

EXECUTIVE SUMMARY

OF THE

COMPREHENSIVE LAND USE PLAN

AND

ZONING ORDINANCE

FOR

THE CITY OF CLEAR LAKE

SEPTEMBER 23, 2010

**PREPARED WITH ASSISTANCE FROM
THE FIRST DISTRICT ASSOCIATION OF LOCAL GOVERNMENTS**

Introduction

The Zoning Ordinance for the City of Clear Lake, South Dakota was last updated in 1995. Since that time numerous court cases have been decided; changes regarding planning and zoning have been made in South Dakota Codified Law. Those factors led the City to request the assistance of First District Association of Local Governments in the updating the City’s Zoning Ordinance.

The purpose of the update to the Zoning Ordinance was to create a more readable ordinance that is simpler to administer and easier for those not accustomed to reading Zoning Ordinances. All of the proposed changes to the Zoning Ordinance and Zoning Map were suggested in an effort to maintain sound planning principles for the orderly growth and development for the City of Clear Lake. While certain changes may affect property owners in different ways, the goal of the update was to allow property owners to continue using their property as they have been by minimizing the number of nonconforming uses.

In order to ensure that the Zoning Ordinance and Zoning Map lead toward orderly growth through using sound planning principles, it must be based on a Comprehensive Land Use Plan. By providing an inventory of natural and cultural resources a plan for development within the City of Clear Lake and in the areas where it may expand over the next twenty (20) years was developed.

Over the course of eight (8) months First District met with property owners and shareholders in the City of Clear Lake, as well as City Staff, the Mayor, and the City Council. Those meetings helped guide the development of the Comprehensive Land Use Plan for the City of Clear Lake and the changes to the zoning ordinance. The results of those meetings are divided into four groups: Comprehensive Plan Minor Changes, Changes in Zoning Districts, Other Changes. Each subheading includes a brief description of the nature of changes described within the section.

Comprehensive Plan:

The Comprehensive Land Use Plan was compiled by analyzing data from recent reports of demographics for Deuel County and the US Census, and by conducting a land use inventory of the City. Information was also gathered from shareholders and the City Council at meetings. From those meetings and research, numerous goals were identified along with objectives and strategies to attaining those goals. The goals are categorized as follows:

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|----------------------------|----------------------------------|
| 1. General Community Goals | 2. Residential Goal |
| 3. Commercial Use Goal | 4. Industrial Use Goal |
| 5. Public Utilities Goal | 6. Environmental Protection Goal |
| 7. Growth Management Areas | |

Specific demographic data relating population and housing, educational attainment, employment, and income can help point out trends for projecting growth in communities. Inventorying existing land uses provides a snapshot of how land is being used in the City at a specific point in time. Therefore a land use survey was conducted along with an inventory of available infrastructure for the City. Also, empirical data compiled by the 2000 US Census for the City of Clear Lake was analyzed. This data is displayed in the following Charts and Tables:

Charts

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|----|----------------------------------------------------------|
| #1 | Population Trends for the City of Clear Lake (1920-2000) |
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#2	Population Trends for the City of Clear Lake and Deuel County (1920-2000)
#3	Population by Age Cohort (1990-2000)
#4	Percentage of Residents Over 25 with High School and/or College Diplomas
#5	Years of School Completed by Percentage of Persons Over 25 (1990-2000)
#6	Income Distribution- Family Median Income (1990-2000)
#7	Income Distribution- Household Median Income (1990-2000)
#8	Comparison of Employment by Industrial Sector (1990-2000)

Tables

#1	Deuel County Population Analysis
#2	Clear Lake Labor Force
#3	Industrial Sector Employment
#4	Comparison of Employment by Industrial Sector, 1990 & 2000
#5	City of Clear Lake Housing Facts 1990 & 2000

The analysis of the above statistics and information gathered in the inventories of land uses and infrastructure provided valuable insight into how to plan for the orderly development of the City of Clear Lake. Projections for population were made based upon the data compiled for the Plan. Maps of the Major Street Plan, Growth Management Areas, and Future Land Use(s) were created to serve as a basis for future development. The Plan offers recommendation relating to development concerns such as: streets, water, sanitary sewer, and storm water.

Minor Changes:

These changes include the re-formatting of the entire ordinance to create a document that is easier to follow for those who administer the ordinance and those of the general public. The entire ordinance was re-numbered and most portions were moved or updated. Also, in order to update the zoning ordinance to be in conformance with state and federal law, as well as Supreme Court decisions. A few of the most notable additions/revisions include:

Section 1.02.02. Violations/Penalties for Violation.

This establishes a policy for handling violations of the zoning ordinance. Rather than requiring the City to take the “violator” to court for fines and damages, this section allows the City to impose an administrative fee to those who begin projects without a proper permit.

Chapter 2.02. Non-Conforming Uses

Non-conforming uses are uses which existed legally at the time of the establishment of the zoning ordinance, but changes to the zoning ordinance have made them illegal. For example, houses that were placed 3 feet from a property before an ordinance that required structures to be 6 feet from a property line; or a gas station located in a place that has since been zoned as a residential district. Provisions existed in the existing ordinance, however state law and Supreme Court cases have been heard relating to non-conforming uses and therefore changes in wording were made. Substantively, these provisions did not change except to clarify that a nonconforming structure which is destroyed beyond 50% of its market value may not be replaced, and that a non-conforming use which is discontinued for more than one year may not resume at the site (wording was

conflicting). The ordinance was updated to allow for conforming additions to non-conforming structures. For example, if that same structure which is built 3 feet from the (north) lot line and wants to make an addition to the south, the addition may be allowed (provided it meets the other applicable setbacks. This was not allowed prior to the passage of this ordinance.

Conditional Uses

State law recognizes the term “conditional use” but not “special exceptions”. All references to “special exceptions” have been changed to “conditional use”.

Religious Institutions

Court cases and federal legislation require all houses of worship to be treated the same in the eyes of local land use law. Further, they are generally to be allowed wherever similar types of businesses such as theatres and conference/banquet halls are allowed. Changes were made to be consistent with this ruling.

Chapter 4.07. Adult Uses.

Federal law and court cases recognize uses commonly described as “Adult Uses” (strip clubs, adult movie theatres, adult shops, etc.) as being constitutionally protected expressions of free speech. Any city which prohibits Adult Uses from being operated within City Limits is exposed to lawsuit. However, the operation and location of these businesses can be regulated. This ordinance imposes a land use component which is required to be approved by the Board of Adjustments (Conditional Use permit) and a business component requiring licensure from the City Council. Each permit/license requires specific conditions to be met or maintained of such an operation. Also, the location of these businesses is limited through setbacks as well as by zoning district (Industrial District.)

Changes in Zoning Districts:

In order to provide for the health, safety, and general welfare of the citizens of Clear Lake the City has been divided into eight (8) zoning districts, as well as two “Overlay Districts”. By assigning zoning districts, the City can more reasonably assure its citizens that their homes or businesses will be neighbored by land uses in harmony with their own. “Overlay Districts” establish certain criteria in addition to the criteria required of underlying zoning districts (underlying districts would be R-1, R-2, C-1, C-2, etc.) Usually overlay districts are established due to circumstances that cover a wide array of zoning districts (Water Source Protection District) or special circumstances which exist in only a portion of a larger zoning district (Central Business Overlay District.) The zoning districts for the City of Clear Lake are listed below: (New districts are displayed in **bold** print.)

- A Agricultural District
- R-1 Single Family Residential District**
- R-2 General Residential District
- R-2L Lake Residential District**
- R-3 Manufactured Homes Residential District
- PUD Planned Unit Development District
- C-1 General Commercial District
- C-2 Highway Commercial District
- I Industrial District

Overlay Districts

CB Central Business Overlay District

WS Water Source Protection Overlay District

Description of New Districts:

R-1 Single Family Residential District

The intent of the “R-1” Single Family Residential District is to provide locations for low-density site-built, single-family residential dwellings. Other types of single family residential dwellings and compatible uses may be permitted based upon complying with site review and adjacent landowner concerns. The only “permitted uses” in the district are site built single-family dwellings, modular homes, and public park and recreation areas, as well as accessory uses. Area/Construction Regulations (see below) were designed with the intent of maintaining low density residential developments while limiting non-conformities.

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential	9,000 square feet	75'	35'	30%
Churches, synagogues, chapels and other similar places of worship	87,120 square feet (2 acres)	75'	35'*	30%
Other Conditional Uses	To be determined by the Board of Adjustment			

**Maximum height for steeples and towers shall be seventy-five (75) feet*

	Minimum Front Yard*	Minimum Rear Yard	Minimum Side Yard
Permitted Uses	25'	15'	8'
Conditional Uses	To be determined by the Board of Adjustment		

R-2L Lake Residential District

The intent of the “R-2L” Lake Residential District is to provide an environment for the development of single-family, two-family and multiple-family uses in harmony with lake-oriented commercial, public, and semi-public recreational opportunities in close proximity to Clear Lake. Permitted uses shall encourage medium density residential uses. High density residential, public, and semi-public recreational services, and other commercial uses normally associated with lakeshore development may be permitted where the residential characteristics of the neighborhood and density of development are given consideration. Limited commercial operations are allowed in this district, provided they are in harmony with neighboring land uses and structures.

Examples of business which may be allowed are: cabins, bed and breakfast, resorts, antique shops, RV and recreational equipment commercial storage and/or rental, etc. Due to lack of infrastructure and the inefficiency of providing services to some areas adjacent to the lake, neighborhood commercial businesses (restaurants, banks, grocery stores, convenience stores, etc) are discouraged due to traffic generated, utility needs, and compatibility with residential uses. Area/Construction Regulations (see below) were designed with the intent of allowing development at existing densities, but requiring additional space for commercial activities.

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential	6,500 square feet	50'	35'	40%
Two Dwelling Units	3,000 square feet/dwelling unit	50'	35'	40%
Three - Four Dwelling Units	2,500 square feet/dwelling unit	50'	35'	40%
Assisted Living, Nursing and Rest Homes, etc.	2,000 square feet/dwelling unit	60'	35'	40%
Museums, antique stores, souvenir shops, recreational vehicle and equipment rental, and commercial storage structures	10,000 square feet	100'	35'	40%
Lodging/boarding houses or bed and breakfast, resorts, or tourist cabins	10,000 square feet	100'	35'	40%
Other Conditional Uses	To be determined by the Board of Adjustment			

	Lake Front Lots		Non-Lake Front Lots		Minimum Side Yard	
	Front Yard	Rear Yard*	Front Yard	Rear Yard	Party Wall Side	Non-Party Wall Side
Single Family Residential	20'	30'	22'	20'	0'	6'
Two Dwelling Units	20'	30'	22'	20'	0'	6'
Three - Four Dwelling Units	30'	30'	30'	25'	0'	6'
Assisted Living, Nursing and Rest Homes, etc.	50'	30'	50'	25'	0'	30'
Museums, antique stores, souvenir shops, recreational vehicle and equipment rental, and commercial storage structures	30'	30'	30'	20'	20'	
Lodging/boarding houses or bed and breakfast, resorts, or tourist cabins	30'	30'	30'	20'	15'	
Other Conditional Uses	To be determined by the Board of Adjustment					

*Rear yard shall be measured ordinary high water mark or a point as determined by the Board of Adjustment.

CB Central Business Overlay District

The intent of the “CB” Central Business Overlay District is to accommodate mixed-use buildings with neighborhood-serving retail, service, and other uses on the ground floor and residential units above the nonresidential space by utilizing pedestrian-oriented, storefront-style shopping streets thereby promoting the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction. This district can be defined as the area which would commonly be referred to as the Central Business District, or Main Street businesses where buildings were constructed up to lot lines nearly a century ago. Imposing restrictions on businesses in this area which should be observed by businesses bordering residential districts in other parts of town would be over-burdensome and cause the area to lose its historical flavor. Allowing new businesses elsewhere in the General Business district to observe relaxed setbacks, parking, and screening requirements would be problematic given the uses and traffic needs of these businesses. Therefore the new district was created.

Additions within Districts:

- As a result of the land use inventory, district boundaries were re-drawn and (in some cases) created to limit non-conforming uses. Also, uses which were being employed currently, but were not listed in the applicable district were added, provided they met the intent of the district.
- Through past practices in residential districts, the Board of Adjustments had granted numerous variances to side yard setbacks. It was decided by the Board that an exception to the side yard setbacks should added provided variance requirements are met and an appropriate easement is recorded at the Deuel County Register of Deeds ensuring that no structures shall hereafter be constructed within a distance two

times the minimum required side yard on the affected adjacent property.

- In the event condominium style businesses (strip malls or shopping centers) are constructed in the City, an exception to side yard requirements was also listed in the commercial districts:
 - Strip malls and shopping centers as single units within a multi-unit commercial/retail structure with common elements share a common/party wall the minimum side yard may be reduced to zero (0) feet on the party wall side by the Board of Adjustment.

Other Suggested Changes:

Changes described in this section came as a result of collaboration between City Staff, City Representatives, and First District Association of Local Governments to address items commonly addressed in ordinances for other communities in a manner consistent with state law and the intentions of the Plan Commission and City Council. Many changes simply formalize existing policy as established through practice or variances, others were added to increase efficiency and uniformity of administering the Zoning Ordinance.

Section 4.02.01. Construction Limitations.

Fences are still allowed to be up to 7 feet tall except for in the required front yard which may be no taller than 3 feet. A fence in the required front yard may be allowed to be 4' tall if allowed by the Board of Adjustment. This allows for safe pedestrian traffic on sidewalks, and safe ingress/egress of vehicular traffic entering into roads and crossing sidewalks, as well as increasing safety for emergency service providers.

Chapter 4.03. Accessory Buildings.

The only significant proposed change is to allow accessory structures (garages) to be up to 30' x 40' with up to 14' sidewalls. (Previously the requirements were: 30' x 36' with 8.5' sidewalls.)

Chapter 4.04. Signs And Outdoor Advertising.

Provisions regulating sign placement and size have been added which are common among towns the size of Clear Lake in South Dakota. This section also provides limited regulation of electronic message board signs as well.

Section 4.05.01. Parking, Storage, or Use of Major Recreation Equipment.

Major recreation equipment is still not allowed to be parked/stored in the required front yard. An exception to allow for RV's to be parked anywhere on the lot for up to 3 days during loading or unloading.

Chapter 4.19. Wind Energy Conversion Systems And Vertical Axis Wind Turbines

Small Wind Energy Conversion Systems (SWECS) are defined and allowed in some districts, but only as conditional uses. These structures look like conventional large scale versions of wind towers. Vertical Axis Wind Turbines (VAWT) are becoming more popular for residential and commercial use. These "helix-shaped" structures are typically mounted on top of another building to provide electricity for the benefiting property. These turbines are listed as conditional uses in all districts. Prior to allowing VAWT or SWECS, the applicant must meet several conditions relating to federal and state requirements, setbacks, height, size, design, noise output, lightning protection, signage, access, warning information, verify that the connection of the turbine meets requirements of utility provider, electromagnetic interference, and have a plan for abandonment or removal.