

Article 19.00
Conditional Use Permits

19.01 Procedure. The Planning Commission may authorize by conditional use permit the uses designated in this ordinance when located in a zoning district allowing such use. The Planning Commission shall impose such conditions as are appropriate and necessary to insure compliance with the Comprehensive Plan and to protect the health, safety, and general welfare in the issuance of such conditional use permit.

19.02 Application. To obtain a conditional use permit, the applicant shall file an application with the Office of Planning and Zoning on a form as provided. Every application shall contain the following information:

- A. Legal description of the land on which such conditional use is requested.
- B. Name, address and phone number of the owner of the property which is the subject of such application.
- C. Name, address and phone number of the person making the application if made by anyone other than the owner.
- D. Zoning district classification under which the property is regulated at the time of such application.
- E. Any other information concerning the property as may be requested by the Office of Planning and Zoning.

19.03 Fees. Upon the filing of any application for conditional use with the Office of Planning and Zoning, the applicant shall pay to the County the appropriate fee as designated in Article 24.00.

19.04 Information on Site Plan. In addition to the following information, plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this ordinance and all relevant laws, rules, and regulations.

Exception: The Planning Director may waive the submission of plans, if he finds that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this title.

- A. The address of the property and the legal description.
- B. The name of the project and/or business.
- C. The scale and north arrow.

- D. All existing and proposed buildings or additions.
- E. Dimensions of all buildings.
- F. Distance from all building lines to the property lines at the closest points.
- G. Building height and number of stories.
- H. Dimensions of all property lines.
- I. Parking lots or spaces; designate each space, give dimensions of the lot, stalls, and aisles.
- J. Screening; show height, location, and type of material to be used.
- K. The landscaped setback and trees; indicate species of trees and material to be used for landscaping.
- L. Name and location of all adjacent streets, alleys, waterways and other public places.

Approved site plans shall not be changed, modified, or altered and all work shall be done in accordance with the approved site plans.

19.05 Planning Commission Hearing. Upon the filing of an application for a conditional use permit, the Planning Director shall set a date for public hearing on such requested conditional use, at which time and place the Lincoln County Planning Commission shall meet to consider the conditional use request.

- A. Notification. The applicant shall notify all property owners (inclusive of Contract for Deed buyers at last known address) of land lying within five hundred (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. For applicable Commercial WECS and CAFO applications, the applicant shall notify all property owners (inclusive of Contract for Deed buyers at last known address) of land lying within one (1) mile, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with "Notice of Hearing" forms for this purpose, and the notices shall be sent by the applicant to all parties on the aforementioned list by first class mail no less than ten calendar days prior to the public hearing on the request held by the Planning Commission. The applicant shall sign an affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least five (5) working days prior to the Planning Commission meeting.
- B. Signs. A sign(s) to be provided by the Office of Planning and Zoning shall be posted on or near the property at least five calendar days prior to the scheduled hearing.
- C. Action. The Planning Commission shall decide whether to grant the conditional use with

such conditions and safeguards as are appropriate or to deny a conditional use when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Article 19.06.

(Amended: Ordinance No. 1908-39, 08-27-19)

19.06 Appeal of Planning Commission Decision. The decision rendered by the Planning Commission on a conditional use permit may be appealed to the Board of County Commissioners. The applicant or any other person aggrieved by the decision of the Planning Commission shall file a written appeal with the Office of Planning and Zoning within five working days of the Planning Commission decision. When an appeal is filed, the Planning Director shall present the Planning Commission's decision to the Board of County Commissioners for review. Notice of the meeting shall be given as required by Article 19.05 (A). The Board shall vote to either uphold, overrule or amend the decision of the Planning Commission.

19.07 Amendments. Amendments shall be processed in the same manner as required for a separate conditional use permit.

19.08 Expiration.

- A. A conditional use permit shall expire two years from the date upon which it becomes effective if no substantial work has commenced. This provision shall not apply to a conditional use permit approved for a residential use in the A-1 or RC zoning districts. Upon written request to the Planning Director and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Planning Director, subject to the following conditions:
 - 1. There was no public objection presented during the public hearing process for the original conditional use permit.
 - 2. The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit.
 - 3. The project start and/or completion has been impacted by ongoing permitting processes or necessary engineering/studies.
- B. A conditional use permit approved in accordance with Article 19 shall expire one year after the use discontinues on the premises, or the use is changed to another permitted use in the underlying district.

(Amended: Ordinance No. 1801-47, 01-23-18)

19.09 Conditional Use Criteria. The following considerations shall be employed when acting upon requests for conditional uses:

- A. The impact of the proposed use on adjacent properties shall be a major consideration. The proposed use should be generally compatible with adjacent properties and other properties in the district.
- B. Measures shall be taken to ensure that the proposed use does not alter the general character of the area or neighborhood.
- C. The effects of noise, odor, traffic, air and water pollution, and other negative factors shall be eliminated or controlled through the use of screening, setbacks, and orientation.

19.10 Preexisting Uses. An existing use eligible for a conditional use permit which was lawfully established on the effective date of this ordinance shall be deemed to have received a conditional use permit as herein required and shall be provided with such permit by the County upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension, or relocation of such existing use, an application in accordance with this ordinance shall be required.

19.11 Reapplication. No applicant requesting a conditional use permit whose application includes the same or substantially the same requirements for the same or substantially the same property as that which has been denied by the Planning Commission or Board of County Commissioners shall be again considered by the Planning Commission before the expiration date of six (6) months from the date of the final action on the petition.

19.12 Review of Permit by Planning Commission. The following procedures shall be employed when acting upon reviews of conditional use permits:

- A. **Basis for Review.** Noncompliance with any of the terms, conditions or requirements placed on a conditional use permit by Lincoln County is sufficient cause to subject such permit to review by the Lincoln County Planning Commission.
- B. **Procedure.** If the Planning Director is reasonably satisfied there exists any noncompliance with the terms, conditions or requirements of a conditional use permit, the Director shall give written notice of such noncompliance to the person, firm, corporation or entity to which the permit was granted. Additionally, the Director shall advise the Planning Commission of such noncompliance at its next regularly scheduled meeting. Upon such advisement, the Planning Commission shall set a time for review of the permit at a subsequent regularly scheduled meeting. Such review will be open to the public.
- C. **Notice of Review Hearing.** At least ten (10) days prior to the hearing, the following shall occur:
 - 1. The Planning Director shall give written notice of the review hearing to the person or entity for whom the permit was authorized;

2. Notice of the hearing shall be published at least once by the Planning Director in a legal newspaper of the county;
 3. The Planning Director shall be responsible for posting at least one sign on the property in such a manner so as to be clearly visible from the street, road or other public right-of-way from which entrance or access to the property is gained.
- D. Hearing. In the event the Planning Commission determines by substantial evidence that such compliance has not been established, it may do any of the following:
1. Revoke said permit.
 2. Amend said permit.
 3. Postpone action for a period of time it deems appropriate to allow the permit holder to comply with all terms, conditions and requirements of the permit in question.
 4. Require any other such action it deems appropriate and in accordance with the provisions of this Section.
- E. Effect of Revocation. Any person, firm, corporation or entity to which a conditional use permit has been granted and subsequently revoked by the Planning Commission or Board of County Commissioners may not apply for a conditional use permit pursuant to Section 19.02 for a period of six months.
- F. Appeal. Appeals from decisions made by the Planning Commission pursuant to this section shall commence and proceed in accordance with Section 19.06.

Article 20.00

Change of Zone

20.01 Application to County or by County for Zoning Change. Any person, firm, or corporation desiring a change in regulations, restrictions, or boundaries of the zoning map of any property from one zoning district classification to another zoning district classification under this ordinance, shall make application for such change with the Office of Planning and Zoning. Such application form shall be provided by the Office and be completed in full by the applicant.

The Board of County Commissioners may from time to time on its own motion, after public notice and hearing, and after a recommendation by the Planning Commission amend, supplement, or change the boundaries or regulations herein or subsequently established.

20.02 Fees. Upon the filing of any application for a zoning district classification change with the Office of Planning and Zoning, the applicant shall pay to the County the appropriate fee as designated in Article 24.00.

20.03 Planning Commission Hearing. Upon the filing of an application and payment of the fee, the Office of Planning and Zoning shall set a date for at least one public hearing at which time the Planning Commission will consider such requests for a change in zoning district classification. The date for a public hearing shall be a day when the Planning Commission is regularly scheduled to meet.

- A. Legal Notice. The Planning Director shall cause to be published a legal notice as required in SDCL 11-2-29. The Lincoln County Auditor shall also provide a copy of the notice to the county auditor in the abutting county at least ten days before the hearing.
- B. Signs. A sign(s) to be provided by the Office of Planning and Zoning shall be posted on or near the property at least five days prior to the scheduled hearing.
- C. Planning Commission Recommendation. The Planning Commission shall consider all applications for zoning district classification changes and make a recommendation to the Board of County Commissioners.

20.04 Board Hearing. The Board of County Commissioners shall conduct a public hearing on all applications which have been forwarded to them from the Planning Commission.

- A. Legal Notice. The Board shall cause to be published a legal notice as required in SDCL 11-2-19.
- B. Signs. A sign(s) to be provided by the Office of Planning and Zoning shall be posted on or near the property at least five days prior to the scheduled hearing.
- C. Hearing. Upon the day of such public hearing, the Board shall review the decisions and recommendations of the Planning Commission on all applications. The Board, in making

its determination on such applications, may make changes in the zoning map in accordance with or in rejection or modification of the recommendations of the Planning Commission.

20.05 Reapplication. No application requesting a zoning district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board, shall again be considered by the Planning Commission before the expiration of six months from the date of the final action of the Board.

Article 21.00
Zoning Board of Adjustment

21.01 Establishment. The Lincoln County Planning Commission shall act as the Zoning Board of Adjustment. The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances, and hear appeals to the terms of these regulations in harmony with the general purpose and intent and in accordance with general and specific rules herein contained.

21.02 Operational Procedure.

- A. The Board shall meet at the regularly scheduled meetings of the Planning Commission. All meetings of the Board shall be open to the public and all business coming before the Board shall be transacted at such meetings.
- B. The Board shall keep minutes of its proceedings, records of examinations and other official actions, all of which shall be filed in the Office of Planning and Zoning and shall be a public record.

21.03 Appeals. The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Planning Director in the enforcement of these regulations.

21.04 Standards. The Zoning Board of Adjustment shall not vary the regulations unless it shall make findings based upon the evidence presented to it in each specific case that all of the following conditions are present:

- A. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
- B. The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification or other property substantially similar in use.
- C. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
- D. The proposed variance will not unreasonably impair an adequate supply of light and air to adjacent property; increase the congestion in the public streets; increase the danger of fire; endanger the public safety; or diminish or impair property values within the area.
- E. That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

- F. That the variance, if authorized, will represent the minimum variance that will afford reasonable relief and will represent the least modification desirable of the zoning regulations.
- G. The Board shall hear and make determinations on variance to exceed the height limits as established by these regulations.
- H. The Board of Adjustment, under its authority to grant variances may impose reasonable conditions on the grant, and one accepting those conditions is bound by them.

21.05 Application to County for Variance. Any person, firm or corporation desiring a variance or wishing to appeal a decision of the Planning Director or authorized representatives shall make application for such request to the Office of Planning and Zoning. Such application shall be provided by the Office and be completed in full by the applicant.

21.06 Fees. Upon the filing of any application for a variance or appeal by the Board, the applicant shall pay to Lincoln County the appropriate fee as designated in Article 24.00. These fees shall be utilized to help defray necessary administrative costs of processing the application as required.

21.07 Hearing. Upon the filing of an application, the Office of Planning and Zoning shall set a date for public hearing, at which time and place the Zoning Board of Adjustment shall meet to consider the request for variance or appeal.

- A. Signs. A sign(s) to be provided by the Office of Planning and Zoning shall be posted on the property at least five days prior to the scheduled hearing.
- B. Decision. All requests under this article shall be acted upon at a meeting of the Planning Commission. A favorable vote by two-thirds of the members of the Board of Adjustment shall be required to approve each request.

21.08 Appeals from Decision of Board. Appeals may be taken to the Circuit Court by any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the County, aggrieved by any decision of the Board of Adjustment, in the manner and form provided by the statutes of the State of South Dakota, in such cases made and provided.

21.09 Limitations. Any order of the Board of Adjustment granting a variance may be declared invalid by the Board of Adjustment unless substantially completed within two years from the date of such order. The Planning Director shall notify the property owner of record upon invalidation of a variance.

Article 22.00
Administration and Enforcement

22.01 Powers and Duties.

- A. The Planning Director is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration.
- B. In accordance with prescribed procedures and with the approval of the Board of County Commissioners, the Planning Director may appoint technical officers and inspectors and other employees that shall be authorized to assist in the enforcement of this ordinance.

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

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

22.03 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 such persons shall forthwith stop such work until authorized by the Planning Director to proceed with the work.

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

Article 23.00 Zoning Permits

23.01 Permits Required. It shall be unlawful for any person, firm or corporation to erect, construct, change, enlarge, alter, repair, move, improve, remove, convert, demolish, use, occupy or maintain any building, structure or land use regulated by this ordinance or cause the same to be done without first obtaining a separate zoning permit for each building, structure or land use change from the Office of Planning and Zoning. A zoning permit does not supersede or give the recipient special privileges in relationship to other required permits including but not limited to: building permits will be required to be permitted and approved by the chief building official.

(Amended: Ordinance No. 1907-42, 07-23-19)

23.02 Application. To obtain a zoning permit, the applicant shall first file an application therefor in writing on a form furnished by the Office of Planning and Zoning. A zoning permit may be applied in conjunction with a building permit. Every application shall:

- A. Identify and describe the work to be covered by the permit for which application is made.
- B. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
- C. Indicate the proposed use or occupancy and work proposed.
- D. Be accompanied by a plot plan.
- E. Be signed by applicant, or his or her authorized agent, who may be required to submit evidence to indicate the authority.
- F. Give such other data and information as may be required by the Planning Director or his or her representative.

(Amended: Ordinance No. 1907-42, 07-23-19)

23.03 Information on Plot Plan. Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this ordinance and all relevant laws, ordinances, rule, and regulations.

Exception: The Planning Director or his or her representative may waive the submission of plans, if he or she finds that the nature of the work or change in land use applied for is such that reviewing of plans is not necessary to obtain compliance with this ordinance.

(Amended: Ordinance No. 1907-42, 07-23-19)

23.04 Issuance. The application, plans, and other data filed by an applicant for a zoning permit shall be reviewed by the Planning Director or his or her representative. The plans may be reviewed by other departments to verify compliance with any applicable laws or requirements under their jurisdiction.

If the Planning Director or his or her representative finds that the work described in an application for a zoning permit and the plans, and other data filed therewith, conform to the requirements of this ordinance and other pertinent laws and ordinances, and that the fees have been paid, he or she shall issue a permit.

When the Planning Director or his or her representative issues the zoning permit where plans are required, he or she shall endorse in writing and/or stamp his or her approval of the plans and may stipulate required modifications or conditions in order to establish compliance with any applicable ordinances of the County. The approved plans and specifications shall not be changed, modified, or altered without authorization from the Planning Director, and all work shall be done in accordance with approved plans.

The Planning Director or his or her representative may issue a zoning permit for the construction or use of part of a building or a structure before the entire plans for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this ordinance. The holder of the zoning permit shall proceed at his or her own risk, without assurance that the zoning permit for the entire building, structure, or use will be granted.

(Amended: Ordinance No. 1907-42, 07-23-19)

23.05 Validity of Permit. The issuance or granting of a zoning permit or approval of plans shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this ordinance or of any other ordinance of the jurisdiction. No zoning permit presuming to give authority to violate or cancel the provisions of this ordinance shall be valid.

(Amended: Ordinance No. 1907-42, 07-23-19)

23.06 Expiration. Every zoning permit issued under the provisions of this chapter shall expire by limitation and become null and void if the work or use authorized by the permit is not commenced within 180 days from the date of the zoning permit, or if the work or use authorized by the permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before the work can be recommenced, a new permit shall first be obtained to do so, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that the suspension or abandonment has not exceeded one year.

Any applicant holding an unexpired zoning permit may apply for an extension of the time within which he or she may commence work under that zoning permit when he or she is unable to commence work within the time required for this section for good and satisfactory reasons. The Planning Director may, except as otherwise provided herein, extend the time for action by the applicant for a period not exceeding 180 days upon written request by the applicant showing that circumstances beyond the control of the applicant showing that circumstances beyond the control

of the applicant have prevented action from being taken. No permit shall be extended more than once.

(Amended: Ordinance No. 1907-42, 07-23-19)

23.07 Suspension or Revocation. The Planning Director may, in writing, suspend or revoke a permit issued under the provisions of this ordinance whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this ordinance.

(Amended: Ordinance No. 1907-42, 07-23-19)

Article 24.00

Fees

24.01 General Regulations. The fees set forth in this article shall be paid at the time of filing an application with the Office of Planning and Zoning. Such fee shall be payable to the County Treasurer and under no conditions shall any fee be refunded after publication of any required legal notice or, if notice is not required, after the Planning Commission has considered the application. No action shall be taken upon any application unless all fees have been paid.

24.02 Board of Adjustment. A fee of \$250.00 shall be charged for filing a variance application or an appeal to the Zoning Board of Adjustment.

24.03 Change of Zone. A fee of \$350.00 shall be charged for filing an application to change the zoning classification of property, except to the Planned Development District. If any use, for which a rezoning is required, is commenced prior to the application for a rezoning, the application fee shall be double the regular fee.

24.04 Conditional Use. A fee of \$250.00 shall be charged for filing an application for a conditional use permit in any district. If any use, for which a conditional use permit is required, is commenced prior to the application for a conditional use permit, the application fee shall be double the regular fee.

24.05 Planned Development District. A fee of \$350.00 plus \$50.00 for each subarea shall be charged for the filing of an application to change to the Planned Development District. If any use, for which a rezoning is required, is commenced prior to the application for a rezoning, the application fee shall be double the regular fee.

24.06 Major Amendment. A fee of \$100.00 shall be charged for the filing of an application for a major amendment to a Planned Development District.

24.07 Minor Amendment. A fee of \$50.00 shall be charged for the filing of an application for a minor amendment to a Planned Development District.

24.08 Special Meeting. A fee of \$500.00 shall be charged for requesting a special meeting of the Planning Commission to consider any matter or issue addressed by the Ordinance.

24.09 Zoning Permit. A fee of \$50.00 shall be charged for all zoning permits not requiring a building permit fee.

Article 25.00
General Provisions

25.01 General Regulations. The following general regulations shall apply to all zoning districts:

- A. Except as otherwise provided, no building shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall any structure or land be used:
 - 1. Except for a purpose permitted in the district in which the structure or land is located;
 - 2. Except in conformance with the height and minimum lot requirements, and the parking and sign regulations, and any other applicable requirements of the district in which the structure or land is located.
 - 3. Except in conformance with any Federal, State or County codes as may be applicable. Where these regulations and any other rules and regulations conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- B. The density and yard requirements of these regulations are minimum regulations for each and every building existing at the effective date of these regulations and for any building hereafter erected or structurally altered. No land required for yards or other open spaces about an existing building or any building hereafter erected or structurally altered shall be considered a yard or lot area for more than one building.
- C. Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one main building on a lot except as otherwise provided in these regulations.
- D. Cooperatives, condominiums, and all other forms of property ownership do not affect the provisions of these regulations and all requirements shall be observed as though the property were under single ownership.

25.02 Violation and Penalty. Violations shall be treated in the manner specified below:

- A. The owner or agent of a building or premises in or upon which a violation of any provision of these regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00, 30 days in jail, or both. Each and every day that such violation continues may constitute a separate offense.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these

regulations, the appropriate authorities of Lincoln County, in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of said building, structure or land.

25.03. Warning and Disclaimer of Liability. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the flood zone or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of Lincoln County or on any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

25.04 Interpretation, Abrogation, and Severability. In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not the intent to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where these regulations and other regulations, easement, covenant or deed restriction conflict or overlap whichever imposes the more stringent restrictions shall prevail. All other regulations inconsistent with these regulations are hereby repealed to the extent of this inconsistency only. If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

25.05 Saving Clause. These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect rights or causes of action, either civil or criminal, not in suit that may have already accrued or grown out of any regulations repealed.

25.06 Purpose of Catch Heads. The catch heads appearing in connection with the sections of these regulations are inserted simply for convenience to serve the purpose of an index. The introductory statements found at the beginning of each article are to serve as general references only. The catch heads, introductory statements, and illustrative examples of zoning terms shall be wholly disregarded by any person, office, court, or other tribunal in construing the terms and provisions of these regulations.

25.07 Effective Date. These regulations shall be in full force and effect from and after its passage and publication as provided by law.

Article 26.00

Definitions

26.01 Purpose. For the purpose of these regulations certain terms are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word 'building' shall include the word 'structure' and 'premises'; the word 'shall' is mandatory and not directory; the words 'used' or 'occupied' include the words 'intended', 'designed' or 'arranged to be used or occupied'; the word 'lot' includes the words 'plot', 'parcel' or 'tract', and the word 'person' includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. Any word not herein defined shall be as defined in any recognized standard English dictionary.

26.02 Definitions.

01. **ABANDONED SIGN.** A sign or sign structure which contains no sign copy, contains obliterated or obsolete sign copy, or is maintained in an unsafe or unsightly condition for a period of three months shall be considered an abandoned sign.
02. **ABANDONED WELL.** A well no longer used or intended to be used as a water source.
03. **ACCESSORY BUILDING OR USE.** A subordinate building or portion of the main building, the use of which is incidental to and customary in connection with the main building or the main use of the premises and which is located on the same lot with such main building or use. An accessory use is one which is incidental to the main use of the premises.
04. **ADULT ARCADE.** Any place to which the public is permitted or invited and in which coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images involving specific sexual activities or specific anatomical areas to persons in booths or viewing rooms.
05. **ADULT BOOKSTORE OR VIDEO STORE.** A commercial establishment that offers for sale or rent any of the following as one of its principal business purposes:
 1. Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, videocassettes or reproductions or slides, or other visual representations that depict or describe specific sexual activities or specific anatomical areas.
 2. Instruments, devices, or paraphernalia that are designed for use in connection with specific sexual activities.
06. **ADULT CABARET.** Any nightclub, bar, restaurant, or other similar commercial establishment that regularly features:
 1. Persons who appear in a state of nudity or seminudity.

2. Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.
3. Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas.
07. **ADULT MOTION PICTURE THEATER.** A commercial establishment in which, for any form of consideration, films, motion pictures, videocassettes, slides, or other similar photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas are predominantly shown.
08. **ADULT ORIENTED BUSINESS.** Any adult arcade, adult bookstore or video store, cabaret, adult live entertainment establishment, adult motion picture theater, adult theater, massage establishment that offers adult service, or nude model studios.
09. **ADULT SERVICE.** Dancing, serving food or beverages, modeling, posing, wrestling, singing, reading, talking, listening, or other performances or activities conducted for any consideration in an adult oriented business by a person who is nude or seminude during all or part of the time that the person is providing the service.
10. **ADULT THEATER.** A theater, concert hall, auditorium, or similar commercial establishment that predominantly features persons who appear in a state of nudity or who engage in live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.
11. **AGRICULTURE.** The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition shall not include intensive agricultural activities such as concentrated animal feeding operations and agribusiness activities.
12. **AIRPORT.** A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.
13. **ANIMAL UNIT.** A unit of measurement based on the amount of waste produced by the animal. For the purposes of this ordinance animal units (AU) shall be calculated according to the following chart. Animal units relate to inventory rather than annual production. Animal units are computed by multiplying the number of head of a particular animal times the corresponding animal unit equivalent. Other animal species equivalent which are not listed will be based on species' waste production.

ANIMAL SPECIES	ANIMAL UNIT EQUIVALENT (AU/HEAD)
Feeder or Slaughter Cattle	1.0
Mature Dairy Cattle	1.4
Finisher Swine (over 55 lbs.)	0.4
Nursery Swine (less than 55 lbs.)	0.1
Farrow-to-Finish (sows)	3.7
Swine Production Unit (sows, breeding, gestating & farrowing)	0.47
Horses	2.0
Sheep	0.1
Turkeys	0.018
Laying Hens and Broilers (continuous overflow watering)	0.01
Laying Hens and Broilers (separate liquid handling system)	0.033
Ducks	0.2

14. **ANIMAL WASTE, INCORPORATED.** Animal waste applied to the land surface and mechanically mixed into the soil within 24 hours.
15. **ANIMAL WASTE, INJECTED.** Animal waste injected or tilled into the soil at the time of application.
16. **ANIMAL WASTE, SURFACE APPLIED.** Animal waste applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal waste in irrigation waters.
17. **ANTENNA.** Any structure or device used for the purpose of collecting or radiating electromagnetic waves including but not limited to directional antennas such as panels, microwave dishes, satellite dishes, and omni-directional antenna such as whip-antenna.
18. **ANTENNA SUPPORT STRUCTURE.** Any existing structure that supports wireless communications facilities, such as but not restricted to, telecommunications and broadcast towers, buildings, clock towers, steeples, and light poles.
19. **AQUIFER.** A geologic formation, group of formations, or part of a formation capable of yielding, storing, or transmitting a usable amount of groundwater to wells or springs for domestic or animal use.
20. **AQUIFER, SHALLOW.** Any aquifer having the following characteristics:
 1. The aquifer is within fifty (50) feet or less below the land surface with fifteen (15) feet or less of continuous, overlying, extremely low permeability material, such as clayey till or shale. Weathered till or highly fractured weathered shale is not an extremely low permeability for purposes of this ordinance; or

2. The aquifer is greater than fifty (50) feet but less than one hundred feet (100) below the land surface with thirty (30) feet or less of continuous, overlying, low to extremely low permeability geological material that may be a combination of weathered and unweathered till, shale, or till and shale.

21. **AQUIFER PROTECTION AREA.** A geographical area overlying a geologic formation, group of formations or part of a formation capable of yielding, storing, or transmitting a usable amount of groundwater to wells or springs for domestic or animal use. Any deposition of sand and gravel that is connected to water bearing strata or is not isolated.

AUTOMATIC OBSTRUCTION LIGHTING SYSTEM. A lighting system that provides continuous 360-degree surveillance of the airspace around a wind farm from the ground level to above aircraft flight altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.

(Amended: Ordinance No. 1710-47, 10-24-17)

22. **AUTOMOBILE SALES.** The use of any building, land area, or their premises for the display and sale of new or used automobiles, panel trucks or vans, trailers, or recreational vehicles and including any warranty repair work and other repair service conducted as an accessory use.
23. **AUTOMOBILE SERVICE STATION.** Shall mean any building or premise which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted. Gasoline pumps and gasoline pump islands shall be located more than twelve (12) feet from the nearest property line.
24. **AUTOMOBILE STORAGE YARD.** The temporary storage of vehicles which are impounded, licensed, and operable, in an unroofed area.
25. **BANNERS.** A temporary sign composed of lightweight material either enclosed or not enclosed in a rigid frame secured or mounted so as to allow movement of the sign caused by movement of the atmosphere; i.e. pennants, twirling signs, balloons, or other gas-filled figures, ribbons, or other similar moving devices.
26. **BAR/LOUNGE.** An establishment that is licensed to sell alcoholic beverages, including beer, by the drink.
27. **BED AND BREAKFAST ESTABLISHMENT.** A private single-family residence which is used to provide limited meals and temporary accommodations for a charge to the public.
28. **BEST MANAGEMENT PRACTICES (BMP).** Schedules of activities, prohibitions of

practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, manure stockpiles, or drainage from raw material storage.

29. **BILLBOARD.** A sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located. Also, an off-premise sign.
30. **BOARD OF COUNTY COMMISSIONERS.** The governing body of Lincoln County.
31. **BOARDINGHOUSE.** A building, other than a hotel or apartment hotel, where for compensation and by prearrangement for definite periods, lodging, meals, or lodging and meals are provided for three or more persons.
32. **BROADCAST.** To convey, generate, transmit or receive electromagnetic signals regardless of frequency, power level or communications use.
33. **BROADCAST TOWER.** Shall mean a structure, not including offices or studio, for the transmission or broadcast of radio, television, radar, or microwaves.
34. **BUILDABLE AREA.** That portion of the lot that can be occupied by the principal use, thus excluding the front, rear and side yards.
35. **BUILDING.** Any structure, either temporary or permanent, forming an open, partially enclosed, or enclosed space constructed by a planned process of materials and components to be designated and used for the shelter or enclosure of any person, animal, or property of any kind. For the purpose of these regulations, retaining walls, concrete slabs, utility poles and fences are not considered structures.
36. **BUILDING, DETACHED.** A building surrounded by open space on the same lot.
37. **BUILDING ELIGIBILITY.** See 'eligible building site'.
38. **BUILDING, HEIGHT OF.** The vertical distance from the grade to (a) the highest point of a flat roof, (b) the deck line of a mansard roof, or (c) the average height between eaves and ridge for gable, hip, and gambrel roofs.
39. **BUILDING LINE.** Is a line on the lot running parallel to and the required horizontal distance from the nearest property line.
40. **BUILDING, PRINCIPAL.** A non-accessory building in which is conducted the principal use of the lot on which it is located.

41. **BUS/TRUCK TERMINAL.** An area and building where buses, trucks, and cargo are stored; where loading and unloading are carried on regularly; and where minor maintenance of these types of vehicles is performed.
42. **CAMOUFLAGE.** A covering or disguise of any kind to hide or conceal.
43. **CAMPGROUND.** A plot of ground consisting of two or more campsites where camping units can be located and occupied as temporary living quarters.
44. **CATHODIC PROTECTION.** A technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell; protection of a tank through the application of either galvanic anodes or impressed current.
45. **CHANGE OF USE.** Substitution of one thing for another specifically regarding use of land or use of a building.
46. **CHEMIGATION.** The process of applying agricultural chemicals (fertilizers or pesticides) through an irrigation system by injecting chemicals into the water.
47. **CLASS V INJECTION WELL.** A conduit through which potentially contaminated but generally non-hazardous fluids can move from the land surface to the subsurface; the types of primary concern in Lincoln County are (1) commercial/industrial facility septic tanks used to dispose of more than domestic wastewater and (2) dry wells for repair/service bay drains at facilities servicing motorized vehicles/equipment.
48. **COMMERCIAL RECREATION FACILITY.** A recreation facility operated as a business and open to the public for a fee.
49. **CONCENTRATED ANIMAL FEEDING OPERATION.** A lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 90 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. For the purpose of these regulations, a concentrated animal feeding operation is further defined as follows:
50. **CONCENTRATED ANIMAL FEEDING OPERATION - EXISTING.** A non-permitted operation of at least 200 animal units which existed on August 3, 1995.
51. **CONCENTRATED ANIMAL FEEDING OPERATION - NEW.** An operation which did not exist prior to August 3, 1995.
52. **CONTAINMENT FACILITY, PRIMARY.** The tank, pit, container, pipe, enclosure, or vessel of first containment of a regulated substance.

- 53. **CONTAINMENT FACILITY, SECONDARY.** A second level of containment outside the primary containment facility designed to prevent a regulated substance from reaching land or waters outside the containment area.
- 54. **CONTAMINATION.** The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.
- 55. **CONTINGENCY PLANS.** Detailed plans for control, containment, recovery and clean up of hazardous materials released during floods, fires, equipment failures, leaks and spills.
- 56. **COMPREHENSIVE PLAN.** The adopted long-range plan intended to guide the growth and development of the area, including analysis, recommendations and proposals of economy, housing, transportation, community facilities, and land use.
- 57. **CONDITIONAL USE.** A use that would not be appropriate generally or without restriction throughout the zoning district, but which if controlled, would promote the public health, safety and welfare.
- 58. **CONTAMINATION, AIR.** A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining or milling operation that increases ambient air radiation levels by 50 mrem from the background levels established prior to the commencement of such activity, measured at the perimeter of the mining or milling site or at the top of an exploration hole.
- 59. **CONTAMINATION, WATER.** A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining or milling operation that exceeds the maximum contaminate levels established by the Federal Safe Drinking Water Act and regulations promulgated thereunder.
- 60. **CONTRACTOR'S SHOP AND STORAGE YARD.** Use of land or building(s) for storage and preparation of materials used by that same individual(s) in conducting the business of construction and repair work, generally completed at some other on-site location.
- 61. **DAY CARE.** The providing of care and supervision of a child or children as a supplement to regular parental care, without transfer of legal custody or placement for adoption, with or without compensation, on a regular basis for a part of a day.
- 62. **DAY CARE, CENTER.** Is normally in a facility used only for providing day care nursery or pre-kindergarten services, and is limited in number over twelve (12) by the square footage of useable space available. The ratio is presently thirty-five (35) square feet per child indoors and fifty (50) square feet per child outdoors.
- 63. **DAY CARE, FAMILY.** Care is done in a family home and the number of children cared for is limited to a maximum of six (6) children under fourteen. Included in that count are the providers' own children six years and under. See (Home Occupation).

64. DAY CARE, GROUP. Is normally in a family home. The number of children cared for is seven (7) to twelve (12) children under the age of fourteen including the provider's own children six years and under.
65. DENSITY. The number of families, individuals, dwelling units, or housing structures per unit of land.
66. DEVELOPMENT. The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.
67. DISTRICT. An area for which regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.
68. DWELLING. A building, or portion thereof, constructed in conformance with the International Building Code, and used exclusively for human habitation, including single-family, two-family, and multiple-family dwellings, but not including hotels, motels, or lodging houses. This definition does not include a mobile home or manufactured home (see subsection 111).
69. DWELLING, SINGLE FAMILY. A building designed for or occupied exclusively by one family.
70. DWELLING, TWO FAMILY. A building designed for or occupied exclusively by two families.
71. DWELLING, MULTIPLE. A building designed for or occupied exclusively by three or more families.
72. DWELLING UNIT. One or more rooms in a dwelling occupied or intended to be occupied as separate living quarters by a single family as defined herein.
73. ELECTRICAL SUBSTATION. A premises which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.
74. ELIGIBLE BUILDING SITE (BUILDING ELIGIBILITY). A site which fulfills the requirements for the construction or placement of a residential dwelling or manufactured home. To compute the number of eligible building sites on a lot of record of forty acres or more, the total acreage of the parcel shall be divided by forty acres. The resulting whole number is the number of building sites eligible on the lot of record.
75. EXPLORATION. The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other

facilities related to such work. Any and all shafts, tunnels, or holes shall not exceed 18 inches in diameter unless the conditional use for exploration provides for a larger diameter. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

- 76. FACILITY. Something built, installed or established for a particular purpose.
- 77. FAMILY. One or more individuals, related by blood or law, occupying a dwelling unit and living as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law, in addition to persons actually related by blood or law the following persons shall be considered related by blood or law for the purposes of this ordinance: (1) A person residing with the family for the purpose of adoption; (2) Not more than six (6) persons under eighteen (18) years of age, residing in a foster home licensed or approved by a governmental agency; (3) Not more than four (4) persons nineteen (19) years of age or older residing with the family for the purpose of receiving foster care licensed or approved by a governmental agency; and (4) any person who is living with the family at the direction of a court.
- 78. FARMSTEAD. An area which existed on August 3, 1995 and encompasses a farm dwelling or dwellings and other agricultural buildings and structures devoted to and used in connection with a farming operation. A farmstead is generally bounded on one or more sides by a tree belt, is located on one or more quarter-quarter section parcels or equivalent area, and does not include crop land, hay land or pasture.
- 79. FLOOD INSURANCE RATE MAP (F.I.R.M.). An official map of Lincoln County on which the Federal Insurance Administration has delineated the areas of flood hazard and their potential for flooding.
- 80. FLOOD PLAIN. A land area adjoining a river, creek, watercourse or lake which is likely to be flooded and which is designated as Zone A, A0 or A1- A30 on the F.I.R.M.
- 81. FLOOD PROOFING. A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding primarily for the reduction or elimination of flood damages to properties, water, and sanitary facilities, structures, and contents of buildings in a flood hazard area.
- 82. FLOOR AREA. The square feet of floor space within the outside line of walls and includes the total of all space on all floors of a building. It does not include porches, garages, or space in a basement, or cellar when said space is used for storage or incidental uses.

83. **FREESTANDING SIGN (Ground Sign).** A sign supported by one or more uprights, poles, or braces in or upon the ground and not attached to any building.
84. **FRONTAGE.** All the property on one side of a street or highway, between two intersecting streets (crossing or terminating) or for a distance of 400 feet on either side of a proposed building or structure, measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street, but not including property more than 400 feet distant on either side of a proposed building or structure.
85. **GARAGE, PRIVATE.** A detached accessory building or portion of a main building housing the automobiles of the occupants of the premises, but not commercial vehicles.
86. **GARAGE, PUBLIC.** A building or portion thereof, other than a private or storage garage, designed or used for equipping, servicing, repairing, hiring, selling, storing, or parking motor-driven vehicles. The term repairing shall not include an automobile body repair shop nor the rebuilding, dismantling, or storage of wrecked or junked vehicles.
87. **GARAGE, STORAGE.** Any building or premises, used for housing only motor-driven vehicles, other than trucks and commercial vehicles.
88. **GREENHOUSE.** A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.
89. **GROUND SIGN.** See (Freestanding Sign).
90. **GROUND WATER.** Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.
91. **GROUP HOME.** A supervised living or counseling arrangement in a family home context providing for the 24 hour care of children or adults.
92. **HAZARDOUS MATERIAL.** Any contaminant as defined in this ordinance, and any hazardous chemical for which a material safety data sheet must be filed under 42 USC 11021 and 11022 as in effect on the date of publication of this ordinance.
93. **HOME OCCUPATION, MINOR.** A business, profession, occupation, or trade conducted for gain or support and located entirely within a dwelling, which use is accessory, incidental, and secondary to the use of the dwelling for residential purposes and does not change the essential residential character or appearance of such dwelling.
94. **HOME OCCUPATION, MAJOR.** A business, profession, occupation, or trade conducted for gain or support and located entirely within a dwelling, and/or accessory building thereto, which use is accessory, incidental, and secondary to the use of the property for

residential or agricultural purposes and does not change the essential residential or agricultural character or appearance of such property.

95. **HYDROLOGIC BALANCE.** The relationship between the quality and quantity of inflow to and outflow from the storage in hydrologic units, such as a drainage base and aquifer, soil zone lake, or reservoir it encompasses, the quantity and quality relationships between precipitation, runoff, evaporation and the change in ground and surface water storage.
96. **HYDROLOGIC REGIME.** The entire state of water movement in a given area which is a function of the climate and includes the entire water cycle for the drainage area.
97. **JOINT ZONING JURISDICTION.** The area outside a municipality where the Board of County Commissioners has granted to the municipality joint zoning powers with the County.
98. **KENNEL.** Any premise or portion thereon where dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for payment. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.
99. **LEAKS AND SPILLS.** Any unplanned or improper discharge of a potential contaminant including any discharge of a hazardous material.
100. **LOADING SPACE.** A space within the main building or on the same lot for the standing, loading, or unloading of trucks.
101. **LOT.** A parcel or tract of land having specific boundaries and which has been recorded in the Register of Deeds office. A lot used for residential purposes shall include only one main building together with its accessory buildings, open spaces and parking spaces required by these regulations and shall have its principal frontage upon a road or other approved access.
102. **LOT AREA.** The lot area is the area of a horizontal plane bounded by the front, side and rear lot lines. Public right-of-way shall not be considered part of the lot area.
103. **LOT, CORNER.** A lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.
104. **LOT, DEPTH.** The mean horizontal distance between the front and rear lot lines.
105. **LOT, DOUBLE FRONTAGE.** A lot having a frontage on two nonintersecting roads, as distinguished from a corner lot.
106. **LOT, FRONTAGE.** The length of the front lot line measured at the street right-of-way line.

107. LOT, INTERIOR. A lot other than a corner lot.
108. LOT LINE. A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.
109. LOT LINE, FRONT. The lot line separating a lot from a street right-of-way.
110. LOT LINE, REAR. The lot line opposite and most distant from the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line. In no case, shall any structure be closer than three feet to any residential lot line.
111. LOT LINE, SIDE. Any lot line other than a front or rear lot line.
112. LOT OF RECORD. Part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of said Register of Deeds prior to August 3, 1995.
113. LOT, WIDTH. The width of a lot at the front yard line.
114. MAIN BUILDING. See 'Principal Building'.
115. MAJOR STREET. Streets or roads which have been designated as freeways or arterial routes on the major street plan.
116. MANUFACTURING:
1. LIGHT MANUFACTURING. Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building.
 2. GENERAL MANUFACTURING. Those manufacturing processes including light manufacturing which have the potential to be a nuisance due to dust, odor, noise, vibration, pollution, smoke, heat, glare, or the operation of the processes outside the building.
117. MANURE STORAGE AREA. An area for the containment of animal manure in excess of 8,000 pounds or 1,000 gallons.
118. MAP, OFFICIAL ZONING. The map or maps, which are legally adopted as a part of the zoning regulations that delineate the boundaries of the zoning districts.
119. MASSAGE ESTABLISHMENT. An establishment in which a person, firm, association, or corporation engages in or permits massage activities, including any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, or

stimulating of external soft parts of the body with the hands or with the aid of any mechanical apparatus or electrical apparatus or appliance. This subdivision does not apply to:

1. Physicians who are licensed pursuant to SDCL Ch. 36-4 or a podiatrist licensed pursuant to SDCL Ch. 36-8.
 2. Registered nurses or licensed practical nurses who are licensed pursuant to SDCL Ch. 36-9.
 3. Physician assistants who are licensed pursuant to SDCL Ch. 36-4A or certified nurse practitioners and certified nurse midwives who are licensed pursuant to SDCL Ch. 36-9A.
 4. Physical therapists licensed pursuant to SDCL Ch. 36-10.
 5. Athletic trainers licensed pursuant to SDCL Ch. 36-29.
 6. Massage therapists licensed pursuant to SDCL Ch. 36-35.
 7. Chiropractors licensed pursuant to SDCL Ch. 36-5.
120. MILLING. The processing or enhancing of a mineral.
121. MINE DEWATERING DISCHARGE. Water that has been discharged from active or abandoned mines in areas affected by mineral exploration, mining and milling.
122. MINERAL. An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, a metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel and quarry rock.
123. MINERAL EXTRACTION. The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.
124. MOBILE HOME/MANUFACTURED HOME. Any single-family permanent living quarters, more than eight (8) feet wide and thirty-two (32) feet in length, and designed and built to be towed on its own chassis.
125. MOBILE HOME PARK. A parcel or tract of land designed and maintained for the purpose of providing a location for mobile homes and manufactured homes as living quarters and where private roads provide access to individual lots. This definition shall specifically exclude sales lots for mobile homes, manufactured homes, travel trailers and similar operations.

126. **MOTOR VEHICLE REPAIR SHOP.** Any building or structure in which a business, service or industry involving the maintenance, servicing or repair of vehicles is conducted or rendered. This includes rebuilding of engines, spray paint operations and hourly repair.
127. **MREM.** One thousandth of a REM.
128. **NEIGHBORHOOD UTILITY FACILITY.** Telephone, electric, and cable television lines, poles, and equipment; water, oil, or gas pipes, mains and valves; sewer pipes and valves; lift stations; telephone exchanges and repeaters; and all other facilities and equipment (excluding buildings that exceed 120 square feet of roof area) necessary for conducting a service by governmental agencies or commissions or public or private utilities. This definition does not include an electrical substation.

(Amended: Ordinance No. 1907-49, 07-23-19)

129. **NONCONFORMING BUILDING OR STRUCTURE.** Any building or structure which does not comply with all of the regulations of this ordinance or any amendment hereto governing bulk for the zoning district in which such building or structure is located; or is designed or intended for a nonconforming use.
130. **NONCONFORMING USE.** A use of land, buildings, structures, or premises that lawfully existed prior to the adoption, revision, or amendment to this ordinance, but which fails, by reason of such adoption, revision, or amendment, to conform to the present use restrictions of the zoning district in which it is located.
131. **NONSTANDARD USE.** The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.
132. **NUDE MODEL STUDIO.** A place in which a person who appears in a state of nudity or who displays specific anatomical areas is observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by other persons who pay money or other considerations. The term, nude model studio, does not include a proprietary school that is licensed by this state, a college, or a university that is supported entirely or in part by taxation, a private college or university that maintains and operates educational programs in which credits are transferable to a college or university that is supported entirely or in part by taxation or a structure to which the following apply:
1. A sign is not visible from exterior of the structure and no other advertising appears indicating that a nude person is available for viewing.

2. A Student must enroll at least three days in advance of a class in order to participate.
 3. No more than one nude or seminude model is on the premises at any time.
133. NUDE, NUDITY OR STATE OF NUDITY. Any of the following:
1. The appearance of a human anus, genitals, or a female breast below a point immediately above the top of the areola.
 2. A state of dress that fails to opaquely cover a human anus, genitals, or a female breast below a point immediately above the top of the areola.
134. OFFICE OF PLANNING AND ZONING. The office designated by the Board of County Commissioners to administer and enforce this ordinance.
135. OUTDOOR STORAGE. The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours. Goods, material, merchandise, or vehicles shall not include items listed, nor be of a nature as indicated in the definition of a salvage or junkyard as defined herein.
136. PARKING SPACE. An area, enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street and permitting ingress and egress of an automobile.
137. PASTURE. A field that provides continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.
138. PERMISSIVE USES. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.
139. PERMITTED SPECIAL USE. A use allowed in a zoning district subject to the applicable restrictions of that zoning district and additionally subject to certain restrictions for that specific use.
140. PERSONAL SERVICES. Establishments primarily engaged in providing services involving the care of a person or their apparel. Including but not limited to: laundry or dry cleaning, garment services, coin operated laundry, photographic and art studios, beauty shop, barber shop, shoe repair, reducing salon and health club, and clothing rental.
141. PLACE OF WORSHIP. A structure where persons regularly assemble for worship, ceremonies, rituals, and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs, or architectural or other features.

142. **PLANNING COMMISSION.** The Planning Commission appointed by the Board of County Commissioners, who shall regularly meet and make determinations or recommendations as provided for by this Ordinance.
143. **PLANNING DIRECTOR.** The individual appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.
144. **PORTABLE SIGN.** Any sign not permanently attached to the ground or building.
145. **PREMISES.** A lot, parcel, tract or plot of land together with all buildings and structures thereon.
146. **PRIMARY CONTAINMENT FACILITY.** A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.
147. **PRINCIPAL BUILDING.** A building in which is conducted the primary or predominant use of the lot on which it is located.
148. **PRINCIPAL USE.** The primary or predominant use of any lot.
149. **PUBLIC UTILITY FACILITIES.** See (Neighborhood Utility Facilities). The definition is the same as the Neighborhood except that buildings that exceed 120 square feet in roof area are allowable.
150. **QUARTER-QUARTER SECTION.** A quarter of a quarter section as determined by the United States Rectangular Land Survey land survey system shall be considered a quarter-quarter section for purposes of these regulations. For purposes of these regulations, rights-of-way for public or private transportation shall not impact the completeness of a quarter-quarter section.
151. **RECHARGE CAPACITY.** The ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
152. **REGULATED SUBSTANCE.** A regulated substance shall include: pesticides and fertilizers, hazardous and toxic substances designated by the EPA thru any of the following; Clean Water Act, Toxic Substances Control Act, Resource Conservation and Recovery Act, or Comprehensive Environmental Response Compensation and Liability Act; petroleum and petroleum substances, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, additives used in refining oils and gasoline. This term does not include sewage and sewage sludge.
153. **REM (ROENTGEN EQUIVALENT MAN).** A measurement of the biological effects resulting from ionizing radiant energy where roentgen is the amount of radiation leading to the absorption of 88 ergs of energy per gram of air.
154. **RESIDENCE.** A permanent dwelling place.

155. **RETAIL SALES AND TRADE.** Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.
156. **SALVAGE OR JUNK YARD.** An open area where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to: scrap iron and other metals, paper, rags, rubber tires, bottles, and motor vehicles. This definition includes an automobile wrecking or dismantling yard, but does not include uses established entirely within enclosed buildings.
157. **SANITARY LANDFILL.** A site for the disposal of garbage and other refuse material.
158. **SECONDARY CONTAINMENT FACILITY.** A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area.
159. **SEMINUDE.** A state of dress in which clothing covers no more than the genitals, pubic region, and female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices.
160. **SETBACK/SETBACK LINE.** That line that is the required minimum distance from any lot line that establishes the area within which the principal structure must be erected or placed.
161. **SIGN.** Any object, device, or structure, or part thereof, situated outdoors or visible from outdoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. This definition does not include national or state flags or their emblem or insignia, interior window displays, athletic scoreboards, or the official announcements or signs of government.
162. **SIGN AREA.** The area of the largest single face of the sign within the perimeter which forms the outside shape including any frame which forms an integral part of the display, but excluding the necessary supports or uprights on which the sign may be placed. If the sign consists of more than one section or module, all areas will be totaled.
163. **SIGN (OFF PREMISE).** A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

164. **SIGN (ON PREMISE).** A sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or to an entertainment offered on the premises where the sign is located.
165. **SOLID WASTE RECEIVING STATION.** A facility where garbage and other refuse material is collected at a central location, compacted and then transported for disposal at a landfill site.
166. **SPECIFIED ANATOMICAL AREAS.** Any of the following:
1. A human anus, genitals, the pubic region, or a female breast below a point immediately above the top of the areola that is less than completely and opaquely covered.
 2. Male genitals in a discernibly turgid state even if completely and opaquely covered.
167. **SPECIFIC SEXUAL ACTIVITIES.** Any of the following:
1. Human genitals in a state of sexual stimulation or arousal.
 2. Sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation, or sodomy.
 3. Fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breast.
 4. Excretory functions as part of or in connection with any of the activities under subsection (1), (2), or (3) of this subdivision.
168. **STABLE.** Any premise or part thereon where horses or any equine animal are maintained, boarded, bred or cared for in return for payment, or are kept for the purpose of sale.
169. **STATIONARY TANK.** An above ground tank which is fixed permanently in place on a foundation, rack, cradle, stilts or on the ground. The term does not include tanks mounted on wheels, trolleys, skids, pallets or rollers.
170. **STORY.** That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.
171. **STREET.** A public right-of-way which affords the principal means of access to abutting property. Also referred to a road or highway.
172. **STREET LINE.** The line between the public right-of-way and private property.

173. **STRUCTURE.** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. For the purpose of these regulations, retaining walls, concrete slabs and utility poles are not considered structures.
174. **SUBDIVISION.** The division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building developments (whether immediate or future). This term includes resubdivision and, when appropriate to the context, is related to the process of subdividing or to the land subdivided.
175. **SURFACE IMPOUNDMENT.** A facility, or part of a facility which is a natural topographic depression, man-made excavation, or dike area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.
176. **TEN YEAR TIME OF TRAVEL DISTANCE.** The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.
177. **TOWER FACILITY(IES).** Structures thirty-five feet (35') or more in height and that may include a tower, antenna(s), equipment building(s), anchor points and other related equipment used by broadcast services and/or wireless telecommunications services.
178. **TOWER, HEIGHT.** The height of the tower is the vertical distance from the point of contact with the ground to the highest point of the tower including all antenna or other attachments.
179. **TOWER, MONOPOLE.** A tower consisting of a single pole, constructed without any guy wires and ground anchors.
180. **TRAILER.** Means any of the following:
1. **TRAVEL TRAILER.** A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and, when factory equipped for the road, it shall have a body width not exceeding eight (8) feet, and a body length not exceeding thirty (30) feet.
 2. **PICK-UP COACH.** A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
 3. **MOTOR HOME.** A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
 4. **CAMPING TRAILER.** A canvas, folding structure, mounted on wheels and designed for travel, recreation and vacation use.

181. **TRUCK STOP.** Any building, premises, or land in which or upon which a business, service or industry involving the maintenance, servicing, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into motor vehicles, the sale of accessories or equipment for trucks and similar commercial vehicles. A truck stop also may include overnight accommodations and restaurant facilities.
182. **UNSAFE SIGN.** A sign on which the display area or structure has deteriorated due to rust, rotting, or physical damage to the point where any portion of the sign has the potential to fall shall be considered unsafe.
183. **UNSIGHTLY SIGN.** A sign which has deteriorated to the point where at least one-fourth of the display area is no longer clearly recognizable at a distance of twenty feet; or where the paint is peeling, chipping or flaking from the structure shall be considered an unsightly sign.
184. **WAREHOUSE.** A building used primarily for the storage of goods and materials.
185. **WASTE.** Any garbage, refuse, manure, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1986, or source, special nuclear or by-product materials as defined by the Atomic Energy act of 1954, as amended to January 1.
186. **WATER TABLE.** The upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.
187. **WHOLESALE MERCHANDISING/TRADE.** Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.
188. **WIND ENERGY CONVERSION SYSTEM (WECS).** Any mechanism or device designed for the purpose of converting wind energy into electrical or mechanical power.
189. **WIRELESS TELECOMMUNICATION.** Any ground or roof mounted structure of more than 35 feet in height above average ground level built for the purposes of supporting, elevating or attaching antenna(s) for broadcasting of cellular, personal communications, specialized mobilized radio, enhanced specialized mobilized radio, paging, and similar services. For all sections of this ordinance, wireless telecommunication shall not be considered a public utility.

190. YARD. Reserved.
191. YARD, FRONT. A yard across the full width of the lot extending from the front line of the main building to the front line of the lot.
192. YARD LINE. See (Building Line).
193. YARD, REAR. A yard extending the full width of the lot between a principal building and the rear lot line.
194. YARD, REQUIRED FRONT. The required front yard shall extend across the front of a lot between the property lines. There shall be a required front yard on each street side of a corner lot. The required front yard with the smallest required front yard may be referred to as the side-street-side front yard.
195. YARD, REQUIRED REAR. The required rear yard shall extend across the rear of a lot between the property lines. On corner lots, the required rear yard may be to the rear of either street. On interior lots, the required rear yard shall, in all cases, be at the opposite end of the lot from the front yard.
196. YARD, REQUIRED. A required yard shall mean the required open space between a property line and a building line. The open space shall be unoccupied and unobstructed from the ground upwards except as otherwise provided in this ordinance.
197. YARD, REQUIRED SIDE. The required side yard shall extend between the required front yard line and the required rear yard line. There shall only be one required side yard on a corner lot.
198. YARD, SIDE. A yard between the main building and the side line of the lot, and extending from the front yard line to the rear yard line.
199. ZONE OF CONTRIBUTION. The entire area around a well or wellfield that contributes water to the well or wellfield.
200. ZONING DISTRICT. A specifically delineated area within which regulations and requirements uniformly govern the use, placement, spacing, and size of land and buildings.
201. ZONING PERMIT. A document signed by the Planning Director or an authorized representative as a condition precedent to the commencement of a use or the erection, construction, reconstruction, restoration, alteration, conversion, or installation of a building, which acknowledges that such use or building complies with the provisions of the zoning regulations or an authorized variance therefrom.