

# **YANKTON COUNTY OUTSIDE COUNTY ZONING ORDINANCE REVIEWS AGRICULTURE DISTRICTS AND SUPPORTING INFORMATION**

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BEADLE

TITLE I  
ARTICLE 10

## DEFINITIONS

### ZONING DEFINITIONS

For the purpose of this Ordinance, certain terms and words used herein shall be interpreted as follows:

**Abandoned Property.** Any deteriorated, dilapidated, and/or abandoned property in unusable condition having no value other than nominal scrap or junk value.

**Accessory Use or Structures.** A use or structure on the same lot with and of a nature customarily included or subordinate to the principle use or structure.

**Agriculture.** The use of land for agricultural purpose 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.

**Alley.** A public right-of-way which is used primarily as a secondary means of access to the abutting property.

**Animal Unit.** Animal Units are used in the permitting process because they allow equal standards for animals based on size and manure production. An AU is calculated by multiplying the number of animals by an animal unit factor for the specific type of animal. The AU factor is established by dividing the average weight of the animal by 1000, this formula shall be used to add animals not already included in the table below.

Mature Dairy Cows	1.4	Horses	2
Cattle other than Mature Dairy Cows	1	Sheep or Lambs	.1
Feeder or Slaughter Cattle	1	Turkeys (under 5 lbs)	.018
Feeder Cattle (up to 800 lbs)	.8	Turkeys	.04
Calves (up to 400 lbs)	.4	Ducks or Geese	.2
Finisher Swine (over 55 lbs)	.4	Laying Hens or Broilers (liquid handling system, confinement)	.033
Nursery Swine (less than 55 lbs)	.1	Laying Hens or Broilers (overflow watering)	.01
Swine Production Unit (Sows Breeding, Gestating, Farrowing)	.47	Farrow to Finish Sows	3.7

**Common Ownership.** A single, corporate, cooperative or other joint operation or venture.

**Comprehensive Plan.** A long-range plan for the improvement and development of Beadle County, South Dakota, as adopted by the Planning Commission and the County Commissioners.

**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 ninety (90) days or more during any twelve (12)-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are considered a single animal operation if they adjoin each other, or if they use a common area, or system for disposal of manure. Structures include: A lagoon, formed manure storage structure, compost structure, egg wash water storage structure, earthen manure storage basin, open or enclosed feed lot, or confinement building.

**Conditional Use.** A conditional use is a use that would not be appropriate without restrictions throughout a zoning district, but which if controlled as to number, area, location, or relations to the neighborhood, would promote the public health, safety, welfare, appearance, comfort, convenience, prosperity, and general well being. Such uses may be permitted in a zoning district as conditional uses, if specific conditions are defined by the Beadle County Board of Adjustment. Such uses may be allowed in such zoning districts as conditional uses, as specific provisions for such exceptions are made in these zoning regulations.

**Cul-de-sac.** A street having one end connecting with a public street and being terminated as its other end by a vehicular turn-around.

**Construction.** 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 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.

**Density.** Pertaining to the number of dwelling units per net acre or gross acre, as indicated for the appropriate zoning district and new subdivisions.

**Domestic Animal.** Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.

**Dwelling, Single Family.** A residential dwelling unit other than a mobile home, designed for one family.

**Dwelling, Multiple Family.** A residential building designed for two or more families living independently of each other.



**Dwelling Unit.** One room or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or long term basis, and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking, bathroom, and sleeping facilities.

**Earthen Manure Storage Basin.** An earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are removed at least once each year.

**Engineer.** A professional, registered engineer;

**Established Building Site.** An established building site shall have been used in the past as a farmstead for a normal farming operation. Any residence established for more than ten (10) years shall become an established building site. This site shall meet the minimum lot requirements with these ordinances.

**Established Residence.** Any residence established by a personal presence for more than two (2) years, in a fixed and permanent dwelling and an intention to remain there.

**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 title: (1) A person residing with the family for the purpose of adoption; (2) Not more than six (6) persons under license or approved by a governmental agency; (3) Not more than four (4) persons nineteen (19) years of age or younger 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.

**Farm Equipment.** Includes any farm wagon, farm implement drawn by another vehicle, or farm vehicle which is designed and used primarily for tillage, harvesting, or transportation of agricultural products or farm property by or for agricultural producers.

**Feedlot.** Feedlot means pens or similar areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type areas. Feedlot is synonymous with other industry terms such as open lot, pasture lot, dirt lot, or dry lot.

**Floor Area.** The sum of all gross horizontal enclosed area of the floors of the building(s) and its accessory building(s) on the same lot, excluding basement floor areas and non-enclosed portions of the structure.

**Floor Area Ratio.** The numerical value obtained through dividing the floor area of a building or buildings by the area on which such building or buildings are located.

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**Flood Plain.** A land area adjoining a river, creek, watercourse, or lake which is likely to be flooded and which is designated as such on the Flood Insurance Rate Map.

**Game Lodge.** A building or a group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

**Governing Body.** The board of county commissioners, the city council or city commission.

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

**Hobby Farm.** A parcel of land, together with fields, buildings, animals and implements, the residents of which may raise crops of livestock primarily for pleasure or a pastime, which does not generate a principal source of income for those residents.

**Home Occupation.** An occupation conducted in a dwelling unit provided that:

1. No more than two other persons, in addition to the members of the family residing on the premises, shall be engaged in such occupation.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. No more than 30 percent of the floor area is allowed for such occupation.
3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding TWO SQUARE FEET in area, non-illuminating and mounted flat against the wall of the principal building.
4. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential district. Parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
5. No equipment or process shall be used in such home occupation which create noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot.

**Horticulture.** The art or science of growing flowers, fruit, and vegetables.

**Housed Lot.** A totally roofed building that may be open or completely enclosed on the sides. Animals are housed over solid concrete or dirt floors, slotted floors over pits or manure collection areas in pens, stalls or cages. Housed lot is synonymous with other industry terms such as slotted floor buildings.



structures, vehicles, or enclosures used or intended for use of storing a vehicle. All proper utilities must also be present for said living quarters.

**Modular Home.** Factory-built housing certified by the building inspector as meeting the standards established by most current edition of the ICC Residential Building Code adopted by local resolution. A modular home has no permanent frame and is constructed in more than one section.

**Motor vehicle.** Includes all vehicles or machines, trailers, semitrailers, recreational vehicles, truck tractors, road tractors, and motorcycles propelled by any power other than muscular and used upon the public highways for the transportation of persons or property, or both, including traction engines, road rollers, farm wagons, freight trailers.

**Municipality.** A city or town, however organized, as defined in SDCL 9-1-1

**Natural Drain.** A drainage system which operates as part of a natural water course.

**Natural Water Course.** A fixed and determinate route by which water naturally flows from one parcel of real property to another due to the conformation of the land and by which water is discharged upon the land receiving the water. It is not necessary that the force of the flow of the water be sufficient to form a channel having a well defined bed or banks.

**Natural Wetland.** A natural depression or low area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The term includes low areas, which are normally farmed or farmable and which, if improved by draining or filling, would permanently contribute to the natural watercourse.

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

**No-till Cropland.** Land which is subject to a conservation farming practice: where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel; and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.

**Office of Planning and Zoning.** The office designated by the Board of County Commissioners to administer and enforce this ordinance.

**Open Lot (Agriculture).** Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Open lot is synonymous with other industry terms such as pasture lot, dirt lot or dry lot.

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**Operator.** 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.

**Person.** An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, Municipal Corporation, government agency, public utility district, consumer's power district, or any other entity, public or private, however organized.

**Plat.** A map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which is submitted for approval and which will be recorded in final form.

**Premises.** A lot or parcel of land, improved or unimproved.

**Public Utility Substation.** An area where facilities are provided for the distribution of telephone, radio communications, water, gas, and electricity.

**Resorts.** Lodging, restaurant, bait shop, marina, or any combination of these.

**Right-of-way.** A general term denoting land, property or interest therein acquired for or devoted to an alley, street, road or highway use.

**Rural or Rural Area.** Any territory outside a municipality as defined in SDCL 9-1-1;

**Sediment Basin.** A basin constructed to trap and store water-born sediment and debris.

**Severe Property Damage.** Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

**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.

**Shelterbelt.** A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock, residences, recreational areas, and wildlife from wind.



FILE I  
ARTICLE 11

## RIGHT TO FARM COVENANT

Prepared by:

Beadle County Zoning Officer (or by Grantor or Grantor's Attorney)

Zoning Officer Address (or Grantor's or Grantor's Attorney's address)

Huron, SD 57350 (or Grantor's or Grantor's Attorney's city)

File form at:

Beadle County Register of Deeds

450 3<sup>rd</sup> Street SW

Huron, SD 57350

### RIGHT TO FARM NOTICE COVENANT

You are hereby notified that the property you are purchasing is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for existing agricultural or agricultural processing operations to expand and any set-backs within the Beadle County Zoning Ordinances will not apply to your residence for said expansion. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to a county ordinance, may not be removed from the record title without consent of the Beadle County Commission.

Legal Description:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STATE OF SOUTH DAKOTA COUNTY OF BEADLE

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

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## **TITLE 2 – ARTICLE 1**

### **AGRICULTURAL DISTRICT (AG)**

#### **SECTION 2-101 - Statement of Intent.**

The intent of Agricultural Districts is to protect the agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial and industrial development to those areas where they are best suited for reasons of practicality.

#### **SECTION 2-102 - Permitted Uses and Structures.**

The following uses and structures shall be permitted in Agricultural Districts:

1. Any form of agriculture including the raising of crop, horticulture, animal husbandry, and kennels;
2. Dwellings and their normal accessory buildings including mobile homes;
3. Railroad track right-of-way;
4. Roadside produce stands in conjunction with a bona fide farm operation on the premises;
5. Greenhouses of a nonretail nature;
6. All utility systems necessary to service the district; and
7. The sale of seed.
8. Concentrated animal feeding operations under 1000 animal units.

#### **SECTION 2-103 - Conditional Uses.**

Upon application and after notice, payment of permit fees and appropriate safeguards, the Board of Adjustment may permit the following conditional uses in the AG District.

1. Agricultural product processing facilities;
2. Airports;
3. Amphitheaters, stadiums, drive-in movies, arenas, and field houses;
4. Aquaculture;

5. Auction yards and barns;
6. Auto sales or vehicles, including trailers;
7. Campgrounds;
8. Cemeteries;
9. Churches;
10. Concentrated Animal Feeding Operations over 999 animal units;
11. Commercial trucking terminals;
12. Day care centers;
13. Day cares, group family home;
14. Exhibition areas;
15. Extraction of sand, gravel, or minerals provided such uses meet requirements for conducting surface mining in SD Law;
16. Fairgrounds, racetracks, and amusement parks;
17. Fireworks stands;
18. Game Farms;
19. Game Lodges;
20. Go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, automobile parking;
21. Golf courses, country clubs, and golf-driving ranges;
22. Home occupations;
23. Junkyards/Salvage Yards, provided that they meet the following minimum requirements and other restrictions that the Board of Adjustment may deem appropriate:
  - A. Junkyards/salvage yards shall be set back a minimum of one thousand three hundred twenty (1320) feet from any adjoining road right-of-way.

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B. No junkyards will be allowed within three hundred thirty (330) feet from any adjoining property line.

C. Junkyards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or a shelterbelt or shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.

D. No junkyards will be allowed within one thousand (1000) feet from the junkyard property line to the nearest residence; excluding the residence of the junkyard operator.

E. All junkyards have a minimum lot area of ten (10) acres.

24. Municipal or multi-residential sewage treatment sites;

25. Off site signs;

26. Operation and maintenance terminals for trucks and other equipment;

27. Private plane landing strips;

28. Private recreation areas;

29. Private shooting preserves;

30. Public parks or public recreational areas;

31. Repair shops;

32. Riding stables;

33. Sanitary landfill, provided:

A. The site meets the requirements of the State Department of Environment and Natural Resources.

B. A site plan is provided indicating the following information:

i. Present topography, soil types, and depth to groundwater;

ii. Location of existing water drainage, existing buildings, existing shelterbelts;

iii. Identification of roads leading to the site;



- iv. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines;
  - v. Proposed monitoring wells, etc.;
  - vi. No sanitary landfill will be allowed within two thousand six hundred forty (2640) feet from the landfill property line to the nearest residence or commercial use; excluding the residence of the landfill operator.
34. Schools, private or denominational;
35. Shooting range;
36. Swimming pools;
37. Towers;
38. Utility Substations;
39. Wildlife and game production areas;
40. Wind energy systems
41. Wireless Telecommunication Towers and Facilities

#### **SECTION 2-104 - Determination of Uses and Structures.**

The uses and structures specifically listed in this chapter are not considered to be the only conceivable uses of agricultural land. However, these uses listed do represent the types of uses which may be considered. If an applicant desires to construct a building or conduct a use which is not specifically listed, such applicant shall carry the burden of proof through the variance process to the board of adjustment that his/her request is the type of use allowed in the agricultural district, is not more compatible with a different zoning district, and it does in no way violate the intent of this chapter.

#### **SECTION 2-105 - Maximum Number of Approaches.**

Before any approaches are constructed within Beadle County, an applicant must obtain a permit from contact the Highway Superintendent, Town Board, and/or Township Board. Approaches will be constructed at the expense of the land owner and limited to what is allowed by State Law.

#### **SECTION 2-106 - Minimum Requirements for Residence.**

1. There shall be a minimum front yard setback from the right of way and property line of not less than seventy-five (75) feet, whichever is greater.



2. On corner lots there shall be a minimum setback from both right of ways of not less than seventy-five (75) feet on property that has two (2) intersecting roads.
3. The minimum lot area shall be five (5) acres.
4. There shall be a frontage of not less than three hundred (300) feet across the front yard.
5. All lots will front on a right-of-way dedicated to public use or have an ingress/egress easement for access.
6. The maximum lot coverage for all structures is ten percent (10%).
7. The maximum residential dwelling height is thirty-five (35) feet.
8. The maximum residential dwelling density is one residence per forty acres, except where more than one residence is necessary for persons employed on a farm, then additional dwellings may be allowed.

#### **SECTION 2-107 - Minimum Shelterbelt Setback.**

Shelterbelts, field belts, and living snow fence consisting of one or more rows shall have the windward row of plantings on the north and west sides of roads set back a minimum of 160 feet from the shoulder of the road. The windward row of plantings on the south and east side will be set back a minimum of one hundred (100) feet from the shoulder of the road. Existing shelterbelts are exempt from minimum setback requirements.

#### **SECTION 2-108 - Protection of Natural Waterways.**

No building or construction shall be permitted within one hundred feet of the high water mark of natural water drainage ways, nor shall any such building or construction be permitted within the flood-prone area of the James River. Flood Hazard Boundary maps are available at the Director of Equalizations Office at the Beadle County Courthouse, at the Beadle County Emergency Managers Office and at the City Planning and Inspection Office.

#### **SECTION 2-109 - Private Sewage Disposal Systems.**

All private sewage disposal systems will comply with U.S. Environmental Protection Agency regulations and South Dakota Law. All residences and businesses will file a septic system plan with the Beadle County equalization office. The city planning and inspections office and Beadle County zoning administrator can provide copies of the state regulations that explain installation and inspection requirements for septic systems.

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**SECTION 2-110 - Right to Farm Notice Covenant.**

Any new residence or non farm structure with in the AG district must complete and record a Right to Covenant with the Beadle County Register of Deeds.

*See Title 1 Article 11*

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## **TITLE 2 - ARTICLE 2**

### **CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) REGULATIONS**

#### **SECTION 2-201 General Requirements.**

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. This section applies to any concentrated animal feeding operation (CAFO) constructed or used after the effective date of March 31, 2017. Any facility shall be sufficiently separated from other land uses so as not to unreasonably interfere with or burden the enjoyment of other neighboring lands, consistent with the policy established under this Ordinance. All concentrated animal feeding operations shall comply with the regulations as outlined herein.

#### **SECTION 2-202 Concentrated Animal Feeding Operation Permit Requirements**

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

Any person who owns, operates, or proposes to own or operate a concentrated animal feeding operation with over 999 animal units shall be required to apply for a conditional use permit pursuant to these regulations whenever any of the following occurs:

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion in the number of animal units of a concentrated animal feeding operation, which would result in the creation of either a Class A concentrated animal feeding operation or an increase of at least 20% of the current State permit or Animal Unit Statement on file with the County.
3. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.



## **SECTION 2-203 Classes of Concentrated Animal Feeding Operations:**

Concentrated animal feeding operations are hereby classified as Class A or B concentrated animal feeding operations and are defined by the number of animal units as listed in Table A.

See Table A.

## **SECTION 2-204 Concentrated Animal Feeding Operation Control Requirements:**

- 1) **Required Minimum Setbacks** and Separation Distance for Concentrated Animal Feeding Operations and those Existing Concentrated Animal Feeding Operations without a County issued permit expanding by 20% or into a Class A Concentrated Animal Feeding Operations after March 31, 2017. See Table B.
- 2) **Setback and Separation Distance Requirements for Classes A and B, Concentrated Animal Feeding Operations:**

### **a. Measurement for Setbacks and/or Separation Distances**

The facility shall be sited not closer than those distances indicated in the "Setback Table". Setbacks shall be measured from the outermost structure of the concentrated animal feeding operation to the outermost point of a structure/use as identified on the "Setback Table". If land is platted to hold a CAFO the measurement shall be from the outermost point of the land so platted to the outermost point of the structure/use as identified on the "Setback Table". However, to any structure that is considered a "Dwelling" the measurement shall be from the center of the dwelling plus 263 feet.

### **b. Increase in Separation Distance**

The Board of Adjustment may consider an increase in Separation Distance for a Class A application using the following criteria:

1. The stated animal units exceed 20% of the minimum for that type of animal in a Class A operation.
2. Based on the number of CAFOs in the immediate area.
3. Based on topography, location and prevailing wind direction additional separation distance would be appropriate to safeguard air and/or water quality.
4. Concerns or circumstances unique to a specific permit application.
5. If the proposed CAFO will operate with state of the art odor control practices and manure management practices as determined by Best Practices within the Industry.

**c. Considerations to Decrease Setbacks and/or Separation Distances**

The Board of Adjustment may allow an exception from the separation distance only when the applicant obtains a waiver from the owner(s) of property within the separation distance that does not comply with the above table. Any authorized person, business, or governmental entity that is within the separation distance may waive the separation distance through a written instrument to be filed with the County Register of Deeds. This waiver shall pass with the land.

**3) Exemptions to Setback and/or Separation Distance Requirements (Expansion)**

- a. All Concentrated Animal Feeding Operations (CAFO) in operation prior to March 31, 2017, which do not comply with the minimum setback requirements, but continue to operate, and are not expanded in a manner which will result in one of the following examples, are exempt from setback/separation distance requirements:
  - i. Example 1: A Class B CAFO expands to a Class A CAFO.
  - ii. Example 2: A Class A CAFO expands by 20% of the number of animal units
- b. A concentrated animal feeding operation which is expanded or constructed, if the title holder of the land benefiting from the distance separation requirement executes a written waiver with the title holder of the land where the CAFO is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The title holder of the land benefiting from the distance separation requirement land is the individual or individuals, business entity, governmental entity, bona-fide religious institution, or educational institution from which separation is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
- c. A concentrated animal feeding operation which is constructed or expanded closer than the required setback/separation distance from the corporate limits of a city, if the incorporated community approves a written waiver. The written waiver becomes effective only after it's recorded with the Register of Deeds.
- d. A concentrated animal feeding operation which existed prior to the creation of a structure set out in Table B, if said structure was built after January 1, 2012 and after the date the concentrated animal feeding operation was established. The date that the concentrated animal feeding operation was established is the date on which concentrated animal feeding operation commenced operating. A change in ownership or expansion shall not change the date of operation.

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- e. 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.

#### **4) Standards for Conditional Use Permits**

- a. The Board of Adjustment or the County Zoning Officer may request information relating to concentrated animal feeding operations not contained in these regulations.
- b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- c. A Conditional Use Permit for concentrated Animal Feeding Operations shall be in effect only as long as other provisions of the permit are being adhered to.
- d. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to concentrated animal feeding operations that the applicant has or had an interest in.
- e. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the applicant and signed by both the applicant and the Chair of the Board of Adjustment. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.
- f. Owner of land or permit holder may transfer said permit within one year of being granted said permit with condition that new permit holder must sign letter of assurances and agree to all conditions of said permit.
- g. Any permit granted expires after 12 months if construction has not begun. Permit holder may request an extension of up to one year.

## **5. Information Required for Class A Concentrated Animal Feeding Operation**

- a. Owner's, manager's, management companies or similar entities name, address and telephone number.
- b. Legal descriptions of site.
- c. The number and type of animals to be housed by the proposed concentrated animal feeding operation.
- d. Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation, if required by the State of South Dakota. A County conditional use permit may be approved conditioned upon receiving a State General Permit.
- e. Information on ability to meet designated setback requirements, including maps showing measured distances.
- f. Notification of whomever maintains the access road (township, county and state).
- g. The Board of Adjustment may require an Environmental Impact Study for a Class A or B application. Said study may include a study of the possible impact on all wells, lakes, rivers and streams within .5 mile of the proposed site.

### **SECTION 2-205 ANIMAL WASTE APPLICATION.**

Any operator of a concentrated animal feeding operation who applies animal waste to farmland must meet the setbacks in Table C. See Table C.

### **SECTION 2-206 REPORT OF ANIMAL NUMBERS.**

Concentrated animal feeding operations which are in existence and operating before the enactment of this Ordinance (March 31, 2017) and are of a size that would require them to have a state general permit must file a statement of animal units using the form provided by the Zoning Officer on or before July 1, 2017. Failure to do so will result in a violation of this ordinance and subject the offending operator to a fine of \$50/day.

h



**Table A: Animal Units to Define Classes of Concentrated Animal Feeding Operations**

<b>TYPE OF ANIMAL:</b>	<b>Class A</b>	<b>Class B</b>
Number of Animal Units	1,000 or more	300 to 999

**\*For definition and calculation of animal units see Definitions Title 1 Article 10.**

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**SECTION 2-207: FAILURE TO GET PERMIT BEFORE EXPANSION:**

Any Operator or Concentrated Animal Feeding Operation that expands its number of Animal Units beyond what is permitted in this Ordinance and continues to operate at this expanded number of Animal Units for over 30 days without obtaining a conditional use permit is a violation of this Ordinance and is subject to a civil fine in the amount of \$50/day for each day of operation while in violation.

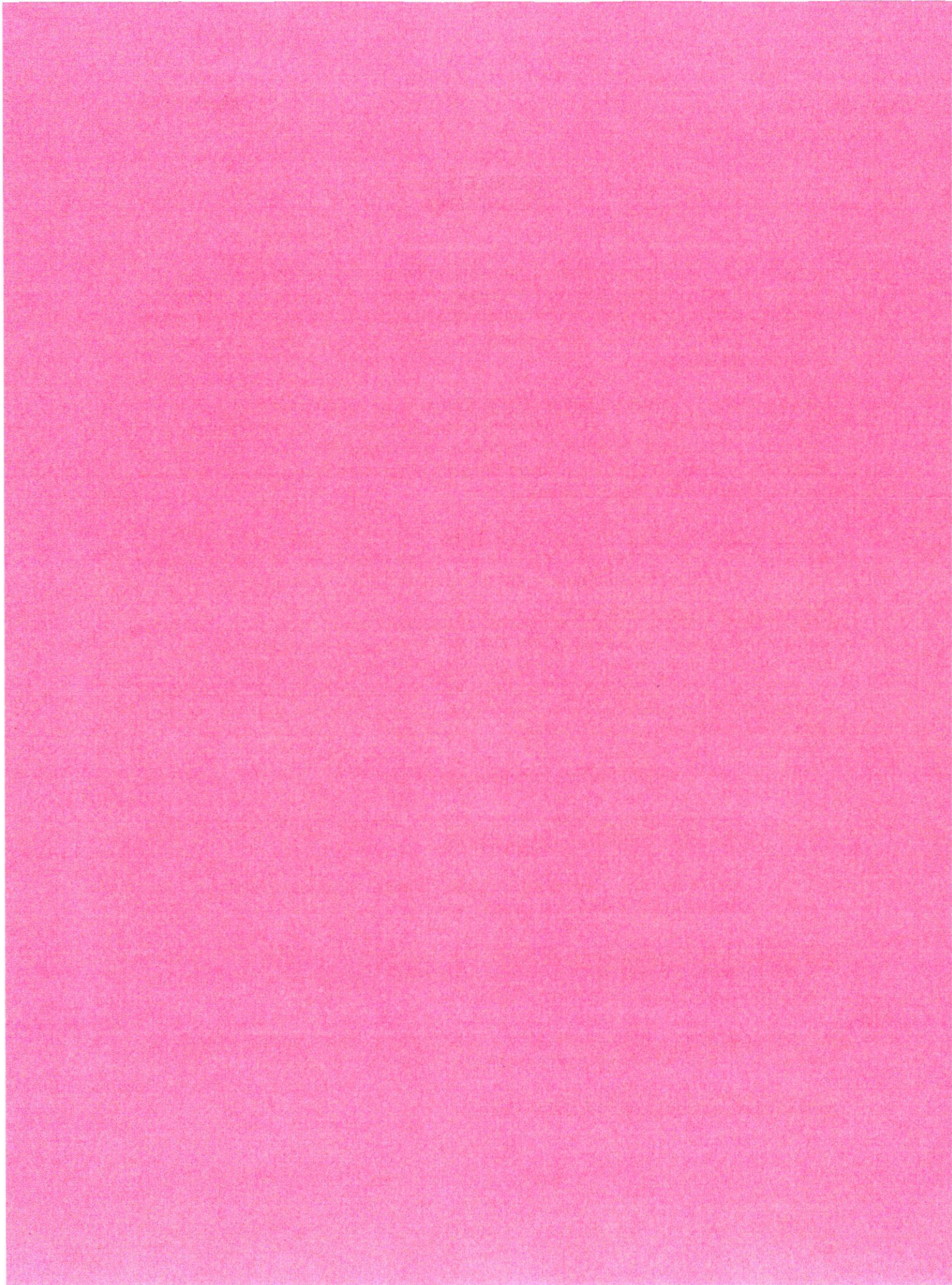
**Table C: Animal Waste Application:**

Description	Surface Applied	Incorporated or Injected
Lakes, Rivers and Streams Classified as Fisheries	300 ft	100 ft
Lakes, Rivers and Streams as Drinking Water Supplies and Public Wells	1000 ft	1000 ft
Private Shallow Wells	250 ft	250 ft
Residences	300 ft	300 ft
Municipalities	1000 ft	300 ft

**Table B: Minimum Setbacks**

	CLASS A	CLASS B
Dwellings (other than owner's or operator's) Churches, Schools, Businesses, Designated County or State Parks, Lake Park, Planned Residential, Town (Rural Municipalities) Zoning Districts and Incorporated Municipality Limits with Populations over 5000	2.64 feet per Animal Unit up to 2000 Animal Units then 1 foot per Animal Unit to a maximum distance of 7920 feet	2.64 feet per Animal Unit with a maximum of 999 animal units
Well (other than owner/operator), Lake, River and Stream	500 feet	500 feet
Federal, State, County, & Township Road Right of Way	300 feet	300 feet







## DEFINITIONS

### ARTICLE 2.00 DEFINITIONS

Section 2.01. For the purpose of this regulation, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", and the word "shall" is mandatory and not discretionary.

Section 2.02. A 25-year, 24-hour Storm Event is the amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 5 inches in Brookings County. The map in Appendix A shows the actual amount of rainfall that constitutes the 25-year, 24-hour storm event for South Dakota.

Section 2.03. Accessory Buildings and Uses is a subordinate use which is incidental to that of the main building or to the main use of the premises. Buildings of 120 square feet or less are not required to have a building permit.

Section 2.04. Anaerobic Lagoon means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic manure, the impoundment is designed to receive manure on a regular basis, and the impoundment's design manure loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

- a. A confinement feeding operation structure.
- b. A runoff control basin which collects and stores only precipitation induced runoff from an open feedlot.
- c. An anaerobic treatment system which includes collection and treatment facilities for all gases.

Section 2.05. Animal Feeding Operation Structure means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.

Section 2.06. Animal Manure is poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Section 2.07. Animal Unit See Page 22.07.

## DEFINITIONS

Section 2.08. Applicant is 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.

Section 2.09. Aquifer is a geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.

Section 24.10. Basement A basement has more than one-half (1/2) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes, other than by a janitor.

Section 2.11. Bed and Breakfast Home A building in which not to exceed five (5) rooms are rented to transients.

Section 2.12. Best Management Practices (BMP) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.

Section 2.13. Building is any structure in excess of 120 square feet designed for the support, shelter and protection of persons, animals, or property.

Section 2.14. Buildings, Height of The vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between the eaves and ridge for gable, hip and gambrel roofs.

Section 2.15. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Section 2.16. Change in Operation means a cumulative increase of more than 500 animal units, after May 13, 1997, which are confined at an un-permitted concentrated feeding operation.

Section 2.17. A Chronic or Catastrophic Event is a single precipitation event, or a series of rainfall events in a short period of time, that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

Section 2.18. Common Ownership is defined as single, corporate, cooperative or other joint operation or venture.



Section 2.19. Concentrated Animal Feeding Operation See Page 22.01

Section 2.20. Conditional Use A conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such uses are made in these zoning regulations. The Board of Adjustment may, after notice and hearing, revoke the conditional use in the event of a violation of any of such conditions. In addition, the conditional use permit may not be transferred during any violation. (Ord. 2004-01, 9-28-2004)

Section 2.21. Confinement Feeding Operation means a totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.

Section 2.22. Confinement Feeding Operation Structure means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

Section 2.23. Corner Lot is a lot with two front yards.

Section 2.24. District A section or sections of the County for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Section 2.25. Domestic Animal is any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.

Section 2.26. Dwelling Any building, including seasonal housing structures, or a portion thereof, which is designed and used exclusively for residential purposes.

Section 2.27. Dwelling, Single-Family A building occupied exclusively by one (1) family.

Section 2.28. Dwelling, Multiple A building occupied by two (2) or more families.

Section 2.29. Dwelling Unit One (1) or more rooms in a dwelling occupied as separate living quarters by a single family.

## DEFINITIONS

Section 2.30. Earthen Manure Storage Basin means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are removed at least once each year.

Section 2.31. Established Building Site means an established building site shall have been used in the past as a farmstead for a normal farming operation. Any residence established for more than ten (10) years shall become an established building site.

Section 2.32. Established Residence is any residence established by a personal presence, in a fixed and permanent dwelling and an intention to remain there.

Section 2.33. Family One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as an individual housekeeping organization. A family may include two (2), but not more than two (2), persons not related by blood, marriage, or adoption.

Section 2.34. Farm An area with or without family dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

Section 2.35. Farm Dwelling means any residence farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

Section 2.36. Farm Employee A person hired by the farm owner/ manager and works at least an average of 20 hours a week on the farm doing customary farm work. Proof of a Employer/Employee relationship must be provided in writing.

Section 2.37. Feedlot Operator means 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.

Section 2.38. Formed Manure Storage Structure means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

Section 2.39. Frontage All the property on one (1) side of a street or road.



## DEFINITIONS

Section 2.40. Garage, Private An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is accessory.

Section 2.41. Home Occupation and Home Extended Occupations (See General Requirements section, Article 17.00.)

Section 2.42. Housed Lot means totally roofed buildings that may be open or completely enclosed on the sides. Animals are housed over solid concrete or dirt floors, slotted floors over pits or manure collection areas in pens, stalls or cages. Housed lot is synonymous with other industry terms such as slotted floor buildings.

Section 2.43. Institution farm Agricultural land wholly owned by a government agency, Federal, State, County or Municipality, and used to grow an agricultural commodity. (Ord. 2004-01, 9-28-2004)

Section 2.44. Junk/Salvage/Recycling Yard The use of more than one thousand (1,000) square feet of any land, building, or structure for commercial purposes, where waste, discarded materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels etc., are stored.

Section 2.45. Letter of Assurances is a list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Section 2.46. Lodging House A building or place where lodging is provided (or which is equipped to provide lodging regularly) by pre-arrangement for definite periods, for compensation, for three (3) or more persons in contradistinction to hotels open to transients.

Section 2.47. Lot, Buildable (1) A parcel of land occupied or intended for occupancy by a use permitted in this regulation, including one (1) main building together with its accessory buildings, the open spaces and parking spaces required by this regulation. (2) A lot which is a part of a subdivision, the plat of which has been recorded in the office of the County Register of Deeds at the time of the adoption of this regulation, provided that said lot has a frontage of not less than seventy five (75) feet; or an irregular tract lot described by a deed recorded in the office of the County Register of Deeds at the time of the passage of this regulation; provided that if a lot has less width or area as required by this regulation, the lot is not a buildable lot.

Section 2.48. Lot, Corner A lot abutting upon two (2) or more streets at their intersection.



## DEFINITIONS

Section 2.49. Lot, Depth of The average horizontal distance between the front and rear lot lines.

Section 2.50. Lot, Double Frontage A lot having a frontage of two (2) streets as distinguished from a corner lot.

Section 2.51. Man-made means a pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.

Section 2.52. Manufactured Home is a building, used exclusively for human habitation, which is constructed in a manufacturing facility after June 15, 1976, in compliance with the National Manufactured Home Construction and Safety Standards Act and transportable in one or more sections to a building site.

Section 2.53. Manure Management System means any piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at a concentrated animal feeding operation.

Section 2.54. Mobile Home is a building, used exclusively for human habitation, constructed in a manufacturing facility prior to June 15, 1976, the effective date of the National Manufactured Home Construction and Safety Standards Act, which is transported on a permanent chassis to a building site. A mobile home shall be construed to remain a mobile home subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. A mobile home shall not be construed to be a travel trailer or other form of recreational vehicle.

Section 2.55. Mobile Home Park Any premises used or set apart for supplying to the public parking space for one (1) or more mobile homes for living and sleeping purposes, and which include any buildings, structures, vehicles or enclosures used or intended for use by park residents.

Section 2.56. Modular Home is a building, used exclusively for human habitation, constructed off site and in compliance with the applicable local or state building code and which is transported on a temporary chassis to a permanent building site.

Section 2.57. Motel A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

## DEFINITIONS

Section 2.58. Non-conforming Use Any building or land lawfully occupied by a use at the time of passage of this regulation or amendment thereto, which does not conform after the passage of this regulation or amendment.

Section 2.59. Non-farm Dwelling means any occupied dwelling, which is not a farm dwelling.

Section 2.60. No-till Cropland means land which is subject to a conservation farming practice: where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel; and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.

Section 2.61. Open Concentrated Animal Feeding Operation is an un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.

Section 2.62. Open Lot means pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Open lot is synonymous with other industry terms such as pasture lot, dirt lot or dry lot.

Section 2.63. Parking Space An area, enclosed or un-enclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Section 2.64. Permit is required by these regulations unless stated otherwise.

Section 2.65. Potential Pollution Hazard A Concentrated Animal feeding Operation of 100 to 500 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:

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

Section 2.66. Process Generated Wastewater means water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure



## DEFINITIONS

collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

Section 2.67. Process Wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.

Section 2.68. Producer means the owner or operator of the concentrated livestock feeding operation.

Section 2.69. Religious Farming Community An agricultural community with common land and property ownership. (Ord. 2004-01, 9-28-2004)

Section 2.70. Sale or Auction Yard or Barn A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or farm for one (1) day during sale or auction.

Section 2.71. Seasonal Camp Trailers or Recreational Vehicles A vehicle designed for temporary seasonal living quarters.

Section 2.72. Sediment Basin is a basin constructed to trap and store water-born sediment and debris.

Section 2.73. Service Station Any building or premises where automotive fuels are stored and made available for sale and dispensing through fixed equipment into fuel supply tanks or motor vehicles and where automotive supplies and accessories may or may not be available.

Section 2.74. Severe Property Damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Section 2.75. Shall means that the condition is an enforceable requirement of this permit.

Section 2.76. Shallow Aquifer is 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.

Section 2.77. Shallow Well is a well which is located in a shallow aquifer.

## DEFINITIONS

Section 2.78. Shelterbelt A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation and wildlife from wind.

Section 2.79. Should means that the condition is a recommendation. If violations of the permit occur, the Board of Adjustment will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

Section 2.80. Significant Contributor of Pollution means to determine if a feedlot meets this definition, the following factors are considered:

- a. Size of feeding operation and amount of manure reaching waters of the state;
- b. Location of the feeding operation in relation to waters of the state;
- c. Means of conveyance of manure and process wastewater into waters of the state; and
- d. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal manure and process wastewater into waters of the state.

Section 2.81. Solid Waste (reference SDCL 34A-6-1.3, 17.) any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, 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, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

Section 2.82. Solid Waste Facility or solid waste disposal facility, (reference SDCL 34A-6-1.3, 18.) All facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.



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Section 2.83. Solid Waste Management System (reference SDCL 34A-6-1.3, 19.) Is the entire process of storage, collection, transportation, processing and disposal of solid wastes by any person.

Section 2.84. Street, Highway or Road All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

Section 2.85. Street, Highway or Road, Right-of-Way (ROW) Line A dividing line between a lot or parcel of land and a contiguous street, highway or road.

Section 2.86. Structure Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.

Section 2.87. Structural Alterations Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of the roof or the exterior walls.

Section 2.88. Twin Homes A two family unit, with a common wall, under separate ownership, on more than one lot, zero setback with one side yard and having separate septic systems for each family.

Section 2.89. Unauthorized Releases mean the discharge of water from the lower end of the treatment or containment system through a release structure or over or through retention dikes. An unauthorized release is distinguished from a bypass in that a bypass discharges wastewater prior to any treatment or containment.

Section 2.90. Waters 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.

Section 2.91. Yard An open space on the same lot with a building, unoccupied and unobstructed. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used.

Section 2.92. Yard, Front A yard extending across the front of a lot between the side yard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections

18. Secondary Containment Facility. A second tank, catchments pit, pipe or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area. Monitoring and recovery are required.
19. Shallow/Surficial Aquifer. An aquifer in which the permeable media (sand and gravel) starts at the land surface or immediately below the soil profile. The main shallow/surficial aquifer in Brookings County is the Big Sioux Aquifer.
20. Ten Year Time of Travel Distance. The distance that ground water will travel in ten years. This distance is a function of the permeability and slope of the aquifer.
21. Zone of Contribution. The entire area around a well or well field that is recharging or contributing water to the well or well field.
22. Zoning Complaints. All zoning complaints must be in writing and signed.

**Section 4.06.03. Establishment and Delineation of Aquifer Protection Overlay Zones.**

1. Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on published maps entitled "Well head Protection Area Maps, Brookings County Shallow Aquifer Map" dated May, 1988, with pages 5 and 9 amended in January of 1999, as drawn by Banner Associates. Said maps are hereby adopted by reference as part of this ordinance as if the maps were fully described herein. In addition to the before mentioned maps the South Dakota Department of Environment and Natural Resources, Division of Financial and Technical Assistance, Geological Survey Aquifer Materials Map 19 dated 2004, for areas designated 0-50 feet on map, will be used to further identify aquifer boundaries. In the event of a conflict between such maps as to the area covered by the aquifer at a given location, then the map showing the larger aquifer area shall be followed. (Ord. 2006-02, 3-28-2006).
2. The shallow/surficial aquifer boundary was mapped using data from the South Dakota Geological Survey and United States Geological Survey. This map only serves as a general guide to the location of these aquifers. County studies and other information shall be used, where available, to better determine more precise aquifer locations. Aquifer boundaries are drawn at the discretion of geologists and hydrologists based on best available information. Therefore, actual site specific aquifer boundaries may differ from the attached map and other information. Hydrogeologic information is necessary to verify the location of a concentrated animal feeding operation in relation to an underlying shallow aquifer.

**Section 4.06.04. Zone A - Aquifer Critical Impact Zone.**

Zone A, the well head protection area, is the zone of contribution mapped around all public water supply wells or well fields and includes land upgradient to the ten year time of travel boundary plus contributing drainage areas, as delineated on the official copy of published maps representing sloping, adjacent lands not underlain by the aquifer from which surface water can flow directly onto Zone A.

**Section 4.06.04.01. Permitted uses in Zone A:**

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

1. Agriculture;
  - a. Application of manure is permitted with an approved nutrient management plan.
2. Horticulture.
3. Park, greenways or publicly owned recreational areas.
4. Necessary public utilities/facilities designed so as to prevent contamination of ground water.
5. Best Management Practices are encouraged, particularly in Zone A.

**Section 4.06.04.02. Conditional Uses in Zone A:**

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

1. Expansion of existing conforming and non-conforming uses to the extent allowed by the underlying district. The County Zoning Commission shall not grant approval unless it finds such expansion does not pose greater potential contamination to ground water than the existing use.
2. Sediment basins will be allowed on a case-by-case basis and must be constructed to current NRCS standards and specifications.
3. Expansion of existing Class "D" Concentrated Animal Feeding Operations (CAFOs) to 499 animal units, that were in continuous existence at the time of adoption of Brookings County Zoning Ordinance May 1976.

**Section 4.06.04.03. Prohibited Uses in Zone A:**

The following uses are expressly prohibited in Zone A:

1. New Class A, B, C and D Concentrated Animal Feeding Operations after adoption of this ordinance, May, 1976
2. Existing Concentrated Animal Feeding Operations in continuous operation since the adoption of the Brookings County Zoning Ordinance May, 1976 will not be able to expand beyond a total of 500 animal units (Class D).
3. Earthen storage basins and lagoons.
4. Disposal of or stockpiling of solid waste.



## AQUIFER PROTECTION

5. Post-harvest application of nitrogen fertilizer prior to October 15<sup>th</sup> except for the spreading of manure.
6. Storage of road salt or disposal of snow containing deicing chemicals.
7. Processing and storage of Polychlorinated Biphenyls (PCB) containing oils;
8. Car washes;
9. Auto service, repair or painting facilities and junk or salvage yards;
10. Disposal of radioactive waste;
11. Graveyards or animal burial sites;
12. Open burning and detonation sites;
13. All other facilities involving the collection, handling, manufacture, use storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality;
14. Land spreading or dumping of petroleum-contaminated soil, waste oil or industrial wastes.
15. Class V injection wells.
16. All uses not permitted or not permitted as Conditional Uses in Zone A.
17. Transmission facilities designated to transport liquid hydrocarbons or liquid hydrocarbon products.

### **Section 4.06.05. Zone B - Aquifer Secondary Impact Zones.**

Zone B is established as the remainder of the mapped shallow/ surficial aquifer not included in Zone A.

This portion of the aquifer is being protected because (1) it is a valuable natural resource for future development, (2) it provides drinking water supply for individual households, (3) contamination is not justified, even though this area is not a public water supply wellhead and (4) contaminants could eventually reach Zone A.

#### **Section 4.06.05.01. Permitted Uses in Zone B:**

1. All uses permitted in the underlying zoning districts provided that they can meet the Performance standards as outlined for the Aquifer Protection Overlay Zones.
2. Best Management Practices are encouraged, particularly in Zone B.

**Section 4.06.05.02. Conditional Uses in Zone B:**

1. New Class D and accumulative expansion of 250 animal units of existing Class C and D CAFO's in continuous operation since the adoption of Brookings County Zoning Ordinance on May 1976 not to exceed 750 total animal units. (Class C).
2. Sediment basins will be allowed on a case-by-case basis and must be constructed to current NRCS standards and specifications.
3. All Conditional Uses allowed in underlying districts may be approved by the County Zoning Commission provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

**Section 4.06.05.03. Prohibited Use in Zone B:**

The following use is expressly prohibited in Zone B:

1. New and expansion of Class A, B and C Concentrated Animal Feeding Operations.
2. Earthen storage basins and lagoons.
3. Post-harvest application of nitrogen fertilizer prior to October 15<sup>th</sup> except for the spreading of manure.
4. Land spreading or dumping of petroleum-contaminated soil, waste oil or industrial wastes.
5. Class V injection wells.
6. Transmission facilities designated to transport liquid hydrocarbons or liquid hydrocarbon products.

**Section 4.06.06. Performance Standards:**

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

1. New or replacement septic tanks and associated drain fields for containment of human or animal wastes must conform with regulations established by the State Department of Environment and Natural Resources.
2. Any facility involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes, except for spreading of manure, in excess of 1000 pounds and/or 100 gallons which has the potential to contaminate ground water must have a secondary containment system which are easily inspected and whose purpose is to intercept any leak or discharge from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have double walls and inspectable sumps. Pipes installed to carry diluted chemicals for chemigation are exempted and storage of liquid fertilizer for chemigation is allowed as long as a secondary containment system is used. Secondary containment for tanks used for chemigation must be in place by April 1, 1991.



**ARTICLE 11.00**  
**AGRICULTURAL DISTRICTS**

Section 11.01. "A" Agricultural District

Purpose

This district is established to maintain and promote farming and related activities within an environment which is generally free of other land use activities. Residential development will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

Covenants/Waivers

A RIGHT TO FARM Covenant shall be filed with Register of Deeds on all property to be used as a site for a newly constructed residence (farm and non-farm) or church prior to issuance of a building permit and to all new subdividing of property by platting. Such Right to Farm covenant shall be in the form as set forth in Addendum 1 to this Ordinance. (Ord. 2006-03, 9-26-2006)

Permitted Uses

1. Agricultural activities and farm related buildings, including Class E but excluding Classes A, B, C and D Concentrated Animal Feeding Operations.
2. Established residence.
3. Residential dwelling not within 1,320 feet of a Concentrated Animal Feeding Operation unless waiver registered on deed.
4. Single family residences including manufactured, mobile and modular homes on less than 35 acre lots provided that such residences are on an established farm building site, abandoned school site, or are lots of record and further provided that the proposed site has established road access, the lot has clearly delineated boundaries and the site can meet minimum water and sewer standards.
5. Fisheries services and game propagation areas;
6. Orchards, tree farms, truck gardening, nurseries and greenhouses;
7. Public parks and recreation areas;
8. Home occupations.



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8. Institution farms, including religious farming communities;
9. Sewage treatment plants;
10. Fur farms;
11. Class A, B, C, and D Concentrated Animal Feeding Operations.  
See Section 1211.
12. Stables, dog/cat kennels;
13. Veterinary clinics;
14. Junk/salvage/recycling yards, provided that they meet the following minimum requirements and other restrictions that the County Planning Commission may deem appropriate:
  - a. Storage for junk/salvage/recycling yards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.
  - b. Junk/salvage/recycling yards shall be screened on all sides by a solid wall at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Planning Commission; screening must be maintained in good repair.
  - c. No junk/salvage/recycling yards will be allowed within one thousand three hundred twenty (1,320) feet of any residence other than that of the owner of the land.
  - d. All junk/salvage/recycling yards must have a minimum lot of ten (10) acres.
15. Water pumping stations, elevated tanks and similar essential public utilities and service structures.
16. One manufactured or mobile home as a secondary residence, on an established farmstead to be used for the occupancy of a farm employee, or by parents, grandparents, children or brothers and sisters of the occupant of the land, provided that said home is removed within ninety (90) days of the vacation there from by the qualified occupant or occupants, (Ord. 2006-02, 3-28-2006)
17. Commercial radio and TV towers;

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18. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races;
19. Seasonal retail stands, excluding garden produce but including fireworks stands;
20. Home extended business;
21. Caretaker residences associated with public or private enterprise;
22. Lodging house.
23. Agricultural processing plants.
24. Spreading of manure with irrigation system.
25. Wind Energy Systems (WES)
26. The County Zoning Commission may permit other uses which, in its opinion, are not detrimental to other uses and are in the general character of the Agricultural District. (Ord. 2004-01, 9-28-2004)

### Area Regulations

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

1. **Lot Size:** All lots for purposes of residential use unless otherwise provided for in this ordinance, shall be a **minimum of thirty five (35) acres**, except as provided in Item 7 below.
2. **Front Yard:** The minimum depth of the front yard shall be one hundred (100) feet. A corner lot will have two front yards.
3. **Side Yard:** The minimum width of a side yard shall be twenty-five (25) feet.
4. **Rear Yard:** The minimum depth of a rear yard shall be fifty (50) feet.
5. **Maximum Lot Coverage:** Dwellings and buildings accessory thereto shall cover not more than twenty-five (25) percent of the lot area.
6. **Shelterbelts.** (See Article 19.00.)

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7. The County Zoning Commission may allow a smaller minimum lot size for the "A" Agricultural District under the following condition:
- a. Where a second single family home is requested on an established farmstead, so long as it is immediately connected to the existing farming operation.
  - b. Single family residences legally built under these ordinances shall be considered an established farm building site after it has existed ten (10) years.
  - c. The County Zoning Commission may deny any request for a smaller minimum lot size if it is determined to be an attempt to circumvent the intent or requirements of this ordinance.
  - d. Conditional use permitting of a Religious farming community will include the authorization to construct or utilize an existing building as a church and to construct multiple single family dwelling units. A detailed site plan will be required, and all federal, state, and local laws will be strictly enforced. If a confined animal feeding operation (CAFO) or any other conditional use permitted uses are planned a separate application will be required. In the event that a Religious farming community ceases to exist all single family dwelling units will be required to be removed. (Ord. 2004-01, 9-28-2004)
8. Non-conforming lots of record that are allowed to develop must meet the following setbacks:

	Per Unit Min. Density Sq. Ft	Min. Lot Area Sq. Ft. Well	Min. Lot Area Sq. Ft. Rural Water	Min. Lot Width	Min. Front Yard	Min. Side Yard	Min. Rear Yard
Single Family Dwelling	20,000'	43,560'	20,000'	60'	50'	8'	50'
Other Allowable Uses	20,000'	20,000'	20,000'	60'	50'	8'	50'



**ARTICLE 22.00**  
**CONCENTRATED ANIMAL FEEDING OPERATION**

Section 22.01. Concentrated Animal Feeding Operation Regulations.

Intent

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

It is the intention of the County Zoning Commission 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.

Definitions

1. A 25-year, 24-hour Storm Event is the amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 5 inches in Brookings County. The map in Appendix A shows the actual amount of rainfall that constitutes the 25-year, 24-hour storm event for South Dakota.
2. Accessory Buildings and Uses is a subordinate use, which is incidental to that of the main building or to the main use of the premises. Buildings of 120 square feet or less are not required to have a building permit.
3. Anaerobic Lagoon means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic manure, the impoundment is designed to receive manure on a regular basis, and the impoundment's design manure loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

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- a. A confinement feeding operation structure.
  - b. A runoff control basin, which collects and stores only precipitation induced runoff from an open feedlot.
  - c. An anaerobic treatment system, which includes collection and treatment facilities for all gases.
4. Animal Feeding Operation Structure means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.
  5. Animal Manure is poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.
  6. Animal Unit See page 22.00-8.
  7. Applicant is 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.
  8. Aquifer is a geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.
  9. Best Management Practices (BMP) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.
  10. Building is any structure in excess of 120 square feet designed for the support, shelter and protection of persons, animals, or property.
  11. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
  12. Change in Operation means a cumulative increase of more than 500 animal units, after May 13, 1997, which are confined at an un-permitted concentrated feeding operation.
  13. A Chronic or Catastrophic Event is a single precipitation event, or a series of rainfall events in a short period of time that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an



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overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

14. Common Ownership is defined as single, corporate, cooperative or other joint operation or venture.
15. Concentrated Animal Feeding Operation see page 22.00-9.
16. Confinement Feeding Operation means a totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.
17. Confinement Feeding Operation Structure means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.
18. Corner lot is a lot with two front yards.
19. Domestic Animal is any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.
20. Earthen Manure Storage Basin means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are removed at least once each year.
21. Established Building Site means an established building site shall have been used in the past as a farmstead for a normal farming operation. Any residence established for more than ten (10) years shall become an established building site.
22. Established Residence is any residence established by a personal presence, in a fixed and permanent dwelling and an intention to remain there.
23. Farm Dwelling means any residence farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.
24. Feedlot Operator means 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.



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25. Formed manure Storage Structure means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.
26. Housed Lot means totally roofed buildings that may be open or completely enclosed on the sides. Animals are housed over solid concrete or dirt floors, slotted floors over pits or manure collection areas in pens, stalls or cages. Housed lot is synonymous with other industry terms such as slotted floor buildings.
27. Letter of Assurances is a list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.
28. Man-made means a pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.
29. Manure Management System means any piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at an concentrated animal feeding operation.
30. Non-farm Dwelling means any occupied dwelling, which is not a farm dwelling.
31. No-till Cropland means land which is subject to a conservation farming practice: where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel; and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.
32. Open Concentrated Animal Feeding Operation is an un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.
33. Open Lot means pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Open lot is synonymous with other industry terms such as pasture lot, dirt lot or dry lot.
34. Permit is required by these regulations unless stated otherwise.

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35. Potential Pollution Hazard A Concentrated Animal feeding Operation of 100 to 500 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:
- a. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
  - b. A Potential Water Pollution Hazard exists due to sitting over a shallow aquifer or drainage that contributes to the waters of the State.
36. Process Generated Wastewater means water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.
37. Process Wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.
38. Producer means the owner or operator of the concentrated livestock feeding operation.
39. Sediment Basin is a basin constructed to trap and store water-born sediment and debris.
40. Severe Property Damage means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
41. Shall means that the condition is an enforceable requirement of this permit.
42. Shallow Aquifer is 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



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

43. Shallow Well is a well that is located in a shallow aquifer.
44. Should means that the condition is a recommendation. If violations of the permit occur, the County Zoning Commission will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.
45. Significant Contributor of Pollution means to determine if a feedlot meets this definition, the following factors are considered:
- a. Size of feeding operation and amount of manure reaching waters of the state;
  - b. Location of the feeding operation in relation to waters of the state;
  - c. Means of conveyance of manure and process wastewater into waters of the state; and
  - d. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal manure and process wastewater into waters of the state.
46. Solid Waste (reference SDCL 34A-6-1.3, 17.) any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, 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, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.
47. Solid Waste Facility or solid waste disposal facility, (reference SDCL 34A-6-1.3, 18.) all facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.