ARTICLE I
GENERAL PROVISIONS

CHAPTER 1.01 TITLE AND APPLICATION

Section 1.01.01 Title.

This Ordinance may be known and may be cited and referred to as the "Clark County Zoning Ordinance" to the same effect as if the full title were stated.

Section 1.01.02 Jurisdiction.

Pursuant to SDCL 11-2, 1967, as amended, the provisions of this Ordinance shall apply within the unincorporated areas of Clark County, South Dakota, as established on the map entitled "The Official Zoning Map of Clark County, South Dakota."

Section 1.01.03 Purpose.

The Zoning Ordinance is adopted to protect and to promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

1. To assist in the implementation of Clark County's Comprehensive Land Use Plan which in its entirety represents the foundation upon which this Ordinance is based.

2. To foster a harmonious, convenient, workable relationship among land uses.

3. To promote the stability of existing land uses that conform with the Land Use Plan and to protect them from inharmonious influences and harmful intrusions.

4. To insure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the community as a whole.

5. To prevent excessive population densities and overcrowding of the land with structures.

6. To protect and enhance real estate values.

7. To place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the comprehensive land use plan.

8. To facilitate the adequate provision of transportation, water and sewerage, schools, parks, and other public requirements.

9. To regulate and restrict the height, number of stories, and bulk of building and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; and the location and use of other purposes.

10. To regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of building, structures, and land.

CHAPTER 1.02 ORDINANCE PROVISIONS

Section 1.02.01 Provisions of Ordinance Declared to be Minimum Requirements.

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, Ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

Section 1.02.02 Purpose of Catch Heads.

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

Section 1.02.03 Enforcement, Violation and Penalty.

Section 1.02.03.01. Enforcing Official. The provisions of this Ordinance shall be administered and enforced by the Administrative Official appointed by the Board of County Commissioners, who shall have the power to make inspection of building or premises necessary to carry out his duties in the enforcement of this Ordinance.

Section 1.02.03.02. Violations of the ordinance shall be treated in the manner specified below.

1. Any person who starts work, for which a permit is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All fees assessed there under shall be rounded to the nearest whole dollar.

   Upon finding such violation, Clark County Planning Staff shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the fee for the building permit plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars ($5.00), including the postage costs.

   a. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the building permit fee plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars ($5.00), including the postage costs. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (2) below.

   b. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.

2. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be five hundred dollars ($500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the Auditor and shall be credited to the General Fund of the County.

   The owner or tenant of any building, structure, premises, or part thereof, 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."

3. In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, or a threatened violation of these regulations, the appropriate authorities of Clark County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or a threatened violation of these regulations, and it is the duty of the State's Attorney to institute such action.

4. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

Section 1.02.04 Separability Clause

Should any article, chapter, section, or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part other than the part so declared to be unconstitutional or invalid.

Section 1.02.05 Repeal of Conflicting Ordinances

All ordinances or resolutions or part of ordinances or resolutions in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are repealed entirely.

Section 1.02.06 Effective Date

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

CHAPTER 1.03 OFFICIAL ZONING MAP

Section 1.03.01 Provision for Official Zoning Map.

The unincorporated area of the county is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. 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 Section 1.03.01 of the Ordinance 03-03 adopted June 3, 2003 by Clark County, South Dakota."

If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners, with an entry on the Official Zoning Map as follows: "On (date of adoption) by official action of the Board of County Commissioners, the following change(s) 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 this Ordinance which involves matter 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 on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

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.

Section 1.03.02 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. In cases where the boundary line is given a position within a street, road, or non-navigable stream, it shall be deemed to be in the center of the street, road, or stream, and if the actual location of such street, road, or stream varies slightly from the location as shown on the district map, then the actual location shall control.

2. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines and where the districts designated on the Official Zoning Map accompanying and made a part of this Ordinance are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such districts unless said boundaries are otherwise indicated on the map or by resolution.

3. Boundaries indicated as approximately following city limits shall be construed as following such city limits.

4. In cases where a boundary line is shown adjoining or coincident with a railroad, it shall be deemed to be in the center of the railroad right-of-way and distances measured from the railroad shall be measured from the center of the designated mainline track.

5. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.

6. In unsubdivided property, unless otherwise indicated, the district boundary line on the Official Zoning Map accompanying and made a part of this Ordinance shall be determined by the use of the scale contained on such map.

7. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.

Section 1.03.03 Disincorporation.

All territory which may hereafter become a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason may fall within the zoning jurisdiction of the County, shall automatically be classified in the "A" Agricultural District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

Section 1.03.04 Changes and/or Replacement of Official Zoning Map.

1. In the event that the Official Zoning Map becomes damaged, destroyed, or lost, the Board of County Commissioners may by ordinance adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map.

2. In the event that the Official Zoning Map becomes 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 corrections shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof.

3. The new Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Zoning Ordinance of Clark County, State of South Dakota."

4. 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.

5. Changes to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 3.04, Section 3.04.05 of these regulations.

ARTICLE II
DISTRICT REGULATIONS

CHAPTER 2.01 APPLICATION OF DISTRICT REGULATIONS

Section 2.01.01 Application of District Regulations.

The regulations set by this Ordinance within each District shall be minimum regulations and shall apply uniformly to each class or kind of structure of land, and particularly, except as hereinafter provided:

1. No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used except for a purpose listed as a permitted use or conditional use in the district in which the building or land is located.

2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.

3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.

4. The minimum yards and other open spaces, including lot area per family, required by this Ordinance for each and every building at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this Ordinance.

5. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

CHAPTER 2.02 NON-CONFORMING USES

Section 2.02.01 Purpose and Intent.

The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue. Further, it is intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival.

Section 2.02.02 Continuation of Nonconforming Uses. Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

Section 2.02.03 Use Becoming Nonconforming by Change in Law or Boundaries. Whenever the use of a premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

Section 2.02.04 Extension or Enlargement. A nonconforming use shall not be enlarged, extended, converted, reconstructed, or structurally altered unless such use is changed to a use permitted in the district in which the premise is located.

Section 2.02.05 Restoration After Damage. When the use of a building is nonconforming as defined by this ordinance and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than sixty (60) percent of its fair market cash value, it shall not be restored except in conformity with the provisions of the district in which the building is located. Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.

Section 2.02.06 Repairs and Maintenance. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

Section 2.02.07 Unsafe Nonconforming Use. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to the lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Section 2.02.08 Discontinuance of Nonconforming Use. No nonconforming use, building, structure or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued for more than one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.

Section 2.02.09 Effect on Use Which is Illegal Under Prior Law. Nothing in this Ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this Ordinance.

Section 2.02.10 Powers of the Planning Commission/Board of Adjustment. Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

Section 2.02.11 Continuation of Nonstandard Uses. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

1. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.

2. Structural alteration of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.

3. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.

Section 2.02.12 Non-conforming Lots of Record.

1. In any zoning district a permitted or conditional use and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the 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 yard requirements shall be obtained only through action of the Board of Adjustment.

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

CHAPTER 2.03 DISTRICT REGULATIONS

Section 2.03.01 Districts.

For the purpose of this Ordinance, the unincorporated areas of the County may be divided into any of the following zoning districts: A-Agricultural; CI-Commercial/Industrial; NR-Natural Resources; PR-Planned Residential; and TD-Town District.

In addition to zoning districts, the “AP” Aquifer Protection zoning overlay district imposes special regulations on the property that may fall within these districts without abrogating the requirements imposed by the underlying land use district regulations.

Section 2.03.02 Prohibited Uses.

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

CHAPTER 2.04 "A" AGRICULTURAL DISTRICT

Section 2.04.01 Purpose.

This district is established to preserve open space and maintain and promote farming and related activities within an environment which is generally free of other land use activities. The Agricultural District is further characterized, as land areas not yet ready for further development. Residential development, other than single-family farming dwelling units, will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

Section 2.04.02 Permitted Uses.

1. Agricultural activities and farm related buildings, excluding Class A, B, C, and D Concentrated Animal Feeding Operations but including Class E Concentrated Animal Feeding Operations;

2. Site-built single-family dwellings, modular homes, and Type I and Type II manufactured homes used as farm or non-farm dwellings;

3. Fisheries services and game propagation areas (Public wildlife production areas);

4. Public parks and recreation areas;

5. Temporary fireworks stands used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past complaints or violations regarding previous sales;

6. On-premise signs;

Section 2.04.03 Permitted Accessory Uses.

The following accessory uses and structures shall be permitted in the "A" Agricultural District:

1. Accessory uses and structures customarily incidental to permitted uses and structures when established in compliance with the requirements of this district;

2. Home occupation;

3. Temporary roadside stands for sales of agricultural products grown or produced on the premises provided that there have been no past complaints or violations regarding previous sales.

Section 2.04.04 Conditional Uses.

1. Airports and airstrips;

2. Church or cemetery;

3. Golf course, golf driving range, clubhouse;

4. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet the requirements of Chapters 4.20.

5. Sanitary landfills, rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste provided they meet the requirements of Chapter 4.30.

6. Land application of petroleum-contaminated soils;

7. Institution farms, including religious farming communities;

8. Bed and breakfast home provided they meet the requirements of Chapter 4.27;

9. Domestic sewage treatment plant/facility provided they meet the requirements of Chapter 4.31;

10. Class A, Class B, Class C, Class D Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article IV, Chapter 4.24)

11. Veterinary clinics;

12. Junkyards/salvage yards, provided that they meet the requirements of Chapter 4.32.

13. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, water pumping stations, elevated tanks and similar essential public utilities and service structures.

14. Wireless Telecommunications Towers and Facilities (Chapter 4.22);

15. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races;

16. Extended home occupation (Chapter 4.19);

17. Livestock sales barns;

18. Game Lodge.

19. Fur farms and kennels;

20. Wind Energy System (WES). (See Article IV, Chapter 4.21);

21. Commercial Orchards, tree farms, truck gardening, nurseries and greenhouses;

22. Horticultural Services;

23. Contractor shops and yards;

24. Temporary fireworks stands which have had past complaints or violations regarding previous sales;

25. Off-premise signs;

26. Public buildings or facilities erected or established and operated by any governmental agency;

27. School.

28. Seasonal retail stands – including produce and fireworks - utilizing a permanent structure.

29. Commercial stables.

30. Group Homes

31. Caretaker residences associated with public or private enterprise.

32. Private shooting preserves.

33. Commercial Animal husbandry service.

34. Private wind energy conversion system (PWECS) – See Chapter 4.29.

35. Target range – See Chapter 4.34.

36. Automotive Tow Business/Impound Lot – See Chapter 4.35.

37. Agricultural sales and services (*Amended: Ord. 02-22; Adopted 12/06/22*)

38. Decrease of Front Yard Setback by up to twenty (20) feet. See Section 2.04.05.2.a. (*Amended: Ord. 01-26; Adopted 07/21/26*)

39. Decrease of Side Yard Setback by up to ten (10) feet. See Section 2.04.05.4.a. (*Amended: Ord. 01-26; Adopted 07/21/26*)

40. Decrease of Rear Yard Setback by up to ten (10). See Section 2.04.05.5.a. (*Amended: Ord. 01-26; Adopted 07/21/26*)

41. Residential Density Bonus. See 2.04.05.9.c. (*Amended: Ord. 02-26; Adopted 07/21/26*)

Section 2.04.05 Area Regulations.

All buildings shall be set back from road right-of-way lines and lot lines to comply with the following requirements:

1. Lot Size: All residential lots shall contain a minimum of five (5) acres, all lots for other permitted uses shall contain a minimum of one (1) acre not including public road right-of-way, except as provided in 2.04.04.7 of this Section. Other Permitted and Conditional uses shall have minimum area regulations determined by the Board of Adjustment. (*Amended: Ord. 02-26; Adopted 07/21/26*)

2. Front Yard: The minimum depth of the front yard shall not be less than one-hundred (100) feet from the road right-of-way and in no case shall an accessory building be located or extended into the front yard. Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts shall be not less than one hundred (100) feet from the road right-of-way.

    a. The Board of Adjustment may allow a minimum front yard reduction of up to twenty (20) feet from any Township Right-of-way provided application includes: written consent in the form of minutes, resolution, or written consent of at least two oath sworn Township Supervisors on behalf of the Township that maintains the street. (*Amended: Ord. 01-26; Adopted 07/21/26*)

    b. The Board of Adjustment may allow a minimum front yard reduction of up to twenty (20) feet from any State or Federal Highway Right-of-way provided application includes: written consent on behalf of South Dakota Department of Transportation by the Area Engineer its designee. (*Amended: Ord. 01-26; Adopted 07/21/26*)

    c. The Board of Adjustment may allow a minimum front yard reduction of up to twenty (20) feet from any County Road provided no objection by the Clark County Highway Superintendent is filed prior to the hearing; and the applicant submit an acknowledgment that the construction of an addition closer than the required setback will result in increased dust and noise generated from traffic which might otherwise be mitigated if the structure were placed 100' from the right of way with the application. (*Amended: Ord. 01-26; Adopted 07/21/26*)

3. Lot width: All lots shall have a minimum width of one hundred fifty (150) feet.

4. Side Yard: There shall be a side yard on each side of building having a width of not less than fifty (50) feet.

    a. The Board of Adjustment may allow a minimum side yard reduction of up to ten (10) feet from any side property line provided the application includes written consent from the affected adjacent property owner. The affected adjacent property owner shall be considered the property owner sharing the applicable property boundary with the applicant. (*Amended: Ord. 01-26; Adopted 07/21/26*)

5. Rear Yard: The minimum depth of a rear yard shall be fifty (50) feet or twenty percent (20%) of the depth of the buildable lot at the time of the passage of this ordinance.

    a. The Board of Adjustment may allow a minimum rear yard reduction of up to ten (10) feet from any rear property line provided the application includes written consent from the affected adjacent property owner. The affected adjacent property owner shall be considered the property owner sharing the applicable property boundary with the applicant. (*Amended: Ord. 01-26; Adopted 07/21/26*)

6. Maximum Lot Coverage: Dwellings and accessory buildings shall cover not more than twenty-five (25) percent of the lot area.

7. Access

    The location of drive-ways accessing individual parcels shall be separated from adjacent

driveways on the same side of the road by the following separation distances: Roads identified on the Major Street plan as:

i. Local road: One hundred (100) foot separation distance.
ii. Collector road: Three hundred (300) foot separation distance.
iii. Arterial: One thousand (1,000) foot separation distance

a. For all proposed uses and structures adjacent to a State Highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

8. Height Regulations

No main building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following structures:

a. Agricultural buildings;

b. Chimneys, smokestacks, cooling towers;

c. Radio and TV towers;

d. Water tanks;

e. Wind Energy System (WES);

f. Elevators and appurtenances;

g. Wireless Telecommunications Towers and Facilities;

h. Private wind energy systems (PWES).

i. Others, providing that they are not used for human occupancy.

9. Maximum Residential Density (*Amended: Ord. 02-26; Adopted 07/21/26*)

Not more than two (2) single family dwelling may be constructed in one United States Public Land Survey (USPLS) Quarter Section unless Maximum Residential Density Bonus A or B is granted by Conditional Use Permit: (*Amended: Ord. 02-26; Adopted 07/21/26*)

Residential Density Bonus: (*Amended: Ord. 02-26; Adopted 07/21/26*)

The Board of Adjustment may by Conditional Use allow up to four (4) single family dwelling in a single USPLS Quarter Section provided at least two (2) of the single family dwelling contain lots of thirty-five (35) acres or more. (*Amended: Ord. 02-26; Adopted 07/21/26*)

Section 2.04.06 Easements/Waivers.

1. An Right to Farm easement must be filed with the Register of Deeds on all property to be used as a site for a newly constructed residence (farm and non-farm) prior to issuance of a building permit. See Chapter 4.23.

2. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing farm which is closer than one-half (1/2) mile from the proposed residential building site. If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. This waiver shall be filed with the Register of Deeds. See Chapter 4.37.

CHAPTER 2.05 "CI" COMMERCIAL/INDUSTRIAL DISTRICT

Section 2.05.01 Purpose.

The "CI" District is intended to provide areas for commercial and industrial activities which require highway access, and further are oriented primarily to, and supportive of, farming and other activities which are determined to be appropriate in the rural area. Industrial uses which produce smoke, noise, dust, odor, and/or heavy traffic and large outdoor storage areas shall require special review and consideration.

Section 2.05.02 Permitted Use.

1. Field crops and grasslands;
2. On and Off-premise signs;
3. Orchards and tree farms;
4. Accessory uses and buildings subordinate to uses listed as a permitted use or conditional use;
5. Temporary fireworks stands used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past complaints or violations regarding previous sales; and
6. Temporary structures used for the sale of produce raised provided that there have been no past complaints or violations regarding previous sales.

Section 2.05.03 Conditional Uses.

1. Implement sales and service;
2. Truck terminals and freight warehouses;
3. Seed sales and grain storage, fertilizer and chemical storage and sales;
4. Highway and street maintenance shops, operated by a government institution;
5. Welding and machine shops;
6. Gas, oil and liquid propane stations including bulk stations;
7. Public and private utilities;
8. Livestock sales;
9. Contractors' shops and yards, including offices when in conjunction with a shop or yard;
10. Wholesale distributing companies;
11. Restaurants;

12. Motels/hotels;

13. Kennel with or without animal grooming

14. Commercial stables;

15. Adult Uses see Chapter 4.26;

16. Recreation vehicle sales and park;

17. Bar/Tavern;

18. Veterinary clinics;

19. Wireless telecommunication towers and facilities;

20. Wind energy systems (WES);

21. Private wind energy system (PWES);

22. Convenience store/service station;

23. Seasonal retail stands - utilizing a permanent structure;

24. Commercial orchards, tree farms, truck gardening, and greenhouses – with retail sales;

25. Light manufacturing;

26. Commercial animal husbandry service;

27. Agricultural product processing facilities such as ethanol plants and corn/soybean processing;

28. Retail sales and trade;

29. Automotive tow business/Impound lot. See Chapter 4.35

30. Other industrial or commercial uses determined by the Board of Adjustment to be consistent with the intent of this District that can meet the performance standards listed in section 2.05.05.

2.05.04 Area Regulations.

1. Lot Area - Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres, not to include the public road right-of-way. An applicant for a conditional use shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses, buildings shall occupy no more than twenty-five percent (25%) of the lot.

2. Front Yard - Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts shall be not less than one hundred (100) feet in depth.

3. Side Yards - On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.

4. Rear Yards - No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.

5. Height Regulations

   No main building shall exceed four (4) stories or fifty (50) feet in height. Exceptions include the following structures:

   a. Chimneys, smokestacks, cooling towers;

   b. Radio and TV towers;

   c. Water tanks;

   d. Wireless Telecommunications Towers and Facilities;

   e. Wind Energy Systems (WES)

   f. Private Wind Energy Systems (PWES)

   g. Others, providing that they are not used for human occupancy.

6. Access

   a. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit.

   b. The location of driveways accessing individual parcels shall be separated from adjacent driveways on the same side of the road by the following separation distances - Roads identified on the Major Street Plan as:

      i. Local road: One hundred (100) foot separation distance.
      ii. Collector road: Three hundred (300) foot separation distance.
      iii. Arterial road: One thousand (1,000) foot separation distance

   c. It is recommended that all property in the “CI” District have access to an asphalt paved or concrete State or County Highway. In order for the Commercial/Industrial District to have access to a gravel road, approval of the governmental entity maintaining said gravel road (Township or County) is required.

2.05.05 Performance Standards. All commercial and industrial uses shall meet the following standards

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.

3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.

4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.

5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.

6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.

7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Fire Protection Standards (NFPA) and any additional regulations that may from time to time be adopted by the County Commissioners

8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

CHAPTER 2.06 RESERVED *(Amended: Ord. 01-23; Adopted 08/01/23)*

CHAPTER 2.07. "TD" TOWN DISTRICT

Section 2.07.01 Purpose.

The Town District is established to provide for orderly low-density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental in the unincorporated towns of Crocker and Carpenter.

Section 2.07.02 Permitted Uses.

1. Single-family residential usage, including Type I and Type II Manufactured Homes.
2. Public parks.
3. Agriculture and horticulture uses, excluding concentrated animal feeding operations.
4. Home occupations.
5. Modular homes
6. Accessory uses and buildings subordinate to uses listed as a permitted use or conditional use.

Section 2.07.03 Conditional Uses.

1. Retail and service businesses.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Contractors' offices, shops, and yards.
7. Manufactured home park.
8. School.
9. Automotive tow business/Impound lot – See Chapter 4.35.

Section 2.07.04 Area Regulations.

Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts shall be as follows:

1. Residential

Minimum Yard Requirements:
Front----------Twenty-five (25) feet
Side----------Six (6) feet
Rear----------Twenty-five (25) feet
Lot Width------Fifty (50) feet
Lot Area-------Five thousand (5,000) feet
Lot Depth-------One hundred (100) feet

Accessory Building Requirements: No part of the structure can be closer than 2' to any property line

Commercial Uses/Lots

1. Lot size shall be determined by off-street parking needs; availability of water and sewage disposal systems; adjacent land uses; need for screening; and type of business. Front, side and rear yards shall be determined by the Board of Adjustment

Industrial Uses/Lots

1. Lot size shall be determined by off-street parking needs; impact on adjoining land uses and need for screening or buffering from residential areas; availability of water and sewage disposal facilities; type of manufacturing or storage facilities. Front, side and rear yards shall be determined by the Board of Adjustment.

CHAPTER 2.08 “PR” PLANNED RESIDENTIAL DISTRICT

Section 2.08.01 Intent.

The intent of the “PR” Planned Residential District is to provide for residential subdivisions which, through their design and development, will limit the amount of agricultural land that is taken out of production, will not require additional public expenditures for roads or other improvements and services, and which will minimize the conflict between farm and non-farm land uses.

Section 2.08.02 Planned Residential District.

To be eligible for consideration under the provision of this district, the proposed planned development must be:

1. The use of land in the Planned Residential District shall be limited to non-farm single family dwelling units and their supporting services.

2. The Planned Residential District shall not be permitted on a parcel of land less than ten (10) acres in area.

3. All roads, common facilities, and open spaces within the Planned Residential District shall be maintained by a homeowner's association.

4. Planned Residential Districts within one (1) mile of an incorporated area will be submitted to the community governing body for review and comment.

5. Where a proposed Planned Residential District is within one (1) mile of an incorporated area, the Clark County Planning Commission may request the developer to construct proposed improvements to specifications approved by the community's governing body.

6. Strip or linear development proposals along a road or highway will not qualify as a Planned Residential District.

7. The overall density of a Planned Residential District shall not be less than one (1) housing unit per three (3) acres of land.

8. Minimum lot size shall not be less than that required by the South Dakota Department of Environment and Natural Resources regulations on Private Sewage Disposal Systems (Chapter 34:04:01).

9. In addition to the Clark County Zoning Regulations, any proposed Planned Residential Districts are subject to platting and subdivision regulations of the county.

10. Access to public dedicated streets and roads shall be limited, and must meet the approval of the Clark County Highway Superintendent or State Highway Department. Dwelling unit access shall be provided through the interior street/road system. Further all interior streets constructed within the Planned Development District may be required to be either gravel, concrete, or bituminous-asphalt with the design to be approved by the County Highway Superintendent.

11. Planned Residential Districts must have access to a hard-surfaced road. Access to a concrete or bituminous-asphalt roads is preferred. In order for the Planned Development District to have access to a gravel road, approval of the governmental entity maintaining said gravel road (Township or County) is required.

12. Planned Residential Districts are not allowed over the shallow aquifer or wellhead protection areas. EXCEPTION: A Planned Development District may be allowed over a shallow aquifer if the proposed Planned Development District utilizes a Board of Adjustment approved central sanitary sewer collection system, which may consist of holding tanks, trunk lines, lift stations, and treatment facilities.

13. Covenants/Waivers per Section 2.04.06 shall be required to be placed on any lot in a Planned Residential District in order to protect agricultural operations or practices in the adjoining areas.

Section 2.08.03 Procedure for Planned Residential Development.

The following shall be observed when a Planned Development proposal is submitted for consideration:

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 Planning Commission and Board of County Commissioners a plan for the proposed development. The plan shall include

    a. Location map showing the relationship of the proposed district to existing roads and property lines;

    b. Proposed land uses, building locations, and housing unit densities;

    c. Proposed circulation pattern indicating the status of street ownership;

    d. Proposed open space uses;

    e. Proposed grading and drainage pattern;

    f. Proposed method of water supply and sewage disposal;

    g. Relation of the proposed development to the surrounding area and comprehensive land use plan.

    h. Such other information as may be required by the Planning Commission and/or Board of County Commissioners to determine if the proposed development is consistent with the intent of the district.

2. Copies of the proposed water and sewer system will be submitted to the South Dakota Department of Environment and Natural Resources for study and comment.

3. A list and schedule of improvements to be completed by the developer must be submitted.

4. In reviewing the plan, the Planning Commission and Board of County Commissioners shall need to determine that:

    a. Resulting development will not be inconsistent with the Comprehensive Land Use Plan objectives or zoning provisions of the area;

    b. The plan can be completed within a reasonable period of time;

    c. The streets are adequate to support the anticipated traffic and the development will not overload the roads outside the planned area;

    d. Proposed utility and drainage facilities are adequate for the population densities proposed.

    e. The proposed minimum yard setback requirements are adequate development. If the developer does not provide proposed setbacks within the development plan, the County will defer to setbacks in the Agricultural Zoning District.

5. If, in the opinion of the Planning Commission, the foregoing provisions are satisfied, the proposal shall be processed according to this section. If the Commission finds to the contrary, they may recommend the application be denied or return the plan to the application for revision.

6. In addition to the requirements of this section, the Planning Commission and Board of County Commissioners may attach conditions it finds are necessary to carry out the purpose of this ordinance.

7. Before approving a Planned Development, the Planning Commission and Board of County Commissioners must have copies of proposed deed restrictions, agreements for maintenance by the homeowners' association of common facilities and open spaces, guarantees (surety bonds, etc.) by the developer for the completion of the development in accordance with the approved plan, and an agreement binding successors who may take over completion of the development to conditions of the plan approval.

5. The Planning Commission shall follow the procedure for considering an amendment to the Clark County Official Zoning Map before approving a Planned Residential District.

6. Permits for construction in a Planned Development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Commission for processing as an amendment to this ordinance.

7. All residences in the Planned Residential District are required to have a signed Covenants/Waivers per Section 2.04.06 registered on the deed of said property before a building permit is issued.

Section 2.08.04 Subsequent Performance. Failure to follow the approved plan on the part of the applicant or his agent shall be considered a violation of these regulations, punishable as herein prescribed.

CHAPTER 2.09 "AP" AQUIFER PROTECTION OVERLAY DISTRICT

Section 2.09.01 Purpose and Intent.

The Clark Planning Commission and Board of County Commissioners recognize (1) that residents of Clark County rely on ground water for a safe drinking water supply and (2) that certain land uses in Clark County can contaminate ground water particularly in shallow aquifers.

The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow aquifers of Clark County. It is the intent to accomplish aquifer protection, as much as possible, by public education and securing public cooperation. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. Any use existing at the time this ordinance is adopted is grandfathered.

Section 2.09.02 Establishment/Delineation/Regulation of Aquifer Protection Overlay Zones.

Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on a map prepared by the East Dakota Water Development District (EDWDD), Brookings, South Dakota. Said maps are hereby adopted by reference as part of this Ordinance as if the maps were fully described herein. In addition to East Dakota Water Development District Map, the South Dakota Department of Environment and Natural Resources, Division of Financial and Technical Assistance, Geological Survey created a map entitled "First Occurrence of Aquifer Materials in Clark County, South Dakota - Map 2" dated April 3, 2001. This map will be used to further identify aquifer boundaries. In the event of a conflict between such maps as to the area covered by the aquifer at a given location, borings will be required by the County to determine the incidence of shallow aquifer.

The Aquifer Protection Overlay District is divided into two (2) zones. The critical impact zone, Zone A, was mapped by the East Dakota Water Development District with South Dakota Geological Survey (SDGS) technical assistance using techniques outlined in the U.S. Environmental Protection Agency publication "Guidelines for Delineation of Wellhead Protection Areas," June, 1987. The shallow/ surficial aquifer boundary for Zone B was mapped by the South Dakota Geological Survey.

Section 2.09.03 Zone A -- Aquifer Critical Impact Zones.

Zone A, the wellhead protection area, is the mapped zone of contribution around all public water supply wells or wellfields in shallow/surficial aquifers and includes land upgradient from the well or wellfield to the ten (10) year time of travel boundary.

Section 2.09.03.01 Permitted Uses in Zone A.

The following uses are permitted provided they meet appropriate performance standards outlined for aquifer protection overlay zones.

1. Agriculture;

    a. Application of manure is permitted with approved nutrient management plan.

2. Horticulture;

3. Parks, greenways or publicly owned recreational areas;

4. Necessary public utilities/facilities designed so as to prevent contamination of groundwater.

5. Dwellings on lots of five (5) acres or more with septic disposal system five hundred (500) or more meet from a public water supply well.

6. All "Permitted Uses" listed in the underlying district(s) which do not pose a potential risk to groundwater resources and are not an expressly prohibited use.

Section 2.09.03.02 Conditional Uses in Zone A.

The following uses are permitted only under the terms of a conditional use permit and must conform to provisions of the underlying zoning district and meet Performance Standards outlined for Aquifer Protection Overlay Zones.

1. Expansion of existing uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.

2. All uses permitted by conditional use in the underlying district which do not pose a potential risk to groundwater resources and are not an expressly prohibited use in Zone A may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

3. Manure storage areas may be allowed provided they meet all Department of Environment and Natural Resources criteria.

4. New public water supply wells located within two thousand five hundred (2,500) feet of a concentrated animal feeding operation.

5. Expansion of existing Concentrated Animal Feeding Operations (Existing as of March 18, 1997) not to exceed a cumulative total of three hundred (300) animal units. Said expansion or alteration must be constructed according to the Department of Environment and Natural Resources State General Permit criteria and shall apply for said General Permit. The County shall require soil borings to determine impermeable material between land surface and the aquifer.

Section 2.09.03.03 Prohibited Uses in Zone A.

The following uses are expressly prohibited in Zone A:

1. Residential development with a density greater than one (1) dwelling per five (5) acres where septic tanks are used;

2. New septic systems within five hundred (500) feet of a public water supply well;

3. New Concentrated Animal Feeding Operations, including Class A, Class B, Class C, Class D, and Class E after March 18, 1997.

4. Expansion of existing Concentrated Animal Feeding Operations beyond a total expansion of three hundred (300) animal units;

5. Manure storage areas except above ground tanks;

6. Disposal of solid waste except spreading of manure (see Section 2.09.05 Performance Standards for Aquifer Protection Overlay Zones);

7. Outside unenclosed storage of road salt;

8. Disposal of snow containing de-icing chemicals;

9. Processing and storage of PCB contaminated oil;

10. Car washes;

11. Auto and equipment service, repair or painting facilities and junk or salvage yards;

12. Disposal of radioactive waste;

13. Graveyards or animal burial sites;

14. Detonation sites;

15. Open burning except ditches, fields and non-hazardous yard and household wastes such as paper, wood and leaves;

16. Fall application of nitrogen fertilizer, except spreading of manure.

17. Planned Residential Districts

18. Land spreading of petroleum contaminated soil;

19. Land spreading or dumping of waste oil;

20. Industrial process water and waste disposal wells--5W20 type Class V injection wells;

21. Automobile service station disposal wells--5X28 type Class V injection wells;

22. All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality.

Section 2.09.04 Zone B -- Aquifer Secondary Impact Zones.

Zone B is the remainder of the mapped shallow/surficial aquifer in the County not included in zone A. Zone B also includes any delineated lands adjacent to Zone A not underlain by the shallow aquifer but with sufficient slope that contaminated surface water could flow directly onto Zone A.

Zone B is being protected because (1) the aquifer is a valuable natural resource for future development, (2) the aquifer provides drinking water supply for individual domestic users, (3) contamination is not justified just because this area is not currently used for public water supply, and (4) contaminants from this area could eventually enter Zone A.

Section 2.09.04.01 Permitted Uses in Zone B.

1. All "Permitted Uses" listed in the underlying districts which do not pose a potential risk to groundwater resources provided that they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones and are not an expressly prohibited use.

Section 2.09.04.02 Conditional Uses in Zone B.

1. All conditional uses allowed in underlying districts which do not pose a potential risk to groundwater resources and are not an expressly prohibited use may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

2. New Class D concentrated animal feeding operations and expansion of existing Class C and D concentrated animal feeding operations up to nine hundred ninety-nine 999 animal units. The County will require soil borings to determine impermeable materials between land surface and aquifer.

3. Earthen storage basins and lagoons.

4. Expansion of existing Class A and B Concentrated Animal Feeding Operations (Existing as of March 18, 1997) not to exceed a cumulative total of three hundred (300) animal units. Said expansion or alteration must be constructed according to the Department of Environment and Natural Resources State General Permit criteria and shall apply for said General Permit. The County shall require soil borings to determine impermeable material between land surface and the aquifer.

5. Stockpiling of solid manure.

6. Expansion, modification, alteration, or relocation of existing permitted or conditional uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.

Section 2.09.04.03 Prohibited Uses in Zone B

The following uses are expressly prohibited in Zone B:

1. Fall application of nitrogen fertilizer on the following soil types: Blendon, Delmont, Dimo, Divide, Egeland, Embden, Enet, Fordville, Henking, Maddock, Renshaw, Sioux, Spottswood;

2. Land spreading of petroleum contaminated soil;

3. Land spreading or dumping of waste oil;

4. Industrial process water and waste disposal wells--5W20 type Class V injection wells;

5. Automobile service station disposal wells--5X28 type Class V injection wells.

6. New Class A, B, or C Concentrated Animal Feeding Operations;

7. Expansions of existing Class A, B, C, and D concentrated animal feeding operations which cannot meet performance standards;

8. Expansion of existing Class A and B Concentrated Animal Feeding Operations beyond a total expansion of three hundred (300) animal units;

9. Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

Section 2.09.05 Performance Standards For Aquifer Protection Overlay Zones

The following standards shall apply to land uses in Zones A and B of the Aquifer Protection Overlay Districts:

1. New or replacement septic tanks and associated drain fields for containment and disposal of human waste must conform with regulations established by the State Department of Environment and Natural Resources.

2. Commercial or industrial liquid waste ponds containing any hazardous solid or liquid material or waste will not be permitted without a secondary containment system except for community wastewater lagoons.

3. Manure storage areas for all classes of Concentrated Animal Feeding Operations must be constructed in conformance with all State and Federal regulations.

4. Petroleum products stored at one (1) locality in a tank or series of tanks must be elevated; such tanks must have a secondary containment system where it is deemed necessary by the County Zoning Office.

5. When pastured animals are concentrated for winter feeding and the number of animal units exceeds two hundred (200) within 1/4 mile of a public water supply well or five hundred (500) animal units in the remainder of Zones A and B, measures shall be employed to prevent runoff of manure.

6. Discharge of industrial process water is prohibited without County Zoning Office approval.

7. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.

8. Any facility required to file material safety data sheets as part of SARA Title III must prepare and have on file in the County Zoning Office an acceptable contingency plan for preventing hazardous chemicals from contaminating the shallow aquifer. Agricultural operations are exempt unless they have more than ten (10) employees.

9. Any commercial or industrial facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials, in excess of one thousand (1,000) pounds or one hundred (100) gallons, must be constructed to prevent hazardous materials from contaminating the shallow/surficial aquifer should equipment failure, floods, fire or other natural catastrophes occur. Stored petroleum products are exempt from this performance standard. Facilities must meet specifications under SARA Title III and the following specifications:

    a. For flood control, all underground facilities shall include a monitoring system and a secondary standpipe over the 100-year frequency flood level. All above ground facilities, an impervious dike, above the 100-year flood level and capable of containing one hundred twenty (120%) of the largest storage volume, with an overflow recovery catchment area (sump).

    b. For fire control, all facilities shall include a fire retardant system and provision for dealing safely with both health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are overhead and buried electrical lines, pipes, other buried objects and other hazardous liquids, chemicals or open flames in the immediate vicinity.

    c. For equipment failures, a secondary containment system must be installed to intercept any leak or discharge from the primary containment. A leak detection system and overfill protection system must also be installed. Underground tanks or buried pipes for handling hazardous materials must have double walls and accessible sumps.

10. The County Zoning Office and Department of Environment and Natural Resources shall be informed as soon as possible within twelve (12) hours of any leak, spill or release of materials that might potentially contaminate groundwater.

11. Since it is known that improperly abandoned wells can become direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

Section 2.09.06 Exceptions.

1. Storage of liquids, chemicals and fertilizers used in agricultural operations during planting and crop cultivation are exempt from the requirements of this ordinance March 1 to October 1. However, Best Management Practices are encouraged, particularly in Zone A.

2. Storage of liquid or dry fertilizer in amounts equal to or less than one thousand (1,000) pounds or one hundred (100) gallons, or pesticides in amounts equal to or less than one hundred (100) pounds or twenty-five (25) gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.

3. Tanks used for chemigation are exempt from the secondary containment regulations but secondary containment is encouraged.

4. A non-conforming concentrated animal feeding operation in Zone A will become a prohibited use if such concentrated animal feeding operation is inactive for five (5) years.

5. A proposed use not identified as a permitted use or conditional use in Zones A or B may be allowed by conditional use provided the applicant can show the facility will not be located over the shallow aquifer and runoff of all potential contaminates will be contained on site. A minimum of five (5) test borings must be drilled to a minimum depth of fifty (50) feet.

Section 2.09.07 Grant Of Permit, Alteration Of Use.

Before a permit is granted, the Administrative Official must examine an application and determine that the proposed use, activity or development meets the provisions of this ordinance.

When securing a use permit, the owner/developer agrees to make future improvements which may become necessary to prevent contamination of shallow aquifers and the owner/developer must allow County personnel to inspect any improvements to verify they meet the performance standards.

Whenever any person has an existing use, activity or development and thereafter desires alteration or expansion of the authorized use, such persons shall apply for a permit except for the normal upkeep, replacement and repair of existing facilities. The owner may appeal an Administrative Official's decision to modify or deny a requested permit to the Board of Adjustment.

Section 2.09.08 Limitation Of County Liability.

Nothing in this ordinance shall be construed to imply that Clark County, by issuing a permit, has accepted any of an owner's/developer's liability if a permitted development contaminates water in shallow/surficial aquifers.

Section 2.09.09 Underlying Zones.

Underlying zoning restrictions apply along with restrictions set forth in the Aquifer Protection Overlay District.

ARTICLE III
ADMINISTRATION

CHAPTER 3.01 GENERAL

Section 3.01.01 Permits Required.

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a permit issued by the Administrative Official. The Administrative Official except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.

2. It shall be unlawful to commence the excavation for or the construction of any building or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the Administrative Official has issued a building permit for such work. A building permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction

Section 3.01.02 Applications.

Applications for building and use permits shall be made to the Administrative Official upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Administrative Official, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 1.02.03 and shall require a new building and use permit.

Section 3.01.03 Fees.

1. The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance, The schedule of fees shall be posted in the office of the Administrative Official and may be altered or amended only by the Board of County Commissioners.

2. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

Section 3.01.04 Building/Use Permit.

1. A Building/Use Permit shall be deemed to authorize, and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such building and the use thereof or the use of such land is in full conformity with the requirements of this ordinance and any requirements pursuant thereto. However, on the serving of a written notice by the Adminstrative Official of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the Building/Use Permit for such use shall without further action, be null and void, and a new Building/Use Permit shall be required for any further use of such building or land.

2. The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. A Building Permit shall become null and void twelve (12) months from the date of issuance thereof unless substantial progress has been made by that date on the project described therein. If the work described in any building permit has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be cancelled by the administrative official and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within twelve (12) months from the issuance of the permit but has not been completed, the Administrative Official may extend the building/use permit an additional twelve (12) months.

Section 3.01.05 Building Permit Process.

1. The landowner requesting the Building/Use Permit shall complete an application for a building/use permit per Section 3.01.02 accompanied with the appropriate fee. Completed applications shall be returned to the Administrative Official for review.

2. Issuance of a Building/Use Permit. If the proposed excavation alteration, construction, or change of use, as set forth in the application for a Building/Use Permit are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Administrative Official shall issue a building/use permit for such excavation, construction, alteration or change in use within a reasonable time from the date the application is submitted.

3. If a building/use permit is refused, the Administrative Official shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application with the cause for denial.

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

CHAPTER 3.02 ADMINISTRATIVE OFFICIAL

Section 3.02.01 Administrative Official.

The provisions of this Ordinance shall be administered and enforced by an Administrative Official appointed by the Board of County Commissioners, who shall have the power to make inspection of building or premises necessary to carry out his duties in the enforcement of this Ordinance.

Section 3.02.02 Duties.

The powers and duties of the Administrative Official shall be as follows:

1. Issue all building permits and make and maintain records thereof.

2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.

3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.

4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.

6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.

7. Provide public information relative to all matters arising out of this Ordinance.

8. Forward to the Planning Commission all applications for amendments to this Ordinance.

9. Forward to the Board of Adjustment, applications for appeals, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.

10. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission. The Administrative Official shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.

    a. For building permits, the Administrative Official shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.

    b. For Conditional Uses and Variances, the Administrative Official shall review the application, and shall make recommendations to the Board of Adjustment.

c. For Zoning Amendments, the Administrative Official shall review the application, and shall make comments regarding said application to the Planning Commission and Board of County Commissioners.

11. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Clark County Planning Commission and/or the Clark County Board of Adjustment and/or Clark County Commissioners.

Section 3.02.03 Right of Entry.

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

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

Section 3.02.04 Stop Order.

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

Section 3.02.05 Occupancy Violation.

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

CHAPTER 3.03 BOARD OF ADJUSTMENT

Section 3.03.01 Establishment.

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

1. The County Commission shall act as the Board of Adjustment. The Board of County Commissioners shall also appoint two (2) alternates to the Board of Adjustment. If a County Commissioner acting as a Board of Adjustment member is unable to attend a meeting, the first alternate, or second alternate, in turn, shall serve in the member's place. Alternates may be appointed for a term of three (3) years

Section 3.03.02 Procedures for Meetings.

1. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. The Chairman, or in his or her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.

2. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the County Auditor and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

Section 3.03.03 Powers and Duties of the Board.

1. The Board of Adjustment shall have the following powers and duties:

    a. Administrative Review. To hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the County Administrative Official or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map.

    b. Conditional Uses. To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.

    c. Variance. To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

Section 3.03.04 Appeals, Record of Appeal, Hearing and Stays.

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Administrative Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.

2. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the Administrative Official from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrative Official 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. Such appeal shall be taken within thirty (30) days.

3. An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrative Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.

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

5. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Administrative Official or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney.

Section 3.03.05 Board of Adjustment has Powers of Administrative Official on Appeals: Reversing Decision of Administrative Official.

1. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken.

2. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes shall be necessary to reverse any order, requirement, decision or determination of the Administrative Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

Section 3.03.06 Duties Of Administrative Official, Board Of Adustment, and Courts On Matters Of Appeal.

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Administrative Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official, and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by law.

Section 3.03.07 Appeals to a Court of Record. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, landowner, or any officer, department, board, or bureau of the County, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Auditor.

CHAPTER 3.04 PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS

Section 3.04.01 Powers and Jurisdiction Relating to Conditional Uses.

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

1. A written application for a conditional use permit is submitted, indicating the section of this Ordinance under which the conditional use permit is sought and stating the grounds on which it is requested.

2. The Administrative Official may require the applicant for a conditional use permit to notify adjacent property owners by mail, at their last known address, of the conditional use permit request and of the public hearing time and date prior to the hearing of the Board of Adjustment.

3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.

4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use permit, and that the granting of the conditional use will not adversely affect the public interest.

6. Before granting any conditional use permit, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:

a. Entrance and exit 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 conditional use on adjoining properties and properties generally in the district.

c. Utilities refuse and service areas, with reference to locations, availability, and compatibility.

d. Screening and buffering with reference to type, dimensions and character.

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

f. Required yards and other open space.

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

h. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.

7. The concurring vote of two thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a Conditional Use Permit.

8. A conditional use permit shall expire two years from the date upon which it becomes effective if the construction related to the project requiring the conditional use has not been completed. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.

9. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.

10. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.

11. Reapplication: The Board of Adjustment may only consider a previously denied application if the following occur:

    a. Six (6) months has expired since the date of the previous final action of the Board of Adjustment; or

Section 3.04.02 Powers and Jurisdiction Relating to Variances.

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

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested and demonstrating that special conditions or circumstances exist which are peculiar to the land, structure, or buildings in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

2. The Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A variance from the terms of this ordinance shall not be granted by the Board of Adjustments unless and until a written application for a variance is submitted demonstrating:

   a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;

   b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

   c. That the special conditions and circumstance do not result from the actions of the applicant;

   d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.

   e. That granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

   f. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

3. The Administrative Official may require the applicant for a variance to notify adjacent property owners by mail, at their last known address, of the variance request and of the public hearing time and date prior to the hearing of the Board of Adjustment .

4. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.

5. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

6. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest.

7. The concurring vote of two thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a variance.

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

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

10. A variance shall expire two (2) years from the date upon which it becomes effective if the construction related to the project requiring the variance has not been completed. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment.

11. Reapplication: The Board of Adjustment may only consider a previously denied application if the following occur:

    a. Six (6) months has expired since the date of the previous final action of the Board of Adjustment; or

Section 3.04.03 Zoning Amendments.

Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one or more of the owners of property within the area requested to be changed. A proposed change of zoning regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by petition by twenty (20) percent of the landowners in the zoning district or districts requesting change. However, no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.

The following procedure for requesting a Zoning Amendment or Zoning District Boundary Change shall be followed:

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

    a. Any required attachments and fees, including Registered or Certified Mail.

    b. Any additional information, as requested by the Administrative Official, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.

    c. The Administrative Official shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.

    d. The Administrative Official shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Administrative Official shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Administrative Official shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.

    e. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.

    f. The Planning Commission shall either recommend or not recommend approval of the amendment to the Board of County Commissioners.

    g. The Board of County Commissioners shall either approve or not approve the ordinance describing the proposed changes to these zoning regulations, in accordance with standard procedures for reading, approval, publication, and effective date.

    h. When the Board of County Commissioners approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by two-thirds (4 votes) of the Board of County Commissioners.

        Protest Standard: The protest shall be signed by at least forty percent (40%) of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within 250 feet of the area affected by the amendment.

i. After passage the Ordinance Amendment shall take effect on the 20th day after its publication in the official newspaper of the County.

ARTICLE IV
SUPPLEMENTAL REGULATIONS

Pursuant to the purpose of this regulation are certain general requirements that are not provided for under Article II Zoning Districts. These requirements are set forth under this Article.

CHAPTER 4.01 VISIBILITY AT INTERSECTIONS

On a corner lot in any zoning district, no planting, structure, or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Town District, and Planned Development District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

CHAPTER 4.02 FENCES

Section 4.02.01 Fences in the "TD" Town District and "PR" Planned Residential District

Section 4.02.01.01 Purpose.

1. The regulation of fences is intended to protect the public safety and welfare, provide privacy, buffer noise, and allow adequate air, light and vision.

Section 4.02.01.02 Permit required.

1. Permits to construct fences exceeding thirty-six (36) inches in height shall be required in the TD and PR Districts.

Section 4.02.01.03 Location/Construction Requirements.

1. Notwithstanding other provisions of this Ordinance, fences, walls, trees, and hedges may be permitted in any required yard. Except fences and hedges which are more than thirty (30) percent solid shall not be located within fifty (50) feet of an intersection, measuring along the property lines and connecting these two points by a straight line per Section 4.01. Further, the fence, wall, tree, or hedge shall not be constructed within twenty (20) feet of a public right-of-way or ten (10) feet of a private road.

2. Fences, with a maximum height of not more than eight (8) feet, may be erected on any part of a lot other than in the required front yard.

3. The County does not provide surveying services. The property owner is responsible for locating property lines.

4. Fences may be built no closer than one (1) foot up to the property line. Fences constructed within an identified easement face the potential of removal in the event of necessary work to be conducted within the easement. Replacement of the removed fence is the responsibility of the owner of said fence.

5. The “finished side” of the fence shall face neighboring properties or the road.

6. Approved fencing materials include stone, brick, finished wood, vinyl, and chain link.

7. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.

8. Fences can be built on the property line when the fence is shared between property owners.

CHAPTER 4.03 ACCESSORY BUILDINGS

1. Only specifically authorized accessory uses allowed; accessory uses must be subordinate to principal use.

2. No accessory use shall be permitted in any district unless such use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.

3. No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building.

4. No accessory building may be used for residential dwelling purposes at any time.

5. Town and Planned Residential Districts.

   In any Town or Planned Residential district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district. Accessory uses for the principal permitted uses and conditional uses of the Town and Planned Residential Districts shall also comply with the provisions of Table 4.03-1.

6. Commercial - Industrial District.

   In any Commercial-Industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.

7. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.

Table 4.03-1
Permitted Accessory Uses: TD and PR Districts.

Permitted uses: **Principal Use**	**Permitted Accessory Uses**
Town District - Single family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers	1. Private garages. a. Attached garages shall be limited to maximum dimensions of 36 feet by 42 feet and conform to the design of the house. b. Unattached garages shall be limited to maximum sidewalls of 10 1/2 feet; maximum dimensions of 36 feet by 42 feet; and a maximum of 4/12 roof pitch or to conform to the design of the house. 2. Buildings or structures for customary residential storage purposes not over 10 feet in height and not exceeding 150 square feet in gross floor area. 3. Readily moveable sports, recreation, or outdoor cooking equipment. 4. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved. 5. Home occupations but only as defined herein. 6. Non-commercial greenhouses provided that greenhouses over one hundred (100) square feet in floor area must have an approved site plan. 7.Off-street parking and storage of vehicles,
Churches, Convents and Monasteries	1. All customarily incidental uses reasonably necessary to allow the free exercise of religion, but not to include commercial use.
All conditional uses	1. All customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use.
All other items	1. No accessory uses permitted.

CHAPTER 4.04 SIGNS AND OUTDOOR ADVERTISING.

Section 4.04.01 On and Off Premise Signs.

1. Prohibited Signs - No private sign shall be erected or maintained which:

    a. Creates a hazard due to collapse, fire, collision, decay, or abandonment;

b. Creates traffic hazards, by either:

i. Confusing or distracting motorists; or

ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles, or

iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or

iv. Creates a nuisance to persons using a public right-of-way; or

v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement

2. Signs shall be permitted in all zoning districts, subject to the following provisions:

a. Wall signs may be located anywhere on the wall of a building.

b. Signs shall not project over public property.

c. Signs shall not be erected adjacent to a corner of two intersecting streets, unless such signs are constructed to not obstruct the view of said intersection.

d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.

e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the Administrative Official and the said Official grants a permit therefore.

3. The Administrative Official shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies with National Building Code relating to outdoor advertising.

4. On-premise Signs: Each sign erected as an on- premise sign in those zoning districts where permitted shall unless specified elsewhere in this ordinance, conform to the following requirements:

a. Each sign erected as an on-premise sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet. Each sign shall observe a minimum front, rear and side-yard setback of ten (10) feet and also meet clear view triangle standards (Chapter 4.01). The maximum cumulative amount of all on-premise signage allowed shall not exceed eighty (80) square feet. Further, no on-premise sign may be converted to an off-premise sign. Exception: On-premise signs in the Commercial and Industrial Districts may have a maximum surface area and cumulative amount of all on-premise signage of three hundred (300) square feet area

b. No on-premise sign may be converted to an off-premise sign.

5. Off-premise Signs: Off-premise signs erected in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:

    a. Each sign shall have a maximum surface area of three hundred (300) square feet

    b. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted off-premise sign on the same side of the street or road.

    c. Each sign shall not be closer than ten (10) feet from any street right-of-way.

    d. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.

    e. Stacked signs (two or more signs stacked vertically on a single sign structure are prohibited.

    f. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.

CHAPTER 4.05 STRUCTURES TO HAVE ACCESS

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to private streets approved by the Board of Adjustment, and all structures shall be so located on lots as to provide safe and convenient access for services, fire protection and required off-street parking.

CHAPTER 4.06 YARDS

Section 4.06.01 Yards, General.

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

Section 4.06.02 Yards, Reduction in Size.

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

Section 4.06.03 Additional Yard Requirements.

The following yard requirements must be observed in addition to the yard requirements of the various districts:

1. A corner lot must have a front yard on both streets

2. On residential, commercial and industrial developed property, in the TD-Town District and PR-Planned Residential District, fronting on one (1) side of the street between two (2) streets where one or more residences already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.

3. In the TD and PR Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.

4. In the TD and PR Districts, required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

Section 4.06.04 Exceptions to Yard Requirements.

The following exceptions may be made to the yard requirements in the TD and PR Districts:

1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.

2. In commercial and industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.

3. An accessory building may be located in a rear yard but not occupy more than thirty (30) percent of a rear yard.

4. Any accessory buildings closer than ten (10) feet to a main building shall be considered as part of the main building and shall be provided with the same side and rear yard requirements as the main building.

CHAPTER 4.07 ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT

1. In any district, only one (1) structure housing a permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met. Exception: Secondary commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met.

CHAPTER 4.08 EXCEPTIONS TO HEIGHT REGULATIONS

The height limitations contained in Chapter II do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

CHAPTER 4.09 PRIVATE WASTEWATER TREATMENT SYSTEMS (SEPTIC TANKS)

All residential, commercial, and industrial uses must be connected to a sewer system which meet requirements established by the South Dakota Department of Environment and Natural Resources.

CHAPTER 4.10 MODULAR AND MANUFACTURED HOME HOMEPROVISIONS.

Section 4.10.01 Modular Homes.

1. Modular homes shall meet the following regulations.

    a. Modular homes shall meet or exceed Uniform Building Codes.

    b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.

    c. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.

    d. Modular homes shall not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch.

    e. Modular homes shall have a minimum of a 4/12-roof pitch.

    f. Have siding material of a type customarily used on site-constructed residences.

    g. Have roofing material of a type customarily used on site-constructed residences.

Section 4.10.02 Type I and Type II Manufactured Homes.

1. For the purpose of this Ordinance, manufactured homes will be regulated by type. Two (2) types of manufactured homes are defined under these regulations.

    a. Type I manufactured home shall:

        i. Have more than one thousand one hundred (1,100) square feet of occupied space in a double section or larger multi section unit.

        ii. The running gear and hitch have been removed.

        iii. Has been anchored to a foundation and permanent footing.

iv. Have a gabled roof with a pitch of at least 3/12 feet.

v. Have siding material of a type customarily used on site-constructed residences.

vi. Have roofing material of a type customarily used on site-constructed residences.

vii. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.

b. Type II manufactured home shall:

i. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit.

ii. Utilize a permanent perimeter enclosure in accordance with approved installation standards, as specified in 4.10.02.

iii. Be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the Defense Civil Preparedness Agency TR-75, issued June 1972, by the U.S. Department of Defense or by the NFPA 225 Model Manufactured Home Installation Standards.

iv. Have siding material of a type customarily used on site-constructed residences.

v. Have roofing material of a type customarily used on site-constructed residences.

vi. Have a gabled roof with a pitch of at least 3/12 feet.

vii. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.

viii. Be place onto a support system. In accordance with approved installation standards, as specified in Section 4.10.02.2.

2. Installation standards

a. Permanent Perimeter Enclosure as required for Type I Manufactured Homes. Those manufactured homes designated in this Ordinance (Type I), as requiring a permanent perimeter enclosure must have footings and crawl space or basement walls. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

b. Foundation Siding/Skirting

i. The foundation shall be (a) an approved wood basement constructed of 2 x 6 frame-work and treated with water resistant materials; or (b) a foundation shall be constructed with eight (8) inches poured concrete or concrete block.

ii. The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

iii. All manufactured homes without a permanent perimeter enclosure (Type II) shall have an approved foundation siding/skirting enclosing the entire perimeter of the home.

c. Support System

i. Type I manufactured homes shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.

ii. Type II manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the NFPA 225 Model Manufactured Home Installation Standards.

3. Replacement of Nonconforming Homes.

Type I and Type II Manufactured Homes located upon any lot or lots of record at the time of the adoption of this Ordinance may be replaced by Type I and/or Type II Manufactured Homes of like dimensions and said replacement shall not be deemed to have changed the use thereof from a non-conforming to a conforming use. If a replacement Type I and/or Type II Manufactured Home is of larger dimension than the replaced Type I and/or Type II Manufactured Home, then application must first be made to the Board of Adjustment for a conditional use permit.

4. Variance from Maximum Age Requirement

Type I and Type II manufactured homes may receive a variance from the maximum age requirement (Chapter 4.10). The Board of Adjustment may grant a variance if the applicant requesting the placement of the manufactured home meets the following requirements:

a. The applicant shall provide a photograph of the manufactured home's exterior and interior.

b. That it shall have been shown to the satisfaction of the Board of Adjustment that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Clark County.

c. That the applicant shall obtain, and present to the Board of Adjustment, the written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site.

CHAPTER 4.11 PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS

1. No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exception are Type II manufactured homes.

CHAPTER 4.12 UTILITY EASEMENTS

No building or addition thereto shall be erected over or across any existing public utility or upon any platted easement.

CHAPTER 4.13 MOVED IN BUILDINGS

1. Any building to be moved requires a building permit. The Administrative Official may attach conditions to the issuance of the moved in building permit. No permit shall be issued until the following requirements are met.

    a. The fee for said permit as prescribed in Section 3.01.03, shall have been paid.

    b. That the work is to be completed within twelve (12) months after the permit has been issued by the Administrative Official.

    c. The applicant may also be required to file with the County Auditor a sufficient bond conditioned so that the applicant will indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the county, the Administrative Official shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.

    d. Any building, which is not newly constructed to be used for first occupancy, shall also meet the following minimum requirements to obtain a permit.

        1. The written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site. In the Town Districts “TD” the applicant will comply with the above and further obtain the consent of more than fifty (50) percent of the number of owners of property within one hundred fifty 150 feet (excluding streets and alleys) of said proposed location has been received.

CHAPTER 4.14 SCREENING

Where any “CI” use is adjacent to any residential use, that use (building, parking or storage) shall be appropriately screened from the residential use by a fence or planting, approved by the Board of Adjustment, except where planting may be in conflict with vision clearance. See Section 4.01

CHAPTER 4.15. REFUSE

In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lots shall be responsible for keeping their property free of trash. Normal farming operations excluded.

CHAPTER 4.16 UNLICENSED VEHICLES

Vehicles not in use and without current license may not be kept in any uncovered area other than a designated junk, salvage yard, or designated collection site. EXCEPTION: 1. Vehicles used in normal farming operations and 2. Antique cars being refurbished shall not be required to be kept in a covered area or in above designated areas.

CHAPTER 4.17 MINIMUM WATER AND SEWER REQUIREMENTS

A water and sewer system cannot be approved until it meets the following standards:

1. All public utilities and facilities shall be located, elevated, and constructed to minimize or eliminate flood damage; and

2. All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of Environment and Natural Resources, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

CHAPTER 4.18 SHELTERBELT SETBACK REQUIREMENTS

1. A shelterbelt, consisting of one (1) or more rows shall not be established in the “A” Agricultural District within one hundred fifty (150) feet of a public road right-of-way line on the north and west sides of roads and not within one hundred (100) feet of a public road right-of-way line on the south and east sides of the roads. Shelterbelts at right angles to roads shall provide a minimum turnaround of fifty (50) feet measured from the road right-of-way. Shelterbelts shall not be established within one hundred fifty (150) feet of adjoining property lines without written permission of adjoining property owners. Trees used for landscaping the area immediately adjacent to farmsteads and residences are exempt from this regulation.

2. The shelterbelts setback requirements (paragraph 1 above) also apply to volunteer trees that the landowner allows to grow.

3. A recommendation from the County Highway Superintendent, Township and/or State Department of Transportation is required prior to the issuance of any variance of the shelterbelt setback from any respective County, Township or State/Federal public right-of-way.

CHAPTER 4.19 EXTENDED HOME OCCUPATION

1. There are significant differences between home occupations and extended home occupations. While each use is based on supplementing income, the location and type of business in which each is practiced has unique characteristics. Specifically a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building.

2. For the purpose of this section, provided all requirements are met, the following may be considered extended farm home occupations:

a. Those businesses that support agricultural needs to include but not limited to vehicle and implement repair, implement sales, welding repair conducted in a safe manner; Veterinarian's office; Seed Sales; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses. Specific business uses such as automobile and recreational vehicle sales are prohibited.

3. Performance Standards

a. An extended home occupation may not be changed to another extended home occupation except by the issuance of a separate conditional use permit.

b. The extended home occupation is accessory to the principal use of the property (residence).

c. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.

d. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign, not to exceed sixteen (16) square feet in area, non-illuminated.

e. Off premise signage for extended home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.

f. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales.

g. There shall be no outdoor storage of materials, vehicles, etc. related to the extended home occupation unless the aforementioned storage is placed behind a fence or is as approved by the Board of Adjustment.

h. Extended home occupations should be agriculturally related and shall be conducted in an accessory building with the exception of implement sales.

i. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood. Prior to the issuance of a conditional use permit for an extended home occupation, County Highway Superintendent and/or Township approval shall be required.

j. Any need of off-street parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.

k. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

CHAPTER 4.20 SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; MINERAL EXPLORATION AND DEVELOPMENT; AND CONCRETE AND ASPHALT MIXING PLANTS REQUIREMENTS.

Section 4.20.01 Application.

1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:

    a. A description of the mineral or minerals which are the subject of the mining or milling.

    b. Maps showing the general area within which the mining or milling operation will be conducted.

    c. Present topography, soil types, and depth to groundwater.

    d. Location of existing water drainage, existing buildings, existing shelterbelts.

    e. Identification of roads leading to the site.

    f. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.

    g. Proposed monitoring wells, etc.

Section 4.20.02 State and Federal Requirements.

1. All applicants for sand, gravel or quarry operations; mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants shall demonstrate prior to the commencement of operation that the site meets the requirements of the State Department of Environment and Natural Resources.

2. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the special use permit is granted, the permit shall identify such inspection 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 Board of Adjustment.

Section 4.20.03 Setbacks.

1. Sand, gravel or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one thousand (1,000) feet of a residence. The setback will be measured from the mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest residence. The exception to this standard would apply to residences owned and lived in by the operator of the mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants.

2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at least one hundred (100) feet from any public right-of-way.

3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of minerals, sand, or gravel provided the following conditions are met:

   a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.

   b. No excavation is allowed within five (5) feet of any rear or side property line.

   c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

Section 4.20.04 General Provisions:

1. Haul Roads.

   A requirement for receiving a permit for extractive/mining operations shall include a haul-road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).

2. Air, Noise, and Water Pollution.

   The applicant may be required to provide information regarding how potential air, noise, and water pollution would be minimized.

3. Land Reclamation.

   The applicant shall provide for a plan for land 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 lands. The reclamation plan 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, access roads, and mining sites.

   e. Methods of waste management and disposal, including liquid and solid wastes.

   f. Method of revegetation.

4. Performance Bond.

   The applicant may be required to post a surety performance bond in an amount to be determined by the County Commission to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of affected ground and surface waters. The amount shall be set by the County Commission based on an estimate of the cost of reclamation and decontamination. The bond shall be released five (5) years after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.

5. Utilities/Easements.

   No excavation shall occur within recorded easements. The Board of Adjustment may specify a maximum slope at which excavation may occur in relation to any utility pole or recorded easement

6. 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 mining and milling activities.

7. Solution mining - mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

CHAPTER 4.21 WIND ENERGY SYSTEM (WES) REQUIREMENTS

Section 4.21.01 Applicability.

1. The requirements of these regulations shall apply to all WES facilities except private facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.

Section 4.21.02 Federal and State Requirements.

1. All WESs shall meet or exceed standards and regulations of the Federal Aviation and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WESs.

Section 4.21.03 General Provisions.

1. Mitigation Measures

   a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.

   b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.

c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.

e. Fences. The permittees 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 affected landowner.

f. Roads

   i. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

   ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.

   iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, 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.

   iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

   v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.

   vi. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction to be available to the county upon request. 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 revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface

disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material. (*Amended: Ord. 02-19; Adopted 10/01/19*)

2. Setbacks

Wind turbines shall at least meet the minimum spacing requirements of Table 5.22.03.2. (*Amended: Ord. 02-19; Adopted 10/01/19*)

Table 5.22.03.2
WES Setbacks
(*Amended: Ord. 02-19; Adopted 10/01/19*)

	Setback Distance*
Participating occupied residence, business, church, or school	500' or 110% of tower height (whichever is greater)
Municipal Boundaries at the time of Conditional Use Permit Application	5,280'
Non-Participating occupied residence, business, church, or school (in Town Districts)	5,280'
Non-Participating occupied residence, business, church, cemeteries, or school (in all other Zoning Districts)	3,960'
Distance from the Right-of-Way of Public Road	500' or 110% of the height of the wind turbine**, whichever is greater
Distance from Property Line	500' or 110% of the height of the wind turbine***, whichever is greater

* Setback distance to be measured from the wall line of the neighboring principal building to the base of the WES tower. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position.

** The horizontal setback shall be measured from the base of the tower to the public right-of-way.

*** The horizontal setback shall be measured from the base of the tower to the adjoining property line unless wind easement has been obtained from adjoining property owner.

i. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above if the road authority, participating or non-participating landowners, or municipality (by resolution of the governing body) agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Clark County Zoning Officer. Said agreement shall be binding upon the

heirs, successors, and assigns of the title holder and shall pass with the land. (*Amended: Ord. 02-19; Adopted 10/01/19*)

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.

4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The preferred manner of lighting is by means of an Aircraft Detection Lighting System (ADLS). Subject to FAA approval, applicants will install an ADLS within one (1) year of approval by FAA for the specified project. In the event FAA does not approve an ADLS system, the applicant will comply with all lighting and markings otherwise required by FAA. (*Amended: Ord. 02-19; Adopted 10/01/19*)

5. Turbine Spacing. The turbines shall be spaced no closer than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer. (*Amended: Ord. 02-19; Adopted 10/01/19*)

6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

7. Collector Lines. Collector lines are the conductors of electric energy from the Wind Energy System to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the WES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

8. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes may be made as long as feeders remain on pubic rights-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 permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.

9. Decommissioning/Restoration/Abandonment

   a. Decommissioning Plan. Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.

   b. Site Restoration. The decommissioning of the WES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the WES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the WES. The permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.

   c. Cost Responsibility. The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

   d. Financial Assurance. (*Amended: Ord. 02-19; Adopted 10/01/19*) At least thirty (30) days prior to construction the applicant shall file a plan with the Board of Adjustment which includes a form of financial assurance (such as: escrow account, surety bond, letter of credit, etc.) agreed upon by the Board of Adjustment. The plan shall contain provisions that:

      i. The financial assurance is funded by the turbine owner annually at a rate of five thousand dollars ($5,000) per turbine for a period of thirty (30) years.

         a. The Board may allow decreased annual payment if the Board determines the full rate is not necessary to cover costs of decommissioning.

         b. The financial assurance is submitted for the purpose of decommissioning the towers. This requirement is not necessary if the applicant is required by another entity to maintain financial assurance equal to or exceeding the amount required by this ordinance.

      ii. All interest earned by the account remains in the account.

      iii. An account statement is provided upon request to the administrative official.

iv. The account follows ownership of the wind energy system.

v. The account is not subject to foreclosure, lien, judgment, or bankruptcy

vi. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the turbine owner shall submit to the Commission an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Commission may change the annual escrow funding rate to more closely match the estimated amount needed for decommissioning.

vii. If the turbine owner fails to execute the decommissioning requirement, the account shall be utilized to pay for the cost of decommissioning the wind energy system or individual components thereof.

e. Failure to Decommission. If the WES facility owner or operator does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of 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 WES facility.

f. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.

10. Flicker Analysis. A Flicker Analysis shall include the duration and location of flicker potential for all schools, churches, businesses and occupied dwellings within a one (1) mile radius of each turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year. The analysis shall account for topography but not for obstacles such as accessory structures and trees. Flicker at any receptor shall not exceed thirty (30) hours per year within the analysis area. (*Amended: Ord. 02-19; Adopted 10/01/19*)

    a. Exception: The Board of Adjustment may allow for a greater amount of flicker than identified above if the participating or non-participating landowners agree to said amount of flicker. If approved, such agreement is to be recorded and filed with the Clark County Zoning Officer. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land. (*Amended: Ord. 02-19; Adopted 10/01/19*)

11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.

12. Towers.

    a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.

    b. All towers shall be tubular design. (*Amended: Ord. 02-19; Adopted 10/01/19*)

13. Noise. Noise level generated by the wind energy system shall not exceed 50 dBA, average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing non-participating residences, businesses, cemeteries, and buildings owned and/or maintained by a governmental entity. (*Amended: Ord. 02-19; Adopted 10/01/19*)

14. Permit Expiration. The permit shall become void if either no construction as described in the application has commenced within three (3) years of issuance or final decision of any appeal related to the issuance of this permit; if a State Permit from the South Dakota Public Utility Commission has not been issued within two (2) years of issuance. (*Amended: Ord. 02-19; Adopted 10/01/19*)

15. Required Information for Permit.

    a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.

    b. Map of easements for WES.

    c. Affidavit attesting that necessary easement agreements with landowners have been obtained.

    d. Map including any occupied residential structures, cemeteries, businesses and buildings owned and/or maintained by a governmental entity within one (1) mile of the project area. (*Amended: Ord. 02-19; Adopted 10/01/19*)

    e. Preliminary map of sites for WES, access roads and collector and feeder lines. Final map of sites for WES, access roads and utility lines to be submitted sixty (60) days prior to construction.

    f. Proof of right-of-way easement for access to transmission lines and/or utility interconnection shall be submitted sixty (60) days prior to construction. (*Amended: Ord. 02-19; Adopted 10/01/19*)

    g. Location of other WES in general area.

    h. Project schedule.

    i. Mitigation measures, if applicable (i.e. haul roads, communication, aviation, environmental, etc.) (*Amended: Ord. 02-19; Adopted 10/01/19*)

    j. Project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with state and federal wildlife agencies. Evidence of such consultation shall be included in the application.

    k. Final haul road agreements to be submitted sixty (60) days prior to construction.

CHAPTER 4.22 WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

Section 4.22.01 Purpose.

The general purpose of this Section is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the County.

Specifically, the purposes of this Ordinance are:

1. To regulate the location of Towers and Telecommunications Facilities in the County;

2. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;

3. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;

4. To promote and encourage shared use/co-location of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;

5. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;

6. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and

7. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

Section 4.22.02 Development Of Towers.

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."

2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three (3) other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Clark County mount law-enforcement or public safety communications apparatus.

3. An Application to develop a Tower shall include:

a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.

b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.

c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including County-owned property.

d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.

e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or co-locate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or co-locate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially unreasonable.

f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or co-located on another person’s Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.

g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.

h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.

i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.

j. The FCC has sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power

density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.

k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.

4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

Section 4.22.03 Setbacks.

1. All Towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.

2. Towers in excess of one hundred (100) feet in height shall meet the following:

   a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.

   b. Distance from public right-of-way shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.

   c. Distance from any property line shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.

3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.

4. Setback requirements may be modified, as provided in, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

Section 4.22.04 Structural Requirements.

All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with applicable building codes, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

Section 4.22.05 Separation or Buffer Requirements.

For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower.

Proposed Towers must meet the following minimum separation requirements from existing towers or towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance:

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.

2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.

3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.

4. The separation requirements contained in 4.22.05 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

Section 4.22.06 Method Of Determining Tower Height.

Measurement of Tower height for the purpose of determining compliance with all requirements of this Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

Section 4.22.07 Illumination.

Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

Section 4.22.08 Exterior Finish.

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

Section 4.22.09 Modification Of Towers.

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such non-conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:

    a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.

b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The grant of a development permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.

c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.

Section 4.22.10 Certifications And Inspections.

1. All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of this ordinance and all other construction standards set forth by federal and state law. For new monopole Towers, such certification shall be submitted with an Application pursuant to of this Ordinance and every five (5) years thereafter. For existing monopole Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to this Ordinance and every two (2) years thereafter. The Tower owner may be required by the County to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized.

2. The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.

   The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

Section 4.22.11 Maintenance.

1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

2. Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

3. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.

4. The property in which Towers, Telecommunications Facilities, and Antenna Support Structures are situated shall be maintained in a manner to control noxious weeds.

5. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.

6. All Towers shall maintain compliance with current RF emission standards of the FCC.

7. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

Section 4.22.12 Criteria For Site Plan Development Modifications.

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a conditional use in accordance with the following:

    a. In addition to the requirement for a Tower Application, the Application for modification shall include the following:

        i. A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.

        ii. A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.

        iii. A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.

        iv. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for co-location, and the result of such attempts.

        v. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.

2. The Board of Adjustment shall consider the Application for modification based on the following criteria:

    a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.

    b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.

    c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

3. In addition to the requirements of subparagraph (2) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:

a. In the case of a requested modification to the setback requirement, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.

b. In the case of a request for modification of the separation and buffer requirements from residential use of land of, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.

c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:

   i. Facilitate co-location of Telecommunications Facilities in order to avoid construction of a new Tower; or

   ii. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

Section 4.22.13 Abandonment.

1. If any Tower shall cease to be used for a period of three hundred sixty-five (365) consecutive days, the Board of Adjustment shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the Board of Adjustment that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the Board of Adjustment shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.

2. To secure the obligation set forth in this Section, the Applicant [and/or Owner] may be required to post a bond.

Section 4.22.14 Action of the Board of Adjustment.

1. Clark County shall approve or deny an application for collocation within ninety (90) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.

2. Clark County shall approve or deny an application for a new wireless telecommunications facility within one hundred fifty (150) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.

3. The Board of Adjustment may not deny the application on the basis that a competing provider already provides coverage.

CHAPTER 4.23 RIGHT TO FARM EASEMENT

The following easement is to be utilized as a requirement for farm and non-farm residential development within the Agricultural and Planned Residential Districts.

Prepared by:
Clark County Administrative Official (or by Grantor or Grantor's Attorney)
Administrative Official Address (or Grantor's or Grantor's Attorney's address)
Clark, SD 57225 (or Grantor's or Grantor's Attorney's city)

RIGHT TO FARM EASEMENT

1. Purpose. This easement is required in the Agricultural District or Planned Residential District.

2. Easement.

   ("Grantors") are the owners of real property described as follows:
   _____
   _____

   In accordance with the conditions set forth in the decision of Clark County, dated _____ 20____, approving a permit for a dwelling on the above described property, and in consideration of such approval, Grantors grant to the owners of all property adjacent to the above described property, a perpetual nonexclusive easement as follows:

   The Grantors, their heirs, successors, and assigns acknowledge

   1. That the property for which they are applying for a Clark County residential building permit is located within or near agriculturally zoned land.

   2. That the Grantors may be subject to inconvenience or discomfort from lawful agricultural uses permitted by Clark County zoning regulations. Agricultural uses permitted by Clark County may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops and livestock production, ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal manure; the operation of machinery, the application of irrigation water, and other accepted and customary agricultural activities conducted in accordance with Federal, State and County laws. These activities ordinarily and necessarily produce discomforts and inconveniences which may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes.

3. That such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

4. That there is the potential for Clark County approved agricultural uses to expand.

5. That this Right to Farm Easement is a requirement for obtaining a Clark County building permit for residential development and may not be removed from the record title without consent of the Clark County Board of Adjustment.

Grantors, their heirs, successors or assigns hereby waive all common law rights to object to normal and necessary agricultural management activities legally conducted on adjacent lands which may conflict with Grantors' use of Grantors' property for residential purposes, and Grantors hereby grant a Right to Farm easement to adjacent property owners for such activities.

Nothing in this Right to Farm easement shall grant a right to adjacent property owners for ingress or egress upon or across the described property. Nothing in this Right to Farm easement shall prohibit or otherwise restrict the Grantors from enforcing or seeking enforcement of statutes or regulations of governmental agencies for activities conducted on adjacent properties.
This Right to Farm easement is appurtenant to all property adjacent to the above described property and shall bind to the heirs, successors and assigns of Grantors and shall endure for the benefit of the adjoining landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third party enforcement of this easement.

IN WITNESS WHEREOF, the Grantors have executed this easement on _____, 20____.

_____
Signature, Grantor

STATE OF SOUTH DAKOTA
SS:
COUNTY OF CLARK

This instrument was acknowledged before me on _____, 20____ by _____ (Grantors).

_____Notary Public

My Commission Expires: _____

CHAPTER 4.24 CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

Section 4.24.01 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's environment. Animal manure must be controlled where it may add to air, surface

water, ground 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 zoning regulations in existence at the time of the construction of such facilities.

Section 4.24.02 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 forty-five (45) days or more during any twelve (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 (2) 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 if they use a common area or system for land application 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	10 to 299	(Potential water pollution hazard)
Class E	10 to 299	(No pollution hazard)

Section 4.24.03 Animal Units

Table 4.24-1 denotes animal species and number of a species required to equal five hundred (500), one thousand (1,000) and two thousand (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' manure production.

EQUIVALENT NUMBER OF A SPECIES TO EQUAL TABLE

ANIMAL SPECIES	500 AU	1,000 AU	2,000 AU	ANIMAL UNIT EQUIVALENT SPECIES/AU
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Cow/Calf Pair	417 hd	833 hd	1,666 hd	1.2
Mature Dairy Cattle	350 hd	700 hd	1,400 hd	1.43
Mature Dairy Cow under 1,000 pounds	500 hd	1,000 hd	2,000 hd	1.0
Heifer	714 hd	1,428 hd	2,856 hd	0.7
Dairy Calf	2,500 hd	5,000 hd	10,000 hd	0.2
Finisher Swine (over 300 lbs)	1,250 hd	2,500 hd	5,000 hd	0.4
Finisher Swine (55 to 300 lbs)	1,667 hd	3,333 hd	6,666 hd	0.3
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	135 hd	270 hd	540 hd	3.7
Swine Production Unit (Sows Breeding, Gestating & Farrowing)	1,064 hd	2,130 hd	4,260 hd	0.47
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep and lambs	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys (over 5 lbs)	27,800 hd	55,000 hd	110,000 hd	0.018
Turkeys (under 5 lbs)	100,000 hd	200,000 hd	400,000 hd	0.005
Laying Hens and Broilers (continuous overflow watering in facility)	50,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	15,150 hd	30,000 hd	60,000 hd	0.033
Chicken over 5 lbs (dry manure system)	100,000 hd	200,000 hd	400,000 hd	0.005
Chicken under 5 lbs (dry manure system)	166,667 hd	333,333 hd	666,666 hd	0.003
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

Numbers above represent actual “Head Count’ of animal species

Section 4.24.04 Concentrated Animal Feeding Operation Permit Requirements.

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

1. A new Concentrated Animal Feeding Operation is proposed where one does not exist.

2. An expansion of a concentrated animal feeding operation is proposed that exceeds the number of animal units allowed by an existing county-issued permit.

3. An expansion in the number of animal units of a concentrated animal feeding operation, without a county-issued permit, that existed prior to March 18, 1997, which would result in the creation of either a new Class A, B, C, or D concentrated animal feeding operation.

4. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.

5. A signed complaint has been received by the County Administrative Official 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.

6. A change in ownership of any concentrated animal feeding operation with a history of pollution documented by the County Zoning Officer or State of South Dakota.

Section 4.24.05 Concentrated Animal Feeding Operation Control Requirements.

1. No Significant Contribution of Pollution

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

2. State General Permit

Class A 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-issued permit for a concentrated animal feeding operation may be approved conditioned on receiving a State General Permit.

It shall be at the discretion of the Board of Adjustment to require a State General Permit for Class C and Class D Concentrated Animal Feeding Operations. At a minimum Class C and D Concentrated Animal Feeding Operations may be required to obtain a State General Permit if the following occur:

a. If an earthen storage basin or lagoon is used for manure storage which is not prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer.

b. The Board of Adjustment decides conditions require a State General Permit.

c. Class A & B Concentrated Animal Feeding Operations may be required to construct concrete storage or tanks for manure containment where earthen holding ponds are deemed inappropriate due to environmental concerns. Environmental concerns include potential impact on air, surface or ground water quality. The Board of Adjustment shall base the decision to require concrete storage or tanks upon the following:

i. Topography, prevailing wind direction and potential odor impact on adjoining residents;

ii. Proposed technology to be used to minimize odor production and travel;

iii. Potential water pollution due to site location as it pertains to drainage.

3. Nutrient Management Plan.

Class A and B Concentrated Animal Feeding Operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe land application of manure and protection of surface and ground water. The South Dakota Department of Environment & Natural Resources must approve the plan prior to the issuance of the County Conditional Use Permit and land application of any manure. 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 application site are secondary to the proper and safe land application of the 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 & Natural Resources. The generic nutrient management plan must be based on application of nitrogen and phosphorus. Nitrogen and phosphorus may be applied up to the amounts indicated by soil or crop nitrogen test results that are necessary to obtain a realistic crop yield. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of this general permit. 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 nutrient management plan.

The plan must comply with County Manure Application Setbacks.

Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure. All lease agreements for manure application must be kept up-to-date and if agreements are not renewed new land must be found to replace acres.

4. Manure Management and Operation Plan

Classes A, and B Concentrated Animal Feeding Operations shall submit a Manure Management and Operation Plan. Class C & D may be required to submit a plan if an earthen storage basin or lagoon is used for manure storage of if the Board of Adjustment decides conditions require a State permit.

a. The Plan must include:

   i. The location and specifics of proposed animal manure management facilities.

   ii. The operation procedures and maintenance of animal manure management facilities.

   iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Animal manure management treatment facilities will require inspection by an engineer and as-built plans to be submitted to the County Administrative Official.

   iv. Animal manure shall not be stored longer than two (2) years unless approved by Board of Adjustment.

   v. Manure containment structures shall provide for a minimum design volume as required by South Dakota Department of Environment and Natural Resources.

   vi. The Applicant shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed per South Dakota Department of Environment and Natural Resources standards.

b. As a condition of the permit, the Board of Adjustment may require the producer to participate in environmental training programs.

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 Board of Adjustment will review the need for control measures on a site-specific basis, taking into 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 the surface water contained from drainage areas and further 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. The County encourages the use of covers on open storage systems for liquid manure systems to reduce odor production.

h. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

i. The county may require manure to be immediately incorporated or injected.

j. The County encourages the storage of solid manure in containment areas having good drainage to minimize odor production.

k. The County encourages the use of bio-filters on enclosed concentrated animal feeding operation barns/structures to reduce odor production.

6. Setbacks and Separation Distance for New Concentrated Animal Feeding Operations and those Existing Concentrated Animal Feeding operations without a County-issued permit expanding into a new Class A, B, C, or D, Concentrated animal Feeding Operations after (date of adoption of new ordinance). See Table 4.24-2 *(Amended: Ord. 01-19; October 1, 2019)*

Table 4.24-2
Separation Distances and Setbacks[1, 4]

	Number of Animal Units	10 to 299 Animal Units	300 to 999 Animal Units	1,000 to 1,999 Animal Units	2,000 to 4,999 Animal Units	5,000 to 9,999 Animal Units	Over 10,000 Animal Units
SEPARATION DISTANCES	Established Residences [2,3]	1,320 feet	2,640 feet			3,960 feet	5,280 feet
	Churches, Businesses and Commercially Zoned Areas[3]	1,320 feet	2,640 feet			3,960 feet	5,280 feet
	Incorporated Municipality Limits, Carpenter, & Crocker[3]	2,640 feet	5,280 feet		10,560 feet plus 440 feet for each additional 1,000 animal units over 2,000 animal units	11,800 feet plus 440 feet for each additional 1,000 animal units over 5,000 animal units	14,000 feet plus 440 feet for each additional 1,000 animal units over 10,000 animal units
	Federal, State, County, and Township Right-of-Way	200 feet	330 feet				
SETBACKS	Established Private Water Well[5,6]	250 feet					
	Existing Public Water Well	500 feet		1,000 feet			
	Lakes and Streams classified as Fisheries as identified by the State	200 feet			500 feet		
Designated Floodplain		PROHIBITED					

[1] Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the suggested minimum setback required for each operation if said operations were treated as individual operations.

[2] Established residences do not include any residence established after March 18, 1997 and less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.

[3] The Board of Adjustment may allow a setback of less than the minimum required provided a written waiver by the entity deriving the benefit of the setback is filed with the application.

[4] The Board of Adjustment may utilize Section 4.24.05.7 to increase or decrease the setbacks and separation distances.

[5] Established private water wells refer to wells used as a source of potable water for human consumption one (1) year prior to application date for the proposed CAFO or expansion.

[6] Setback does not apply to the wells of the CAFO operator.

7. Separation Distance Requirements Exemptions to Separation and/or Setback Distance Requirements *(Amended: Ord. 01-19; October 1, 2019)*

a. A concentrated animal feeding operation that satisfies any of the criteria below shall be exempt from the applicable separation or setback distance with no variance required by the Board of Adjustment.

i. A Concentrated Animal Feeding Operation which is expanded or constructed less than the suggested setback from a right-of-way (ROW) provided approval of the applicable road authority is submitted to the zoning officer prior to issuance of any applicable building permits or stocking of the Concentrated Animal Feeding Operation if no building permits are required. County Highway Department (County right-of-way), Township Board of Supervisors (Township right-of-way), or State Department of Transportation (state right-of-way) are authorized to provide approval on behalf of the respective road authority. Other entities may provide approval on behalf of the listed entities if documentation of their authority to grant such approval is submitted.

ii. All Concentrated Animal Feeding Operations in operation prior to January 1, 2019 which do not comply with the suggested minimum setback/separation requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from suggested separation distance:

    a. Example 1: A Class E CAFO expands to a Class A, B, or C CAFO.

    b. Example 2: A Class C CAFO expands to a Class A or B CAFO.

    c. Example 3: A Class B CAFO expands to a Class A CAFO.

    d. Example 4: A Class A CAFO expands by 10% of the number of animal units

    Provided, that the expansion does not further encroach the setback/separation distance existing on January 1, 2019. See Figure 4.24.5.7.

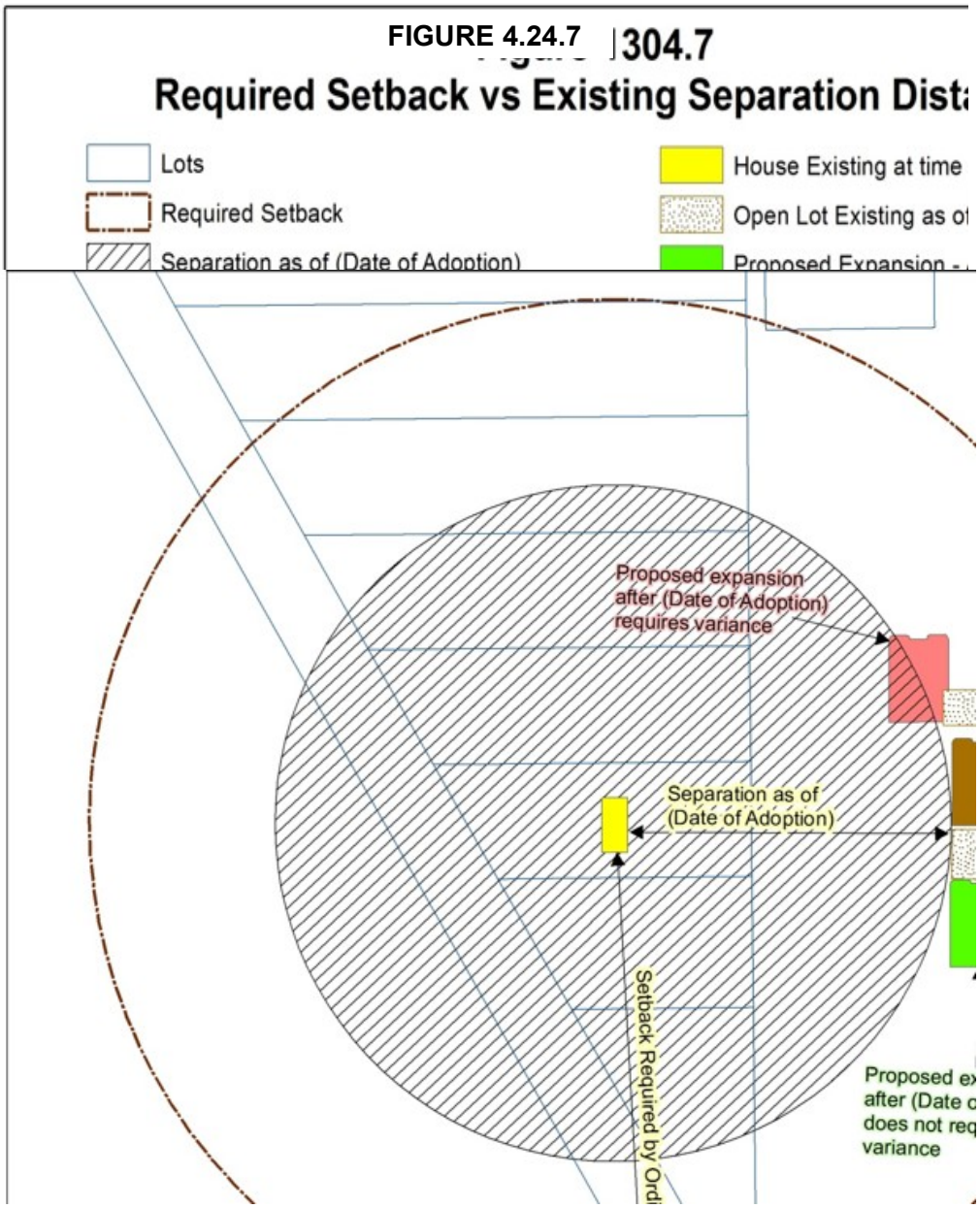
iii. A Concentrated Animal Feeding Operation which is expanded or constructed, if the title holder of the land benefitting from the distance separation requirement executes a written waiver with the title holder of the land where the Concentrated Animal Feeding Operation is located, under such terms and conditions which the parties may negotiate. The title holder of the land benefitting from the distance separation requirement is the residence, commercial enterprise, individual or individuals, governmental entity, religious institution, or educational institution from which separation is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

iv. A Concentrated Animal Feeding Operation which is constructed or expanded closer than the suggested setback/separation distance from the corporate limits of a community, if the incorporated community approves a written waiver.

v. A Concentrated Animal Feeding Operation which existed prior to the creation of a residence, educational institution, commercial enterprise, religious institution, incorporated community, if the residence, educational institution, commercial enterprise or religious institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the concentrated animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.

vi. Any Concentrated Animal Feeding Operation in operation as of January 1, 2019 which does not comply with the suggested minimum setback/separation distance requirements is allowed to be replaced in the event of a calamity without obtaining a variance. Provided, that the replacement does not further encroach the setback/separation distance existing at the time of the calamity. See Figure 4.24.7.

FIGURE 4.24.7



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. In granting a conditional use, the Board of Adjustment may determine one (1) or more of the following considerations warrant an increase in setbacks and separation distances.

i. Considerations To Increase Suggested Setbacks And Separation Distances

   a. A concentration of Concentrated Animal Feeding Operations in the area exists or would occur which may pose an air or water quality concern.

   b. Due to topography and/or prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality. The South Dakota Odor Footprint Tool may be utilized to determine the need to increase setback and/or separation requirements.

   c. A Concentrated Animal Feeding Operation is in excess of five thousand (5,000) animal units.

   d. Review of past management practices and proposed improvements to manure handling facilities.

ii. In granting a conditional use, the Board of Adjustment may determine one (1) or more of the following considerations warrant a decrease in setbacks and separation distances

      a. Public input relating to the setback or separation distance requested;

      b. Site specific review dealing with drainage, topography, and wind direction;

      c. Review of the operation of the Concentrated Animal Feeding Operation as it pertains to the type of manure handling system and manure application methods to be used would not require conformance with suggested setback and separation distances as outlined herein;

      d. An existing Concentrated Animal Feeding Operation proposes to expand but does not meet suggested setback or separation distances, the Board of Adjustment may reduce suggested setbacks and separation distances after review of past management practices and proposed improvements to manure handling facilities;

      e. Due to the type of manure handling and management of the CAFO little or no impact on adjacent property is expected. The use of Bio-filters, lagoon covers, and/or methane digesters are examples of improvements which may result in the reduction of recommended setbacks and separation distances. The South Dakota Odor Footprint Tool may be utilized to determine the need to decrease setback and/or separation requirements;

      f. Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected. The South Dakota Odor Footprint Tool may be utilized to determine the need to decrease setback and/or separation requirements;

g. By limiting the proposed expansion to specific number of animal units no adverse impacts are expected. The South Dakota Odor Footprint Tool may be utilized to determine the need to decrease setback and/or separation requirements;

9. Standards for Concentrated Animal Feeding Operations *(Amended: Ordinance 01-19)*

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

b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.

c. Conditional use permits for concentrated Animal Feeding Operations shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.

d. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has or had 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 Administrative Official and signed by both the applicant and the Chairperson of the Board of Adjustment. The letter of assurances will be prepared by the Administrative Official and signed by both the applicant and the Chairperson. The permit for the Concentrated Animal Feeding Operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of the regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. Permit applicants will be notified by registered mail and a hearing before the Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations. Permits and letters of assurances will be reviewed on an annual basis for compliance.

f. As a condition of the permit, the County Board of Adjustment may require the applicant/operator to compensate townships and/or the County for excessive wear or damage to roads as a result of manure transportation.

10. Information Required for Class A, and B Concentrated Animal Feeding Operation Permit.

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

b. Legal descriptions of site and site plan.

c. Number and type of animals.

d. Documentation of a South Dakota Department of Environment and Natural Resources approved nutrient management plan.

e. Documentation of a South Dakota Department of Environment and Natural Resources approved 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. Documentation of approved General Permit from South Dakota Department of Environment & Natural Resources.

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

j. Notification of public water supply officials.

k. Notification, by certified mail, of all adjoining landowners within one-mile of the proposed site.

l. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.

m. Any other information as contained in the application and requested by the County Administrative Official.

11. Information Required for Class C, D, and E Concentrated Animal Feeding Operation 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 if required.

e. Manure management and operation plan if required.

f. Management plan for fly and odor control.

g. Information on ability to meet designated setback requirements, including site plan to scale.

h. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.

i. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.

j. Notification of whoever maintains the access road (township, county and state). Notification of public water supply officials.

k. Any other information as contained in the application and requested by the County Administrative Official.

Section 4.24.06: Accessory Agricultural Housing (*Amended: Ord. 05-20; Adopted 06/02/20*)

1. Accessory Agricultural Housing is a permitted accessory use to Class A Concentrated Animal Feeding Operations.

2. Accessory Agricultural Housing must be approved by the Board of Adjustment.

   a. Any Class A Concentrated Animal Feeding Operation, permitted after July 1st, 2020 is required to submit a request for accessory agricultural housing at the time of the initial Concentrated Animal Feeding Operation application.

   b. Any Class A Concentrated Animal Feeding Operation, permitted before July 1st, 2020 may submit a request for Accessory Agricultural Housing if such request is made prior to July 1st, 2021.

3. Accessory Agricultural Housing shall be located within the same section of land as the permitted Class A Concentrated Animal Feeding Operation, provided the property is owned by the permit-holder.

4. Minimum lot area shall consist of at least two (2) acres per accessory agricultural housing dwelling, including the residence of the agricultural employer if on the same lot.

5. Accessory agricultural housing shall be in accordance with the following table:

Number of Animal Units	Maximum Number of Dwellings	Maximum number of persons in Accessory Agricultural Housing
2,000 to 5,999 AU's	1	18
6,000 to 8,999 AU's	2	27
9,000 to 12,999 AU's	3	39
Over 13,000 AU's	4	48

6. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with the most recently adopted version of the International Building Code in accordance with SDCL-11-10-6 for any dwelling structure with two (2) or more dwelling units.

7. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with any South Dakota Administrative Rules 74:53.

8. The dwelling/shared dwelling shall be removed or renovated into a single-family dwelling in the event the permit for the concentrated animal feeding operation becomes void.

9. In the event the accessory agricultural housing dwelling/shared dwelling remains unoccupied for a period of one (1) year; or is not used in conformance with this Chapter, the accessory agricultural housing dwelling/shared dwelling shall be removed or with permission of the Board of Adjustment may be used for any use accessory to the Concentrated Animal Feeding Operation.

CHAPTER 4.25. SOIL EROSION AND SEDIMENTATION CONTROL.

Before issuing a building permit, the Administrative Official may require a filing of a certificate of intent to adhere to the county soil loss standards developed by the Clark County Conservation District. The Administrative Official shall consult the Clark County Soil Erosion and Sedimentation Control Ordinance that was developed pursuant to SDCL 38-8A before determining if the proposed activity requires such a certificate of intent.

If a complaint is received regarding a violation of the county soil loss standards caused by non-agricultural activity, the Administrative Official shall undertake those actions outlined in the Clark County Soil Erosion and Sedimentation Control Ordinance in order to bring about compliance.

CHAPTER 4.26. ADULT USE REGULATIONS.

In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

Section 4.26.01 Setbacks.

1. None of the following uses may be established, operated or maintained within five hundred (500) feet of a residence, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park.

    a. Adult bookstore.
    b. Adult motion picture theater.

    c. Adult photo studio.

    d. Adult Entertainment Cabaret

    e. Any use which has as a part of its operation adult entertainment or amusement including but not limited to, a restaurant or eating place, a bar, lounge or tavern.

    f. Any use intended to provide adult amusement or entertainment.

2. Not more than two of the following uses may be established, operated or maintained within one thousand (1,000) feet of each other:

    a. Adult bookstore.

    b. Adult motion picture theater.

    c. Adult photo studio.

    d. Adult entertainment cabaret

e. Any use which has as a part of its operation adult entertainment or amusement including but not limited to, a restaurant or eating place, a bar, lounge or tavern.

f. Any use intended to provide adult amusement or entertainment.

g. A bar.

h. A liquor store.

3. The one thousand (1,000)-foot restriction provided for in 4.26.01.2 above may be waived and a conditional use permit issued upon proper application if the County finds:

a. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed.

b. That the proposed use will not enlarge or encourage the development of a 'skid row' area.

c. That all applicable regulations will be observed.

Section 4.26.02 Required License. It shall be unlawful for any person to engage in the business of operating an adult use in Clark County without first having obtained a license from the Clark County Board of County Commissioners.

Section 4.26.02.01 Application; Standards for Issuance.

1. Application for an adult use license shall be made in writing and shall state the following:

a. The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.
b. The location of the adult use business.

c. The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.

d. A statement by the applicant that he is familiar with the provisions of this article and is in compliance with them.

e. A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.

f. A statement that no manager or principal operating the business has been convicted of any offense of prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use in any other community revoked within the last two (2) years.

2. Within fifteen (15) days after receipt of an application for an adult use license, the Clark County Board of County Commissioners shall investigate the information contained in the application and shall determine the following:

a. That the premises designated by the applicant as the location of the business are in full compliance with all applicable ordinances of Clark County, including zoning ordinances.

b. That the premises and each manager and employee comply with the provisions of Section 4.26.02.1 as such provisions apply to them.

c. That the applicant, each manager and each employee are over twenty-one (21) years of age.

d. That no manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use revoked within the last two (2) years.

3. If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted and each manager and employee, if applicable, with each of the requirements established in subsections (1) and (2) of this section, and with the conditions and regulations set forth in Section 4.26.03 within fifteen (15) days after completion of such investigation, the Clark County Board of County Commissioners shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.

4. If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (1) of this section, and with the conditions and regulations set forth in Section 4.26.03 within fifteen (15) days after completion of such investigation, the Clark County Board of County Commissioners shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the County with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

Section 4.26.03 Conditions & Regulations Governing Operation; Violation; Penalty.

1. The following regulations shall govern and control the business of operating an adult use in Clark County:

a. No person under twenty-one (21) years of age shall be allowed on the licensed premises.

b. At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.

c. Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the County Commissioners written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five (5) regular business days, provide the information concerning the new manager which is required in Section 4.26.02.

d. No adult use shall be located on-premises for which a license to sell alcoholic liquor has been issued, and no alcoholic liquor shall be permitted on such premises.

e. No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.

f. No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the South Dakota Compiled Statutes.

g. No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.

h. No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.

2. In addition to the requirements established in Section 4.26.03.1, the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on-premises by use of motion picture devices or other such operations means:

   a. All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure.

   b. There shall be no aperture whatsoever in any wall or partition between viewing areas.

   c. Each viewing area shall be lighted at a minimum level of ten (10) foot candles in all parts thereof.

3. In addition to the requirements established in Section (1) of this section, the following regulations shall govern and control the operation of an adult entertainment cabaret:

   a. All performers shall be at least twenty-one (21) years of age.

   b. All performances, exhibitions or displays shall take place on a platform raised at least two feet from the level of the floor, and located at least ten (10) feet from any patron.

   c. No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.

   d. No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.

4. It shall be unlawful for any person licensed to engage in the business of operating an adult use within the County to fail to comply with the conditions and regulations set forth in subsections 4.26.01, 4.26.02, and/or 4.26.03 of this section as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.

5. Any person convicted of a violation of this section shall be subject to a fine pursuant to Section 1.02.03 of this Ordinance.

Section 4.26.04 Suspension or Revocation. Nothing in the terms of this article shall preclude the right of the Clark County Board of County Commissioners to suspend or revoke the license of the licensee, as follows:

1. The Clark County Board of County Commissioners may temporarily suspend any license issued under the terms of this article when he has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the seven (7)-day period, and further provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.

2. The Clark County Board of County Commissioners may suspend or revoke any license issued under the terms of this article upon ten (10) days notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the Clark County Board of County Commissioners determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

CHAPTER 4.27 BED AND BREAKFAST REGULATIONS.

1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor. Preference will be given to structures with historic or other unique qualities.

2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.

3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than two (2) square foot in area.

4. Such uses shall be an incidental use with an owner occupied principal dwelling structure provided that not more than four bedrooms in such dwelling structure shall be used for such purpose.

5. Off-street parking requirements shall be one space per guestroom and shall be in addition to parking requirements for the principal use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property.

6. The length of stay shall not exceed fourteen (14) days during any one hundred twenty-- (120) day consecutive period.

7. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.

8. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.

CHAPTER 4.28 HOME OCCUPATION REGULATIONS.

1. No person other than members of the family residing on the premises shall be engaged in such occupation.

2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use of residential purposes by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.

3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not to exceed two (2) square feet in area, non-illuminated.

4. No home occupation shall be conducted in any accessory building.

5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such home occupation shall be provided off the street and other than in a required front yard.

6. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

7. There is no commodity sold upon the premises, except that which is prepared on the premises in connection with such occupation or activity.

CHAPTER 4.29. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS). The regulations regarding private wind energy conversion systems (hereafter referred to as pwecs) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.

2. Setback Requirements. 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 hundred ten percent (110%) the system height, unless written permission is granted by the affected entity.

3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.

4. Tower Access. Climbing access to the PWECS tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.

5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.

6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.

7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

CHAPTER 4.30. SANITARY LANDFILLS, RUBBLE SITES, COMPOSTING SITES, WASTE TIRE SITES, AND RESTRICTED USE SITES REQUIREMENTS.

1. The site meets the requirements of the State Department of Environment and Natural Resources.

2. A site plan is provided indicating the following information:

    a. Present topography, soil types, depth to groundwater.

    b. Location of existing water drainage, existing buildings, existing shelterbelts.

    c. Identification of roads leading to the site.

    d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.

    e. Proposed monitoring wells, etc.

    f. A minimum of one thousand (1,000) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest residence; excluding: the residence of the landfill operator.

CHAPTER 4.31. DOMESTIC SANITARY SEWER TREATMENT PLANT/FACILITY REQUIREMENTS.

1. The site meets the requirements of the State Department of Environment and Natural Resources.

2. A site plan is provided indicating the following information:

    a. Present topography, soil types, and depth to groundwater.

    b. Location of existing water drainage, existing buildings, existing shelterbelts.

    c. Identification of roads leading to the site.

    d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.

    e. Proposed monitoring wells, etc.

    f. No sewage treatment plant/facility will be allowed within one thousand three hundred twenty (1,320) feet from the property line of the sewage treatment plant/facility to the nearest residence; excluding: the residence of the sewage treatment plant/facility operator

CHAPTER 4.32. JUNKYARDS/SALVAGE YARDS REQUIREMENTS.

1. Storage for junkyards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.

2. Junkyards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
3. No junkyards will be allowed within one thousand (1,000) feet from the property line of the junkyard/salvage yard to the nearest residence; excluding: the residence of the junkyard/salvage yard operator.

4. All junkyards must have a minimum lot of ten (10) acres.

5. These are the minimum requirements. The Board of Adjustment may assign other restrictions deemed appropriate.

CHAPTER 4.33. SHORELINE ALTERATIONS, FILLING, GRADING, LAGOONING AND DREDGING. These regulations shall apply to the NR District. These regulations are deemed necessary along the shores of natural waters to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland.

1. Removal of Shore Cover

   Tree and shrub cutting in a strip paralleling the shoreline and extending twenty-five (25) feet inland from all points along the high water mark, or as determined by the Board of Adjustment shall be limited in accordance with the following provisions:

   a. Cutting shall leave sufficient cover to screen cars, dwellings, and accessory structures, except boathouses, as seen from the water, to preserve natural beauty and to control erosion.

   b. Trees and natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

   c. The removal of trees and natural shrubbery and its replacement shall require the granting of a permit by the Administrative Official. Application for such permit shall be accompanied by a plan showing the work to be accomplished. The granting of such permit shall be conditional upon a contract requiring the applicant to give to the Administrative Official, within one (1) year after the date of grant, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

2. Filling, Grading, Lagooning and Dredging

   a. Filling, grading, lagooning or dredging which would result in substantial detriment to natural waters by reason of erosion, sedimentation or impairment of fish and aquatic life is prohibited.

   b. A permit shall be required for any filling or grading which is within three hundred (300) feet horizontal distance of a natural body of water and which has surface drainage toward the water and in which there is:

      i. Filling of more than five hundred (500) square feet of any wetland which is contiguous to the water;

      ii. Filling or grading on all slopes of twenty percent (20%) or more. (This does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.)

      iii. Where more than ten thousand (10,000) square feet of the bank of a natural body of water is exposed by grading.

      iv. A permit shall be required before constructing, dredging or commencing work on an artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within three hundred (300) feet of the high water mark, or from a point as determined by the Board of Adjustment, of a natural body of water or where the purpose is the ultimate connection with such body of water. This requirement does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.

c. A permit is not required for soil conservation practices, approved by the Natural Resources Conservation Service (NRCS), such as terraces, run-off diversions and grassed waterways which are used for sediment retardation.

d. Building permits shall be required for all retaining walls or structures.

e. Issuance of the permit may, at the request of the Administrative Official, include review from the Corps of Engineers, US Fish and Wildlife and/or any other applicable Federal, State or Local agencies.

CHAPTER 4.34. TARGET RANGE REQUIREMENTS.

Section 4.34.01 Conditional Use Permits.

1. No Range shall be established within the Clark County without first obtaining a Conditional Use Permit.

Section 4.34.02 General Regulations for All Ranges.

1. No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment):

    a. A safety plan shall be submitted along with the application. The plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum the safety plan must state:

        i. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.

        ii. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.

        iii. The policy for the site for the use of alcohol.

        iv. Controlled substances are prohibited on the site.

        v. Rules for the safe handling of weapons.

        vi. A building and grounds maintenance plan.

        vii. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program development, range supervision and other items such as sign-in procedures.

        viii. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.

ix. The penalties that are in force for violations of the safety plan.

x. The method used to control trespass or unauthorized access to the range or preserve.

b. On an annual basis, applicants must provide proof of insurance.

c. Applicants shall continuously keep the City informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.

d. All Ranges must control entrance to their sites.

e. No alcohol licenses shall be granted to any site which has a Range.

f. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

Section 4.34.03 Special Regulations for Ranges.

1. Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:

   a. A survey delineating the layout of all individual Ranges.

   b. Setbacks to all property lines.

   c. Method of containing projectiles within each individual range (such as earthen berms or other method).

   d. Methods to be employed to reduce noise, including impulse noise.

      i. The maximum noise that may escape the range into areas not controlled by the owner is 125 dB.

   e. All Ranges shall be designed using the NRA Range Source Book as a guideline.

Section 4.34.04 Application Requirements.

1. Each application for a Range shall, at a minimum, include the following:

   a. A description of specific activities to be conducted on-site.

   b. The hours and days of operation.

   c. The maximum number of people using the facility at any one time.

   d. A plan, if applicable, for collecting and recycling used shot.

   e. A delineation of any special events, if any.

f. A sewage, water and solid waste management plan.

Section 4.34.05 Area Regulations.

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

2. Minimum Front Yard: One hundred fifty (150) feet.

3. Minimum Side Yard: Three hundred (300) feet.

4. Back of the Range Setback: A minimum of one thousand (1000) feet from any buildings and/or roads.

5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.

6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.

7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.

8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.

Section 4.34.06 Miscellaneous Regulations.

1. In the event that any provision of this Chapter or the Conditional Use Permit is violated, or the County otherwise reasonably believes that the health, safety or general welfare of the public is endangered by the use, or if the County reasonably believes that a public nuisance has been created, then, upon ten (10) days written notice, the County may originate action to either modify or cancel any Conditional Use Permit.

CHAPTER 4.35. AUTOMOTIVE TOW BUSINESS/IMPOUND LOT REQUIREMENTS.

Impound lots, incident to the operation of an automotive tow business, may be established within districts pursuant to the zoning laws of the County for the storage of vehicles under the following conditions and requirements:

1. The area used for an impound lot must be free of debris and regularly maintained.

2. The area used for an impound lot must be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet; if the impound lot abuts or is adjacent to a residential use, that section abutting or adjacent to the residential use shall be completely enclosed with a fence or natural vegetation having a minimum height of six (6) feet and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from the residential use.

3. An impound lot may be used for the temporary storage of vehicles from which major parts have not been removed, and which are capable of being made fully operable.

4. An impound lot may be used for the storage of not more than twenty (20) vehicles at any one time.

5. Vehicle parts shall not be stored within an impound lot.

6. Vehicle parts shall not be taken or sold from vehicles stored within an impound lot.

7. Vehicles stored in an impound lot must be parked neatly in rows and meet or exceed all County, State and Federal laws governing the same.

8. The Board of Adjustment may impose other conditions to ensure that the use of property during automotive tow business/impound lot activities is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 4.36 PIPELINES.

Any pipeline requiring South Dakota Public Utilities Commission approval shall also require a conditional use permit. A conditional use permit shall be issued by the Board of Adjustment if the applicant adheres to all requirements of the South Dakota Public Utilities Commission which may include various Clark County recommendations regarding such issues such as but not limited to right-of-way, haul roads, building permits, etc.

CHAPTER 4.37 WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION COVENANT.

The following covenant is to be utilized as required for farm and non-farm residential development in the Agricultural and Planned Development Zoning Districts which are located within one-half mile of an existing concentrated animal feeding operation in the Agricultural Zoning District

Prepared by:
Clark County Administrative Official (or by Grantor or Grantor's Attorney)
Administrative Official Address (or Grantor's or Grantor's Attorney's address)
Clark, SD 57225 (or Grantor's or Grantor's Attorney's city)

WAIVER OF SETBACK FROM
EXISTING CONCENTRATED ANIMAL FEEDING OPERATION COVENANT

The following covenant is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within one-half (1/2) mile of an existing Concentrated Animal Feeding Operation. The covenant shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. (See 2.04.06)

1. Purpose. This covenant is required for any dwelling to be constructed within 0.8 mile (4,224 feet) of an existing concentrated animal feeding operation as defined by the Clark County Zoning Ordinance.

2. Waiver:

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

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within 0.8 mile (4,224 feet) of an existing concentrated animal feeding operation. This covenant waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Clark County Zoning Ordinance.

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

IN WITNESS WHEREOF, _____, 20__

Grantors (Print) _____

Grantors (Signature) _____

STATE OF SOUTH DAKOTA
SS:
COUNTY OF CLARK
This instrument was acknowledged before me on _____, 20____ by _____ (Grantors).

_____Notary Public My Commission Expires: _____

ARTICLE V
DEFINITIONS

Section 5.01. For the purpose of this ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure," and the word "shall" is mandatory and 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. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

Abandoned Well. A water producing well which is no longer regularly used and maintained, or is in such disrepair that one of the two (2) following criteria are met:

1) Groundwater can no longer be obtained from it; or
2) It represents a direct conduit for surface contaminants to enter the aquifer/ground water source.

Accessory Agricultural Housing. Any dwelling, pursuant to Chapter 4.24 occupied by employees of a Concentrated Animal Feeding Operation which has been issued a Conditional Use permit by Clark County. (*Amended: Ord. 05-20; Adopted 06/02/20*)

Accessory Buildings and Uses. A subordinate use which is incidental to that of the main building or to the main use of the premises.

Administrative Official. The individual(s) appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

Adult. A person, one who has reached the age of eighteen (18).

Adult Amusement or Entertainment. Amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas' or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

Adult Bookstores. An establishment having, as a substantial portion of its stock in trade, books, magazines, films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished by their emphasis on matter depicting, describing or relating to specified Sexual Activities or Specified Anatomical Areas as such terms are defined in this section, or an establishment with a segment or section devoted to the sale or display of such material. Adult bookstores may alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

Adult Entertainment Cabaret. Means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition,

performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas, as herein defined.

Adult Motion Picture Theater. An enclosed building, regardless of its seating capacity, which is used to present for public view on the premises, films, movies, previews, trailers or advertisements which are distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as herein defined.

Adult Photo Studio. An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing "specified anatomical areas", as herein defined.

Adult Use. The term "adult use" shall include adult entertainment cabaret, adult bookstores, adult motion picture theaters, and adult photo studios as herein defined.

Agricultural sales and service. The use of land, structures or buildings for the purposes of selling commodities (including feed, seed, fertilizer, herbicide, and pesticide) and services that are necessary to support agricultural operations but does not include any manufacturing, assembling, processing, repair, or construction use. (*Amended: Ord 02-22; Adopted 12/01/22*)

Agriculture. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition shall not include intensive agricultural activities such as concentrated animal feeding operations and/or agribusiness activities.

Airport. A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

Air Transportation Facility. A transportation facility consisting of the means and equipment for the movement of passengers or goods by air.

Alley. A narrow service way providing a secondary means of access to abutting property.

Alter or alteration. Any change, addition or modification in construction or occupancy.

Animal Feeding Operation Structure. An anaerobic lagoon, formed manure storage structure, egg wash water storage structure, earthen manure storage basin or confinement building.

Animal Husbandry. The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

Antenna Support Structure. Any building or structure other than a tower which can be used for location of telecommunications facilities.

Antique Car. An antique car must be at least twenty-five (25) years of age or older.

Applicant. An individual, a corporation, a group of individuals, partnership, joint venture, owners, or a business who request or seeks application approval under the terms of this ordinance.

Application. The process by which the owner of a parcel of land within Clark County submits a request to use. develop, construct, build, modify upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to Clark County concerning such a request.

Automotive Tow Business. A business engaged in removing or delivering to public or private property a motor vehicle by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site and shall comply with Chapter 4.35.

Bar/Tavern. An establishment that is licensed to sell alcoholic beverages by the drink.

Basement. A basement has more than one-half (½) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes.

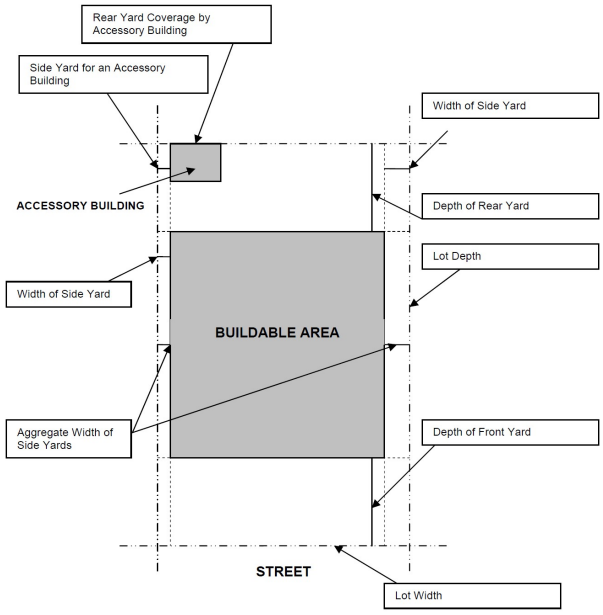
Bed and Breakfast (B & B's). A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties and shall comply with Chapter 4.27.

Best Management Practices. Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.

Board of County Commissioners. The governing body of Clark County.

Breakaway Wall. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Buildable Area. The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (See illustration below).



Building. The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection of persons, animals, or property.

Buildings, Height of. The vertical distance from the grade to the peak (highest point of the structure).

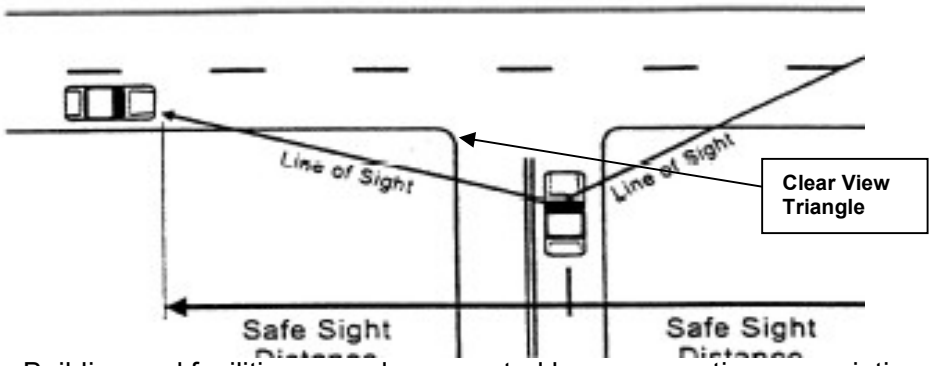
Chemigation. The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.

Church. A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

Class V Injection Well. A conduit though which potentially contaminated but generally non-hazardous fluids can move below land surface into or above an aquifer. The types of primary concern in Clark County are 5W20--industrial process water and waste disposal wells and 5X28 automobile service station disposal wells. Typically, 5W20 types are commercial/ industrial facility septic tanks used to dispose of more than domestic wastewater. 5X28 types are dry wells for wastes from repair bay drains at facilities servicing internal combustion vehicles and equipment.

Clear View Triangle. A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (See illustration below).

Clear View Triangle Illustration



Club, Private. Building and facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. The structure is not available for public use or participation.

Commercial Animal Husbandry Service. A commercial operation that provides animal husbandry services.

Common Ownership. A single, corporate, cooperative, or other joint operation venture.

Comprehensive Land Use Plan. The adopted long-range plan intended to guide the growth and development of Clark County.

Concentrated Animal Feeding Operation. 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 forty-five (45) days or more during any twelve (12)-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility.

Contractor Shops and Yards. Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Conditional Use. A conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such uses is made in this zoning Ordinance. Conditional uses are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.

Contamination. The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.

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 fifty (50) mrems from the background levels at the perimeter of the mining and 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 levels established by the Federal Safe Drinking Water Act and regulations promulgated there under.

Contingency Plans. Detailed plans for control, containment, recovery and clean up of hazardous materials released during floods, fires, equipment failures, leaks and spills.

Contractor Shops and Yards. Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Convenience Store. Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

Density. The number of families, individuals, dwelling units, or housing structures per unit of land.

Development. The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.

District, Zoning. A section or sections of the County for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Domestic Sanitary Sewage Treatment Facility. Shall mean the structures equipment and processes required to collect, carry away, and treat and dispose of wastewater, industrial wastes, and or sludge.

Dredging. Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, and waterways and in underwater mining.

Dwelling. Any building, including seasonal housing structures, or a portion thereof, which contains one (1) or more rooms, with sleeping quarters and is further designed and used exclusively for residential purposes. This definition does not include manufactured homes.

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

Dwelling, Multiple-Family. A residential building occupied by two (2) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

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

Dwelling, Single-Family. A building occupied exclusively by one (1) family.

Dwelling Unit. One (1) room, or rooms, connected together, constituting a separate, independent housekeeping establishment by a single-family for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Electrical Substation. A premises which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

Eligible Building Site (Building Eligibility). A site which fulfills the requirements for the construction or placement of a building.

Engineer. Any engineer licensed by the State of South Dakota.

Erosion. The process of the gradual wearing away of land masses.

Essential Public Services. Overhead or underground electrical, gas, petroleum products (i.e. gas, natural gas, oil), steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith.

Established Residence (in reference to Chapter 4.24). A non-seasonal dwelling established before the siting of new concentrated animal feeding operation or the expansion of an existing animal feeding operation which requires a conditional use permit.

Established Private Wells (in reference to Chapter 4.24). A private well which is established and presently in use prior to the siting of a new concentrated animal feeding operation or the expansion of an existing animal feeding operation of which requires a conditional use permit.

Existing Farmstead. An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operation. The Board of Adjustment may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation within the last fifty (50) years. This may be determined by existence of buildings/foundations and/or an established shelterbelt.

2. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered in determining the suitability of the parcel for development.

3. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to March 18, 1997.

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 and 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. 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 or make magnetic, radioactive, 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.

Extended Home Occupation. A home occupation conducted outside of the residence and/or in an accessory building and shall comply with Chapter 4.19.

Facility. Something built, installed or established for a particular purpose.

Family. One (1) or more persons occupying a dwelling unit as an individual housekeeping unit all of whom are related to the head of the household within the second degree of kinship – that is, as spouse, parent, child, grandparent, grandchild, or brother or sister of the head of household, including any such relationship arising by marriage or by legal adoption – together with not more than two (2) persons not related by blood, marriage or adoption. Persons whose relationship to the head of the household is more remote than the second degree of kinship, including an aunt, uncle, niece, nephew, or cousin, shall not, by reason of that relationship alone, be counted as members of a single family. This definition shall not include foster families as regulated by the State of South Dakota. (*Amended: Ord. 04-26; Adopted 09/01/26*)

Farm. An area with or without family dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine. The term “farming” includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing

the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

Feedlot. Feedlot means pens or similar areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Feedlot is synonymous with other industry terms such as open lot pasture lot, dirt lot, or dry lot.

Fence. A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar material and is used as a barrier of some sort.

Filling. To reclaim land by filling in low-lying ground with soil.

Firearm. A gun that discharges shot, bullet or other projectile by means of an explosive, gas, compressed air, or other propellant.

Frontage. All the property on one (1) side of a street or road.

General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Clark County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

Game Lodge. A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

Garage, Private. An accessory building used for the storage of vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, trailers, and boats.

Grade. The finished grade of premises improved by a building or structure is the average natural elevation or slope of the surface of the ground within fifty (50) feet of the building or structure.

Grading. The act or method of moving soil to reshape the surface of land or a road to a desired level or grade.

Grandfather"ed" Clause. A clause in a law that allows for the continuation of an activity that was legal prior to passage of the law but would otherwise be illegal under the new law.

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 for personal enjoyment.

Grey Water. All domestic wastewater except toilet discharge water.

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

Group Home. A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

Hazardous Materials. A material which is defined in one or more of the following categories:

1. Ignitable: A gas, liquid or solid which may cause fire through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.

2. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.

3. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.

4. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.

5. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.

6. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

High Water Mark. The elevation established by the South Dakota Water Management Board pursuant to SDCL 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high water mark (elevation) solely for the purpose of the administration of this ordinance. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

Home Occupation. An occupation engaged in by the occupants of a dwelling subject to Chapter 4.28.

Horticultural services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Incorporation. A soil tillage operation following the surface application of manure which mixes the manure into the upper four (4) inches or more of soil.

Injection. The application of manure into the soil surface using equipment that discharges it beneath the surface.

Institutional Farm. Agricultural land wholly owned by a government agency, federal, state, county, or municipality, and used to grow an agricultural commodity.

Impound Lot. A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, Junkyard/salvage Yard or dismantling and shall comply with Chapter 4.32.

Junkyards/Salvage Yards. The use of more than one thousand (1,000) square feet of any land, building, or structure, for commercial purposes, where waste, discarded materials such as scrap metals, used building materials, used lumber, used glass, discarded or inoperable vehicles, paper, rags, rubber, discarded appliances, cordage, barrels, and other similar materials are stored with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Lagooning. The process of creating a shallow body of water, separated from a larger body of water.

Leaks and Spills. Any unplanned or improper discharge of a potential containment including any discharge of a hazardous material.

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

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.

Light Manufacturing. Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

Lodging House. A building or place where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, for three (3) or more persons in contradistinction to hotels open to transients.

Lot Area. The lot area is the land in square feet, within the lot line.

Lot, Buildable.

1. A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance including one (1) main building together with its accessory buildings, the open spaces and parking spaces required by this ordinance.

2. A lot which is a part of a subdivision, the plat of which has been recorded in the office of the County Register of Deeds at the time of the adoption of this Ordinance, or an irregular tract lot described by a deed recorded in the office of the County Register of Deeds at the time of the passage of this Ordinance; provided that if a lot has less width or area as required by this Ordinance, the lot is not a buildable lot.

Lot, Corner. A lot abutting upon two (2) or more streets at their intersection.

Lot, Depth of. The average horizontal distance between the front and rear lot lines.

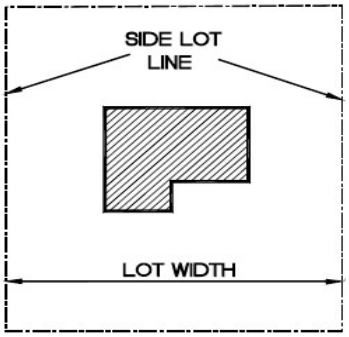
Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot.

Lot Line. A line marking the legal limits of the property of a person. The term property line and lot line shall have the same meaning

Lot of Record. A subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of the Register of Deeds prior to April 19, 1974.

Lot Width. The width of a lot is the mean distance between straight side lot lines measured at a point fifty (50) feet back from the front yard lot line thereof (see below).

Lot Width Illustration



Manufactured Home. See Chapter 4.10.

Manufactured Home Park. Any manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the manufactured home park and its facilities or not. "Manufactured Home Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

Manure. Poultry, livestock, or other animal excreta, bedding, compost and raw materials or other materials commingled with poultry, livestock, or other animal excreta set aside for land application.

Manure, Liquid. A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding and waste feed in water. Liquid manure and slurry is typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

Manure Storage Area. An area for the containment of animal manure. Said area is separate from pens or buildings where animal manure is stored for more than one (1) year.

Milling. The processing or enhancing of a mineral.

Mineral. An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy 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.

Modular Home. See Chapter 4.10.

Motel/Hotel. A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

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

Nonstandard Use. The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.

Nursery. A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

Occupied Residence. A dwelling, mobile home, or manufactured home which has been occupied for the two (2) years immediately preceding an application for a wind energy system. (*Amended: Ord. 02-19; Adopted 10/01/19*)

Open Lot. Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Synonymous with pasture lot, dirt lot, dry lot.

Outdoor Storage. The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours.

Owner. Any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within Clark County who desires to develop, or construct, build, modify, or erect a structure upon such parcel of land.

Parking Space. An area, enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Parks and Recreation Areas. Public non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

Participating (in reference to Chapter 4.21). Any landowner or person who receives direct or indirect compensation for allowing a wind energy system to utilize or have an access/easement to utilize their property**.** (*Amended: Ord. 02-19; Adopted 10/01/19*)

Pasture. A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.

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

Permitted Use. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Plat. The map, drawing or chart on which the subdivider's plan of subdivision is legally recorded.

Potential Pollution Hazard. A Concentrated Animal Feeding Operation of fifty (50) to four hundred ninety-nine (499) animal units may be classified as a Class D Operation by the County Administrative Official when a potential pollution hazard exists. Factors to be considered by the Administrative Official 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 siting over a shallow aquifer or drainage which contributes directly to creeks, streams or lakes.

Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

Principal Structure. The structure in which the principal use of the lot is conducted. For example a dwelling on a residential lot.

Principal Use. The primary use to which the premises are devoted.

Private Shooting Preserves. An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Private Shooting Preserves. An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Private Wind Energy Conversion System (PWECS). Any mechanism or device, not owned by a public or private utility company, designed for the purpose of converting wind energy into electrical or mechanical power to be used on the site where said power is generated.

Process Generated Wastewater. Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

Process Wastewater. Any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, or other portions of the animal feeding operation, but not including feed storage areas.

Quarter-Quarter Section. The Northeast, Northwest, Southwest, or Southeast quarter (1/4) of a quarter section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of thirty-five (35) acres.

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

Range Officer. Means the person designated to be responsible at a Range at any given time during any activity. A Range Officer shall be present on site at any Range when the range is in use.

Recreational Vehicle. A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include manufactured homes.

Religious Farming Community. A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

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

Repair. Reconstruction or renewal of any part of an existing building for the purpose of maintenance. The word "repair" or "repairs" shall not apply to any change of construction.

Resort. This category provides commercial hospitality lodgings in spacious settings that are principally intended for vacationing, relaxation and conference activities for visitors to the community.

Retail Sales and Trade. Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.

Rubble Site. A site for the disposition of refuse as defined by the South Dakota Department of Environment and Natural Resources.

Runoff Control Basin. A structure which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to area which are unroofed or partial roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.

Sale or Auction Yard or Barn. A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

Sand, Gravel, or Quarry Operation. An operation which uses surface excavation techniques in order to extract sand and/or gravel. If the operation is not used for commercial purposes or owned by a governmental entity, the operation is deemed to be a private sand gravel or quarry operation.

Sanitary Landfill. A government-owned site for the disposal of garbage and other refuse material.

Seasonal Camp Trailers or Recreational Vehicles. A vehicle designed for temporary seasonal living quarters.

Secondary Containment Facility. A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.

Section of Land. A division or parcel of land, delineated by the United States Public Land Survey, comprising of approximately one square mile or 640 acres. (*Amended: Ord. 05-20; Adopted 06/02/20*)

Section Line. A dividing line between two (2) sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

Service Station. Any building or premise which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at

a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted. Gasoline pumps and gasoline pump islands shall be located more than twelve (12) feet from the nearest property line.

Setback. The setback of a building is the minimum horizontal distance between the street line and the front line of the building or any projection thereof, except cornices, unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 1/2) feet from the building and having no more than fifty (50) square feet area and not extending above the first story of the building.

Setback Between Uses. Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/ use.

Shallow Aquifer. An aquifer vulnerable to contamination because the permeable material making up the aquifer (1) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (2) 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.

Shared Dwelling. One room, or rooms, connected together, constituting a shared, housekeeping establishment for Accessory Agricultural Housing that may provide living accommodations for more than three (3) unrelated individuals and contain shared cooking, bathing, sleeping and/or common living areas. (*Amended: Ord. 05-20; Adopted 06/02/20*)

Shelterbelt. A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation and wildlife from wind. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, with each tree separated by a distance of thirteen (13) feet or less. Ornamental trees, generally used in front yards and spaced further than 13 feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Shelterbelts shall comply with Chapter 4.18.

Shorelands. All land within one thousand (1,000) feet of a lake or pond and lands within three hundred (300) feet of a river or stream or to the landward side of the flood plain, whichever distance is greater.

Sign. Any device or structure, permanent or temporary, which directs attention to business, commodity, service or entertainment but excluding any flag, badge or insignia of any government agency, or any civic, charitable, religious, patriotic or similar organizations.

Sign, Abandoned. A sign or sign structure which contains no sign copy, contains obliterated or obsolete sign copy, or is maintained in an unsafe or unsightly condition for a period of three (3) months shall be considered an abandoned sign.

Sign. Off-premises. Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

Sign, On-premises. Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

Sign Structure. Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

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; and

4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal manure and process wastewater into waters of the state.

Sleeping Quarters. A room or an area contained within a dwelling unit utilized for the purpose of sleep.

Specified Anatomical Areas. Means (1) Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and (2) Genitals of humans or animals in a discernible turgid state, even if completely or opaquely covered.

Specified Sexual Activities. Means (1) Human genitals in a state of sexual stimulation or arousal; (2) Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation; (3) Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast; and (4) Excretory functions as part of or in connection with any activities set forth in an Adult Bookstore or “Adult Entertainment Cabaret”.

Stable. A building for the shelter and feeding of domestic animals, especially horses and cattle.

Stable, Commercial. A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Stealth. Means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

Street, Arterial. A street designated as such on the Major Street Plan of the Comprehensive Land Use Plan of Clark County, South Dakota.

Street, Collector. A street designated as such upon the Major Street Plan of the Comprehensive Land Use Plan of Clark County, South Dakota.

Street, Highway or Road. All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

Street, Highway or Road Right-of-Way (ROW) Line. A dividing line between a lot or parcel of land and a contiguous street, highway or road.

Street, Local. Any street which is not designated as an arterial street or collector street on the Major Street Plan of the Comprehensive Land Use Plan of Clark County, South Dakota

Structural alterations. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of a roof or the exterior walls.

Structure. Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground. Among other things, structures include, but are not limited to, buildings, manufactured homes, walls, fences, billboards, and poster panels.

Structure, Temporary. Anything constructed or erected, or placed, the use of which requires temporary location on or below the ground or attached to something having a temporary location on or below the ground.

Substantial Damage. Means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed fifty (50) percent of the market value of the structure either:

1. Before the improvement or repair is started, or

2. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this designation, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

   The term does not, however, include either:

   a. Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

   b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Telecommunications Facilities. Means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

1. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or

2. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

Temporary Fireworks Sales Stand. A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

Ten Year Time of Travel Distance. The distance that ground water will travel in ten (10) years. This distance is a function of aquifer permeability and water table slope.

Tower. A self-supporting lattice, guyed, or monopole structure constructed from grade which supports telecommunications facilities. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC.

Townhouse. A townhouse is an attached, privately owned single-family dwelling unit which is a part of and adjacent to other similarly owned single-family dwelling units that are connected to but separated from one another by a common party wall having no doors, windows, or other provisions for human passage or visibility. Differing from condominiums, townhouse ownership does include individual ownership of the land. There can also be common elements, such as a central courtyard, that would have shared ownership

Tree, Ornamental. A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less.

Tree, Shade. For the purposes of this Ordinance, a shade tree is a deciduous tree which is has a mature crown spread of fifteen (15) feet or greater, and having a trunk with at least five (5) feet of clear stem at maturity.

Truck Garden. A farm where vegetables are grown for market.

Turbine. The parts of the Wind Energy System including the blades, generator, and tail.

Twin Homes. A two-family dwelling which has a common wall and is platted into two (2) separate lots.

Utility. Any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipal utility.

Variance. A variance is a relaxation of the terms of the zoning ordinance 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 the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conforming in the zoning district or uses in an adjoining zoning district.

Veterinary Clinic. Any premises to which animals are brought, or where they are temporarily kept, solely for the purpose of diagnosis or treatment of any illness or injury, which may or may not have outdoor runs.

Violation. The failure of a structure/use or other development to be fully compliant with this ordinance.

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

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 flood plains of coastal or riverine areas.

Wetlands. Any area where ground water is at or near the surface a substantial part of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

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

1. Tower or multiple towers,
2. Generator(s),
3. Blades,
4. Power collection systems, and
5. Electric interconnection systems.

Windward Row. Of or on the side exposed to prevailing winds. Regarding shelterbelts, on the north and west side of a public right-of-way, the windward row of the shelterbelt is northernmost or westernmost row of trees. On the south and west side of a public right-of-way, the windward row of the shelterbelt is southernmost and easternmost row of trees.

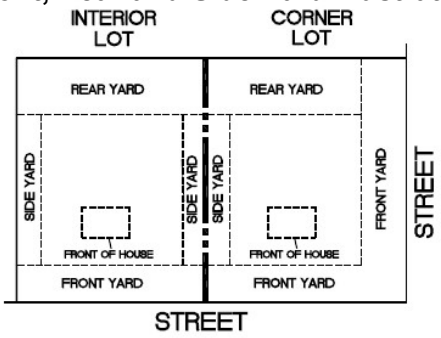
Yard. An open space on the same lot with a building, unoccupied and unobstructed. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used.

Yard, Front. A yard extending across the front of a lot between the side-yard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. There shall be a front yard on each street which a lot abuts regardless of zoning district. (See Front, Side, and Rear Yard Illustration Below)

Yard, Rear. Any yard extending across the rear of a lot measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or bearing wall or any projections other than steps, unenclosed porches, or unenclosed balconies. On corner lots the rear yard may be to the rear of either street, provided that the minimum rear yard depth requirement shall be calculated on the longest average lot dimension. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.
(See Front, Side, and Rear Yard Illustration Below)

Yard, Side. A yard between the main building and the side line of the lot being the minimum horizontal distance between the bearing wall of the building and the side yard line, and extending from the front lot line to the rear yard line. (See Front, Side, and Rear Yard Illustration Below)

Front, Rear and Side Yard Illustration



Zone of Contribution. The entire area around a well or wellfield that contributes water to the well or wellfield.