

## **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)
- CHAPTER 4.17 - CONSERVATION DISTRICT (CN)
- CHAPTER 4.18 - RECREATION DISTRICT (RC)
- CHAPTER 4.19 - FLOODPLAIN DISTRICT (FP)
- 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 mrem 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.

Milling. 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-OS 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-Sumption 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.



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 (net worth) 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 anticleimbing 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.