
SCHEDULE OF MINIMUM OFF-STREET PARKING AND LOADING REQUIREMENTS

Structures and Uses	Minimum Off-Street Parking Requirements	Minimum Off-Street Loading Requirements
Bowling Alleys establishment	4 spaces per alley	1 space per
Churches, Synagogue and Temples	1 space per 4 seats in main worship unit	None required
Eating and Drinking Places establishment	Parking spaces equal to 30% of capacity in persons	2 spaces per
Educational Uses, Nursery & Primary	Parking spaces equal to 20% of capacity in students	2 spaces per structure
Educational Uses, All Other	Parking spaces equal to 40% of capacity in students	2 spaces per structure
Funeral Homes and Chapels establishment	8 spaces per reposeing room	2 spaces per
Hospitals	1 space per 2 beds	3 spaces per structure
Hotels	1 space per rental units	1 space per establishment
Industrial Uses	1 space per 2 employees on largest shift	2 spaces per establishment
Libraries	1 space per 500 sq. foot on floor area	1 space per structure
Lodging and Boarding Housing	1 space per 2 rental units	None required
Medical Clinics	5 spaces per staff doctor or dentist	None required
Mobile Home Park	2 spaces per dwelling unit	None required
Motels	1 space per rental unit	None required
Private Clubs and Lodges	1 space per 500 sq. feet of floor area	1 space per establishment
Residential Structures (including Mobile Homes)	2 spaces per dwelling unit	None required

Retail Sales Establishments establishment	1 space per 200 sq ft of gross floor area	1 space per
Roadside Stands	4 spaces per establishment	None required
Sanitariums, Convalescent and establishment Rest Home Services	1 space per 3 beds, plus 1 space per employee	1 space per
Service Establishments establishment	1 space per 200 sq ft of gross floor area	1 space per
Theaters, Auditoriums and Places of Assembly	1 space per 5 people in designed capacity	1 space per establishment
Veterinary Establishments	3 spaces per staff doctor	1 space per establishment
Wholesaling and Distribution Operations	1 space per 2 employees on largest shift	2 spaces per establishment

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

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

- 4.2008 Signs permitted. Signs shall conform to State law when along all State and Federal primary road system highways. Signs not covered in the above shall be permitted in all commercial, highway commercial, industrial and agricultural districts' with a Special Exception approval from the Brown County Planning Commission subject to the following restrictions:
1. Wall Signs placed against the exterior walls of buildings shall not exceed more than six (6) inches outside of a building's wall surface; shall not exceed five hundred (500) square feet in area for any one premise, and shall not exceed twenty (20) feet in height above the mean centerline street grade.
 2. Projecting Signs fastened to, suspended from, or supported by structures shall not exceed one hundred (100) square feet in area for any one premise; shall not extend more than six (6) feet into any required yard; shall not extend more than six (6) feet into any public right-of-way; shall not be less than ten (10) feet from all side lot lines; shall not exceed a height of twenty (20) feet above the mean centerline street grade, and fifteen (15) feet above the driveway or an alley.
 3. Ground Signs shall not exceed twenty (20) feet in height above the mean centerline street or grade; shall meet a minimum of one-half (1/2) of the yard requirements for the district in which it is located; shall not exceed one hundred (100) square feet on one side nor two hundred (200) square feet on all sides of any one premise.
 4. Roof Signs shall not exceed ten (10) feet in height above the roof; shall meet all the yard and height requirements for the district in which it is located; and shall not exceed three hundred (300) square feet on all sides for any one premise.
 5. Combinations of any of the above signs shall meet the requirements for the individual sign.
- 4.2009 Sign as Obstruction/Deception. Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape; and no sign shall be attached to a fire escape. No sign shall be placed so as to obstruct or interfere with traffic visibility.
- 4.2010 Nonconforming Signs. Signs lawfully existing at the time of the adoption or amendment of this Title may be continued although the use, size, or location does not conform with the provisions of this Title. However, it shall be deemed a nonconforming use or structure.
- 4.2011 Mobile Homes. No mobile home shall be parked and occupied in any unauthorized district for more than forty-eight (48) hours except upon a special permit issued by the Zoning Administrator. Such permit shall not be renewable within the same calendar year. Provided, however, a permit may be issued for parking and occupying a mobile home on land owned by the occupant or occupants, during the construction of a house thereon for a period not exceeding one hundred eighty (180) days. However, if material progress with house construction is not made within forty-five (45) days from the issuance of a permit, or if construction work ceases for a consecutive period of forty-five (45) days, said permit shall become void.
- 4.2012 Solution Mining Prohibited. Solution mining, in site mining of an ore body with the circulation of chemicals through injection and recovery wells for minerals, is prohibited.

4.2013 Vacation of Streets and Roads. Unless a variance is approved, whenever any street, road or other public right of way is vacated, the zoning district adjoining each side of the street, road or other public right of way is extended to the center of such vacation; and all area included in the vacation shall then and henceforth be subject to the appropriate regulations of the extended districts.

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

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

Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this revised ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

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

4.2102 Nonconforming Lots of Record. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of Title 4. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of other yard requirements shall be obtained only through action of the Planning and Zoning Board.

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

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

2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of Title 4;

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

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

4.2104 Nonconforming Structures. Where a lawful structure exists at the effective date of adoption or amendment of this Title that could not be built under the terms of this Title by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than seventy-five (75) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Title; and

3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

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

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

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

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

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

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

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

4.2106 Uses under Special Exception Provisions Not Nonconforming Uses. Any use which is permitted as a special exception in a district under the terms of this Title (other than a change through Board of Adjustment action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

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

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

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

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

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

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

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

The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of Title 4.

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

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

shall be canceled by the Zoning Administrator, and written notice thereof shall 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 renewed building permit has been obtained at no additional cost unless substantial changes have been made to the first building permit. Construction must be completed within two (2) years of issuance of permit. If construction has not been completed within the two (2) year period, a new permit must be obtained for completion of project.

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

The criteria for approaches shall:

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

CHAPTER 4.23

COUNTY PLANNING COMMISSION/ZONING BOARD OF ADJUSTMENT

- 4.2301 Proceedings of the County Planning and Zoning Commission. The County Planning and Zoning Commission shall serve as a Board of Adjustment as provided by SDCL 11-2-2. The County Planning and Zoning Commission shall adopt rules necessary for the conduct of its affairs and keeping with the provisions of Title 4. The County Planning and Zoning Commission shall keep a record of all proceedings. Meetings shall be held at the call of the Chairman, and at such other times as the Planning Commission may determine. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

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

- a) Unless otherwise specified by the Zoning Board of Adjustment at the time it approves an Application for a Variance or for a Special Exception/Conditional Use, any Approved Application shall be valid, for a period of two years following the date said Application was approved by the Zoning Board of Adjustment as shown in its official minutes.
- b) At the end of that two year period, or such other time as specified by the Zoning Board of Adjustment as provided herein, any Approved Application which has not resulted in a Permit, will expire and become null and void.
- c) If an Approved Application has expired as provided herein, a Petitioner may re-apply with a new application. This new application will be subject to the same process, review, consideration and payment of fees as any other new application.
- d) Any Approved Application granted before this revised Ordinance takes effect will continue to be valid for a period of two years following the effective date of this revised ordinance. At the end of that two year period, any Approved Application, which has not resulted in a Permit, will expire and become null and void. (Ordinance #108 May 30, 2017)

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

The Board of Adjustment shall fix a reasonable time (within 30 days) for the hearing of the appeal, give public notice thereof, as well as, due notice to the parties in interest, and decide the

same within a reasonable time (within 30 days). Upon the hearing, any party may appear in person or by agent or by attorney.

CHAPTER 4.24

BOARD OF ADJUSTMENT -- POWERS AND DUTIES

4.2401 Administrative Review. The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator based on or made in the enforcement of any zoning regulation relating to the location or soundness of structures or to interpret any map.

4.2402 Special Exceptions, Conditions Governing Applications, and Procedures. The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Title, requests for special exceptions or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Title to pass; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this Title, or to deny special exceptions when not in harmony with the purpose and intent of this Title. A special exception shall not be granted by the Board of Adjustment unless and until:

1. A written application for a special exception is submitted, indicating the chapter of this Title under which the special exception is sought and stating the grounds on which it is requested.

2. Notice shall be sent to the adjacent landowners, the property owners requesting the special exception, and the local government entity by registered or certified letter at least seven (7) days prior to a hearing on the request.

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

4. The Board of Adjustment shall make a finding that it is empowered under the chapter of this Title described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.

5. Before any special exception shall be issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following, where applicable:

- a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

- b. Off-street parking and loading areas where required, with particular attention to the items in "a" above and the economic, noise, glare or other effects of the general exception on adjoining properties and properties generally in the district;

- c. Refuse and service areas, with particular reference to the items in "a" and "b" above;

- d. Utilities, with reference to locations, availability, and compatibility;

- e. Screening and buffering with reference to type, dimensions, and character;

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

g. Required yards and other open spaces; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 4.25 APPEALS

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

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

4.2502 Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the County Planning and Zoning Commission/Board of Zoning Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property.

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

CHAPTER 4.26 SCHEDULE OF FEES, CHARGES, AND EXPENSES

4.2601 Schedule of Fees, Charges, and Expenses. The Board of County Commissioners shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals and other matters pertaining to Title 4. The schedule of fees shall be posted in the Office of the Zoning Administrator and may be altered or amended only by the Board of County Commissioners. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

CHAPTER 4.27 AMENDMENT

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

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

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

CHAPTER 4.28

VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

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

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

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

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

4.2803 Stop Order. Whenever any work is being done contrary to the provisions of this ordinance, the Planning Director may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any persons shall forthwith stop such work until authorized by the Planning Director to proceed with the work.

CHAPTER 4.29 LEGAL STATUS PROVISIONS

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

CHAPTER 4.30

PERFORMANCE STANDARDS FOR L-I DISTRICT

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

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

CHAPTER 4.31

PERFORMANCE STANDARDS FOR H-I DISTRICT

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

1. Appearance. Junk, salvage, auto wrecking, and similar operations shall be shielded from view from streets and from adjacent properties in another district by means of a sturdy, sight-obscuring fence in good repair, or two rows of alternate planted evergreen or red cedar trees.

2. Fire Hazard. All flammable substances involved in any activity established in this district shall be handled in conformance with the latest edition of the Fire Prevention Code published by the American Insurance Association or other county/city/town ordinances.

3. Noise. All noises and noise-causing activities shall be muffled so that they will not create a disturbance greater than normal peak hour traffic noise on a major street when observed from any area residential district. Major street noise for comparison purposes shall be measured at the property line.

4. Sewage and Liquid Waste. No operation shall be carried on which involves the discharge into a sewer, water course, or the ground of liquid wastes of any radioactive nature, or liquid waste of a chemical nature which are detrimental to normal sewage plant operations or ground conditions.

5. Air Contaminants. Air contaminants and smoke shall be less dark than designated Number Two on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number Two shall be permitted for one (1) four (4) minute period in each one-half (1/2) hour. Light colored contaminants of such opacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted. Particulate matter or dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenths (.2) grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit.

Due to the fact that the possibilities of air contaminants cannot be comprehensively covered in this section there shall be applied the general rule that there shall not be discharged from any source whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health, or safety of any such considerable number of persons or the general public or to cause or have a natural tendency to cause injury or damage to business, vegetation, or property.

6. Odor. Odor-causing operations shall be controlled so as to reduce escape of odors to the minimum practical within the limits of technology and economics.

7. Gases. All noxious gases shall be controlled to the extent that they will not be injurious to life and property. The gases sulphur dioxide and hydrogen sulphide shall not exceed five (5) parts per million, carbon monoxide shall not exceed twenty-five (25) parts per million, and nitrous fumes shall not exceed five (5) parts per million. All measurements shall be made at the property line.

8. Vibration. All machines including punch presses and stamping machines shall be mounted so as to minimize vibration. Fabrication shall not be so excessive that it interferes with industrial operations on nearer lots.

CHAPTER 4.32**CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS**

4.3201 Intent. An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. However, livestock, poultry and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County environment. Animal manure must be controlled where it may add to air, surface water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities. A special exception can be issued, as per Chapter 4.0604 - Agricultural Preservation (AG-P) - Special Exception. Refer to Chapter 4.3205.10 for additional standards.

4.3202 Definitions.

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

Animal Units. Animal species and number of a species required to equal 300, 1,000 and 2,000 animal units. Note that these figures relate to inventory rather than annual production. Other animal species equivalents, which are not listed will be based on species' waste production.

EQUIVALENT NUMBER OF A SPECIES TO EQUAL:

ANIMAL SPECIES	300 AU	1,000 AU	2,000 AU	ANIMAL UNIT EQUIVALENT SPECIES/AU
Feeder or Slaughter Cattle	300 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	200 hd	700 hd	1,400 hd	1.4
Finisher Swine (over 55 lbs)	750 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	3,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	80 hd	270 hd	540 hd	3.7
Swine Production Unit – Sows (Breeding, Gestating & Farrowing)	640 hd	2,130 hd	4,260 hd	0.47
Horses	150 hd	500 hd	1,000 hd	2.0
Sheep	3,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	16,500 hd	55,000 hd	110,000 hd	0.018

Laying Hens and Broilers (continuous overflow watering in facility)	30,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	9,000 hd	30,000 hd	60,000 hd	0.033
Ducks	1,500 hd	5,000 hd	10,000 hd	0.2

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

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

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

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

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

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

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

Process Generated Wastewater. Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from water systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

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

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

Shallow Aquifer. An aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a

sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

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

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

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

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

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

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

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

- 4.3203 Classes of Concentrated Animal Feeding Operations. A concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 180 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are single animal operation if they adjoin each other, or if they use a common area, or system for disposal of manure.

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

ANIMAL UNITS

CLASS A	2,000 or more
CLASS B	1,000 to 1,999
CLASS C	300 to 999
CLASS D	0 to 300 (Potential water pollution hazard)
CLASS E	0 to 300 (No pollution hazard)

4.3204 Concentrated Animal Feeding Operation Permit Requirements. Owner of Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations are required to complete a permit application whenever any of the following occur:

1. A new Concentrated Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows.
3. A cumulative expansion by 500 animal units, after December 18, 1997, of existing concentrated animal feeding operation that does not have a permit.
4. If a livestock operation with a DENR construction permit or a Brown County Zoning permit is sold, the new owner is subject to all the terms and conditions of the permit. The DENR and Brown County Zoning Board must be notified of the transfer by the current permit holder and the new permit holder within 30 days of the transfer. The new permit holder may need to supply the information to modify the permit to reflect the new ownership (if the DENR or Brown County Zoning board requests). A person who is a habitual violator or has a pending enforcement action may not purchase a confinement operation with a DENR or Brown County Zoning Board permit.
5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
6. A signed complaint has been received by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the concentrated Animal Feeding Operation is in violation of County or State regulations.

4.3205 Concentrated Animal Feeding Operation Control Requirements.

1. No Significant Contribution of Pollution

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

2. State General Permit

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

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

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

3. Nutrient Management Plan

Classes A, B, C, and D Concentrated Animal Feeding Operations shall submit a Nutrient Management Plan to the State. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water.

The South Dakota Department of Environment & Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of manure.

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

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

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

The plan must comply with the County Manure Application Setbacks.

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

4. Manure Management and Operation Plan

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

A. Plan must include:

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

(6) Producers shall keep records of manure applications on individual fields, which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.

(7) Manure transportation plan; manure transportation is limited to five miles from the place of origin.

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

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

5. Management Plan for Fly and Odor Control

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

A. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.

B. Methods to be utilized to dispose of dead animals should be included in the management plan.

C. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.

D. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.

E. Store solid manure in containment areas having good drainage to minimize odor production.

F. Remove manure from open pens as frequently as possible to minimize odor production.

G. Consider use of covers on open storage systems for liquid manure systems to reduce odor production.

H. Avoid applying manure on weekends, holidays, and evenings during warm season when neighbors may be involved in outdoor recreation activities.

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

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

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

MINIMUMS

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

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

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

7. Exemptions from Separation Distance

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

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

8. New Residences

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

The following uses are prohibited in Zone A:

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

The following uses are prohibited in Zone X:

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

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

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

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

- A. A Concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- B. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.
- C. A Concentrated Animal Feeding Operation is in excess of 5,000 animal units.

9. Manure Application Setbacks

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

COUNTY MANURE APPLICATION SETBACKS

<u>CATEGORY</u>	<u>SURFACE OR IRRIGATION APPLIED</u>	<u>INCORPORATED OR INJECTED</u>
Lakes, Rivers and Streams Classified as Fisheries from high water mark	1,000 feet	100 feet (lake) 50 feet (river & stream)
Streams and Lake classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation)	10 feet from right-of-way
Area of 10 or more Residences	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1,000 feet	1,000 feet
Private Shallow Wells	1,000 feet	250 feet
A Residence other than the Operator	1,000 feet	300 feet
Natural or Manmade Drainage	500 feet	50 feet

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

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

10. Standards for Special Exceptions

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

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

C. Special Exceptions shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.

D. When considering an application, the County Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.

E. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the zoning officer and signed by both the applicant and the zoning officer.

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

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

11. Facility Road Maintenance Agreements

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

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

A. Owner's Name, address and telephone numbers.

B. Legal descriptions of site and site plan.

C. Number and type of animals.

D. Nutrient management plan.

E. Manure management and operation plan.

F. Management plan for fly and odor control.

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

H. General permit from South Dakota Department of Environment & Natural Resources if available for animal species.

I. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources.

- J. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- K. Notification of whomever maintains the access road (township, county and state).
- L. Notification of public water supply officials.
- M. Any other information as contained in the application and requested by the County Zoning Officer.
- N. Written notification to landowners or tenants living within the setback area to the proposed facility, and publication of notice in official County newspaper at least once.
- O. A full written plan must be submitted at least four weeks in advance of the public hearing in the county courthouse or other location, available for public inspection.
- P. A copy of the general permit application must be submitted to the County, at the time it is submitted to State Department of Environment and Natural Resources.
- Q. A list of owner's names contracted to do manure land spreading and a legal description of the land must be submitted to the County.

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

- A. Owner's name, address and telephone number.
- B. Legal descriptions of site and site plan.
- C. Number and type of animals.
- D. Nutrient management plan.
- E. Manure management and operation plan.
- F. Management plan for fly and odor control.
- G. Information on ability to meet designated setback requirements, including site plan to scale.
- H. Review of plans and specification and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.
- I. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- J. Notification of whomever maintains the access road (township, county and state).
- K. Notification public water supply officials.

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

CHAPTER 4.33 RURAL ADDRESSING

4.3301 Naming of Roads in the Unincorporated Area:

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

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

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

4.3303 Designation of Addresses in the Unincorporated Area:

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

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

4.3304 Posting of Designated Addresses in the Unincorporated Area:

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

4.3305 New Structures:

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

4.3306 Penalties.

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

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

4.3307 Conflicting Ordinances.

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

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

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

4.3402 Rezoning of Property.

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

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

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

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

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

4.3501 Communication Towers and Facilities Requirements

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

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

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

B. General Approval Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Fencing and Screening.

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

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

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

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

- b) **Lighting.** Towers/facilities, including antennas, shall not be artificially lighted unless required by the FAA or applicable authority. Unless required as the only option by the FAA, strobe lighting is not permitted. If lighting is required, lighting alternatives and design chosen must cause the least disturbance to the surrounding views. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.
 - c) **Signs.** No signs shall be allowed on any tower/facility, other than safety or warning signs. If any signage is required consistent with this standard, such signage must comply with the requirements of this ordinance, Signs section. "No Trespassing" signs shall be posted around the facility with a telephone number of who to contact in the event of emergency.
- C. The proposed tower/facility must comply with all other applicable local, state or federal regulations.
- D. The proposed tower/facility will not unreasonably interfere with the view from any publicly-owned or managed areas or major view corridors.
- E. **Removal of Abandoned Towers/Facilities.** The owner of the tower/facility, with written authorization from the property owner, shall file annually a declaration with the Brown County Planning and Zoning Department as to the continuing operation of every tower/facility installed subject to these regulations. Failure to do so may be construed to mean that the facility is no longer in use and may be considered abandoned subject to the provisions for removal. The owner of the tower/facility and property owner will be notified that the property is considered to be in a state of abandonment, and such person(s) shall remove the tower/facility, foundational supports, and associated appurtenances within ninety (90) days of receipt of notice from Brown County at the owner's expense. Adequate removal shall include the restoration of the site to a state in keeping with the character of the surrounding landscape and the elimination of all ground-level paving. Failure to remove such an abandoned tower/facility within said ninety (90) days shall be grounds to issue a Notice of Violation in accordance with the requirements of this Ordinance and undertake enforcement action upon the tower/facility owner and property owner.
 - 1. Any person, firm or corporation not in compliance with these regulations may be deemed guilty of a County infraction.
 - 2. Documentation must be provided to the Brown County Planning and Zoning Department with signatures by all property owners with an interest in the tower/facility stating knowledge of the penalties associated with a County infraction, including that all costs for removal of abandoned towers/facilities in accordance with these regulations may be assessed against property under their ownership. Such documentation must be provided on the form supplied by the Brown County Planning and Zoning Department, and submitted at time of Application for Zoning Permit.
- F. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for towers/facilities must submit the following information (as applicable). All plans shall be drawn at a scale of one (1) inch equals fifty (50) feet.
 - 1. A scaled site plan clearly indicating the location, type and height of the proposed tower/facility.
 - 2. Legal description of the parent parcel and leased parcel (if applicable).
 - 3. The separation distance between the proposed tower/facility and nearest planned and/or existing residential property.

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

CHAPTER 4.36

WIND ENERGY CONSERVATION SYSTEMS

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

4.3602 Authority and Jurisdiction. South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

4.3603 Federal and State Requirements. All WECS facilities shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WECS facilities.

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

A. General Requirements for LWECS

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

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

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

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

- (3) **Public Right-of-Way.** Setbacks from public right-of-way, railroads, powerlines and structures shall be a minimum of 1.1 times the height of the tower and rotor.
 - (4) **Communication and Electrical Lines.** Each wind turbine and meteorological tower shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than 1.1 times its total height, determined from the existing power line or telephone line.
18. **Soil Erosion and Sediment Control Plan.** The owner or operator shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Zoning Office. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan that uses native plant species to maintain and ensure adequate erosion control and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.
19. **Noise.** Audible noise due to LWECS sites operations shall not exceed fifty-five (55) dBA for any period of time, when measured at any dwelling, school, hospital, church or public library existing on the date of approval of any conditional use permit from the property line.
- a) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
 - b) In the event the noise levels resulting from the LWECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment upon recommendation by the Commission provided that the following has been accomplished:
 - (1) Written consent from the affected property owners has been obtained stating that they are aware of the LWECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
 - (2) If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the Brown County Recorder which describes the burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.
20. **Turbine Spacing.** The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
21. **Footprint Minimization.** The owner or operator shall design and construct the WECS so as to minimize the amount of land that is impacted by the WECS. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems

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

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

23. **Safety.**

- a) All wiring between wind turbines and the LWECS substation shall be underground. If the developer can demonstrate the need for an overhead line and the acceptance of landowners for this line, such option may be approved conditionally by the Board of Adjustment.
- b) Wind turbines and meteorological towers shall not be climbable up to 15 feet above ground level.
- c) All access doors to wind turbines and meteorological towers and electrical equipment shall be locked when not being serviced.
- d) Appropriate warning signage shall be placed on Wind Turbine towers, electrical equipment, and LWECS entrances.
- e) For all LWECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the LWECS is within accepted professional standards, given local soil and climate conditions.
- f) For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of eight (8) feet above the ground. Visible fencing shall be installed around anchor points of guy wires. The property owner must sign a notarized acknowledgement and consent form allowing construction of the turbine and guyed wires without fencing as required in this Ordinance to be presented to the Commission and Board of Adjustment.

B. Discontinuation and De-commissioning.

1. **Cost Responsibility.** The owner or operator of a LWECS is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.
2. **Useful Life.** A LWECS is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Commission for approval of a plan outlining the steps and schedule for returning the LWECS to service within 12 months of the submission.
3. **Decommissioning Period.** The facility owner or operator shall begin decommissioning a LWECS facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in b.(2). Decommissioning must be completed within eighteen (18) months after the facility or turbine reaches the end of its useful life.
4. **Decommissioning Requirements.** Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWECS. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.
5. **Decommissioning Plan.** Prior to commencement of operation of a LWECS facility, the facility owner or operator shall file with the Commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a

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

6. **Financial Assurance.** After the tenth (10th) year of operation of a LWECS facility, the Commission may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Commission to cover the anticipated costs of decommissioning the LWECS facility.

7. **Failure to Decommission.** If the LWECS facility owner and operator does not complete decommissioning, the Commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a LWECS facility and seek additional expenditures necessary to do so from the facility owner.

C. Avoidance and Mitigation of Damages to Public Infrastructure.

1. **Roads.** Applicants shall identify all roads to be used for the purpose of transporting LWECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the LWECS and obtain applicable weight and size permits from the impacted road authority(ies) prior to construction. Where practical, all-weather roads shall be used for all activities associated with the LWECS. For private roads, the owner or operator shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access road shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

2. **Existing Road Conditions.** Applicant shall conduct a pre-construction survey, in coordination with the impacted local road authority(ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility. The applicant is responsible for on-going road maintenance and dust control measures identified by the Brown County Highway Superintendent or Township official during all phases of construction. The owner or operator shall notify the County Zoning Office of such arrangements.

3. **Drainage System.** The Applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the LWECS.

4. **Required Financial Security.** The applicant shall be responsible for restoring or paying damages as agreed to by the applicable road authority(ies) sufficient to restore the road(s) and bridges to preconstruction conditions. Financial security in a manner approved by the Brown County Attorney's Office shall be submitted covering 130% the costs of all required improvements. This requirement may be waived by the Board of Adjustment by recommendation from the Brown County Highway Superintendent.

D. Submittal Requirements. In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for LWECS must submit the following information (as applicable).

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

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

A. General Requirements for SWECS

1. **Site Clearance.** The owner or operator shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the SWECS.
2. **Color and Finish.** SWECS shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
3. **Lighting.** A SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
4. **Signage.** All signage on site shall comply with the signs section of this ordinance. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWECS visible from any public road shall be prohibited.
5. **Access.** All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.
6. **Setbacks**

- a) The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and dwellings shall be equal to no less than one point one (1.1) times the system height, unless written permission is granted by each affected person.
- 7. **Noise.** SWECS facilities shall not exceed fifty-five (55) dBA for any period of time, when measured at any dwelling, school, hospital, church or public library existing on the date of approval of any conditional use permit from the property line. The level, however, may be exceeded during short-term events such as utility outages or wind storms, in its approval of the turbine array for warranty purposes.
- 8. **Code Compliance.** A SWECS shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
- 9. **Utility Notification.** No SWECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- 10. **Permit Expiration.** The permit shall become void if no substantial construction has been completed within two (2) years of issuance.
- 11. **Discontinuation and De-commissioning.**
 - a) **Cost Responsibility.** The owner or operator of a SWECS is responsible for removing the wind generator from the tower at their sole expense within 3 months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Commission may pursue legal action to have the wind generator removed at the owner's expense.
 - b) **Useful Life.** A SWECS that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Commission may issue a Notice of Abandonment to the owner of a SWECS that is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Commission shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.
- 12. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for SWECS must submit the following information (as applicable).
 - a) The names of project applicant
 - b) The name of the project owner
 - c) The legal description and address of the project.
 - d) A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
 - e) Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale and an ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.
 - f) Engineer's certification(s) as required in these supplemental standards.
 - g) Documentation of land ownership or legal control of the property
 - h) Location of all known communications towers/facilities within two (2) miles of the proposed SWECS.

13. **Violations.** It is unlawful for any person to construct, install, or operate a SWECS that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. SWECS facilities installed prior to the adoption of this ordinance are exempt.
14. **Severability.** The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.