

**ARTICLE 1**

**SHORT TITLE**

SECTION 101 – Short Title

This ordinance may be known and may be cited and referred to as "the Zoning Ordinances for Day County, South Dakota," to the same effect as if the full titles were stated.

**ARTICLE 2**  
**JURISDICTION**

SECTION 201 - Jurisdiction

The provisions of this Ordinance shall apply within the unincorporated areas of Day County. This Ordinance will only apply in incorporated areas upon adoption of the plan and ordinances by Resolution of the Town Board or City Council. The enforcement of said plan and resolutions will be left to the Town or City.

SECTION 202 – Provisions of the Ordinance Declared to be Minimum Requirements

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. All provisions of this ordinance, must at a minimum, be met in all circumstance. Whenever a provision of any other ordinance is greater in requirements, that ordinance will govern.

## ARTICLE 3

### OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

#### SECTION 301 General

The County 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.

#### SECTION 302 – Zoning Map Changes

If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County commissioners and has become law according to the statutes of the State of South Dakota. The minutes of the Board of Commissioners Meeting and the Planning Commission Meeting must reflect the DATE, CHANGES MADE, and DESCRIPTION OF THOSE CHANGES.

**No amendment to the Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on Official Zoning Map.**

Any unauthorized change to the Official Zoning Map made by any person or persons shall be considered a violation of this ordinance and punishable as provided by this Ordinance.

The Official Zoning Map shall be located in the Zoning Office in the Day County Courthouse. This map shall be the final authority as the current zoning status of land within the legal boundaries of Day County.

#### SECTION 303 – Zoning Map Replacement

In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may, by ordinance, or by resolution if no changes are being made, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners, attested by the County Auditor, and bearing the seal of the County under the following words:

“This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted \_\_\_\_\_ (date of adoption of map being replaced) as part of the Zoning Ordinance of

Day County, South Dakota”.

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved together with all available records pertaining to its adoption or amendment.

#### SECTION 304 – Rules for Interpretation of District Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following City limits shall be construed as following such limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following center line of streams, river, canals, lakes, or other bodies of water shall be construed to follow such center lines;
6. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
7. Where physical or cultural features existing on the ground are at variances with those shown on the official Zoning Map or in other circumstances not covered by subsections 1 through 6 above, the Board of Adjustment shall interpret the district boundaries; and
8. Where a district boundary line divides a lot which was in single ownership at the time of passage of this ordinance, the Board of Adjustment may permit, as a conditional use, the extension of the regulation for either a portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

## ARTICLE 4

### APPLICATION OF DISTRICT REGULATIONS

#### SECTION 401 – General

The regulations set forth in this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

#### SECTION 402 – Zoning Applications

No building, structure, or land shall hereafter be used or occupied; and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

#### SECTION 403 – Performance Standards

No building or other structure shall hereafter be erected or altered:

1. to exceed the height or bulk;
2. to accommodate or house a greater number of families;
3. to occupy a greater percentage of lot area; and
4. to have narrower or smaller rear yards, front yards, side yards, or other open spaces;

than herein required; or in any other manner contrary to the provisions of the Ordinance.

#### SECTION 404 - Open Space or Off-Street Parking or Loading Space

No part of a yard or other open space or off-street parking or loading space required about or in connection with any building for the purpose of complying within the Ordinance shall be included as a part of a yard, open space, or off-street parking or loading space similarly required for any other building.

SECTION 405 - Yard and Lot Reduction Prohibited

No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

SECTION 406 - Unclassified or Unspecified Uses

All uses and structures not specifically listed as a permitted use, special permitted use, or as a conditional use in a particular zoning district shall be prohibited in said district.

## **ARTICLE 5**

### **ESTABLISHMENT OF DISTRICTS**

#### SECTION 501 - Districts Established

For the purposes of this Ordinance, there are hereby created seven (7) types of districts by which the jurisdictional area defined in ARTICLE 2 shall be divided:

Agricultural Fringe Protection District (AGFP)

Agricultural District (AG)

Residential District (R-1)

Lake Front Residential District (R-2)

Commercial District (C)

Highway Commercial District (HC)

General Industrial District (I)

## ARTICLE 6

### AGRICULTURAL FRINGE PROTECTION DISTRICT (AGFP)

#### SECTION 601 - Statement of Intent

The intent of this District is to protect land adjacent to communities from premature development that would inhibit orderly growth and development within the fringe area while maintaining normal agricultural undertakings.

#### SECTION 602 - Permitted Uses and Structures

The following uses and structures shall be permitted in Agricultural Fringe Protection District:

1. Any form of agriculture including the raising of crop, horticulture, animal husbandry, and kennels;
2. Dwellings and their normal accessory buildings including mobile homes, subject to compliance with other ordinances or restrictions;
3. Railroad track right-of-way;
4. Living quarters of persons employed on premises;
5. Roadside produce stands in conjunction with a bonafide farm operation on the premises; and
6. Artificial lakes.

#### SECTION 603 – Special Permitted Uses

1. None

#### SECTION 604 - Conditional Uses

After notice and appropriate safeguards, the Board of Adjustment may permit the following conditional uses in the AGFP District:

1. Fairgrounds, racetracks, amusement parks, riding arenas and rodeo facilities;
2. Utility substations;



3. Airports;
4. Cemeteries
5. Golf courses, country clubs, and golf-driving ranges;
6. Amphitheaters, stadiums, drive-in movies, arenas, and field houses;
7. Go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, automobile parking;
8. Public parks, public recreational areas, churches, and schools;
9. Concentrated Animal Feeding Operations;
10. Operation and maintenance terminals for trucks and other equipment;
11. Junkyards and salvage yards provided they are set back one thousand (1000) feet from the nearest edge of the right of way of any interstate or primary highway right-of-way; if not, they must be screened and not visible to main traveled ways;
12. Sanitary landfill sites in accordance with the South Dakota Department of Environment and Natural Resources and the United States Environmental Protection Agency regulations;
13. Home occupations; and
14. Sewage, lagoons and wastewater treatment facilities subject to all applicable federal and state laws and regulations.

#### SECTION 605 - Maximum Number of Approaches

All approaches on public roads or highways are subject to approval permitted by the Planning Commission, subject to approval permitted by the Planning Commission with approval of the highway superintendent or township board. Approach access on a state highway will need to comply with state regulations.

#### SECTION 606 - Minimum Yard Requirements

There shall be a minimum set back from the property line of not less than one hundred fifty (150) feet set back from the center of the public road. There shall be a frontage of not less than one hundred fifty (150) feet across the front yard and a side yard not less than twenty (20) feet.

#### SECTION 607 - Minimum Parcel of Land

The minimum area for any piece, plot or area of land of contiguous assemblage which creates less than a ten (10) acre tract of land shall be platted by a South Dakota registered land surveyor and recorded and plat approved by board of commissioners or other entities as may be required by law in the office of the Day County Register of Deeds.

#### SECTION 608 - Minimum Shelterbelt Setback

Shelterbelts, field belts, and living snow fences consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred twenty-five (125) feet from the centerline of a county highway, township road or public right of way. Shelterbelts along state and federal highways shall comply with state and federal regulations. Shelterbelts for existing farmstead purposes are exempt from minimum setback requirements. Any new, replacement, extension or expansion of existing shelterbelts, field belts, or living snow fences should follow the minimum requirements if the surrounding area allows it.

#### SECTION 609 – Minimum Sewer Requirements

Installation of wastewater systems shall comply with Administrative Rules of South Dakota, Chapter 74:53:01

## **ARTICLE 7**

### **AGRICULTURAL DISTRICT (AG)**

#### SECTION 701 - Statement of Intent

The intent of Agricultural District is to protect the agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial and industrial development to those areas where they are best suited for reasons of practicality. There should be no Agricultural District zoned within an incorporated Municipality.

#### SECTION 702 - Permitted Uses and Structures

The following uses and structures shall be permitted in Agricultural Districts:

1. Any form of agriculture including the raising of crop, horticulture, animal husbandry, and kennels;
2. Dwellings and their normal accessory buildings including mobile homes;
3. Railroad track right-of-way;
4. Living quarters of persons employed on premises;
5. Roadside produce stands in conjunction with a bonafide farm operation on the premises;
6. Artificial lakes;
7. Public meeting facilities such as schools or churches provided they are subordinated to and complementary with the agricultural activities of the district;
8. All utility systems necessary to service the district;
9. The sale of seed; and
10. Home Occupations.

#### SECTION 703 – Special Permitted Uses

1. None

## SECTION 704 - Conditional Uses

After notice and appropriate safeguards, the Board of Adjustment may permit the following conditional uses in the AG District, providing no new facilities are closer than one (1) mile from any occupied dwelling unless written permission is granted by the owner or owners of such dwelling:

1. Fairgrounds, racetracks, amusement parks, riding arenas and rodeo facilities;
2. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs;
3. Airports;
4. Cemeteries
5. Golf courses, country clubs, and golf-driving ranges;
6. Amphitheaters, stadiums, drive-in movies, arenas, and field houses;
7. Go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, automobile parking;
8. Public parks, public recreational areas, churches, and schools;
9. Concentrated Animal Feeding Operations subject to obtaining and compliance with all county, state and federal permits and licenses;
10. Junkyards and salvage yards provided they are set back one thousand (1000) feet from the nearest edge of the right of way of any interstate or primary highway right of way; if not, they must be screened and not visible to main traveled ways;
11. Sanitary landfill sites in accordance with the South Dakota Department of Environmental Protection Agency regulations;
12. Sewage, lagoons and wastewater treatment facilities subject to all applicable federal and state laws and regulations; and
13. Target/Shooting Range provided they meet requirements of Section 1606.
14. Campgrounds

## SECTION 705 – Determination of Uses and Structures

The uses and structures specifically listed in this chapter are not considered to be the only conceivable uses of agricultural land. However, these uses listed do represent the types of uses which may be considered. If an applicant desires to construct a building or conduct a use which is not specifically listed, such applicant shall carry the burden of proof to the board of adjustment that his/her request is the type of use allowed in the agricultural district, is not more compatible with a different zoning district, and it does in no way violate the intent of this chapter.

## SECTION 706 - Maximum Number of Approaches

All approaches on public roads or highways are subject to approval permitted by the Planning Commission, subject to approval permitted by the Planning Commission with approval of the highway superintendent or township board. Approach access on a state highway will need to comply with state regulations.

## SECTION 707 - Minimum Yard Requirements

There shall be a minimum setback from the property line of not less than seventy-five (75) feet from public road right-of-ways. There shall be a frontage of not less than two hundred (200) feet across the front yard.

## SECTION 708 - Minimum Parcel of Land

The minimum area for any piece, plot or area of land of contiguous assemblage which creates less than a ten (10) acre tract of land shall be platted by a South Dakota registered land surveyor and recorded and plat approved by board of commissioners or other entities as may be required by law in the office of the Day County Register of Deeds.

## SECTION 709 – Minimum Shelterbelt Setback

Shelterbelts, field belts, and living snow fences consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred twenty-five (125) feet from the centerline of a county highway, township road or public right of way. Shelterbelts along state and federal highways shall comply with state and federal regulations. Shelterbelts for existing farmstead purposes are exempt from minimum setback requirements. Any new, replacement, extension or expansion of existing shelterbelts, field belts, or living snow fences should follow the minimum requirements if the surrounding area allows it.

## SECTION 710 – Minimum Sewer Requirements

Installation of wastewater systems shall comply with Administrative Rules of South Dakota, Chapter 74:53:01

SECTION 711 – Right to Farm Covenant/Setback from Concentrated Animal Feeding Operation Requirements

1. All new residential development (farm and non-farm) shall be required to file a “Right to Farm Covenant” with the Register of Deeds before the issuance of a building permit. (See Section 712). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.
  
2. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site. If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. The waiver is to be filed with the Register of Deeds (See Section 713). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

SECTION 712 – Right to Farm Covenant

Prepared by:  
Day County States Attorney  
506 Main Street  
Webster, SD 57274  
(605) 345-4624

**RIGHT TO FARM COVENANT**

\_\_\_\_\_ herein called grantor(s) are the owners of the real property described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In consideration of approval of a Building Permit for construction or placement of a residence, stick-built, modular or manufactured, or modifying of an existing residence, grantor(s) hereby grant to Day County a perpetual non-exclusive Right to Farm Covenant as follows:

Grantors, their heirs, successors and assigns hereby acknowledge that the above described property is situated in or near agricultural land, agricultural operations, or agricultural processing facilities or operations in Day County, South Dakota, and may be subjected to conditions resulting from lawful agricultural or agricultural processing operations. Such operations may include, but are not limited to: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. Said Grantor(s) hereby waive all common law rights to object to normal, necessary, and non-negligent agricultural activities legally conducted that may conflict with grantors' use of grantors' property for residential or other land uses not related to agricultural purposes.

This covenant is appurtenant to all property adjacent to the above described property and shall bind the heirs, successors and assigns of grantor(s) and shall endure for the benefit of the adjacent landowners, their heirs, successors and assigns. Adjacent landowners, their heirs, successors and assigns are hereby expressly granted the right of third party enforcement of this covenant.

IN WITNESS WHEREOF, the grantor(s) have executed this covenant on

\_\_\_\_\_.

\_\_\_\_\_  
(Titleholder's signature)

\_\_\_\_\_  
(Titleholder's signature)

STATE OF SOUTH DAKOTA    )  
  SS:  
COUNTY OF DAY                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

(SEAL)

SECTION 713 – Waiver of Setback from Existing Concentrated Animal Feeding Operation

The following waiver is to be utilized as required for farm and non-farm residential development in the Agricultural, Agricultural Fringe Protection District, Residential and Lake Front Residential Zoning Districts which are located within one-half (1/2) mile of an existing concentrated animal feeding operation in the Agricultural Zoning District (See Section 711 (2))

Prepared by:

Day County Zoning Officer (or by Grantor or Grantor’s Attorney)  
Zoning Officer Address (or Grantor’s or Grantor’s Attorney’s address)  
Webster, SD 57274 (or Grantor’s or Grantor’s Attorney’s city)

WAIVER OF SETBACK FROM  
EXISTING CONCENTRATED ANIMAL FEEDING OPERATION

The following waiver is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within one-half (1/2) mile of an existing Concentrated Animal Feeding Operation. The waiver shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. (See Section 711 (2))

1. Purpose. This waiver is required for any dwelling to be constructed within one-half (1/2) mile of an existing concentrated animal feeding operation as defined by the Day County Zoning Ordinance.

2. Waiver:

(“Grantors”) are the owners of real property described as follows:

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In accordance with the conditions set forth in the decision of Day County, dated \_\_\_\_\_ 20\_\_\_\_, approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within one-half (1/2) mile of the existing concentrated animal feeding operation located at the following property, \_\_\_\_\_ and in consideration of such approval, Grantors agree to the perpetual non-exclusive easement as follows:

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within one-half (1/2) mile of an existing concentrated animal feeding operation. This easement waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation’s, located at the above legal description, potential need for a variance from the setback requirements of the Day County Zoning Ordinance.



2. Further, the grantors hereby waive all common law rights to appeal any decision of Day County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description.

IN WITNESS WHEREOF, \_\_\_\_\_, 20\_\_

Grantors (Print) \_\_\_\_\_

Grantors (Signature) \_\_\_\_\_

STATE OF SOUTH DAKOTA

SS:

COUNTY OF DAY

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (Grantors).

\_\_\_\_\_ Notary Public

My Commission Expires: \_\_\_\_\_

## ARTICLE 8

### CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

#### SECTION 801 - Intent

An adequate supply of safe drinking water, healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed of, negatively affect the County environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. All new and proposed expansions of Concentrated Animal Feeding Operations to be located within Day County shall assume primary responsibility complying with the appropriate State and Federal agencies that monitor water, water quality, and environmental protection. Applicants shall provide Day County with copies of established guidelines and verification of compliance with said agencies.

It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.

It is also the intention of Board of Adjustment that the standard's established are the minimums required and may be modified at the discretion of the Board based upon site specific circumstances/conditions. The Board also may reduce the minimums based upon site specific circumstances/conditions.

## SECTION 802 - Definitions

1. 25-year, 24-hour Storm Event - The amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 5 inches in Day County.
2. Anaerobic Lagoon - An impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic manure, the impoundment is designed to receive manure on a regular basis, and the impoundment's design manure loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:
  - a. A confinement feeding operation structure.
  - b. A runoff control basin which collects and stores only precipitation induced runoff from an open feedlot.
  - c. An anaerobic treatment system includes collection and treatment facilities for all gases.
3. Animal Feeding Operation Structure - An anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.
4. Animal Manure - Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.
5. Animal Unit - See Section 803 & 804.
6. Applicant - An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated Animal Feeding Operations.
7. Aquifer - A geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.
8. Best Management Practices (BMP) - Schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.
9. Bypass - The intentional diversion of waste streams from any portion of a treatment facility.
10. Change in Operation - A cumulative increase of more than 500 animal units, after (January 23, 2011), which are confined at an un-permitted concentrated feeding operation.

11. A Chronic or Catastrophic Event - A single precipitation event, or a series of rainfall events in a short period of time, that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.
12. Common Ownership - A single, corporate, cooperative or other joint operation or venture.
13. Concentrated Animal Feeding Operation (CAFO) - See Section 804.
14. Confinement Feeding Operation - A totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.
15. Confinement Feeding Operation Structure - A formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.
16. Domestic Animal - Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.
17. Earthen Manure Storage Basin - An earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are removed at least once each year.
18. Established Building Site - An established building site shall have been used in the past as a farmstead for a normal farming operation. Any residence established for more than ten (10) years shall become an established building site.
19. Established Business - Any business engaged for profit within a permanent fixed location or infrastructure, and that has been in existence more than six (6) months prior to a permit application.
20. Established Churches - Any church within a permanent fixed location and permanent infrastructure, and a membership consisting of more than one (1) person or family.
21. Established Residence - Any residence established by a personal presence, in a fixed and permanent dwelling and an intention to remain there.
22. Feedlot Operator - An individual, a corporation, a group of individuals, partnerships, joint venture, or any other business entity having charge or control of one or more concentrated animal feeding operations.

23. Formed Manure Storage Structure - A structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.
24. Housed Lot - A totally roofed building that may be open or completely enclosed on the sides. Animals are housed over solid concrete or dirt floors, slotted floors over pits or manure collection areas in pens, stalls or cages. Housed lots is synonymous with other industry terms such as slotted floor buildings.
25. Letter of Assurances - A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.
26. Man-made - A pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.
27. Manure Management System - Any piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at a concentrated animal feeding operation.
28. No-till Cropland - Land which is subject to a conservation farming practice: where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel; and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.
29. Open Concentrated Animal Feeding Operation - A un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.
30. Open Lot (Agriculture) - Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Open lot is synonymous with other industry terms such as pasture lot, dirt lot or dry lot.
31. Permit - Required by these regulations unless stated otherwise.
32. Process Generated Wastewater - Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.
33. Process Wastewater - Any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.

34. Producer - The owner or operator of the concentrated livestock feeding operation.
35. Sediment Basin - A basin constructed to trap and store water-born sediment and debris.
36. Severe Property Damage - Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
37. Shall - The condition is an enforceable requirement of this permit.
38. Shallow Aquifer - An aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit the percolations from the land surface to the aquifer.
39. Shallow Well - A well which is located in a shallow aquifer.
40. Should - The condition is a recommendation. If violations of the permit occur, the Board of Adjustment will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.
41. Significant Contributor of Pollution - To determine if a feedlot meets this definition, the following factors are considered:
- a. Size of feeding operation and amount of manure reaching the waters of the state;
  - b. Location of the feeding operation in relation to waters of the state;
  - c. Means of conveyance of manure and process wastewater into waters of the state; and
  - d. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal manure and process wastewater into waters of the state.
42. Solid Waste (reference SDCL 34A-6-1.3, 17) - Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

43. Solid Waste Facility or Solid Waste Disposal Facility (reference SDCL 34A-6-1.3,18) - All facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.
44. Solid Waste Management System (reference SDCL 34A-6-1.3, 19) - The entire process of storage, collection, transportation, processing and disposal of solid waste by any person.
45. Conditional Use - A conditional use is a use that would not be appropriate generally or without restrictions throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such exceptions is made in these zoning regulations. The Board of Adjustment may, after notice and hearing, revoke a conditional use in the event of a violation of any of such conditions. In addition, the conditional use permit may not be transferred during any violation.
46. Unauthorized Releases - The discharge of water from the lower end of the treatment or containment system through a release structure or over or through retention dikes. An unauthorized release is distinguished from a bypass in that a bypass discharges wastewater prior to any treatment or containment.
47. Waters of the State - All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.
48. Zoning Complaints - All zoning complaints must be in writing and signed.
49. Zone A - Areas of 100-year flood; base flood elevations and flood hazard factors not determined.
50. Zone B - Areas between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding within average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood.

#### SECTION 803 - Number of Animals to Define Classes of Concentrated Animal Feeding Operations

Note that these figures relate to inventory rather than annual production. Other animal species equivalents which are not listed will be based on species' waste production.

<b>TYPE OF ANIMAL:</b>	<b>Class A # of Animals Over 2,000 AU</b>	<b>Class B # of Animals 1,000-1,999 AU</b>	<b>Class C # of Animals 500-999 AU</b>	<b>Class D # of Animals 50-499 AU</b>	<b>Animal Unit Equivalency Ratio</b>
Dairy cows (mature - milked or dry) <sup>1</sup>	1,400 or more	700 to 1,399	350 to 699	35 to 349	1.43
Veal Calves	2,000 or more	1,000 to 1,999	500 to 999	50 to 499	1.0
Cattle other than mature dairy cows <sup>1</sup> and <sup>2</sup>	2,000 or more	1,000 to 1,999	500 to 999	50 to 499	1.0
Swine over 55 pounds	5,000 or more	2,500 to 4,999	1,250 to 2,499	125 to 1,249	0.4
Swine under 55 pounds	20,000 or more	10,000 to 19,999	5,000 to 9,999	500 to 4,999	0.1
Farrow-to-Finish (sows)	540 or more	270 to 539	135 to 269	14 to 134	3.7
Swine Production Unit (Sows Breeding, Gestating & Farrowing)	4,260 or more	2,130 to 4,159	1,065 to 2,129	107 to 1,064	.47
Horses	1,000 or more	500 to 999	250 to 499	25 to 249	2.0
Sheep, Lambs or Goats	20,000 or more	10,000 to 19,999	5,000 to 9,999	500 to 4,999	0.1
Turkeys	110,000 or more	55,000 to 109,999	27,500 to 54,999	2,750 to 27,499	0.018
Laying Hens or Broilers & Pheasants <sup>3</sup>	60,000 or more	30,000 to 59,999	15,000 to 29,999	1,500 to 14,999	0.0333
Chickens, other than laying hens <sup>4</sup>	250,000 or more	125,000 to 249,999	62,500 to 124,999	6,250 to 62,499	0.008
Laying Hens <sup>4</sup>	164,000 or more	82,000 to 163,999	41,000 to 81,999	4,100 to 40,999	.0122
Ducks <sup>3</sup>	10,000 or more	5,000 to 9,999	2,500 to 4,999	250 to 2,499	0.2
Ducks <sup>4</sup>	60,000 or more	30,000 to 59,999	15,000 to 29,999	1,500 to 14,999	0.0333
Geese	60,000 or more	30,000 to 59,999	15,000 to 29,999	1,500 to 14,999	0.0333

1. Animals are counted individually once separated from the mother
2. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.
3. Animal Feeding operation uses a liquid manure handling system
4. Animal Feeding operation uses other than a liquid manure handling system



## SECTION 804 - Classes of Concentrated Animal Feeding Operations

A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 45 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are a single animal operation if they adjoin each other, if the facilities are located within one (1) mile of each other, or they use a common area (i.e. crop fields, pastures, etc.), or containment system for disposal of manure. This would not include the temporary confinement of breeding stock (pasture cows) in the feedlot or lots unless the confinement is intended for feeding for other disposition.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

### ANIMAL UNITS

Class A	2,000 or more
Class B	1,000 to 1,999
Class C	500 to 999
Class D	50 to 499

## SECTION 805 - Concentrated Animal Feeding Operation Permit Requirements

Owners of Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations are required to complete a permit application whenever any of the following occur:

1. A new Concentrated Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows, or proposed change in structures, manure storage facility, feedlot sizes or designs beyond the currently held permit for the facility.
3. A cumulative expansion by 300 animal units, after (January 23, 2011), of existing concentrated animal feeding operation that does not have a permit. This would not include the temporary confinement of breeding stock (pasture cows) in the feedlot or lots unless the confinement is intended for feeding for other disposition.
4. A change in ownership by inheritance is not included and does not require a new permit as long as the inheritance or estate disposition is to a family member. A change of ownership also does not include a change in the business organization of the existing permit holder as long as the existing ownership retains ownership control of 80% or more. If a new residence is granted a building permit within the minimum setback listed in Section 810, as a condition of such permit the permit applicant shall

be required to make, execute and deliver to Day County a “Waiver Of Setback From Existing Concentrated Animal Feeding Operation” (Section 713). The changes by inheritance or change of business organization will however, require an informational filing with the county and new owners shall sign a letter of assurance as defined by Section 812.

5. If a livestock operation with a DENR construction permit or a Day County Zoning permit is sold, the new owner is subject to all the terms and conditions of the permit. The DENR and Day County Zoning Board must be notified of the transfer by the current permit holder and the new permit holder within 30 days of the transfer. The new permit holder may need to supply the information to modify the permit to reflect the new ownership (if DENR or Day County Zoning board requests). A person who is a habitual violator or has a pending enforcement action may not purchase a confinement operation with a DENR or Day County Zoning Board Permit.
6. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
7. A signed complaint has been received by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in substantive violation of Federal, State or County or statutes, regulations or ordinances which has not been remedied and/or agreement made to remedy complaints/violations.
8. A facility may be required to be re-permitted if facility operator loses cropland, pasture or rangeland not already owned by permit owner that would significantly change the acres available for disposal of liquid or solid manure for existing nutrient management plans and county permit. Permit owner is required to file amendment to nutrient management plan to reflect changes in acres available to comply with plan.
9. After a facility is closed and permit retired or lapses the permit owner or successor landowner(s) shall be required to file a plan for continued management of lagoons or manure storage facilities and reclaim the lots and establish vegetation cover and weed control.

#### SECTION 806 - Concentrated Animal Feeding Operation Permit Required in Specific Watersheds

Attached hereto as Exhibit “A” is a map of specific watersheds in Day County where significant lakeshore development has occurred and steps have been and continue to be taken to protect and improve the water quality. All new animal confinement feeding operations of all classes as defined by Section 804 shall require a permit. A county permit shall be required in all cases even though a state permit was obtained.

## SECTION 807 - Concentrated Animal Feeding Operation Control Requirements

### 1. No Significant Contribution of Pollution

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution.

### 2. State General Permit

Class A, B and C Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County permit may be approved or denied conditioned on receiving a State permit.

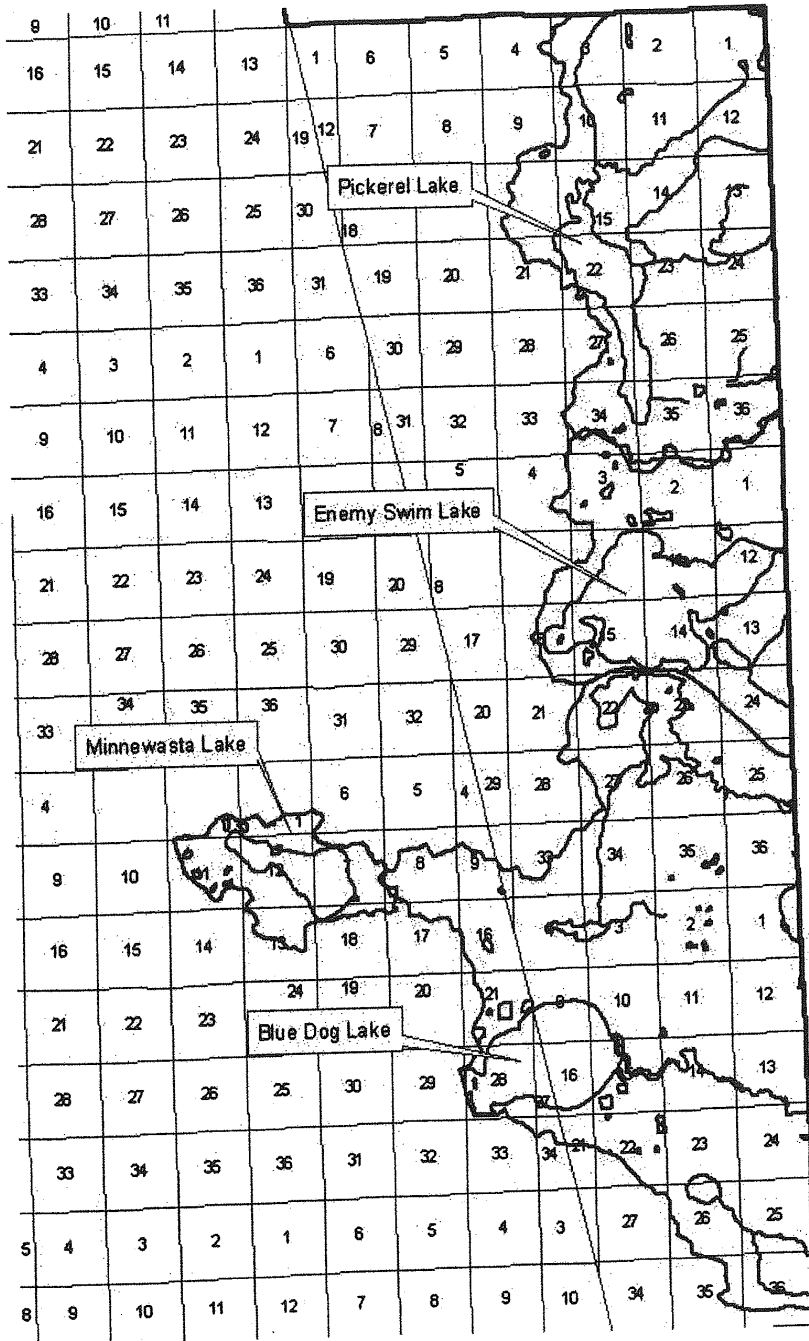
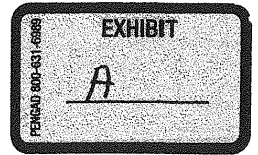
Classes D Concentrated Animal Feeding Operations will be required to obtain a State General Permit if either of the following occur:

- a. If an earthen storage basin or lagoon is used for manure storage.
- b. The Board of Adjustment decides if conditions require a State permit.

### 3. Nutrient Management Plan

Classes A, B, C, and D Concentrated Animal Feeding Operations shall submit a Nutrient Management Plan. The applicant shall develop, maintain, and follow a nutrient Management plan to ensure safe disposal of manure and protection of surface and ground water. The South Dakota Department of Environment & Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid manure and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried at the land disposal site are secondary to the proper and safe disposal of the manure.

# Watershed Locations for Developed Lakes in Day County



- Legend**
- Sections
  - County Line
  - Lakes, Streams, and Wetlands
  - Watershed Boundaries

A generic nutrient management plan that the applicant may use in developing a Nutrient Management Plan is available from the South Dakota Department of Environment & Natural Resources. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of this general permit. Nitrogen, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield.

The South Dakota Department of Environment & Natural Resources recommends and encourages producers to develop nutrient management plans for other nutrients such as phosphorous and potassium. Over applications of these nutrients may lead to water quality problems in area lakes and streams and result in potential damage to the producer's land and crop.

The applicant must maintain records to show compliance with the plan.

The plan must comply with County Manure Application Setbacks.

Land spreading agreements shall be provided if applicant does not have the minimum acreage to apply animal manure. Animal manure shall be applied within five miles of the Concentrated Animal Feeding Operation. The distances may be exceeded by a supplemental permit from the County. The five (5) mile limit does not apply to manure pumped, piped and injected with no exposure to atmosphere.

#### SECTION 808 - Manure Management and Operation Plan

Classes A, B, C, and D Concentrated Animal Feeding Operations shall submit a Manure Management and Operation Plan.

A. Plan must include:

1. The location and specifics of proposed animal manure facilities.
2. The operation procedures and maintenance of manure facilities.
3. Plans and specifications must be prepared or approved by a registered professional engineer, or a South Dakota licensed Natural Resource Conservation Service (NRCS) engineer. Waste treatment facilities will require inspection by an engineer and as-built plans to be submitted to the County Zoning Officer.
4. Animal manure shall not be stored longer than two years.
5. Manure containment structures shall provide for a minimum design volume of 270 days of storage.

6. Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.
- B. As a condition of the permit, the Board of Adjustment may require the producer to participate in environment training programs and become a certified livestock manager.

#### SECTION 809 - Management Plan for Fly and Odor Control

Classes A, B, C, and D Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to minimize and control odors and flies. A management plan is required at the time of application for a permit. The Board of Adjustment will review the need for control measures on a site specific basis, taking in consideration prevailing wind direction and topography. The following procedures to minimize and control flies and odors should be considered in a management control plan.

- A. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.
- B. Methods to be utilized to dispose of dead animals should be included in the management plan.
- C. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.
- D. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
- E. Store manure in containment areas having good drainage to minimize odor production.
- F. Remove manure from open pens as frequently as possible to minimize odor production.
- G. Consider use of covers on open storage systems for liquid manure systems to reduce odor production.
- H. Avoid spreading manure on weekends, holidays, and evenings during warm season when neighbors may be involved in outdoor recreation activities.
- I. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

SECTION 810 - Required Setbacks and Separation Distance for new Concentrated Animal Feeding Operations and those Expanding by 300 or More Animal Units after (January 23, 2011).

	MINIMUMS			
	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
Established Occupied Residences	2,640 feet plus 1,000 feet for 1,000 add'l units	2,640 feet	2,640 feet	2,640 feet
Established Churches, Established Businesses and Commercially Zoned Areas	5,280 feet	5,280 feet	5,280 feet	5,280 feet
Incorporated Municipality Limits And other Incorporated Political Subdivisions	5,280 feet plus 440 feet for each add'l 1,000 AU over 2,000	5,280 feet	5,280 feet	5,280 feet
Private Wells other than the operator	250 feet	250 feet	250 feet	250 feet
Public Wells and Other Private Water Systems With Multiple Hookups	1,000 feet	1,000 feet	1,000 feet	1,000 feet
Lakes and Streams classified as Fisheries as identified by the State and Watershed Areas Identified On Exhibit "A"	1,000 feet	1,000 feet	1,000 feet	1,000 feet
Federal, State & County Road ROW Housed	300 feet	300 feet	300 feet	300 feet
Federal, State & County Road ROW Open Lot	300 feet	300 feet	300 feet	300 feet
Township Road ROW Housed	300 feet	300 feet	300 feet	300 feet
Township Road ROW Open Lot	300 feet	300 feet	300 feet	300 feet

Proposals for new Concentrated Animal Feeding Operations, on a site-by-site basis, shall be set back from adjoining property lines as determined by the Board of Adjustment.

Anyone establishing a new residence must comply with the minimum setbacks as stated in Section 810, Establishing Residences, upon determining the class of the concentrated animal feeding operation where the new residence will be located, along with any other conditions that may be imposed by permit as determined by the Board of Adjustment. If the existing permit holder provides evidence of other agreements or documents to establish that control is maintained without 80% of stock or interest then a new permit may not be required. IRS attribution rules would also be applied regarding shares owned by family members. This does not apply to residences to be built by permit holder(s).

The following uses are prohibited in a floodplain Zoned A:

1. New Concentrated Animal Feeding Operations after adoption of this ordinance.
2. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of 300 animal units.
3. Earthen storage basins and lagoons.
4. Stockpiling of solid waste.

The following uses are prohibited in a floodplain Zoned B:

1. New and expansions of Class A and B Concentrated Animal Feeding Operations.
2. Earthen storage basins and lagoons.

The following use is allowed in a floodplain Zoned B by Conditional Use:

1. New Class D and expansion of existing Class D up to 999 animal units (Class C). The County may require soil borings to determine impermeable material between land surface and the aquifer.

Each application for a new or expanded Concentrated Animal Feeding Operation (CAFO) will be reviewed by the Board of Adjustment on a site specific basis. The Board of Adjustment reserves the right to increase or to decrease the minimum required setbacks and separation distance on a site specific review, based on one or more of the following considerations.

- A. A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- B. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.



C. A Concentrated Animal Feeding Operation is in excess of 5,000 animal units.

SECTION 811 - Manure Application Setbacks

A. The following manure applications setbacks apply to all classes of Concentrated Animal Feeding Operations.

**COUNTY MANURE APPLICATION SETBACKS**

<u>CATEGORY</u>	<u>SURFACE OR IRRIGATION APPLIED</u>	<u>INCORPORATED OR INJECTED</u>
Lake, Rivers and Streams Classified as Fisheries from high water mark	300 feet	100 feet (lake) 50 feet (river & stream)
Streams and Lake classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation)	10 feet from right-of-way
Area of 10 or more Residences	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1,000 feet	1,000 feet
Private Shallow Wells	1,000 feet	250 feet
A Residence other than the Operator	300 feet (surface) 1,000 feet (irrigation)	300 feet
Natural or Manmade Drainage	200 feet	50 feet

B. The Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.

C. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

D. The producer shall maintain at least a **100-foot buffer zone or 35-foot vegetated** buffer between

- 1) any manure land application areas and any natural or manmade drainage;
- 2) any manure application areas and open tile line intake structures or other conduits to surface water; and

- 3) any irrigation of process wastewater and any natural or manmade drainage.  
Depending on the results of a producer's soil phosphorus test and estimated field erosion, a 100-foot vegetated buffer zone shall be required if the producer wants to apply manure based on the nitrogen needs of the crop and not crop removal of phosphorus.
- E. Surface broadcast, injection or incorporation of **liquid manure or process wastewater** should be avoided on frozen or snow-covered ground. If application to frozen or snow-covered ground is absolutely necessary, the producer should notify the county prior to application so the department may review buffer zone requirements with the producer and respond to inquiries from the public. The producer shall only apply liquid manure or process wastewater on land with slopes less than 4%. The producer shall also maintain a minimum of a **100-foot buffer zone to any natural or manmade drainage**.
- F. Application of **dry or solid manure** on frozen or snow-covered ground should be avoided. If manure will be applied to frozen or snow-covered ground, the producer shall only apply manure on land with slopes of less than 4%. The producer shall also maintain a minimum of a **100-foot buffer zone to any natural or manmade drainage**.

To allow for normal winter operation in open lots, snow containing some manure removed from the concentrated animal feeding operation may be land applied and shall be placed on land with slopes less than 4%. The producer shall also maintain a minimum of a **100-foot buffer zone to any natural or manmade drainage**.

#### SECTION 812 - Standards for Conditional Use

- A. The Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- B. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- C. Conditional uses shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.
- D. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.
- E. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the County Zoning Officer and signed by both the applicant and the County Zoning Officer.

SECTION 813 - Information Required for Class A and B Concentrated Animal Feeding Operation Permit.

- A. Owner's name, address, and telephone numbers.
- B. Legal descriptions of site and site plan.
- C. Number and type of animals.
- D. Nutrient management plan.
- E. Manure management and operation plan.
- F. Management plan for fly and odor control.
- G. Information on ability to meet designated setback requirements including site plan to scale.
- H. General permit from South Dakota Department of Environment & Natural Resources if available for animal species.
- I. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources.
- J. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- K. Notification to whomever maintains the access road (townships, county or state). Notification to public water supply officials.
- L. Any other information as contained in the application and requested by the County Zoning Officer.

SECTION 814 - Information Required for Class C and D Concentrated Animal Feeding Operation Permit

- A. Owner's name, address and telephone numbers.
- B. Legal descriptions of site and site plan.
- C. Number and type of animals.
- D. Nutrient management plan.

- E. Manure management and operation plan.
- F. Management plan for fly and odor control.
- G. Information on ability to meet designated setback requirements, including site plan to scale.
- H. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.
- I. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- J. Notification to whomever maintains the access road (township, county, or state).  
Notification to public water supply officials.
- K. Any other information as contained in the application and requested by the County Zoning Officer.

## ARTICLE 9

### SITING OF WIND ENERGY SYSTEMS (WES)

#### SECTION 901 – Purpose

The purpose of this ordinance is to ensure that the placement, construction and modification of a Wind Energy System (WES) facility is consistent with the County'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 County's citizens.

#### SECTION 902 – Authority and Jurisdiction

South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

#### SECTION 903 - 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.

#### SECTION 904 - Definitions

1. Board — The County Commission, City Commission, or other governmental body governing the district this ordinance refers to.
2. Construction — Any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.
3. High Voltage Transmission Line — A conductor of electric energy and associated facilities.
4. Large Wind Energy System or LWES — All WES facilities excluding Small Wind Energy Systems.
5. Person — An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal

corporation, government agency, public utility district, consumers power district, or any other entity, public or private, however organized.

6. Route — The location of a High Voltage Transmission Line between two end points. The route may have a variable width of up to 1.25 miles.
7. Small Wind Energy System or SWES — A WES facility with a single Tower Height of less than seventy-five (75) feet used primarily for on-site consumption of power.
8. Tower Height — The height above grade of the fixed portion of the tower, excluding the wind turbine itself
9. System Height — The height above grade of the tallest point of the WES, including the rotor radius.
10. Turbine — The parts of the WES including the blades, generator and tail.
11. Utility — Any person engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to, a private investor owned utility, a cooperatively owned utility, a consumers power district and a public or municipal utility.
12. 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:
  - (a) Tower or multiple towers, including foundations;
  - (b) Generator(s);
  - (c) Blades;
  - (d) Power collection systems, including padmount transformers;
  - (e) Access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and
  - (f) Electric interconnection systems or portion thereof dedicated to the WES.

## SECTION 905 - Requirements for Siting Small Wind Energy Systems

### 1. Standards

A Small Wind Energy System shall be a permitted use in all zoning districts subject to the following non-exclusive 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, public roads and dwellings shall be equal to no less than one point one (1.1) times the system height, unless written permission is granted by each affected person.
- (b) **Access.** All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.
- (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) **Appearance, Color, Finish.** The SWES shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
- (f) **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.
- (g) **Code Compliance.** A SWES shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
- (h) **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. The Board reserves the right to establish such additional change requests to requirements or standards as may be necessary under the circumstances of each application. The Board may also grant at its discretion variances to the above standards in appropriate circumstances. All such variances shall be set forth in the permit issued.

## 2. Permit Requirements

- (a) **Building Permit.** A building permit shall be required for the installation of a SWES.
- (b) The building permit shall be accompanied by a plot plan which shall include at a minimum 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 SWES is to be erected, consistent with the provisions of 5(3)(h) herein; and
  - (10) The status of all necessary interconnection agreements or studies.
  - (11) Easement agreements and separate landowner agreements;
  - (12) The Board may also request additional information and documents should they deem it necessary in order to properly review the application.
- (c) Expiration. A permit issued pursuant to this ordinance shall expire if
- (1) The SWES is not installed and functioning within twenty-four (24) months from the date the permit is issued; or
  - (2) The SWES is out of service or otherwise unused for a continuous 12-month period.

### 3. Abandonment

- (a) A SWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Board 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 Notice receipt date. The Board 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 sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Board may pursue legal action to have the wind generator removed at the owner's expense.

#### 4. Building Permit Procedure

- (a) An owner shall submit an application to the Board for a building permit for a SWES. The application must be on a form approved by the Board and must be accompanied by two (2) copies of the plot plan identified.
  - (b) The Board shall issue a permit or deny the application within one month of the date on which the completed application is received, unless the Board provides specific reasons for delay.
  - (c) The Board shall issue a building permit for a SWES if the application materials show that the proposed SWES meets the requirements of this ordinance. The Board may also issue a conditional use permit for a SWES which would allow the applicant to proceed subject to the conditions attached to the permit by the Board. The Board would retain jurisdiction over the application until the conditions have been met by the applicant.
  - (d) If the application is approved, or approved with conditions, the Board will return one signed copy of the application with the permit and retain the other copy.
  - (e) If the application is rejected, the Board will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may reapply if the deficiencies specified by the Board are resolved.
  - (f) The owner shall conspicuously post the building permit on the premises so as to be visible to the public at all times until construction or installation of the SWES is complete.
5. 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. SWES facilities installed prior to the adoption of this ordinance are exempt.
6. 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.

### SECTION 906 - Requirements for Siting Large Wind Energy Systems

## 1. Mitigation Measures

- (a) Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWES.
- (b) Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- (c) Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- (d) Livestock Protection. The permittees shall take precautions to protect livestock on the LWES site from project operations during all phases of the project's life.
- (e) Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.
- (f) Roads
  - (1) Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable and written haul road agreements obtained from relevant jurisdictions and filed with the county. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practicable, existing roadways shall be used for all activities associated with the WES. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County Zoning Office of such arrangements and file a copy of haul road agreements.
  - (2) Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads

shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

- (3) Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- (4) Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.
- (g) Soil Erosion and Sediment Control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Zoning Office. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan that uses native plant species to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or bathers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

## 2. Setbacks

LWES shall meet the following minimum spacing requirements.

- (a) Distance from currently occupied off-site residences, business and public buildings shall be not less than three thousand nine hundred sixty (3,960) feet. Distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater. For the purposes of this section only, the term “business” does not include agricultural uses.
- (b) Distance from right-of-way (ROW) of public roads shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater.
- (c) Distance from any property line shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater, unless appropriate easement has been obtained from adjoining property owner.

## 3. Electromagnetic Interference. The permittees shall not operate the LWES so as to cause

microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the LWES or its operation, the permittees shall take the measures necessary to correct the problem.

4. **Lighting.** Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.
5. **Turbine Spacing.** The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
6. **Footprint Minimization.** The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the extent practicable be mounted on the foundations used for turbine towers or inside the towers unless otherwise allowed by the landowner on whose property the LWES is constructed.
7. **Electrical Cables.** The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. This paragraph does not apply to feeder lines.
8. **Feeder Lines.** The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement(s) negotiated. The permittees shall submit the site plan and engineering drawings for the feeder lines to the Board before commencing construction.
9. **Height from Ground Surface.** The minimum height of blade tips at their lowest possible point shall be twenty-five (25) feet above grade.

#### 10. Towers

- (a) **Color and Finish.** The finish of the exterior surface shall be non-reflective or matte.
- (b) All towers shall be singular tubular design, unless approved by the Board.

11. Noise. Noise level produced by the LWES shall not exceed 45 dBA, average A-weighted sound pressure at the perimeter of occupied residences existing at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner and occupant of the residence. The obtaining of a waiver or easement does not bind the Board in granting or denying a variance to this request.

12. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance unless extended by the county or unless the time period is altered by the specific terms of the permit.

13. Required Information for Permit Application.

- (a) Boundaries of the site proposed for LWES and associated facilities on United States Geological Survey Map or other map as appropriate.
- (b) Copies and map of easements for LWES and separate landowner agreements and waivers.
- (c) Map of occupied residential structures, business and public buildings within one half mile of the proposed LWES site boundaries, unless the county grants a variance to this requirement prior to filing the permit application.
- (d) Preliminary map of sites for LWES, access roads and utility lines. Location of other LWES within five (5) miles of the proposed LWES site.
- (e) Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with the following agencies:
  - (1) South Dakota Department of Game, Fish and Parks;
  - (2) U.S. Fish and Wildlife Service;
  - (3) South Dakota State Historical Society;
  - (4) USDA, FSA and affiliated agencies; and
  - (5) Other cultural agencies to include, but not limited to, tribal government agencies.

Evidence of such consultation shall be included in the application.

- (f) Project schedule.
- (g) Mitigation measures.
- (h) Status of interconnection studies/agreements.

- (i) The Board may also request additional information and documents should they deem it necessary in order to properly review the application.

14. Variances. The requirements for a LWES as established by paragraphs 1-13 may be varied or altered by the Board. Applicant must submit a request for variance to Board as part of its application prior to filing application. The Board may grant a variance only after public hearing as requested by the applicable zoning ordinance in the county. The existence of a waiver or easement from the landowner or adjoining landowner does not bind the Board regarding the granting or denying a variance.

#### 15. Decommissioning

- (a) Cost Responsibility. The owner or operator of a LWES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.
- (b) Useful Life. A LWES is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Board for approval of a plan outlining the steps and schedule for returning the LWES to service within twelve (12) months of the submission.
- (c) Decommissioning Period. The facility owner or operator shall begin decommissioning a LWES facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in 14(b). Decommissioning must be completed with eighteen (18) months after the facility or turbine reaches the end of its useful life.
- (d) Decommissioning Requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWES. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained. Underground cables are not required to be removed if affected landowner(s) either at time of installation or at time of decommissioning consents to or waives in writing the removal of such cables.
- (e) Decommissioning Plan. Prior to commencement of operation of a LWES facility, the facility owner or operator shall file with the Board the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed

facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The Board may at any time require the owner or operator of a LWES to file a report describing how the LWES owner or operator is fulfilling this obligation.

- (f) Financial Assurance. After the tenth (10<sup>th</sup>) year of operation of a LWES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the LWES facility. LWES facility, unless at the time of application LWES facility owner provides certification of a plan which sets aside on an annual basis a reserve account for costs associated with decommissioning and provides proof of existence and maintenance of such a plan on an annual basis.
- (g) Failure to Decommission. If the LWES facility owner or operator does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of bonds if required by section 15(f) of this section. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a LWES facility and seek additional expenditures necessary to do so from the facility owner, consistent with the requirements of paragraph 15(f) of this section.

16. Pre-construction Filing. At least forty-five (45) days prior to commencement of construction, the applicant/permittee shall submit final maps depicting the approximate location of the proposed wind turbines, access roads and collector and feeder lines. Upon completion, the applicant shall also supply an "as-built" ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.

## ARTICLE 10

### SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES

#### SECTION 1001 - Purpose

The purpose of this ordinance is to ensure that the placement, construction and modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, to minimize the impact of Wireless Telecommunications Facilities, to encourage the collocation of Wireless Telecommunications Facilities on existing structures, 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 County's citizens — while attempting to ensure access to reliable wireless communications services throughout the County.

#### SECTION 1002 - Authority and Jurisdiction

South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

#### SECTION 1003 - Definitions

For the purposes of this ordinance, the following terms shall be defined as:

1. Accessory Equipment — Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.
2. Administrator — The Zoning Administrator or individual designated by the Board to conduct the Administrative Review referred to in this ordinance
3. Administrative Approval — Zoning approval that the Administrator is authorized to grant after Administrative Review.
4. Administrative Review — The procedures established in Section 1005 (5) of this Ordinance.
5. Antenna — Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, the following: directional antennas, such as panels, microwave dishes and satellite dishes; and omnidirectional antennas, such as whips.
6. Board — The County Commission, City Commission, or other governmental body



governing the district this ordinance refers to.

7. Collocation — The act of siting Telecommunications Facilities in the same location on the same Support Structure as other Telecommunications Facilities. Collocation also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.
8. Carrier on Wheels or Cell on Wheels or COW — A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.
9. Major Modifications — Improvements to existing Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification. Major Modifications include, but are not limited to, extending the height of the Support Structure by more than twenty (20) feet or ten percent (10%) of its current height whichever is greater, and the Replacement of the structure.
10. Minor Modifications — Improvements to existing Telecommunications Facilities and Support Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a “substantial” change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by less than twenty (20) feet or ten percent (10%) of its current height, whichever is greater, and the expansion of the compound area for additional Accessory Equipment.
11. Monopole — A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.
12. Ordinary Maintenance — Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and aesthetic and structural integrity; for example the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.
13. Replacement — Constructing a new Support Structure of proportions and of equal height or such other height as would be allowed under the definition of Minor Modification to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the preexisting Support Structure.
14. Stealth Telecommunications Facility — Any Telecommunications Facility that is

integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

15. Support Structure(s) — A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, Utility Poles and other freestanding self-supporting structures.
16. Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunications Facility can consist of one or more Antennas and Accessory Equipment or one base station.
17. Tower — A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

#### SECTION 1004 - Approvals Required for Telecommunications Facilities and Support Structures

##### 1. Administrative Review

Telecommunications Facilities located on any existing Support Structure shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. New Support Structures that are less than sixty (60) feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District [or your equivalent] after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. Stealth Telecommunications Facilities shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance.

##### 2. Variances/Exceptions

Telecommunications Facilities and Support Structures not permitted by Administrative Approval may be permitted in any district upon granting of a variance or conditional approval from the Board in accordance with the standards and guidelines set forth in this ordinance.

##### 3. Exempt

Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this ordinance: (1) antennas

used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within the district after a declaration of an emergency or a disaster by the Governor or by the responsible official of the district; and (4) television and AM/FM radio broadcast towers and associated facilities.

SECTION 1005 - Telecommunications Facilities and Support Structures Permitted by Administrative Approval

1. Telecommunications Facilities Located on Existing Structures

- (1) Antennas and Accessory Equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing Support Structure in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations, provided the Antenna and Accessory Equipment are in compliance with the requirements and standards of this Part.
- (3) Each Antenna mounted on existing structures and any Accessory Equipment shall meet the following standards:
  - (a) Omnidirectional or whip Antennas shall not exceed twenty (20) feet in length and not exceed seven (7) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
  - (b) Directional or panel Antennas shall not exceed ten (10) feet in length and two (2) feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
  - (c) Cylinder-type Antennas shall not exceed ten (10) feet in length and not exceed twelve (12) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
  - (d) Satellite and microwave dishes shall not exceed ten (10) feet in diameter. Dish antennas greater than three (3) feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.
  - (e) Other Antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no

greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.

- (f) Accessory Equipment must comply with Section 1007 (5)

## 2. New Support Structures

- (1) New Support Structure less than sixty (60) feet in height shall be permitted in all zoning districts in accordance with the requirements of this Part.
- (2) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all general Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.
- (3) In the case of a monopoles or replacement poles that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.
  - (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
  - (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
  - (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
  - (d) Monopoles and the Accessory Equipment associated there with shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
  - (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
  - (f) Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to twenty (20) feet above the height of the utility tower.
  - (g) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-

way.

### 3. Stealth Telecommunications Facilities

- (1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below:
  - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
  - (b) The structure utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
  - (c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

### 4. General Standards, Design Requirements, and Miscellaneous Provisions

Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section 1007 and the provisions of Section 1008.

### 5. Administrative Review Process

- (1) All Administrative Review applications must contain the following:
  - (a) Administrative Review application form signed by applicant.
  - (b) Copy of lease, ownership documents or letter of authorization from property owner evidencing applicant's authority to pursue zoning application.
  - (c) Zoning Drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
  - (d) In the case of a new Support Structure:
    - i. Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option.
    - ii. A list of all existing structures considered as alternatives to the proposed

location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower or monopole is listed among the alternatives, applicant must specifically address why the modification of such structure is not a viable option.

- (e) Administrative Review application fee. Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.

(2) Procedure

- (a) Within ten (10) business days of the receipt of an application for Administrative Review, the Administrator shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) schedule an Administrative Review hearing with the Applicant within thirty (30) days of the receipt of a complete application, unless for a good cause a later date is necessary.
- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The Administrative Hearing will be conducted to confirm that the proposed application is consistent with this Ordinance. The Administrator must issue a written decision granting or denying the request within thirty (30) days of the hearing. This time period may be extended for good cause. Failure to issue a written decision within (30) days shall constitute a denial of the application. The applicant may appeal such a denial as provided in this Ordinance or applicable State or Federal Law.
- (d) Should the Administrator deny the application, the Administrator shall provide written justification for the denial, specifically the inconsistencies between the applicant and this ordinance.

SECTION 1006 - Telecommunications Facilities and Support Structures Permitted by Variance/Exception

1. Any Telecommunications Facility or Support Structures not Meeting the Requirements of Section 1005 may be permitted by application for a variance or exception in all Zoning Districts Subject to:

- (1) The submission requirements of 6.2 below;
- (2) The applicable standards of 7 and 8 below; and
- (3) The requirements of Article 23.

## 2. Submission Requirements for Variance Applications

- (1) All variance applications for Telecommunications Facility and Support Structures must contain the following:
  - (a) Variance application form signed by applicant.
  - (b) Copy of lease, ownership record or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application.
  - (c) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
  - (d) Number and type of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
  - (e) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.
  - (f) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
  - (g) A statement justifying why Collocation is not feasible. Such statement shall include:
    - i. Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option.
    - ii. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower was listed among the alternatives, applicant must specifically address why the modification of such tower is not a viable option.
  - (h) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.

- (i) If required of other variance applications, a property owner list that includes the name, address, and tax parcel information for each parcel entitled to notification of the application.
  - (j) Variance application fee. Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.
- (2) Procedure
- (a) Within ten (10) business days of the receipt of an Application for a Variance, the Administrator shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.
  - (b) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
  - (c) Once an application is deemed complete, a review meeting shall be held within thirty (30) days.
  - (d) A complete application for a Variance shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this Ordinance.
  - (e) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Variance application under this Ordinance.

## SECTION 1007 - General Standards and Design Requirements

### 1. Design

- (1) Monopoles shall be subject to the following:
  - (a) Monopoles shall be designed to accommodate at least three (3) telecommunications providers.
  - (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for at least three (3) telecommunications providers.



- (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or the Board, Monopoles shall have a galvanized silver or gray finish.
- (2) Towers shall be subject to the following:
  - (a) Towers shall be designed to accommodate at least four (4) telecommunications providers.
  - (b) A compound area surrounding the Tower must be of sufficient size to accommodate Accessory Equipment for at least four (4) telecommunications providers.
  - (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or the Board, Towers shall have a galvanized silver or gray finish.
- (3) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the Board or Administrator.
- (4) Upon request of the Applicant, the Board or Administrator may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that Collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

## 2. Setbacks

- (1) **Property Lines.**  
Unless otherwise stated herein, Monopoles and Towers shall be setback from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other Support Structures shall be governed by the setbacks required by the underlying zoning district.
- (2) **Residential Dwellings.**  
Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be setback from all off-site residential dwellings, businesses and public buildings a distance of one thousand five hundred feet (1,500). There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement utility poles shall not be subject to a set back requirement.
- (3) Unless otherwise stated herein, all Accessory Equipment shall be setback from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a set back requirement.

- (4) The Board or Administrator shall have the authority to reduce or waive any required setback upon the request of the applicant if the Telecommunications Facility or Support Structure will be less visible as a result of the diminished setback. The Board or Administrator must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this Ordinance. The structure must still meet the underlying setback requirements of the zone.

### 3. Height

- (1) In non-residential districts, Support Structures shall not exceed a height of one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (2) In residential districts, Support Structures shall not exceed a height equal to one hundred fifty (150) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (3) In all districts, the Board shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request, the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the Board.

### 4. Aesthetics

- (1) **Lighting and Marking.**  
Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).
- (2) **Signage.**  
Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
- (3) **Landscaping.**  
In all districts, the Board or Administrator shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The Board or Administrator may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the Board or Administrator, landscaping is not appropriate or necessary.

5. Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunications Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.
  - (1) An equipment building, shelter or cabinet must not exceed five hundred sixty (560) square feet and twelve (12) feet in height, including the support structure for the equipment building.
    - (a) Exception to size restriction. A single equipment building or shelter may exceed five hundred sixty (560) square feet if it is located at ground level, is used by more than one Telecommunications provider and does not exceed one thousand five hundred (1500) square feet.
    - (b) Exception to height restriction. Upon the Applicant's request, the Board or Administrator may waive the height restriction to allow for the stacking of equipment on top of each other. The Board or Administrator must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. The Board or Administrator may also waive the height restriction where a higher support structure is needed to raise the Equipment above a slope or flood plain.
  - (2) If the Accessory Equipment is at ground level in a residential zone, the Board or Administrator may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three (3) feet in height at installation. The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Board or Administrator.

#### SECTION 1008 - Miscellaneous Provisions

##### 1. Safety

- (1) Ground-mounted Accessory Equipment and Support Structures shall be secured and enclosed with fence not less than six (6) feet in height, or as deemed appropriate by the Board or Administrator.
- (2) The Board or Administrator may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

##### 2. Abandonment and Removal

- (1) Abandonment. Any Telecommunications Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered

abandoned.

- (2) Removal. The owner of the Telecommunications Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. The district authority shall ensure and enforce removal by means of its existing regulatory authority.

3. Multiple Uses on a Single Parcel or Lot  
Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site.

### SECTION 1009 - Existing Telecommunications Facilities and Support Structures

Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

1. Non-Conforming Telecommunications Facility
  - (1) Non-conforming Antennas or Accessory Equipment. Ordinary Maintenance may be performed on Non-conforming Antennas and Accessory Equipment.
  - (2) Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the Administrator.
  - (3) Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of Variance approved by the Board.
2. Non-Conforming Support Structures
  - (1) Ordinary Maintenance may be performed on a Non-conforming Support Structure.
  - (2) Collocation of Telecommunications Facilities on an existing non-conforming Support Structure is permitted upon the granting of Administrative Approval by the Administrator.
  - (3) Minor Modifications may be made to non-conforming Support Structures to allow for Collocation of Telecommunications Facilities. Such Minor Modifications shall be permitted by Administrative Approval granted by the Administrator.
  - (4) Major Modifications may be made to non-conforming Support Structures only upon the granting of Variance approved by the Board.

## **ARTICLE 11**

### **RESIDENTIAL DISTRICT (R-1)**

#### SECTION 1101 - Intent

The intent of Residential District (R-1) is to provide for residential uses of varying types and other compatible uses in a pleasant and stable environment.

#### SECTION 1102 - Permitted Uses and Structures

1. Single-family dwelling;
2. Noncommercial horticultural uses; and
3. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district.

#### SECTION 1103 – Special Permitted Uses

1. None

#### SECTION 1104 - Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Board of Adjustment may permit as a conditional use in the Residential District (R-1):

1. Multiple-family dwellings;
2. Mobile home parks and mobile homes;
3. Churches, synagogues, and temples;
4. Nursery, primary, intermediate, and secondary schools;
5. Day Cares;
6. Public recreational uses and park facilities;
7. Golf courses and country clubs;
8. Mortuary or Funeral Homes;

9. Cemeteries;
10. Utility substations;
11. Convalescent, nursing, and rest homes;
12. Medical and other health facilities;
13. Governmental services;
14. Commercial uses, and
15. Home occupations and professional offices.

#### SECTION 1105 - Minimum Lot Requirements

The minimum lot area shall be seven thousand (7,000) square feet for single and multi-family dwellings. The minimum lot width shall be fifty (50) feet.

#### SECTION 1106 - Minimum Yard Requirements

There shall be a front yard setback of not less than a depth of twenty-five (25) feet. There shall be a rear yard setback of not less than a depth of ten (10) feet. Each side yard setback shall not be less than five (5) feet. All distances shall be measured from the outer edge of the property line.

## ARTICLE 12

### LAKE FRONT RESIDENTIAL (R-2)

#### SECTION 1201 - Intent

The intent of the Lake Front Residential District (R-2) is to provide for residential uses of shoreline land without altering natural surroundings of the District.

#### SECTION 1202 - Permitted Uses and Structures

1. Single-family residential dwellings;
2. Noncommercial horticultural uses; and
3. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District.

#### SECTION 1203 – Special Permitted Uses

1. None

#### SECTION 1204 - Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Board of Adjustment may permit on such terms and conditions as may be determined or set by the Board of Adjustment as a conditional use in the Lake Front Residential (R-2):

1. Golf courses and country clubs;
2. Resorts;
3. Grocery, convenience, and sporting goods stores;
4. Home occupations and professional offices;
5. Mobile homes; and
6. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District. and

### SECTION 1205 - Minimum Lot Requirements

Each lot shall have a depth of not less than one hundred (100) feet and shall have a shoreline frontage width of not less than fifty (50) feet. The minimum lot road frontage shall not be less than ten (10) feet in width. All lots without shoreline frontage shall have a minimum width of fifty (50) feet and a minimum depth of one hundred (100) feet

### SECTION 1206 - Minimum Yard Requirements

Each structure shall be setback not less than forty (40) feet from the normal high water mark. The road setback shall not be less than fifty (50) from federal and state highways and not less than thirty (30) feet from other roads. Each side yard shall not be less than five (5) feet as measured from the property line of the lot in question. The setback from other road accesses may be waived if not practicable within existing plats.

### SECTION 1207 – Minimum Sewer Requirements

Installation of wastewater systems shall comply with Administrative Rules of South Dakota, Chapter 74:53:01

### SECTION 1208 – Modification/alteration with 40’ OHWM

Maintaining a buffer zone to intercept runoff, filter sediment and pollution, and maintaining portions of natural shoreline are extremely in portent in preserving water quality, preventing pollution, preserving fish and wildlife habitat, and for natural scenic beauty.

Any shoreline development and construction or modification, including rip-rap and retaining walls, shall require a special permit prior to undertaking such development, construction or modifications. The considerations or factors to be considered in granting a permit include, but are not limited to:

1. The work minimizes erosion or sediment to the lake;
2. Runoff will be minimized by construction and maintenance of a proper silt fence during construction; and
3. Intensive vegetation clearing in the vegetative buffer zone should be minimized on lake bluffs and steep slopes. Limited clearing and trimming of trees and shrubs is allowed to accommodate the placement of stairways paths, water accesses, and to provide a view to the water from the principal dwelling. Trees and natural shrubbery shall be preserved as far as practicable, and those removed should be replaced if possible to retard runoff, prevent erosion and preserve natural beauty.



Application for such a permit must be accompanied by a detailed plan showing the work to be accomplished, and also a list of names and addresses of the adjacent landowner(s). After filing of application the hearing shall be scheduled and notice of hearing given by publication and written notice to landowner(s) contained in application. After granting of such permit applicant shall provide to the Zoning Officer within two years after the date of permit, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

## ARTICLE 13

### COMMERCIAL DISTRICT (C)

#### SECTION 1301 - Intent

The intent of the Commercial District (C) is to provide a commercial area for those establishments serving the general shopping needs of the trade area and in particular, those establishments customarily oriented to the pedestrian shopper. The grouping of uses is intended to strengthen the central business area as the urban center of trade, service, governmental and cultural activities and to provide neighborhood commercial convenience areas.

#### SECTION 1302 - Permitted Uses and Structures

The following uses and structures shall be permitted in the Commercial District (C):

1. All retail sales and services;
2. Finance, insurance and real estate services;
3. Lodges and fraternal organizations;
4. Wholesale trade;
5. Eating places;
6. Public buildings and grounds;
7. Churches, welfare, and charitable services; and
8. Rental storage units.

#### SECTION 1303 – Special Permitted Uses

1. None

#### SECTION 1304 - Conditional Uses

After the provisions of this Ordinance relating to Conditional Uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Commercial District (C):

1. Grain Elevators;
2. Other trade and service uses which are similar to the permitted uses and which are in harmony with the intent of this Ordinance;
3. Structures containing both commercial and residential uses; and
4. Multi-family and single-family dwellings
5. Automobile repair and services; not including automobile salvage or storage yards.
6. Funeral services and/or funeral homes.
7. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District; and
8. Drinking establishments, not offering any form of entertainment except as permitted by any other ordinance.
9. Cannabis Dispensary (subject to Section 1605).

#### SECTION 1305 – Minimum Lot Requirements

The minimum lot area shall be two thousand four hundred (2,400) square feet. The minimum lot width shall be twenty-five (25) feet.

#### SECTION 1306 – Minimum Yard Requirements

All permitted structures located on the lot shall have a front yard setback of a least ten (10) feet and a minimum rear yard setback of ten (10) feet. Minimum side yard setbacks to be determined by location and circumstances defined in permit, and agreements(s) of adjoining landowners.

#### SECTION 1307 – Maximum Lot Coverage

The maximum lot coverage for all buildings shall not be more than ninety percent (90%) of the total lot area.

## ARTICLE 14

### HIGHWAY COMMERCIAL DISTRICT (HC)

#### SECTION 1401 – Intent

The intent of the Highway Commercial District (HC) is to provide commercial areas for those establishments which can function most satisfactorily in an area directly related to major vehicular transportation routes defined herein as State and Federal Highways. The intent must also be made for the needs of the highway user and the automobile, and in so doing to establish appropriate locations along major streets and highways for highway and automobile related retail and service establishments in locations which will not cause undue traffic congestion.

#### SECTION 1402 – Permitted Uses and Structures

1. Retail sale of lumber and other building materials, farm equipment, motor vehicles, marine craft, trailers, farm and garden supplies, fuel and ice;
2. Wholesale sale of: motor vehicles and automotive equipment; drugs, chemicals, and allied products; dry goods and apparel; groceries and related products; electrical goods hardware, plumbing, heating equipment, and supplies; machinery, equipment, and supplies, beer, wine, and distilled alcoholic beverages; paper and paper products; furniture and home furnishings; lumber and construction materials;
3. Funeral and crematory services;
4. Farm products warehousing and storage, excluding stockyards;
5. Refrigerated warehousing;
6. Household goods warehousing and storage;
7. General warehousing and storage;
8. Automobile repair and services;
9. Reupholster and furniture repair service;
10. Contract construction service;
11. Bus garaging and equipment maintenance;
12. Motor freight terminals;

13. Motor freight garaging and equipment maintenance;
14. Automobile parking;
15. Libraries, museums, art galleries, planetary, aquariums, historic and monument sites; auditoriums, exhibition halls; and arcades;
16. Miniature golf course, gymnasiums and athletic clubs, swimming pool, tennis courts, ice skating rinks; roller skating rinks;
17. Parks;
18. Amphitheaters, stadiums, drive-in movies, arenas and field houses; race tracks, fairgrounds, amusement parks, golf driving ranges, go-cart tracks, golf courses and country clubs, riding stables, playfields and athletic fields, bowling alleys, riding arenas and rodeo facilities.
19. Communication and utility uses;
20. Automobile service stations;
21. Motels;
22. All retail sale and services;
23. Finance, insurance, and real estate services;
24. Lodges and fraternal organizations;
25. Eating places;
26. Public buildings and grounds;
27. Churches, welfare, and charitable services;
28. Grain elevators;
29. Rental storage units, and
30. Campgrounds

#### SECTION 1403 – Special Permitted Uses

1. None

#### SECTION 1404 – Conditional Uses

1. Light industry and manufacturing;
2. Food lockers, provided, that any slaughtering, killing eviscerating, skinning, or plucking be done indoors;
3. Other trade and service uses which are similar to the permitted uses and which are in harmony with the intent of this Ordinance;
4. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District, and
5. Drinking establishments.
6. Cannabis Dispensary (subject to Section 1605).

#### SECTION 1405 – Minimum Lot Requirements

The minimum lot area for permitted uses shall be thirty thousand (30,000) square feet. The minimum lot width for permitted uses shall not be less than one hundred (100) feet.

#### SECTION 1406 – Minimum Yard Requirements

There shall be a front yard setback of not less than forty (40) feet. There shall be a rear yard setback of not less than twenty (20) feet. Each side yard setback shall be not less than 10 feet. All distances shall be measured from the lot lines.

## ARTICLE 15

### GENERAL INDUSTRIAL DISTRICT (I)

#### SECTION 1501 – Intent

The intent of the General Industrial District (I) is to provide space for certain types of industrial and/or manufacturing and/or warehousing or storage operations which are compatible to adjoining districts. Such uses generally require open storage of materials or goods either before, during, or after the manufacturing process but are of a low noise or nuisance level. Land designed for this District should be located in relation to the thoroughfare network of the community as well as rail and air if required and designed so as not to disrupt normal traffic flows. Because of increasing technological developments, extensive lists of permitted uses are not practical. At anytime, a Planned Industrial Park is encouraged in this District.

#### SECTION 1502 – Permitted Uses and Structures

1. None

#### SECTION 1503 – Special Permitted Uses

1. None

#### SECTION 1504 – Conditional Uses

All industrial uses and structures will be allowed by a conditional use permit. The Board of Adjustment may permit as a conditional use in general industrial districts any use which is consistent with the intent of this district.

#### SECTION 1505 - Minimum Lot Requirement

There shall be, at a minimum, thirty thousand (30,000) square feet per general industrial district lot.

#### SECTION 1506 - Minimum Yard Requirements

There shall be a front yard setback of not less than twenty five (25) feet. There shall be a rear yard setback of not less than twenty (20) feet. Each side yard setback shall not be less than twenty (20) feet, PROVIDED, that on lots adjacent to a Residential District, all structures shall be located so as to provide a minimum side and rear yard setbacks of twenty five (25) feet along

that portion of the lot adjacent to the Residential District. Measurements shall be taken from the property lines of the lot in question.



## ARTICLE 16

### SUPPLEMENTARY DISTRICT REGULATIONS

#### SECTION 1601 - Visibility at Intersections

On all corner lots and lots bordering alleys and all private driveways intersecting public roads, and adjoining any other county and secondary roads or any other public rights-of-way in all districts except Commercial, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two and one-half (2 1/2) feet and ten (10) feet above the centerline grades of the intersecting streets, in the area formed by a radius of twenty (20) feet from the intersection of the street, curbs, or edge.

#### SECTION 1602 - Erection of More Than One Principal Structure on a Lot

In any district, more than one structure may be erected on a single lot, provided, that the use is a permitted use and that yard and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot.

#### SECTION 1603 - Spacing of Signs

Signs may not be located in such a manner as to obscure or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device; obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic. There shall also be a distance of at least five (5) feet from the bottom of the advertising sign to the ground.

#### SECTION 1604 - Front Yard Regulations

In any required front yard, no fence or wall shall be permitted which materially impedes vision across such yard above the height of thirty (30) inches, and no hedge or other vegetation shall be permitted which materially impedes vision across such yard between the heights of thirty (30) inches and ten (10) feet. See Section 1601 for further regulations concerning corner lots.

In the case of through lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the County Zoning Officer may waive the requirement for the normal front yard and substitute, therefore, a special yard requirement which shall not exceed the average of the yards provided on adjacent lots.

Depth of required front yards shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of

rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be parallel.

SECTION 1605 – Cannabis Dispensaries.

1. Maximum Number of Cannabis Dispensaries.

- a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
- b. The County shall allow up to 2 cannabis dispensaries provided the time, place, and manner of said dispensaries comply with this ordinance and the County licensing ordinance.

2. Required Separation Distances

- a. A cannabis dispensary shall be located not less than 1,000 feet from churches, daycares, and a public or private school existing before the date of the cannabis dispensary application;
- b. Except as set forth above, a cannabis dispensary maybe be located next to an existing structure without any further setbacks other than normal side and frontage setbacks required in the approved zoning districts listed.
- c. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
  - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- d. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed

3. Other Locational Requirements

- a. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.

- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.
4. Controlled Access - No cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.
  5. Documentation of State Licensure.
    - a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.
  6. The zoning official is authorized to issue permits (building/use) for cannabis dispensaries subject to a conditional use permit granted with the following items included:
    - a. Submission of a site plan containing the following:
      - i. Any information required for applicable building permit,
      - ii. Ingress and egress plan
      - iii. Parking plan
      - iv. Lighting plan (including security lighting)
      - v. Screening/security fencing plan,
      - vi. Refuse plan;
      - vii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
    - b. Documentation of ability to meet setback/separation requirements.
    - c. Documentation of State Licensure.
  7. All Cannabis Establishments are required to be constructed in conformance with the International Building Code as provided in SDCL 11-10.

## SECTION 1606 – Target Range Requirements

### General Area Regulations:

1. Minimum Lot Size: Ten (10) acres.

2. Minimum Front Yard: One hundred fifty (150) feet.
3. Minimum Side Yard: Three hundred (300) feet.
4. Back of the Range Setback: A minimum of One-quarter (1/4) mile from any buildings and/or roads. The Board of Adjustment may reduce this setback distance based on the presence of natural or manmade features.
5. Setback from Residences: One-half (1/2) mile to be measured from the firing line to the nearest residential dwelling.
6. Setback from Commercial Uses: One-half (1/2) mile to be measured from the firing line to the nearest commercial structure.
7. Setback from Churches and Schools: One-half (1/2) mile to be measured from the firing line to the nearest church or school.
8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.

## ARTICLE 17

### NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, NONCONFORMING USES OF STRUCTURES AND PREMISES, AND NONCONFORMING CHARACTERISTICS OF USES

#### SECTION 1701 - Intent

Within the Districts established by this Ordinance or amendments that may later be adopted, there exists:

1. Lots;
2. Structures;
3. Uses or land and structures; and
4. Characteristics of use

Which were lawful before this Ordinance was passed or amended but which would be prohibited, regulated, or restricted under the term of this Ordinance or future amendments. It is the intent of this Ordinance to permit the nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by these regulations to be incompatible with permitted uses in the Districts involved. A nonconforming use of structure or a nonconforming use of land and structure in combination shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises intended to be seen from off the premises or by the addition of other uses of a nature which would be prohibited generally in the District involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of this adoption or amendment of this Ordinance and upon which actual building construction had been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

### SECTION 1702 - Nonconforming Lots of Record

In any District in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership. This provision shall apply even though such lot fails to meet the requirements for area and/or width, that are generally applicable in the District, provided that yard dimensions and requirements other than those applying to area and/or width of the lot shall conform to the regulations for the District in which such lot is located. Variances to the yard requirements shall only be obtained through action of the Board of Adjustment.

In any District, if two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered undivided parcel for the purpose of this ordinance. No portion of said parcel shall be used or sold in a manner which diminished compliance with lot width and area requirements established by this Ordinance; nor shall any division of any parcel be made which creates a lot with a width or area below requirements stated in this Ordinance.

### SECTION 1703 - Nonconforming Uses of Land (or Land with Minor Structures Only)

Where at the time of passage of this Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.
2. If any such nonconforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the District in which such land is located.
3. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

### SECTION 1704 - Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the

structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its reasonable fair market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

#### SECTION 1705 - Repairs and Maintenance

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any portion of twelve consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the current reasonable fair market value of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the District in which it is located.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

#### SECTION 1706 - Conditional Uses Shall Not be Nonconforming Uses

Any use which is permitted as a conditional use in a District under the terms of this Ordinance (other than a change through the Board of Adjustment action from a nonconforming use to another use not generally permitted in the District) shall not be deemed a nonconforming use in such District shall without further action be considered a conforming use at the date of adoption of this Ordinance.

## ARTICLE 18

### BUILDING/USE PERMITS

#### SECTION 1801 - Permits Required

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a permit issued by the Zoning Officer. The Zoning Officer except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit. A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction.

#### SECTION 1802 - Applications

1. Application for building and use permits shall be made to the Zoning Officer upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan which may include a plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Zoning Officer, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in Article 24 and shall require a new building and use permit.

#### SECTION 1803 - Building/Use Permit Issuance and Termination

1. Issuance of a Building/Use Permit. If the proposed excavation alteration, construction, or change of use, as set forth in the application for a Building/Use Permit are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Zoning Officer shall issue a building/use permit for such excavation, construction, alteration or change in use. If a building/use permit is refused, the Zoning Officer shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the



application with the cause for denial. The Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.

2. A Building/Use Permit shall be deemed to authorize, and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such building and the use thereof or the use of such land is in full conformity with the requirements of this ordinance and any requirements pursuant thereto. However, on the serving of a written notice by the Zoning Officer of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the Building/Use Permit for such use shall without further action, be null and void, and a new Building/Use Permit shall be required for any further use of such building or land.
3. The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. A Building Permit unencumbered by a conditional use or variance application that exceeds two (2) years from the date of issuance and has not been substantially completed, shall expire and be cancelled by the Zoning Officer. Written notice thereof, shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within two (2) years from the issuance of the permit but has not been completed, the Zoning Officer may extend the building/use permit.
4. Building Permits encumbered by a special permitted use, conditional use or variance shall not expire for a period of two years following issuance, disposition of final appeals or court proceedings; provided, actual construction as described in the building permit is completed within two (2) years. Permits in violation shall be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit or application shall not proceed unless and until a new building/use permit has been issued.

#### SECTION 1804 - Permits Displayed

1. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place. The permit shall be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use.

## ARTICLE 19

### ZONING OFFICER

#### SECTION 1901 - Zoning Officer

1. The provisions of this Ordinance shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners, who shall have the power to make inspection of buildings or premises necessary to carry out his duties in the enforcement of this Ordinance.

#### SECTION 1902 - Duties

The powers and duties of the Zoning Officer shall be as follows:

1. Issue all building/use permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Day County Planning Commission and/or the Day County Board of Adjustment and/or Day County Commissioners.
8. Provide public information relative to all matters arising out of this Ordinance.
9. Forward to the Planning Commission all plats and/or applications for amendments to this Ordinance.

10. Forward to the Board of Adjustment, applications for appeals, conditional uses, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.
11. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission.
12. The Zoning Officer shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.
  - a. For building/use permits, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
  - b. For Special Permitted Uses, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
  - c. For Conditional Uses and Variances, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.
  - d. For Zoning Amendments, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Planning Commission and Board of County Commissioners.

#### SECTION 1903 - Procedures for Approval of Special Permitted Use Permit

1. The Special Permitted Use procedure is an administrative review process, where the Zoning Officer shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a Special Permitted Use permit. Requests for special permitted uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. A Special Permitted Use Permit shall not be granted unless and until:
  - a. A written application for a permitted special use is submitted, indicating the section of this Ordinance under which the permitted special use is sought and stating the grounds on which it is requested.
  - b. The Zoning Officer shall review the application for conformance with this ordinance.
  - c. If the application does not meet all of the performance standards for the Special Permitted Use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Zoning Officer shall determine that the application is not in conformance with Section 1903 and appropriate Special Permitted Use Standards. The applicant may then appeal the decision of the Zoning Officer as described in Section 2106.
  - d. If the Zoning Officer determines that the application is in conformance with the prescribed performance standards, the Zoning Officer shall make written findings

certifying compliance with the specific standards governing the specific Special Permitted Use Permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the specific Special Permitted Use Permit.

- e. The Zoning Officer shall then issue the Special Permitted Use permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the Zoning Officer for the specific Special Permitted Use permit.
- f. The Zoning Officer shall then issue any other associated building/use permits.
- g. A Special Permitted Use permit shall expire two (2) years from the date upon which it becomes effective if no construction has commenced.
- h. A special permitted use permit that is granted does not expire for a period of two years following completion of any final appeal of the decision.

#### SECTION 1904 - Right of Entry

Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Zoning Officer or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises a regulation violation, the Zoning Officer or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Zoning Officer by this ordinance, provided that if such building or premises be occupied, they shall first present proper credentials and request entry; and if such building or premises be unoccupied, they shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Zoning Officer or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Officer or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to 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 Officer or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

#### SECTION 1905 - Stop Order

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Officer may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Zoning Officer to proceed with the work.

SECTION 1906 – Use and Occupancy Violation

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Officer may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such persons shall discontinue the use within the time prescribed after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this ordinance.

## ARTICLE 20

### PLANNING COMMISSION

#### SECTION 2001 - Establishment

1. The Planning Commission shall consist of membership of the Board of County Commissioners.

#### SECTION 2002 - Term of Office

1. The terms shall run concurrent with the terms of the membership of the Board of County Commissioners.

#### SECTION 2003 - Meetings of the Planning Commission

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.
2. All Meetings of the Planning Commission shall be open to the public. The Planning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.
3. A simple majority vote of a quorum of members of the Planning Commission in attendance is required to forward a recommendation, pertaining to its duties described in Section 2005, on to the Board of County Commissioners.

#### SECTION 2004 - Per Diem and Expenses of Commission

1. Per Diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.

#### SECTION 2005 - Powers and Duties of the Board.

1. Comprehensive Land Use Plan. The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. Upon preparation the Planning

Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.

2. Zoning Ordinance. To develop and recommend a zoning ordinance, in accordance with the Plan, 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 SDCL 11-2-13 and 11-2-14. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.
3. Subdivision.
  - a. If determined appropriate, to develop and recommend regulations governing the subdivision of land within Day County.
  - b. If a subdivision ordinance has been adopted, to review proposals for subdivision to determine whether such subdivisions comply with the subdivision ordinance of the County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.
4. Amendments. The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning ordinance, and subdivision regulations subject to SDCL 11-2-28.
5. The Planning Commission shall have all other responsibilities designated to it by this Ordinance and South Dakota Law.

## **ARTICLE 21**

### **BOARD OF ADJUSTMENT**

#### SECTION 2101 - Establishment

Within Day County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The Planning Commission, shall act as the Board of Adjustment.
2. The Board of County Commissioners may appoint two (2) alternates to the Board of Adjustment. If a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent Board of Adjustment members place. The term of the Alternates shall be for three (3) years.

#### SECTION 2102 - Procedures for Meetings

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
2. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.
3. A quorum of the Board of Adjustment consists of four (4) members physically present or participating remotely
4. The Board of Adjustment shall take no action on any item at a meeting where a quorum of the Board is not physically present or participating remotely.

#### SECTION 2103 - Powers and Duties of the Board

1. The Board of Adjustment shall have the following powers and duties:
  - a. Administrative Review. To hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map.



- b. Conditional Uses. To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.
- c. Variance. To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

#### SECTION 2104 - Power and Jurisdiction Relating to Administrative Review

The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Officer or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map.

#### SECTION 2105 Board of Adjustment has Powers of Administrative Officer on Appeals: Reversing Decision of Zoning Officer

1. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, 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 the powers of the Zoning Officer from whom the appeal is taken.
2. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (four (4) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Officer, 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 the application of this ordinance.

#### SECTION 2106 - Appeals, Record of Appeal, Hearing and Stays

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. An appeal to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County adversely affected by any decision of the zoning officer to grant or deny the permit. No other appeal such as any relating to a

ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision is authorized by this section. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The appeal shall be filed within twenty-one (21) days of the decision in question. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal.

3. An appeal stays all proceedings in furtherance of the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, unless the Zoning Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall hear and decide the appeal within sixty (60) days of receiving said appeal, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney.

#### SECTION 2107 - Appeals to a Court of Record.

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board, or bureau of the county, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the County Zoning Officer.

## **ARTICLE 22**

### **SCHEDULE OF FEES**

#### SECTION 2201 - Fees

1. The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance, The schedule of fees shall be posted in the office of the County Zoning Officer and may be altered or amended only by the Board of County Commissioners.
2. Until all applicable fees, charges, and expenses have been paid in full, no decision shall be made on any application or appeal.

## ARTICLE 23

### PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS

#### SECTION 2301 - Powers and Jurisdiction Relating to Conditional Uses

The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted, indicating the section of this Ordinance under which the conditional use permit is sought and stating the grounds on which it is requested.
2. Property owners adjacent to the proposed site shall be notified of the conditional use request by certified or registered mail, at the cost of the applicant. In lieu of this requirement, at the discretion of the Zoning Officer, the applicant may obtain written consent from adjacent landowners, to be submitted with the conditional use application.
3. All work to include alteration, actual construction, excavation, dirt work or other similar activity subject to a permitting process or as an allowed land use conducted upon neighboring lands which began after the date on which a complete conditional use application is accepted shall consider the following. If such action causes the application to fail to meet one or more of the performance standards or criteria for the proposed conditional use, said action shall not cause the requested conditional use to be considered nonconforming until a final disposition of the conditional use request and any appeal is determined pursuant to § 11-2-61 or 11-2-65. If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year following approval or determination of any appeal as set forth above, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.
4. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
5. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
6. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest.

7. The granting of any conditional use, by the Board of Adjustment shall be based upon written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
  - a. Access:
    - i. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for conditional use requested prior to issuance of a Conditional Use Permit.
    - ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.
  - b. Parking and internal traffic:
    - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
    - ii. The number of parking spaces is appropriate for the proposed use of the property.
  - c. Utilities and refuse:
    - i. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.
    - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.
  - d. Screening, buffering, and open space:
    - i. The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
  - e. Lighting:
    - i. Lights associated with the use will not create a nuisance nor distract traffic.
    - ii. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.
  - f. General compatibility with adjacent properties and other property in the district.
    - i. Any use listed as a Conditional Use is generally compatible in the district it is listed in.
    - ii. General compatibility is used when prescribing conditions for approval of a permit.
8. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
9. The affirmative majority vote of the present and voting members of the Board of Adjustment

is required to pass any application for a Conditional Use Permit.

10 Expiration of a Conditional Use Permit

- a Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire two (2) years from the date upon which it becomes effective if no actual construction as described in the building permit has commenced. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.
- b A conditional use permit that is granted does not expire for a period of two years following completion of any final appeal of the decision.

11. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance.

12. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation. BOA will have all other remedies as available in Article 24.

SECTION 2302 - Powers and Jurisdiction Relating to Variances.

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. The Zoning Officer may require the applicant for a variance to notify adjacent property owners by certified or registered mail at their last known address, at the applicant's expense, of the variance request; in lieu of the foregoing, if required, the applicant may obtain written consent from adjacent landowners, to be submitted with the Variance application.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this ordinance shall not be granted unless the following criteria are met:
  - a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
  - b. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
  - c. The special conditions and circumstances do not result from the actions of the applicant;
  - d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
  - e. Granting the variance request would not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
  - f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under the terms of this regulation.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a variance.
9. Expiration of a Variance
  - a. Unless otherwise specified by the Board of Adjustment, a variance shall expire two (2) years from the date upon which it becomes effective if no actual construction as described in the building permit has commenced. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment. If the variance request is granted in connection with activities for which a conditional use permit has been granted within the past six (6) months, the variance may be extended in the same manner and shall

expire at the same time and under the same conditions as the conditional use permit.

- b. A variance that is granted does not expire for a period of two years following completion of any final appeal of the decision.

### SECTION 2303 - Zoning Amendments

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one (1) or more of the owners of property within the area requested to be rezoned. Initiated petitions which create amendments to this ordinance are required to submit signatures of twenty (20) percent of the landowners in the zoning district or districts requesting change. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.
2. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change shall be followed:

The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Officer. Completed applications shall be returned to the Zoning Officer for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:

- a. Any required attachments and fees, including Registered or Certified Mail.
- b. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.
- c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.
- d. A proposed time schedule for beginning and completion of development.
- e. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.



- f. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.
- g. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within two hundred fifty (250) feet and any adjoining landowners of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- h. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.
- i. The Planning Commission shall recommend approval or disapproval of a requested change, either in whole or in part. Recommendations for changes shall be presented to the Board of County Commissioners.
- j. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in an official newspaper of the County.

#### SECTION 2304 - Reapplication

No application requesting a variance, conditional use, or zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment (variances, conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or Board of County Commissioners before the expiration of two (2) months from the date of the final action of the Planning Commission, Board of Adjustment, or Board of County Commissioners.

## ARTICLE 24

### VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

#### SECTION 2401 - Building Permit Violations

Any person, firm, or corporation in violation of this ordinance shall be fined one hundred (\$100) dollars. The Zoning Officer may also take enforcement measures as given in Article 19. Payment of all fines shall be made in the office of the Day County Zoning Officer within fourteen (14) days after the person, firm, or corporation in violation of the above Ordinance has been notified by certified letter. If payment of the fine is not received at the end of the ten (10) day period the County may assess a fine of twenty five (\$25) dollars per day in addition to the \$100 fine and the Day County States Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9 and 7-19-1. Any fines collected shall be deposited in the Day County general fund.

#### SECTION 2402 - Violation of Ordinance

Any person, firm, or corporation in violation of the provision of these Ordinances, except Article 18, shall be punishable by a fine not less than twenty-five (\$25) dollars nor more than five thousand (\$5,000) dollars. The Zoning Officer may also take enforcement measures as given in Article 19. Payment of all fines shall be made in the office of the Day County Zoning Officer within ten (10) days after the person, firm, or corporation in violation of the above Ordinance has been notified by certified letter. If payment of the fine is not received at the end of the ten (10) day period, the Day County States Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9 and 7-19-1. Any fines collected shall be deposited in the Day County general fund.

The assessment of the payment of fines is not an exclusive remedy of the county for violations and the county may pursue or require other remedial steps to obtain compliance.

## ARTICLE 25

### LEGAL STATUS PROVISIONS

#### SECTION 2501 - Separability

Should any article, section, or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such 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.

#### SECTION 2502 - Purpose of Catch Heads

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience to serve the purpose of any index; and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

#### SECTION 2503 - Repeal of Conflicting Ordinances

All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with the provision of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect. Provisions of this ordinance do not impair or affect the enforcement of the Flood Map Ordinance dated August 18, 2000.

#### SECTION 2504 - Effective Date

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

## ARTICLE 26

### ADDITIONAL USE REGULATIONS

#### UTILITY POLES/STRUCTURES

##### SECTION 2601 – Purpose

Day County, South Dakota Board of Commissioners deems it necessary for purposes of promoting the safety and general welfare of the community and to assist the County Highway Department in its snow removal procedures and for snow storage and in order for the County to maintain the in-slopes of its roads, to prohibit the installation and placement of all utility poles, structures, guy wires, within fifty feet (50') of the center-line of all County Roads designated as part of the County Highway System. This does not apply to placement along other secondary roads in the County unless at the time of application this is waived upon approval by County as set forth in 2604 below.

##### SECTION 2601(A) – Obstructions at or near Right of Way

No building, structure, haystack, bales, or bale stacks, advertising sign, stock dam, water diversion ditch, tree stumps, rock piles, debris or other public hazards shall be located closer than one hundred fifty (150) feet from the center of all highways and roads located in Day County, including township roads, county roads and public highways. There shall be a distance of at least five (5) feet from the bottom of an advertising sign to the ground.

##### SECTION 2602 – Penalty for Violation

A violation of this Article shall result in a maximum fine of \$500.00 or thirty (30) days in the county jail, or both the jail and fine. In addition, all poles, structures, etc. placed or installed in violation shall be removed at the expense of the utility company. If not removed, the County may contract for the removal and charge the cost and expense to the utility company.

##### SECTION 2603 – Prospective Application

This Article is intended to apply prospectively and does not affect existing utility poles, structures, guy wires in place and fully constructed and energized prior to effective date of ordinance. This Article also does not apply to on-going maintenance, up-grades, and repair of existing facilities, i.e. poles and lines.

##### SECTION 2604 – Waiver of 50' No Build Requirements

The fifty-feet (50') no build provisions of this Article may be modified or reduced upon an affirmative showing of negative impact to landowner, or unreasonable delay in completing the project, or that easements are not available to utility under the circumstances. Applicants will be required to document their efforts to comply with this Ordinance and to obtain the necessary easements. This waiver may be granted at the time of approval of initial permit or request.

# **APPENDIX A**

# DAY COUNTY SUBDIVISION REGULATIONS

## APPENDIX A

An Ordinance establishing rules, regulations, and standards governing the subdivision of the land within Day County, South Dakota, and providing harmonious development of the county and its environs for the coordination of streets within subdivisions with other existing or planned streets or with other features of the comprehensive plan of the county for adequate open spaces for traffic, recreation, light and air, and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity.

Now, therefore, be it enacted by Day County, South Dakota.

### ARTICLE I - GENERAL PROVISIONS

#### SECTION 101 - Purpose

These regulations shall be for the purpose of promoting harmonious development through the implementation of the Day County Comprehensive Plan.

#### SECTION 102 - Extent of Regulation

The provisions of these regulations shall apply to every addition to, or subdivision within Day County, South Dakota, and their prescribed area of extra-territorial jurisdiction. No plat of a subdivision of land shall be filed or recorded until it has been submitted to the Planning Commission for their review and then approved by the Day County Commissioners.

#### SECTION 103 - Definitions

For the purposes of this ordinance, certain terms or words used herein shall be interpreted as follows:

The word *person* includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word *shall* is mandatory, the word *may* is permissive.

The words used or occupied included the words *intended*, *designed*, or *arranged* to be used or occupied.

The word *lot* includes the words *plot* or *parcel*.

The word *building* includes the word *structure*.

**Alley:** A public right-of-way which is used primarily as a secondary means of access to the abutting property.

**Block:** A track or parcel of land bounded by public streets or land, streams, railroads, unplatted lands or a combination thereof.

**Comprehensive Plan:** A long-range plan for the improvement and development of Day County, South Dakota, as adopted by the Planning Commission and the County Commissioners.

**Cul-de-sac:** A street having one end connecting with a public street and being terminated as its other end by a vehicular turn-around.

**Improvements:** Pavements, curbs, gutters, sidewalks, water mains, sanitary sewers, storm sewers, grading street signs, plantings, and other items for the welfare of the property owners and the public.

**Lot:** A portion of a subdivision or other parcel of platted land, intended as a unit for transfer of ownership or for development.

**Lot of record:** A tract of land described as an integral portion of a subdivision plat which is properly recorded in the Register of Deeds Office of Day County, South Dakota.

**Plat:** A map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which he submits for approval and which will be recorded in final form.

**Right-of-way:** A strip of land separating private property from the existing road, street or alley or dedicated in public ownership.

**Street:** A right-of-way, dedicated to public use, which affords a primary means of access to the abutting property.

**Street -major:** Provides for the through traffic movement between areas and across the city, and direct access to abutting property; subject to necessary control of entrances, exits and curb use.

**Street -collector:** Provides for traffic movement between major arterials and local streets, and direct access to abutting property.

**Street - local:** Provides for direct access to abutting land, and for local traffic movements.

**Subdivider:** A natural person, firm, co-partnership, association or corporation who submits a proposed subdivision to the Planning Commission.

**Subdivision:** The division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership or building development.

**Water course, drainage way, channel or stream:** A natural or man-made depression in which a current of surface run-off water flows following precipitation.



**ARTICLE 2**  
**PROCEDURES**

SECTION 201 - Plat Application

Day County shall follow the procedures pursuant to SDCL 11-3-1 to 11-3-26.

**ARTICLE 3**  
**DESIGN STANDARDS**

SECTION 301 - General Standards

Land within the proposed subdivision which the Planning Commission finds to be unsuitable for subdividing due to flooding or bad drainage shall not be subdivided until the objectionable features have been eliminated or until adequate safeguards against such objectionable features are provided.

SECTION 302 - Streets and Alleys

1. Streets in the subdivision normally shall connect with streets already dedicated in adjoining or adjacent subdivisions.
2. Minor residential streets should be planned as to discourage through traffic. Permitted cul-de-sacs shall not be longer than four hundred (400) feet and shall terminate with a turn-around having a curbline diameter of not less than eighty (80) feet.
3. Centerline off-sets of intersecting streets shall be avoided, but where necessary shall be not less than one hundred fifty (150) feet.
4. Blocks in residential subdivisions shall be not less than three hundred (300) feet long and not more than one thousand two hundred (1,200) feet long.
5. Half streets shall be prohibited except where essential to the reasonable development of the subdivision or where it is found to be practical to require the dedication of the other half when adjoining property is subdivided.
6. Under normal conditions streets shall be laid out so as to intersect as nearly as possible at right angles, except where topography or other conditions justify variations. More than four (4) approaches to any intersection shall be prohibited.
7. Alleys shall be provided in Commercial and Industrial districts except where other definite and assured provision is made for service access.
8. The right-of-way widths and pavements widths (back-to-back of curb) for interior streets and alleys included in any subdivision shall not be less than the minimum dimensions for each classification as follows:

<u>TYPE</u>	<u>PAVEMENT WIDTH</u>	<u>R.O.W</u>
Major Arterial Streets	66'	80'
Local Streets	46'	66'
Alleys	16'	20'

### SECTION 303 - Lots

1. Side lot lines shall be approximately at right angles to straight street lines or radial to curved street lines.
2. Every lot shall abut and have access to a public street.
3. Double frontage lots shall be avoided except where they back upon a major street.

### SECTION 304 – Easements

1. Easements on rear or side lot lines shall be provided for sanitary sewers where necessary and shall be a total of at least ten (10) feet wide on each side.
2. Where a subdivision is traversed by a water course, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way of such width as will be adequate for both water flow and maintenance operations.

**ARTICLE 4**  
**ENFORCEMENT**

SECTION 401 - Enforcement

1. No plat of any subdivision within the application of this Ordinance shall be entitled to be filed or recorded in the office of the Register of Deeds or have any validity until such plat has been prepared, approved, and acknowledged in the manner prescribed by this Ordinance.
  
2. It shall be unlawful to sell, trade, or otherwise convey any lot or parcel of land for building purposes as a part of or in conformity with any plat, plan, or replat of any subdivision within the area subject to application of this Ordinance unless said plan, plat, or replat shall have been approved as prescribed by this Ordinance and filed and recorded in the office of the Register of Deeds.

## **ARTICLE 5**

### **PENALTY**

#### SECTION 501 - Penalty

It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of this Ordinance. Violation thereof shall be a misdemeanor and may be punishable by a fine established by the County Commissioners for each and every day that any violator fails to comply with the provisions of this Ordinance.

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

Nothing herein contained shall prevent Day County from taking such other lawful action as is necessary to prevent any violation.

## **ARTICLE 6**

### **SEVERABILITY CLAUSE**

#### SECTION 601 - Severability Clause

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the regulations as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

## **ARTICLE 7**

### **LEGAL STATUS PROVISIONS**

#### **SECTION 701 - Conflict with Other Regulations**

No final plat of land within the force and effect of the Zoning Ordinance shall be approved unless it conforms to these Regulations. Whenever there is a discrepancy between standards or dimensions noted herein and those contained in the Zoning Ordinance, building code, or other official regulations or ordinances, the most restrictive shall apply.

## **APPENDIX B**



## ZONING DEFINITIONS

For the purpose of this Ordinance, certain terms and words used herein shall be interpreted as follows:

A 25-year, 24-hour Storm Event is the amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 10-12 inches in Day County.

Abandoned property - Any deteriorated, dilapidated, and/or abandoned property in unusable condition having no value other than nominal scrap or junk value.

Abutting – Abutting shall mean adjacent or contiguous property except property which separated by a publicly dedicated roadway. The term “abutting” implies a closer proximity than the term “adjacent”.

Accessory Use or Structures - A use or structure on the same lot with and of a nature customarily included or subordinate to the principle use or structure.

Actual Construction - Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation demolition or removal of an existing building has been substantially commenced, preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that such activities are carried on diligently.

Aggrieved Person - A person aggrieved is any person directly interested in the outcome of and aggrieved by a decision or action or failure to act regarding a zoning decision thus:

1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;
2. Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;
3. Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;
4. Shows that the injury is unique or different from those injuries suffered by the public in general.

Alley: A public right-of-way which is used primarily as a secondary means of access to the abutting property.

Animal Husbandry - The branch of agriculture concerned with the care and breeding of domestic animals such as cattle, hogs, sheep, and horses.

Applicant - An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

Aquifer - a geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.

Block – A track or parcel of land bounded by public streets or land, streams, railroads, unplatted abutting property.

Building - Any structure designed or intended for the support, enclosure, shelter, or protection of persons or property. The word includes the word structure and is a structure which is entirely separated from any other structure by space or by wall in which there is not communicating doors, windows, or similar openings. A principal building including covered porches and paved patios is a building which is a primary use. In any residential district, any dwelling shall be deemed to be the principal building on the lot.

Building Area - The portion of a lot remaining after required setbacks and widths have been determined.

Building Permit – A document signed by the Zoning Administrator as a condition precedent to the commencement of a use or the erection, construction, re-construction, restoration, alteration, conversion, or installation of a building, which acknowledges that such use, or building complies with the provisions of the zoning ordinance or an authorized variance therefrom.

Best Management Practices (BMP) -Schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.

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

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

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

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

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

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

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

A Chronic or Catastrophic Event - A single precipitation event, or a series of rainfall events in a short period of time, that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

Church - A building used for public religious worship.

Comprehensive Plan – A long-range plan for the improvement and development of Day County, South Dakota, as adopted by the Planning Commission and the County Commissioners.

Concentrated Animal Feeding Operation – A lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 45 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are a single animal operation if they adjoin each other, or if they use a common area, or system for disposal of manure.

Conditional Use - A conditional use is a use that would not be appropriate generally or without restrictions throughout a zoning district, but which if controlled as to number, area, location, or relations to the neighborhood, would promote the public health, safety, welfare, appearance, comfort, convenience, prosperity, and general well being. Such uses may be permitted in a zoning district as conditional uses, if specific conditions are defined by the Board of Adjustment. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such exceptions is made in these zoning regulations. The Board of Adjustment

may, after notice and hearing, revoke a conditional use in the event of a violation of any of such conditions. In addition, the conditional use permit may not be transferred during any violation.

Confinement Feeding Operation - A totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.

Confinement Feeding Operation Structure - A formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

Cul-de-sac – A street having one end connecting with a public street and being terminated as its other end by a vehicular turn-around.

Daycare - The providing of group care and supervision of children on a regular basis for part of a day as a supplement to regular parental care.

Density - Pertaining to the number of dwelling units per net acre or gross acre, as indicated for the appropriate zoning district and new subdivisions.

District – A part, zone, or geographic area of Day County within which certain zoning or development regulations apply.

Domestic Animal - Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.

Dwelling, Single Family - A residential dwelling unit other than a mobile home, designed for one family.

Dwelling, Multiple Family - A residential building designed for two or more families living independently of each other, completely.

Dwelling Unit - One room or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or long term basis, and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking, bathroom, and sleeping facilities.

Family – One or more individuals, related by blood or law, occupying a dwelling unit and living as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. In addition to persons actually related by blood or law, the following persons shall be considered related by blood or law for the purposes of this title: (1) A person residing with the family for the purpose of adoption; (2) Not more than six (6) persons under licensed or approved by a governmental agency; (3) Not more than four (4) persons nineteen

(19) years of age or older residing with the family for the purpose of receiving foster care licensed or approved by a governmental agency; and (4) any person who is living with the family at the direction of a court.

Floor Area - The sum of all gross horizontal enclosed area of the floors of the building(s) and its accessory building(s) on the same lot, excluding basement floor areas and non-enclosed portions of the structure.

Home Occupation - An occupation conducted in a dwelling unit provided that:

1. No more than two other persons, in addition to the members of the family, residing on the premises shall be engaged in such occupation.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. No more than 30 percent of the floor area is allowed for such occupation.
3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding TWO SQUARE FEET in area, nonilluminating and mounted flat against the wall of the principal building.
4. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and the need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
5. No equipment or process shall be used in such home occupation which created noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot.

Horticulture - The art or science of growing flowers, fruit, and vegetables.

Improvements – Pavements, curbs, gutters, sidewalks, water mains, sanitary sewers, storm sewers, grading street signs, planning, and other items for the welfare of the property owners and the public.

Junk Yards - The use of more than seven hundred fifty (750) square feet of open storage on any lot, portion of a lot, or tract of land for the sale, storage, keeping, or abandonment of junk, scrap metal, or salvageable materials, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

Kennel - Any premise, or portion thereof, where dogs, cats, and other household pets are maintained, boarded, bred, or cared for, in return for remuneration, or are kept for the purpose of sale.

Landscaped Area - An area that is permanently devoted and maintained for the growing of shrubbery, grass or other plant material, and may include minor areas with non-living ground cover. Said minor areas will exclude the street right-of-way.

Letter of Assurances - A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Lot - For the purpose of this Ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required.

Lot Frontage - The front of a lot shall be construed to be the portion nearest the street. For purposes of determining yard requirements on corner lots and through lots, all sides of a lot abutting to streets shall be considered frontage, and yards shall be provided as indicated under *Yards* as defined herein.

Lot Line – A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.

#### Lot Measurements

1. DEPTH - of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and their rearmost points of the side lot lines in the rear; and
2. WIDTH - of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot.

Lot of Record – A tract of land described as an integral portion of a subdivision plat which is property recorded in the Register of Deeds Office of Day County, South Dakota.

Lot Types - Any lot within the jurisdiction of this Ordinance shall be one of the following types:

1. CORNER LOT - A corner lot is defined as a lot located at the intersection of two or more streets. A lot abutting a curved street will be considered a corner lot if the interior angle of the side lot lines are less than 135 degrees.
2. INTERIOR LOT - An interior lot is defined as a lot other than a corner lot with only one frontage on a street.
3. THROUGH LOT – A through lot is defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Major renovation - Reconstruction and/or renovation/remodeling of an existing structure to the extent of 75% or more of the replacement cost of said structure. Replacement cost shall be

determined by use of the Day Swift Program which is used by the Day County Director of Equalization Office.

Man-made - A pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.

Mobile Home – A one-family dwelling unit of vehicular, portable design, built on a chassis and designed to be moved from one site to another and to be used without a permanent foundation.

Mobile home means any vehicle or similar portable structure having been constructed with wheels (whether or not such wheels have been removed) and having no foundation other than wheels, jacks or skirting, and so designed as to permit occupancy for dwelling or sleeping purposes.

Mobile Home Park – Any premises where more than two mobile homes are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public, parking space for two or more mobile homes for living and sleeping purposes, and which include buildings, structures, vehicles, or enclosure used or intended for use of storing a vehicle. All proper utilities must also be present for said living quarters.

Modular Home – A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence; transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning, and electrical systems contained within the structure.

Nonconforming Use - Any building or land lawfully occupied by a use at the time of passage of this Ordinance, which does not conform after passage of this Ordinance.

Open Concentrated Animal Feeding Operation - An un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.

Permit - Required by these regulations unless stated otherwise.

Permitted Uses – Any permissive, permitted, special, or conditional use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Plat – A map, drawing, or chart on which the subdivider’s plan of the subdivision is presented and which he submits for approval and which will be recorded in final form.

Premises - A lot or parcel of land, improved or unimproved.

Principal Building – A building in which is conducted the primary or predominant use of the lot on which it is located.

Principal Use – the primary or predominant use or building of any lot.

Public Utility Substation - An area where facilities are provided for the distribution of telephone, radio communications, water, gas, and electricity.

Range (Target/Shooting). Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. The term range includes archery ranges.

Residential Development Area - An area of land that is located in a residential zoning district or an area consisting of three (3) or more dwelling units within a 500 foot radius.

Resorts - Lodging, restaurant, bait shop, marina, or any combination of these.

Right-of-way – A strip of land separating private property from the existing road, street or alley or dedicated in public ownership.

School - An institution for educating children.

Setback/Setback Line – That line that is the required minimum distance from any lot line that establishes the area within which the principal use must be erected or placed.

Shall - The condition is an enforceable requirement of this permit.

Should - The condition is a recommendation. If violations of the permit occur, the Board of Adjustment will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

Shelterbelt - A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock, residences, recreational areas, and wildlife from wind.

Sign, Off-Site (Billboards) - A sign other than an exterior or interior on-site sign. Off-site signs are more conventionally known as billboards.

Sign, Exterior On-Site - A sign that is erected for purpose of being visible from the outside of the building or structure relating to said building or structure. Such signs will be regulated within this Ordinance.

Sign, Interior On-Site - A sign on the interior of the structure relating to subject matter to the premises which it is located, or to products, accommodations, services, or activities available on the premises. As long as any such sign is not normally visible from the exterior of the premises, it will not be regulated by this Ordinance.

Solid Waste - (reference SDCL 34A-6-1.3, 17.) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from



industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

Solid Waste Facility or Solid Waste Disposal Facility - (reference SDCL 34A-6-1.3,18.) All facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.

Solid Waste Management System - (reference SDCL 34A-6-1.3, 19.) The entire process of storage, collection, transportation, processing and disposal of solid wastes by any person.

Special Permitted Use – A use which meets performance standards or criteria specific to such use. A use identified as a special permitted use shall be approved if the applicant demonstrates all performance standards or criteria have been met. A Special Permitted Use is to be approved by the Zoning Administrator and not subject to the hearing process of a conditional use.

Street – A right-of-way, dedicated to public use, which affords a primary means of access to the abutting property.

Street Line - The lot line abutting right-of-way line.

Street-collector – Provides for traffic movement between major arterials and local streets, and direct access to abutting property.

Street-local – Provides for direct access to abutting land, and for local traffic movements.

Street-major – Provides for the through traffic movement between areas and across the city, and direct access to abutting property; subject to necessary control of entrances, exits, and curb use.

Structure - Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include, but not limited to, buildings, mobile homes, walls, signs, billboards, and poster panels.

Subdivider – A natural person, firm, co-partnership, association or corporation who submits a proposed subdivision to the Planning Commission.

Subdivision – The division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, or transfer of ownership or building development.

Travel Trailer - A vehicle built on a chassis designed to be used as a temporary dwelling for travel and/or recreational uses. The body of this vehicle has a width not exceeding eight (8) feet.

Truck or Trailer Terminal - Any lot, structure, or premises used for the parking or storage of capital equipment such as trucks, trailers, or other like equipment.

Variance - A variance is a relaxation of the terms of the Zoning Ordinance where such variance is in relation to the regulations set forth onto the property and not a result of the actions of the applicant, a literal enforcement of the Ordinance would result in the unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. This is not to be confused with a conditional use.

Water course, drainage way, channel or stream – A natural or man-made depression in which a current of surface run-off water flows following precipitation.

Waters of the State - All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Yard - A required open space other than a court, unoccupied and unobstructed by any structure or portion of a structure from thirty (30) inches above the grade of the lot upward.

Yard, Front - A yard extending between side lot lines across the front of a lot adjoining a public street. Depth of a required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding.

Yard, Side - A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street.

In the case of through lots, side yards shall extend from the rear lines of front yards required. In case of corner lots, yards remaining after full and half depth front yards have been established shall be considered side yards.

Width of required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

Yard, Rear - A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yard, but only front and side yards. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

Zoning Complaints - All zoning complaints must be in writing and signed.

Zone A - Special Flood Hazard Areas subject to inundation by the 100-year flood.

Zone B – Areas between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood.