings to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate the violation or threatened violation.

## **1-18: Legal Status Provisions**

1-18-1. Separability. If any article, section, or provision of this ordinance be declared by the courts to be unconstitutional or invalid, the decision shall not affect the validity of this ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

1-18-2. Repeal of Conflicting Ordinances. All ordinances in conflict with this ordinance, or inconsistent with the provisions of this ordinance, are hereby repealed to the extent necessary to give this ordinance full force and effect.

1-18-3. Effective Date. This ordinance will take effect and be in force from and after its passage according to law.

## **1-19: Definitions**

1-19-1. All words used in this document are defined as follows:

- (a) As defined herein if definitions are provided; then
- (b) As defined under the laws of the State of South Dakota; then
- (c) As their common usage requires.

1-19-2. The following defined terms apply to this ordinance;

- (a) Accessory Use or Structure – A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- (b) Buildable area – The portion of a lot remaining after required yards have been provided.
- (c) Building – The word “building” includes the word structure and is a structure which is entirely separate from any other structure by space or by walls in which there is no communication doors or windows or similar openings. A principal building including covered porches and paved patios,

- is a building in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwellings shall be deemed to be the principal building on the lot on which the same is situated.
- (d) Building, Principal – A building in which is conducted the main use of the lot on which said building is located.
  - (e) Conditional Use – A conditional use is a use that would not be appropriate, generally or without restriction, throughout the zoning district, but which if control as to number, area, location or relation to the neighborhood, would promote the public health, safety welfare, morals, order, convenience, appearance, prosperity or general welfare. These uses may be permitted in the zoning district as conditional uses, if specific provision for the conditional use is made in this ordinance.
  - (f) Fire Lane – Any public right-of-way available for use for ingress and egress to property, specifically including, but not limited to, streets and alleys.
  - (g) Flood Hazard Boundary Map (FHBM) – The official map issued by the Federal Insurance Administration where the areas of special flood hazard have been designated Zone A.
  - (h) Flood Insurance Rate Map (FIRM) – An official map of a community on which the Federal Emergency Management Agency has delineated areas of special flood hazard designated as Zone A.
  - (i) Floodway – 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 an accumulative increase in the water surface.
  - (j) Home Occupation – A business activity customarily carried on in the home by a member of the occupant’s family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal household operations, without the employment of persons not residing in the home, which does not cause the generation of additional traffic in the street.

- (k) Performance standards – Criterion established for the purposes of:
  - 1. Assigning proposed land uses to proper districts; and
  - 2. Controlling noise, odor, glare, smoke, toxic matter, esthetics, vibration, fire/explosive hazards generated by, or inherent in, uses of land or buildings.
  
- (l) Permitted Use – A use by right, which is specifically authorized in a particular zoning district.
  
- (m) Street – A right-of-way established by a recorded plat to provide the primary means of access to abutting property.