

## SECOND REVISION OF BROWN COUNTY ORDINANCES

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**TITLE 1      GENERAL PROVISIONS**

**CHAPTER 1.01 - PENALTIES AND REPEALING CLAUSE**

**CHAPTER 1.02 - EMPLOYEE SALARY OR WAGE RATES**

**CHAPTER 1.03 - CONDUCT OF HEARINGS AND CONTESTED CASES**

**CHAPTER 1.01      PENALTIES AND REPEALING CLAUSE**

- 1.0101 Penalty in General. Except in cases where a different or additional penalty is imposed by this Ordinance or by some existing provision of law, every violation of any of the provisions of this Ordinance shall be punishable by a fine not to exceed two hundred dollars for each violation, or by imprisonment for a period not to exceed thirty days for each violation, or by both the fine and imprisonment. (SDCL 7-18A-2)
- 1.0102 Ordinances Repealed. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance and not re-enacted as part of this Ordinance, are hereby repealed; and all other ordinances not previously in this Ordinance restated, refined, or modified are similarly hereby repealed.
- 1.0103 Unconstitutionality. Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason the remainder of this Ordinance shall not be affected thereby.
- 1.0104 Publication and Effect. This Ordinance, upon its adoption, shall take effect on the twentieth day after its completed publication as provided by SDCL 7-18A-8.

**CHAPTER 1.02            EMPLOYEE SALARY OR WAGE RATES**

1.0201 Salaries and Wage Rates Set by Board of County Commissioners. Salaries and wage rates may be annually or at such other times altered, modified, changed, or increased by the Board of County Commissioners, with said change spread in the Official Minutes.

## CHAPTER 1.03 - CONDUCT OF HEARINGS AND CONTESTED CASES

1.0301 Purpose: Unless otherwise provided in these ordinances, the conduct of any contested hearing or appeal before any administrative body or board of Brown County or before the Brown County Commissioners shall be conducted in accordance with the procedures set forth in this ordinance.

1.0302 Notice: In any appeal, or hearing on a contested case, before any agency or board of Brown County the notice of appeal, or the notice in a contested case, shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes, ordinances and rules involved;
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.
5. If the matter is an appeal to the Brown County Commission there shall be included copies of any finding, conclusions or order of any agency from which the decision is being appealed together with a copy of any transcript of any record or minutes of any proceedings of such agency;
6. A statement of any action authorized by law, which may affect the parties, as a result of any decision made at the hearing, whether it be the revocation of a license, the assessment of a fine, or other effect;
7. If the proceeding is an adversary hearing, a statement that the hearing is an adversary proceeding and that a party has the right at the hearing, to be present, to be represented by a lawyer, and that these and other due process rights will be forfeited if they are not exercised at the hearing;
8. A statement, if applicable, that the decision based on the hearing may be appealed to the circuit court and the State Supreme Court as provided by law.

1.0303 Rights of Parties at Hearings on Contested Cases. Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of his interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence in his behalf.

1.0304 Rules of Evidence in Contested Cases. In contested cases:

1. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases

in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

2. A party may conduct cross-examinations required for a full and true disclosure of the facts.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

1.0305 Transcript – Minutes in Lieu of Transcript. Whenever a party requests in writing that oral proceedings be transcribed, a verbatim record of all proceedings and testimony shall be kept by the agency/board. Unless otherwise provided by law the agency/board shall not be required to transcribe the record unless the requesting party tenders and pays the reasonable cost thereof. If transcribed, a copy of the record shall be furnished to any other party to the hearing at the request and expense of such requesting party. If no verbatim record is transcribed, the agency or commission shall prepare minutes of the hearing. The minutes shall consist of a written summary of the evidence and proceedings.

1.0306 Expert Opinion Evidence. In any contested case, it shall be the responsibility of the parties to supply expert opinion and/or testimony when necessary to meet the respective burdens of proof. Experts may be appointed by the agency/board with the costs being assessed against the parties.

1.0307 Master/Hearing Examiner. The agency or board involved, whichever the case may be, may appoint a hearing examiner which shall preside over the conduct of the hearing. The board or agency involved may also appoint an expert to act as a special master who shall make recommendations and findings to the agency/board for their consideration. Neither the agency nor the board is bound by any findings or recommendations made by the Master. The costs and expenses of either or both the hearing examiner and the master may be assessed against the litigants, appellants or petitioners, whatever the particular designation may be.

1.0308 Arbitration. Any appellant, petitioner, party or litigant may, in lieu of appearing before any formal proceedings before the Brown County Board of Commissioners or its subordinate agencies and boards, submit to binding arbitration by unanimous consent of all interested parties.



1.0309 Notice to Interested Parties. Notice of any hearing shall be given to all interested parties by service upon them of a true and correct copy of the notice set forth in Section 1.0302. Proof of service shall be evidenced by certificate or affidavit establishing that due and proper service was accomplished upon all interested parties. Service by first class mail shall be permitted.

**TITLE 2      INDIGENT CARE/WELFARE GUIDELINES**

**CHAPTER 2.01      INDIGENT CARE/WELFARE GUIDELINES**

For the purpose of meeting the legal responsibility to provide assistance to the indigent persons of Brown County, from time to time, the Brown County Board of Commissioners shall, by resolution, adopt rules, regulations and appendixes necessary for the implementation of a County Welfare Program, in accordance with SDCL 28-13.

**TITLE 3      SOLID WASTE MANAGEMENT SYSTEM**

**THE SOLID WASTE MANAGEMENT ORDINANCE  
BROWN COUNTY, SOUTH DAKOTA**

**CHAPTER 3.01 - GENERAL PROVISIONS & DEFINITIONS**

**CHAPTER 3.02 - GARBAGE FROM INSIDE & OUTSIDE THE COUNTY**

**CHAPTER 3.03 - PROHIBITED WASTES & SCAVENGING**

**CHAPTER 3.04 - DISPOSAL SITES, UNIT INSPECTIONS, & LITTERING**

**CHAPTER 3.05 - AUTHORIZED DUMPING SITES**

**CHAPTER 3.06 - SALVAGEABLE MATERIAL**

**CHAPTER 3.07 - LANDFILL FEES & SPECIAL ASSESSMENTS**

**CHAPTER 3.08 - INQUIRES & COMPLAINTS**

**CHAPTER 3.09 - WASTE REDUCTION TARGETS – ITEMS OPTED OUT OF**

**CHAPTER 3.01      GENERAL PROVISIONS AND DEFINITIONS**

3.0101 Rules and Regulations Pertain To: The rules and regulations which relate and pertain to the implementation of solid waste disposition in Brown County shall effect all persons, partnerships, firms or corporations within the coverage of the rules and regulations by reason of being in Brown County, doing business in Brown County, or otherwise coming within the coverage of said regulation for any reason.

3.0102 Title: This portion of the Second Revision of the Brown County Ordinances shall be now, cited and referred to as Title 3 - Brown County Solid Waste Management.

3.0103 Intent and Purpose: This Ordinance is adopted for the purpose of:

1) Protecting natural resources and improving Brown County's environment, including minimizing surface and ground water contamination.

2) Preventing public nuisances.

3) Assuring that all individuals are informed and responsible for their actions regarding solid waste that may affect the environment and the community now and in the future.

4) Encouraging the use and reuse of recyclable materials.

5) Augmenting, supplementing and supporting state and federal regulations on solid waste issues including the regulatory management hierarchy of reduction, prevention, reuse, recycling, processing and finally landfilling.

3.0104 Definitions: The following words and phrases, when used in this Ordinance, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

3.01041 Generally: For the purposes of this Ordinance, certain terms or words used herein shall be interpreted as follows:

(a) The word "shall" is mandatory, and not discretionary; the word "may" is permissive.

(b) Words used in the present tense shall include the future; words used in the singular shall include the plural; and plural words shall include the singular.

(c) Words shall be given their common usage if not defined.

3.01042 Board: The Brown County Board of Commissioners.

3.01043 Corrugated Cardboard: Heavy paper with alternating ridges and grooves.

3.01044 County: Brown County, South Dakota

3.01045 Hazardous Waste: A solid waste and/or combination of solid wastes which because of quantity, concentration, or physical, chemical or infectious characteristics, may cause, or significantly contribute to an increase in mortality or an increase in serious, irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or to the environment when improperly treated, stored, managed, transported or disposed of, but hazardous waste does not include radioactive materials or mining wastes which are exempt pursuant to federal or state law.

3.01046 Litter: Refuse, rubbish, waste material or animal waste improperly disposed of by discarding, abandoning, allowing to accumulate, scattering or depositing outside an approved container.

3.01047 Metal Containers: Any container made from aluminum, tin or steel which contained a product for consumption.

3.01048 Paper & Paper Products: Paper items including paper napkins, towels, corrugated and other cardboard, toilet tissue, high grade office paper, newsprint, offset paper, bond paper, xerographic bond paper, memo paper and duplicator paper.

3.01049 Person: Any individual, partnership, firm, association, municipality, public or private corporation, state, tribe, nation, political subdivision, trust, estate or any other legal entity, including any employee, officer or governing or managing body thereof.

3.01050 Plastic Containers: Any formed or molded container having a neck that is smaller than the body of the container, composed predominately of plastic resin.

3.01051 Processing: The treatment of solid waste and recyclables after collection and before disposal. Processing includes, but is not limited to, packaging, volume reduction, storage, separation, exchange, physical, chemical or biological modification and transfer from one waste facility to another.

- 3.01052 Recyclable Collector: Any person who collects or receives recyclable material from another person or persons for a consideration or a fee and/or for the purpose of resale.
- 3.01053 Recycling Collection Facility: An established facility where recyclable materials are collected.
- 3.01054 Recyclable Material: Material or products that may be readily separated from the solid waste stream and may be used or reused as a substitute for raw materials or other items, including but not limited to aluminum, paper, plastic, tin, cardboard, glass and steel.
- 3.01055 Refuse: All refuse, containers or accumulation of animal or vegetable matter which attends the processing, preparation, transportation, cooking, eating, sale, or storage of meat, fish, vegetables and fruit.
- 3.01056 Rubble Materials: Solid waste resulting from the demolition of buildings, roads, and other structures. This is limited to concrete, brick, asphalt, lumber, masonry, glass, trees, rock, shingles, sheet rock, couches, mattresses and carpet or such other materials approved by the Landfill Manager or his designee.
- 3.01057 Rural Container Sites: Collection points throughout Brown County established for Brown County residents to dispose of Residential household garbage and other recyclable material.
- 3.01058 Salvaging: The controlled removal of solid waste materials from a solid waste disposal facility or collection point for reuse.
- 3.01059 Scavenging: Uncontrolled removal of solid waste materials from a solid waste disposal facility or collection point.
- 3.01060 Solid Waste: Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities.
- 3.01061 Special Waste: Pesticide or herbicide containers, Petroleum contaminated soils, Asbestos, Dead animals, Appliances, Ash, Sludge and other waste requiring special handling under any state, federal, or county ordinance.
- 3.01062 Solid Waste Management Authority: The County is hereby authorized to make all necessary and reasonable rules and regulations covering refuse and garbage accumulations, refuse storage containers, the collection and transportation of refuse, refuse collection vehicles, for the effective and reasonable administration of the Title, and shall similarly establish by resolution a solid waste fee schedule for the purpose of funding the obligations and responsibilities of the County.
- 3.01063 Yard Waste: Leaves, grass clippings and other similar waste vegetative material.

**CHAPTER 3.02 REFUSE FROM INSIDE AND OUTSIDE THE COUNTY**

3.0201 Refuse from Outside the County: Every person, firm, or corporation engaged in refuse operations, who transports refuse from outside the County, shall first obtain permission from the Board of Commissioners of Brown County and shall not be entitled to do so either on an isolated basis or regular basis without having a contractual arrangement with the County duly executed in writing by the Board, provided, however, that casual users may bring refuse from outside of the County provided that such refuse is brought to the Landfill site owned and operated by the County and shall pay for such refuse disposition at a tonnage rate that shall be established by resolution at the time of the establishment of the solid waste fee schedule.

3.0202 Refusal to Admit Certain Vehicles: The Landfill Manager or his designee shall have the authority to refuse the admittance or the unloading at the sanitary landfill of the following vehicles:

(1) Those so loaded or uncovered so that material may fall or be blown off the vehicle while in transit.

(2) Those not having a contract as previously required in this title; provided, however, that refuse may be brought to the landfill site for disposition at a tonnage basis cost.

(3) Those containing special wastes not having received prior approval of the landfill manager or his designee or not having provided the landfill a minimum of 24 hours notice of intent to deliver said special wastes.

3.0203 Transporting Refuse to Landfill or Rural Container Sites:

**ALL VEHICLES OR TRAILERS SHALL BE TARPED AND SECURE:**

Vehicles used for transporting rubble, compost, tree limbs (less than eight inches in diameter), household garbage, and other waste material shall be transported in an enclosed, covered vehicle having appropriate side and rear gates to prevent its load from dropping, sifting, leaking, or otherwise escaping from the vehicle.

3.0204 Untarped or Nonsecured Loads: Applicable fees will be set by resolution at the time landfill charges are set.

Tarping Exceptions: Large rocks, concrete, large trees (over eight inches in diameter and less than six feet in length), appliances and other heavy material determined by the Landfill Manager or his designee not to blow from said vehicle.

Items in the exception category still require appropriate end and side gates and additional restraints (ropes, chains, straps, etc.) as necessary.

### CHAPTER 3.03 PROHIBITED WASTES AND PROHIBITED SCAVENGING

The County landfill will not accept certain wastes that have been identified by the State or Federal Government as not being appropriate for disposal in a municipal landfill.

(A) The County landfill shall not accept the following materials.

- (1) Hazardous Wastes
- (2) Liquid Wastes
- (3) Lead acid batteries
- (4) Motor oil
- (5) White Good Appliances containing freon
- (6)\* All office and computer paper, Effective July 1, 1996
- (7)\* All printed paper products and corrugated paper or other cardboard paper, Effective January 1, 1997
- (8)\* All containers made from glass, plastic, aluminum or steel, Effective July 1, 1997

\* Refer to section 3.09 for materials that have been opted out of. If materials have been opted out of they can be disposed of at the County landfill or if there are other recycling alternatives available these materials may go through this system.

(B) The County Landfill shall accept the following waste material for alternative disposal provided they are separated and handled according to Federal, State, and County rules and regulations.

- (1) Tires
- (2) White Good Appliances (Certified freon removal required)
- (3) Yard Waste
- (4) Trees
- (5) Asbestos (Notification required)
- (6) Rubble Material
- (7) Scrap Metals
- (8) Petroleum Contaminated Soils (Notification required)
- (9) Other special waste material as so designated by the landfill manager or his designee.

(C) The County operated rural container sites shall not accept the following waste material unless alternative containers are available for waste materials not accepted.

- (1) Tires
- (2) Major Appliances
- (3) \* Yard Waste
- (4) Trees
- (5) Asbestos
- (6) Rubble Material
- (7) Dead Animals
- (8) Hazardous Waste
- (9) Liquid Waste
- (10) Lead Acid Batteries
- (11) Motor Oil

- (12)\*\* All office & computer paper (Effective July 1, 1996)
- (13)\*\* All printed paper products & corrugated cardboard (Effective January 1, 1997)
- (14)\*\* All containers made from glass, plastic, aluminum or steel (Effective July 1, 1997)
- (15) Other special waste material as so designated by the landfill manager or his designee.

\* Alternative containers are available at designated sites to recycle yard waste.

\*\* Refer to section 3.09 for materials opted out of. If materials have been opted out of they can be disposed of at the rural container sites or if other recycling alternatives are available these materials may go through this system.

Any person bringing material for deposit at the Landfill, upon entry onto the Landfill premises, authorizes the landfill manager or his designee to inspect the material before deposit.

3.0301 Scavenging Prohibited: Scavenging is prohibited at all rural container sites and at the sanitary landfill.



## **CHAPTER 3.04            DISPOSAL SITES, UNIT INSPECTIONS AND LITTERING**

- 3.0401 Refuse Disposal Sites: Hours at the waste disposal site or sites that are open to the public shall be those that are posted at such sites or as may be published in one of the official County newspapers. No person other than an authorized waste disposal site operator or authorized government employee shall trespass or be on a waste disposal site area during the hours of closure as designated on signs posted at the site. NO DUMPING at the site shall be permitted without obtaining written permission from the Landfill Manager or one of his designated agents.
- 3.0402 Unit Inspection Required: All hauling units using the Brown County Sanitary Landfill under this chapter shall be subject to random inspections to be performed by the Brown County Sanitary Landfill Manager or his designee. Random inspections include inspections of vehicles, equipment, and contents delivered to the landfill for deposit.
- 3.0403 Littering: No person, persons, firm, partnership, or corporation shall dispose of any of the materials as set forth in Chapter 3.01 anywhere in the County except at the landfill or at the Rural Container disposal sites. Anyone littering at the collection site or any other sites in the County shall be subject to the penalty or penalties provided.

**CHAPTER 3.05            AUTHORIZED DUMPING SITES**

3.0501 Dumping where Waste Disposal Operator Designates: No person, firm, or corporation, or their representatives, shall place or dump any waste at a place within the waste disposal site other than where the waste disposal operator shall so designate.

Waste Separation Required - Landfill: Waste must be separated according to material type and disposed of in the correct designated area.

## **CHAPTER 3.06            SALVAGEABLE MATERIAL**

3.0601 Disposition of Salvageable Material: The Board shall be authorized in accordance with law to call for bids for salvageable, saleable, or recyclable material and shall be permitted and allowed to enter into contracts on fixed basis with the successful bidder for sale and disposition of salvageable, saleable, and recyclable material, and shall be entitled to make subsequent re-sales under said contract without re-bidding, provided, however, that such contract as entered into with successful bidder or bidders shall be subject to a termination clause by either party on sixty (60) days written notice. The bidding procedure as herein provided shall conform to the standard bidding procedure as undertaken by the County in accordance with all other of its standard and normal bidding procedures.

**CHAPTER 3.07 LANDFILL FEES AND SPECIAL ASSESSMENTS**

3.0701 Fees: The Board of County Commissioners shall set all fees associated with collection & disposal of solid waste.

3.07010 Landfill Charges: The Charges for the use of the landfill shall be established by resolution of the Brown County Board of Commissioners.

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3.07011 Solid Waste Special Assessment: For rural container site maintenance and transportation of waste material deposited in the rural container sites to an approved facility.

The Board of County Commissioners shall prior to the second Tuesday in September of each year set the fee for the following year. Notice of any change in fee, together with dates for equalization, shall be published in all official designated county legal publications during the last week of September following the establishment of the fee.

The Board of County Commissioners shall sit in equalization on said fee from October 15 to November 1 of the year prior to the year when such fee is due.

Said fee shall be billed with the tax notices or such other billing procedure as may be established by the board of County Commission. Omitted fees may be billed up to but no later than November 1 in the year the fee is due.

In the event any fee becomes delinquent, it shall be certified to the County Treasurer and shall be collected by the County Treasurer including penalty established by the same formula as prescribed for delinquent real estate tax (SDCL 10-21-23) in the following year as a condition precedent to payment of the real property tax on the lot or parcel of land with respect to which the fee was levied.

3.0702 General Penalty Clause: Any person violating any provision of this ordinance shall be assessed a civil assessment to be set by the Brown County Commission, Any person violating a provision of this ordinance shall also be guilty of a Class 2 Misdemeanor and shall be punished pursuant to SDCL 7-18A-2. In addition, a person that violates any provision of this ordinance may be subject to any civil penalty pursuant to SDCL 34A-1, 34A-2, 34A-6, 34A-11 or 34A-12.

Any notice of assessment posed under this ordinance or applicable resolution shall be mailed to the last known address of the owner registered to the vehicle discovered at the location where the infraction or violation is determined to have occurred. Any assessment not paid within the time frame for payment may be enforced as a violation of this county ordinance, which is enforceable also as a criminal offense. Cumulative violations within the same day may be assessed a higher administrative fee, with the total of any infractions within a single day not to exceed an amount set by the Brown County Commission.

**CHAPTER 3.08            INQUIRIES AND COMPLAINTS**

3.0801 Office for Inquiries and Complaints: All persons covered shall make an inquiry deemed necessary or file such complaint as they may have with the Office of the County Auditor of Brown County, South Dakota, during the hours of 8:00 A.M. to 5:00 P.M. of each day, except Saturdays, Sundays, and Holidays. All persons feeling aggrieved shall be entitled to a hearing before said Board.

**CHAPTER 3.09            WASTE REDUCTION TARGET - ITEMS OPTED OUT OF**

3.0901 All Printed paper products & corrugated cardboard. Brown County having reviewed and documented that the cost of recycling of all printed paper products and corrugated cardboard will cost more than the true and total cost of recycling of unsubsidized landfilling of all printed paper products and corrugated cardboard and having followed the designated opt out procedure will be opting out of the waste reduction target scheduled to go into effect January 1, 1997. The County of Brown will review its determination for this specific waste reduction target at least once every two years starting with the effective date of this ordinance.

3.0902 All containers made of glass and all containers made of plastic, except #1 & #2 plastics. Brown County having reviewed and documented that the cost of recycling of all containers made of glass and all containers made of plastic, except #1 and #2 plastics will cost more than the true and total cost of recycling of unsubsidized landfilling of all containers made of glass and all containers made of plastic, except #1 and #2 plastics and having followed the designated opt out procedure will be opting out of the waste reduction target scheduled to go into effect July 1, 1997. The County of Brown will review its determination for this specific waste reduction target at least once every two years starting with the effective date of June 25, 1997.

## **TITLE 4      ZONING**

- CHAPTER 4.01 - DEFINITIONS
- CHAPTER 4.02 - JURISDICTION
- CHAPTER 4.03 - OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION
- CHAPTER 4.04 - APPLICATION OF DISTRICT REGULATIONS
- CHAPTER 4.05 - ESTABLISHMENT OF DISTRICTS
- CHAPTER 4.06 - AGRICULTURE PRESERVATION DISTRICT (AG-P)
- CHAPTER 4.07 - MINI-AG DISTRICT (M-AG)
- CHAPTER 4.08 - RESIDENTIAL DISTRICT (R-1)
- CHAPTER 4.09 - PLANNED MOBILE HOME PARK DISTRICT (R-2)
- CHAPTER 4.10 - LAKE FRONT RESIDENTIAL (R-3)
- CHAPTER 4.11 - RURAL-URBAN (RU)
- CHAPTER 4.12 - PLANNED DEVELOPMENT DISTRICT (P-1)
- CHAPTER 4.13 - COMMERCIAL DISTRICT (C)
- CHAPTER 4.14 - HIGHWAY COMMERCIAL DISTRICT (HC)
- CHAPTER 4.15 - LIGHT INDUSTRIAL DISTRICT (L-I)
- CHAPTER 4.16 - HEAVY INDUSTRIAL DISTRICT (H-I)
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- CHAPTER 4.20 - SUPPLEMENTARY DISTRICT REGULATIONS
- CHAPTER 4.21 - NONCONFORMING LOTS, NONCONFORMING USES OF LAND,  
NONCONFORMING STRUCTURES, NONCONFORMING USES OF STRUCTURES AND  
PREMISES, AND NONCONFORMING CHARACTERISTICS OF USES.
- CHAPTER 4.22 - ADMINISTRATIVE PROCEDURE AND ENFORCEMENT -- BUILDING  
PERMITS AND APPROACHES
- CHAPTER 4.23 - COUNTY PLANNING COMMISSION/ZONING BOARD OF ADJUSTMENT
- CHAPTER 4.24 - BOARD OF ADJUSTMENT -- POWERS AND DUTIES
- CHAPTER 4.25 - APPEALS
- CHAPTER 4.26 - SCHEDULE OF FEES, CHARGES, AND EXPENSES
- CHAPTER 4.27 - AMENDMENT
- CHAPTER 4.28 - VIOLATIONS, COMPLAINTS, PENALTIES AND REMEDIES
- CHAPTER 4.29 - LEGAL STATUS PROVISIONS
- CHAPTER 4.30 - PERFORMANCE STANDARDS FOR L-I DISTRICT
- CHAPTER 4.31 - PERFORMANCE STANDARDS FOR H-I DISTRICT
- CHAPTER 4.32 - CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS
- CHAPTER 4.33 - RURAL ADDRESSING
- CHAPTER 4.34 – MUNICIPAL, STATE AND COUNTY USE DISTRICT (M)
- CHAPTER 4.35 – COMMUNICATION TOWERS AND FACILITIES
- CHAPTER 4.36 – WIND ENERGY CONSERVATION SYSTEMS

## CHAPTER 4.01           DEFINITIONS

4.0101 General. For the purpose of this Title, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall is mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied.

4.0102 For the purpose of this Title, certain terms or words used herein shall be interpreted as follows:

Abandoned or Existing Farm Site. Must be a site that includes at least three of the following four criteria:

1. Contains an existing shelterbelt on at least two (2) sides;
2. Contains a usable well or rural water system hook-up;
3. Presently contains outbuildings, and;
4. Has an existing approach onto a public road or highway.

Sites that meet the above described criteria may be surveyed and platted and thereby split into two separate lots, plots, or tracts in recognition of lending institution mortgage requirements. This provision is exclusively intended to facilitate single family occupation of abandoned or existing farm sites and is not intended to allow multiple family subdivisions in zones not allowing such. Sites so split shall be considered a single site with regard to other provisions and requirements of this Title. Further division into more than two (2) lots, plots, or tracts is prohibited.

Accessory Use or Structure. A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

Acre(s), Gross the Total Acreage of: (1) a subdivision; (2) a contiguous zoning district; or (3) a planned development. Computations shall include all public right-of-ways except: (1) boundary streets of which only one-half of the right-of-way shall be used in any computation; and (2) publicly owned land used for community facilities such as parks, schools, libraries, etc.

Acre(s), Net. Same as Gross Acres but, excluding all public right-of-ways and publicly owned land utilized for community facilities.

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

Antenna. Any device that radiates or captures electromagnetic wave signals, including digital voice and data signals, analog voice and data signals, video signals or microwave signals, and is mounted on a structure that allows freedom from obstruction for the radiation and capture of the electromagnetic signals.



Antenna Support Structure. Any existing structure that supports communication facilities, such as but not restricted to, telecommunications and broadcast towers, buildings, clock towers, steeples and light poles.

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

Aquifer. A zone or group of strata that can store and transmit water in sufficient quantities for specific use.

Area of Shallow Flooding. A designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard. The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

Automobile, Abandoned. Any motor vehicle, or portion thereof, which when operated on a public roadway is required to be registered by the State of South Dakota, whose registration has been expired for a period of one (1) month or more. Notwithstanding the foregoing definition, a motor vehicle or portion thereof stored within a permitted building or structure shall not be considered to be an abandoned automobile.

Automobile Sales. The use of any building, land area, or their premises for the display and sale of new or used automobiles, trucks or vans, trailers, or recreational vehicles and including any warranty repair work and other repair service conducted as an accessory use.

Automobile Service Station. Building and premises where gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail, and where, in addition, the following services may be rendered and sales made, and no other:

1. Sale and servicing of spark plugs, batteries, and distributors and distributor parts;
2. Tire servicing and repair, but not recapping or regrooving;
3. Replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearing, mirrors, and the like;
4. Radiator cleaning and flushing;
5. Washing and polishing, sale of automotive washing and polishing and polishing materials; Greasing and lubrication;
6. Greasing and lubrication;
7. Providing and repairing fuel pumps, oil pumps, and lines;
8. Minor servicing and repair of carburetors;
9. Adjusting and repairing brakes;
10. Emergency wiring repairs;
11. Minor motor adjustments not involving removal of the head or crankcase or racing the motor;

12. Sales of cold drinks, packaged foods, tobacco, and similar convenience goods for automobile service station customers, as accessory and incidental to principal operation;
13. Provision of road maps and other informational material to customers; and
14. Provision of restroom facilities.

Uses permissible at an automobile service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in automobile service stations. An automobile service station is not a repair garage nor a body shop.

Base Flood. The flood having a one (1) percent chance of being equaled or exceeded in any given year.

Basement. Any area of the building having its floor grade (below ground level) on all sides.

Bed and Breakfast Establishment. A private single-family residence which is used to provide limited meals and temporary accommodations for a charge to the public.

Billboard. See Sign, Off-Site.

Boarding House. Any dwelling which provides sleeping and/or cooking and/or eating facilities for more than three (3) units but less than ten (10) unrelated individuals. A rooming house or furnished rooming house shall be deemed to be a boarding house. Sleeping rooms shall not be used for more than two (2) persons per room. Such dwellings shall not be open to transients.

Building Area. The portion of a lot remaining after required yards have been provided.

Building. The word "building" includes the word structure and is a structure, which is entirely separate from any other structure by space or by walls in which there is no communicating doors or windows or similar openings. A principal building including covered porches and paved patios, is a building in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

Collocation. The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Commission. The Brown County Planning and Zoning Commission.

Concentrated Animal Feeding Operation. Refer to Chapter 4.32 for complete set of regulations and definitions of terms pertinent to Concentrated Animal Feeding Operations.

Contamination, Air. A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining, or milling operation that increases ambient air radiation levels by 50 mrems from the background levels established prior to the commencement of such activity, measured at the perimeter of the mining or milling site or at the top of an exploration hole.

Contamination, Water. A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining, or milling operation that exceeds the maximum contaminate levels established by the Federal Safe Drinking Water Act and regulations promulgated thereunder.

County Board. The Brown County Board of Commissioners.

Critical Feature. An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Density. Pertaining to the number of dwelling units per net acre or gross acre, as indicated for the appropriate zoning district. Residential District density shall not be exceeded for new subdivisions nor exceeded for resubdivision of existing platted land.

Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation, or drilling operations or storage of equipment or materials.

Drive-in Restaurants or Refreshment Stands. Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.

Dwelling, Mobile Home. See Mobile Home.

Dwelling, Multiple Family. A residential dwelling designed for or occupied by two (2) or more families living independently of each other and doing own cooking in said dwelling. The number of families in residence not to exceed the number of dwelling units provided.

Dwelling, Single Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family.

Efficiency Unit. A dwelling unit having only one (1) room exclusive of bathroom, water closet compartments, kitchen, laundry, pantry, foyer, communicating corridor, closets, or any dining alcove. An efficiency unit shall be permitted in a multi-family dwelling.

Elevated Building. A non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3 (e) (5) of the National Flood Insurance Program regulations.

Employee(s). In regard to off-street parking requirements, employees mean all who work in the enterprise including owners.

Existing Construction. For the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

Existing Manufactured Home Park or Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an Existing Manufactured Home Park or Subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Exploration. The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes, digging pits or cuts, and other works for the purpose of extracting samples prior to commencement of development of extraction operations and the building of roads, access ways, and other facilities related to such work. Any and all shafts, tunnels, or holes shall not exceed 18 inches in diameter unless the conditional use for exploration provides for a larger diameter. The term does not include those activities which cause no, or very little surface disturbance, such as; airborne surveys and photographs; use of instruments or devices which are hand carried or otherwise transported over the surface to make magnetic, radioactive, or tests and measurements; boundary or claim surveying, location work, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

Family. An individual or two or more persons, related by blood or marriage, living together as a single-housekeeping unit in a dwelling unit, in each instance with no more than two non-related people being housed in the same dwelling unit, but provided further that domestic servants employed on the premises may be housed on the premises without being counted as a family or families. The word "family" shall not include groups occupying nursing homes, group houses, fraternity houses, sorority houses, dormitories, barracks; however, a portion of a building in this category may consist of one or more dwelling units occupied by a family or families.

Feedlot, Commercial. A commercial feedlot is a place where the principal business is the feeding of livestock and such feeding is not done in conjunction with the production of crops on a farm of which the feedlot is a part.

Farm. A tract of land together with fields, buildings, farm implements, animals, and personnel for the intended purpose of producing crops of which livestock feeding may be a part of.

Farm Unit. All buildings and structures needed in agricultural operation, including dwellings for owners, operators, farm laborers employed on the farm and other family members.

Flood Hazard-Special Area. The land in the Floodplain subject to a one percent or greater chance of flooding in any given year.

Flood Insurance Rate Map. The Official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study. The official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary - Floodway Map, and the water surface elevation of the base flood.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain or Flood-Prone Area. Any land area susceptible to being inundated by water from any source (See definition of flooding).

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

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

Flood Proofing. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Flood Protection System. Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without accumulatively increasing the water surface.

Floor Area. The sum of all gross horizontal area of the several floors of a building and its accessory buildings on the same lot excluding basement floor areas and non-enclosed portions of the structure. All dimensions shall be measured between exterior faces of walls.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or personal enjoyment.

Groundwater. Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.

Habitable Floor. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor".

High Voltage Transmission Line. A conductor of electric energy and associated facilities.

High Watermark. Point where permanent vegetation begins.

Highest Adjacent Grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure. Any structure that is:

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

Home Occupation. An occupation conducted on the premises provided that:

1. The use of the dwelling unit for home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and not more than thirty (30) percent of the floor area of the dwelling shall be used in the conduct of the home occupation.
2. Any 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.
3. No equipment or process shall be used in such home occupation, which creates noise, vibration, glare, fumes, odor, or electrical interference detectable to the normal senses, if the occupation is conducted in a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.

4. No more than one other person, in addition to members of the family residing on the premises, shall be engaged in such occupation.

5. 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 one (1) square foot in area, non-illuminated and mounted flat against the wall of the principal building.

Hydrologic Balance. The relationship between the quality and quantity of inflow to and outflow from the storage in hydrologic units, such as drainage base and aquifer; soil zone lake or reservoir it encompasses; and the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

Hydrologic Regime. The entire state of water movement in a given area which is a function of the climate and includes the entire water cycle for the drainage area.

Improved Road. Roads with at least a gravel base and utilized regularly by more than one (1) household.

Junkyards. A junkyard is a place where unrecyclable waste having no economic value, or waste which is recyclable but has no chance of being recycled is deposited. (See also Salvage Yard.)

Kennels. Any lot, structure, or premise where four (4) or more dogs and/or ten (10) or more cats four (4) months of age are kept.

Large Wind Energy Conservation System or LWECS. All WECS facilities excluding Small Wind Energy Conservation Systems.

Lattice Tower. A support structure constructed of vertical metal struts and cross braces forming a triangular or square structure, which often tapers from the foundation to the top.

Levee . A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System. A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Loading Space, Off-Street. Adequate space, logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used such as trucks, tractors, trailers, etc., and accessible to such vehicles at all times. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

Lot. A parcel of land occupied or intended for occupancy by a use permitted in Title 4, including one main building together with its accessory buildings and open spaces and parking spaces required by this Title, and having its principal frontage upon a street.

Lot Depth. The mean horizontal distance between the front lot line and rear lot line of a zoning lot. In the case of a corner lot, the lot depth is the greater of the mean horizontal distances between the front lot lines and respective side lot opposite each.

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

Lot of Record. A lot or parcel of land that has access to a street, the deed of which has been recorded in the Office of the County Register of Deeds prior to the adoption of these revised Ordinances and may be used for the uses in the district in which it is located except as hereinafter specified.

Lot Types. Any lot within the jurisdiction of Title 4 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 on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (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.

Lot Width. The mean horizontal distance between side lot lines measured at right angles to the lot depth.

Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home. Includes the term mobile home and means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. This term also includes park or travel trailers and other similar vehicles when on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Millage. The processing or enhancing of a mineral.



Mine Dewatering Discharge. Water that has been discharged from active or abandoned mines in areas affected by mineral exploration, mining, and milling.

Mineral. An inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is usable in its natural form as a metal, a metallic compound, a chemical, an emergency source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel, and quarry rock.

Mineral Extraction. The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

Mobile Home. Any occupied vehicle used or so considered as to permit it being used as a conveyance on the public streets or highways and duly licensed as such, and shall include self-propelled or non-self-propelled vehicles so designed, constructed, reconstructed or added to by means of an enclosed addition or room in such a manner as will permit the occupancy thereof as a dwelling or sleeping place for one or more persons. Nothing in this definition shall be construed so as to include prefabricated, precut residences or those manufactured in sections or parts away from the site and transported thereto for erection, provided that when completely erected, said prefabricated, precut, or manufactured residences shall be on a permanent foundation and in all respects comply with the Uniform Building Code, 1967 Edition and Amendments thereto, recommended by the International Conference of Building Officials.

Mobile Home Park. Any premises where two or more 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 or sleeping purposes, and which include any buildings, structures, vehicles or enclosures used or intended wholly or in part, for the accommodation of automobile transients.

Monopole. A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

Mrem. One thousandth of a REM.

New Construction. Structures for which the "start of construction" commenced on or after the effective date of this ordinance.

New Construction for FEMA purposes. For the purpose of determining insurance rates, structures for which the "start of construction" commence on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision for FEMA purposes. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Nonconforming Use. Any building or land lawfully occupied by use at the time of passage of Title 4, which does not conform after passage of this Title.

Parking Space, Off-Street. For the purposes of Title 4, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three (3) or more automobiles shall have individual spaces marked, and shall be so designated, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, so that any automobile may be parked and un-parked without moving another.

For purposes of rough computation, off-street parking space and necessary access and maneuvering room may be estimated at three hundred (300) square feet, but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinances and regulations of the county.

Performance Standards. It is a criterion established for the purposes of:

1. Assigning proposed industrial uses to proper districts; and
2. Making judgments in the control of noise, odor, smoke, toxic matter, vibration, fire and explosive hazards, or glare generated by, or inherent in, uses of land or buildings.

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.

Planned Development. A means of developing or redeveloping existing larger parcels or combinations of smaller parcels of land within the jurisdiction of this Title, by allowing more flexibility in design to produce a more aesthetic and/or efficient environment, and which through safeguards incorporated elsewhere in this Title will assure that any such planned development will be in harmony and compatible with the intent of this Title and the appropriate zoning district of this Title.

More specifically, a planned development is land, which is under:

1. Single ownership; or
2. Unified control, and wherein such land is to be utilized for ultimate use by:
  - a. Single ownership, or
  - b. Unified control, or
  - c. Separate ownership and unified control, or
  - d. Separate ownership without unified control, and whereon such land is designed for use as one building or a group of buildings and whereon such land there may or may not be provisions for multiple purpose uses. Standards and requirements within the various zoning districts permitting a planned development are indicated in Chapter 4.12 of this Title.

Any such planned development shall be compatible to the Comprehensive Plan for Brown County, South Dakota. Provided further, if the proposed development is only for a portion of the contiguous landholdings of the applicant(s), then a simple, schematic plan showing anticipated uses, densities, shall be submitted with application for any planned development.

Public Utility Substation. An area where facilities are provided for the distribution of telephone, radio, communications, water, gas, and electricity. These facilities shall be permitted as a conditional use in the various zoning districts subject to conditions, which will assure their harmony, especially aesthetically with the nature of the respective district.

Recharge Capacity. The ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Recreational Vehicles (RV). A vehicular which is:

- 1 Built on a single chassis;
- 2 400 square feet or less when measured at the largest horizontal projections;
- 3 Designed to be self-propelled or permanently towable by a light duty truck; and
- 4 Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REM (Roentgen Equivalent In Man). A measurement of the biological effects resulting from ionizing radiant energy where Roentgen is the amount of radiation leading to the absorption of 88 ergs of energy per gram of air.

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.

Salvage 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 for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof. (See also Junkyards)

Shelterbelts/Fieldbelts. A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock, residences, recreation areas, and wildlife. Shade and ornamental trees are not considered as shelterbelts.

Shooting/Hunting Preserve. Any acreage, either privately owned or leased, on which hatchery raised game is released for the purpose of hunting for a fee, over an extended season.

Sign. Any device designed to inform or attract the attention of persons not on the premises on which the sign is located, provided, however, that the following shall not be included in the application of the regulations herein:

1. Signs not exceeding one (1) square foot in area bearing only property numbers, post office box numbers, names of occupants of premises, or other identification of premises not having commercial connotations;
2. Flags and insignias of any government except when displayed in connection with commercial promotion;

3. Legal notices, identification, informational, or directional signs erected or required by governmental bodies;
4. Integral decorative or architectural feature of buildings, except letters, trademarks, moving parts, or moving lights; and
5. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

Sign, Off-site. A sign other than an exterior or interior on-site sign. Off-site signs are more conventionally known as billboards regardless of size.

Sign, On-site, Exterior. An exterior sign relating to its subject to the premises on which it is located, or to products, accommodations, services, or activities on the premises. Exterior on-site signs do not include signs erected by outdoor advertising industry in the conduct of the outdoor advertising business, such as billboards, which are off-site signs.

Sign, On-site, Interior. A sign on the interior of a structure relating its subject matter to the premises on which it is located, or to products, accommodations, services or activities on the premises. As long as any such sign is not normally viewable from the exterior of the premises, it shall not be regulated by this Title.

Small Wind Energy Conservation System or SWECS. A WECS facility with a single tower height of less than seventy-five (75) feet used primarily for on-site consumption of power.

Special Exception/Conditional Use. A special exception is a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to the 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 district as special exceptions, if specific provisions for such special exception is made in this Title.

Start of Construction. Includes substantial improvement, and means the date the Building Permit was issued, providing the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction for a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms.

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

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 buildings, mobile or manufactured homes, walls, gas or liquid storage tank, (that is principally above ground) signs, fences and billboards.

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring

the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
2. Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

System Height. The height above grade of the tallest point of the WECS, including the rotor radius.

Telecommunication. The technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

Tower Height. The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Truck or Equipment Terminal. Any lot, structure or premises used for the parking or storage of capital equipment such as trucks, trailers, or other like equipment, over 3/4 ton capacity.

Turbine. The parts of the WECS including the blades, generator and tail.

Utility Substation. See Public Utility Substation.

Variance. A variance is a relaxation of the terms of Title 4 where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Title would result in unnecessary and undue hardship. As used in this Title, 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 nonconformity in the zoning district. This is NOT to be confused with a conditional use.

Violation. The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this Title is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

Water Table. The upper surface of a zone of saturation where the body of groundwater is not confined by an overlying impermeable zone.

Wildlife Propagation. Means the production of offspring that qualify as wildlife from captive live wildlife parents.

Wind Energy Conservation System or WECS. A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

1. Tower or multiple towers,
2. Generator(s),
3. Blades,
4. Power collection systems, and
5. Electric interconnection systems or portion thereof dedicated to the WECS.

Wireless Telecommunications Antenna. A device, dish or array used to transmit or receive telecommunication signals.

Wireless Telecommunications Equipment Shelter. The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.

Wireless Telecommunications Facility. A facility consisting of the equipment and structures involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

Wireless Telecommunications Tower. A structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.

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, provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

Yard, Front. A yard extending between side lot lines across the front of a lot adjoining a public street. 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 height of thirty (30) inches to ten (10) feet.

In the case of through lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the administrative official 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.

In the case of corner lots which do not have reversed frontage, a front yard of the required depth shall be provided in accordance with the prevailing yard pattern and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of reversed frontage corner lots, a front yard of required depth shall be provided on either frontage, and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of corner lots with more than two (2) frontages, the administrative official shall determine the front yard requirements, subject to the following limitations:

1. At least one front yard shall be provided having the full depth required generally in the district; and
2. No other front yard on such lot shall have less than half the full depth required generally.

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.

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 of 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 the case of corner lots, yards remaining after full and half depth front yards have been established shall be considered side yards.

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

Yard, Special. A yard behind any required yard adjacent to a public street, required to perform the same functions as a side or rear yard, but adjacent to a lot line so placed to perform like functions as a side yard, but next to a lot line so located or oriented that neither the term side yard nor the term rear yard clearly applies. In such cases, the administrative official shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the district, determining which shall apply by the relation of the portion of the lot on which the yard is to be

placed to the adjoining lot(s), with due consideration to the orientation and placement of structures and buildable areas thereon.



## CHAPTER 4.02 JURISDICTION

4.0201 Jurisdiction. The provisions of Title 4 shall apply within the unincorporated area of Brown County, South Dakota, (excluding areas of joint jurisdiction being: three (3) miles of Aberdeen, one (1) mile of Groton, one (1) mile of Hecla, one-half (1/2) mile of Frederick, and one and one-half (1 1/2) miles of Warner City limits; and also including the incorporated communities of Claremont, Columbia and Stratford, as established on the map entitled "The Official Zoning Map of Brown County, South Dakota".

4.202 Provisions of Title 4 Declared to be Minimum Requirements. In their interpretation and application, the provisions of this Title shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. This Title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Whenever the provisions require a greater width or size or yards, courts, or other spaces, or require a lower height of buildings or less number of stories or require a greater percentage of lot to be left unoccupied, or impose other higher standards that are required, in any other ordinance, the provisions of this Title shall govern.

Wherever the provisions of any other ordinance require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the provisions of this Title, the provisions of such ordinance shall govern.

## CHAPTER 4.03 OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

4.0301 General. The County is hereby divided into zones, or districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereof, is hereby adopted by reference and declared to be a part of this Title. The Official Zoning Map shall be identified by the signature of the Chairman 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 is the Official Zoning Map referred to in Chapter 4.03 enacted by Revised Ordinance No. 2 of Brown County, South Dakota," together with date of the adoption of this revised Ordinance.

4.0302 Zoning Map Changes. If, in accordance with the provisions of Title 4, changes are made in the 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 with an entry on the Official Zoning Map as follows: "On /Date/, by official action of the Board of County Commissioners, the following change/changes were made in the Official Zoning Map: /brief description of nature of change/," which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Auditor. No amendment to Title 4 which involves matters portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said Map.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Title.

Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Chapter 4.28.

Regardless of the existence of purported copies of the Official Zoning Map which may, from time to time, be made or published, the Official Zoning Map, which shall be located in the Office of the County Auditor, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

4.0303 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 resolution, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map, or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Chairman 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 zoning map being replaced/ as part of Ordinance No. 1, Second Revision of Brown County Ordinances, Brown 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.

4.0304 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 centerlines of streets, highways, or alleys, shall be construed to follow such centerlines;
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 city 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 shorelines, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines;
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 variance with those shown of the Official Zoning Map, or in other circumstances not covered by subsections 1 through 6 above, the County Planning Commission and/or Board of Adjustment shall interpret the district boundaries;
8. Where a district boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, the County Planning Commission may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

## CHAPTER 4.04

## APPLICATION OF DISTRICT REGULATIONS

- 4.0401 General. The regulations set forth within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided.
- 4.0402 Zoning Affects Every Building and Use. 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.
- 4.0403 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 this Title.
- 4.0404 Open Space, Off-Street Parking, and Loading Space. No part of a yard, other open space, off-street parking, or loading space required about or in connection with any building for the purpose of complying with this Title, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.
- 4.0405 Yard and Lot Reduction Prohibited. No yard or lot existing at the time of passage of this Title 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.
- 4.0406 Unclassified or Unspecified Uses. May be permitted as special exception by the Board of Zoning Adjustment after the County Planning and Zoning Commission has made a review and recommendation provided that such uses are similar in character to the principal uses permitted in the district.

**CHAPTER 4.05 ESTABLISHMENT OF DISTRICTS**

4.0501 Planning Commission Recommendations. It shall be a purpose of the Brown County Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The Planning Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the Board of County Commissioners shall not hold public hearings or take action until it has received the final report of the County Planning Commission.

4.0502 Districts Created. For the purposes of zoning, there are hereby created 15 types of districts by which the jurisdictional area defined in Chapter 4.02 shall be divided:

- (AG-P) Agriculture Preservation (4.06)
- (M-AG) Mini-Agriculture (4.07)
- (R-1) Residential (4.08)
- (R-2) Residential -- Mobile Home Park (4.09)
- (R-3) Lake Front (4.10)
- (RU) Rural Urban (4.11)
- (P-1) Planned Development (4.12)
- (C) Commercial (4.13)
- (HC) Highway Commercial (4.14)
- (LI) Light Industrial (4.15)
- (HI) Heavy Industrial (4.16)
- (CN) Conservation (4.17)
- (RC) Recreation (4.18)
- (FP) Floodplain (4.19)
- (M) Municipal, State and County Use District (4.34)

## CHAPTER 4.06            AGRICULTURE PRESERVATION DISTRICT (AG-P)

4.0601 Statement of Intent. The intent of the Agriculture Preservation District is to protect 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 shall be continued; to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery.

4.0602 Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in the Agriculture Preservation District:

1. Any form of agriculture including the raising of crops, horticulture, animal husbandry, and poultry husbandry yet excluding commercial feedlots;
2. A family farm unit and their normal accessory buildings including mobile homes; and
3. Railroad track right-of-way.

4.0603 Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in the Agriculture Preservation District:

1. Roadside produce stands in conjunction with a bona fide farm operation on the premises; and
2. Artificial lake(s) of three acres or less.

4.0604 Special Exceptions. After notice and appropriate safeguards, the Board of Adjustment may permit the following as special exceptions in the (AG-P) Agriculture Preservation District:

1. Home occupation; Hunting Lodges; Bed and Breakfast establishments.
2. Fairgrounds, racetracks, and amusement parks;
3. Utility substations; Communication Towers and Facilities; Wind Energy Conservation Systems;
4. Airports/Heliport;
5. Golf courses, country clubs and golf driving ranges;
6. Amphitheaters, stadiums, drive-in movies, arenas, and field houses;
7. Go-cart tracts, riding stables, playfields, athletic fields, bowling, swimming pools, and automobile parking;
8. Public parks, public recreational areas, churches, and schools;
9. Commercial feedlots;
10. Operation and maintenance terminal for trucks and other equipment;

11. Sand, gravel, or quarry operation, yet not including mineral extraction as defined in Chapter 4.01, 4.0102.
12. Sanitary landfill sites in accordance with South Dakota Environmental Protection Agency regulations;
13. Cemeteries;
14. Kennels and veterinary operations;
15. Farm related bulk commodities;
16. Farm related agriculture business or agriculture processing;
17. Wildlife propagation and game management;
18. High voltage lines of 343 KV or greater;
19. Mineral exploration, provided the following conditions are met:
  1. The applicant shall provide:
    - a. A description of the mineral or minerals which are the subject of the exploration;
    - b. Maps showing the general area within which the exploration operation will be conducted; and
    - c. A detailed description of the County's environmental conditions, to include surface, land use, and vegetation as well as a detailed description of the area's geologic formations and hydrology from the best available scientific resources.
  2. The applicant shall provide:

Maps indicating the location of the drill sites to the nearest quarter section of land, a technical description of the exploration process, the types of equipment to be used, and the estimated timetable for each phase of work and for final completion of the program.
  3. The applicant shall provide:
    - a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed exploration; and
    - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance, and any other related hazard to public health and safety.

4. The applicant shall provide for reclamation of the land to its original condition after exploration is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands explored and adjacent lands. The reclamation shall include:

- a. A reclamation schedule;
- b. Methods of plugging drill holes;
- c. Methods of severing and returning topsoil and subsoil;
- d. Methods of grading, backfilling, and contouring of exploration sites and access roads;
- e. Methods of waste management and disposal, including liquid and solid wastes; and
- f. Method of revegetation.

The applicant shall identify specific phases when monitoring; and inspection of the exploration activities shall be conducted by County, State, Federal, or independent personnel to assure compliance with all applicable rules and regulations. If the conditional use permit is granted, the permit shall identify such inspection agency; and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Commissioners.

A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of exploration activities.

20. Concentrated Animal Feeding Operations - refer to Chapter 4.32 for standards.
21. Greenhouses and nurseries provided there is no retail sale of products conducted on the premises.
22. Shooting/Hunting Preserve.

4.0605 Minimum Lot Requirements. The minimum lot frontage width shall be two hundred (200) feet. The minimum area for any plot, piece, or area of land of contiguous assemblage as established by survey, plot, or deed shall contain an area of not less than forty (40) acres. (Ordinance 088 amendment)

The Planning Commission may reduce the required land area following the procedures of a Variance (4.2403) providing that:

1. The use of the land is for agricultural purposes and that the construction of buildings is confined to the shelter of grain, livestock or agricultural equipment.



The minimum area for any residence(s) shall consist of a piece, plot, or deed, occupied or to be occupied by (a) residential dwelling(s) shall contain an area of not less than forty (40) acres unless:

1. If to be occupied by other members of the farm unit (see Definitions), the Planning Commission may reduce the required area following the procedures of a Variance (4.2403); or,
2. When a residence is to be sited on an abandoned or existing building site (see Definitions), the Planning Commission may reduce the required area following the procedures of a Variance (4.2403) with a minimum of one (1) acre.

4.0606 Minimum Setback Requirements. All structures shall be set back not less than one hundred (100) feet from all improved public roads measured from road right-of-way. The minimum side yard and rear yard set back shall each be twenty (20) feet.

4.0607 Minimum Shelterbelt Setback. Shelterbelts consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred fifty (150) feet from the right-of-way line. Fieldbelts consisting of one or more rows perpendicular to the right-of-way shall be set back a minimum of one hundred (100) feet from the right-of-way line. Replacement trees in existing shelterbelts are exempt from minimum shelterbelt requirements as long as its nonconformance is not increased.

4.0608 Approaches. Along all County roads, approaches shall be a minimum of five hundred (500) feet apart. Each side of the road shall be included in separation calculation.

4.0609 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Rural Urban (RU) by Title 4, Chapter 4.11 of the Revised Brown County Ordinances, as amended, to-wit: **South 435' of West 500' of the Southwest Quarter (SW 1/4) of Section 2, Township T127N, Range 63W of the 5th P.M., Brown County, South Dakota** be and the same is hereby changed to Agriculture Preservation (AG-P) to be used in accordance with Title 4, Chapter 4.06 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 1/28/94).
2. That the portion within the limits of Brown County, heretofore zoned Heavy Industrial District (H-I) by Title 4, Chapter 4.16 of the Revised Brown County Ordinances, to-wit: **SW ¼ of Sec 23-T123N-R65W of the 5<sup>th</sup> P.M., except railroad right of way and except Lot H-1, Brown County, SD, subject to easements, reservations and restrictions of record, if any (13380 378<sup>th</sup> Ave)** be and the same is hereby changed to Agricultural Preservation (AG-P) to be used in accordance with Title 4, Chapter 4.06 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 10/30/2012).

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**CHAPTER 4.07            MINI-AG DISTRICT (M-AG)**

4.0701 Statement of Intent. The intent of the Mini Ag (M-AG) District is to provide an environment and area conducive to large residential lot/hobby farm endeavors while retaining a quasi-rural character.

4.0702 Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in the Mini-Ag District:

1. Any form of agriculture including the raising of crops, horticulture, animal husbandry, and poultry husbandry, excluding commercial feedlots;
2. Single-family/two-family dwellings and their normal accessory building, excluding mobile homes; and
3. Railroad track right-of-way.

4.0703 Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in the Mini-Ag District:

1. Roadside produce stands in conjunction with a bona fide farm operation on the premises; and
2. Artificial lakes(s) of three (3) acres or less.

4.0704 Special Exceptions. After notice and appropriate safeguards, the Board of Adjustment may permit the following as special exceptions in the Mini-Ag District:

1. Home occupations; Hunting Lodges; Bed and Breakfast establishment;
2. Fairgrounds, racetracks, and amusement parks;
3. Utility substations; Communication Towers and Facilities; Wind Energy Conservation Systems;
4. Airports;
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, swimming pools, and automobile parking;
8. Public parks, public recreational areas, churches, and schools;
9. Operation and maintenance terminal for trucks and other equipment;
10. Sand, gravel, or quarry operation, yet not including mineral extraction as defined in Chapter 4.01, 4.0102;

11. Sanitary landfill sites in accordance with South Dakota Environmental Protection Agency regulation;

12. Cemeteries;

13. Kennels and veterinary establishments; and

14. Wildlife propagation and game management.

4.0705 Minimum Lot Requirement. The minimum lot frontage width shall be two hundred (200) feet. The minimum lot area shall be:

without central sewer or water -- 2 1/2 acres

with central sewer or water – 1 acre

with central water and sewer -- 1/2 acre

4.0706 Minimum Setback Requirements. All structures shall be set back not less than one hundred (100) feet along section line roads and not less than forty-five (45) feet along all others, measured from road right-of-ways. The minimum side yard and rear yard setback shall each be twenty-five (25) feet.

4.0707 Minimum Shelterbelt Setback. Shelterbelts consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred fifty (150) feet from the right-of-way line. Fieldbelts consisting of one or more rows perpendicular to the right-of-way shall be set back a minimum of one hundred (100) feet from the right-of-way line. Replacement trees in existing shelterbelts are exempt from minimum shelterbelt requirements as long as its nonconformance is not increased.

4.0708 Approaches. Along all county roads, approaches shall be a minimum of five hundred (500) feet apart. Each side of the road shall be included in separation calculation.

4.0709 Service Roads. Service roads may be required at the discretion of the Planning Commission.

4.0710 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Whitetail Meadows 1<sup>st</sup> Subdivision in NW ¼ Sec 26-T123N-R65W of 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 8/16/2005).

2. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1A, 2A, 3A and 4A Bledsoe Second Subdivision in the SW ¼ of Sec 14-T124N-R64W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown,

South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 1/17/2006).

3. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1-8 Fischbach First Subdivision in the SE ¼ of Sec 23-122N-R64W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/13/2006).
4. That the portion within the limits of Brown County, heretofore zoned Rural Urban District (RU) by Title 4, Chapter 4.11 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 2-5 of Block A First Addition to Stratford in the SW ¼ of Sec 4-121N-R62W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/25/2007).
5. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Legacy Development in the NE ¼ of Sec 1-123N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/19/2008).
6. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Plat of Fischer Richmond Lake Estates in the NE ¼ of Sec 23-124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/19/2008).
7. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **John Beck's 1<sup>st</sup> Subdivision in the SE ¼ of Sec 18-123N-R64W of the 5<sup>th</sup> P.M., Brown County, South Dakota (38286 133<sup>rd</sup> Street)** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South

Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (Ord 098 effective 2/16/2016).

8. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1-3 Hoffman First Consolidation Addition; Lot 3 Dewalds Outlot C; Lot 38A Dewalds Outlot C; all in the E ½ of Sec 14-124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota (West Shore Drive)** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (Ord 099 effective 5/17/2016).
9. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1-8 Ramsdell's First Subdivision in the NE ¼ of Sec 23-122N-R64W of the 5<sup>th</sup> P.M., Brown County, South Dakota (13903 387<sup>th</sup> Ave)** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (Ord 100 effective 6/21/2016).
10. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1 and 2 Biegler Richmond Lake Third Subdivision in the SW ¼ of Sec 13-124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota (126694 and 126998 East Shore Drive)** be and the same is hereby changed to Mini-Ag District (M-Ag) to be used in accordance with Title 4, Chapter 4.07 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (Ord 105 effective 11/22/2016).

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## CHAPTER 4.08 RESIDENTIAL DISTRICT (R-1)

4.0801 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.

4.0802 Permitted Principal Uses and Structures.

1. Single-family/two family dwellings; and
2. Noncommercial horticulture uses.

4.0803 Permitted Accessory Uses and Structures.

1. Home occupations and professional offices; and
2. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district.

4.0804 Special Exceptions. After the provisions of this Title relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in Residential District (R-1):

1. Multiple-family dwellings;
2. Churches, synagogues, and temples;
3. Nursery, primary, intermediate, and secondary schools;
4. Public recreational and park facilities;
5. Utility substations;
6. Convalescent, nursing, and rest homes;
7. Medical and other health facilities;
8. Mobile homes with a minimum width of twenty (20) feet and on a permanent foundation;
9. Bed and Breakfast.

4.0805 Minimum Lot Requirements. The minimum lot area shall be seven thousand two hundred (7,200) square feet for single/two family dwellings. The minimum lot area for multi-family dwellings in excess of two units shall be seven thousand two hundred (7,200) square feet and an additional one thousand eight hundred (1,800) square feet for each unit in excess of the first two. The minimum lot width shall be sixty (60) feet and the minimum lot depth shall be one hundred twenty (120) feet.

4.0806 Minimum Yard Requirements. There shall be a front yard of not less than a depth of twenty-five (25) feet. There shall be a rear yard of not less than a depth of twenty (20) feet. There shall be a side-street setback of not less than fifteen (15) feet on corner lots. Each side yard shall not be less than seven (7) feet as measured from the outermost edge of structure. All distances are measured from the lot line. (Ordinance 089 amendment)

4.0807 Maximum Height. The height of all buildings and structures shall not exceed thirty-five (35) feet.



## CHAPTER 4.09 PLANNED MOBILE HOME PARK DISTRICT (R-2)

4.0901 Intent. This district is created to preserve and enhance property values in the County by providing designated, distinctive areas of not less than two (2) acres having a minimum of three hundred (300) feet in width in which mobile homes may be situated for residential dwelling purposes. It is the intent that this district be a desirable, prominent area providing adequate open space and essentially the same considerations given to citizens of other residential districts.

4.0902 Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in Planned Mobile Home Park Districts(s) (R-2):

1. Mobile home dwellings;
2. Laundromats including facilities for coin operated washing and drying machines designed for mobile home residents; and
3. Parks and playgrounds.

4.0903 Permitted Accessory Uses and Structures. Only those accessory uses and structures customarily incidental to principal uses and structures.

4.0904 Minimum Lot Requirements. The minimum lot area for individual mobile homes shall be four thousand (4,000) square feet. The overall density of any mobile home park shall not exceed eight (8) units per gross acre, and the net density of any particular acre shall not exceed ten (10) units per acre.

4.0905 Minimum Yard Requirements. The minimum distance required for the separation of a mobile home from any other mobile home shall be twenty-five (25) feet from side to side, twenty-five (25) from side to rear, and twenty (20) from rear to rear; front setback from private drive of twenty (20) feet.

4.0906 Mobile Home Parks. A mobile home park may be established by following the rezoning process for the Planned Mobile Home Park District (R-2) provided:

1. A request for a change in zoning districts to Planned Mobile Home Park (R-2) shall set forth the location and legal description of the proposed mobile home park property, and sketch of the proposed mobile home park, showing dimensions, driveways, proposed location of sanitary conveniences and other buildings and improvements.
2. Certification of compliance with all ordinances and regulations regarding mobile home park licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations shall be a prior requirement for granting said Planned Mobile Home Park District (R-2).

4.907 Mobile Home Regulations Within a Mobile Home Park.

1. Planned Mobile Home Developments (R-2)

a. Planned mobile home developments are permitted as a matter of right in districts zoned as planned Mobile Home Park Districts (R-2). However, to implement the Statement of Intent for this district, the following standards shall be met by any applicant;

1. The proposed property shall be located so that it shall not be necessary excessive traffic movement from the park to pass through an existing single-family residential area or area suitable for future single-family residential development.
2. The property shall be convenient to schools, parks, and shopping facilities.
3. The property is not within an area used nor planned for industrial development, nor will the occupants of the proposed park be in any way adversely affected by nearby existing or planned industrial uses.

b. Access and Street Requirements:

1. All mobile home spaces must be served from internal private streets within the mobile home park and there shall be no direct access from a mobile home space to a public street or alley. These streets must be at least graveled.
2. A minimum of two (2) off-street parking spaces shall be provided for each mobile home space; guest parking in the ratio of one parking space per five (5) mobile home spaces shall be interspersed throughout the mobile home park.
3. No internal private street access to public streets shall be located closer than one hundred (100) feet to any public street intersection.
4. All streets shall be lighted in accordance to the standards of the City-County.
5. Stop signs shall be placed at all public street intersections. Yield signs placed appropriately on internal private streets.
6. Entrance to mobile home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such adjacent public roads.
7. Streets should be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street with ten (10) feet minimum moving lanes for collector streets, nine (9) feet minimum moving lanes for minor streets, and seven (7) feet minimum lanes for parallel parking.

c. Other Requirements:

1. Applicants shall comply with appropriate requirements of the Subdivision Regulations as contained in Title 5.
2. Each mobile home park shall provide screened areas or enclosed containers that are accessible for refuse collection of an adequate size for the number of

units served, and shall provide for the disposal of such refuse on a regularly scheduled basis.

3. Additional development requirements may be prescribed as conditions when such requirements are determined to be necessary to ensure the protection of the character of the neighboring properties, the compatibility of land uses, and the health and safety of mobile home park occupants.

4. All electric service will be underground.

## CHAPTER 4.10 LAKE FRONT RESIDENTIAL (R-3)

4.1001 Intent. The intent of the Lake Front Residential District (R-3) is to provide for residential uses of shoreline land without altering natural surroundings of the district.

4.1002 Permitted Principal Uses and Structures.

1. Single-family residential usage including mobile homes but excluding mobile home parks.

4.1003 Permitted Accessory Uses and Structures.

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district; and
2. Home occupations.

4.1004 Special Exceptions. After the provisions of this Title relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in Lake Front Residential District (R-3);

1. Clubs and campgrounds;
2. Resorts;
3. Grocery stores;
4. Sporting goods stores;
5. Publicly owned and operated facilities;
6. Bed and Breakfast.

4.1005 Minimum Lot Requirements. Each lot shall have a depth of not less than one hundred sixty-two (162) feet and shall have a shoreline frontage width of not less than fifty (50) feet. All lots without shoreline frontage shall have a minimum width of fifty (50) feet and a minimum depth of one hundred fifty (150) feet.

4.1006 Minimum Setback Requirements. Each building shall be set back not less than fifty (50) feet from the normal high watermark. The road setback shall be fifty (50) feet from Federal and State highways and thirty (30) feet from other roads. There shall be a side-street setback of not less than fifteen (15) feet on corner lots. Each side yard shall not be less than seven (7) feet as measured from the outermost edge of structures. All distances are measured from the lot line. Boat houses, piers, and docks are exempted from yard requirements. (Ordinance 090 amendment)

4.1007 Service or Access Roads. Service or access roads may be required at the discretion of the Planning Commission.

4.1008 Sewage Disposal Regulations. It is the responsibility of the landowner to conform with State and Federal sewage disposal regulations.

4.1009 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Thorpe's First Elm Lake Subdivision in NE ¼ Sec 17-T128N-R65W of 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 9/6/2000).
2. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Thorpe's Second Elm Lake Subdivision in NE ¼ Sec 17-T128N-R65W of 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/12/2002).
3. That the portion within the limits of Brown County, heretofore zoned Conservation District (CN) by Title 4, Chapter 4.05 of the Second Revision Brown County Ordinances, as amended, to-wit: **The South ½ of SE ¼, East of the River, Section 8, Township 128 North, Range 65 West, Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances.
4. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1-31, Thorpe's 4<sup>th</sup> Elm Lake Subdivision in E ½ Sec 17-T128N-R65W, Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 8/16/2005).
5. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1 and 2 Prairie Lake Second Subdivision in E ½ W ½ Sec 23-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above

change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 9/20/2005).

6. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1-6 Keatts Fourth Subdivision in the W ½ of the NW ¼ of Sec 23-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 1/3/2006).
7. That the portion within the limits of Brown County, heretofore zoned Lake Front Residential District (R-3) and Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Keatts Fifth Subdivision in the W ½ of the NW ¼ of Sec 23-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/19/2008).
8. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1-3 First Subdivision of Bauer's Outlot, Lots 5-9 First Subdivision of Bauer's Outlot, Lots 1-6 Second Subdivision of Bauer's Outlot and Lot 3 of Bauer's Third Addition in the SW ¼ of Sec 7-T123N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 4/8/2008).
9. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Playa Casa Preliminary Subdivision and final plat of Playa Casa Subdivision Lots 3A thru 8A and Lots 3B thru 8B, in the W ½ of Sec 12-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, SD** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 8/12/2008).
10. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Thorpe's Third Elm Lake Subdivision in the NE ¼ of Sec**

- 17-T128N-R65W of the 5<sup>th</sup> P.M., Brown County, SD** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 11/23/2010).
11. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Thorpe's Fifth Elm Lake Subdivision in the NE ¼ and SE ¼ of Sec 17-T128N-R65W of the 5<sup>th</sup> P.M., Brown County, SD** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 9/30/2011).
  12. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Flying T Elm Lake Subdivision in the NE ¼ of Sec 17-T128N-R65W of the 5<sup>th</sup> P.M., Brown County, SD (West Elm Lake Road south of Brown County 3A/102<sup>nd</sup> Street)** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 9/30/2011).
  13. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1 and 2, RO-JU-OS Park Second Subdivision in the SE ¼ of Sec 8-T128N-R65W of the 5<sup>th</sup> P.M., Brown County, SD (10188 and 10192 RO-JU-OS Place)** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances. (Ordinance 096 effective 10/27/2015)
  14. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 7 and 8, Block 1, RO-JU-OS Park; Lots 12 & 13, Block 1 RO-JU-OS Park; Lots 1-5, Block 1 RO-JU-OS Park; Lot 6, Block 1 RO-JU-US Park; Lot 2 Block 1 Graham Oster Addition to RO-JU-OS Park; Lot 3, Block 1 Graham Oster Addition to RO-JU-OS Park; Holty Outlot A to RO-JU-OS Park; and a tract 60' N & S by 175' E & W adjacent to Lot 1 Hart Family Subdivision to RO-JU-OS Park located in the S ½ SE ¼ of Sec 8-T128N-R65W, Brown County, SD (10186, 10194, 10176, 10184, 10172, 10174, 10160 and 10164 RO-JU-OS Place)** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown,

South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances. (Ordinance 097 effective 10/27/2015)

15. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 1 – 3 Peaceful Pines Addition in the SE ¼ of Sec 24-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, SD (379501, 379511 and 379519 North Shore Drive)** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances. (Ordinance 102 effective 8/23/2016)
  
16. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lot 2 Klipfel Subdivision in the N ½ SE ¼ of Sec 8-T123N-R61W, Brown County, SD (10858 RO-JU-OS Place)** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances. (Ordinance 103 effective 10/25/2016) **Note: Ordinance 106 effective January 17, 2017 Corrected Legal Description.**
  
17. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lot 2 Klipfel Subdivision in the N ½ SE ¼ of Sec 8-T123N-R65W, Brown County, SD (10858 RO-JU-OS Place)** be and the same is hereby changed to Lake Front Residential District (R-3) to be used in accordance with Title 4, Chapter 4.10 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances. (Ordinance 106 effective 1/17/2017)



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## CHAPTER 4.11 RURAL-URBAN (RU)

4.1101 Intent. The intent is to provide an environment in small communities where strict application of specified uses and activities are not practical; an intermixing of activities is allowed provided that totally incompatible uses to those already present are not undertaken or those which produce excessive odor, smoke, toxic matter or vibration.

### 4.1102 Permitted Principal Uses and Structures.

1. Single-family dwellings;
2. Multi-family dwellings;
3. Mobile homes; and
4. Noncommercial horticulture.

### 4.1103 Permitted Accessory Uses and Structures.

1. Home occupations and professional offices; and
2. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district.

4.1104 Special Exceptions. After the provisions of this Ordinance relating to special exceptions have been fulfilled, the Board of Adjustment may permit as a special exception any use which is consistent with the intent of this district. The Planning Commission, may as a condition to approval, require certain additional requirements to ensure compatibility.

4.1105 Minimum Lot Requirements. The minimum lot area shall be seven thousand two hundred (7,200) square feet for single/two-family dwellings. The minimum lot areas for multi-family dwellings in excess of two units shall be seven thousand two hundred (7,200) square feet and an additional one thousand eight hundred (1,800) square feet for each unit in excess of the first two. The minimum lot width shall be sixty (60) feet and the minimum lot depth shall be one hundred twenty (120) feet.

4.1106 Minimum Yard Requirements. For all principal permitted uses and structures, there shall be a front yard of not less than a depth of twenty-five (25) feet. There shall be a rear yard of not less than a depth of twenty (20) feet. There shall be a side-street setback of not less than fifteen (15) feet on corner lots. Each side yard shall not be less than seven (7) feet as measured from the outermost edge of structures. All distances are measured from the lot line. Yard requirements for special exceptions shall be determined by the Planning Commission. (Ordinance 091 amendment)

### 4.1107 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **The East 400 feet of the 1000 feet South of Brown County Highway 23, located in the S ½ of the NW ¼ of Sec 2-T121N,-R64W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Rural Urban District

(RU) to be used in accordance with Title 4, Chapter 4.11 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances.

## CHAPTER 4.12 PLANNED DEVELOPMENT DISTRICT (P-1)

4.1201 Intent. The intent of the Planned Development District (P-1) is to provide for the development of large tracts of land as integrated and harmonious units, and to provide certain modifications in the standards of this resolution to promote such development. To be eligible for consideration under the provisions of this district, the proposed planned development must be:

1. In accordance with the County Comprehensive Plan;
2. Composed of such uses, to such a degree, as are necessary for the integrated functioning of the planned development unit and the County;
3. So designed as to produce an attractive and desirable environment complimenting the surrounding neighborhood; and
4. A minimum of the (10) acres in land area.

4.1201 Application Procedure.

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit to the County Planning Commission a plan for the proposed planned development unit. The plan shall indicate:

- a. The location and extent of the proposed planned development unit, including its relationship to surrounding properties;
- b. The exact nature and extent of improvements to be developed or erected upon the tract, including contoured site plans, building plans and elevations, and plans for landscaping and paved areas, transportation patterns, and water and sewer services;
- c. Such other information as may be required by the County Planning Commission to determine if the proposed planned development unit is consistent with the intent of the district.

2. The County Planning Commission shall, within sixty (60) days of receiving the plan for the proposed development unit, consider such plan at a minimum of one regular County Planning Commission meeting. Upon consideration, the County Planning Commission shall inform the applicant in writing of its approval or denial of the plan. In the event of denial, the Commission shall inform the applicant of the reason(s) for denial including any recommended modifications in the plan, which would cause the Commission to reconsider.

3. Upon approval of the plan by the County Planning Commission, it shall forward its written recommendations to the Board of County Commissioners along with a copy of the approved plan, that the tract be designated a Planned Development District (P-1) by amendment of the Official Zoning Map.

4. Upon receiving the County Planning Commissioner's written recommendation, the Board of County Commissioners shall consider the amendment of the Official Zoning Map as provided elsewhere in this Title.

5. Following the amendment of the Official Zoning Map by the Board of County Commissioners, the County Zoning Officer may, upon proper application, issue a building permit for construction of the planned development unit in accordance with the approved plan.

4.1203 Subsequent Performance. Following issuance of a building permit for the planned development unit by the zoning administrator, the applicant shall begin construction within a period of six (6) months. Failure to do so shall invalidate the building permit. Construction shall follow precisely the plan approved by the County Planning Commission to which modifications may be granted only by the County Planning Commission upon the filing of an amended plan. Failure to follow the approved plan on the part of the applicant or his agent shall be considered a violation of this resolution punishable as herein prescribed.

## CHAPTER 4.13            COMMERCIAL DISTRICT (C)

4.1301 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.

4.1302 Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in the Commercial District (C):

1. Retail sale of: groceries, fruits, vegetables, dairy products, meats, poultry products, fish and seafoods; baked goods, candies, nuts, confectionery items, beer, wine, and distilled alcoholic beverages; heating and plumbing equipment; paint, glass and wallpaper; electrical supplies; hardware; dry goods and general merchandise; tires, batteries and accessories; marine and aircraft accessories; wearing apparel and accessories; furniture, home furnishings and equipment; household appliances; radios, televisions, and music supplies; drugs and proprietary medicines; antiques and second hand merchandise; books and stationery; sporting goods and bicycles; jewelry; flowers and other plant materials; cigars and cigarettes; newspapers and magazines; cameras and photographic supplies; gifts, novelties, and souvenirs; optical goods;
2. Finance, insurance and real estate services;
3. Laundering, dry cleaning and dyeing services; photographic services including commercial services; beauty and barber services; apparel repair and alteration, and cleaning pickup service; shoe repair services;
4. Business services;
5. Automobile washing; electrical repair; radio and television repair, and watch, clock and jewelry repair;
6. Professional services;
7. Governmental services;
8. Educational services;
9. Passenger Bus and Taxi Terminals;
10. Churches, synagogues, and temples; welfare and charitable services; business associations, professional membership organizations; labor unions and similar labor organizations; and civic, social and fraternal associations.
11. Eating and drinking places;
12. Communication and utility uses;
13. Public buildings and grounds;

14. On-site signs;
15. Automobile service stations;
16. Hotels and motels;
17. Automobile parking;
18. Libraries, museums, art galleries, planetaria, aquariums; historic and monument sites; motion picture theaters, legitimate theaters; auditoriums; exhibition halls, penny arcades; gymnasiums and athletic clubs; ice skating, roller skating; and bowling; and
19. Parks.

4.1303 Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in the Commercial District (C):

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district.

4.1304 Special Exceptions. After the provisions relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in the Commercial District (C):

1. Grain elevators;
2. Other trade and service uses which are similar to the permitted principal uses and which are harmony with the intent of this district;
3. Structures containing both commercial and residential uses;
4. Implement and automobile sales and services, and
5. General warehousing and storage.

4.1305 Minimum Lot Requirements. The minimum lot area shall be two thousand five hundred (2,500) square feet. The minimum lot width shall be twenty-five (25) feet. The minimum lot depth shall be one hundred (100) feet.

4.1306 Minimum Yard Requirements. All buildings located on lots adjacent to a Residential District shall be located so as to conform on the adjacent side with the side yard requirements for the adjacent Residential District. There shall be a front yard of not less than a depth of ten (10) feet. There shall be a rear yard of not less than ten (10) feet. Each side yard shall not be less than five (5) feet as measured from the outermost edge of structures. All distances are measured from the lot lines.

4.1307 Maximum Lot Coverage. The maximum lot coverage for all buildings shall be not more than ninety (90) percent of the total lot area. Minimum off-street parking and loading requirements shall also be considered for lot coverage based on use.

4.1308 Maximum Height. The maximum height of structures shall be forty-five (45) feet.

4.1309 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Richmond Resort Outlot 2 located in the NE ¼ Sec 25-T124N-R65W of 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Commercial District (C) to be used in accordance with Title 4, Chapter 4.13 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 12/6/2000).
2. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lots 3 and 4 in the SW ¼, except lake, T128N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota, subject to Lake Easement Contract of record** be and the same is hereby changed to Commercial District (C) to be used in accordance with Title 4, Chapter 4.13 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 7/12/2005).
3. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lot 4 Schaeffer Richmond Lake 2<sup>nd</sup> Addition in NW ¼ and NE ¼ Sec 25-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Commercial District (C) to be used in accordance with Title 4, Chapter 4.13 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 10/5/2005).
4. That the portion within the limits of Brown County, heretofore zoned Residential District (R-1) by Title 4, Chapter 4.08 of the Second Revision Brown County Ordinances, as amended, to-wit: **Lot 1 Palmer's Richmond Lake Resort Subdivision, being a subdivision of Outlot 1 of Richmond Resort Outlots 1 and 2 in SW ¼ Sec 30-T124N-R64W and NE ¼ Sec 25-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Commercial District (C) to be used in accordance with Title 4, Chapter 4.13 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 11/15/2005).



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## CHAPTER 4.14 HIGHWAY COMMERCIAL DISTRICT (HC)

4.1401 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 a major vehicular circulation route due to the nature of the merchandise handled and the display space required, particularly items requiring expansive display area such as motor vehicles, trailers, and farm implements; the method of transport required of the purchaser for the merchandise handled, particularly goods customarily traded in bulk such as lumber or feed requiring access for the customer to the sales area; primary dependence upon vehicular, as opposed to pedestrian, access such as drive-in facilities and all types of automotive and farm implement services; or the clientele toward which the establishments are primarily oriented, particularly travelers on the highway.

4.1402 Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in Highway Commercial Districts (HC):

1. Retail sale of: lumber and other building materials, farm equipment, motor vehicles, recreational vehicles, marine craft, aircraft, mobile homes, trailers, farm and garden supplies, fuel and ice;
2. Wholesale sales 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 and supplies;
4. Farm products warehousing and storage;
5. Refrigerated warehousing;
6. Food lockers, provided, that any slaughtering, killing, eviscerating, skinning, or plucking be done indoors;
7. Household goods warehousing and storage;
8. General warehousing and storage;
9. Automobile repair and services;
10. Upholster and furniture repair services;
11. Contract construction services;
12. Bus garaging and equipment maintenance;
13. Motor freight terminals;
14. Motor freight garaging and equipment maintenance;

15. Automobile parking;
16. Libraries; museums; art galleries; planetaria; aquariums; historic and monument sites; auditoriums; exhibition halls; and penny arcades;
17. Miniature golf, gymnasiums and athletic clubs, swimming pools, tennis courts, ice skating, roller skating;
18. Parks;
19. Theaters; 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; play fields and athletic fields; bowling; and swimming pools;
20. Communication and utility uses;
21. Drive-in eating and drinking places; restaurants;
22. Automobile service stations;
23. Motels; and
24. Livestock sales establishments, buying stations.

4.1403 Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in Highway Commercial District (HC):

1. Accessory uses normally appurtenant to the permitted principal uses and structures when established in conformance within the space limits of this district.

4.1404 Minimum Lot Requirements. The minimum lot area shall be ten thousand (10,000) square feet. The minimum lot width shall be one hundred (100) feet.

4.1405 Minimum Yard Requirements. There shall be a front yard of not less than a depth of one hundred (100) feet. Each side yard and rear yard shall be no less than twenty-five (25) feet as measured from the outermost edge of the structure.

4.1406 Maximum Lot Coverage. The maximum lot coverage for all buildings shall not be more than fifty (50) percent of the total area.

4.1407 Maximum Height. The height of all buildings and structures shall not exceed forty-five (45) feet.

4.1408 Service or Access Roads. Service or access roads may be required at the discretion of the Planning Commission.

4.1409 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.03 of the Revised Brown County

- Ordinances, as amended, to-wit: **West 198' of the North 990' of the Northwest Quarter (NW 1/4) of Section 4, Township One Hundred Twenty-One (121), Range Sixty-one (61), Brown County, South Dakota**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 6/18/1986).
2. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Ellis Outlot 1 in the NW 1/4 of Section 20-T123N-R62W, Brown County, South Dakota**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/10/1998).
  3. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Lot 1, R & F Walker Addition in the NE ¼ of Sec 15-T126N-R64W of the 5<sup>th</sup> P.M., Brown County, South Dakota**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 12/21/2010).
  4. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Lot 2 Don and Eunice Weismantel First Addition in the NE ¼ of Sec 19-T123N-R62W of the 5<sup>th</sup> P.M., Brown County, South Dakota**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/22/2011).
  5. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **David and Sheryl Evelo Addition in the NW ¼ of Sec 26-T122N-R64W of the 5<sup>th</sup> P.M., Brown County, South Dakota (14048 386<sup>th</sup> Ave)**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/19/2012).

6. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Schaunaman's Outlot 1 and 2 in the SE ¼ of Sec 24-T124N-R65W of the 5<sup>th</sup> P.M., Brown County, SD, subject to easements, reservations and restrictions of record, if any (382008 and 382016 Shore Drive N)**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective July 23, 2013).
  
7. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **South Dakota Wheat Growers Tract 1 in the S ½ SW ¼ of Sec 2-T127N-R64W of the 5<sup>th</sup> P.M., Brown County, SD (10684 386<sup>th</sup> Ave)**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective October 29, 2013).
  
8. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Wollman Third Subdivision in the SW ¼ of Sec 29-T124N-R62W of the 5<sup>th</sup> P.M., Brown County, SD (12890 395<sup>th</sup> Ave)**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective June 17, 2014).
  
9. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Lots 3 and 4 Schlosser-Sumpton Addition in the W ½ NW ¼ of Sec 11-T127N-R64W of the 5<sup>th</sup> P.M., Brown County, SD (38604 Brown County #10A and 38609 107<sup>th</sup> Street, Frederick)**, be and the same is hereby changed to Highway Commercial (HC) to be used in accordance with Title 4, Chapter 4.14 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective November 1, 2016).

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## CHAPTER 4.15 LIGHT INDUSTRIAL DISTRICT (L-I)

4.1501 Intent. The intent of the Light Industrial District (L-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 designated for this district should be located in relation to the thoroughfare network of the community as well as rail and air if required, and designated so as to not disrupt normal traffic flow. Planned Industrial Parks are encouraged in this district.

4.1502 Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in the Light Industrial District (L-I):

1. Building materials sales;
2. Cartage and express facilities;
3. Contractor's offices, shops and yards - such as building, cement, electrical, heating, ventilation and air conditioning, masonry, painting, plumbing and heating, refrigeration and roofing;
4. Fuel and bulk sales;
5. Greenhouses, wholesales;
6. Highway maintenance shops and yards;
7. Packing and crating;
8. Printing and publishing;
9. Public utility and service uses;
10. Accessory uses, incidental to and on the same zoning lot as principal uses;
11. Wholesaling of all commodities, except commercial explosives, automobile and other mechanical equipment salvage;
12. Offices;
13. Fruit and vegetable concentration, preservation, and preparation;
14. Grain elevators, grain and mill products;
15. Poultry and small game dressing and packing;
16. Blacksmith shop; body and fender works; bottling works; wholesale establishments; bus terminal;
17. Cabinet shop; carpenter shop; carpet cleaning; clothes cleaning and dyeing;

18. Auto and truck rentals;
19. Public garage;
20. Machine shops, metal processing and fabrication;
21. Parking lot; public buildings; public transit yard;
22. Sand blasting; service stations; signs, outdoor advertising; sign painting; stone monument works; stone masonry shop;
23. Veterinary;
24. Novelties;
25. Optical goods;
26. Photographic equipment;
27. Rubber and/or metal stamps;
28. Venetian blinds, window shades and awnings;
29. Food and kindred processing, wholesale; confections, honey extractions;
30. Dairy products;
31. Toiletries;
32. Manufacture, compounding, assembling or treatment of articles of merchandise from the following previously prepared materials: canvas, cellophane, cloth, and cork;
33. Feathers, felt, fiber, fir;
34. Glass and plastics; and
35. Leather.

4.1503 Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in Light Industrial District (L-I):

1. Caretaker and watchmen quarters; and
2. Medical facilities accessories to an industrial use.

4.1504 Special Exceptions. After the provisions of this Title relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in Light Industrial Districts any use, which is consistent with the intent of this district.



- 4.1505 Performance Standards. All uses and structures in a Light Industrial District should use the performance standards in Chapter 4.30 as guidelines.
- 4.1506 Minimum Lot Requirements. The minimum lot area shall be twenty-five thousand (25,000) square feet. The minimum lot width shall be one hundred twenty-five (125) feet.
- 4.1507 Minimum Yard Requirements. There shall be a front yard of not less than a depth of one hundred (100) feet. Each side yard and backyard shall not be less than twenty-five (25) feet as measured from the outermost edge of structures.
- 4.1508 Maximum Lot Coverage. The maximum lot coverage for all buildings shall not be more than fifty (50) percent of the total lot area.
- 4.1509 Service or Access Roads. Service or access roads may be required at the discretion of the Planning Commission.
- 4.1510 Rezoning of Property.
1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation (AG-P) by Title 4, Chapter 4.06 of the Revised Brown County Ordinances, as amended, to-wit: **Wright's Outlot 1 in the West 1/2 of Section 8, Township 123N, Range 62W of the 5th P.M., Brown County, South Dakota** be and the same is hereby changed to Light Industrial District (L-I) to be used in accordance with Title 4, Chapter 4.15 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 12/18/1990).
  2. That the portion within the limits of Brown County, heretofore zoned Rural Urban District (RU) and Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Revised Brown County Ordinances, as amended, to-wit: **Lot 1, 4-Seasons Claremont Site Subdivision in the NW ¼ and SW ¼ of Sec 2-T125N-R60W of the 5th P.M., Brown County, South Dakota** be and the same is hereby changed to Light Industrial District (L-I) to be used in accordance with Title 4, Chapter 4.15 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 1/18/2008).
  3. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Revised Brown County Ordinances, as amended, to-wit: **Rieck Lot 1, Rieck-WEB Subdivision in the NE ¼ of Sec 3-T121N-R64W of the 5th P.M., Brown County, South Dakota** be and the same is hereby changed to Light Industrial District (L-I) to be used in accordance with Title 4, Chapter 4.15 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 5/20/2008).

4. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Revised Brown County Ordinances, as amended, to-wit: **The NW ¼ of Sec 24-T123N-R65W of the 5<sup>th</sup> P.M., except Froehlich Outlot 1 thereof and except Lot H-1 thereof, Brown County, SD and the SW ¼ of Sec 24-T123N-R65W of the 5<sup>th</sup> P.M., except railroad right-of-way, except Lot H-1 thereof, and except Lots 1 and 2, MDU-NBPL Subdivision thereof, Brown County, SD (E. side of Brown County 12WA/379<sup>th</sup> Ave, N side of State Highway 12)** be and the same is hereby changed to Light Industrial District (L-I) to be used in accordance with Title 4, Chapter 4.15 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 11/22/2011).

## CHAPTER 4.16 HEAVY INDUSTRIAL DISTRICT (H-I)

- 4.1601 Intent. This district is established to provide space for land uses, which are generally incompatible to any adjoining land uses, but which are necessary to the economy of the community. Only those uses will be permitted in this district which cannot realistically and economically meet the performance standards specified in L-I. It is not intended that this district be an easy "catchall" for entrepreneurs to utilize rather than meeting community obligations for being compatible neighbors in the community. In establishing the location of this district (and if possible, only one such contiguous area of the community shall be created), prevailing wind, existing and anticipated adjoining developments, and public interest of the community should be taken into consideration. Every effort shall be made by permitted uses to minimize the causes for incompatibility and every use shall also meet performance standards indicated herein. Location of this district should be the thoroughfare system of the community and be so designed as to not wholly disrupt normal traffic flow.
- 4.1602 Permitted Principal Uses and Structures. In the Heavy Industrial District (H-I), there shall be no permitted principal uses and structures.
- 4.1603 Permitted Accessory Uses and Structures. There shall be no accessory uses and structures permitted in a Heavy Industrial District (H-I).
- 4.1604 Special Exceptions. After the provisions of this Title have been fulfilled, the Board of Adjustment may permit as special exceptions in the Heavy Industrial District, the manufacturing, assembling, compounding, packaging, processing, or treatment of products or raw materials conducted within a structure or enclosed within a metal container, except those industries which are injurious, noxious, or hazardous by reasons of emission of odors, dust, fumes, smoke, noise, or vibrations, including but not limited to the following:
1. Those uses found in L-I;
  2. Foundry casting;
  3. Acid manufacturing;
  4. Salvage yards;
  5. Junkyards;
  6. Boiler works, blast furnace;
  7. Brick manufacturing;
  8. Cement manufacturing;
  9. Chemical manufacturing;
  10. Fertilizer manufacturing;
  11. Glue manufacturing;

12. Meat packing plants or slaughterhouses;
13. Paint manufacturing and related operations;
14. Railroad repair shop and similar railroad operations;
15. Soap manufacturing;
16. Stockyards, livestock sale barns;
17. Tannery;
18. Tar or asphalt plants;
19. Bulk fuel plants;
20. Motor power tools and trailers;
21. Assembly of appliances;
22. Laboratories;
23. Paper, plastics, precious or semi-precious metals or stones;
24. Battery manufacturing;
25. Caretaker and watchmen quarters;
26. Medical facilities and accessories to an industrial use;
27. Mineral extraction or milling, providing the following minimal conditions are met;
  1. The applicant shall provide;
    - a. A description of the mineral or minerals to be mined or milled;
    - b. Maps showing the area within which the mining or milling operations shall be conducted;
    - c. A description of the surface, land use, and vegetation, as well as a description of nature and depth of the topsoil and subsoil;
    - d. An environmental assessment which establishes baseline conditions for radioactive and toxic materials in air, ground and surface waters, soils, vegetation, and animals;
    - e. A description of the overburden, mineral seams, and other geologic formations; their conductivity and hydraulic gradients known to exist above the deepest projected depth of mining operation; and

f. A description of the hydrology to the deepest projected depth of the mining operation, including mapping of the depth, water table level, extent, and flow characteristics of ground water and aquifers for the hydrologic regime of the ground water and drainage basins affected by the mining or milling operation.

2. The applicant shall provide;

A technical description of the mining or milling; types of equipment to be used; detailed site plan of all anticipated construction; an estimated timetable for each phase of work and for final completion of the program; a statement of source, quality, and quantity of water to be used in the mining and milling operations, as well as the chemical and radioactive characteristics of all mined or milled products, waste products, and emissions to the environment.

3. The applicant shall provide:

a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the mining or milling operation; and

b. A description of the proposed plan to address the identified environmental impacts to include:

(1) Methods of separating the topsoil, subsoil, and spoil piles, protecting them from erosion before reclamation begins, and keeping the topsoil free from acid or toxic materials;

(2) Plan for ensuring that acid-forming or toxic materials constituting a hazard uncovered or created during mining or milling are promptly treated in a manner to prevent water and air contamination;

(3) Measures to maintain the quantity and quality of ground and surface water, hydrologic balance, productivity of farmland, and soil and water recharge capacity; and

(4) Procedures to prevent water and air contamination through radioactive or toxic seepage of runoff from tailings ponds, mine wastes, mine dewatering discharge, or other mining and milling related operations.

4. The applicant shall provide a plan for the reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent land and shall include:

a. A reclamation schedule;

b. Methods of grading, backfilling, and contouring of disturbed areas and access roads;

c. Methods of waste management and disposal, including liquid and solid waste; and

d. Methods of revegetation.

The applicant shall identify specific phases when monitoring; and inspection of the mining and milling process shall be conducted by County, State, Federal, or independent personnel to assure compliance with all applicable rules and regulations. If the conditional use permit is granted, the permit shall identify the inspection agency, and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Commissioners.

A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of the mining and milling.

4.1605 Performance Standards. All uses and structures in Heavy Industrial Districts should use the performance standards in Chapter 4.31 as guidelines.

4.1606 Minimum Lot Requirements. The minimum lot area shall be forty-three thousand five hundred sixty (43,560) square feet. The minimum lot width shall be one hundred fifty (150) feet.

4.1607 Minimum Yard Requirements. There shall be a front yard of not less than a depth of one hundred (100) feet. Each side yard and rear yard shall be no less than twenty five (25) feet as measured from the outermost edge of the structure.

4.1608 Maximum Height. The height of all buildings and structures shall not exceed sixty (60) feet.

4.1609 Service or Access Roads. Service or access roads may be required at the discretion of the Planning Commission.

4.1610 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **That portion of the NW ¼ 23-T123N-R61W lying north of railroad tracks, Brown County, South Dakota and approximately 3.17 acres in the SW corner of the NE ¼ Sec 23-T123N-R61W, lying north of the railroad tracks, Brown County, South Dakota. (Property to be platted as James Valley Ethanol Outlot 1 in the N ½ of Sec 23-T123N-R61W, Brown County, South Dakota)**, be and the same is hereby changed to Heavy Industrial District (H-I) to be used in accordance with Title 4, Chapter 4.16 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/26/2002).
2. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **The West 654' of the North 517' of the NE ¼ of Sec 20-**

- T123N-R62W of the 5<sup>th</sup> P.M., Brown County, South Dakota, to be known as Sperry Outlot 1 in the NE ¼ of Sec 20-T123N-R62W of the 5<sup>th</sup> P.M., Brown County, South Dakota**, be and the same is hereby changed to Heavy Industrial District (H-I) to be used in accordance with Title 4, Chapter 4.16 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 8/26/2003).
3. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **The NW ¼ of the NW ¼ of Sec 28-T124N-R63W of the 5<sup>th</sup> P.M., Brown County, South Dakota**, be and the same is hereby changed to Heavy Industrial District (H-I) to be used in accordance with Title 4, Chapter 4.16 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances.
  4. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Meyers Outlot 1 in the SW ¼ of Sec 21-T124N-R63W of the 5<sup>th</sup> P.M., Brown County, South Dakota**, be and the same is hereby changed to Heavy Industrial District (H-I) to be used in accordance with Title 4, Chapter 4.16 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances.
  5. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **Meyers Outlot 2 in the SW ¼ of Sec 21-T124N-R63W of the 5<sup>th</sup> P.M., Brown County, South Dakota**, be and the same is hereby changed to Heavy Industrial District (H-I) to be used in accordance with Title 4, Chapter 4.16 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/11/2006)..
  6. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06, Second Revision Brown County Ordinances, as amended, to-wit: **SE ¼ of Sec 23-T123N-R65W, except highway, and Lot 1 Didreckson Subdivision in the NW ¼ of Sec 26-T123N-R65W of the 5<sup>th</sup> P.M., Brown County, South Dakota**, be and the same is hereby changed to Heavy Industrial District(H-I) to be used in accordance with Title 4, Chapter 4.16 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 6/11/2006).

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## CHAPTER 4.17 CONSERVATION DISTRICT (CN)

4.1701 Intent. The intent and purpose of the Conservation District (CN) is to provide for the retaining of natural growth of a particular area, to preserve the natural environment and resources from destructive land uses, to preserve certain locations which have a historic value and to protect natural spawning grounds, feeding grounds, and wildlife habitats.

4.1702 Permitted Principal Uses and Structures. The following principal uses and structures shall be permitted in Conservation Districts (CN):

1. Wildlife propagation and game management;
2. Forest preserves and public access areas;
3. Utility lines within right-of-ways and within ten (10) feet of public and road right-of-ways;
4. Caretaker's residences; and
5. Agriculture and agricultural activities (except commercial feedlots).

4.1703 Permitted Accessory Uses and Structures. The following accessory uses and structures shall be permitted in Conservation Districts (CN):

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district.

4.1704 Special Exceptions. After the provisions of this Title relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in Conservation District (CN):

1. Utility substations;
2. Public parks; and
3. Summer camps.

4.1705 Special Conditions. The use of property or the construction of any building for any purpose permitted in the Conservation District (CN) shall be subject to the following conditions and limitations:

1. No land or water area shall be filled, dredged, or drained nor shall any natural stream or floodway be encroached upon or polluted.
2. Provided, however, that exceptions to the foregoing conditions may be authorized by the County Planning Commission for navigation channels, drainage channels, roads, clearings, or other improvements necessary for the protection of existing uses or the proper development of adjacent properties, provided that such works or improvements shall be so limited that they will not tend to destroy or materially change the natural conditions of rivers, woodlands, swamps, marshes, shallows, or other wetlands.

- 4.1706 Minimum Yard Requirements. Any building shall have a front yard of not less than a depth of one hundred (100) feet and a rear yard of not less than a depth of fifty (50) feet. There shall be two (2) side yards, each of which shall not be less than thirty (30) feet as measured from the outermost edge of structures.
- 4.1707 Minimum Shelterbelt Setback. Shelterbelts consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred fifty (150) feet from the right-of-way line. Field belts consisting of one or two rows perpendicular to the right-of-way shall be set back a minimum of one hundred (100) feet from the right-of-way line.

## CHAPTER 4.18 RECREATION DISTRICT (RC)

4.1801 Intent. The intent of the Recreation District (RC) is to provide suitable areas for varying types of recreational activities, in particular, those customarily located near lakes and rivers. The grouping of recreational uses will provide for convenient public access.

4.1802 Permitted Principal Uses and Structures. The principal public or private uses and structures permitted in the Recreation District (RC) may include but shall not be limited to the following:

1. Swimming areas;
2. Archery Ranges;
3. Instructional camps;
4. Golf courses, driving ranges;
5. Skating rinks;
6. Sporting fields and stadiums, tennis courts;
7. Parks and recreational areas;
8. Riding Stables;
9. Access areas and facilities; and
10. Agriculture and related-agricultural uses.

4.1803 Permitted Accessory Uses and Structures. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district.

4.1804 Special Exceptions. After the provisions of this Ordinance relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in the Recreation District (RC):

1. Utility substations;
2. Shooting ranges;
3. Concessions; and
4. Marinas.

4.1805 Minimum Lot Requirements. The minimum lot area shall be one (1) acre. The minimum lot width shall be one hundred fifty (150) feet.

4.1806 Minimum Yard Requirements. Any building shall have a front yard and rear yard of fifty (50) feet. There shall be two (2) side yards each of which shall not be less than twenty-five (25) feet as measured from the outermost edge of the structures.

4.1807 Minimum Shelterbelts Setback. Shelterbelts consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred fifty (150) feet from the right-of-way line. Field belts consisting of one or two rows perpendicular to the right-of-way shall be set back a minimum of one hundred (100) feet from the right-of-way line.

4.1808 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation (AG-P) by Title 4, Chapter 4.06 of the Revised Brown County Ordinances, as amended, to-wit: **The North eight hundred twenty feet (N 820') of that portion of the Southeast Quarter of Section Fifteen, Township One Hundred Twenty-two, Range Sixty-four (SE 1/4 15-122-64), lying east of the Chicago & North Western Railway Company right-of-way and West of U.S. Highway #281 located in Brown County, South Dakota** be and the same is hereby changed to Recreational District (RC) to be used in accordance with Title 4, Chapter 4.18 of the Revised Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on file in the office of said Official, and by reference be made a part of the Revised Brown County Ordinances (effective 2/1/1995).

## CHAPTER 4.19 FLOODPLAIN DISTRICT (FP)

- 4.1901 Statutory Authorization. The Legislature of the State of South Dakota has in SDCL 9-36 and 7-18-14 (State Statute delegating authority) delegated the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Brown County Commission of Brown County, South Dakota does ordain as follows:
- 4.1902 Findings Of Fact. 1) The flood hazard areas of Brown County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. 2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.
- 4.1903 Intent. The intent of the Floodplain District (FP) is to delineate reasonable high watermarks within the jurisdiction of this Title. For the reasons of health, safety, and the general welfare, certain safeguards are needed to: 1) protect human life and life; 2) minimize the expenditure of public money for costly flood control projects; 3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; 4) to minimize prolonged business interruptions; 5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard; 6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas; 7) to ensure that potential buyers are notified that property is in an area of special flood hazard; and 8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- 4.1904 Methods Of Reducing Flood Losses. In order to accomplish its purposes, this ordinance includes methods and provisions for: 1) restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities; 2) requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction; 3) controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; 4) controlling filling, grading, dredging, and other development which may increase flood damage; and, 5) preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.
- 4.1905 Lands To Which This Ordinance Applies. This ordinance shall apply to all areas of special hazard within the jurisdiction of Brown County, South Dakota.
- 4.1906 Basis For Establishing The Areas Of Special Flood Hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Brown County, South Dakota dated September 29, 2010, with an accompanying Flood Insurance Rate Map (FIRM), is hereby adopted by reference and declared to be a part of this ordinance. The FIRM panel numbers are 25, 50, 75, 100, 125,

150, 200, 209, 217, 225, 250, 275, 300, 325, 350, 375, 400, 425, 450, 475, 500, 550, 575, 590, 595, 600, 602, 606, 610, 625, 675, 700, 725, 734, 742, 750, 751, 752, 753, 754, 756, 760, 761, 765, 770, 800, 825, 828, 829, 850, 875, 900, 925, 950, 975, 1000, 1025, 1050, 1075, 1100, 1125, 1150, 1175, 1200, & 1225. The Flood Insurance Study and FIRM are on file at the Brown County Courthouse, 25 Market Street, Aberdeen, South Dakota.

- 4.1907 Compliance. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations.
- 4.1908 Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenants, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- 4.1910 Interpretation. In the interpretation and application of this ordinance, all provisions shall be: 1) Considered as minimum requirements; 2) Liberally construed in favor of the governing body; and, 3) Deemed neither to limit nor repeal any other powers granted under State statutes.
- 4.1911 Dual Districts. FP Districts (zones) will be found in conjunction with another district. Within these dual districts, the permitted uses, special exceptions, yard and lot requirements, etc., will be the same as those in the district found jointly with the FP district. The FP designation requires additional standards/requirements because of their proximity in and to flood prone areas.
- 4.1912 Flood Insurance Rate Map Utilized as Basis for FP District Designation. The FIRM is the basis for the FP zone designation. Any shaded areas on the FIRM constitutes a FP District which must be cross-checked with the Zoning Map to determine its joint district. This chapter shall apply to all areas of special flood hazards within the jurisdiction of this Title. The areas of special flood hazards identified in a scientific and engineering report entitled, "The Flood Insurance Study for the County of Brown", dated September 29, 2010, with an accompanying Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of this Title.
- 4.1913 Permitted Principal Uses and Structures. Only those permitted uses and structures allowed in the district listed jointly with the FP District.
- 4.1914 Special Exceptions. Only those special exceptions that are allowed in the district listed jointly with FP designation.
- 4.1915 Yard, Lot, and Area Requirements. Yard, lot, and area requirements shall be those that are required in the districts that are listed with the FP designation.
- 4.1916 Establishment of Development Permit. A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in Chapter 4.1912. A property receiving a Letter of Map Amendment or Letter of Map based upon fill must also obtain a development permit. Application for a Development Permit shall be made on forms furnished by the Zoning Administrator. The administrator shall require, review, and record information that may include, but not be limited to, plans in duplication drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Where base flood elevations are utilized, all new construction, substantial improvements and other

development must comply with requirements of Section 4.1922, Use of Other Base Flood Data. Specifically, the following information is required.

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
2. Elevation in relation to mean sea level to which any new or substantially improved structure has been flood proofed;
3. Certification by a registered professional engineer or architect that the flood proofing methods for any non-residential structure meet the flood proofing criteria in Chapter 4.1912; and
4. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

The administrator shall review all development permit applications to determine: 1. that the requirements of this Title have been satisfied; 2. that all necessary permits have been obtained from those Federal, State, or local agencies from which prior approval is required; 3. if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purpose of this Chapter "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas. If it is determined that there is no adverse effect and the development is not a building, the permit shall be granted. If it is determined that there could be an adverse effect, then technical justification (i.e., a registered professional engineer) for the proposed development shall be required. If the proposed development is a building, the provisions of this Title shall apply. All information obtained pertaining to the provisions of this Chapter shall be maintained for public inspection. When base flood elevation data has been provided in accordance with Chapter 4.1906, the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available in order to administer Chapter 4.1912. Alterations of watercourses require the notification of adjacent communities and the State Dept. of Disaster and Emergency Services. Evidence of such notification must additionally be submitted to the Federal Emergency Management Agency. Maintenance within the altered or relocated watercourse so that flood carrying capacity is not diminished is also required.

4.1917 General Standards. In all areas of special flood hazards, the following standards are required:

1. Anchoring.
  - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads.
  - b. All manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement and be capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. Specific requirements may be:

(1) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring one additional tie per side.

(2) Frame ties be provided at each corner with five additional ties per side at intermediate points, with homes less than 50 feet long requiring four additional ties per side.

(3) All components of the anchoring system be capable of carrying a force of 4,800 pounds, and;

(4) Any additions to the home be similarly anchored.

## 2. Construction Materials and Methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## 3. Utilities.

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system, and,

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into the flood waters, and,

c. On-site water disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

## 4. Subdivision Proposals.

a. All subdivision proposals shall conform to Title 5, Chapter 5.0305 of the First Revision of the Brown County Ordinances.

4.1918 Specific Standards. In all areas of special flood hazards, where base flood elevation data has been provided as set forth in Section 4.1906, Basis for Establishing the Areas of Special Flood Hazard or Section 4.1922 Use of Other Base Flood Data, the following standards are required:

1. New construction and substantial improvements of any residential structure shall have the lowest floor, including basement, elevated to one foot above the base flood elevation.



2. New construction and substantial improvements of any commercial, industrial, or other non-residential structure shall either have the lowest floor, including basement, elevated to one foot above the level of the base flood elevation; or, together with attendant utilities and sanitary facilities, shall:

- a. Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
- c. Be certified by a registered engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certifications shall be provided to the official as set forth in 4.1916.
- d. Properties that have received a Letter of Map Amendment or Letter of Map Revision based upon fill must still have their lowest floor elevated or floodproofed to one foot above the base flood elevation.

### 3. Manufactured Homes.

- a. Manufactured homes shall be anchored in accordance with 4.1917.
- b. All manufactured homes or those to be substantially improved shall conform to the following requirements:
  - 1) Require that manufactured homes that are placed or substantially improved on a site a) outside of a manufactured home park or subdivision, b) in a new manufactured home park or subdivision, or c) in an expansion to an existing manufactured home park or subdivision, or d) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage: as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
  - 2) Require that manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions that are not subject to the provisions in b-1) above be elevated so that either a) the lowest floor of the manufactured home is at or above the base flood elevation, or b) the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

### 5. Recreational Vehicles

1) Require that recreational vehicles either a) be on site for fewer than 180 consecutive days, b) be fully licensed and ready for highway use, or c) meet the permit requirements and elevation and anchoring requirements for manufactured homes.

4.1919 Encroachment. The cumulative effect of any proposed development, shall not increase the water surface elevation of the base flood more than one foot at any point.

4.1920 The Designation Of The Zoning Administrator. The Zoning Administrator is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.1921 Duties And Responsibilities Of The Zoning Administrator. Duties of the Zoning Administrator shall include, but not be limited to:

1) Permit Review

a. Review of all development permits to determine that the permit requirements of this ordinance have been satisfied;

b. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of 4.1928-1 are met.

4.1922 Use Of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 4.1906, Basis For Establishing The Areas Of Special Flood Hazard, the Zoning Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any Federal, State, or other source. Where base flood elevation data are utilized, all new construction, substantial improvements, or other development in Zone A are administered in accordance with Sections 4.1923, Information To Be Obtained And Maintained and 4.1918, Specific Standards.

4.1923 Information To Be Obtained And Maintained.

1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

2) For all new or substantially improved floodproofed structures:

(i) Verify and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed.

(ii) Maintain the floodproofing certifications required in Section 4.1921.

3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.1924 Alteration Of Watercourses.

1) Notify adjacent communities and the State Department of Public Safety Emergency Management prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

- 4.1925 Interpretation Of FIRM Boundaries. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.1930.
- 4.1926 Openings In Enclosures Below The Lowest Floor. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
- 1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - 2) The bottom of all openings shall be no higher than one foot above grade.
  - 3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- 4.1927 Below-Grade Residential Crawlspace Construction. New construction and substantial improvement of any below-grade crawlspace shall:
- 1) Have the interior grade elevation, that is below base flood elevation, no lower than two feet below the lowest adjacent grade.
  - 2) Have the height of the below grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not exceed four feet at any point.
  - 3) Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood.
  - 4) Meet the provisions of Section 4.1917-1, Anchoring; Section 4.1917-2, Construction Materials and Methods; and 4.1926, Openings in Enclosures Below the Lowest Floor.
- 4.1928 Floodways. Located within areas of special flood hazard established in Section 4.1906 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
- 1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
  - 2) If Section 4.1928-1 is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Chapter 4.19.
- 4.1929 Warning and Disclaimer of Liability. The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering

considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Title does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Title shall not create liability on the part of Brown County, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this Title or any administrative decision lawfully made thereunder.

4.1930 Variance Procedures. The Brown County Zoning Board of Adjustment shall hear and decide on appeals and requests for variances from the requirements of this Chapter. The Zoning Board of Adjustment shall consider:

1. The danger that materials may be swept onto other lands to the injury of others.
2. The danger to life and property due to flooding or erosion damage.
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
4. The importance of the services provided by the proposed facility to the community.
5. The necessity to the facility of a waterfront location.
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
7. The compatibility of the proposed use with the existing and anticipated development.
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
9. The safety of access to the property in times of flood for ordinary and emergency vehicles.
10. The expected heights, velocities, rate of rise, and sediment transport of the flood waters and the effects of wave action expected at the site.
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as gas, electrical, and water systems, streets and bridges.

The Zoning Board of Adjustment may attach conditions to the granting of variances as it deems necessary to further the purposes of this Chapter. Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items 1-11 above have been considered. As the lot size increases beyond one-half acre, the technical justifications required for issuance of a variance increases.

Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this Chapter. Variances shall not be issued within any designated floodway if any increase in flood levels during the base discharge would

result. Variances shall only be issued upon a determination that the variance is the minimum necessary to afford relief. Variances shall only be issued upon:

1. A showing of good and sufficient cause.
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and,
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation. All variances shall be reported to the Federal Emergency Management Agency.

## CHAPTER 4.20 SUPPLEMENTARY DISTRICT REGULATIONS

- 4.2001 Visibility at Intersections. On a corner lot in all Residential Districts, nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two and one-half (2 1/2) 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 street curbs or street edges.
- 4.2002 Erection of More Than One Principal Structure on a Lot. In any district, no more than one main structure shall be located on a tract or lot when used for residential purposes. Where a lot or tract is used for an agricultural farm operation, commercial or industrial purpose, more than one main building may be located upon the lot or tract, but only when such buildings conform to all other yard requirements or any other requirements of this Title and are treated as though it were on an individual lot.
- 4.2003 Exceptions to Height Regulations. The height limitations contained in this Title shall not apply to spires, belfries, cupolas, antennas, ventilators, domes, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human occupancy; provided, that the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) regulations are met.
- 4.2004 Structures to Have Access. Every building hereafter erected or moved shall be on a lot adjacent to public access and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.
- 4.2005 Parking and Storage of Certain Vehicles. Not more than five (5) automobile vehicles of any kind or type without current license plates and inoperable shall be parked in any zoning district; except those licensed dealers permitted by special exception in the Heavy Industrial District (H-I).
- 4.2006 Minimum Off-Street Parking and Loading Requirements. Off-Street motor vehicle parking and loading space shall be provided on any lot on which any of the indicated structures and uses are hereafter established. Such space shall be provided with vehicular access to a street or alley. For the purpose of computing the number of parking spaces available in a given area, the formula of two hundred fifty (250) square feet per parking space shall be required. Minimum off-street parking and loading requirements, which shall be applicable in all zoning districts except Commercial (C) to the structures and uses indicated, shall be set forth in the Schedule of Minimum Off-Street Parking and Loading Requirements, hereby adopted by reference and declared to be a part of this Title. If minimum off-street and loading space, required in said schedule, cannot be reasonably provided on the same lot on which the principal structure or use is conducted in the opinion of the County Planning Commission, the Commission may permit such space to be provided on other off-street property, provided, that such space lies within four hundred (400) feet of the entrance to such principal structure or use.
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SCHEDULE OF MINIMUM OFF-STREET PARKING AND LOADING REQUIREMENTS

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<b>Structures and Uses</b>	<b>Minimum Off-Street Parking Requirements</b>	<b>Minimum Off-Street Loading Requirements</b>
Bowling Alleys	4 spaces per alley	1 space per establishment
Churches, Synagogue and Temples	1 space per 4 seats in main worship unit	None required
Eating and Drinking Places	Parking spaces equal to 30% of capacity in persons	2 spaces per establishment
Educational Uses, Nursery & Primary	Parking spaces equal to 20% of capacity in students	2 spaces per structure
Educational Uses, All Other	Parking spaces equal to 40% of capacity in students	2 spaces per structure
Funeral Homes and Chapels	8 spaces per reposeing room	2 spaces per establishment
Hospitals	1 space per 2 beds	3 spaces per structure
Hotels	1 space per rental units	1 space per establishment
Industrial Uses	1 space per 2 employees on largest shift	2 spaces per establishment
Libraries	1 space per 500 sq. foot on floor area	1 space per structure
Lodging and Boarding Housing	1 space per 2 rental units	None required
Medical Clinics	5 spaces per staff doctor or dentist	None required
Mobile Home Park	2 spaces per dwelling unit	None required
Motels	1 space per rental unit	None required
Private Clubs and Lodges	1 space per 500 sq. feet of floor area	1 space per establishment
Residential Structures (including Mobile Homes)	2 spaces per dwelling unit	None required
Retail Sales Establishments	1 space per 200 sq ft of gross floor area	1 space per establishment
Roadside Stands	4 spaces per establishment	None required
Sanitariums, Convalescent and Rest Home Services	1 space per 3 beds, plus 1 space per employee	1 space per establishment
Service Establishments	1 space per 200 sq ft of gross floor area	1 space per establishment
Theaters, Auditoriums and Places of Assembly	1 space per 5 people in designed capacity	1 space per establishment
Veterinary Establishments	3 spaces per staff doctor	1 space per establishment
Wholesaling and Distribution Operations	1 space per 2 employees on largest shift	2 spaces per establishment

4.2007 Signs Excepted. All signs are prohibited in all Residential, Conservation, Flood Plain, Rural Urban, and Recreation Districts except in the following:

1. Signs Over Show Windows or Doors of a nonconforming business establishment announcing without display or elaboration only the name and occupation of the proprietor and not to exceed two (2) feet in height and ten (10) feet in length.
2. Real Estate Signs not to exceed eight (8) square feet in area which advertise the sale, rental, or lease of the premises upon which said signs are temporarily located.
3. Name, Occupation, and Warning Signs not to exceed two (2) square feet located on the premises.
4. Bulletin Boards for public, charitable, or religious institutions shall not exceed thirty- five (35) square feet in area located on the premises.
5. Memorial Signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal affixed flat against a structure.
6. Official Signs such as traffic control, parking restrictions, information, and notices.
7. Temporary Signs or banners when authorized by the County Planning Commission.

4.2008 Signs permitted. Signs shall conform to State law when along all State and Federal primary road system highways. Signs not covered in the above shall be permitted in all commercial, highway commercial, industrial and agricultural districts' with a Special Exception approval from the Brown County Planning Commission subject to the following restrictions:

1. Wall Signs placed against the exterior walls of buildings shall not exceed more than six (6) inches outside of a building's wall surface; shall not exceed five hundred (500) square feet in area for any one premise, and shall not exceed twenty (20) feet in height above the mean centerline street grade.
2. Projecting Signs fastened to, suspended from, or supported by structures shall not exceed one hundred (100) square feet in area for any one premise; shall not extend more than six (6) feet into any required yard; shall not extend more than six (6) feet into any public right-of-way; shall not be less than ten (10) feet from all side lot lines; shall not exceed a height of twenty (20) feet above the mean centerline street grade, and fifteen (15) feet above the driveway or an alley.
3. Ground Signs shall not exceed twenty (20) feet in height above the mean centerline street or grade; shall meet a minimum of one-half (1/2) of the yard requirements for the district in which it is located; shall not exceed one hundred (100) square feet on one side nor two hundred (200) square feet on all sides of any one premise.
4. Roof Signs shall not exceed ten (10) feet in height above the roof; shall meet all the yard and height requirements for the district in which it is located; and shall not exceed three hundred (300) square feet on all sides for any one premise.
5. Combinations of any of the above signs shall meet the requirements for the individual sign.



- 4.2009 Sign as Obstruction/Deception. Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape; and no sign shall be attached to a fire escape. No sign shall be placed so as to obstruct or interfere with traffic visibility.
- 4.2010 Nonconforming Signs. Signs lawfully existing at the time of the adoption or amendment of this Title may be continued although the use, size, or location does not conform with the provisions of this Title. However, it shall be deemed a nonconforming use or structure.
- 4.2011 Mobile Homes. No mobile home shall be parked and occupied in any unauthorized district for more than forty-eight (48) hours except upon a special permit issued by the Zoning Administrator. Such permit shall not be renewable within the same calendar year. Provided, however, a permit may be issued for parking and occupying a mobile home on land owned by the occupant or occupants, during the construction of a house thereon for a period not exceeding one hundred eighty (180) days. However, if material progress with house construction is not made within forty-five (45) days from the issuance of a permit, or if construction work ceases for a consecutive period of forty-five (45) days, said permit shall become void.
- 4.2012 Solution Mining Prohibited. Solution mining, in site mining of an ore body with the circulation of chemicals through injection and recovery wells for minerals, is prohibited.
- 4.2013 Vacation of Streets and Roads. Unless a variance is approved, whenever any street, road or other public right of way is vacated, the zoning district adjoining each side of the street, road or other public right of way is extended to the center of such vacation; and all area included in the vacation shall then and henceforth be subject to the appropriate regulations of the extended districts.

**CHAPTER 4.21           NONCONFORMING LOTS, NONCONFORMING USES OF LAND,  
NONCONFORMING STRUCTURES, NONCONFORMING USES OF  
STRUCTURES AND PREMISES, AND NONCONFORMING  
CHARACTERISTICS OF USES.**

4.2101 Intent. Within the districts established by this Title or amendments that may later be adopted, there exists (a) lots, (b) structures, (c) uses of land and structures, and (d) characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment; it is the intent to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent that non-conformities shall not be enlarged upon, expanded, or extended, nor be used as ground for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this revised ordinance by attachment on a building or premises of additional signs 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 Title 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 adoption or amendment of this Ordinance and upon which actual building construction has 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 an 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.

4.2102 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 Title 4. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of other yard requirements shall be obtained only through action of the Planning and Zoning Board.

4.2103 Nonconforming Uses of Land (or Land with Minor Structures Only). Where at the time of passage of this revised Ordinance lawful use of land exists which would not be permitted by the regulations imposed by Title 4, and where such use involves no individual structure with a replacement cost exceeding one thousand (1,000) dollars, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of Title 4;

2. 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 Title 4;

3. If any such nonconforming use of land ceases for any reason for a period of more than one (1) year any subsequent use of such land shall conform to the regulations specified by Title 4 for the district in which such land is located; and

4. No additional structure not conforming to the requirement of this Title 4 shall be erected in connection with such nonconforming use of land.

4.2104 Nonconforming Structures. Where a lawful structure exists at the effective date of adoption or amendment of this Title that could not be built under the terms of this Title 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 seventy-five (75) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Title; and

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.

4.2105 Nonconforming Uses of Structures or of Structures and Premises in Combination. If the nonconforming use involving individual structures with a replacement cost of one thousand (1,000) dollars or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Title that would not be allowed in the district under the terms of this Title, the nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Title in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;

2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Title, but no such use shall be extended to occupy any land outside such building.

3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of Title 4.

4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;

5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for a period of more than one (1) year (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and

6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to replacement cost at the time of destruction.

4.2106 Uses under Special Exception Provisions Not Nonconforming Uses. Any use which is permitted as a special exception in a district under the terms of this Title (other than a change through 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, but shall without further action be considered a conforming use.

**CHAPTER 4.22 ADMINISTRATIVE PROCEDURE AND ENFORCEMENT -- BUILDING PERMITS AND APPROACHES**

4.2201 Administration and Enforcement. An administrative official who shall be known as the Zoning Administrator and who shall be designated by the County Board of Commissioner's, shall administer and enforce Title 4. He may be provided with the assistance of such other persons as the County Board of Commissioners may direct.

If the Zoning Administrator shall find that any of the provisions of this Title are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He may order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Title to insure compliance with or to prevent violation of its provisions.

4.2202 Building Permits Required. Building permits are required in the following instances:

1. For any improvements on or to any structure/building in which the market value (networth) of the improvement exceeds \$2,000; or
2. For any structure or building, regardless of cost, if additional land or area is required for it to be sited on.

No building or structure, which meets any one of the above criteria shall be erected, partially erected, moved, added to or structurally altered without a permit therefore issued by the Zoning administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of the Title, unless he received a written order from the County Planning Commission in the form of an administrative review, special exception, or variance as provided by this Title.

4.2203 Application for Building Permit. All applications for building permits shall show the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any, and the location and dimensions of the proposed building or alteration.

The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; 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; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of Title 4.

One copy of the application shall be returned to the applicant by the Zoning Administrator after he shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The original and one copy of the application, similarly marked, shall be retained by the Zoning Administrator. The issuance of a building permit shall, in no case, be construed as waiving any provisions of this Title.

4.2204 Expiration of Building Permit. If the work described in any building permit has not begun within one hundred and eighty (180) days from the date of issuance thereof, said permit shall expire; it

shall be canceled by the Zoning Administrator, and written notice thereof shall given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a renewed building permit has been obtained at no additional cost unless substantial changes have been made to the first building permit. Construction must be completed within two (2) years of issuance of permit. If construction has not been completed within the two (2) year period, a new permit must be obtained for completion of project.

- 4.2205 Construction and Use to be as Provided in Applications and Permits. Building permits issued on the basis of applications approved by the Zoning Administrator authorized only the use, arrangement, and construction set forth in such approved application and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Title, and punishable as provided by Chapter 4.28.
- 4.2206 Building/Zoning Permit Fees. All building/zoning permits shall be obtained by application of the owner or builder and shall give an estimate of the value of construction or repair and initial fees shall be based on such estimate; provided that if at the completion of said construction or repair the estimated cost as given in the application appears inadequate to the Building and Zoning Official, he may demand bills or receipts to substantiate such value and additional fees may be assessed accordingly. It is the owner's and builder's responsibility to obtain a permit prior to construction on property, owned or leased.
- 4.2207 Building Permit in Conspicuous Places. All building permits issued by the Zoning Administrator must be placed in a conspicuous location on the building site for the duration of the construction or work described.
- 4.2208 Approach Permit. No approach shall be constructed upon any county road or highway without an approach permit issued by the Zoning Administrator. No approach permit shall be issued by the Zoning Administrator except in conformity with the below criteria, unless he received a written order from the Board of Adjustment in the form of a variance as provided by this Title.

The criteria for approaches shall:

1. Have no two approaches closer than five hundred (500) feet apart.
2. Not be located on the crest of a hill nor other locations where sight visibility will be impaired.
3. Have a slope of four (4) to one (1);
4. Have a minimum driving width of twenty-four (24) feet, and
5. Require the final approval of the County Director of Public Works as he may require that a culvert be installed.

**CHAPTER 4.23            COUNTY PLANNING COMMISSION/ZONING BOARD OF  
ADJUSTMENT**

4.2301 Proceedings of the County Planning and Zoning Commission. The County Planning and Zoning Commission shall serve as a Board of Adjustment as provided by SDCL 11-2-25.1 The County Planning and Zoning Commission shall adopt rules necessary for the conduct of its affairs and keeping with the provisions of Title 4. The County Planning and Zoning Commission shall keep a record of all proceedings. Meetings shall be held at the call of the Chairman, and at such other times as the Planning Commission 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.

The County Planning and Zoning Commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the Secretary of the Planning Commission. The Planning Commission shall adopt from time to time, sub-regulations as it may deem necessary to carry appropriate provisions of this Title into effect.

4.2302 Appeals, Hearings, Notice. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days prior to the newspaper publication of building permits by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

The Board of Adjustment shall fix a reasonable time (within 30 days) for the hearing of the appeal, give public notice thereof, as well as, due notice to the parties in interest, and decide the same within a reasonable time (within 30 days). Upon the hearing, any party may appear in person or by agent or by attorney.

## CHAPTER 4.24 BOARD OF ADJUSTMENT -- POWERS AND DUTIES

- 4.2401 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 Administrator based on or made in the enforcement of any zoning regulation relating to the location or soundness of structures or to interpret any map.
- 4.2402 Special Exceptions, Conditions Governing Applications, and Procedures. The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Title, requests for special exceptions or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Title to pass; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this Title, or to deny special exceptions when not in harmony with the purpose and intent of this Title. A special exception shall not be granted by the Board of Adjustment unless and until:
1. A written application for a special exception is submitted, indicating the chapter of this Title under which the special exception is sought and stating the grounds on which it is requested.
  2. Notice shall be sent to the adjacent landowners, the property owners requesting the special exception, and the local government entity by registered or certified letter at least seven (7) days prior to a hearing on the request.
  3. The public hearing shall be held. Any party may appear in person or by agent or by attorney.
  4. The Board of Adjustment shall make a finding that it is empowered under the chapter of this Title described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.
  5. Before any special exception shall be issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following, where applicable:
    - a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
    - b. Off-street parking and loading areas where required, with particular attention to the items in "a" above and the economic, noise, glare or other effects of the general exception on adjoining properties and properties generally in the district;
    - c. Refuse and service areas, with particular reference to the items in "a" and "b" above;
    - d. Utilities, with reference to locations, availability, and compatibility;
    - e. Screening and buffering with reference to type, dimensions, and character;



f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;

g. Required yards and other open spaces; and

h. General compatibility with adjacent properties and other property in the district.

6. Upon application, pursuant to the provisions of this Title, conditions and safeguards may be imposed as are appropriate. These conditions may specify time limits or address other matters pertinent to the issuance of a special exception. If conditions and safeguards established are not met, the special exception shall be declared unlawful and constitute a violation. Classified special exceptions shall be authorized only if they meet the following criteria:

a. Fire Hazard. The use shall not include any activity involving the use or storage of flammable or explosive material unless protected by adequate fire-fighting and fire-suppression equipment and by such safety devices as are normally used in the handling of any such material.

b. Noise. The use shall not include noise which objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.

c. Vibration. The use shall not include vibration, which is discernible without instruments on any adjoining lot or property.

d. Air Pollution. The use shall not involve any pollution of air by fly ash, dust, vapors, or other substances which are harmful to health, animals, vegetation, or other property or which can cause soiling, discomfort, or irritation.

e. Odors. The use shall not involve any malodorous gas or matter, which is discernible to any adjoining lot or property.

f. Glare. The use shall not involve any direct or reflected glare that is visible from any adjoining property or from any public street, road, or highway.

g. Traffic Hazard. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion. No single use or density of development should generate traffic volumes on any public street in excess of one hundred (100) vehicle trips per day per acre.

h. Sewer and Water. The use shall not involve an activity, which will substantially increase the burden on the water supply or cause sewage treatment problems unless provision is made for necessary adjustments.

i. Character of Neighborhood. The use shall not involve any activity not in character with the majority of the uses in the neighborhood unless, by design, setback, nature of operation, and other devices, the character of the neighborhood will be maintained.

j. General Welfare of the Community. The use shall not involve any activity which adversely affects the general welfare to the community.

4.2403 Variances, Conditions Governing Application and Procedures. The Board of Adjustment shall have the power, where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardships as such relief may be granted without substantially impairing the intent and purpose of this Title.

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of Title 4 should produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purpose of conveniences, profit, and caprice.

2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Title.

3. A variance from the terms of this Title shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions for a variance and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to the lands, structure, or buildings in the same district; that literal interpretation of the provisions of this Title would deprive the applicant of rights commonly enjoyed by other properties in the same districts under the terms of this Title; that special conditions and circumstances do not result from the action of the applicant; that granting the variance requested will not confer on the applicant any special privilege that is denied by this Title to other lands, structures, or buildings in the same district.

4. 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 issuance of a variance.

5. Notice of public hearing shall be given as in 4.2402 except that adjacent landowners will not be sent notice. The public hearing shall be held and any party may appear in person, or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of 4.2402 have been met by the applicant for a variance; the Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the general purpose and intent of Title 4 will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Title. Violation of such conditions and safeguards, when made a part of terms under which the variance is granted, shall be deemed a violation of Title 4 and punishable under Chapter 4.28 of this Title.

7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Title in the district involved, or any use expressly or by implication prohibited by the terms of this Title in said district.

4.2404 Board of Adjustment has Power of Zoning Administrator on Appeals, Reversing Decision of Zoning Administrator. In exercising the above mentioned power, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

4.2405 Vote Required to Reverse or to Grant Special Exception or Variance. The concurring vote of five members of the membership of the Board of Adjustment shall be necessary to grant any special exception or to reverse any order, requirement, decision, or determination of any such officer. The concurring vote of four members of the membership of the Board of Adjustment shall be necessary to decide in favor of the application on any matter upon which it is required to pass under this title or to effect any variation in this title.

## CHAPTER 4.25 APPEALS

4.2501 Duties of Zoning Administrator, County Planning and Zoning Commission/Board of Zoning Adjustment, County Commissioners, and Courts on Matters of Appeals. It is the intent of Title 4 that all questions of interpretation and enforcement shall be presented first to the Zoning Administrator and any person or persons or any board, taxpayer, department, board or bureau of the county aggrieved by any decisions of the Zoning Administrator and that such questions shall be presented to the County Planning and Zoning Commission/Board of Zoning Adjustment only in appeal from the decisions of the Zoning Administrator, and that recourse from the decisions of the County Planning and Zoning Commission/Board of Zoning Adjustment shall be to County Board of Commissioners and recourse from their decision to the courts as provided by law.

It is further the intent of Title 4 that the duties of the Board of County Commissioners shall include the procedure for deciding such questions as stated in this Chapter under this Title, the Board of County Commissioners shall have the duties: (1) of considering and adopting or rejecting proposed amendments or the repeal of this Title as provided by law, and (2) of being recourse in questions of appeal.

4.2502 Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the County Planning and Zoning Commission/Board of Zoning 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.

In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the County Planning and Zoning Commission/Board of Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

**CHAPTER 4.26            SCHEDULE OF FEES, CHARGES, AND EXPENSES**

4.2601 Schedule of Fees, Charges, and Expenses. The Board of County Commissioners shall 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 Title 4. The schedule of fees shall be posted in the Office of the Zoning Administrator and may be altered or amended only by the Board of County Commissioners. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

## CHAPTER 4.27      AMENDMENT

4.2701 Amendments. The provisions set forth in Title 4 may, from time to time, be amended, supplemented, changed, modified, or repealed by action of the Board of County Commissioners or when such amendment, supplement, change, modification, or repeal is requested through a petition of thirty (30) percent of the landowners in the districts requesting a change. An individual landowner may also petition the Board to change the zoning of all or any part of his property. Upon filing or upon separate requests by the Board of County Commissioners, the County Planning Commission shall hold a public hearing not less than fifteen (15) days after notice published in newspaper of general circulation in the County and subject to the provision of SDCL 11-2-29.

The Board of County Commissioners shall hold a hearing subject to the provisions of SDCL 11-2-29. At that time, the recommendations of the County Planning Commission will be reported.

The Board of County Commissioners shall therefore, by duly enacted ordinance, or resolution as appropriate, either adopt or reject such amendment, supplement, change, modification or repeal, and if it is adopted by the Board of County Commissioners, the same shall be published in the official newspaper in the County and take effect on the twentieth (20th) day after its publication.

## CHAPTER 4.28 VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

4.2801 Building Permit Violations. Any person, firm, or corporation in violation of Chapter 4.22, Subchapter 4.2202 may be assessed a late fee of one-half percent (1/2 %) of estimated cost of structure, \$50.00 administrative fee in addition to base cost of permit when application submitted after start of construction. The Zoning Administrator may also take enforcement measures as given in 4.2201. Payment of all fees shall be made in the Office of the Brown County Zoning Administrator within ten (10) days after the person, firm, or corporation in violation of Title 4 has been notified by registered letter, certified letter or hand delivered notice by Brown County Sheriff Department. If payment of the fee is not received at the end of the ten (10) day period, the Brown County State's Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9, 7-19-1, 11-2-25.

4.2802 Violation of Title 4. It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of the Title, except as otherwise specified in subchapter 4.2202. Violation thereof shall be a misdemeanor and may be punishable by a fine of up to one hundred (100) dollars for each and every day that any violator fails to comply with the provisions of this Title. All fines for violations shall be paid to the County and shall be credited to the general revenue fund.

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 the County from taking such other lawful action as is necessary to prevent or remedy any violation.

4.2803 Stop Order. Whenever any work is being done contrary to the provisions of this ordinance, the Planning Director 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 persons shall forthwith stop such work until authorized by the Planning Director to proceed with the work.

## CHAPTER 4.29           LEGAL STATUS PROVISIONS

- 4.2901 Separability. Should any article, section, or provision of this Title be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Title as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.
- 4.2902 Purpose of Catch Heads. The catch heads herein in connection with the foregoing chapters 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 Title.
- 4.2903 Repeal of Conflicting Ordinances. All ordinances or parts of ordinances in conflict with this Title, or inconsistent with the provisions of this Title, are hereby repealed to the extent necessary to give this Title full force and effect.



## CHAPTER 4.30 PERFORMANCE STANDARDS FOR L-I DISTRICT

### 4.3001 Performance Standards for an L-I District shall be as follows:

1. Occupation Noise. Any use established shall be so operated that no noise resulting from the use is perceptible beyond the boundaries of that plat line of the site on which such use is located. This standard shall apply to incidental traffic, parking, loading, construction, or maintenance operation.
2. Smoke and Particulate Matter. Any use established, enlarged, or remodeled after the effective date of the Ordinance shall be so operated as to control the emission of smoke or particulate matter to the degree that it is not detrimental to or shall endanger the public health, safety, comfort, or general welfare of the public.
3. Toxic or Noxious Matter. Any use established shall be so operated as not to discharge across the boundaries of the lot or through percolation into the subsoil beyond the boundaries of the lot wherein such use is located, toxic or noxious matter.
4. Odors. Any use established, enlarged, or remodeled shall be so operated as to prevent the emission of odorous matter of such quantity as to be readily detectable at any point beyond the lot line of the site on which such use is located.
5. Vibration. Any use creating periodic earthshaking vibrations, such as may be created from a drop forge, shall be prohibited if such vibrations are perceptible beyond the lot line of the site on which the use is located. The standard shall not apply to vibrations created during the process of construction.
6. Glare or Heat. Any use requiring an operation producing an intense heat or direct light transmission shall be performed with the necessary shielding to prevent such heat or direct light from being detectable at the lot line of the site on which the use is located.
7. Explosives. Any use requiring the storage, utilization, or manufacturing of products which could decompose by detonation shall be located not less than 500 feet from the "R" District line.
8. Screening. Any use in the "L-I" Light Industrial District abutting on the "R" district shall effectively screen any open storage from eye level vision by providing and maintaining a wall, fence, or 30-foot-side planting strip to screen and reduce the noise, dust, and vision between two uses. Such wall or fence shall be 6 feet in height and at least 50 percent closed.
9. Waste Material. Waste Material resulting from or used in industrial or commercial manufacturing, fabricating, servicing, processing, or trimming shall not be washed into the public storm sewer system not the sanitary sewer system, but shall be disposed of in a manner approved by the city engineer. The engineer may establish appropriate regulations and standards therefore.

## CHAPTER 4.31 PERFORMANCE STANDARDS FOR H-I DISTRICT

### 4.3101 Performance Standards for an H-I District shall be as follows:

1. Appearance. Junk, salvage, auto wrecking, and similar operations shall be shielded from view from streets and from adjacent properties in another district by means of a sturdy, sight-obscuring fence in good repair, or two rows of alternate planted evergreen or red cedar trees.
2. Fire Hazard. All flammable substances involved in any activity established in this district shall be handled in conformance with the latest edition of the Fire Prevention Code published by the American Insurance Association or other county/city/town ordinances.
3. Noise. All noises and noise-causing activities shall be muffled so that they will not create a disturbance greater than normal peak hour traffic noise on a major street when observed from any area residential district. Major street noise for comparison purposes shall be measured at the property line.
4. Sewage and Liquid Waste. No operation shall be carried on which involves the discharge into a sewer, water course, or the ground of liquid wastes of any radioactive nature, or liquid waste of a chemical nature which are detrimental to normal sewage plant operations or ground conditions.
5. Air Contaminants. Air contaminants and smoke shall be less dark than designated Number Two on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number Two shall be permitted for one (1) four (4) minute period in each one-half (1/2) hour. Light colored contaminants of such opacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted. Particulate matter or dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenths (.2) grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit.  
  
Due to the fact that the possibilities of air contaminants cannot be comprehensively covered in this section there shall be applied the general rule that there shall not be discharged from any source whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health, or safety of any such considerable number of persons or the general public or to cause or have a natural tendency to cause injury or damage to business, vegetation, or property.
6. Odor. Odor-causing operations shall be controlled so as to reduce escape of odors to the minimum practical within the limits of technology and economics.
7. Gases. All noxious gases shall be controlled to the extent that they will not be injurious to life and property. The gases sulphur dioxide and hydrogen sulphide shall not exceed five (5) parts per million, carbon monoxide shall not exceed twenty-five (25) parts per million, and nitrous fumes shall not exceed five (5) parts per million. All measurements shall be made at the property line.
8. Vibration. All machines including punch presses and stamping machines shall be mounted so as to minimize vibration. Fabrication shall not be so excessive that it interferes with industrial operations on nearer lots.

**CHAPTER 4.32 CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS**

4.3201 Intent. An adequate supply of 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, negatively affect the County environment. Animal manure must be controlled where it may add to air, surface water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

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. A special exception can be issued, as per Chapter 4.0604 - Agricultural Preservation (AG-P) - Special Exception. Refer to Chapter 4.3205.10 for additional standards.

4.3202 Definitions.

Animal Manure. Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Animal Units. Animal species and number of a species required to equal 300, 1,000 and 2,000 animal units. 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.

ANIMAL SPECIES	EQUIVALENT NUMBER OF A SPECIES TO EQUAL:			ANIMAL UNIT EQUIVALENT SPECIES/AU
	300 AU	1,000 AU	2,000 AU	
Feeder or Slaughter Cattle	300 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	200 hd	700 hd	1,400 hd	1.4
Finisher Swine (over 55 lbs)	750 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	3,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	80 hd	270 hd	540 hd	3.7
Swine Production Unit – Sows (Breeding, Gestating & Farrowing)	640 hd	2,130 hd	4,260 hd	0.47
Horses	150 hd	500 hd	1,000 hd	2.0
Sheep	3,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	16,500 hd	55,000 hd	110,000 hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	30,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	9,000 hd	30,000 hd	60,000 hd	0.033
Ducks	1,500 hd	5,000 hd	10,000 hd	0.2

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.

Change in Operation. "Change in operation" means a cumulative expansion of more than 300 animal units, after December 18, 1997, which are confined at an existing unpermitted concentrated animal feeding operation.

Farm Dwelling. Any dwelling owned or occupied by the farm owners, operators, tenants, or seasonal or year-round hired workers.

Non-Farm Dwelling. Any occupied dwelling which is not a farm dwelling.

Permit. A permit required by these regulations unless stated otherwise.

Potential Pollution Hazard. A Concentrated Animal Feeding Operation of 0-300 Animal Units may be classified as a Class D Operation by the County Zoning Officer when a Potential Pollution Hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:

1. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
2. A Potential Water Pollution Hazard exists due to sitting over a shallow aquifer or drainage, which contributes to the waters of the State.

Process Generated Wastewater. Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from water 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.

Process Wastewater. "Process wastewater" means any process generated wastewater and any precipitation (rain or snow) that comes into contact with animals, manure, litter or bedding, feed or other portions of the animal feeding operation. The term includes runoff from an open lot.

Shall. "Shall" means that the condition is an enforceable requirement of this permit.

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 percolation water from transporting contaminants from the land surface to the aquifer.

Shallow Well. A well which is located in a shallow aquifer.

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

Significant Contributor of Pollution. To determine if a concentrated animal feeding operation meets this definition, the following factors are considered:

1. Size of feeding operation and amount of manure reaching waters of the state;
2. Location of the feeding operation in relation to waters of the state;
3. Means of conveyance of manure and process wastewater into waters of the state;
4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state.

Water of the State. "Water of the State" means 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.

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

Zone X. These areas have been identified in the community flood insurance study as areas of moderate or minimal hazard from the principal source of flood in the area.

4.3203 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 180 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 single animal operation if they adjoin each other, or if they use a common area, or system for disposal of manure.

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	300 to 999
CLASS D	0 to 300 (Potential water pollution hazard)
CLASS E	0 to 300 (No pollution hazard)

4.3204 Concentrated Animal Feeding Operation Permit Requirements. Owner 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.

3. A cumulative expansion by 500 animal units, after December 18, 1997, of existing concentrated animal feeding operation that does not have a permit.
4. If a livestock operation with a DENR construction permit or a Brown County Zoning permit is sold, the new owner is subject to all the terms and conditions of the permit. The DENR and Brown 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 the DENR or Brown 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 Brown County Zoning Board permit.
5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
6. 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 violation of County or State regulations.

#### 4.3205 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

Classes A and B 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 conditioned on receiving a State permit.

Classes C and 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 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 to the State. 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 and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of manure.

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 & 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 application 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 the County Manure Application Setbacks.

Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure. Animal manure shall be applied within five miles of the Concentrated Animal Feeding Operation.

#### 4. Manure Management and Operation Plan

Classes A and B 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 of 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.
- (7) Manure transportation plan; manure transportation is limited to five miles from the place of origin.

B. As a condition of the permit, the County Board of Adjustment may require the producer to participate in environmental training programs and become a certified livestock manager.

C. The Board of Adjustment may require manure to be injected or incorporated into the soil.

#### 5. 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 control odors or flies. A management plan is required for submission of a permit. The County Board of Adjustment will review the need for control measures on site specific basis, taking in consideration prevailing wind direction and topography. The following procedures to 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 solid 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 applying manure on weekends, holidays, and evenings during warm season when neighbors may be involved in outdoor recreation activities.

I. Avoid surface application when allowable during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

J. Incorporation of manure must occur within 24 hours of open air spreading.

6. Required Setbacks (defined as radius) and Separation Distance for new Concentrated Animal Feeding Operations and those Expanding by 300 or More Animal Units after December 18, 1997.



MINIMUMS

	CLASS A	CLASS B	CLASS C	CLASS D & E
Established Residences not including owners/operators	3,960 feet*	2,640 feet	2,640 feet	2,640 feet
Churches, Businesses and Commercially Zoned Areas	5,280 feet*	5,280 feet	2,640 feet	2,640 feet
Incorporated Municipality	3 miles	2 miles	5,280 feet	2,640 feet
Public Water Supplies & Private Wells other than the operator	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Lakes and Streams classified as Fisheries as identified by the State	500 feet	500 feet	200 feet	200 feet
Federal, State & County Road ROW Housed	300 feet	300 feet	200 feet	200 feet
Federal, State & County Road ROW Open Lot	300 feet	300 feet	200 feet	200 feet
Township Road ROW Housed	150 feet	150 feet	150 feet	150 feet
Township Road ROW Open Lot	150 feet	150 feet	150 feet	150 feet
Designated 100 Year Floodplain	Prohibited	Prohibited	Prohibited	Prohibited

\* Plus 1,000 feet for 1,000 additional units

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 County Board of Adjustment.

7. Exemptions from Separation Distance

A. If a Concentrated Animal Feeding Operation is closer than the separation distances provided in these regulations, the applicant can request a written waiver from the separation distance. The residence, business, church, school, municipality, or public use area may waive the distance requirement. The waiver is recorded with the County Register of Deeds in order that any future owners can be informed.

B. Concentrated Animal Feeding Operation expansion of 300 animal units or more can apply to County Board of Adjustment for a variance to the required setback and separation distance regulations.

8. New Residences

Anyone establishing a new residence must comply with the minimum setbacks as stated in Section 6, Established Residences, upon determining the class of the concentrated animal feeding operation where the new residence will be located.

The following uses are prohibited in Zone 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 Zone X:

- (1) New and expansion of Class A and B Concentrated Animal Feeding Operations.
- (2) Earthen storage basins and lagoons.

The following uses are allowed in Zone X by Special Exception:

- (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 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.

#### 9. Manure Application Setbacks

- A. The following manure application 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>
Lakes, Rivers and Streams Classified as Fisheries from high water mark	1,000 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	1,000 feet	300 feet
Natural or Manmade Drainage	500 feet	50 feet

B. The County 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.

10. Standards for Special Exceptions

A. The County Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.

B. The County 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. Special Exceptions 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 County 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 zoning officer and signed by both the applicant and the zoning officer.

F. A neighboring township that adjoins between two counties will follow the regulations of the county that is most restrictive.

G. An applicant's record on environmental issues, employment, and labor compliance must be submitted with the application. If the County Planning and Zoning Commission finds the person is a "bad actor" then the applicant will be denied a permit.

#### 11. Facility Road Maintenance Agreements

All facilities within Brown County that cause excessive maintenance of County or Township roads shall be required to have a written agreement with the Township Board or County Highway Superintendent, stating acceptance responsibility for all additional costs incurred by the facility in maintenance of said road. Excessive maintenance shall be defined as: All work and materials costs incurred over and above the average cost of maintaining that specific type of road within that local governmental units jurisdiction. The terms of said agreement shall be determined prior to the issuance of a conditional use permit.

#### 12. 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 of whomever maintains the access road (township, county and state).
- L. Notification of public water supply officials.
- M. Any other information as contained in the application and requested by the County Zoning Officer.

N. Written notification to landowners or tenants living within the setback area to the proposed facility, and publication of notice in official County newspaper at least once.

O. A full written plan must be submitted at least four weeks in advance of the public hearing in the county courthouse or other location, available for public inspection.

P. A copy of the general permit application must be submitted to the County, at the time it is submitted to State Department of Environment and Natural Resources.

Q. A list of owner's names contracted to do manure land spreading and a legal description of the land must be submitted to the County.

### 13. Information Required for Class C and D Concentrated Animal Feeding Operational Permit

A. Owner's name, address and telephone number.

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 specification 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 of whomever maintains the access road (township, county and state).

K. Notification public water supply officials.

L. Any other information as contained in the application and requested by the County Zoning Officer.

**CHAPTER 4.33 RURAL ADDRESSING**

**4.3301 Naming of Roads in the Unincorporated Area:**

1. The names of roads are hereby fixed and adopted in accordance with and as shown by the official road address maps of the county. The names on these maps shall supersede the road names found on the plats recorded in the office of County Register of Deeds. The County Planner is directed to submit the necessary documentation to attach changes to the plats to correspond with the names on the official road maps of the county.
2. The County Planner will name or approve the naming all future roads in accordance with South Dakota Administrative Rules Chapter 50:02:03 except as specified below.

**4.3302 Installation and Maintenance of Road Intersection Signs in the Unincorporated Area:**

1. The County Highway Department shall maintain installed signs at designated road intersections.
2. When new roads are platted, whether public or private, the owner or developer shall install or reimburse the County for all material and labor costs associated with the installation of intersection signs.
3. Sign material and location shall be specified by the Highway Superintendent.
4. All installation costs shall be determined by the Highway Superintendent.
5. Townships shall install and maintain intersection signs within their unincorporated towns.

**4.3303 Designation of Addresses in the Unincorporated Area:**

1. Addresses for buildings on all public and private roads shall be issued by the County Planner in accordance with South Dakota Administrative Rules Chapter 50:02:03 except as specified below.
2. Addresses for buildings on all public and private roads in unincorporated cities and towns within the established zoning jurisdiction of a City or a Township shall be issued by the City or Township in accordance with South Dakota Administrative Rules Chapter 50:02:03 except as listed below.
3. The County Planner shall keep a record of all numbers assigned according to this ordinance and forward a copy to the Register of Deeds, Communications, Assessor's Office and Aberdeen Fire Department.
4. Addressing in the area around the City of Aberdeen bordered by but not to include the following streets shall be an exception:
  - North – 130 Street
  - South – 135 Street
  - East – 392 Avenue
  - West – 385 Avenue

This area will continue to use the addressing conventions of the City of Aberdeen.

4.3304 Posting of Designated Addresses in the Unincorporated Area:

1. The owner or occupant or person in charge of any house or building to which an address has been assigned will be notified by the County Planner of the address assigned to the same at any time after the adoption of this ordinance.
2. Within sixty (60) days after the receipt of such notification from the County Planner, the owner or occupant or person in charge of the structure to which an address has been assigned shall affix the address to the structure, if visible from the road, or to a sign or number post if not visible from the road, in such a way that the address can be clearly seen from the roadway.
3. It shall be the duty of such owner or occupant or person in charge thereof upon affixing the new number to remove any different number which might be mistaken for, or confused with, the number assigned to said structure by the County Planner.
4. Each principle building shall display the address assigned to the frontage on which the front entrance is located. In case a principle building is occupied by more than one business or family dwelling unit, each separate dwelling or unit must display a separate address.
5. Mobile homes located in an organized mobile home park must display their proper lot number on the mobile home lot visible from the driveway/access way.
6. Address characters shall be painted or applied, of contrasting color to the background, of not less than three inches (3") in height.
7. If a building or dwelling is situated in such a way that the address cannot be easily seen from the roadway in front of said structure, then a sign or address post must be used in front of the structure or at the entrance of the primary driveway and placed in such a way that it can easily be seen from the roadway.

4.3305 New Structures:

1. Addresses will be assigned to each proposed lot or tract on the surveyor's copies of final subdivision plats by the County Planner.
2. No building permit shall be issued for any principle building until the owner or developer has procured from the County, City or Township Planner the official address of the premises. Final approval of a certificate of occupancy of any principle building erected or repaired after the effective date of this ordinance shall be withheld until permanent and proper addresses have been displayed in accordance with the requirements of paragraph 4.3304 above.

4.3306 Penalties.

In the event that the owner or occupant or person in charge of any house or building refuses to comply with the terms of this ordinance by failing to affix the address assigned within sixty (60) days after notification, or by failing to remove any old addresses affixed to such structure or

primary driveway or elsewhere which may be confused with the address assigned thereto within said sixty (60) day period, shall be guilty of a class 2 misdemeanor. Each day of non-compliance shall be a separate offense.

4.3307 Conflicting Ordinances.

All ordinances or parts of ordinances in conflict therewith are hereby repealed.



**CHAPTER 4.34 MUNICIPAL, STATE AND COUNTY USE DISTRICT (M)**

4.3401 Intent. The purpose of this zone is to provide various locations of City and County government and to permit construction of buildings pertaining thereto without exception.

4.3402 Rezoning of Property.

1. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **The NE ¼ of Sec 14-T123N-R65W of 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Municipal, State and County Use District (M) to be used in accordance with Title 4, Chapter 4.34 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/14/2001).

2. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **The NW ¼ of Sec 14-T123N-R65W of 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Municipal, State and County Use District (M) to be used in accordance with Title 4, Chapter 4.34 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/14/2001).

3. That the portion within the limits of Brown County, heretofore zoned Rural Urban District (RU) by Title 4, Chapter 4.11 of the Second Revision Brown County Ordinances, as amended, to-wit: **Brown County Lot A of Outlot E, Dinsmore's First Addition to Claremont, Brown County, South Dakota** be and the same is hereby changed to Municipal, State and County Use District (M) to be used in accordance with Title 4, Chapter 4.34 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/14/2001).

4. That the portion within the limits of Brown County, heretofore zoned Conservation District (CN) by Title 4, Chapter 4.17 of the Second Revision Brown County Ordinances, as amended, to-wit: **The SW ¼ of Sec 24-T124N-R65W of the 5<sup>th</sup> P.M., except Lake and Land Deeded, Brown County, South Dakota** be and the same is hereby changed to Municipal, State and County Use District (M) to be used in accordance with Title 4, Chapter 4.34 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 2/14/2001).

5. That the portion within the limits of Brown County, heretofore zoned Agricultural Preservation District (AG-P) by Title 4, Chapter 4.06 of the Second Revision Brown County Ordinances, as amended, to-wit: **The N ½ of the SW ¼ of Sec 15-T124N-R63W of the 5<sup>th</sup> P.M., Brown County, South Dakota** be and the same is hereby changed to Municipal, State and County Use District (M) to be used in accordance with Title 4, Chapter 4.34 of the Second Revision Brown County Ordinances, of the County of Brown, South Dakota, as amended, and the Zoning Official is hereby directed to designate the above change on the Zoning Map on filed in the office of said Official, and by reference be made a part of the Second Revision Brown County Ordinances (effective 5/19/2015 Ordinance 092 amendment).

## CHAPTER 4.35 COMMUNICATION TOWERS AND FACILITIES

### 4.3501 Communication Towers and Facilities Requirements

Communication towers/facilities existing and/or approved prior to the date of adoption of these standards may continue to be used, however, proposed modifications must be reviewed by the Director, and, depending on the nature of the proposed modifications, may be subject to review and approval by the Board of Adjustment. In addition, any proposed modifications to approved and/or existing towers/facilities on towers constructed prior to adoption of this ordinance must be submitted for review.

**A. Co-Location.** Prior to applying for a Conditional Use Permit for construction of a new tower/facility, the applicant shall exhaust all alternatives for co-location on existing towers/facilities. As such, the applicant shall submit evidence demonstrating the following:

1. The planned equipment would exceed the structural capacity of the existing or approved antenna support structure, as documented by a qualified professional engineer licensed in the State of South Dakota, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the antenna support structure as documented by a qualified engineer and the interference cannot be prevented at a reasonable cost.
3. Existing or approved antenna support structures cannot accommodate the planned equipment at the necessary height as documented by a professional engineer licensed in the State of South Dakota.
4. Fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower/facility development are presumed to be unreasonable.
5. No new tower/facility shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Adjustment that no existing tower, structure, or alternative technology can accommodate the applicant's needs.
6. Furthermore, no new tower/facility shall be approved that is not in compliance with all standards for approval set forth in this ordinance.

### **B. General Approval Standards**

1. **Separation.** The following separation requirements shall apply to all proposed communication towers and facilities.

a) **Separation from planned and/or existing residential properties.**

Proposed towers/facilities shall be separated from neighboring properties either planned or utilized for residential purposes as established herein. The minimum separation distance shall be measured from the center of the foundation of the proposed tower/facility to the nearest portion of a property line of a neighboring tax parcel used or planned for residential purposes. For the purposes of this section, a property shall be considered to be used for a residential purpose, regardless of assessment type, if a dwelling or mobile home exists on the property. A property

shall be considered to be planned for residential purposes if it is within two miles of a city boundary, and that city has established a residential land use classification for the property.

(1) For towers/facilities of self-supporting monopole or lattice-type construction, the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater.

(2) For guyed towers/facilities the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater, plus one hundred (100%) percent of the length of the longest supporting guy wire.

**2.Height.** The applicant must demonstrate the proposed height of the tower/facility is the minimum necessary to accommodate the proposals requirements, as documented by a qualified engineer.

**3.Required Setbacks.** The center foundation of all towers/facilities are required to be setback in accordance with the following:

a) From any public right-of-way, the following apply:

(1) for towers of monopole and lattice-type construction, a distance equal to one hundred fifty (150%) percent the height of the tower or two hundred (200) feet, whichever is greater; and for towers of guyed-type construction, a distance equal to one hundred fifty (150%) percent the height of the tower plus the length of guyed wire or two hundred (200) feet, whichever is greater.

(2) From any adjoining property zoned or planned residential or existing residential use, the distance of three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower/facility for towers of lattice or monopole construction type; and three hundred (300) or one hundred fifty (150%) percent of the height of the tower/facility plus one hundred (100%) percent of the length of the longest supporting guy wire for towers of guyed type construction as measured the center foundation of the tower/facility to the nearest property line.

(3) From other property lines, a distance equal to at least fifty (50%) percent of the height of the tower/facility.

(4) Guys and accessory buildings must satisfy the minimum zoning district setback requirements for accessory structures within the lease area.

**4. Fencing and Screening.**

a)**Security Fencing.** Towers/facilities shall be enclosed by fencing not less than six (6) feet in height and shall be equipped with appropriate anticlimbing devices.

b) **Screening.** The lowest six (6) feet of the tower/facility shall be visually screened by trees, large shrubs, solid walls, buildings, solid fencing, and/or any combination thereof, from all public right-of-ways and adjoining zoned, planned, and/or existing residential land uses.

**5. Aesthetics.** Towers/facilities shall meet the following general requirements.

a)**Color.** Towers/facilities shall maintain a galvanized steel finish. If required to be painted by the FAA, such required colored schemes must be submitted to the Board of Adjustment. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.

b) **Lighting.** Towers/facilities, including antennas, shall not be artificially lighted unless required by the FAA or applicable authority. Unless required as the only option by the FAA, strobe lighting is not permitted. If lighting is required, lighting alternatives and design chosen must cause the least disturbance to the surrounding views. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.

c) **Signs.** No signs shall be allowed on any tower/facility, other than safety or warning signs. If any signage is required consistent with this standard, such signage must comply with the requirements of this ordinance, Signs section. "No Trespassing" signs shall be posted around the facility with a telephone number of who to contact in the event of emergency.

C. The proposed tower/facility must comply with all other applicable local, state or federal regulations.

D. The proposed tower/facility will not unreasonably interfere with the view from any publicly-owned or managed areas or major view corridors.

E. **Removal of Abandoned Towers/Facilities.** The owner of the tower/facility, with written authorization from the property owner, shall file annually a declaration with the Brown County Planning and Zoning Department as to the continuing operation of every tower/facility installed subject to these regulations. Failure to do so may be construed to mean that the facility is no longer in use and may be considered abandoned subject to the provisions for removal. The owner of the tower/facility and property owner will be notified that the property is considered to be in a state of abandonment, and such person(s) shall remove the tower/facility, foundational supports, and associated appurtenances within ninety (90) days of receipt of notice from Brown County at the owner's expense. Adequate removal shall include the restoration of the site to a state in keeping with the character of the surrounding landscape and the elimination of all ground-level paving. Failure to remove such an abandoned tower/facility within said ninety (90) days shall be grounds to issue a Notice of Violation in accordance with the requirements of this Ordinance and undertake enforcement action upon the tower/facility owner and property owner.

1. Any person, firm or corporation not in compliance with these regulations may be deemed guilty of a County infraction.

2. Documentation must be provided to the Brown County Planning and Zoning Department with signatures by all property owners with an interest in the tower/facility stating knowledge of the penalties associated with a County infraction, including that all costs for removal of abandoned towers/facilities in accordance with these regulations may be assessed against property under their ownership. Such documentation must be provided on the form supplied by the Brown County Planning and Zoning Department, and submitted at time of Application for Zoning Permit.

F. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for towers/facilities must submit the following information (as applicable). All plans shall be drawn at a scale of one (1) inch equals fifty (50) feet.

1. A scaled site plan clearly indicating the location, type and height of the proposed tower/facility.

2. Legal description of the parent parcel and leased parcel (if applicable).

3. The separation distance between the proposed tower/facility and nearest planned and/or existing residential property.

4. The separation distance from other existing and approved towers. The applicant shall also identify the type of construction of the existing tower(s) and owner/operators of such facilities.
5. A landscape plan showing specific landscape materials, existing and those proposed, identifying type and size of materials
6. Written statements from other applicable jurisdictions such as the FAA regarding coloring and potential lighting requirements. In addition, a copy of the FAA's response to the submitted "Notice of Proposed Construction or Alteration" must be submitted.
7. A statement by the applicant as to whether construction of the tower/facility will accommodate co-location of additional antennas for future users and documentation regarding the standards for co-located established in this Ordinance.
8. Identification of all other tower/facility sites owned and/or operated by the applicant within Brown County.
9. Elevations showing all facades, indicating exterior materials and color of the tower/facility on the proposed site and width, depth and height shall be presented.
10. Wireless telecommunications towers and antennae shall be designed to withstand sustained winds of at least 80 miles per hour.
11. Commentary on Ice Design Criteria for Communications Structures shall be consulted for ice load specifications.
12. The applicant shall demonstrate that the proposed tower complies with all Federal Communications Commission regulations addressing radio frequency emissions standards.
13. Copy of the signed lease agreement with the property owner.
14. Submittal of search rings established for the proposed communication tower and affidavit that the applicant made diligent, but unsuccessful efforts for permission to install or collocate the applicant's wireless communications facilities on all existing towers or other antenna support structures located within an area equal to one hundred percent (100%) of the search ring for the proposed site of the wireless communications facility.
15. The applicant shall agree, in writing, to allow for possible co-location of Brown County Public Safety equipment in the top position to the proposed communications facility and grants a perpetual access agreement to such equipment. Brown County Communications Department would be responsible for all public safety equipment installed.

## CHAPTER 4.36 WIND ENERGY CONSERVATION SYSTEMS

4.3601 **PURPOSE.** The purpose of this ordinance is to insure that the placement, construction and modification of a Wind Energy Conservation System (WECS) facility is consistent with the County's land use policies, to minimize the impact of WECS facilities, to establish a fair and efficient process for review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County's citizens.

4.3602 **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.

4.3603 **Federal and State Requirements.** All WECS 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 WECS facilities.

4.3604 **Large - LWECS.** The requirements of this Ordinance shall apply to all LWECS proposed after the effective date of this Ordinance. LWECS for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing LWECS, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing LWECS shall be allowed without full compliance with this Ordinance.

### A. General Requirements for LWECS

1. **Site Clearance.** The owner or operator shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWECS.
2. **Topsoil Protection.** The owner or operator shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
3. **Compaction.** The owner or operator 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.
4. **Livestock Protection.** The owner or operator shall take precautions to protect livestock during all phases of the project's life.
5. **Fences.** The owner or operator shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the fence owner.
6. **Color and Finish.** Wind Turbines shall be painted a non-reflective color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective. At LWECS sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the LWECS to the natural setting and existing environment.
7. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.
8. **Tower configuration.** All wind turbines, which are part of a LWECS, shall be installed with a tubular, monopole type tower. Meteorological towers may be guyed.
9. **Lighting.** LWECS sites shall be marked as required by the Federal Aviation Administration (FAA) and shall not be artificially lighted, except to the extent required by the FAA or other applicable authority. Lighting, including lighting intensity and frequency of strobe, shall

adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators or infrared heating devices used to protect the monitoring equipment.

10. **Signage.** All signage on site shall comply with the signs section of this ordinance. The manufacturer's or owner's company name and/or logo may be placed upon the compartment containing the electrical generator, of the WECS. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the LWECS sites.
11. **Feeder Lines.** The owner or operator shall place overhead electric lines, known as feeders, on public right-of-ways 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 right-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the owner or operator may place feeders on private property. When placing feeders on private property, the owner or operator shall place the feeder in accordance with the easement(s) negotiated. The owner or operator shall submit the site plan and engineering drawings for the feeder lines to the Commission before commencing construction.
12. **Waste Disposal.** Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site in a time period as established by the Brown County Health Department and disposed of in accordance with all applicable local, state and federal regulations.
13. **Minimum Ground Clearance.** The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet for a LWECS system and twenty-five (25) feet for a SWECS system .
14. **Signal Interference.** The applicant shall not operate the LWECS so as to cause any interference with electromagnetic communications, such as radio, telephone or television signals, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the LWECS or its operation, the owner or operator shall take the measures necessary to correct the problem.
15. **Federal Aviation Administration.** All LWECS shall comply with FAA standards and permits.
16. **Electrical Codes and Standards.** All LWECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
17. **Setbacks**
  - a) The following setbacks and separation requirements shall apply to all wind turbines and meteorological towers; provided that the Board of Adjustment upon recommendation by the Commission may reduce the standard setbacks and separation requirements if the intent of this Ordinance would be better served thereby. All other structures shall comply with the applicable setbacks as defined by the base zone district.
    - (1) **Structures.** Each wind turbine and meteorological tower shall be set back from the nearest off-site residence, school, hospital, church or public library, a distance no less than the greater of (a) one point one (1.1) times its total height or (b) one thousand (1,000) 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.
    - (2) **Property Lines.** At no time shall any part of the wind turbine and meteorological tower overhang an adjoining property without securing appropriate easements from adjoining property owners. Distance from property line shall be five hundred (500)



feet or one point one (1.1) times the system height depending upon which is greater, measured from ground surface to the tip of the blade when in a fully vertical position.

(3) **Public Right-of-Way.** Setbacks from public right-of-way, railroads, powerlines and structures shall be a minimum of 1.1 times the height of the tower and rotor.

(4) **Communication and Electrical Lines.** Each wind turbine and meteorological tower shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than 1.1 times its total height, determined from the existing power line or telephone line.

18. **Soil Erosion and Sediment Control Plan.** The owner or operator 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 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 barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

19. **Noise.** Audible noise due to LWECS sites operations shall not exceed fifty-five (55) dBA for any period of time, when measured at any dwelling, school, hospital, church or public library existing on the date of approval of any conditional use permit from the property line.

a) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

b) In the event the noise levels resulting from the LWECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment upon recommendation by the Commission provided that the following has been accomplished:

(1) Written consent from the affected property owners has been obtained stating that they are aware of the LWECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and

(2) If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the Brown County Recorder which describes the burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

20. **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.

21. **Footprint Minimization.** The owner or operator shall design and construct the WECS so as to minimize the amount of land that is impacted by the WECS. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems

shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise mutually agreed upon by the permittee and the landowner on whose property the LWECS is constructed.

22. **Permit Expiration.** The permit shall become void if no substantial construction has been completed within two (2) years of issuance.

23. **Safety.**

a) All wiring between wind turbines and the LWECS substation shall be underground. If the developer can demonstrate the need for an overhead line and the acceptance of landowners for this line, such option may be approved conditionally by the Board of Adjustment.

b) Wind turbines and meteorological towers shall not be climbable up to 15 feet above ground level.

c) All access doors to wind turbines and meteorological towers and electrical equipment shall be locked when not being serviced.

d) Appropriate warning signage shall be placed on Wind Turbine towers, electrical equipment, and LWECS entrances.

e) For all LWECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the LWECS is within accepted professional standards, given local soil and climate conditions.

f) For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of eight (8) feet above the ground. Visible fencing shall be installed around anchor points of guy wires. The property owner must sign a notarized acknowledgement and consent form allowing construction of the turbine and guyed wires without fencing as required in this Ordinance to be presented to the Commission and Board of Adjustment.

#### **B. Discontinuation and De-commissioning.**

1. **Cost Responsibility.** The owner or operator of a LWECS 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.

2. **Useful Life.** A LWECS 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 Commission for approval of a plan outlining the steps and schedule for returning the LWECS to service within 12 months of the submission.

3. **Decommissioning Period.** The facility owner or operator shall begin decommissioning a LWECS facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in b.(2). Decommissioning must be completed within eighteen (18) months after the facility or turbine reaches the end of its useful life.

4. **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 LWECS. 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 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.

5. **Decommissioning Plan.** Prior to commencement of operation of a LWECS facility, the facility owner or operator shall file with the Commission 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 Commission shall review a plan filed under this section and shall approve or disapprove the plan with six (6) months after the decommissioning plan was filed. The Commission may at any time require the owner or operator of a LWECS to file a report describing how the LWECS owner or operator is fulfilling this obligation.

6. **Financial Assurance.** After the tenth (10<sup>th</sup>) year of operation of a LWECS facility, the Commission may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Commission to cover the anticipated costs of decommissioning the LWECS facility.
7. **Failure to Decommission.** If the LWECS facility owner and operator does not complete decommissioning, the Commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. 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 LWECS facility and seek additional expenditures necessary to do so from the facility owner.

### **C. Avoidance and Mitigation of Damages to Public Infrastructure.**

1. **Roads.** Applicants shall identify all roads to be used for the purpose of transporting LWECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the LWECS and obtain applicable weight and size permits from the impacted road authority(ies) prior to construction. Where practical, all-weather roads shall be used for all activities associated with the LWECS. For private roads, the owner or operator 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. 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 road 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.
  2. **Existing Road Conditions.** Applicant shall conduct a pre-construction survey, in coordination with the impacted local road authority(ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility. The applicant is responsible for on-going road maintenance and dust control measures identified by the Brown County Highway Superintendent or Township official during all phases of construction. The owner or operator shall notify the County Zoning Office of such arrangements.
  3. **Drainage System.** The Applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the LWECS.
  4. **Required Financial Security.** The applicant shall be responsible for restoring or paying damages as agreed to by the applicable road authority(ies) sufficient to restore the road(s) and bridges to preconstruction conditions. Financial security in a manner approved by the Brown County Attorney's Office shall be submitted covering 130% the costs of all required improvements. This requirement may be waived by the Board of Adjustment by recommendation from the Brown County Highway Superintendent.
- D. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for LWECS must submit the following information (as applicable).

1. The names of project applicant
2. The name of the project owner
3. The legal description and address of the project.
4. A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
5. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale and an ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.
6. Engineer's certification(s) as required in these supplemental standards.
7. Documentation of land ownership or legal control of the property
8. The latitude and longitude of individual wind turbines.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other LWECS within 10 rotor diameters of the proposed LWECS.
10. Existing Resources Inventory.
11. An Acoustical analysis
12. FAA Permit Application
13. Location of all known communications towers/facilities within two (2) miles of the proposed LWECS.
14. Decommissioning Plan
15. Description of potential impacts on nearby all LWECS and Non LWECS and wind resources on adjacent properties.
16. Identification of significant migratory patterns and nesting areas for birds within two (2) miles.

4.3605 Small - **SWECS**. The requirements of this Ordinance shall apply to all SWECS proposed after the effective date of this Ordinance. SWECS for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing SWECS, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing SWECS shall be allowed without full compliance with this Ordinance.

#### **A. General Requirements for SWECS**

1. **Site Clearance.** The owner or operator shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the SWECS.
2. **Color and Finish.** SWECS shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
3. **Lighting.** A SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
4. **Signage.** All signage on site shall comply with the signs section of this ordinance. 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 SWECS visible from any public road shall be prohibited.
5. **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.
6. **Setbacks**

- a) 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.
7. **Noise.** SWECS facilities shall not exceed fifty-five (55) dBA for any period of time, when measured at any dwelling, school, hospital, church or public library existing on the date of approval of any conditional use permit from the property line. The level, however, may be exceeded during short-term events such as utility outages or wind storms, in its approval of the turbine array for warranty purposes.
8. **Code Compliance.** A SWECS shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
9. **Utility Notification.** No SWECS 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.
10. **Permit Expiration.** The permit shall become void if no substantial construction has been completed within two (2) years of issuance.
- 11. Discontinuation and De-commissioning.**
- a) **Cost Responsibility.** The owner or operator of a SWECS is responsible for removing the wind generator from the tower at their sole expense within 3 months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Commission may pursue legal action to have the wind generator removed at the owner's expense.
  - b) **Useful Life.** A SWECS that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Commission may issue a Notice of Abandonment to the owner of a SWECS 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 Commission shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.
12. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for SWECS must submit the following information (as applicable).
- a) The names of project applicant
  - b) The name of the project owner
  - c) The legal description and address of the project.
  - d) A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
  - e) Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale and an ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.
  - f) Engineer's certification(s) as required in these supplemental standards.
  - g) Documentation of land ownership or legal control of the property
  - h) Location of all known communications towers/facilities within two (2) miles of the proposed SWECS.

13. **Violations.** It is unlawful for any person to construct, install, or operate a SWECS that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. SWECS facilities installed prior to the adoption of this ordinance are exempt.

14. **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.

TITLE 5          SUBDIVISION REGULATIONS

CHAPTER 5.01	General Provisions
CHAPTER 5.02	Procedures
CHAPTER 5.03	Design Standards
CHAPTER 5.04	Improvements
CHAPTER 5.05	Covenants and Guarantees
CHAPTER 5.06	Preliminary Plat Exemption
CHAPTER 5.07	Enforcement
CHAPTER 5.08	Violation and Penalties
CHAPTER 5.09	Severability Clause
CHAPTER 5.10	Legal Status Provisions

## CHAPTER 5.01           GENERAL PROVISIONS

5.0101 Purpose. These regulations shall be for the purpose of implementing the Brown County Comprehensive Plan by shaping development patterns and providing for consistency in the quality of development.

5.0102 Jurisdiction. These regulations shall apply within the unincorporated areas of Brown County, South Dakota, including the incorporated municipalities of Claremont, Columbia and Stratford, yet excluding areas of joint jurisdiction with Aberdeen, Frederick, Groton, Hecla and Warner. (Ordinance 087 amendment)

5.0103 Extent of Regulations.

1. The provisions of these regulations shall apply to every addition to, or subdivision within, any city or town listed within subchapter 5.0102, provided that if the land or any part thereof included in any such addition or subdivision is within, adjoining or contiguous to the boundaries of any city or town, listed in 5.0102 the plat thereof, before being recorded, shall be submitted to the governing body thereof, which shall thereupon examine the same, and it shall appear that the system of streets and alleys set forth therein conforms to the system of streets and alleys of the existing plat of such city or town, and that all taxes, if any, upon the tract or subdivision have been fully paid, and that such plat and the survey thereof have been executed according to law, such governing body shall approve the same, and the auditor or clerk shall endorse on such plat a certification of acceptance. No plat of any such addition or subdivision so situated shall be entitled to record or be recorded unless the same bears the acceptance certificate of the auditor or clerk.

2. Whenever any person wishes to plat any lands outside the boundaries of a municipality which are not included in 5.0103 (1), he shall be governed by and proceed in accordance with the provisions of these regulations, except that before recording his plat, he shall submit the same for review as outlined within these regulations.

5.0104 Definitions. For the purposes of this Title, 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 number and plural number includes the singular.

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

The words used or occupied include 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.



**BOARD:** As used shall mean Board of County Commissioners of Brown County.

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

**COMMISSION:** Planning and Zoning Commission of Brown County, South Dakota.

**CUL-DE-SAC:** A street having one end connecting with a public street and being terminated at its other end by a vehicular turn-around.

**COUNCIL:** Town or city council of a municipality in Brown County, South Dakota.

**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 Brown County, South Dakota.

**COMPREHENSIVE PLAN:** A long-range plan for the improvement and development of Brown County, South Dakota, as adopted by the Planning and Zoning Commission and Board of County Commissioners.

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

**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.

**STREET:** A thoroughfare, dedicated to public use, which affords a primary means of access to the abutting property.

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

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

**SUBDIVISION:** Subdivision means:

1. The division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose of transferring ownership or for building development;
2. After the division of land each parcel, tract, or lot forty (40) acres or greater and used exclusively for agricultural purposes shall not be deemed a subdivision.

**WATER COURSE, DRAINAGE WAY, CHANNEL, OR STREAM:** A natural or man-made depression in which a current of surface runoff water flows following participation.

## CHAPTER 5.02 PROCEDURES

- 5.0201 Preapplication. Prior to the subdivision of any land, the subdivider or his agent shall discuss informally with the Planning Commission the proposed subdivision with reference to these Subdivision Regulations, Title 4 Zoning, and compatibility with the Comprehensive Plan.
- 5.0202 Preliminary Application Fee. The subdivider shall pay to the Zoning Administrator, to be deposited in the county-general fund, a preliminary fee of ten (\$10) dollars before the application.
- 5.0203 Preliminary Application. The subdivider or his agent shall prepare and submit to the Planning Commission the following:
1. Six (6) copies of the preliminary plat, drawn to a scale of one (1) inch to two hundred (200) feet or larger. All preliminary submittals shall be in conformance with the design standards set forth in Chapter 5.05 of this Title and shall include or be accompanied by the following information:
    - a. Receipt for preliminary fee.
    - b. Proposed name of the subdivision, which shall not duplicate previously filed plat names
    - c. A date, scale, north point, and key map showing the general location of the proposed subdivision in relation to surrounding development.
    - d. Names and addresses of the subdivider, engineer, surveyor, or landscape architect responsible for the survey or design.
    - e. Location of boundary lines in relation to section or quarter section lines, including a legal description of the property.
    - f. Existing contours wherever five (5) feet of deviation occurs.
    - g. Location, width, and name of existing or platted streets and alleys, railroads, utilities, rights-of-way or easements, parks, and existing structures within the proposed subdivision and their relationship to the same of adjacent subdivisions.
    - h. Zoning classification and existing and proposed land use.
    - i. Written and signed statements explaining how and when the subdivider proposes to provide and install all required sewers or other suitable sanitary disposal systems, water supply, pavement, sidewalks, drainage ways, and other required improvements.
    - j. Written and signed statements by the appropriate officials, obtained by the subdivider, ascertaining the availability of gas, electricity, and water to the proposed subdivision.
    - k. Layout, number, and approximate dimensions of lots and the number of each block.
    - l. The owner of any parcel of land proposing to develop such land for residential or commercial purposes shall obtain written approval of the proposed access to an abutting highway or street from the appropriate highway or street authority. The approval shall be

obtained prior to filing of the plat in accordance with this chapter and may not replace the need for any permits required by law.

2. The preliminary plat must be submitted to the Zoning Administrator at least ten (10) days prior to action by the Planning Commission.

3. Before the preliminary plat is reviewed, the governmental entity (town or township) in which the proposed subdivision is located will be notified at least five (5) days in advance of the preliminary plat review date.

4. The Commission shall approve or disapprove the preliminary plat within sixty (60) days. Approval of the preliminary plat by the Commission shall be void at the end of one (1) year unless a final plat has been submitted.

5. If the Planning Commission finds that land proposed to be subdivided is unsuitable for subdivision development due to flooding, bad drainage, steep slopes, rock formations and/or other such conditions as may increase the danger of health, life or property or aggravate erosion or flood hazards; and, if from adequate investigations, conducted by all the public agencies concerned, it has been determined that in the best interest of the public the land should not be platted and developed for the purpose proposed, the Planning Commission may not approve the land for subdivision unless adequate methods are formulated by the subdivider for meeting the problems that will be created by the subdivision and development of the land.

6. Upon approval of the preliminary plat, the subdivider may proceed with the preparation of the final plat. If disapproved, the subdivider may appeal the Board of County Commissioners to overturn the decision of the Planning Commission.

#### 5.0204 Final Plat Application.

1. The subdivider shall pay to the Zoning Administrator a final application fee after preliminary approval and before final application. The fee shall be twenty-five (\$25) dollars plus one (\$1) dollar per acre for all parcels or lots larger than one (1) acre in size, rounded to the next highest whole number.

2. Exemption (also see Chapter 5.06) whenever the preliminary application is waived, final plats must be submitted to the Zoning Administrator at least five (5) working days prior to its review by the Planning Commission.

#### 5.0205 Final Plat Requirements and Approval. The subdivider shall prepare and submit to the Planning Commission the following, prepared by land surveyor registered in the State of South Dakota:

1. Six (6) copies of the final plat at a uniform size of fifteen (15) inches by twenty-six (26) inches. All final plat submittals shall be in conformance with the design standards set forth in Chapter 5.05 of this Title and shall include or be accompanied by the following information:

a. The name of the subdivision, location by section, township, range, county, and state.

b. Name(s) of the subdivider, engineer, surveyor or landscape architect responsible for the survey or design.

- c. A scale, north point and key map, showing the general location of the proposed subdivision in relation to the surrounding development and in relation to the section in which it is located.
- d. The exact location and layout of lots, streets, alleys, easements, and other public ground with accurate dimensions in feet and decimals of feet, interior angles, length of radii and/or arcs of all curves, together with the names of all streets.
- e. Location and description of all monuments.
- f. Descriptive boundaries of the subdivision, based on an accurate traverse giving angular and linear dimensions that must be mathematically close.
- g. Notarized certificate signed and acknowledged by all parties having any titled interest in or lien upon the land subdivider consenting to the plat, including dedication of all streets, alleys and public ways, parks or other public grounds, or lands for charitable, religious, or educational purposes, if any, and granting easements.
- h. Certificate signed by the County Treasurer stating that there are no regular or special taxes due or delinquent against the property described in the plat.
- i. One (1) copy of any private restriction or covenants affecting the subdivision or any part thereof.
- j. The following format shall be used for the required signatures:
  - 1.Owner's Certificate;
  - 2.Surveyor's Certificate;
  - 3.Treasurer's Certificate;
  - 4.Planning/Zoning Commission Certificate;
  - 5.Governing Body Certificate;
  - 6.Director of Equalization Certificate; and
  - 7.Register of Deeds Certificate.

**CHAPTER 5.03            DESIGN STANDARDS**

5.0301 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.

5.0302 Streets and Alleys.

1. Streets in the subdivision normally shall connect with streets already dedicated in adjoining or adjacent subdivisions.
2. Minor residential streets shall 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 turnaround having a curb line diameter of not less than eighty (80) feet. This also applies to private roadways.
3. Centerline offsets 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 pavement 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:

MINIMUM TYPE	DRIVING WIDTH	ROW
Major Arterial Streets (County)	28	100
Secondary Streets (Townships)	28	66
Local Streets	24, if off-street parking 44, if on-street parking	50

9. The horizontal alignment on all streets where the centerline deflects two (2) degrees or more shall be as follows:

RADI OF HORIZONTAL CURVES	
Major Streets	700' minimum
Minor Streets	100' minimum

10. New Subdivisions - The acceptance of a plat by the Brown County Commission does not obligate the County to maintain the roads of a rural subdivision. Until the County accepts the subdivision roads for maintenance and designates those roads as part of the Brown County Secondary Road System, the County is not responsible for maintenance. It is the policy of Brown County not to designate roads as secondary roads and accept them for maintenance in any additional rural subdivisions. To protect the safety and welfare of the citizens, roads shall be constructed in conformance to the standards as stated in Brown County Ordinance Title 5.

11. All subdivision roads shall be permanently dedicated as public rights-of-way or shown as private roadways. For the dedication of public right-of-way, the plat shall include a certificate for township acceptance of the road dedication or the owner's certificate shall describe the legal responsibilities for construction, repair and maintenance of said roads.

## **12. MINIMUM ROAD IMPROVEMENTS AND DESIGN STANDARDS**

### **Arrangement and Design.**

- A) Roads shall provide public convenience and safety and shall be related appropriately to the topography and arranged so that building sites are at or above the road grade.
- B) All new subdivision roads (including private roads) shall be properly integrated with the existing system of roads; there should be a road connecting adjacent subdivisions where topographical and land use considerations permit. Roads shall be completed prior to the issuance of building permits per plan and specifications provided for.
- C) To insure consistent signage throughout the County, developer or owner shall install road signs at all road intersections, both public and private, and along roads within the new subdivision, at such places, manner and in accord with specifications as approved by the County Highway Superintendent. Signs shall be installed prior to the issuance of any building permits.
- D) All section line roads shall be extended to the boundary lines of the tract to be subdivided on the side the subdivision is accessed, unless prevented by topography or other physical conditions.
- E) The arrangement of all roads shall be such as not to cause hardship to adjoining landowners when they plat their own land and seek access to the roads.
- F) All subdivision roads shall be permanently dedicated as public rights-of-way and accepted by the Brown County Commission, or shown as private roadways.
- G) Dead end roads or streets are prohibited except that where the Comprehensive Plan indicates a road is to continue past the developer's property, a temporary dead end with a turnaround may be allowed until such time as the road is continued.
- H) Half road or streets are prohibited, except that they may be required to complete the remaining half of the highway already dedicated or where the Comprehensive Plan indicates that the alignment of the road will center on the property line.

### **13. Minimum Road Right-of-Way.**

- A) Roads shall have a minimum publicly dedicated right-of-way of 66 feet. An easement of 66 feet shall be reserved for private roadways. A right-of-way of 100 feet may be required on any roads built on section lines or designated as arterial or collector. The owner shall dedicate 17 feet of added right-of-way on the side of any section line r-o-w wherever the owner's land abuts the section line r-o-w.

### **14. Section Line Road Standards.**

- A) A Developer subdividing off a Section Line Road, will be required to work in partnership with the governing body whether Township or County, to assure that the

design criteria for section line roads to said development shall be in accordance with the South Dakota Department of Transportation Secondary Road Plan (Revised 1997).

B) Access from individual lots within a subdivision onto an arterial road shall be prohibited.

Frontage roads are not encouraged but may be considered when special circumstances warrant.

C) Driveway spacing and sight distance requirements shall be in accordance with SDDOT standards, and the location of all entrances to public roads shall be approved in writing by the governmental agency having jurisdiction.

D) Minimum width of the driving surface shall be 24 feet, plus two-foot shoulders. The inslope of the road shall be a minimum depth of 3 feet wide with a maximum slope of 4:1, ditch bottoms of 10 feet wide, and minimum backslopes will vary. The minimum clear zone shall be 10 feet wide.

E) Gravel roads shall have an initial three-inch lift of gravel spread over the driving surface. This lift shall be compacted. A second three-inch lift of gravel shall be spread over the driving surface within one year of the first lift. Asphalt, Portland cement concrete surfaces, and granular surfaces shall be constructed in accordance with specifications of the South Dakota Department of Transportation (SDDOT). Asphalt surfaces shall, at a minimum, is a 6-inch granular base course with a 4-inch thickness of asphalt or a 7-inch thickness of Portland cement concrete.

F) Culverts under roadways or driveways shall be R.C.P or C.M.P. Culverts 24” and less in diameter shall have sloped end sections if placed across main roads and shall have safety ends if placed across an approach. Larger culverts will not require end sections if the ends of the culvert are extended beyond the safety zone. The safety zone shall be determined by use of tables in the South Dakota Department of Transportation Secondary Road Plan.

G) The size of culverts shall be determined by a drainage study for the entire drainage basin. The minimum culvert diameter shall be 18 inches. The minimum culvert size for individual driveways shall be 18”.

H) Seeding of ditches and other erosion protection measures shall be employed after grading is completed to minimize erosion.

Exception: If a parcel of land is to be developed or improved for an individual residence then an alternate road design for access to such parcel may be considered by the Brown County Commission. (The intent of this exception is for a single-family residence only. If this parcel or adjacent parcels are further developed and/or subdivided for residential use, all applicable zoning ordinances, subdivision ordinances and road standards adopted by Brown County shall be in effect).

I) The sub divider upon completion of all the improvements shall request in writing a final inspection by the County Highway Superintendent or Township official.

J) The sub divider shall maintain all improvements for one year after completion as verified by the inspection of the County Highway Superintendent or Township official. Maintenance shall be guaranteed by cash deposited with the County Commission or Township Board by the posting of a maintenance bond in favor of the County Commission or Township Board both in the amount of five percent of the estimated cost of the improvements. Thereafter the county or township, whichever is applicable, may maintain the improvements in accordance with a duly adopted annual improvement and/or maintenance program which may require special assessments from the individual property owners.

K) The County Commission or Township Board may by resolution accept streets after receipt of a written notice of a satisfactory final inspection by the County Highway

Superintendent or Township official and the posting of a maintenance guarantee by the sub divider.

#### **15. Subdivision Road Standards.**

A) Design Criteria for subdivision roads shall be in accordance with the South Dakota Department of Transportation Secondary Road Plan (Revised 1997).

B) Access from individual lots within a subdivision onto an arterial road shall be prohibited.

Frontage roads are not encouraged but may be considered when special circumstances warrant.

C) Driveway spacing and sight distance requirements shall be in accordance with SDDOT standards, and the location of all entrances to public roads shall be approved in writing by the governmental agency having jurisdiction.

D) Minimum width of the driving surface shall be 20 feet, plus two-foot shoulders. The minimum slopes shall be 3:1 and the minimum clear zone shall be 10 feet wide.

E) Gravel roads shall have an initial three-inch lift of gravel spread over the driving surface. This lift shall be compacted. A second three-inch lift of gravel shall be spread over the driving surface within one year of the first lift. Asphalt, Portland cement concrete surfaces, and granular surfaces shall be constructed in accordance with specifications of the SDDOT. Asphalt surfaces shall, at a minimum, be a 6-inch granular base course with a 4-inch thickness of asphalt or a 7-inch thickness of Portland cement concrete.

F) Culverts under roadways or driveways shall be R.C.P or C.M.P. Culverts 24" and less in diameter shall have sloped end sections if placed across main roads and shall have safety ends if placed across an approach. Larger culverts will not require end sections if the ends of the culvert are extended beyond the safety zone. The safety zone shall be determined by use of tables in the South Dakota Department of Transportation Secondary Road Plan.

G) The size of culverts shall be determined by a drainage study for the entire drainage basin. The minimum culvert diameter shall be 18 inches. The minimum culvert size for individual driveways shall be 18".

H) Seeding of ditches and other erosion protection measures shall be employed after grading is completed to minimize erosion.

I) Streets with curb and gutter shall meet the requirements in the attached cross section for a curb and gutter street.

Exception: If a parcel of land is to be developed or improved for an individual residence then an alternate road design for access to such parcel may be considered by the Brown County Commission. (The intent of this exception is for a single-family residence only. If this parcel or adjacent parcels are further developed and/or subdivided for residential use, all applicable zoning ordinances, subdivision ordinances and road standards adopted by Brown County shall be in effect).

J) The sub divider upon completion of all the improvements shall request in writing a final inspection by the Township official.

K) The sub divider shall maintain all improvements for one year after completion as verified by the inspection of the Township official. Maintenance shall be guaranteed by cash deposited with the Township Board by the posting of a maintenance bond in favor of the Township Board both in the amount of five percent of the estimated cost of the improvements. Thereafter the township may maintain the improvements in accordance with a duly adopted annual improvement and/or maintenance program, which may require special assessments from the individual property owners.



L) The Township Board may by resolution accept streets after receipt of a written notice of a satisfactory final inspection by the Township official and the posting of a maintenance guarantee by the sub divider or by individuals/homeowner association. Homeowner association incorporation papers and letters of assurance with the Township are filed with plat of properties.

**16. Private Roadways.**

- A) Private roadways shall be indicated on the plat and shall not be included as part of any required lot area or setback.
- B) Any private roadway approved by the County shall provide permanent unobstructed access to the area it serves. The erecting of any structure within the private roadway easement, which would in any way interfere with the use of such private roadway by the public or any governmental agency will not be permitted.
- C) Any plat presented for County Commission approval, which shows a private roadway as a means of access shall provide language in the Planned Unit Development (P.U.D.) reserving the private road as a permanent unobstructed access easement and establishing private responsibility for maintenance of the roads, including a permanent road maintenance agreement as part of covenants or an otherwise recordable instrument.
- D) All road standards specified in Section 5.03 shall also apply to private roadways.
- E) The sub divider shall maintain all improvements for one year after completion and then private roads are maintained by individuals or a homeowner association. Homeowner association incorporation papers and letters of assurance with the County and/or Townships are filed with plat of properties.

**17. Intersections and Approaches.**

- A) Acute angles at road intersections are to be avoided in so far as possible, but in no case with an angle of less than 80 degrees be permitted.
- B) Not more than two roads shall intersect at one point unless specifically approved.
- C) Intersection offsets of less than 300 feet shall not be permitted
- D) Two approaches may be permitted on each side of each half-mile segment of county primary highways. Where possible, the approaches on the opposite side of the highway shall be at the same location.
- E) No approach shall be constructed in private subdivisions without first obtaining an approach permit from the Brown County Highway Superintendent. The landowner shall be responsible for constructing the approach in conformance with specifications relating to location, width, in-slope, safety, culvert size, drainage, and other factors as determined by the Brown County Highway Superintendent. Approaches shall be in compliance with the South Dakota Department of Transportation's Road Design Manual.

18. No building permits shall be issued until all required road improvements have been completed per plan and specifications provided for.

5.0303 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.

5.0304 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.

5.0305 Flood Designated Areas. When located within flood prone areas as designated on the Flood Insurance Rate Map (FIRM), all subdivision proposals:

1. Shall be consistent with the need to minimize flood damage;
2. Shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. Shall have adequate drainage provided to reduce exposure to flood damage and shall not put additional burden on adjacent land owners; and
4. Shall provide base flood elevation data for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

## CHAPTER 5.04 IMPROVEMENTS

5.0401 Improvements. It shall be the responsibility of the subdivider to install in accordance with plans, specifications, and data certain required improvements as follows:

1. Staking -- The external boundaries and corners of each block and lot shall be monumented by iron rods, pipes, or pins not less than one (1) inch in diameter and extending at least twenty-four (24) inches below grade.
2. Streets -- All streets shall have a gravel surface as specified by Chapter 5.03 Design Standards. All streets shall be installed prior to the sale of lots adjoining that street.
3. Sanitary Sewer -- Where a municipal sanitary sewer is accessible by gravity flow within two hundred (200) feet of the final plat, the subdivider shall submit to the Town or City Council his plans for connection with a trunk line to the existing system. The Town or City Council shall then inform the subdivider of the trunk line size requirements as per anticipated development in the general area. Where a municipal sanitary sewer is not accessible by gravity flow within the two hundred (200) feet of the final plat, the subdivider shall make provision for the disposal of sewerage as required by law. Where a municipal sanitary sewer accessible by gravity connection is not within two hundred (200) feet of the final plat, but where plans for the installation of city sanitary sewers within such proximity to the plat have been prepared and construction will commence within twelve (12) months from the date of the approval of the plat, the subdivider shall be required to install sewers in conformity with such plans.
4. Water Mains -- Where a public water supply is within five hundred (500) feet of a proposed subdivision, the subdivider shall install, or have installed, a connection to each lot prior to the paving of the street, as according to the County requirement(s). Where a public water supply is not available, each lot in a subdivision shall be furnished with a water supply system with proper provisions for the maintenance thereof.

## **CHAPTER 5.05            COVENANTS AND GUARANTEES**

5.0501 Restrictive Covenants. The subdivider may, at his own expense, restrict the use of such premises as contained in a subdivision plat by means of restrictive covenants which are reviewed by the Planning Commission and approved by the County Commissioners. Any such covenants shall be included as deed restrictions on the final plat.

**CHAPTER 5.06            PRELIMINARY PLAT EXEMPTION**

5.0601 Exemption from Preliminary Platting Process. For a proposed subdivision that would contain or less parcels, tracts or lots, and the building of no new streets, the preliminary process is waived.

## **CHAPTER 5.07            ENFORCEMENT**

5.0701 Enforcement. No plat of any subdivision within the application of Title 5 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 Title.

It shall be unlawful to sell, trade, or otherwise convey any lot or parcel of land for building purposes individually, as a part of, or in conformity with any plat, plan, or replat of any subdivision within the area subject to application of this Title unless said plan, plat, or replat shall have been approved as prescribed by this Title and filed and recorded in the Office of the Register of Deeds.

## **CHAPTER 5.08 VIOLATIONS AND PENALTIES**

5.0801 Violation of Title 5. It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of this Title. Violation thereof shall be a misdemeanor and may be punishable by a fine of up to one hundred (\$100) dollars for each and every day that any violator fails to comply with the provisions of this Title. All fines for violations shall be paid to the County and shall be credited to the general revenue fund.

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 the County from taking such other lawful action as is necessary to prevent or remedy any violation.

**CHAPTER 5.09 SEVERABILITY CLAUSE**

5.0901 Severability Clause. Should any section or provision of these regulations be declared by 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.



**CHAPTER 5.10           LEGAL STATUS PROVISIONS**

5.1001 Conflict with Other Regulations. No final plat of land within the force and effect of Title 4 shall be approved unless it conforms to these regulations. Whenever there is a discrepancy between minimum standards or dimension noted herein and those contained in Title 4, the building code, or other official regulations or ordinances, the most restrictive shall apply.

**TITLE 6      TRAFFIC REGULATIONS**

CHAPTER 6.01	Traffic Regulations
CHAPTER 6.02	Parking
CHAPTER 6.03	Speed Zones
CHAPTER 6.04	Snow Removal

## CHAPTER 6.01      TRAFFIC REGULATIONS

### 6.0101 DEFINITIONS:

Motor Vehicle: Any automobile, motor truck, motorcycle, and all vehicles propelled by power other than muscular power, whether intended for on-road or off-road use.

Vehicle: Every device in, upon, or by which any person or property is or may be transported.

Manufactured Home: A manufactured home is a structure that meets the following requirements;

- (1) It is transportable in one or more sections;
- (2) Its body is eight or more feet wide or forty or more feet long in the traveling mode or it occupies three hundred twenty or more square feet when erected on a site;
- (3) It is built on a permanent chassis;
- (4) It is designed to be used as a dwelling with or without a permanent foundation when it is connected to the required utilities.

### 6.0102 EXHIBITION DRIVING:

Any person who drives any motor vehicle on a private roadway (or parking lot) intended for or open to public use in such a manner that creates or causes unnecessary engine noise, tire squeal, skid or slide upon acceleration or stopping; or that simulates a temporary race, or that causes the vehicle to unnecessarily turn abruptly or sway shall be guilty of exhibition driving.

### 6.0103 CARELESS DRIVING

Any person who drives any motor vehicle on a private roadway or parking lot intended for or open to public use carelessly and without due caution, at a speed or in a manner so as to endanger any person or property shall be guilty of careless driving.

### 6.0104 SPEED:

No person may operate any motor vehicle on any roadway intended for public or private use within any area designated as a manufactured home park at a speed greater than ten (10) miles per hour.

### 6.0105 PENALTY:

Any person violating any provision of this chapter shall be punished by a fine of not less than seventy five dollars (\$75.00) nor more than two hundred dollars (\$200.00) or by confinement not to exceed thirty days in jail, or both such fine and confinement, for each violation.

## CHAPTER 6.02      PARKING

**6.0201 Parking Violations:** Unless otherwise provided herein, restrictions for parking on County Roads and on County property will follow the guidelines of SDCL 32-30.

1. Stopping or Parking on Rural Highway Prohibited. No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main-traveled portion of any highway, outside of a business or residential district, when it is practical to stop, park, or leave such vehicle standing off of the paved or improved or main-traveled portion of the highway.

2. Standing or Parked Vehicles - Remaining Space Required - Unobstructed View Required. In no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear or unobstructed width of not less than twenty (20) feet upon the main-traveled portion of such highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of two hundred (200) feet in each direction upon such highway.

3. No Parking Zones Posted by Department - Violation Prohibited. It will be a violation to park in any position so prohibited by parking signs erected by the Brown County Highway Department with concurrence of the Brown County Sheriff's Department. These signs erected will be enforced by this Department. All signs will be official no parking signs as made under the direction of the Brown County Highway Department. When so erected, they will become official no-parking zones under the County Ordinance.

4. Disability Parking Signs. Disability parking signs will be erected where appropriate around public buildings, parks, the fairgrounds and other county locations. If a vehicle is parked in a location limited to disability parking and does not have a license plate or mirror hanger allowing disability parking, the vehicle will be tagged and removed as provided by this chapter.

5. Places Where Standing and Parking Prohibited. Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official control device, no person shall stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

- a. In front of a public or private driveway;
- b. Within fifteen (15) feet of a fire hydrant;
- c. Within twenty (20) feet of a crosswalk at an intersection;
- d. Within thirty (30) feet upon the approach to any flashing signals, stop sign, yield sign or traffic control signal located at the side of a roadway;
- e. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly sign posted;
- f. At any place where official signs prohibit standing and parking.

6. Places where stopping prohibited. Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall stop, stand, or park a vehicle:

- a. On a sidewalk;
- b. Within an intersection;

- c. On a crosswalk;
- d. On any railroad tracks;
- e. At any place where official signs prohibit stopping;
- f. Parking shall be prohibited from within two hundred (200) feet of any bridge or river crossing. Signs will be erected regarding this and vehicles parked in this area will be tagged and removed as provided by this Chapter.

**6.0202 Enforcement - Ticketing Illegally Parked Vehicles:**

**A. A violation of this Chapter is a Class II Misdemeanor. However before a criminal citation is issued, the following procedure will apply:**

- 1. Whenever any vehicle is parked in violation of the provisions of Chapter 6.02 the officer shall attach to the vehicle a notice showing such violation, which such notice shall be in an envelope shape and instructs the owner or operator to enclose the amount of the assessment described thereon in such envelope and deposit such amount in the courtesy box located at the Brown County Sheriff's Office or deliver such envelope to the Sheriff's Office.
- 2. Anyone who is parked in violation of the provisions of this chapter shall have 72 hours or three days from the date of the violation to make full payment of the assessment designated on the violation notice. Failure to make the full payment of the assessment within 72 hours or three days from the date of the violation will result in the assessment being doubled. Failure to make the full payment of the assessment within ten days from the date of violation is also a Class II Misdemeanor and, in addition to any fine or imprisonment authorized, the court shall tax as costs the original assessment to be paid directly to the County.

**B. Unless otherwise provided, the Brown County Commission by resolution may from time to time establish assessments, fines and penalties for parking in violation of this chapter.**

**C. Repeated or Continuous Violations**

- 1. *Original offense.* When a vehicle is illegally parked as provided herein, the deputy or officer shall attach to such vehicle a parking violation ticket indicating the offense and penalty associated with the offense.
- 2. *Subsequent offenses.* If a vehicle remains illegally parked in the same place for at least an hour after being ticketed, then:
  - a. A second violation ticket shall be attached with the second offense penalty being doubled from the initial ticket.
  - b. Any continued violations where a vehicle remains in the same spot may be enforced on an hourly basis with the fines being increased as follows:
    - i. Third offense is \$20.00;
    - ii. Fourth offense is \$30.00; and
    - iii. Fifth offense is \$35.00;
 with the total of fines not exceeding \$100.00 in any given day.
- 3. This procedure may be continued on an hourly basis, except as provided in the limitation in this subsection, until the vehicle is towed. The owner of the vehicle shall be liable for the penalties prescribed for all violations in addition to any costs for towing or storage by third parties, as provided herein.

### **6.0203 Removal of vehicles illegally parked**

- A. Any vehicle parked in violation of this Chapter or state law may be removed by the Sheriff's Department, or by a third party or a towing service at the direction of the Sheriff's Department, and placed in public storage in the manner provided herein. The owner of the vehicle, in addition to the fines and penalties provided in this chapter, shall pay the charges for towing and storage of such vehicle so removed.
- B. The guidelines for enforcing these parking tickets will be as follows:
  - 1. When a vehicle is found in violation of the provisions of this Chapter, the deputy or officer will tag the vehicle for the underlying offense, as provided herein, and will then run a registration check to determine the owner of the vehicle.
  - 2. The deputy or officer will next attempt to contact the owner of the vehicle to determine whether the vehicle can be removed by the owner within a reasonable time.
  - 3. If the attempt to contact the owner is unsuccessful, or if the owner is unable to remove the vehicle within a reasonable time, or if the owner does not remove the vehicle as promised, the deputy or officer may then contact a towing service to remove the vehicle.
  - 4. The owner of a towed vehicle will be responsible for both the fine identified for the underlying offense and the reasonable cost of towing and storing the vehicle.
  - 5. It will be assumed that a towing or storage fee is reasonable if the fee is based the fair market cost of similar towing or storage services in the local area.
- C. Any vehicle found unattended upon a bridge or causeway or in any tunnel or where such vehicle constitutes an obstruction and hazard to traffic or is a wrecked vehicle or is parked in such a way as to constitute a clear and immediate danger to public safety may be removed at any time without prior notification of the owner.

## **CHAPTER 6.03            SPEED ZONES**

6.0301 It shall be unlawful for any person to drive a motor vehicle on any street or highway at a speed greater than is reasonable and prudent under the conditions then existing or to speed in excess of those fixed by this chapter or established by the Board of County Commissioners as set forth in this division.

6.0302 Commission to set speed limits.

a. The Brown County Commission is authorized and empowered to determine and establish upon any street or highway within the County of Brown, or any part thereof, limited speed zones which speed limits shall constitute the maximum speed at which any person may drive or operate any vehicle in any zone, and upon any street or highway, or portion thereof so zoned, and on which highway the maximum speed permissible in said zone has been conspicuously posted. The beginning and end of such limited speed zones shall be indicated by signs showing the speed limits.

b. The Brown County Commission may change the speed limit or the extent of any such limited speed zone, at any time they may deem necessary and consistent with state law.

6.0303 A violation of this chapter is a Class 2 Misdemeanor.

## CHAPTER 6.04      SNOW REMOVAL

- 6.0401 Snow Removal from Private Property. No person or persons shall remove snow from private property, drive-ways, or field entrances, and deposit, push, or dump the same on any Brown County Highway or public right-of-way or on shoulders of the highways. Violation of this provision is a Class II Misdemeanor. Violators of this ordinance shall be responsible for the removal of the snow. If Brown County is required to remove the snow, it will be at a cost of \$500.00 per hour, with a minimum of \$500.00. The cost and expenses of these protective operations will be billed to the individual responsible. If these costs and expenses are not paid to the Brown County Treasurer by October 1<sup>st</sup> of the incurring year, the sum will be extended onto the tax list against the landowner of the described property.
- 6.0402 Snow Removal from County Parking Lots. For the purpose of snow removal from County owned parking lots, all vehicles will be ticketed and towed at the owner's expense. The towing fee is not to exceed \$100.00 and the fine is not to exceed \$20.00. County personnel on duty shall be notified and given the opportunity to move their vehicle. The Brown County Sheriff will make arrangements to move vehicles owned by inmates, who have previously requested parking.



## TITLE 7      INDECENT EXPOSURE

### Chapter 7.01    FAILURE TO CONCEAL SEXUAL OR GENITAL PART OF THE BODY

1.        It shall be unlawful for any person owning, renting, leasing, operating or managing any establishment that sells, by the drink or for consumption on the premises, intoxicating liquor, alcoholic beverages, or low point beer, which establishment has had a license application approved or recommended to be approved by the governing body of the County of Brown, to cause, allow or permit any person in or about such establishment, while in the presence of any other person in such establishment:

- A.        To fail to conceal with fully opaque covering, the sexual or genital parts of his or her body. For the purposes of this section, “sexual” or “genital parts” shall include the genitals, pubic area, anus, cleavage of the buttocks or perineum of any person or the vulva or nipple and areola (the more darkly pigmented portion of the breast encircling the nipple) of a female. For the purposes of this section, a fully opaque covering, shall mean or include the wearing of pasties that cover the nipple and areola of a female breast.
- B.        To expose any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anal region or public hair region of nipple and/or the areola of a female.
- C.        For the purposes of this ordinance, “person” shall mean a natural person, association, corporation, firm, organization, partnership or society.

2.        None of the following uses may be established, operated, or maintained within one-fourth mile of a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship.

- a.        Adult bookstore
- b.        Adult theater
- c.        Adult photo studio
- d.        Adult cabaret
- e.        Adult motel
- f.        Nude Model studio
- g.        Adult video store
- h.        Adult novelty store

For the purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structure or objects, from the nearest point on the property line of a parcel containing an adult oriented business to the nearest point on the property line of a parcel containing a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence or a place of worship. An adult oriented business lawfully operating in conformity with this section does not violate this section if a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence or a place of worship subsequently locates within one-fourth mile of an adult oriented business.

It is recognized that there are some uses, which because of their very nature, are recognized as having serious questionable operational characteristics, and are not compatible with certain uses. Special

regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding area.

No more than one adult use may be established, operated, or maintained within 2,500 feet of another adult use as measured from the closest point of the outside wall of the building or tenant space.

3. An person who shall violate any of the provisions of this ordinance or shall fail to comply therewith shall be guilty of a Class 2 Misdemeanor punishable by thirty days imprisonment in the county jail or one hundred dollars fine, or both.

4. In addition, upon proof of violation of this ordinance, any license approved or recommended to be approved by the governing body of Brown County may be revoked or suspended pursuant to SDCL 35-2-10.

5. State law further provides that no adult oriented business established after June 30, 2008, may be located within one-fourth mile of a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship. A violation of this State law is a Class 1 Misdemeanor. Each day of violation constitutes a separate offense.

#### DEFINITIONS:

Adult Bookstore, Adult Novelty Store, or Adult Video Store. A Commercial establishment which, as one of its principle purposes offers for sale or rental for any form of consideration any one or more of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or
- B. Instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.” A principal business purpose is defined as a business that maintains at least 40% of its inventory items for sale or rent that are characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.” The definition under this subsection shall not include a store that, as its principal business purpose, sells or rents films, motion pictures, video cassettes, video reproductions or other visual representations that contain an official industry rating of G, PG, PG-13, R or NC 17.

Adult Cabaret. A nightclub, bar, juice bar, restaurant, bottle club or similar commercial establishment whether or not alcoholic beverages are served which regularly features persons who appear nude or semi-nude.

Adult Motel. A hotel, motel, or similar commercial establishment which offers accommodations to the public in any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, DVD's or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions. A hotel, motel or similar commercial establishment, which offers a sleeping room for rent for a period of time that is less than ten (10) hours. A hotel, motel or similar commercial establishment which allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult Motion Picture Theater or Drive In Theater. An enclosed building or outdoor drive in theater used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as herein defined, for observation by patrons therein. The definition under this subsection shall not include a store that, as its principal business purpose, sells or rents or show films, motion pictures, video cassettes, video reproductions, DVD's or other visual representations that contain an official industry rating of G, PG, PG-13, R or NC-17.

Adult Oriented Businesses. An adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult photo studio or nude model studio.

Adult Photo Studio. An establishment, which, on payment of a fee, provides models for the purpose of photographing "specified anatomical areas."

Nude Model Studio. Any place where a person who appears nude, or who displays "specified anatomical areas" and is provided to be sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of South Dakota, or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- B. Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
- C. Where no more than one nude or semi-nude model is on the premises at any onetime.

Specified Anatomical Areas. (1) Less than completely and opaquely covered (a) human genitals, pubic region; and (b) female breast below a point immediately above the top of the areola. (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities. (1) Human genitals in a state of sexual stimulation or arousal; (2) acts of human masturbation, oral copulation, sexual intercourse, or sodomy; (3) fondling or other erotic touching or another's human genitals, pubic region, buttock, anus or female breast.

**TITLE 8      ANIMAL CONTROL IN BROWN COUNTY**

CHAPTER 8.01	Statement of Purpose
CHAPTER 8.02	Definitions
CHAPTER 8.03	Enforcement
CHAPTER 8.04	Rabies Vaccination
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**CHAPTER 8.01        STATEMENT OF PURPOSE**

8.0101 For the purpose of controlling animals and protecting the public in those areas located within Brown County, the following Animal Control Ordinance is hereby adopted.

## CHAPTER 8.02            DEFINITIONS

8.0201 For the purpose of this Title, certain terms or words used herein shall be interpreted as follows:

Animal Control Officer: The patrol officer with police authority, whose duty it is to apprehend animals throughout his jurisdiction within the County whose owners are in violation of this ordinance. He responds to complaints about violations and delivers the animals to the Animal Shelter. The Brown County Sheriff shall act as Animal Control Officer jointly with the Control Officer of this ordinance.

Animal Shelter: Any premises designated by action of the County for the purpose of impounding and caring for all animals found running at large in violation of this ordinance.

At Large: Any dog or other domesticated animal shall be deemed to be at large when it is off the property of its owner and not under control of a competent person.

Control Officer: The owner and/or operator of the Animal Shelter as hereinafter provided, who is a contractor with the County for sheltering and destroying animals. The Brown County Sheriff's Office is charged with the overall enforcement of this ordinance. The owner/operator shall follow this ordinance and any treatment or legal orders of the Sheriff or his Designee to provide destruction of the animals being handled. He exercises supervision and control over the animal delivered to the shelter by the Sheriff or Designee.

Domesticated Animals: Any animal shall be deemed domesticated when it is maintained/kept for purposes of pleasure or potential profit or if individual ownership is otherwise asserted.

Exposed to Rabies: A dog has been exposed to rabies within the meaning of this ordinance, if it has been bitten by or been exposed to any animal known to be or suspected of being infected with rabies.

Kennel: Any person, group of persons, or corporation engaged in the commercial business of breeding, buying, selling, or boarding dogs.

Owner: Any person, group of persons, or corporation owning, keeping, or harboring a dog.

Restraint: A dog is under restraint within the meaning of this ordinance if he is controlled by a leash, at "heel" beside a competent person and obedient to that person's commands, on or within a vehicle being driven or parked on the streets, or within the property limits of its owner or keeper.

Spayed Female: Any bitch, which has undergone surgery to prevent conception, whose owner can provide suitable proof of such surgery.

**CHAPTER 8.03                    ENFORCEMENT**

8.0301 Enforcement. The provisions of this ordinance shall be enforced by the Brown County Sheriff's Office, the Brown County States Attorney's Office or the Animal Control Officer, who shall be supervised in the performance of their duties by the Brown County Sheriff.

No person shall hinder, delay or obstruct any animal control officer, his/her assistant, or any law enforcement officer when such officer is engaged in performance of an official duty.

**CHAPTER 8.04                    RABIES VACCINATIONS**

8.0401 The owner of each dog shall have proof that the dog has been vaccinated for rabies and shall have a tag attached to a suitable collar with date/year that applies.

The owner will also provide proof that the Rabies Vaccinations are kept current within guidelines established by Veterinarian.

If a dog is with the owner hunting or working farm animals, the collars may be removed. But, if asked by proper authorities, the owner shall show proof of rabies vaccination.

Failure to comply with the provisions of this section may result in charges being filed.

8.0402 In the event that a Rabies tag issued by a dog shall be lost, the owner shall obtain a duplicate tag.

8.0403 No person shall use for any dog, a Rabies tag or evidence of vaccination for Rabies, issued for any other dog.



**CHAPTER 8.05 TAG AND COLLAR**

8.0501 The Rabies tag shall be stamped with the number and the year for which issued. Every dog shall at all times wear a choke chain, collar, or harness to which is attached its Rabies tag unless actively engaged in hunting with its owner, or is a working farm animal.

**CHAPTER 8.06            RESTRAINT**

8.0601 The owner shall keep his dog or other domesticated animals under restraint at all times and shall not permit such dog or other domesticated animals to be at large off the premises or property of the owner unless under the control of a competent person. It shall be unlawful for any dog owner to keep or have within County limits a dog that habitually or repeatedly chases, snaps at, or attacks at livestock, poultry, pedestrians, bicyclists, vehicles or turns over garbage pails or damages gardens, flowers, vegetables, or conducts itself to be a public nuisance.

**CHAPTER 8.07            ANIMAL SHELTER**

8.0701 The County shall provide for or maintain a suitable shelter for the impounding of dogs and other animals. Such shelter shall be so constructed that animals of different kinds and of different sizes and sexes may be segregated, and shall be maintained in a safe and sanitary condition. Such shelter may either be constructed and operated by the County, or the County may enter into a contract with a veterinarian or other suitable person for the supplying and operation of the same. All animals confined in such shelter shall be regularly fed and watered and treated in a humane manner.

**CHAPTER 8.08            IMPOUNDMENT AND DISPOSITION OF ANIMALS**

8.0801 All dogs or other domesticated animals found running at large that constitute a public nuisance, shall be taken up to the animal control officer, and impounded in the animal shelter or other suitable shelter, and there confined in a humane manner for a period of not less than three days. Animals impounded and not claimed by their owners at the expiration of three days may be disposed of in a humane manner by the shelter operator, except as hereinafter provided in the cases of certain animals. When dogs or other domesticated animals are found running at large, and their ownership is known to the Animal Control Officer or owner of shelter, such dogs or other domesticated animals need not be impounded, but the Animal Control Officer may at his discretion, cite the owners of such dogs or other domesticated animals to appear in court and answer charges of violations of this ordinance or the animals may be released with a warning for the first offense and the second offense shall be cited to court. Immediately upon impounding dogs or other domesticated animals, the Animal Control Officer shall make every reasonable effort to notify the owners of such dogs or other domesticated animals so impounded and inform such owners of such dogs or other domesticated animals so they may regain possession of such animals. If a dog shall be wearing a rabies tag, the Animal Officer shall, immediately after impounding such a dog, and before destroying or disposing of it, ascertain the name of the owner from the records of the rabies tag and inform such owner of the conditions whereby he may regain possession of such dog, upon paying all costs of impoundment. If any owner has requested his dog or domesticated animal be destroyed, the same shall be humanely destroyed at the owner's expense; under no circumstances shall it be sold or given to any person or persons.

**CHAPTER 8.09 REDEMPTION AND DESTRUCTION OF IMPOUNDED ANIMALS**

8.0901 The owners shall be entitled to regain possession of any impounded dogs or other domesticated animals, except hereinafter as provided in the case of certain dogs upon compliance with the provisions contained in this Ordinance and the payment of the fees and charges provided for in this Ordinance. Any animal impounded under the provisions of this Ordinance and not reclaimed by its owner within three days may be humanely destroyed in a manner prescribed by the owner of the shelter or placed in the custody of some person deemed to be a responsible and suitable person to be the owner of such animal. After fees are obtained, the shelter may destroy any sick or injured animal which has been impounded without holding it for three days if its condition is such and makes its earlier destruction necessary or desirable. All animals destroyed shall be destroyed by a humane procedure but not by shooting.

## **CHAPTER 8.10            IMPOUNDMENT FEES**

- 8.1001 Any dog or other domesticated animal impounded herein may be reclaimed as herein provided upon payment by the owner of the costs of impoundment fees to the shelter for each dog or other domesticated animal impounded plus any costs for veterinarian services rendered and cost of board.
- 8.1002 Impoundment fees shall be kept by the Shelter and no charge shall be made to the County. A record is to be kept of these fees and is to be furnished to the Brown County Sheriff's Office. No dog will be released unless it has a current rabies vaccine record.
- 8.1003 No person shall avoid payment of impoundment fees, veterinarian services, or rabies observation costs, by stopping payment on any check.

## **CHAPTER 8.11            RABIES CONTROL**

- 8.1101 Every animal which bites a person shall be promptly reported to the Animal Control Officer, and shall thereupon be securely quarantined at the direction of the Animal Control Officer for a period of not less than ten days, and shall not be released from such quarantine except by written permission of the Animal Control Officer. Such quarantine may be at the shelter designated at the County Animal Shelter, or at the owner's operation, in a veterinary hospital of his choice, located in Brown County, either place at the expense of the owner. In the case of stray animals, or in the case of animals whose ownership is not known, such quarantine shall be at the shelter designated as the County Animal Shelter.
- 8.1102 The owner upon demand made by the Animal Control Officer shall forthwith place in the custody of a licensed veterinarian any animal which has bitten a human, or which is suspected as having been exposed to rabies, for supervised quarantine which expense shall be borne by the owner, and may be reclaimed by the owner if adjudged free of rabies and upon compliance of provisions set forth in this ordinance.
- 8.1103 When an animal under quarantine has been diagnosed as being rabid, or suspected by a licensed veterinarian as being rabid, and dies while under such observations, the Animal Control Officer shall immediately send or cause to be sent the head of such animal to a competent laboratory for pathological examination, and shall notify the proper public health officers of reports of human contacts and the diagnosis made of the suspected animal.
- 8.1104 When one or both reports give a positive diagnosis of rabies, the Animal Control Officer may recommend an area quarantine for a period of thirty (30) days, and upon the invocation of such quarantine, no animal shall be taken into such area or permitted to be in that area, during such period of quarantine unless so advised by the State Health Department.
- 8.1105 Every unvaccinated animal bitten by an animal showing positive symptoms of rabies shall be forthwith destroyed or shall, at the owner's option and expense, be held under not less than six (6) months.
- 8.1106 In the event there are additional positive cases of rabies occurring during the period of the quarantine, such period of quarantine may be extended for an additional six (6) months.
- 8.1107 No person shall kill, or cause to be killed, any rabid animal, any animal suspected or having been exposed to rabies, or any animal biting a human, except as herein provided, nor remove same from the County Limits without written permission from the Animal Control Officer. The carcass of any dead animal exposed to rabies shall, upon demand, be surrendered to the Animal Control Officer. The Animal Control Officer shall direct the disposition of any animal found to be infected with rabies. No person shall fail or refuse to surrender any animal for quarantine or destruction as required herein when demand is made therefore by the Animal Control Officer.
- 8.1108 Every other having knowledge that his animal has bitten or is suspected of biting a human being, shall forthwith report the same to the Animal Control Officer for disposition of said animal, under the provisions of this Ordinance.

**CHAPTER 8.12           REPORT OF BITE CASES**

8.1201 Report of Bite Cases. It shall be the duty of every physician, or other practitioner, to report to the Animal Control Officer, the names and addresses of persons treated for bites inflicted by animals, together with such other information as will be helpful in rabies control.



**CHAPTER 8.13            RESPONSIBILITIES OF VETERINARIANS**

8.1301 It shall be the duty of every licensed veterinarian to report to the Animal Control Officer his diagnosis of any animal observed by him as a rabies suspect. All quarantined animals must be reported to the Animal Control Officer.

**CHAPTER 8.14            EXEMPTIONS**

8.1401 Hospitals, clinics, and other premises operated by licensed veterinarians for the care and treatment of animals are exempt from the provisions of this Ordinance, except where such duties are expressly stated. The licensing and vaccination requirements of this ordinance shall not apply to any animal belonging to a non-resident of the County and kept within the County for not longer than thirty (30) days, provided all such dogs shall at all times while in the County, be kept within a building enclosure or vehicle, or be under restraint by owner.

## **CHAPTER 8.15            INVESTIGATION**

- 8.1501 For the purpose of discharging the duties imposed by this Ordinance and to enforce its provisions, the Animal Control Officer, or any Deputy Sheriff is empowered to enter upon any premises upon which a dog is kept or harbored and to demand the exhibition by the owner of such dog, or the tags of such dog. It is further provided that the Animal Control Officer may enter the premises where any animal is kept in a reportedly cruel or inhumane manner and demand to examine such animal and to take possession of such animal, when in his opinion, it requires humane treatment.
- 8.1502 The Animal Control Officer or any member of the Brown County Sheriff's Office is hereby authorized and empowered to follow and enter upon any enclosure or lot within the limits of the County in quest of any animal suspected of being affected by rabies, or to apprehend any dog which he has observed to be running at large.

**CHAPTER 8.16            INTERFERENCE**

8.1601 No person shall interfere with, hinder, or molest any official in the performance of any duty of his office, or seek to release any animal in the custody of the Animal Control Officer except as herein provided.

**CHAPTER 8.17        RECORDS**

8.1701 It shall be the duty of the Animal Control Officer to keep, or cause to be kept, accurate and detailed records of the impoundment, and disposition of all animals coming into his custody. It shall be the duty of the Animal Control Office to keep, or cause to be kept, accurate and detailed records of all bite cases reported to him and his investigation of same. It shall be the duty of the Animal Shelter to keep, or cause to be kept, accurate and detailed records of all dogs/cats impounded and destroyed or released, which records shall be open to inspection at reasonable times by such persons responsible for similar records of Brown County, South Dakota, and shall be audited annually in the same manner as other County records are audited.

**CHAPTER 8.18            TEASING AND MOLESTING**

8.1801 It shall be unlawful for any person to tease, molest, bait, or in any way bother any dog not belonging to him or not legally under his control.

**CHAPTER 8.19            TRANQUILIZERS**

8.1901 The Animal Control Officer, or his duly appointed employees or any member of the Brown County Sheriff's Office is hereby authorized to use, operate, and possess such services that are designed to propel projectiles for the purpose of subcutaneous injections of tranquilizers, depressants, or other drugs into animals.

**CHAPTER 8.20            ABANDONMENT OF ANIMALS AND ALLOWING ANIMALS TO  
ROAM FREELY**

8.2001 It shall be unlawful for any person to abandon any dog or other domesticated animal, or intentionally or through gross negligence allow such animals to freely roam upon a public right of way or upon the property of another. Violation of this ordinance shall also be deemed a public nuisance. (Ordinance 093 amendment).



**CHAPTER 8.21          PUBLIC NUISANCE**

8.2101 If any person owning or keeping more than five (5) dogs and failing to keep such dogs within the confines of his own property such failure should amount to a public nuisance and be subject to the provisions of SDCL 21-10-5 et.seq.

**CHAPTER 8.22            DOGS IN PACKS**

8.2201 Any officer authorized under this Ordinance to enforce the terms thereof, or any Peace Officer, as defined by 23A-45-9.7 or Conservation Officer, as defined by SDCL 41-2-11, shall have authority to dispatch or destroy dogs in packs which are actively chasing, barking, harassing or attacking any livestock, poultry, big game animal, small game animal, or game birds, if in his opinion all other means of controlling or subduing such pack would fail. Three (3) or more dogs shall constitute a pack.

## CHAPTER 8.23           VICIOUS ANIMALS

8.2301 An animal is declared to be vicious within the meaning of this Ordinance when a propensity to attack or bite human beings or other animals shall exist and is known or thought reasonable to be known to the owner. No vicious animal shall be allowed off the premises of its owner unless muzzled and on a leash, in charge of the owner or a member of the owner's immediate family over sixteen (16) year of age.

Any vicious animal, which is found off the premises of its owner other than provided herein, shall be seized by any animal control officer or law enforcement officer and impounded.

**PROVIDED:** if the animal cannot be captured, it may be destroyed; **PROVIDED FURTHER:** if the animal has been seen running at large, or bites a person and it can be witnessed, the animal control officer or law enforcement officer may order the owner to deliver the animal to a county animal control shelter within twenty-four (24) hours and the owner ordered to appear in Court to show cause why this animal should not be destroyed; **PROVIDED FURTHER:** the owner of the animal shall be ordered to pay all accompanying costs associated with the animals destruction, should such action be ordered.

**CHAPTER 8.24            COUNTY ANIMAL CONTROL OFFICER**

8.2401 There may be a person designated by the County Commissioners as County Animal Control Officer whose duties and jurisdiction are herein described:

1.        The County Animal Control Officer will have as his geographic jurisdiction an area extending beyond the City limits of Aberdeen, said area to specifically include the balance of Brown County. The balance of Brown County, with the exception of any area within an incorporated municipality where a city ordinance is in effect, shall be under the jurisdiction of the Brown County Sheriff.

**CHAPTER 8.25            GEOGRAPHIC JURISDICTION**

8.2501 This ordinance providing for the control of dogs shall apply to all of Brown County, State of South Dakota, except for those areas incorporated within any municipality where a city ordinance exists.

**CHAPTER 8.26        SANCTIONS**

8.2601 Violations of this County Ordinance shall be deemed a Class 2 Misdemeanor.

**TITLE 9      2012 Revised Drainage Ordinance**

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## **Chapter 9.01 GENERAL PROVISIONS**

SECTION 101. TITLE. These regulations shall be referred to as the 2012 Revised Drainage Ordinance of Brown County.

SECTION 102. AUTHORITY. The authority for this ordinance is promulgated under SDCL 46A-10A and SDCL 46A-11.

SECTION 103. PURPOSE. These regulations shall govern the drainage of water within the unincorporated area of Brown County and are designed to enhance and promote the physical, economic and environmental management of the county; protect the tax base; prevent inordinate adverse impacts on servient properties; encourage land utilization that will facilitate economical and adequate productivity of all types of land; lessen government expenditure; conserve and develop natural resources; and preserve the important benefits provided by wetlands.

SECTION 104. INTERPRETATION, ABROGATION, AND SEVERABILITY.

In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not the intent to repeal, abrogate or impair any existing easements, covenants or deeds restrictions. However, where these regulations and other easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail. All other county regulations inconsistent with these regulations are hereby repealed to the extent of this inconsistency only. If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

SECTION 105. PURPOSE OF CATCH HEADS. The catch heads appearing with the sections of this ordinance are inserted simply for convenience to serve the purpose of an index. The catch heads shall be wholly disregarded by a person, office, court or other tribunal in construing the terms and provisions of this ordinance.

SECTION 106. SAVING CLAUSE. These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect rights or causes of action, either civil or criminal, that may have already accrued or grown out of any regulations repealed.

SECTION 107. DISCLAIMER OF LIABILITY. The degree of public and environmental protection offered by this ordinance is considered reasonable for regulatory purposes and is based on the best available scientific and engineering considerations. The application of this ordinance shall not create liability on the part of Brown County, or any officer or employee thereof.

SECTION 108. PRESERVATION OF LANDOWNER'S RIGHTS AND SOVEREIGN IMMUNITY. The authorization of a drainage project shall in no way affect the legal rights which may otherwise exist between a landowner and any other property (dominant or servient estate). The County, in considering project applications, shall be protected by the Doctrine of Sovereign Immunity and shall not be subject to any cause of action or claim brought by any person alleging an impact caused by the water which is the subject



of the application.

**SECTION 109. COMPLIANCE WITH LAWS OR REGULATIONS NOT AFFECTED BY PROJECT APPROVAL.** A project approved under the provisions of this ordinance shall in no way remove any responsibility on the part of any landowner, tenant or contractor to comply with all applicable local, state or federal laws or regulations nor will such approval shield or abrogate the landowner from civil liability to others affected by the project.

**SECTION 110. DEFINITIONS.** For the purposes of this ordinance, certain terms and words are hereby defined. Unless otherwise noted, all terms contained in this ordinance are defined by their plain meaning.

- A. **ADMINISTRATIVE OFFICIAL.** The Planning Director duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.
- B. **BENEFITED AREA.** The area within a drainage district or coordinated drainage area that receives the direct benefit from the drainage projects which have been constructed, or are to be constructed, within the district or drainage area.
- C. **BOARD.** The Board of Brown County Commissioners.
- D. **CONTRACTOR.** Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.
- E. **COORDINATED DRAINAGE AREA.** A defined geographic area containing one or more parcels of real property and more than one land owner which is established via a public election to provide a planned network or method of natural or man-made drainage and funded through an assessment on the benefited properties.
- F. **DOMINANT ESTATE.** Any parcel of real property, usually at a higher elevation, which holds a common law or statutory right to drain water onto other real property.
- G. **DRAIN.** A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, either natural, man-made or natural with man-made improvements.
- H. **DRAINAGE DISTRICT.** A drainage area with multiple owners that was established under state law prior to July 1, 1985, in which all planning, construction and maintenance of the drainage system conform with a master plan for the district and are funded through an assessment on the benefited acres within the district.
- I. **DRAINAGE PROJECT.** Any man-made improvements constructed or installed with the intent to drain water.
- J. **LANDOWNER OR OWNER.** Any individual, firm or corporation, public or private, or public agency, who has title to real property as shown by the records of the Register of Deeds. If the real property is sold under a contract for deed and the contract is of record in the office of the Register of Deeds, both the recorded owner of the real property and the purchaser as named in the contract for deed are deemed owners of the real property.

- K. PERSON. An individual, firm, partnership, association, corporation, contractor or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United states, a state agency, and any political subdivision of the state.
- L. ROUTINE MAINTENANCE. Maintenance performed on a vested drain, existing non-vested drain, natural drain, or intermittent stream, in conformance with Sections herein.
- M. SERVIENT ESTATE. Any parcel of real property, usually at a lower elevation, which is subject to a legal right allowing a dominant estate to drain water onto it.
- N. VESTED DRAINAGE RIGHT. A right to drain water from one property to another which has been established on the basis of SDCL 46A-10A or 46A-11A. Any natural right acquired before July 1, 1985, is deemed vested. Drainage with man-made origins or improvements acquired prior to July 1, 1985, is deemed vested if recorded at the Register of Deeds office before July 1, 1992. Drainage districts are exempt from the recording requirements.

**Chapter 9.02 DRAINAGE DISTRICTS, COORDINATED DRAINAGE AREAS,  
DRAINAGE PROJECTS AND DRAINAGE BASIN UTILITY DISTRICTS**

SECTION 201. APPLICATION FOR REPAIR WORK ON A DRAINAGE DISTRICT. In the event that maintenance is required in a drainage district in which three or more landowners have voluntarily contributed to the cost of previous maintenance, at least sixty percent of the resident landowners served by the drain may file a petition with the County Auditor requesting the Board to take action regarding the necessary repairs. Such petition shall include a map which shows the boundaries of the benefited area of the district in which assessments will be made to cover the cost of the proposed work, the official name or number of the district, the initial and terminal points and general or exact course of the drain, a description of the proposed maintenance, a site plan showing the location of the maintenance, and a statement that the owners agree to future maintenance and assessment of the drain by the Board. The petition shall also detail the type or types of drainage projects that will be included in the proposed area. All maintenance work and assessments shall be completed in accordance with SDCL 46A-10A and 46A-11.

SECTION 202. COUNTY ACTION ON MAINTENANCE PETITION. Upon receipt of a petition to maintain an existing drainage district, the Board shall set a date for a public hearing upon the request. The hearing shall be held within 30 days of the receipt of the petition. Any interested person may appear at the hearing in regard to the petition.

SECTION 203. APPLICATION WHEN DRAINAGE DISTRICT EXTENDS INTO MORE THAN ONE COUNTY. When the drainage district extends into more than one county, the application shall be made to the county which had jurisdiction over the original drainage district. If the original county with jurisdiction is unknown, application for repair work shall be made to all counties affected.

SECTION 204. ABANDONMENT OF DRAINAGE DISTRICT. Any drainage district established prior to July 1, 1985, may be abandoned and abolished after a petition has been filed with the County Auditor by not less than 25 percent of the drainage district property owners. The petition shall include the name of the drainage district. The Board shall publish notice and hold a hearing in conformance with SDCL 46A-10A. If less than a majority of drainage district owners petition for the abandonment of a drainage district, the Board shall schedule an election in accordance with 46A-10A-43 at which the property owners within the district shall decide the fate of the district.

SECTION 205. PETITION FOR COORDINATED DRAINAGE AREA. When the landowners of an area propose to develop a coordinated network of drainage projects, a petition shall be filed with the County Auditor requesting the formation of a coordinated drainage area. The petition shall be signed by not less than 25 percent of the landowners within the area and shall conform to the requirements set forth in SDCL 46A-10A-49. The petition shall include an accurate survey and map verified by a licensed surveyor which shows the boundaries and area of land included within the limits of the proposed coordinated drainage area. The petition shall also detail the type of types of drainage projects that will be included in the proposed area. The Board shall place the proposed coordinated drainage area map in a convenient public office for at least twenty days for examination by those having an interest in the application, and shall set a date for a hearing on the petition.

SECTION 206. HEARING ON COORDINATED DRAINAGE AREA. The Board, after publishing

notice of the hearing, shall hold a hearing on the proposed coordinated drainage area at which any interested person may appear. If the Board is satisfied that the proposed drainage area is in the public interest and that all requirements of SDCL 46A-10A have been met, it may approve the creation of the coordinated drainage district pending the assent of a majority of the landowners within the drainage area at an election to be held within one month of the hearing. However, if the landowners signing the petition represented a majority of the resident landowners in the proposed district, no election need be held.

SECTION 207. NOTICE OF HEARING. The Board, prior to holding a hearing on a petition to establish a coordinated drainage area, shall publish notice of the hearing in a newspaper of general circulation in the area affected. The notice shall be published at least 14 days in advance of the hearing date.

SECTION 208. COORDINATED DRAINAGE AREA ELECTION. Any election regarding a coordinated drainage area shall be held in conformance with SDCL 46A-10A-50 through 46A-10A-54. The board or commission shall give ten days' notice of an election by publication in an official newspaper in the proposed coordinated drainage area. The vote shall be taken by ballot in a form provided by the Board. The ballot shall include the question on whether a coordinated drainage area should be established and a notice informing voters that all costs of the drainage area will be paid by the landowners within the area. Establishment of the area shall be effective upon the approval of a majority of landowners within the district. If a majority vote against the establishment of the drainage area, no further proceedings may be taken on a similar request for a period of two years.

SECTION 209. ASSESSMENT OF COSTS TO COORDINATED DRAINAGE DISTRICT. All costs associated with the coordinated drainage area shall be paid by the landowners within the district. The County may perform necessary construction and/or maintenance and recover the costs by assessing the benefited landowners within the coordinated drainage area.

SECTION 210. DRAINAGE PROJECT NOTIFICATION REQUIREMENTS. Any person constructing a new drainage project or modifying an existing drainage project shall be required to notify the Drainage Administrator prior to commencement of the drainage project. Notification shall be required for, but not limited to the following:

- 1) Construction or installation of a surface or closed drain.
- 2) Any draining or filling, in whole or in part, of a pond, wetland, or lake.
- 3) Construction of any lateral drain.
- 4) Modification of any permitted drainage with the intent of deepening or widening any drainage channel, increasing the size of any drainage tile, or the extending or rerouting any drainage work.
- 5) Repairing, replacing or improving any drain.
- 6) Improvements to a drainage district or a coordinated drainage area which were not included in the original plans.

The notification shall be filed on a form provided by the County and shall be filed with the Drainage Administrator. The notice shall provide a detailed site plan showing the location of the proposed construction, and a description of the type and size of the drain,

and the location of the proposed outlet. The notice for a proposed drainage project which would empty into an existing drainage system shall include a description of the type and general location of the existing system.

The contractor, installer or landowner shall also provide to the Drainage Administrator GPS data for installed drain tile in decimal degrees or degrees-minutes seconds electronic format. Contractors or installers without GPS capabilities shall provide an as-installed map for the tile. This information shall be provided no less than 30 days prior to the final date of installation.

### **Chapter 9.03 DRAINAGE COMPLAINTS**

SECTION 301. JURISDICTION ON DRAINAGE DISPUTES. Any landowner may take a drainage dispute directly to Circuit Court. However, pursuant to SDCL 46A-10A-34, the Board may address any drainage disputes in the unincorporated area of Brown County. The Board may further provide by Resolution that certain types or categories of drainage disputes will not be heard by the Board and must be taken directly to Circuit Court.

SECTION 302. FILING A COMPLAINT. Any landowner in the county may file a drainage complaint by setting forth the facts of the drainage dispute in writing and submitting it to the Administrative Official. The complaint shall include the name and address of the complainant, the location of the property which has suffered damage or may suffer damage and the location of the property against which the complaint is being registered. When possible the complaint should detail the type and location of work, and when the work occurred. The Board may require that a drainage dispute include expert reports from a professional engineer or surveyor.

SECTION 303. ADMINISTRATIVE OFFICIAL TO OFFER POSSIBLE RESOLUTION, DECISION ON JURISDICTION BY BOARD. Upon receipt of a drainage complaint the Administrative Official shall make an investigation of the facts, offer a recommendation for resolution to the parties involved and, if requested by any affected party, forward the complaint to the Board for a hearing. The Board shall make a determination whether they will accept jurisdiction over the particular type or category of drainage which is set forth in the complaint. If the Board does not accept jurisdiction, the dispute may be taken to Circuit Court. If the Board does accept jurisdiction, a date for a public hearing on the drainage complaint shall be set.

SECTION 304. HEARING ON COMPLAINT. When a hearing has been scheduled the Board shall notify all affected parties of the date and time for the hearing. Any interested individual shall have the opportunity to appear and be heard. The Board may make a decision regarding the drainage dispute at the hearing, may defer the item pending additional information from either of the disputing parties, may hold additional hearings on the dispute, or refer the matter to Circuit Court.

SECTION 305. APPEAL OF BOARD DECISION. Any affected party may appeal the Board's decision on a drainage dispute to Circuit Court.

## **Chapter 9.04 ADMINISTRATION AND ENFORCEMENT**

SECTION 401. POWERS AND DUTIES. The Administrative Official is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Administrative Official may designate technical officers and/or inspectors or other employees that shall be authorized to assist in the administration and enforcement of this ordinance.

SECTION 402. RIGHT OF ENTRY. Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Administrative Official or an authorized representative has reasonable cause to believe that there exists upon any premises an ordinance violation, the Administrative Official or an authorized representative may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrative Official by this ordinance, provided that if such property be occupied, the Administrative Official shall first present proper credentials and request entry; and if such property be unoccupied, the Administrative Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the property and request entry. If such entry is refused, the Administrative Official or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Administrative Official 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 property shall fail or neglect, after proper request is made as herein provided, to promptly permit entry thereon by the Administrative Official or any authorized representative for the purpose of inspection and examination pursuant to this ordinance.

SECTION 403. STOP ORDER AND INJUNCTION. Whenever any work is being done contrary to the provisions of this ordinance, the Administrative Official may order the work stopped by notice in writing served on any persons engaged in or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Administrative Official to proceed. In the event of a violation or threatened violation of this ordinance, the Board may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of any drainage work.

**TITLE 10 ALCOHOLIC BEVERAGES**

- CHAPTER 10.01 RETAIL SALES OF BEER IN CONTAINERS HAVING A LIQUID CAPACITY OF GREATER THAN TWO GALLONS**
- CHAPTER 10.02 ALLOWING OFF SALE LICENSEES TO SELL ALCOHOLIC BEVERAGES ON SUNDAY**
- CHAPTER 10.03 LICENSING FEE OF VIDEO LOTTERY MACHINES**
- CHAPTER 10.04 CONSUMPTION OF ALCOHOLIC BEVERAGES ON COUNTY PROPERTY**



**CHAPTER 10.01      RETAIL SALE OF BEER IN CONTAINERS HAVING A LIQUID  
CAPACITY OF GREATER THAN TWO GALLONS**

- 10.0101      Purpose and Intent. As authorized by SDCL 7-8-20(8) this Ordinance is enacted for the purpose of preventing the consumption of alcohol by persons under the age of twenty-one (21) years.
- 10.0102      Jurisdiction. This Ordinance shall apply to all retail sales of beer in containers having a liquid capacity of greater than two (2) gallons.
- 10.0103      Regulation.
- a. A retail licensee selling beer in a container having a liquid capacity of greater than two (2) gallons shall place a distinctive symbol, notation, or mark on the container which uniquely identifies him and moreover, shall mark such container in such a manner, and maintain such business records, that in the event that the container is returned to him, he can establish the following information with respect to his most recent sale involving the container within the last six (6) months, to-wit: the date of the sale and the name, address, driver's license and social security number of the person to whom it was sold.
  - b. Each retail licensee shall register his unique identification symbol, notation, or mark with the Brown County Sheriff and shall provide the Brown County Sheriff with the information gathered pursuant to subsection (a) as the Sheriff from time to time may require.
  - c. This section shall not apply to the sale of containers by a retail licensee if he intends and requires that the contents of the container will be consumed on the licensed premises where the sale occurs.
- 10.0104      Penalty. Any person who shall violate any of the provisions of this Ordinance shall be guilty of a Class II Misdemeanor.

**CHAPTER 10.02      ALLOWING OFF SALE LICENSEES TO SELL ALCOHOLIC  
BEVERAGES ON SUNDAY**

10.0201      No on-sale or off-sale licensee, licensed under SDCL 35-4-2(3), (4), (5), (6), (9), (11), (13), or (18), may sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of two a.m. and seven a.m. or at any time on Christmas Day.

The sale, service, and consumption of alcoholic beverages shall be permitted on Sundays and Memorial Day, except between the hours of two a.m. and seven a.m.

A violation of this section is a Class 2 misdemeanor punishable by thirty (30) days imprisonment in a county jail or a five hundred dollar (\$500.00) fine, or both.

**CHAPTER 10.03 LICENSING FEE OF VIDEO LOTTERY MACHINES**

10.0301 Purpose and Intent. As authorized by SDCL 35-4-103, this Ordinance is enacted to provide for licensing of video lottery machines and collecting a fee for both.

10.0302 Regulation. It is hereby imposed on any person, corporation or business who is licensed pursuant to subdivisions 4, 11, 14, or 17 of SDCL 35-4-2 and who is issued a video lottery establishment license pursuant to SDCL 42-7A-41 an annual license fee for the privilege of locating video lottery machines on the licensed premises. The fee for each video lottery machine shall be fifty dollars (\$50.00) per year at the time that said license application is submitted to the Brown County Auditor's Office as an initial or renewal application. Once paid, said fees are non-refundable except if said license applied for or renewal is not granted. Any increase in the number of video lottery machines, during the license period, shall cause the fee to be paid to the Brown County Auditor's Office within ten (10) days of the activation of the video lottery machine.

**CHAPTER 10.04      CONSUMPTION OF ALCOHOLIC BEVERAGES ON COUNTY PROPERTY**

- 10.0401      The consumption of alcoholic beverages upon property owned, leased or rented by Brown County shall be prohibited except under such conditions and at such locations as is authorized by the Fairgrounds/Youth Camp Superintendent. Such restrictions shall be posted in a conspicuous place.
- 10.0402      Persons who wish to dispense alcoholic beverages upon county property must submit an application to the Brown County Commission, who shall thereafter advise the applicant of the applicable restrictions, locations or activities permitted for the possession, sale or consumption of alcoholic beverages applicable to such location and/or function. The applicant is thereafter required to post written notice of such restriction in a conspicuous manner, at each location where alcoholic beverages are dispensed.
- 10.0403      Violations of this County Ordinance shall be deemed a Class 2 Misdemeanor.

**TITLE 11      ENHANCED 911 EMERGENCY TELEPHONE REPORTING SYSTEM**

**CHAPTER 11.01      AN ENHANCED 911 EMERGENCY TELEPHONE REPORTING SYSTEM**

11.0101      Jurisdictional Service Area. The Enhanced 911 system is to be provided for a service area including the following described jurisdictional area: all of the area within the legal boundaries of the limits of Brown County.

11.0102      Installation, Operation, and Surcharge. The Commission shall be responsible for the costs incurred for installation, maintenance, or operation of the system. In order to pay for the costs incurred, a uniform monthly Enhanced 911 emergency surcharge may be imposed. The surcharge rate shall be one dollar and twenty-five cents (\$1.25) for each local exchange access line or any other unit of measurement as authorized by South Dakota Codified Laws. The remittance shall be made to the South Dakota Department of Revenue. In the event of any change to the maximum surcharge in the South Dakota Codified Laws, this Ordinance shall authorize imposition of any amount not to exceed the new state maximum, if done in accord with State law and this Ordinance.

11.0103      Surcharge Use and Procedure. The proceeds of the surcharge shall be utilized to pay for nonrecurring and recurring costs of the Enhanced 911 related service. No such charge may be imposed upon more than one hundred (100) local exchange access lines or the equivalent per customer billing.

At least once every calendar year, prior to September first, the Commission shall review the current charge and establish, by resolution, a rate of charge to be effective on the next January first, not to exceed the amount authorized.

All funds collected for the surcharge shall be credited to a special fund, apart from the general fund of the County, for payment of nonrecurring and recurring costs for the general operational expense of the Enhanced 911 related service, including but not limited to the personnel costs for employees and/or monthly contract costs billed by the public safety answering point.

Any amount collected in excess of expenses within any given year shall be carried forward to the next year. If an Enhanced 911 system is discontinued, any money remaining in the fund after all payments to the service supplier pursuant to this section have been made shall be transferred proportionately to the general funds of each participating public agency.

11.0104      Service Agreements. The Commission may enter into an agreement directly with the service supplier or may contract or cooperate with any public agency, or other States and/or their political subdivisions, for the administration of an Enhanced 911 system as provided by law.

11.0105      Severability and Savings Clause. If any provision of this ordinance shall be held invalid, it shall not affect any other provision of this ordinance that can be given effect without the invalid provision, and for this saving purpose, the provisions of this ordinance are hereby declared to be severable.

## TITLE 12      PEDDLERS AND SOLICITORS

### CHAPTER 12.01      PEDDLERS AND SOLICITORS

12.0101 Purpose and Intent. Authorized by SDCL 9-34-18, this Ordinance is enacted for the purpose of licensing transient businesses.

12.0102 Definitions. A person, firm, or corporation, whether as owner, agent, consignee or employee, engaged in the selling of personal property or personal services to include, but not limited to spraying, trimming or pruning of trees and shrubs of all species, painting or repairing buildings or structures, and pest or rodent control by going about from place to place, highway or street parking, or house to house either in person or by telephone to sell the same and who carries with him such property for delivery at time of sale or immediately thereafter is a peddler. A person, firm, or corporation, whether as owner, agent, consignee or employee engaged in going from place to place, highway or street parking, or house to house either in person or by telephone to solicit orders for, or to offer to sell, personal property for future delivery is a solicitor. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with or as part of or in the name of any local dealer, trader, merchant or auctioneer.

12.0103 Peddling or Soliciting Exempt from Chapter. This chapter shall not apply to persons soliciting newspaper subscriptions, nor to magazine, book, or periodical subscription solicitations sponsored by any nonprofit organization, nor to traveling salesmen doing business exclusively with retail merchants, manufacturers, jobbers, or with public officials, whether they carry samples or not, nor to co-operative corporations or associations, nor to the peddling or soliciting of orders for any agricultural product produced or processed within the State of South Dakota, stock foods, veterinary medicines and biologicals, or such petroleum products as are subject to state inspection under the provisions of SDCL 37-2; nor to any solicitor who does not demand or accept payment of money or any deposits in advance not to any solicitor whose terms do not require payment of any money or deposit on delivery without the privilege of examination.

12.0104 Equipment Sales and Service by Permanent Dealer Exempt from Chapter. This chapter shall not apply to the sale, lease or repair of motor vehicles, farm machinery or implements, or mobile homes, by a dealer having a fixed permanent location and place of business in South Dakota where such goods and services are offered on a continuing basis.

12.0105 Enforcement. It shall be the duty of any officer of the county to require any person seen peddling, soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his Peddler's license and to enforce the provisions of this article against any person found to be violating same.

12.0106 Fees. The fees for a peddler's or solicitor's license shall consist of the basic registration fee of fifteen dollars (\$15.00) to defray the cost of the county processing the license and investigatory expense; and, in addition, a license fee of twenty-five dollars (\$25.00) per day, fifty dollars (\$50.00) per week or one hundred dollars (\$100.00) per month shall be paid by the applicant; and in addition, the sum of fifteen dollars (\$15.00) for each additional solicitor or peddler employed or under the direction of said applicant.

12.0107 Application. After payment of the requisite license fees to the county auditor, any person desiring to obtain a license under the provisions of this chapter shall make and file with the County Auditor a sworn application in writing in duplicate on a form furnished by the County Auditor, which shall give the following information:

- (a) Name and description of applicant.
- (b) Address (legal and local).
- (c) A brief description of the nature of the business and how the business will be operated.
- (d) If employed, the name and address of the employer, together with credentials establishing the exact relationship.
- (e) The length of time for which the right to do business is desired.
- (f) If a vehicle is to be used, a description of the same, together with the license number or other means of identification.
- (g) Names of other towns or cities in the state where the applicant has had a similar license in the past year.
- (h) A statement as to whether or not the applicant has been convicted of any federal, state, or municipal law, the nature of the offense, the punishment or penalty assessed, the name of the court and the town or city.

12.0108 Service of Process. Before any license shall be issued, there shall be filed with the County Auditor an instrument in writing, signed by the applicant under oath, nominating and appointing the County Auditor his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on behalf of the applicant, and service of summons in any action brought upon by the bond shall be deemed made when served upon the County Auditor. Immediately upon service of process upon the County Auditor as provided herein, the County Auditor shall send to the licensee at his last known address by registered mail a copy of said process.

12.0109 Bond. Before any license shall be issued under this chapter, every applicant not a resident of this county, who represents a firm whose principal place of business is located outside the state shall file with the County Auditor a surety bond, running to the county the amount of one thousand dollars (\$1,000) with surety acceptable to and approved by the county commissioners, conditioned that the applicant shall comply fully with all the provisions of the ordinances of the county and all the statutes of the state regulating and concerning the business of a transient merchant, itinerant merchant, nonresident auctioneer, solicitor or canvasser and guaranteeing to any citizen of Brown County that all money paid as a down payment will be accounted for and applied according to the representations made, and further, guaranteeing to any citizen of the city doing business with such licensee that the property purchased will be delivered according to the representation of the licensee, that all merchandise sold and delivered shall be as represented and that he will refund any money or deposit on any merchandise which is not as represented. Action on such bond may be brought in the name of the county to the use or benefit of the aggrieved person.

12.0110Investigation. Before issuing a license under this article to any person applying, the County Auditor shall refer the application to the County Sheriff, who shall make such investigation of the applicant's moral character and business responsibility as he deems necessary for the protection of the public good, including the inquiry of the Federal Bureau of Investigation and the investigation division of the Office of Attorney General of the State of South Dakota; except in the event the applicant has received a like license from the county within one year past, the licensing authority may waive this requirement. The County Sheriff shall make the investigation within a reasonable time and shall certify to the licensing authority whether or not the moral character and business responsibility of the applicant are satisfactory. The expense of this investigation shall be paid out of the registration fee for such license as provided for in this chapter.

12.0111Issuance. The Board of County Commissioners shall issue any license issued under the provisions of this chapter, and shall have discretion whether or not to grant the license after considering the showing on applicant's behalf and after making the investigation it deems necessary.

12.0112Exhibition. Any person licensed under this article is required to exhibit his license at the request of any person who may deal with the licensee.

12.0113Suspension. Upon complaint being made to the Board of County Commissioners of any of the grounds for revocation set forth in section 12.0114, and upon its determination that the health, welfare, and safety of the citizens of the county requires it; the commission may order immediate suspension of the license and the licensee shall not engage in the business authorized by the license, pending a hearing and decision by the Board of County Commissioners as provided in section 12.0114.

12.0114Cause for Revocation. License issued under the provisions of this article may be revoked by the County Board of Commissioners after notice and hearing for any of the following causes:

(a) Fraud, misrepresentation, or false statement contained in the application for license.

(b) Fraud, misrepresentation, or false statement made in the course of carrying on the business under the license.

(c) Any violation of this chapter.

(d) Conviction of any felony or of a misdemeanor involving moral turpitude.

(e) Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

12.0115Notice of Hearing. Notice of the hearing for revocation of a license under this chapter shall be given in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.

12.0116Expiration. Licenses shall expire on the date specified in such license.

12.0117Renewal. In the event any licensee under this chapter desires to continue the business authorized under the license after the expiration date of such license, a new application shall be filed and the same procedure followed as for the initial license.



12.0118Appeal or Review. Any person aggrieved by the action of the Board of County Commissioners in the denial of an application for permit or license as provided in section 12.0111, or in the decision with reference to the revocation of a license as provided by section 12.0114 of this chapter, shall have the right of having the commission review their decision by filing with the County Auditor, within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for such review. Service of such notice shall be made on the County Auditor. The Board of County Commissioners shall set a time and place for a full and complete hearing in the same manner as provided in section 12.0115 for notice of hearing on revocation, and the decision and order of the board on such matter shall be final and conclusive.

12.0119Regulation.

(a) It shall be unlawful for any person who sells personal services as defined in 12.0102 to engage in any business within the county without having first registered with the County Auditor in compliance with the provisions of this chapter and without having received a license from the county commissioners.

(b) Any peddler or solicitor who has a license from a city or town with the county must still register with the County Auditor and receive a license from the Board of County Commissioners before commencing business outside the city limits in the county. All other provisions of this chapter shall apply.

(c) Any peddler or solicitor conducting business in a city or town within this county that does not require a license for peddlers or solicitors must apply to the County Auditor and obtain a license from the County Commissioners before commencing business in this county.

12.0120Penalty. Any person who shall violate any of the provisions of this Ordinance shall be guilty of a Class II Misdemeanor.

**TITLE 13      WHEEL TAX**

**CHAPTER 13.01      WHEEL TAX – EFFECTIVE OCTOBER 1, 2003**

13.0101      Pursuant to SDCL 32-5A a wheel tax shall be imposed on all motor vehicles as defined in SDCL 32-3-1, registered in Brown County at a rate of two dollars per wheel, not to exceed eight dollars per vehicle, commencing on October 1, 2003. Said tax shall be collected and proceeds distributed in accordance with SDCL 32-5A.

**CHAPTER 13.02      WHEEL TAX – EFFECTIVE OCTOBER 1, 2004**

13.0201      Pursuant to SDCL 32-5A-1.1 an additional two dollars per wheel shall be imposed on all motor vehicles as defined in SDCL 32-3-1, registered in Brown County. The total vehicle tax may not exceed sixteen dollars per vehicle, which includes the existing amount being collected pursuant to Chapter 13.01 and the additional pursuant to Chapter 13.02.

13.0202      Pursuant to SDCL 34-5A-2, the proceeds from the additional two dollar per wheel tax imposed will be distributed among the county and the municipalities and townships located within the county, as follows:

County Road and Bridge Fund	90%
Municipalities	3%
Townships	7%

13.0203      The number of road miles maintained by each entity shall provide the means for calculating the distribution of the 3% to the municipalities and the 7% to the townships.

13.0204      Chapter 13.02, Title 13 shall be effective October 1, 2004.

**TITLE 14      DECLARATION AND ABATEMENT OF NUISANCES**

**CHAPTER 14.01      DECLARATION AND ABATEMENT OF NUISANCES**

14.0101      This Ordinance is for the declaration and abatement of public nuisances in the unincorporated areas of Brown County.

14.0102      Pursuant to the SDCL 7-8-33 and consistent with the purpose of creating and maintaining a safe and healthy environment for the public welfare of Brown County residents and their property.

14.103      Public Nuisance.

What is a public nuisance? Unlawfully doing an act, or omitting to perform a duty, which act or omission either: (1) injures, or endangers the comfort, repose, health, or safety of others; (2) a hazard or an injury to human health; and in addition (3) specific acts, conditions, and things that are declared to constitute a public nuisance.

Whoever shall create, commit, maintain, or permit to be created, committed, or maintained (1) any of the enumerated conditions, specific acts, things, and situations or (2) otherwise violates the general provisions of this ordinance is guilty of a public nuisance and the place, contents, area, thing, or all of the foregoing, are declared a public nuisance and shall be enjoined and abated as provided by state statute and/or county ordinance.

It will be the responsibility of the Zoning Administrator or an Official designated by the Brown County Commission, to enforce these public nuisance ordinances in Brown County. All nuisances / condemnations will be handled on a complaint basis only.

14.0104      Definitions.

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

Breeding place for flies, rodents and/or pests - The unhealthy and unnecessary accumulation of manure, garbage, tires, debris or discarded items which is a potential breeding area for flies and rodents.

Building official - As used in this Title it shall mean the Zoning Administrator, Sheriff's Deputy, or an Official authorized by the Brown County Commissioners with the enforcement of this Title.

Building - Any structure designed or intended for the support, enclosure, shelter, or protection of persons or property.

Buildings, which are abandoned, boarded up, partially destroyed, or partially constructed and uncompleted subsequent to the expiration of a building permit. Any building which poses a health hazard to anyone or anything that might inhabit it. Any residential

structures that are found to be deteriorated to the point that they may endanger or injure a person's life are considered to be a nuisance.

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.

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

Other - Any like and similar condition or conditions.

14.104 Right of Entry.

Whenever necessary to make an inspection to enforce any of the provisions of this Title, or whenever the Official (as defined in Section 14.0104), or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which is prohibited under this Title, Official or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed by this Title. If such building or premises is occupied, a reasonable effort will be made to locate the owner of the building or premises and demand entry. If such entry is refused, the Zoning Administrator or Official or an authorized representative shall have recourse of every remedy provided by law to secure entry.

No owner or occupant or any other person having charge or care of any building or premises shall fail or neglect, after proper demand made as herein provided, to properly permit entry therein for purposes of inspection and examination pursuant to this Title.

14.105 Notification.

Whenever notification is given that any condition or conditions prohibited in this Title exist on any premises located in Brown County, the Zoning Administrator or Official or an authorized representative shall give cause to be given, notice to abate the unlawful condition or conditions existing on the premises. Such notice shall be in writing to the person creating, permitting, or maintaining such nuisance to abate the same within a reasonable period of time.

14.106 Owner Unknown - Notice Waived.

Whenever the owner, occupant, or agent of any premises in or upon which any nuisance may be found is unknown or cannot be found, the Zoning Administrator or Official shall proceed to abate the nuisance without notice. In either case the expenses of such abatement shall be collected from the person who may have created, caused or suffered such nuisance to exist.

14.107 Right of Appeal.

The owner or any person affected shall have the right of appeal to the Brown County Commission for investigation and review of the Zoning Administrators or Official's determination. Such appeal shall be filed in accordance with Title 1, Chapter 1.03 and shall state the objection of the person filing the same, shall be filed with the Zoning Administrator within ten (10) days after the date of posting, publishing, serving, or

mailing of the Notification, and shall be presented to the Brown County Commission by the Zoning Administrator who shall proceed in accordance with the Abatement Notice, or as modified by the Commission; or not at all, and its decision thereon shall be final and conclusive.

14.0109 Failure to Abate.

In the event a person fails to abate such nuisance the Zoning Administrator or Official shall prepare a statement of the expenses incurred in the razing, demolishing, removing, reconstruction, or other affirmative act necessary to abate the unlawful condition occurred.

14.110 Abatement by State Law.

In addition to the method of abatement of nuisances provided in this Title, the County may abate any nuisance found within the County in the manner provided by State Law.

14.111 Penalty and Remedy.

Any person who maintains, commits, or fails to abate a public nuisance as required under the provision of this Title shall be subject to a maximum penalty of thirty (30) days in jail, or a two hundred dollar (\$200) fine, or both. Each day that the nuisance continues shall constitute a separate offense.

In addition, the County may use the remedies of a civil action and abatement as set forth in SDCL 21-10-5 through SDCL 21-10-9.

**TITLE 15**

**LAW ENFORCEMENT: OFFENSES/MISCELLANEOUS**

CHAPTER 15.01	Intent and Purpose
CHAPTER 15.02	Crowds Obstructing Streets
CHAPTER 15.03	Resisting, Obstructing, Escaping from or Assaulting An Officer
CHAPTER 15.04	Impersonating an Officer
CHAPTER 15.05	False Emergency Alarm
CHAPTER 15.06	Disorderly Conduct
CHAPTER 15.07	Violations

**CHAPTER 15.01      INTENT AND PURPOSE**

This ordinance is adopted for the purpose of assisting the general public in protecting public rights of way. This ordinance is also adopted to assist law enforcement in the performance of their official duties.

## **CHAPTER 15.02      CROWDS OBSTRUCTING STREETS**

It shall be unlawful for persons to gather in crowds or groups or for any person to stand on any public street, sidewalk or other public right of way in such manner as to obstruct free pass thereon or to annoy/harass persons passing along the same. Law enforcement officers are authorized to disperse the crowd or group or to cause the removal of any person violating the provisions of this section and to summarily arrest any person in case of refusal to obey any reasonable direction given by such officer for the purpose of clearing the way or preventing the annoyance to any passerby on any public right of way.



**CHAPTER 15.03      RESISTING, OBSTRUCTING, ESCAPING FROM OR ASSAULTING AN OFFICER**

No person shall resist or obstruct any law enforcement officer in any performance of any official duty, or in any way aid or assist any person to resist or escape from any such officer, nor assist any person to escape from any lawful confinement. No person shall flee from, assault or strike any law enforcement officer, nor in any way interfere with a law enforcement officer in the discharge of his/her official duty.

## **CHAPTER 15.04      IMPERSONATING AN OFFICER**

No person unduly authorized shall exercise the duties conferred by law upon law enforcement officers, wear the law officer's badge or represent himself as being a law enforcement officer or peace officer, or attempt to exercise the duties of a law enforcement officer or peace officer.

**CHAPTER 15.05      FALSE EMERGENCY ALARM**

No person shall knowingly make or give any false alarm of fire or other emergency by calling or causing to be called the fire department or law enforcement officers or any authorized emergency vehicle.

## CHAPTER 15.06      DISORDERLY CONDUCT

A person shall be guilty of Disorderly Conduct if with the purpose to cause public danger, alarm, disorder or nuisance, he/she willfully (1) creates a disturbance of the public order by an act of violence or by an act likely to produce violence; or (2) engages in fighting or in a violent or threatening or tumultuous Behaviors; or (3) makes any unreasonable loud noise; or (4) addresses abusive language or threats to any person present which creates a clear and present danger of violence; or (5) causes likelihood of harm or serious inconvenience by failing to obey a lawful order of dispersal by a police officer, or (6) damages, befouls or disturbs public property or property of another so as to create a hazardous, unhealthy or physically offensive condition; or (7) commits a trespass on residential property or on public property. Trespass for the purpose of this section shall mean:

a). Entering upon, or refusing to leave, any residential property of another, either where such property has been posted with "No Trespassing" signs, or where immediately prior to such entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that such entry, or continued presence, is prohibited.

b) Entering upon, or refusing to leave, any public property in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the governing body of the public agency owning the property, which such regulations have been conspicuously posted or where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official charged with the security, care of maintenance of the property, his agent or a police officer.

or (8) makes a telephone call with intent to annoy/harass another, whether or not conversation ensues; or (9) hinders, annoys, or molests persons passing along any street, sidewalk, crosswalk or other public way, or loiters, sits or stands around the entrance of any church, theater, public building or other place of public assemblage in any manner so as to unreasonably obstruct such entrance, or places or erects upon any public way an obstruction of any type except temporary barriers or warning signs placed for the purpose of safeguarding the public against any hazard; or (10) assembles together with two or more persons with intention to do any unlawful act with force or violence against the person or property of another, and who makes any overt act to carry out such unlawful purpose; or (11) disturbs, threatens or in any insolvent manner intentionally touches any house or vehicle occupied by any person.

**CHAPTER 15.07 VIOLATIONS**

Violations of this county ordinance shall be deemed a Class II Misdemeanor.

## TITLE 16 - BROWN COUNTY FAIR

### CHAPTER 16.01 DEFINITIONS

The following terms, as used in this Title, mean:

#### 16.1.1 Brown County Fairgrounds

The location commonly known as the Brown County Fairgrounds, and described as that area bounded on the west by 387<sup>th</sup> Avenue (N 5<sup>th</sup> Street/Brown County 10), on the south by 131<sup>st</sup> Street (24<sup>th</sup> Ave NW, Aberdeen), on the east by a line approximately ½ mile east of and parallel to 387<sup>th</sup> Avenue and on the north by a line ½ mile north of and parallel to 131<sup>st</sup> Street and having the legal description:

Southwest Quarter (SW ¼) of Section One (1), Township One Hundred Twenty Three (123) North, Range Sixty-four (64) West of the Fifth Principal meridian, containing 160 acres, more or less, according to the Government Survey thereof, Brown County, South Dakota, except Fairgrounds Outlot 1 located in the SW ¼ Section 1, Township 123 North, Range 64 West of the 5<sup>th</sup> P.M., according to the plat thereof of record, Brown County, South Dakota.

plus the additional property owned by Brown County located directly east of the above described property having the legal description:

Lot 1, First Replat of Dahme Northview Addition in the Southeast Quarter of Section 1, Township 123 North, Range 64 West of the 5<sup>th</sup> P.M. according to the plat thereof of record, Brown County, South Dakota.

#### 16.1.2 Brown County Fair Week

The period of time from the beginning date to the ending date of the Brown County Fair set and advertised each year for the running of the Brown County Fair, including the time between those dates, plus twenty-four (24) hours before and after the advertised beginning and ending dates of the fair.

#### 16.1.3 Fair Board

The volunteer board created and appointed by the Brown County Commission, pursuant to SDCL Chapter 7-27, which is given the responsibility by the County Commission to assist the Fair Manager in planning, managing and conducting the annual Brown County Fair and for establishing rules and regulations to achieve this purpose.

#### 16.1.4 Fair Off-Season

The Fair Off-season is that period of time between Fair Weeks.

#### 16.1.5 Restricted Traffic Perimeter

The Restricted Traffic Perimeter is that area of the Fairgrounds bounded by the roadways of West Pit Road, North Pit Road, Bruckner Express, Fair Lane, Centennial Drive, Arena Drive, West Livestock Lane and Sheep Street.

During the Fair Off-season, the Fair Board may adjust or modify this Restricted Traffic Perimeter for future fairs as experience or conditions may warrant.

The Fair Manager will keep and post at the fair office an accurate map showing the Restricted Traffic Perimeter and will make this map available for public inspection at the fair office during normal business hours.

16.1.6 Class 2 Misdemeanor

A violation of County Ordinance punishable by the fine and imprisonment authorized by SDCL 7-18A-2 and SDCL 22-6-2(2).

## CHAPTER 16.02 BROWN COUNTY FAIR BOARD

### 16.2.1 Purpose and Intent.

The Brown County Commission reaffirms its establishment of the Brown County Fair Board, pursuant to SDCL Chapter 7-27, for the purpose of conducting an annual county fair and for the purpose of exhibiting at such fair the agricultural, stock breeding, horticultural, mining, mechanical, industrial and other products and resources of this county and state.

### 16.2.2 Members – Tenure.

The Brown County Fair Board shall consist of twenty-five (25) members appointed by the Brown County Commission. Each member shall serve for a period of three (3) years, and are eligible for reappointment for an additional three (3) year term.

### 16.2.3 Organization and Operations.

In order to carry out its responsibilities, the Fair Board:

1. Is authorized to create various organizational by-laws, subject to the approval of the Brown County Commission.
2. Is authorized to create and elect various officers and to assign specific duties to these officers.
3. Is authorized to create various committees, to appoint individuals to serve on these committees and to assign these committees various tasks.
4. Must comply with the open meeting laws found at SDCL 1-25.
5. Must comply with the open records laws found at SDCL 1-27.

### 16.2.4 Regulations.

The Brown County Fair Board may make any by-law, rule or regulation, not inconsistent with law, which it deems necessary or proper to carry out its assigned responsibilities and duties including:

1. Planning, managing and conducting the annual Brown County Fair; and
2. Managing and governing Brown County Fairgrounds and its facilities during the time leading up to and including Fair Week; and
3. Providing for the protection, health, safety and comfort of the public attending the Brown County Fair.
4. Creating a policy to provide for the humane treatment of all non-domesticated animals and livestock on the Brown County Fairgrounds during fair week for the purpose of show, display, competition or sale as part of fair activities or programs.

Before taking effect, all by-laws, rules and regulations adopted by the Fair Board must be approved by the Fair Manager and the Brown County Commission.

### 16.2.5 Specific Responsibilities

Along with the Fair Manager, the Brown County Fair Board:

1. Works to plan, coordinate and produce the annual Brown County Fair, including:
  - a. Youth and adult competitive exhibiting,
  - b. commercial exhibit opportunities,



- c. 4-H competition,
  - d. FFA shows,
  - e. Special events,
  - f. Livestock, agricultural, educational and Home Arts exhibits
  - g. Providing quality entertainment and food concessions for the enjoyment of area residents and visitors.
2. Is responsible for long range planning for both future fairs and for future fairground needs.
  3. Supervises its various fair committees.
  4. Assists the Fair Manager with the various activities and programs held both during Fair Week and during the Fair Off-season,
  5. Works with the Fair Manager concerning Fair contract and budget issues,
  6. Approves all contracts before they are sent to the Brown County Commission for final approval.
  7. Approves Fair Board Treasurer's monthly report.
  8. Meets at least monthly to conduct its business.
  9. Helps find, recruit and organize volunteers to work during Fair Week.

16.2.6            Penalties.

Any person who violates a published rule or regulation adopted by the Brown County Fair Board and approved by the Fair Manager and the County Commission is guilty of a Class 2 Misdemeanor.

CHAPTER 16.03            BROWN COUNTY FAIR MANAGER (Ordinance 107, effective 2/7/17)

16.3.1            General Authority:

The Brown County Fair Manager is a county employee hired by Brown County Commission to serve as the Chief Executive Officer (CEO) of the Brown County Fair during both Fair Week and the Fair Off-season and as the site manager for the Brown County Fair and Fairgrounds during Fair Week.

16.3.2            Specific Responsibilities:

The Fair Manager has the following specific responsibilities:

1. To serve as the chief Brown County Fair contact person.
2. To propose and manage the annual county fair budget.
3. To initially collect and account for all income generated by the Brown County Fair Program pursuant to policies, practices and procedures set by the Brown County Commission.
4. To negotiate, or supervise the negotiations, of all county fair contracts related to the operation of the Fair and to submit any proposed contracts to the County Commission for approval.
5. To find county fair sponsors willing to donate money, property or services to the fair and to enter into sponsorship agreements, subject to the approval of the Brown County Commission.
6. To hire and train temporary employees for both office work and for other work during Fair Week.
7. To recruit, train and manage volunteers working at the Fair during Fair Week.
8. To increase job knowledge and skills by identifying and completing appropriate continuing education courses and seminars.
9. To carry out these additional responsibilities and duties:
  - a. Marketing
  - b. Grant Writing
  - c. Scheduling of all Fair Events
  - d. Forklift & Safety Training
  - e. Insurance Procedures and Verifications (making sure all events and vendors have proper insurance – listing BCF as an additional insured)
  - f. Scouting Artists for Entertainment and Events
  - g. Organization and Management of Vendors
  - h. Organization and Management of the Fairgrounds Camping Program.
  - i. Organization and Management of Ticket Sales
  - j. Public speaking on behalf of the Fair.
  - k. Ticket Sales

16.3.3            Relationship with the Fair Board:

During the fair off-season, the Fair Manager and the Fair Board work together, under the direction of the Fair Manager, to develop rules, regulations and procedures to improve the operation of future fairs, to recruit volunteers, solicit donations, identify and correct past problems and organize and plan the upcoming fair.

During Fair Week, the Fair Manager is the final authority concerning the operation of all aspects of the Brown County Fair and the management of the Brown County Fairgrounds, subject only to review by the Brown County Commission.

During fair week, the members of the Fair Board individually and as a Board, under the direction of the Fair Manager, assist in the operation of fair activities and the management of the fairgrounds.

16.3.4            Initial Collection of Fair Revenue

1. Both before and during Fair Week, the Fair Manager will be the county official directly responsible for the initial receiving, collecting, securing and accounting for all receipts, money and other fair program revenue to which the County is entitled.
2. In carrying out this responsibility, the Fair Manager will:
  - a. Follow the policies, practices and procedures set by the Brown County Commission for this purpose.
  - b. Can be assisted by his or her office staff, volunteers or county employees.
  - c. Will train, supervise and direct all volunteers, employees and staff in the sale of tickets or the generation or collection of other fair revenue.
  - d. Will require all volunteers, employees and staff to follow the policies, practices and procedures set by the Brown County Commission.
  - e. Will promptly deliver to the Brown County Treasurer all fair program revenue, along with a full accounting of the same, as provided by SDCL 7-27-14, SDCL 7-11-1 and the policies and procedures set by the Brown County Commission.
3. The Brown County Commission, in cooperation with the Fair Manager, will adopt a set of standard policies, practices and procedures for the purposes identified herein, including how, when and by whom county fair revenues are to be collected, accounted for, transported and secured.

## CHAPTER 16.04 TRAFFIC CONTROL DURING FAIR WEEK

### 16.4.1 Exclusive Control by the Fair Board:

During fair week, all parking lots and roadways at the Brown County Fairgrounds will be under the exclusive direction and control of the Brown County Fair Board and the Fair Manager.

### 16.4.2 Restricted Traffic Areas During Fair Week:

During Fair Week, the operation of motor-driven vehicles, such as mopeds, golf carts and ATV's is not permitted within the Restricted Traffic Perimeter of the Brown County Fairgrounds, as defined by 16.01.05, unless a person first obtains from the Fair Board or Fair Manager a Special Permit to drive in this restricted traffic area.

### 16.4.3 Special Fair Permit:

In order to secure special authorization to operate a motor vehicle in the restricted area identified in section 16.01.05, an applicant for a special permit must provide to the Fair Board, in advance for approval, both proof of insurance and a copy of a valid driver's license.

Only authorized and permitted drivers shall operate said vehicles in the restricted area. All others may be subject to fines and penalties authorized herein.

### 16.4.4 Traffic Rule Enforcement:

During fair week, all vehicles operated on the Brown County Fairgrounds must comply with directions of the Brown County Fair Board personnel or law enforcement and must obey all Brown County Fair Board regulations. Drivers with a Special Fair Permit must carry this permit on their person while operating a vehicle on the Fairgrounds in the restricted area and must be able to immediately produce their special permit upon being stopped or checked.

16.4.5            Parking:

During fair week, parking on the Fairgrounds is restricted to the specific areas set aside by the Brown County Fair Board.

1. Vehicles must park in designated areas only.
2. Vehicles may not be parked in or around the buildings, except for unloading and loading or as provided by Section 16.03.04(4).
3. Fire lanes shall be maintained at all times.
4. Designated disabled parking areas are set aside for vehicles displaying current and valid disabled placards/licenses only.

16.4.6            No Parking Near Fire Hydrants:

During Fair Week, it will constitute a Class 2 Misdemeanor for any person to park a motor vehicle on the Fairgrounds within ten (10) feet of a fire hydrant. The Fair Manager will identify the no parking zone around each fire hydrant with appropriate cones, signs or in some similar manner.

16.4.7            Speed Limit:

During fair week, the speed limit for all vehicles operated on the Fairgrounds is 10 miles per hour.

16.4.8            Violations:

Each violation of this ordinance is a Class 2 Misdemeanor.

## CHAPTER 16.05 OPEN FLAME FIRES PROHIBITED

### 16.5.1            Purpose and Intent:

The purpose of Chapter 16.05 is to protect the health and safety of all citizens taking part in the Brown County Fair and to safeguard all property at the Brown County Fairgrounds during Fair Week.

### 16.5.2            Open Flame Fire:

An open flame fire includes any fire that either exhibits a visible open flame or consists of any embers or coals hot enough to burst into an open flame if provided additional oxygen or fuel, including but not limited to a campfire, bonfire, fire pit, fire ring, barrels, lanterns, torches, fireworks or similar blaze.

### 16.5.3            Regulation:

Except as otherwise specifically provided herein, it shall be unlawful for any person or persons to start or maintain an open flame fire at any location on the Brown County Fairgrounds during fair week.

### 16.5.4            Exceptions:

For purposes of this Chapter, an Open Flame Fire does not include:

1.        Commercially manufactured charcoal or gas cooking grills, stoves or other cooking appliances or camping gear if:
  - a.        Used by a person authorized to camp at the Brown County Fairgrounds; and
  - b.        Used by that person at their assigned camp site, either inside or outside their camping unit; and
  - c.        Used by that camper, or another person under their supervision, for food preparation.
  
2.        Commercially manufactured cooking equipment used by food concession vendors in the preparation of their food product provided the vendor holds a vendor's license issued by the Brown County Fair Board and the vendor operates his or her concession in a manner consistent with their vendor's license.
  
3.        The responsible use of matches or cigarette lighters.

4. Those exceptions granted by the Brown County Fair Board or the Fair Manager to an individual or to a group of people seeking to enhance the public's fair-going experience without creating any significant additional risk to the public, provided during the event the individual or group given the exception keeps on site a working fire extinguisher approved by the Fair Manager. (Examples of Possible Events: Community pig roast, fireworks, special effects as part of a musical performance, the tail gate cooking contest sponsored by the Fair Board, necessary fairground maintenance or repair work.)

16.5.5            Penalty:

A violation of this Chapter is a Class 2 misdemeanor.

16.5.6            Liability for fire:

In addition to any criminal penalty, any person who violates this Chapter and who thereby causes fire damage to other persons or property will be liable for all injuries sustained as a result of that fire damage and for all related fire suppression and extinguishment costs incurred as a result of the said fire. Criminal prosecution is not a prerequisite to liability for damage or for fire suppression and extinguishment costs.

CHAPTER 16.06 OTHER PROVISIONS

16.6.1 Putting Flyers and Similar Material on Vehicles Prohibited:

During Fair Week, no person shall deposit or place on any motor vehicle, parked on the Fairgrounds, any handbill, circular, leaflet, pamphlet, booklet or other printed material without the permission of the owner, driver or occupant of that vehicle.

16.6.2 Fairgrounds Designated a Public Park During Fair Week:

During Fair week, the Brown County Fairgrounds will be designated a public park or a public playground for purposes of SDCL 22-24B-22 (1) and 22-24B-24. During Fair Week suitable signs will be posted at all vehicle entry gates and other public entry locations informing the public that they are entering a public park and playground. The Brown County Fairgrounds will cease to be a designated public park or public playground during the Fair Off-Season.

16.03 BROWN COUNTY FAIR MANAGER

16.3.1 General Authority:

The Brown County Fair Manager is a county employee hired by Brown County Commission to serve as the Chief Executive Officer (CEO) of the Brown County Fair during both Fair Week and the Fair Off-season and as the site manager for the Brown County Fair and Fairgrounds during Fair Week.

16.3.2 Specific Responsibilities:

The Fair Manager has the following specific responsibilities:

1. To serve as the chief Brown County Fair contact person.
2. To propose and manage the annual county fair budget.
3. To initially collect and account for all income generated by the Brown County Fair Program pursuant to policies, practices and procedures set by the Brown County Commission.
4. To negotiate, or supervise the negotiations, of all county fair contracts related to the operation of the Fair and to submit any proposed contracts to the County Commission for approval.
5. To find county fair sponsors willing to donate money, property or services to the fair and to enter into sponsorship agreements, subject to the approval of the Brown County Commission.
6. To hire and train temporary employees for both office work and for other work during Fair Week.
7. To recruit, train and manage volunteers working at the Fair during Fair Week.



8. To increase job knowledge and skills by identifying and completing appropriate continuing education courses and seminars.
9. To carry out these additional responsibilities and duties:
  - a. Marketing
  - b. Grant Writing
  - c. Scheduling of all Fair Events
  - d. Forklift & Safety Training
  - e. Insurance Procedures and Verifications (making sure all events and vendors have proper insurance - listing BCF as an additional insured)
  - f. Scouting Artists for Entertainment and Events
  - g. Organization and Management of Vendors
  - h. Organization and Management of the Fairgrounds Camping Program.
  - i. Organization and Management of Ticket Sales
  - j. Public speaking on behalf of the Fair.
  - k. Ticket Sales

### 16.3.3 Relationship with the Fair Board:

During the fair off-season, the Fair Manager and the Fair Board work together, under the direction of the Fair Manager, to develop rules, regulations and procedures to improve the operation of future fairs, to recruit volunteers, solicit donations, identify and correct past problems and organize and plan the upcoming fair.

During Fair Week, the Fair Manager is the final authority concerning the operation of all aspects of the Brown County Fair and the management of the Brown County Fairgrounds, subject only to review by the Brown County Commission.

During fair week, the members of the Fair Board individually and as a Board, under the direction of the Fair Manager, assist in the operation of fair activities and the management of the fairgrounds.

### 16.3.4 Initial Collection of Fair Revenue

1. Both before and during Fair Week, the Fair Manager will be the county official directly responsible for the initial receiving, collecting, securing and accounting for all receipts, money and other fair program revenue to which the County is entitled.
2. In carrying out this responsibility, the Fair Manager will:
  - a. Follow the policies, practices and procedures set by the Brown County Commission for this purpose.
  - b. Can be assisted by his or her office staff, volunteers or county employees.

- c. Will train, supervise and direct all volunteers, employees and staff in the sale of tickets or the generation or collection of other fair revenue.
  - d. Will require all volunteers, employees and staff to follow the policies, practices and procedures set by the Brown County Commission.
  - e. Will promptly deliver to the Brown County Treasurer all fair program revenue, along with a full accounting of the same, as provided by SDCL 7-27 - 14, SDCL 7-11-1 and the policies and procedures set by the Brown County Commission.
3. The Brown County Commission, in cooperation with the Fair Manager, will adopt a set of standard policies, practices and procedures for the purposes identified herein, including how, when and by whom county fair revenues are to be collected, accounted for, transported and secured.

16.6.3

Contracts to Operate Certain Concessions During Fair Week (Ordinance 094 dated 8/25/15)

Should the Brown County Commission decide to enter into an agreement with a private group or organization, allowing the group or organization to provide certain concessions during Fair Week, the following rules will apply:

- 1. These provisions will only apply to contracts for concessions sold at the fair “Clubhouse” (aka Beer Garden) and or the fair “Grandstand” during Fair Week.
- 2. For groups and organizations to be eligible to contract with the County to provide concessions at these venues, the group or organization must meet the following criteria:
  - a. The group or organization must be recognized by the IRS as a not-for-profit organization under federal tax law.
  - b. The group or organization must demonstrate that it has a large enough volunteer base to effectively handle the requirements of the contract and the challenges of providing excellent service to the fair-going public.
- 3. Any contract entered into with a group or organization will be for a maximum of three years or three Fairs, whichever is shorter, with either party to the contract having the right to terminate the contract during the Contract Review Period each year, by giving proper notice to the other party.
- 4. The Contract Review Period will begin on the first day after the end of a given Fair

Week and will end at 5:00 pm on the last business day before the 15<sup>th</sup> day of September of that same year. The Contract will specify how and to whom notice of termination will be given.

5. A Contract will terminate:
  - a. Automatically at the conclusion of the third Fair Week covered by the contract, or
  - b. By one party to the contract giving written notice to the other party, during the Contract Review Period, of that party's intent to terminate the contract, or

- c. At any other time by the mutual agreement of the parties.
6. If a Contract is terminated as provided by either section 5a or 5b above, and should the Brown County Commission decide to enter into a new contract, the Commission will:
  - a. Advertise for proposals in September and early October with a goal of having proposals submitted by 5:00 pm on the last business day before the 15<sup>th</sup> of October.
  - b. The Commission will open proposals at the first Commission meeting following the deadline set for submission of proposals.
  - c. The Commission will then investigate the various proposals with a view to awarding a contract by the middle of November.
  - d. If a contract is terminated at a time other than during the Contract Review Period, the County Commission will establish a schedule similar to the one provided herein, other than for the particular dates, to award a new contract.
7. In determining to whom a contract should be awarded, the County Commission will consider:
  - a. The not-for-profit status of the organization submitting the proposal,
  - b. The proposal bid amount,
  - c. The strategic plan for Fair Week, submitted with the proposal, along with the financial safeguards the organization plans to have in place to account for the revenue collected,
  - d. The organization's volunteer base,
  - e. The organization's past history and experience, if any, running the concession,
  - f. The overall impact on and the benefit to the citizens of Brown County each proposal would provide.
8. On occasion, the Brown County Commission may vary the provisions of sub-sections 6 and 7 above by Resolution of the Commission for good cause shown.

**TITLE 17**

**LASER BEAMS**

**CHAPTER 17.01 LASER BEAMS**

17.0101 HARASSMENT BY LASER BEAMS PROHIBITED

It shall be unlawful for any person to focus, point or shine a laser beam directly or indirectly on another person or animal in such a manner as to harass or annoy said person or animal. Nor shall any person utilize his laser beam for the purposes of disrupting a public gathering or to cause persons annoyance or inconvenience in any public place.

17.0102 PROHIBITED POSSESSION BY MINORS

It shall be unlawful for any person less than 18 years of age to have in his possession at any public place a laser pointer, laser pen, helium neon lasers; which typically operate at a wave length of 632.8 nMe with a mandated power limit of 5 mW of power, or a dioed-laser which typically operate at a wave length of 670 nMe (although others are possible) with a power source providing 5 mW. Also provided, however, that the possession of any person under the age of 18 years, under the direct supervision of the parent or guardian of such person in the privacy of the parents or guardians home, shall not be prohibited.

17.0103 PARENT/GUARDIAN LIABILITY

Any parent or legal guardian of an un-emancipated minor child who knowingly permits the possession and/or use of a laser device in violation of the foregoing provisions shall be subject to the liabilities enumerated in this section.

17.0104 PENALTY

A violation of this section is a Class 2 Misdemeanor.

17.0105 PUBLIC PLACE DEFINED.

"Public Place" means any place to which the public or any substantial group thereof has access.

## TITLE 18 FIRE SAFETY

- Chapter 18.01** Burning off land or other flammable material (Controlled Burn) without a sufficient firebreak and considering weather a misdemeanor. It is a Class II misdemeanor to set or cause to be set on fire any wood, marsh, prairie grass stubble land or any other flammable material at any time of the year without first having in place a natural or manmade firebreak and without giving due caution to the prevailing and forecast weather conditions. The escape of any such burning shall be deemed prima facie evidence that said firebreak was insufficient. Source SDCL 34-35-10
- Chapter 18.02** The Brown County Commission, upon the request of the President of the Brown County Fire Chief Association, or the Director of Brown County Emergency Management or the Brown County Sheriff may prohibit or restrict open burning, in all or part of Brown County in order to protect the public health and safety. Source SDCL 34-29B-11.1
- Chapter 18.03** Reporting of controlled burns. Anyone who burns off land or other flammable material shall before such burn notify the Brown County Communications Center and provide the following information. Location of the burn, time of burn, substance to be burned, approximate completion time of the burn and a contact phone number for the responsible person. Once the burn has been completed or extinguished the Brown County Communications Center shall again be notified advising of the location and that the burn is out and safe. Anyone who violates this section in whole or part is guilty of a Class II misdemeanor.
- Chapter 18.04** Negligently allowing fire to spread as misdemeanor – Failure to extinguish fire – Interference with control efforts. Anyone who negligently kindles or causes to be kindled, any fire in any woods, brush, fields, marshes, stubble, or prairies and leaves it unquenched or who negligently or without full precaution to prevent said fire from spreading, permits it to spread beyond his own land or not, or who finding any uncontrolled fire burning, fails to give immediate warning and to make reasonable attempt to quench it, or who at any fire is guilty of any disobedience to the lawful orders of any public official or fireman attempting to control said fire, or who interferes with any such officer in any such case or refuses to assist in controlling said fire is guilty of a Class II misdemeanor. Source SDCL 34-35-9
- Chapter 18.05** Liability for fire. Anyone who sets a fire as provided in 18.01 is liable for damages for all injury and fire suppression and extinguishment caused by the fire. Criminal prosecution is not a prerequisite to liability for damages or for fire suppression and extinguishment cost. Source SDCL 5-4-17
- Chapter 18.06** Sections 18.01 and 18.03 shall not apply to the burning of household and yard waste, providing such burning is done so, safely. It shall be deemed negligent if such fire escapes the original site of the fire and shall be punishable in accordance with 18.04.
- Chapter 18.07** Declaration of a fire danger emergency and prohibiting open burning.

18.0701 When weather or other conditions exist which may make the open burning of any substance unduly hazardous and a danger to public safety, the Brown County Board of Commissioners may by resolution declare a “Fire Danger Emergency”.

18.0702 If a “Fire Danger Emergency” is declared, all open burning of any substance shall be prohibited within any or all of the unincorporated area of Brown County until such time as the resolution declaring the “Fire Danger Emergency” shall have been rescinded by appropriate action of the Brown County Board of Commissioners.

18.0703 Any person who shall create, commit, maintain or permit to be created, committed or maintained an open burning in violation of a resolution declaring a “Fire Danger Emergency” shall be deemed to have committed a public nuisance in violation and subject to all criminal and civil penalties provided for therein. Any person that maintains, commits, or fails to abate a public nuisance as required under the provisions of this ordinance shall be subject to a maximum penalty of thirty (30) days in jail, a \$200 fine, or both. Each and every day that the violation continues may constitute a separate offense.

Section 1. DEFINITION:

“Open burning” the intentional burning of any substance whether natural or manmade, or the intentional casting off of any burning substance, whether natural or manmade, except the burning of such substance in a container sufficient so as to prohibit the escape of any of the burning substance, or any sparks, flames or hot ashes from the container. The escape of any such burning substance, or the escape of any sparks, flames or hot ashes from any such container shall be deemed prima facie evidence that the container was insufficient so as to meet the exception from the definition of any open burning set forth herein. The maintaining of a fire in any interior fireplace, stove or furnace is specifically excluded from the definition of an open burning as contemplated by this ordinance.

18.0704 This ordinance is declared to be necessary for the immediate preservation of the public safety in accordance with the provision of SDCL 7-18A-8.

TITLE 19      GEOGRAPHIC INFORMATION SYSTEMS (GIS) DATA ACCESS AND  
DISTRIBUTION ORDINANCE

CHAPTER 19.01	GENERAL PROVISIONS AND DEFINITIONS
CHAPTER 19.02	AUTHORITY AND OVERSIGHT
CHAPTER 19.03	DATA RECIPIENTS
CHAPTER 19.04	DATA DISTRIBUTION METHODS, SERVICES AND FEES
CHAPTER 19.05	LICENSE AGREEMENT
CHAPTER 19.06	DATA REDISTRIBUTION AND THIRD PARTY LICENSE
CHAPTER 19.07	SEVERABILITY AND SEPARABILITY
CHAPTER 19.08	FEES FOR GIS DATA



**Chapter 19.01            General Provisions and Definitions**

19.0101 Purpose. This Ordinance is promulgated under specific statutory authority of Chapter 7-18A-3 of the South Dakota Codified Laws. It is the intent of this ordinance to monitor by regulation and policy, the sale and distribution of GIS data and information pursuant to the GIS Coordinator and Steering Committee. The policies and procedures under this ordinance are intended to be prospective in nature.

19.0102 Title. This portion of the Brown County Ordinances shall be now cited and referred to as Title 19 – Geographic Information System (GIS) Data Access and Distribution.

19.0103 Definitions. For the purpose of clarity in this title or in subsequent data Restrictive Release Statements, the following terms are defined:

Agency. A synonym for “public agency,” or “government agency.”

Data Custodian. A synonym for data Steward.

Data Owner. The entity that holds the valid copyright for the subject data.

Derivative Data or Products. All works created by the Licensee which incorporate all or part of the Steward’s data, including, but not limited to, a revision, modification, translation, abridgement, condensation, expansion, collection, compilation, or any other form of, or modification to, the Steward’s data.

dGI. digital Geographic Information, a synonym for geospatial data.

Geospatial Data. The digital, geographic and location-based information, including related attribute records, data files, and metadata that are stored and maintained in the Data Owner’s or the Steward’s computer systems.

Geodata. A synonym for geospatial data.

GIS. Geographic Information System, the collection of computers, software, databases, and data that enable geospatial data to be received, manipulated, displayed, and distributed.

Licensee. Any recipient of the Steward’s data that has agreed in good faith to the terms of the License Agreement, and is conducting data related activities accordingly.

Metadata. Information that describes geospatial data, such as the contact person in the data owner’s agency, the contents of the dGI database, the data accuracy, projection, currency (date of capture), and format of the data.

Steward. The public agency responsible for the distribution of information used or collected by a public agency or government that is deemed to be public record - in this case, <name of public agency>. The data Steward may also be responsible for the collection, maintenance or update of an Agency’s data. The Steward may or may not also be the data owner.

Steward’s Data. A synonym for geospatial data.

**Chapter 19.02 Authority and Oversight**

19.0201 GIS Department. The GIS Department shall designate, develop, implement and maintain a Geographic Information System (GIS). GIS data and media shall be defined in writing by the GIS Coordinator and shall consist of printed media and digital data that has been created, collected, formatted, manipulated or otherwise maintained by the Brown County GIS Department or a designee thereof. The GIS will primarily be used by the various agencies of Brown County. The GIS Coordinator or a designee thereof shall provide oversight for access to GIS data by internal Brown County departments, employees and elected officials.

19.0202 GIS Steering Committee. A GIS Steering Committee shall be developed to review applications and grant authorization for access and dissemination of GIS data by external persons or entities. The GIS Steering Committee shall consist of the following core persons or designees thereof:

- 1) Brown County GIS Coordinator, Committee Chairman
- 2) Brown County Equalization Director
- 3) Brown County Planning and Zoning Director
- 4) Brown County Data Processing (IT) Director
- 5) Brown County Commissioner

The GIS Steering Committee shall meet at least once each calendar quarter with special meetings to be called by the Committee Chairman as the need arises. Other individuals may be asked to participate in Steering Committee meetings but may not vote unless attending as a designee of one of the aforementioned core persons. For access to GIS data to be granted, a quorum of the GIS Steering Committee (at least 3 members) must approve a request in writing.

**Chapter 19.03            Data Recipients**

19.0301 Classes of Recipients. Brown County, as a GIS Data Steward, intends to make its geospatial data available to all interested parties who agree to the terms of its Restrictive Release Agreement. The Steward reserves the right to differentiate the type of data and data services, as well as the price and the priority for service response, to be provided to each of the following classes of data recipients:

Value Providers. Includes data and cost sharing partners, emergency service providers, public agencies offering services or data in return for use of the Steward's data, or agencies whose mission is integral to the Steward's mission.

Data Redistributors. Private companies that 'value-ad' and re-sell the Steward's data and public agencies that redistribute the Steward's data. (See the "Data Redistribution" section).

Data User. All other recipients including other public agencies, private agencies and private companies that do not redistribute data, non-governmental and non-profit organizations, educational and research institutions, news media, students, and private citizens.

**Chapter 19.04 Data Distribution Methods, Services and Fees**

19.0401 General. The Steward intends to make its geospatial data available through one or more of the following methods pursuant to the Restrictive Release Agreement and depending on the availability and capability of the GIS staff, the availability and capability of licensed data re-distributors, and the availability and capability of such internet-based applications as it deems practical and affordable:

- 1) Copies of the GIS databases in the GIS format used by the Steward (or translated into a specified standard format), to be provided in such electronic output media as the Steward is capable of producing (for example, CD, tape or disk). [Steward-Owned]
- 2) Copies of the GIS databases in the GIS format used by the Steward (or translated into a specified standard format), to be provided as downloadable files through a File Transfer Portal (FTP) via the internet. [Steward-Owned]
- 3) Read and Write/Update access to authorized data partners, distributed via methods to be determined on a case-by-case basis. [Steward-Owned]
- 4) Special requests for information, analysis, or data products, which are subsets of the Steward's digital GIS databases (e.g., custom data services, including data extraction, translation, reformat, or reclassification of data).
- 5) Read-only access to the GIS databases (via the internet) through special application programs commissioned by the Steward. These programs will allow selective query and display of the data as well as printing of maps and data tables, but will not grant access to downloading or copying of the database.

19.0402 GIS Standard Data Products and Pricing List. In order to facilitate the exchange or translation of data among different GIS system formats, the Steward shall maintain a database, which shall include a current list of the Steward's GIS data, products and pricing including designations of ownership, privacy and security restrictions. The list shall be amended as necessary by the GIS Department and annually reviewed and approved by the GIS Steering Committee.

This document may be used for internal management of the Steward's data resources and to inform data requesters and data Licensees so that they may use the Steward's data effectively. The GIS Data Product List may include, but is not limited to, themes, layers and features of mapped elements and corresponding key-linking and descriptive attributes. The List should include the spheroid, datum, and map projection for each theme or layer. The List should also include tables that diagram the contents of data records, the linkages between record types, and the linkages between related databases that store information pertaining to the mapped features.

The GIS Data should but is not required to embed suitable descriptive information (metadata) into data files so as to enable other GIS systems to read and translate the data. Such capabilities shall be employed whenever practical.

The data Steward shall utilize database standards in structuring and identifying its database contents whenever practical and feasible. Such standards include those published by the Federal Geographic Data Committee (FGDC) as well as others.

19.0403 Fees for GIS Data. The Brown County GIS Steering Committee may grant to other government entities, institutions, organizations or individual's access to GIS web-based data at no cost to

the government entities, institutions, organizations or individual; to be determined by the GIS Steering Committee.

If distribution of specific GIS data is approved by the GIS Steering Committee, the GIS data shall be available in either paper format or in ESRI Shape File or Geodatabase digital format, whichever has been requested and approved.

Fees for specific GIS data sets, preparation costs including an hourly Customization Fee for custom data services including data extraction, translation, reformatting or reclassification of data and Standard Product Fees including digital or paper media among others shall be set and adjusted annually, as necessary, by the GIS Steering Committee. A database of individuals and organizations having access to GIS data sets and any fees collected in association with access to such will be administered by the Brown County GIS Department.

19.0404 Subscriptions to Web-Based GIS Data. All GIS subscriptions issued pursuant to this section shall be executed by the person or entity requesting the full web based GIS site access. The subscription fee shall be set and adjusted annually, as necessary, by the GIS Steering Committee. A database of individuals and organizations having access to the web-based data and any fees collected in association with access to such will be administered jointly by the Brown County Equalization and GIS Departments.

**Chapter 19.05 License Agreement**

19.0501 Restrictive Release Agreement. Requests for GIS data must be accompanied by a GIS Services and Data Request Form (available upon request) to be completed by the person or entity (or designee thereof) requesting the data. Specific intentions for access to and dissemination of the data must be provided within each request. Members of the GIS Steering Committee or their designees shall either approve or deny any written request for the proposed use of the GIS data.

19.0502 Copyright and Copyright Notice. The public agency, Data Owner, or its Steward, asserts its right to regulate the distribution of its data through its claim of ownership as a copyright. All title, ownership, and intellectual property rights which may exist or be created with the geospatial data shall remain with the Owner.

The organizational structure of the GIS databases, the coding of the GIS databases, the format of the GIS databases and the graphic design of its maps are the property of data Owner, as registered and protected by U.S. copyright statutes and treaties.

All publications, including via the internet, using any of the Steward's data for release to the public or to others outside the Licensee's organization or using geographic information derived from the Steward's data and identifiable there from must include a copyright notice such as:

“Copyright, <dd/mm/yyyy>, <Brown County, SD>” or

“Derived from data that is Copyright, <dd/mm/yyyy>, <Brown County, SD>”

19.0503 Data Security and Oversight. If written permission is granted, the data requestor will keep and maintain the GIS data in a secure manner, will keep a record of the location of the GIS data, and will return the GIS data to Brown County or destroy the GIS data and inform Brown County of the same upon the cessation of the use of the GIS data.

The data requestor will have an ongoing and continual duty to notify any employees, agents, contractors or other individuals having access to the GIS data as a part of the requestors authorized use of the GIS data of the restrictions set forth in this section and in the Written Permission Form, and to ensure that the employees, agents, contractors or other individuals comply with the same.

19.0504 General Disclaimer. All subscription holders, data requestors and the public acknowledges and understand that GIS data is not a legally recorded map, survey, or legal document and that GIS data may contain errors; the GIS data is for reference only and the subscription holders, the public and data requestors will not use or rely upon the GIS data in any other way.

Further, all subscription holders, data requestors and the public acknowledge and understand that Brown County has provided the GIS data on an “as is” basis and makes no representations, guarantees or warranties whatsoever regarding the GIS data whatsoever, including but not limited to representations, guarantees or warranties that the GIS data is fit for any purpose, or is accurate, complete or correct; and further that Brown County expressly disclaims any and all liability of any nature whatsoever arising out of any use of the GIS data by any person or entity.

19.0505 Data Corrections and Additions. Users of the Steward's dGI that correct errors in the data, or that update the data with more current information, shall make these modifications available to

the Steward. These data updates, additions, revisions, or corrections shall be provided in a format compatible with the format from which the data were received from the Steward.

Licensees of the Steward's dGI that create or modify additional themes, layers, features or data elements based on, or in reference to the Steward's data, shall make these additions available to the Steward, provided they are not the exclusive, proprietary interest of the Licensee. These data additions shall be provided in a format compatible with the Steward's data format. The Licensee assesses these exchanges of data to be of equal value to both parties.

- 19.0506 Release of Indemnity. All subscription holders, data requestors and the public shall defend, release, indemnify and save and hold harmless Brown County and its officers, agents and employees from any and all claims, damages, demands, liabilities, losses, actions, suits, costs, expenses, legal fees, judgments, causes of action, or other legal, equitable or administrative proceedings of any kind whatsoever, of or by anyone whomsoever, regardless of the legal theory(s) upon which premised, which in any way result from, are connected with, or arise out of, directly or indirectly, the actions or omissions of any person or entity in connection with any use of the GIS data obtained by any person or entity; from Brown County, whether such use is authorized or unauthorized, by any person or entity, including actions or omissions of any person or entity; officers, employees, agents, representatives, invitees, subscription holders, data requestors sub-consultants, or any other individual obtaining access to the GIS data provided by Brown County to the subscription holders, data requestors or the public;
- 19.0507 Penalty for Improper Acquisition or Misuse. It shall be a Class 2 misdemeanor for any person or entity, to acquire, maintain, or use for any application the GIS data without first obtaining a subscription to the data or by completing and having approved by the GIS Steering Committee a Restrictive Release Agreement thereby granting access to the GIS data under the conditions set forth in this ordinance.
- 19.0508 Unauthorized Use. The subscription holders and data requestors shall, upon request from Brown County, use its best efforts to assist Brown County in identifying any unauthorized use of the GIS data by any person or entity that may have gained possession of the GIS data provided by the Brown County to the subscription holders or data requestors.
- 19.0509 Causes for Injunction. The subscription holders or data requestors acknowledges and understands that any use it makes of the GIS data that is not in compliance with this section or provided for by a subscription or Written Permission will cause irreparable harm and significant injury to Brown County and that Brown County may seek and obtain injunctive relief against the subscription holders, data requestors, or any person or entity, for acting or threatening to engage in or facilitate the unauthorized use of the GIS data, in addition to any other equitable or legal remedies that may be available to Brown County.

**Chapter 19.06 Data Redistribution and Third Party License**

19.0601 Sublicensing. Any individual, organization or agency that has obtained a subscription to GIS web-based information from Brown County shall not sublicense, assign, lease, post on the internet, transfer, sell, abuse or intend to abuse as to commit harm, allow the use of, permit access to, distribute, allow interactive rights to, or otherwise make the GIS data available to any other person or entity except as specifically provided for in the Written Permission Form and authorized by the GIS Steering Committee.

19.0602 General. Recipients of the Steward's data (Licensees) may not redistribute or re-sell the Steward's data to third parties unless they notify the Steward they intend to do so and agree to the relevant terms of the License Agreement, specifically, payment of a resale royalty fee, and the requiring of third party recipients to sign a similar License Agreement protecting the rights of the Steward. Licensees that sell or distribute the Steward's data to third parties shall obtain their agreement to the same licensing terms as are stated herein. Third parties shall sign a similar License Agreement with the Licensee. Third parties shall not be permitted to redistribute or resell the data unless they sign a License Agreement with the Steward.

19.0603 Derivative Data or Products. The Steward retains all rights pertaining to its data, particularly those regarding its redistribution or resale. So long as its data remains an identifiable and extractable subset of the Licensee's data or products, such data or products will be considered "derivative" of the Steward's data. (For example, re-printing the Steward's base maps in a more convenient size, and display format).

Any portion of the geodata or its derivative products that are modified or merged into another computer file by the Licensee, so as to form a separate entity the original contents of which are unidentifiable and extractable, shall be considered a separate product, free from the provisions of the License Agreement, so long as it is in no way associated with the Steward. (For example; a hazardous materials storage site suitability map comprised of data from many agencies that has been overlaid, merged, and reclassified).

Non-derivative products would incorporate the Steward's mapped features with mapped features and descriptive attributes from other sources in such a way that the original data themes or layers are indistinguishable.

19.0604 Value Added Services. Licensees are permitted to create application programs that query and analyze the Steward's data and produce specific products there from. These are considered to be value-added services, not subject to the Steward's rights regarding data redistribution. (For example; a printed map of boat ramp locations or an on-line guide to restaurants).



**Chapter 19.07 Severability and Separability**

Should any Section, Sub-section or Provision of these GIS Regulations be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the GIS Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

**Chapter 19.08. Fees for GIS Data.**

Products, Services and Fees set forth in this ordinance will be reviewed by the GIS Director and the GIS Steering Committee in an effort to remain comparable to fees offered in other or similar jurisdictions. The Brown County Board of Commissioners shall approve and set all fees by Resolution.

# TITLE 20 THE USE AND OPERATION OF DRONES

## Chapter 20.01 Definitions.

Under this Title:

**“Aircraft”** means any contrivance invented, used, or designed to navigate or fly in the air.

**“Altitude”** means the height of an aircraft above the surface of the land or water below it.

**“Business purposes”** means a pursuit engaged in for hire, for profit, for compensation, or earnings or monetary gain or a pursuit engaged in by a charitable or not-for-profit organization to advance the legitimate purposes of that organization.

**“County airspace”** means the space on a vertical plane perpendicular to and above the land, water, and waterways within the jurisdiction of Brown County, SD.

**“Drone”** means an aircraft that (1) is operated without the possibility of direct human intervention from within or on the aircraft, and (2) weighs less than 55 pounds at the time of the operation, including the weight of any payload or fuel. The term “drone” does not include “toy aircraft” or “public aircraft” as defined herein.

**“Firearm”** has the meaning ascribed to the term in SDCL 22-1-2(16).

**“Hobby or recreational purposes”** means a pursuit engaged in for relaxation, and not for business purposes.

**“Open air assembly zone”** means any structure, enclosed area, or other demarcated space used for the assembly of persons in the open air, including, but not limited to, amusement parks, stadiums, athletic fields, automotive speedways, aviation fields, band stands, beach enclosures, grandstands, observation platforms, outdoor public swimming pools, outdoor theaters, race tracks, reviewing stands, street festivals, or parade routes.

**“Operate”** means to pilot, steer, direct, fly, or manage an aircraft through the air whether from within the aircraft or remotely. The term “operate” includes managing or initiating a computer system that pilots, steers, directs, flies, or manages an aircraft.

**“Operator’s Property”** includes all real property over which a drone operator is permitted to operate a drone by virtue of the fact that either:

- a) The drone operator owns or leases that real property; or
- b) The drone operator has permission from the owner or lessee of that real property to operate a drone over the property, subject to whatever restrictions the property owner or lessee may place on such operation; or
- c) The drone is being operated inside a building or structure with the consent of the person who owns or leases that building or structure, subject to whatever restrictions the property owner or lessee may place on such operation.

**“Public aircraft”** has the meaning ascribed to the term in 42 U.S.C. § 40102.

“**Surveillance**” means the gathering, without permission and in a manner that is offensive to a reasonable person, of visual images, physical impressions, sound recordings, data, or other information involving (1) an active crime, accident, or fire scene or investigation; or (2) the private, personal, business, or familial activities of another person, business, or entity, or that otherwise intrudes upon the privacy, solitude, or seclusion of another person, business, or entity regardless of whether a physical trespass onto real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity, or into the airspace above real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity occurs in connection with such surveillance.

“**Toy aircraft**” means (1) a glider or hand-tossed aircraft that is not designed for and is incapable of sustained flight; or (2) an aircraft that is capable of sustained flight and is controlled by means of a physical attachment, such as a string or wire; or (3) model aircraft mentioned in SDCL 50-11-29.

“**Weapon**” means any instrument, article, or substance that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing harm or damage to any person or property, including, but not limited to, firing a bullet, projectile, or laser.

#### **Chapter 20.02 Operating regulations, restrictions and limitations.**

Any person may operate a drone in county airspace for business, hobby or recreational purposes with the following exceptions, restrictions and limitations:

1. Not within one (1) mile of the Aberdeen Regional Airport and within the 10,000 feet non-precision approach areas to its runways *including Runway 31 and Runway 35 Approach Surfaces as identified in the current Airport Layout Plan (ALP) for the Aberdeen Regional Airport; or*
2. Not over property owned, leased, or operated by Brown County, including but not limited to the Brown County Fair Grounds, the Granary Rural Cultural Center and the Richmond Lake Youth Camp, *except* drones may be operated over county property pursuant to a license issued for this purpose by either the Brown County Commission or by one or more county officials authorized by the Commission to issue such licenses. The Brown County Commission, by resolution, may establish the requirements that must be met and the procedure that must be followed for the issuance of such licenses; or
3. Not by any child under 14 years of age when not accompanied by the child’s parent or guardian or an adult designated by the child’s parent or guardian. The failure of a parent or designated adult to supervise an underage child’s operation of a drone shall be a violation by the parent or designated adult; or
4. Not at an altitude higher than 400 feet above ground level; or
5. Not at such a low altitude as to interfere with the then existing use to which the land or water, or space over the land or water, is put by the owner of the property, or to operate in such a manner as to be imminently dangerous to persons or property lawfully on the land or water beneath, in violation of SDCL 50-13-4; or
6. Not in a manner that interferes with, or fails to give way to, any manned aircraft or moving vehicle or interferes with the movement or safety of vehicular traffic or creates a public nuisance; or

7. Not during the period between sunset and sunrise, unless the drone is being operated within or above the Operator's Property; or
8. Not when weather conditions impair the operator's ability to operate the drone safely; or
9. Not over any open air assembly zone, school, school yard, hospital, swimming pool, place of worship, or law enforcement building, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation; or
10. Not within 500 feet of any electric generating facility, substation, or control center, or within 500 feet of any electric transmission facility, or within 50 feet of any electric distribution facility or of any overhead wire, cable, conveyor, or similar equipment for the transmission of sounds or signal, or of heat, light or power, or data, upon or along any public way within the county, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation; or
11. Not for the purpose of conducting surveillance, unless expressly permitted by law; or
12. Not when the operator of the drone is under the influence of alcohol, any drug, any intoxicant, or any combination thereof. Specifically:
  - a) An operator is considered to be under the influence of alcohol if that person has 0.08 percent or more by weight of alcohol in his or her blood; or
  - b) An operator's ingestion of alcohol, any drug, any intoxicant or any combination thereof renders that person incapable of safely operating such drone.
13. Not when the drone is equipped with a firearm or other weapon or explosives including any type of commercially purchased fireworks; or
14. Not with the intent to use such drone or anything attached to it to cause harm to persons or property; or
15. Not in a reckless or careless manner; or
16. Whenever a drone is being operated other than on or above the Operator's Property, the drone must be within the operator's visual line of sight. The operator shall use his or her own natural vision, which includes vision corrected by standard eyeglasses or contact lenses, to maintain at all times an unobstructed view of the drone, without the use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles designed to provide a "first person view" from the model or similar devices.

### **Chapter 20.03 Construction**

1. ***Operations authorized by FAA and County.*** Nothing in this Title shall be construed to prohibit any person who is permitted by the Federal Aviation Administration or the Brown County Commission or its designee from operating a drone in county airspace or to conduct such

operations on an ongoing basis in accordance with the terms of such authorization and, if applicable, in accordance with the exceptions and limitations listed in Chapter 20.02. In addition:

- a) Unless or until revoked or modified by the County Commission, the following county departments have ongoing authority, under the provisions of this section, to operate a drone in county airspace: Brown County Emergency Management, the Brown County Sheriff, the Brown County Highway Department, Brown County Fair and the Brown County Landfill.
  - a) By resolution and when circumstances justify, the Brown County Commission may give similar ongoing authority to operate a drone in county airspace to other county or local officials, units of government, special districts, rural fire departments and public agencies in Brown County.
2. ***Operations prohibited by federal or state regulation.*** Nothing in this Title shall be construed to authorize the operation of any drone in county airspace in violation of any federal or state law or rule promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration. This Title shall not be construed to permit interference by any drone operation with air traffic or airport operations or in a manner less restrictive than Federal Aviation Administration guidelines regarding unmanned aerial systems and regulations regarding air space obstructions.
  3. ***Governmental operations authorized.*** Nothing in this Title shall be construed to prohibit the use of a drone by a law enforcement agency, a fire department or an emergency management agency or to prohibit the conduct of governmental operations by or on behalf of a municipality, a county township, Brown County, the state of South Dakota, or the federal government.
  4. ***Negligence per se.*** This ordinance is enacted to protect the health and safety of all persons lawfully within Brown County or county airspace and to prevent damage to persons and property. A violation of Chapter 20.02, without legal excuse, is negligence as a matter of law.

**Chapter 20.04 Reserved**

**Chapter 20.05 Reserved**

**Chapter 20.06 Penalty**

- (1) A violation of this Title by an adult is a Class 2 misdemeanor.
- (2) A violation of this Title by a minor is a petty offense.