

# Deuel County Zoning Ordinance

2/21/2023

## TABLE OF CONTENTS

ARTICLE I	General Provisions.....	8
Section 101	Title.....	8
Section 102	Jurisdiction.....	8
Section 103	Provisions of Ordinances Declared to be Minimum Requirements .....	8
Section 104	Purpose.....	8
Section 105	Separability.....	8
Section 106	Purpose of Catchheads.....	9
Section 107	Effective Date.....	9
Section 108	Repeal of Conflicting Ordinances.....	9
ARTICLE II	Definitions .....	10
ARTICLE III	Establishment of Districts.....	35
Section 301	Districts .....	35
Section 302	Official Zoning Map.....	35
Section 302.01	Amendment of the Official Zoning Map.....	35
Section 302.02	Changes and/or Replacement of Official Zoning Map.....	36
Section 303	Interpretation of District Boundaries .....	36
Section 304	Disincorporation .....	37
Section 305	Application of district Regulations.....	37
Section 306	Prohibited Uses.....	37
ARTICLE IV	Nonconforming Uses or Lots of Record.....	38
Section 400	Purpose and Intent.....	38
Section 401	.....	38
Section 402	Discontinuance of Nonconforming Use .....	38
Section 403	Extension or Enlargement .....	38
Section 404	Restoration After Damage .....	38
Section 405	Repairs and Maintenance.....	38
Section 406	Effect on Use Which is Illegal Under Prior Law.....	38
Section 407	Nonconforming Lots of Record .....	39
Section 408	Unsafe Nonconforming Use .....	39
Section 409	Continuation of Nonstandard Uses .....	39
Section 410	Use Becoming Nonconforming by Change in Law or Boundaries .....	39
Section 411	Powers of the Planning Commissions/Board of Adjustment .....	39
Section 412	Continuation of Nonstandard Uses .....	40
ARTICLE V	Board of Adjustment, Appeals, Variance and Conditional Use Permits .....	41
Section 501	.....	41
Section 502	Appeals, Record of Appeal, Hearing and Stays.....	42
Section 503	Powers and Jurisdiction Relating to Administrative Review; Reversing Decision of Administrative Officer.....	42
Section 504	Powers and Jurisdiction Relating to Conditional Uses .....	43
Section 505	Powers and Jurisdiction Relating to Variances .....	44

Section 506	Reapplication.....	47
Section 507	Appeals to a Court of Record.....	47
ARTICLE VI	Planning Commission .....	48
Section 601	Establishment .....	48
Section 602	Term of Office.....	48
Section 603	Meetings of the Planning Commission .....	48
Section 604	Per Diem and Expenses of the Commission .....	48
Section 605	Duties of Planning Commission .....	48
Section 606	Procedures for Meetings .....	49
ARTICLE VII	Schedule of Fees, Charges, and Expenses .....	50
ARTICLE VIII	Administrative Procedure and Enforcement .....	51
Section 801	Enforcing Officer.....	51
Section 801.01	Zoning Officer Duties.....	51
Section 801.02	Procedures for Approval of Special Permitted Use Permit .....	52
Section 802	Right of Entry.....	53
Section 803	Stop Order .....	53
Section 804	Occupancy Violation.....	53
Section 805	Building Permit .....	54
Section 806	Construction and Use to be as Provided in Applications, Plans, and Permits And Application for Zoning Compliance .....	54
Section 807	Complaints Regarding Violations.....	55
Section 808	Violation and Penalty .....	55
ARTICLE IX	Amendment.....	57
Section 901	Amendments to Zoning Ordinance .....	57
Section 902	Procedure for Amendments.....	57
Section 903	Reapplications .....	58
ARTICLE X	(Reserved).....	59
ARTICLE XI	Zoning Districts .....	60
Section 1101	“A” Agricultural District.....	60
Section 1101.01	Purpose.....	60
Section 1101.02	Permitted Uses .....	60
Section 1101.03	Special Permitted Uses .....	61
Section 1101.04	Conditional Uses.....	61
Section 1101.05	Area Regulations .....	62
Section 1101.06	Height Regulations .....	63
Section 1101.07	Access .....	64
Section 1101.08	Easements/Waivers.....	64
Section 1102	“CI” Commercial/Industrial District.....	65
Section 1102.01	Purpose.....	65

Section 1102.02	Permitted Uses .....	65
Section 1102.03	Permitted Uses .....	65
Section 1102.04	Conditional Uses.....	65
Section 1102.05	Area Regulations .....	67
Section 1102.06	Height Regulations .....	67
Section 1102.07	Service Roads.....	67
Section 1102.08	Sewage Disposal Systems .....	67
Section 1102.09	Storage .....	68
Section 1102.10	Section Performance Standards ..	68
Section 1103	“LP” Lake Park .....	69
Section 1103.01	Purpose.....	69
Section 1103.02	Area Contained in “LP” District.....	69
Section 1103.03	Permitted Uses .....	69
Section 1103.04	Special Permitted Uses.....	69
Section 1103.05	Conditional Uses.....	69
Section 1103.06	Minimum Lot Area and Yard Regulations...	70
Section 1103.07	Shoreline Stabilization, Filling, Grading, Lagooning and Dredging.....	71
Section 1104	“NR Natural Resources District.....	73
Section 1104.01	Area Contained in “NR” District.....	73
Section 1104.02	Purpose.....	73
Section 1101.03	Permitted Uses .....	73
Section 1101.04	Uses Permitted by Conditional Use Permit if Deemed not Detrimental to District.....	73
Section 1105	Aquifer Protection Overlay District .....	74
Section 1105.01	Purpose and Intent.....	74
Section 1105.02	(Reserved).....	74
Section 1105.03	Delineation and Regulation of Aquifer Protection Overlay Zones .....	74
Section 1105.04	Zone A – Aquifer Critical Impact Zones .....	74
Section 1105.05	Permitted Uses in Zone A .....	74
Section 1105.06	Conditional Uses in Zone A.....	75
Section 1105.07	Prohibited Uses in Zone A .....	75
Section 1105.08	Zone B – Aquifer Secondary Zones.....	76
Section 1105.09	Permitted Uses in Zone B .....	77
Section 1105.10	Conditional Uses in Zone B.....	77
Section 1105.11	Prohibited Uses in Zone B.....	77
Section 1105.12	Performance Standards for Aquifer Protection Overlay Zones .....	77
Section 1105.13	Grant of Permit, Alteration of Uses .....	79
Section 1105.14	Limitation of County Liability.....	80
Section 1105.15	Underlying Zones.....	80
Section 1106	“TD” Town District.....	81
Section 1106.01	Purpose.....	81
Section 1106.02	Permitted Uses .....	81
Section 1106.03	Special Permitted Uses .....	81
Section 1106.04	Conditional Uses.....	81
Section 1106.05	Area Regulations .....	82

Section 1107	“FP” Floodplain Protection District.....	83
Section 1107.01	Statutory Authorization, Findings of Fact, Purpose and Objectives.....	83
Section 1107.02	Definitions .....	84
Section 1107.03	General Provisions.....	93
Section 1107.04	Administration.....	95
Section 1107.05	Permit Procedures.....	96
Section 1107.06	Variance Procedures.....	97
Section 1107.07	Provisions for Flood Hazard Reduction .....	98
ARTICLE XII	General Requirements .....	104
Section 1201	Screening .....	104
Section 1202	Visibility at Intersections .....	104
Section 1203	Refuse.....	104
Section 1204	Unlicensed Vehicles.....	104
Section 1205	Moved In Buildings.....	104
Section 1206	Minimum Water and Sewer Requirements.....	105
Section 1207	Reserved .....	105
Section 1208	Shelterbelt Setback Requirements.....	105
Section 1209	Home Occupation.....	108
Section 1210	Extended Home Occupation.....	109
Section 1211	Animal Units on Small Acreages .....	110
Section 1212	Buildings Being Moved off County Zone Property .....	110
Section 1213	Fireworks Retailers or Wholesalers .....	110
Section 1214	On-Premise and Off-Premise Signs.....	110
Section 1215	Wind Energy System (WES) Requirements.....	112
Section 1215.01	Applicability .....	112
Section 1215.02	Federal and State Requirements .....	113
Section 1215.03	General Provisions.....	113
Section 1216	Wireless Telecommunications Towers and Facilities .....	117
Section 1216.01	Purpose.....	117
Section 1216.02	Reserved .....	118
Section 1216.03	Development of Towers .....	118
Section 1216.04	Setbacks.....	119
Section 1216.05	Structural Requirements .....	120
Section 1216.06	Separation of Buffer Requirements.....	120
Section 1216.07	Method of Determining Tower Height .....	120
Section 1216.08	Illumination .....	121
Section 1216.09	Exterior Finish.....	121
Section 1216.10	Modification of Towers .....	121
Section 1216.11	Certifications and Inspections .....	122
Section 1216.12	Maintenance .....	122
Section 1216.13	Criteria for Site Plan Development Modifications.....	123
Section 1216.14	Abandonment.....	124
Section 1216.15	Action of the Board of Adjustment .....	124
Section 1217	Cannabis Dispensaries.....	125
Section 1218	Breweries, Wineries, Distilleries .....	126
Section 1219	Sand, Gravel, or Quarry Operation; Rock Crushers; Mineral Exploration and Development And Concrete and Asphalt Mixing Plants Requirements .....	127
Section 1219.01	Application.....	127

Section 1219.02	State and Federal Requirements .....	129
Section 1219.03	Setbacks.....	129
Section 1219.04	General Provisions .....	129
Section 1220	Erection of More than One Principal Structure on a Lot.....	130
Section 1221	Structures to Have Access .....	130
Section 1222	Utility Easements.....	130
Section 1223	Fences.....	130
Section 1223.01	Purpose.....	130
Section 1223.02	Permit Required .....	130
Section 1223.03	Location/Construction Requirements .....	131
Section 1224	Right to Farm Notice Covenant .....	131
Section 1225	Range Requirements .....	132
Section 1225.01	Conditional Use Permits .....	132
Section 1225.02	General Regulations for All Ranges .....	132
Section 1225.03	Special Regulations for Ranges.....	133
Section 1225.04	Application Requirements .....	134
Section 1225.05	Area Regulations .....	134
Section 1225.06	Miscellaneous Regulations .....	135
Section 1226	Waiver of Setback from Existing Concentrated Animal Feeding Operation.....	135
Section 1227	Adult Use Regulations .....	136
Section 1227.01	Setbacks.....	136
Section 1227.02	Required License .....	137
Section 1227.03	Application; Standards for Issuance .....	137
Section 1227.04	Conditions & Regulations Governing Operation; Violation; Penalty .....	138
Section 1227.05	Suspension or Revocation .....	140
Section 1228	Private Wind Energy Conversion Systems (PWECS) .....	141
Section 1229	Bed and Breakfast Establishment .....	141
Section 1230	Pipeline Structures .....	142
Section 1231	Private Campground.....	142
Section 1231.01	Purpose.....	142
Section 1231.02	Minimum Requirements.....	142
Section 1231.03	Application Requirements .....	143
Section 1232	Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites, and Restricted Use Sites Requirements.....	144
Section 1233	Domestic Sanitary Sewer Treatment Plant/Facility Requirements .....	145
Section 1234	Junkyards/Salvage Yards Requirements .....	145
Section 1235	Automotive Tow Business/Impound Lot Requirements.....	146
Section 1236	Manufactured Home Regulations .....	146
Section 1236.01	Type A and Type B Manufactured Homes .....	146
Section 1236.02	Modular Homes.....	148
Section 1237	Permanent Foundations Required for Dwellings .....	149
Section 1238	Accessory Buildings .....	149
Section 1239	Yards .....	150
Section 1239.01	Yards, Reduction in Size.....	150
Section 1239.02	Additional Yard Requirements .....	151
Section 1239.03	Exceptions to Yard Requirements .....	151
Section 1240	Agribusiness Activities.....	151
Section 1240.01	Intent .....	151
Section 1240.02	Requirements .....	152

Section 1241	Solar Energy Systems.....	152
Section 1241.01	Purpose.....	152
Section 1241.02	Private Solar Energy Systems .....	153
Section 1241.03	Permitting.....	153
Section 1241.04	Compliance .....	154
Section 1241.05	General Provisions.....	154
Section 1241.06	Decommissioning .....	156
Section 1242	Custom Processing and Slaughterhouse Activities.....	158
Section 1242.01	Purpose and intent.....	158
Section 1242.02	Regulations.....	158
Section 1242.03	Permitted Uses .....	160
Section 1242.04	Required Information .....	161
Section 1242.05	State and Federal Licenses or Permits.....	161
Section 1243	Religious Farming Community.....	162
Section 1243.01	Purpose .....	162
Section 1243.02	Minimum Requirements.....	162
Section 1243.03	Application Requirements .....	162
Section 1243.04	Separate Permits Required .....	163
Section 1244	Accessory Agricultural Housing .....	163
Section 1245	Private Storage Facility .....	164
Section 1246	Commercial Storage Facility .....	165
ARTICLE XIII	Concentrated Animal Feeding Operation Regulations .....	166
Section 1300	Intent .....	166
Section 1301	Animal Units .....	166
Section 1302	Classes of Concentrated Animal Feeding Operations .....	168
Section 1303	Concentrated Animal Feeding Operation Permit Requirements .....	168
Section 1304	Concentrated Animal Feeding Operation Control Requirements .....	169

**DISCLAIMER:**

The Zoning Ordinances that appear in this document are meant to reflect the most current zoning regulations adopted by Deuel County. This document is provided for informational purposes only and should not be relied upon as the definitive authority for local legislation. The official printed copies of the various zoning ordinances may be reviewed in the Office of the County Auditor.

## **ARTICLE I GENERAL PROVISIONS**

### **Section 101. Title.**

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

### **Section 102. Jurisdiction.**

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

### **Section 103. Provisions of Ordinance Declared to be Minimum Requirements.**

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

### **Section 104. Purpose**

These regulations have been based upon the Deuel County Comprehensive Land Use Plan adopted by the Board of County Commissioners and are in conformance with Chapter 11-2 of the South Dakota Compiled Laws. These regulations are designed to carry out the goals and objectives of the Comprehensive Plan, but especially to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; and to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provision of transportation, water, drainage, sewerage, schools, parks, or other public requirements.

These regulations have been made with reasonable consideration to the character and intensity of the various land uses and the need for public facilities and services that would develop from those uses. These regulations are necessary for the best physical development of the county. The regulations are intended to preserve and protect existing property uses and values against adverse or unharmonious adjacent uses by zoning all unincorporated land except those areas where joint zoning jurisdiction has been granted to a municipality. Any land use conducted in conformance with the Deuel County Zoning Ordinance is hereby deemed to be consistent with the purpose of this ordinance.

### **Section 105. Separability.**

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



**Section 106. Purpose of Catch Heads.**

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

**Section 107. Effective Date.**

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

**Section 108. Repeal of Conflicting Ordinances.**

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

## ARTICLE II DEFINITIONS

For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", the word "shall" is mandatory and not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

Accessory Buildings and Uses. A subordinate building or portion of the principal building, the use which is incidental to and customary in connection with the principal building or the main use of the premises and which is located on the same lot with such principal building or use. An accessory use is a use which is incidental to the main use of the premises.

Adjacent Property. Any lot, parcel, or property bordering by means of adjoining, abutting, or intersecting a specified lot boundary, and those lots immediately across a public right-of-way from a specified lot (see Adjacent Property Illustration).

Adjacent Property Illustration



Adjoining Landowner. The owner of adjacent or contiguous property for which an action by the Zoning Officer, Board of Adjustment, Planning Commission or County Commission is being considered. Property shall be considered as adjoining even though it may be separated from the property of the petitioner by a public road or highway or touches only a corner of the property (see Adjacent Property Illustration).

Adult. A person, one who has reached the age of eighteen (18).

Adult Amusement or Entertainment Establishment. Any use which has as part of its operations amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

Adult Bookstores. An establishment having as a substantial or significant portion of its stock and trade, books, magazines, other periodicals, films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means, which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, or an establishment with a segment or section devoted to the sale or display of such materials. Adult bookstores may alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators, and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

Adult Entertainment Cabaret. Means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas.

Adult Motion Picture Theater. An enclosed building, regardless of its seating capacity, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, for observation by patrons therein.

Adult Photo Studio. An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing “specified anatomical areas”, as herein defined.

Adult use. The term “adult use” shall include adult amusement or entertainment establishment, adult bookstores, adult mini motion picture theaters, adult motion picture theaters, and adult photo studios.

Agriculture. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition includes intensive agricultural activities such as concentrated animal feeding operations but not commercially-based agribusiness activities.

Aggrieved person. A person aggrieved is any person directly interested in the outcome of and aggrieved by a decision or action or failure to act pursuant to this Ordinance who:

1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;
2. Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;
3. Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;
4. Shows that the injury is unique or different from those injuries suffered by the public in general.

Agribusiness Activities. The use of land for the following commercial purposes related to raising, growing, processing, or storage of farm products (crops): custom fertilizer/herbicide application, custom planting, custom harvesting, grain storage, or processing of agriculturally-related raw products (crops) raised, grown or purchased by the landowner or operator.

Airport/Airstrip. A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

Alley. A narrow service way providing a secondary means of access to abutting property.

Alter or alteration. Any change, addition or modification in construction or occupancy.

Animal or Animals. "Animal" or "Animals" shall mean all living, non-human beings, including but not be limited to, cattle, swine, sheep, goats, farmed cervidae, horses, bison, mules, or other equines, llamas, poultry and/or ratitae. "Animal" or animals" does not include wild game.

Animal Feeding Operation Structure. An anaerobic lagoon, formed manure storage structure, egg wash water storage structure, earthen manure storage basin or animal confinement building.

Animal Husbandry. The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

Animal and Farm Fence. Means a fence erected for the purpose of containing livestock, enclosing crops, water areas (excluding private swimming pools), woodlots, buildings, fields or laneways for the operation of agriculture. Common examples may include but are not limited to the images below:



Animal Manure Management Facilities. Any structure or facility utilized for the storage of manure associated with a concentrated animal feeding operation.

Antenna Support Structure. Any building or structure other than a tower which can be used for location of telecommunications facilities.

Antique Car. An antique car must be at least twenty-five (25) years of age or older.

Applicant. An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business who request or seeks application approval under the terms of this ordinance.

Application. The process by which the owner of a parcel of land within Deuel County submits a request to use, develop, construct, build, modify upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to Deuel County concerning such a request.

Aquaculture. Land devoted to the hatching, raising and breeding of fish or other aquatic plants or animals for sale or personal use.

Array/Solar Array. Is the collection of two or more connected solar modules or panels.

Automotive Tow Business. A business engaged in removing or delivering to public or private property a motor vehicle, or an item that was being transported or towed by a motor vehicle, by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site. See Section 1235.

Backlot. An individual lot physically separated from by a legally conveyable parcel or road right-of-way/easement which is owned in common with a waterfront parcel.

Bar/Tavern. An establishment that is licensed to sell alcoholic beverages by the drink.

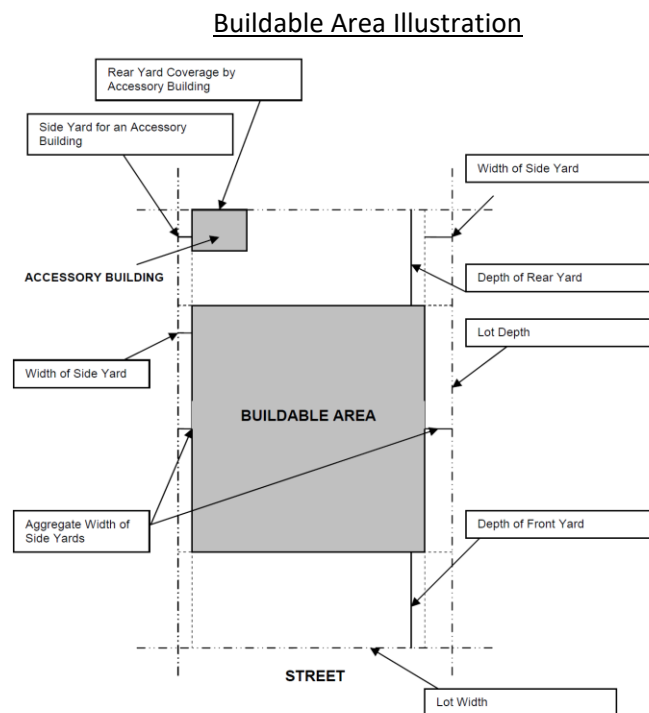
Basement. A basement has more than one-half (1/2) of its height below grade.

Bed and Breakfast (B & B's). A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. See Section 1229

Best Management Practices. Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.

Board of County Commissioners. The governing body of Deuel County.

Buildable Area. The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (see illustration below).



Building. The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection of persons, animals, or property.

Buildings, Height of. The vertical distance from the grade to the peak (highest point of the structure).

Cannabis (or Marijuana). All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

Cannabis Cultivation Facility. In addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

Cannabis Dispensary. In addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

Cannabis Establishment. A cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Cannabis Product Manufacturing Facility. In addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

Cannabis Products. Any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

Cannabis Testing Facility. In addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

Campground. A commercial recreation facility open to the public, for a fee, upon which two or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters.

Certified Crop Advisor. Means any crop advisor/agronomist certified by the American Society of Agronomy.

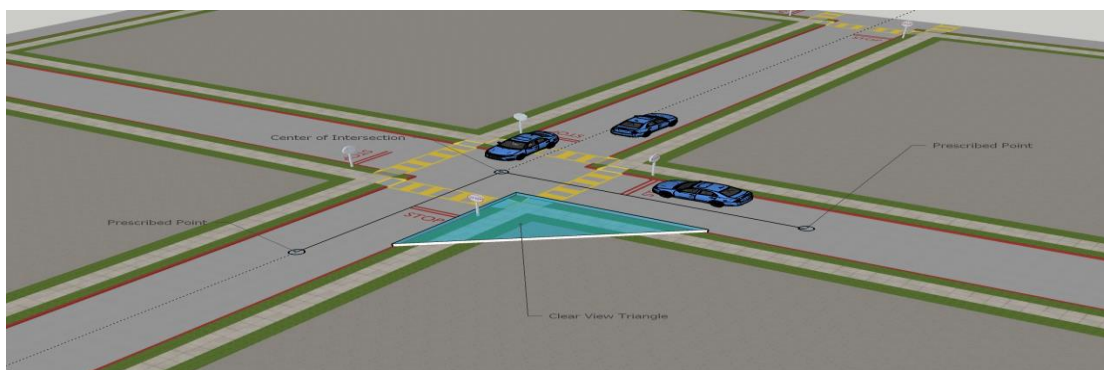
Chemigation. The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.

Church. A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

Class V Injection Well. Class V Injection Well: A conduit through which potentially contaminated but generally non-hazardous fluids can move below land surface to the subsurface. The types of primary concern in Deuel County are (1) commercial/industrial facility septic tanks used to dispose of more than domestic wastewater, and (2) dry wells for repair/service bay drains at facilities servicing motorized vehicles/equipment.

Clear View Triangle. A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below).

Clear View Triangle Illustration



Club, Private. Building and facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. The structure is not available for public use or participation.

Commercial Public Enterprise. Including but not limited to the following: Music concerts; rodeos; tractor pulls; and animal or vehicle races.

Commercial Vehicles. Any motor vehicle licensed by the state as a commercial vehicle.

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

Comprehensive Plan. The adopted long-range plan intended to guide the growth and development of Deuel County.

Concentrated Animal Feeding Operation. A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of forty-five (45) days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.



Conditional Use. A conditional use is a use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district. Conditional uses are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.

Contractor Shops and Yards. Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Contamination. The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.

Contingency Plans. Detailed plans for control, containment, recovery and clean-up of hazardous materials released during floods, fires, equipment failures, leaks and spills.

Convenience Store. Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

Crematory, Animal. A facility which contains furnaces where animal carcasses are reduced to ashes.

Custom Processing. “Custom Processing” means slaughtering, eviscerating, dressing, or processing an animal or processing meat products for the owner of the animal or of the meat products, if the meat products derived from the custom operation are returned to the possession of owner of the animal.

Custom Processor. “Custom Processor” means a person or entity in the business of slaughtering or process meat (whether or not such operation is under continuous inspections by either the SD Dept. of Agriculture or US Dept. of Agriculture for slaughterhouse activities) for an owner of the animals, and returns the majority of the meat products derived from the slaughter or processing to the owner. “Custom Processor” does not include a person or entity who slaughters animals or processes meat for the owner of the animals on the farm or premises of the owner of the animals. “Custom Processor” does not include (a) a person or entity that custom processes fewer than 20 Animals, as that term is defined in this Section 1401, per month; (b) a person or entity who processes exclusively wild game; and/or (c) a person or entity who processes fewer than 20 Animals, as that term is defined in this Section 1401, per month and processes wild game.

Decommissioning. To return the property to its pre-installation state or better as approved in the decommissioning plan.

Density. The number of families, individuals, dwelling units, or housing structures per unit of land.

Development. The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.

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

Domestic Sanitary Sewage Treatment Facility. Shall mean the structures equipment and processes required to collect, carry away, and treat and dispose of domestic wastewater, industrial wastes, and or sludge.

Dredging. Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, and waterways and in underwater mining.

Dwelling. Any building, including seasonal housing structures, or a portion thereof, which contains one (1) or more rooms, with sleeping quarters and is further designed and used exclusively for residential purposes. This definition does not include a mobile home or manufactured home.

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

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

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

Electric Utility. Any person operating, maintaining, or controlling in this state, equipment or facilities for providing electric service to or for the public including facilities owned by a municipality.

Electrical Substation. A premise which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

Eligible Building Site (Building Eligibility). A site which fulfills the requirements for the construction or placement of a building.

Engineer. Means any engineer licensed by the State of South Dakota.

Essential Public Utilities and Services. Overhead or underground electrical, gas, petroleum products (i.e., gas, natural gas, oil), steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables, satellite dishes, and accessories in connection therewith.

Established Residence (in reference to Article XIII). A non-seasonal dwelling established before the siting of new concentrated animal feeding operation or the expansion of an existing animal feeding operation which requires a conditional use permit.

Existing Farmstead. An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operation. The Planning Commission may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation. This may be determined by existence of buildings/foundations and/or an established shelterbelt or tax records.
2. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Planning Commission in determining the suitability of the parcel for development.

Exploration. The act of searching for or investigating a Mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface or make magnetic, radioactive, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

Facility. Something built, installed or established for a particular purpose.

Extended Home Occupation. A home occupation conducted outside of the residence and/or in an accessory building and shall further comply with Section 1210.

Family. One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

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

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

Fence. A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar material and is used as a barrier of some sort.

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

Fur Farm. A farm on which animals, such as mink, are raised for their pelts.

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

Garage, Private. An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, and boats.

General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Deuel County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

General Permit. South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations

Golf Course. A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters.

Government Grain Storage Sites. A grain storage facility owned and operated by a State or Federal governmental entity.

Grade. Is established by the average natural grade within fifty (50) feet of the structure.

Grading. The act or method of moving soil to reshape the surface of land or a road to a desired level or grade.

Grandfather"ed" Clause. A clause in a law that allows for the continuation of an activity that was legal prior to passage of the law but would otherwise be illegal under the new law.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.

Grey Water. All domestic wastewater except toilet discharge water.

Ground-Mount. A solar energy system mounted on a rack or pole that rests or is attached to the ground.

Ground Water. Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.

Group Home. A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

Hazardous Materials. A material which is defined in one or more of the following categories:

1. Ignitable: A gas, liquid or solid which may cause fire through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
2. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
3. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
4. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
5. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.
6. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

High Water Mark. The elevation established by the South Dakota Water Management Board pursuant to SDCL 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high-water mark (elevation) solely for the purpose of the administration of this ordinance. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

Home Occupation. An occupation engaged in by the occupants of a dwelling and shall comply with Section 1209.

Horticultural services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Impound Lot. A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, junkyard/salvage yard or dismantling. See Section 1235.

Incorporation. A soil tillage operation following the surface application of manure which mixes the manure into the upper four (4) inches or more of soil.

Injection. The application of manure into the soil surface using equipment that discharges it beneath the surface.

Institution Farm. Agricultural land wholly owned by a government agency, federal, state, county, or municipality, and used to grow an agricultural commodity.

Inventory (in reference to Article XIII). The total number of animal units located on a concentrated animal feeding operation.

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

Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Leaks and Spills. Any unplanned or improper discharge of a potential containment including any discharge of a hazardous material.

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

Light Manufacturing. Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

Lot Area. The lot area is the land in square feet, within the lot line.

Lot, Buildable. A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance, See "Lot of Record."

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

Lot Line. A line marking the legal limits of the property of a person. The term property line and lot line shall have the same meaning

Lot of Record. A subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of the Register of Deeds prior to July 1, 2022.

Lot Types: See Lot Type Illustration below:

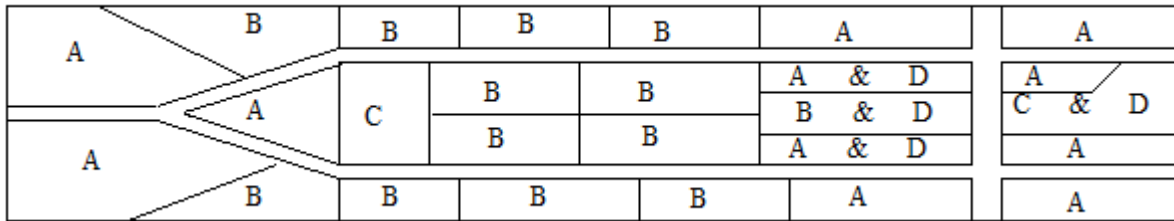
Lot, Corner. A lot abutting upon two (2) or more streets at their intersection. (Lot A and Lot A & D)

Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot. (Lot C and Lot C & D).

Lot, Interior. Defined as a lot other than a corner lot with only one frontage on a street. (Lot B)

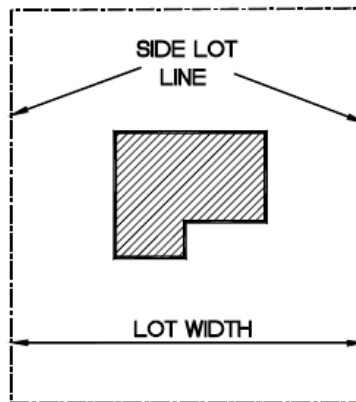
Lot, Through Lot. Defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots. (Lot C and Lot C & D).

Lot Type Illustration



Lot Width. The width of a lot is the mean distance between straight side lot lines measured at a point fifty (50) feet back from the front yard lot line thereof (see below).

Lot Width Illustration



Manufactured Home. See Section 1236

Manufactured Home Park. Any Manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the manufactured home park and its facilities or not. "Manufactured Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

Manure. Poultry, livestock, or other animal excreta, bedding, compost and raw materials or other materials commingled with poultry, livestock, or other animal excreta set aside for disposal.

Manure, Incorporated. Animal manure applied to the land surface and mechanically mixed into the soil within twenty-four (24) hours.

Manure, Injected. Animal manure injected or tilled into the soil at the time of application.

Manure, Liquid. A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free-flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding and waste feed in water. Liquid manure and slurry is typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

Manure, Surface Applied. Animal manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal manure in irrigation waters.

Meat Food Product. “Meat food product” means a product usable as human food, animal foods, or fertilizer and made wholly or in part from meat or a portion of the carcass of animals.

Milling. The processing or enhancing of a Mineral.

Mineral. An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or clay, sand, gravel and quarry rock.

Mineral Extraction. The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

Modular Home. See Section 1236.

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

Nonconforming Building or Structure or 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.

Nonstandard Use. The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.

Nonstandard Concentrated Animal Feeding Operation. A concentrated animal feeding operation existing which is classified as a nonstandard use in accordance with Section 1304.7.



Nursery. A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

Object. Anything constructed, erected, or placed, the use of which does not require permanent location on the ground or attached to something having a permanent location on the ground.

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

Outdoor Storage. The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours.

Outdoor Music Event. A musical event with recorded or live music where there may or may not be a cover charge and/or alcohol.

Owner. Any person with fee title to any parcel of land within Deuel County who desires to develop, or construct, build, modify, or erect a structure upon such parcel of land.

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

Parks and Recreation Areas. Public non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds, swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

Pasture. A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.

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

Permitted Use. Any use listed as a “permitted use” in a particular zoning district and subject to the restrictions applicable to that zoning district. Permitted uses are allowable by right and simply require the property owner to obtain a permit to establish the use based upon a properly filed application, without further action.

Person. Is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Photovoltaic System. An active solar energy system that converts solar energy directly into electricity.

Place of Business. “Place of business in reference to Section 1242” means every location where food or food items are manufactured, processed, sold, stored, or handled, including buildings, sites, permanent or portable structures, carnivals, circuses, fairs, or any other permanent or temporary location.

Plat. The map, drawing or chart on which the subdivider’s plan of subdivision is legally recorded.

Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

Principal Structure. The structure in which the principal use of the lot is conducted. For example, a dwelling on a residential lot.

Principal Use. The primary use to which the premises are devoted.

Private Recreation Areas. Any open space or recreational area, other than a public park, owned and operated or maintained in whole or in part for profit by a private individual(s), club or fraternal organization for members only, and may include therein one or more of the following activities: swimming, boat facilities, picnic area, tennis courts, outdoor skating rinks, athletic fields, walking, riding and cross-country skiing, snowmobiling, but does not include the racing of animals, motor vehicles, motorcycles or snowmobiles.

Private Shooting Preserves. An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Private Wind Energy Conversion System (PWECS). A Wind Energy System designed for the purpose of converting wind energy into electrical or mechanical power to be consumed substantially by the permittee. No PWECS installed in accordance with the requirements of these regulations will generate power as an electric utility as defined by SDCL 49-34A-1. See Section 1228.

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

Process Wastewater. 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.

Quarter Section. The Northeast, Northwest, Southwest, or Southeast quarter (1/4) section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of one hundred fifty-five (155) acres.

Range (Target/Shooting). Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. The term range includes archery ranges. This term only applies to commercial ranges or ranges open to the public. See Section 1225.

Range Officer. Means the person designated to be responsible at a Range at any given time during any activity. A Range Officer shall be present on site at any Range when the range is in use.

Recreational Vehicle. A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include manufactured homes.

Religious Farming Community. A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

Repair. Reconstruction or renewal of any part of an existing building for the purpose of maintenance. The word “repair” or “repairs” shall not apply to any change of construction.

Resort. This category provides commercial hospitality lodgings in spacious settings that are principally intended for vacationing, relaxation and conference activities for visitors to the community.

Retail Sales and Trade. Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.

Rubble Site. A site for the disposition of refuse as defined by the South Dakota Department of Agriculture and Natural Resources.

Runoff Control Basin. A structure which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to area which are unroofed or partial roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.

Sell or Sale. “Sell” or “sale” in reference to Section 1242 includes the keeping, offering or exposing for sale, use, transportation, transferring, negotiating, soliciting, or exchange of meat or meat food products, or the having in possession with intent to sell, use, transport, negotiate, solicit or exchange the same and the storing or carrying thereof in aid of traffic therein, whether done or permitted in person or through others.

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

Sand, Gravel, or Quarry Operation. An operation which uses surface excavation techniques in order to extract sand and/or gravel. If the operation is not used for commercial purposes or owned by a governmental entity, the operation is deemed to be a private sand, gravel or quarry operation. See Section 1219.

Sanitary Landfill. A site for the disposal of garbage and other refuse material.

School. Any building or part thereof, whether public or private, which is designed, constructed, or used for instruction in early childhood, elementary, or secondary education.

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

Secondary Containment Facility. A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.

Section Line. A dividing line between two (2) sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

Service Station. Any building or 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.

Setback. The setback of a building is the minimum horizontal distance between the street line and the front line of the building or any projection thereof, except cornices, unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 1/2) feet from the building and having no more than fifty (50) square feet area and not extending above the first story of the building.

Setback Between Uses. Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/use. In regard to concentrated animal feeding operations the separation distance shall be measured from the wall line of the neighboring principal building to the wall line of the feedlot or structure housing animals and/or manure management facility.

Shallow Aquifer. An aquifer zero (0) to fifty (50) feet in depth from the earth's surface in which 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.

Shelterbelt. A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation and wildlife from wind. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line with each tree separated by a distance of forty (40) feet or less. Ornamental trees, generally used in front yards and spaced further than thirteen (13) feet apart and further do not extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Ornamental trees maybe placed within fifty (50) feet of the public road right-of-way subject to Section 1208.

Shooting Range. shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets.

Shorelands. All land within one thousand (1,000) feet of a lake or pond and lands within three hundred (300) feet of a river or stream or to the landward side of the flood plain, whichever distance is greater.

Sign. Any device designed to inform or attract the attention of persons not on the premises on which the sign is located, provided, however, that the following shall not be included in the application of the regulations herein:

1. Signs not exceeding one (1) square foot in area and bearing only property numbers, post box number, names of occupants of premises or other identification of premises not having commercial connotations;
2. Flags and insignia of any government except when displayed in connection with commercial promotion;
3. Legal notices; identification, informational, or directional signs erected or required by governmental bodies;
4. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights; and
5. Signs directing and guiding traffic and parking on private property but bearing no advertising matter.

Sign. Off-premises. Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

Sign, On-premises. Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

Sign Structure. Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

Significant Contributor of Pollution. To determine if a concentrated animal feeding operation meets this definition, one or more of the following factors are considered and/or may be prescribed as conditions of granting a permit:

1. Whether the site has or will obtain a General Water Pollution Control Permit for Concentrated Animal Feeding Operations from the South Dakota Department of Agriculture and Natural Resources; or
2. Whether the site will obtain a Certificate of Compliance from the South Dakota Department of Agriculture and Natural Resources; or
3. Whether engineered plans have been prepared/reviewed by an engineer licensed in the State of South Dakota to determine runoff and infiltration of solid waste will not exceed volumes allowed by the State of South Dakota Department of Agriculture and Natural Resources if a General Water Pollution Control Permit for Concentrated Animal Feeding Operations was applicable; or

4. Whether the changes to the existing manure management system is considered an improvement from existing practices at a site with no substantiated complaints prior to an application being made.

Slaughterhouse. “Slaughterhouse” means any land, building, facility, place or establishment in which animals are slaughtered, eviscerated, or dressed but where the majority of the meat products derived from the slaughter of animals is not returned to possession of the owner.

Sleeping Quarters. A room or an area contained within a dwelling unit utilized for the purpose of sleep.

Solar Collector. A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy. Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System (SES). A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A SES is the principal land use for the parcel on which it is located. A SES site may include an array of devices, or structural design features, the purpose of which is to provide for generation of electricity, the collection, storage and distribution of solar energy. See Section 1237.

Special Permitted Use. Any land use listed as a special permitted use within a zoning district that meets the specified criteria for certification.

Specified Anatomical Areas. Means (1) Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and (2) Genitals of humans or animals in a discernible turgid state, even if completely or opaquely covered.

Specified Sexual Activities. Means (1) Human genitals in a state of sexual stimulation or arousal; (2) Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation; (3) Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast; and (4) Excretory functions as part of or in connection with any activities set forth in an Adult Bookstore or “Adult Entertainment Cabaret”.

Stable. A building for the shelter and feeding of domestic animals, especially horses and cattle.

Stable, Commercial. A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Stealth. Means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

Storage Facility, Private. A non-commercial structure used for the purpose of storing private goods.

Storage Facility, Commercial. A building(s) for the storage of commercial or private goods and materials in individual units within a common structure.

Street, Arterial. A street designated as such on the Major Street Plan of the Comprehensive Plan of Deuel County, South Dakota.

Street, Collector. A street designated as such upon the Major Street Plan of the Comprehensive Plan of Deuel County, South Dakota.

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

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

Street, Local. Any street which is not an arterial street or collector street.

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.

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.

Structure, Temporary. Anything constructed or erected, or placed, the use of which requires temporary location on the ground or attached to something having a temporary location on the ground.

Telecommunications Facilities. Means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:

- a. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or
- b. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

Temporary Fireworks Sales Stand. A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

Ten Year Time of Travel Distance. The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.

Tower. A self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.

Tree, Ornamental. A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less.

Tree, Shade. For the purposes of this Ordinance, a shade tree is a deciduous tree which is has a mature crown spread of fifteen (15) feet or greater, and having a trunk with at least five (5) feet of clear stem at maturity

Truck Garden. A farm where vegetables are grown for market.

Turbine. The parts of the Wind Energy System including the blades, generator, and tail.

Twin Homes. A two-family dwelling which has a common wall and is platted into two (2) separate lots.

Utility (in reference to Wind Energy Systems). Any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor-owned utility, cooperatively owned utility, and a public or municipal utility.

Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conforming in the zoning district or uses in an adjoining zoning district.

Veterinary Clinic. Any premises to which animals are brought, or where they are temporarily kept, solely for the purpose of diagnosis or treatment of any illness or injury, which may or may not have outdoor runs.

Violation. The failure of a structure/use or other development to be fully compliant with this ordinance.

Waters of the State. 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.

Water Surface Elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.



Well. An artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining groundwater. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well. (SDCL 46-1-6)

Well, Abandoned. A well which is in either such a state disrepair that its original purpose cannot be reasonably achieved, or which has not been used for water production in the past two (2) years.

Well, Established. A water producing well that is either registered with the State of South Dakota or has well logs on file with the South Dakota Department of Agriculture and Natural Resources or has been used for human consumption for more than one week within one (1) year prior to the application date for a proposed concentrated animal feeding operation.

Wetlands. Any area where ground water is at or near the surface a substantial part of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

Wind Energy System (WES). A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

1. Tower or multiple towers,
2. Generator(s),
3. Blades,
4. Power collection systems, and
5. Electric interconnection systems.

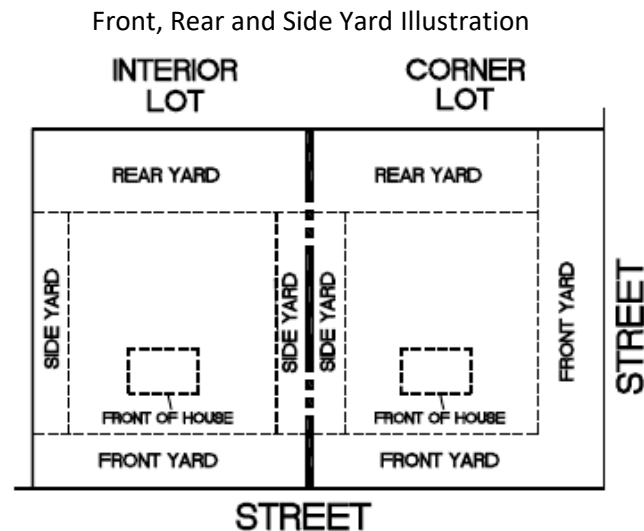
Windward Row. Of or on the side exposed to prevailing winds. Regarding shelterbelts, on the north and west side of a public right-of-way, the windward row of the shelterbelt is northernmost or westernmost row of trees. On the south and east side of a public right-of-way, the windward row of the shelterbelt is southernmost and easternmost row of trees. A shelterbelt on adjoining property shall not be considered the windward row.

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. (See Front, Side, and Rear Yard Illustration Below)

Yard, Front. A yard extending across the front of a lot between the side yard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. (See Front, Side, and Rear Yard Illustration Below)

Yard, Rear. A yard across the whole width of a lot, extending from the rear line of the building to the rear line of the lot. (See Front, Side, and Rear Yard Illustration Below) (See Front, Side, and Rear Yard Illustration Below)

Yard, Side. A yard between the main building and the side line of the lot being the minimum horizontal distance between the bearing wall of the building and the side yard line, and extending from the front lot line to the rear yard line. (See Front, Side, and Rear Yard Illustration Below)



Zone of Contribution. The entire area around a well or wellfield that contributes to the well or wellfield.

Zoning Officer. The individual appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

**ARTICLE III**  
**ESTABLISHMENT OF DISTRICTS**

**Section 301. Districts.** For the purpose of this regulation, the unincorporated areas of the County may be divided into the following zoning districts:

- A      Agricultural District;
- CI     Commercial/Industrial District;
- FP     Floodplain Protection District
- LP     Lake Park District;
- NR     Natural Resources District;
- AP     Aquifer Protection Overlay District;
- TD     Town District.

**Section 302. Official Zoning Map.**

1. The unincorporated area of the County is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners attested by the County Auditor and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 302 of Ordinance B2004-01 adopted July 6, 2004, as amended, by Deuel County, South Dakota."
2. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the County Auditor, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

**Section 302.01. Amendment of the Official Zoning Map.**

1. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners, with an entry on the Official Zoning Map as follows: "On (date of adoption) by official action of the Board of County Commissioners, the following change(s) were made in the Official Zoning Map:" (brief description of nature of change), which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Auditor. No amendment to this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on such map.
2. No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedure set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Article VIII.

### **Section 302.02. Changes and/or Replacement of Official Zoning Map.**

1. In the event the Official Zoning Map becomes damaged, destroyed, lost, the Board of County Commissioners may, by Ordinance, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) for Deuel County, South Dakota."

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

In the event that the Official Zoning Map becomes difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may by resolution adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall contain previous changes and additions to the previous Official Zoning Map and may correct drafting or other errors or omissions in the prior Official Zoning Map.

Amendments to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Article IX.

### **Section 303. Interpretation of District Boundaries.**

1. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.
2. In cases where the boundary line is given a position within a street, road, or non-navigable stream, it shall be deemed to be in the center of the street, road, or stream, and if the actual location of such street, road, or stream varies slightly from the location as shown on the district map, then the actual location shall control.
3. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
4. In cases where a boundary line is shown adjoining or coincident with a railroad, it shall be deemed to be in the center of the railroad right-of-way and distances measured from the railroad shall be measured from the center of the designated mainline track.
5. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines and where the districts designated on the Official Zoning Map accompanying and made a part of this Ordinance are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such districts unless said boundaries are otherwise indicated on the map or by resolution.

6. In unsubdivided property, unless otherwise indicated, the district boundary line on the Official Zoning Map accompanying and made a part of this Ordinance shall be determined by the use of the scale contained on such map.
7. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
8. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
9. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 8 above, the Board of Adjustment shall interpret the district boundaries.

**Section 304. Disincorporation.** All territory which may hereafter become a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason may fall within the zoning jurisdiction of the County, shall automatically be classified in the "A" Agricultural District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

**Section 305. Application of District Regulations.** The regulations set by this Ordinance within each District shall be minimum regulations and shall apply uniformly to each class or kind of structure of land, and particularly, Except as hereafter provided:

1. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building or land be used except for a purpose listed as a permitted use, special permitted use, or conditional use in the district in which the building or use of land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.

**Section 306. Prohibited uses.**

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

## **ARTICLE IV**

### **NONCONFORMING USES OR LOTS OF RECORD**

**Section 400. Purpose and Intent.** Within the districts established by this Ordinance or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before this Ordinance was passed or amended but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

**Section 401.** When a nonconforming use has been changed to a conforming use, it shall not be changed subsequently to any nonconforming use.

**Section 402. Discontinuance of Nonconforming Use.** No nonconforming use, building, structure or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued or its normal operation stopped for a period of one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.

**Section 403. Extension or Enlargement.** No existing building devoted to a use not permitted by this Ordinance, in the district in which such building is located, except when required to do so by law, shall be enlarged, extended, converted, reconstructed or structurally altered, unless such use is changed to a use permitted in the district in which the building is located.

**Section 404. Restoration After Damage.** When a building, the use of which does not conform to the provisions of this regulation, is damaged by fire, act of God, explosion, or the public enemy, to the extent of more than sixty percent (60%) of its fair market cash value, it shall not be restored except in conformity with the regulations of the district in which the building is situated. Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.

**Section 405. Effect on Use Which is Illegal Under Prior Law.** Nothing in this Ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this Ordinance.

**Section 406. Nonconforming Lots of Record.**

1. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area

or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

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

**Section 407. Repairs and Maintenance.** On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

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

**Section 408. Unsafe Nonconforming Use.** Nonconforming lots of record which were zoned for small lot development prior to the adoption of amendments in 999 may be developed if other minimum requirements of this ordinance are met.

**Section 409. Continuation of Nonconforming Uses.** Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

**Section 410. Use Becoming Nonconforming by Change in Law or Boundaries.** Whenever the use of a premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

**Section 411. Powers of the Planning Commission/Board of Adjustment.** Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

**Section 412. Continuation of Nonstandard Uses.** Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

1. Structural alteration of buildings or structures may be made if such changes do not further encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.
2. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.



**ARTICLE V**  
**BOARD OF ADJUSTMENT, APPEALS, VARIANCE, AND CONDITIONAL USE PERMITS**

**Section 501.** Within Deuel County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The Board of Deuel County Commissioners shall appoint the Deuel County Planning Commission to act as the County Board of Adjustment. The Board of County Commissioners may also appoint two (2) alternates to the Board of Adjustment. The Alternates to the Board of Adjustment shall be the members of the Board of Deuel County Commissioners. If a Board of Adjustment member is unable to attend a meeting, the Deuel County Commissioner representing the district in which the applicant requesting a Board of Adjustment action, shall be the first alternate, subsequent alternates shall be chosen by the Board of Adjustment.
2. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board shall determine. The Chairman, or in his or her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.
3. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.
4. A quorum of the Board of Adjustment consists of four (4) members physically present or participating remotely. The Board of Adjustment shall take no action on any item at a meeting where a quorum of the Board is not physically present or participating remotely.
5. The Board of Adjustment shall have the following powers and duties:
  - a. Administrative Review. To hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map.
  - b. Conditional Uses. To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.
  - c. Variance. To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

### **Section 502. Appeals, Record of Appeal, Hearing and Stays.**

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County or city/town affected by any decision of the Zoning Officer to grant or deny the permit. No other appeal such as relating to a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision is authorized. Such appeals shall be taken within a reasonable time not to exceed twenty-one (21) days, as provided by the rules of the Board of Adjustment by filing with the officer from whom the appeal is taken and with Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. All appeals relating to a particular action or property shall be consolidated and heard on an expedited basis
3. An appeal stays all proceedings in furtherance of the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, or unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the County-Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Administrator or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney. The Board of Adjustment shall decide the appeal within sixty (60) days of receiving a notice of appeal. Any party may appear at the hearing in person or by agent or by attorney.

**Section 503. Powers and Jurisdiction Relating to Administrative Review; Reversing Decision of Administrative Officer.** The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Officer based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map. An appeal will not be heard until:

1. The applicant or any other person aggrieved by the decision of the Zoning Officer shall file a written appeal with the Board of Adjustment within five (5) working days of the decision.
2. The Zoning Officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken.

3. Notice of public hearing shall published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected. Written notice shall be given to the appellant seven (7) days prior to meeting.
4. The Zoning Officer shall present his/her decision to the Board of Adjustment for review.
5. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of two-thirds (2/3) of the full membership (four (4) members) of the Board of Adjustment is required to overrule or amend the decision of the Zoning Administrator.

**Section 504. Powers and Jurisdiction Relating to Conditional Uses.** The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this regulation, requests for conditional use permits or for decisions upon other special questions upon which the Board of Adjustment is authorized by this regulation to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this regulation, or to deny conditional use permits when not in harmony with the purpose and intent of this regulation. A conditional use permit shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted, indicating the section of this regulation under which the conditional use permit is sought and stating the grounds on which it is requested.
2. Notice of hearing shall be published once ten (10) days prior to the hearing in a paper of general circulation in the area affected.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
4. The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the conditional use permit, grant with conditions, or deny the conditional use permit, and that the granting of the conditional use permit will not adversely affect the public interest. An affirmative majority vote of the present and voting members of the Board of Adjustment is required to approve a conditional use permit.
5. The granting of any conditional use permit, by the Board of Adjustment shall be based upon written findings certifying compliance with the specific rules governing individual and that satisfactory provision and arrangement has been made concerning:
  - a. Access:
    - i. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for conditional use requested prior to issuance of a Conditional Use Permit.

- ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.
  - b. Parking and internal traffic:
    - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
    - ii. The number of parking spaces is appropriate for the proposed use of the property.
  - c. Utilities and refuse:
    - i. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.
    - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.
  - d. Screening, buffering, and open space:
    - i. The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
  - e. Lighting:
    - i. Lights associated with the use will not create a nuisance nor distract traffic.
    - ii. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.
  - f. General compatibility with adjacent properties and other property in the district.
    - i. Any use listed as a Conditional Use is generally compatible in the district in which it is listed.
    - ii. General compatibility is used when prescribing conditions for approval of a permit.
  - g. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.
6. A conditional use that is granted does not expire for a period of two (2) years following completion of any final appeal of the decision. Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire if no construction has commenced at the time of the conditional use permit's expiration date.

7. In granting the conditional use Permit, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this ordinance. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.
8. Expiration of a Conditional Use Permit :
  - a. Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.
  - b. If a decision by the Board of Adjustment to grant a conditional use permit is appealed to circuit court the conditional use permit that was granted does not expire for a period of two years following completion of any final appeal of the decision.
9. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.
10. Any alteration, construction, use of earthmoving equipment, or other change pursuant to a zoning permit or allowed land use on neighboring land that began after the date on which an application for a conditional use is received, and that causes the application to fail to meet one or more of the criteria or requirements for conditional use under the zoning ordinance, does not cause the request for a conditional use permit to be considered nonconforming until a final disposition of the conditional use request is determined pursuant to SDCL 11-2-61 or SDCL 11-2-65. If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.

**Section 505. Powers and Jurisdiction Relating to Variances.** The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. An affirmative vote of two-thirds (2/3) of the full membership of the Board of Adjustment is required to approve a variance. A variance shall not be granted by the Board of Adjustment unless and until:

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the Board of Adjustment would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
2. No variances shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this ordinance.
3. A variance from the terms of this regulation shall not be granted by Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or buildings in the same district; that literal interpretation of the provisions of this regulation would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; that the special conditions and circumstances do not result from the actions of the applicant, and that granting the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
5. Notice of public hearing shall be given as in Section 504; the public hearing shall be held. Any party may appear in person, or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this regulation, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
8. A variance that is granted does not expire for a period of two (2) years following completion of any final appeal of the decision. Unless otherwise specified by the Board of Adjustment, a variance shall expire if no construction has commenced at the time of the variance's expiration date.

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

**Section 506.** No applicant requesting a variance or conditional use permit whose application includes the same or substantially the same requirements for the same or substantially the same property which has been denied by the Board of Adjustment shall be again considered by the Board of Adjustment before the expiration date of six (6) months from the date of the final action on the petition.

**Section 507. Appeals to a Court of Record.** Any person or persons, jointly or severally, or any officer, department, board, or bureau of the County, aggrieved by a decision of the Board of Adjustment may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board of Adjustment. The Board of Adjustment shall respond to the petition within thirty (30) days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the board appealed from, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ.

A petitioner to the circuit court under this section shall pay all transcript costs required to complete the record of proceedings of the board appealed from.

**ARTICLE VI  
PLANNING COMMISSION**

**Section 601. Establishment.**

1. The Board of County Commissioners shall appoint a Planning Commission of five (5) members, at least one (1) member but not more than two (2) of which shall be a member of the Board of County Commissioners.

**Section 602. Term of Office.**

1. The term of each of the appointed members of the County Planning Commission shall be for three (3) years. The terms shall be varied so no more than one-third of terms shall expire in the same year. Any appointed member of the County Planning Commission may be removed for cause, after hearing prior to the expiration of the term by a majority vote of the elected members of the Board of County Commissioners. Zoning Officers of the County may be appointed as ex-officio members of the Commission.

**Section 603. Meetings of the Planning Commission**

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.

**Section 604. Per Diem and Expenses of Commission**

1. Per diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.

**Section 605. Duties of Planning Commission**

The Planning Commission shall have the following duties:

1. Comprehensive Plan:

The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.

2. Zoning Ordinance:

To develop and recommend a zoning ordinance, in accordance with the Plan, for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by SDCL 11-2-13 and 11-2-14. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.



3. Subdivision:

- a. To develop and recommend regulations governing the subdivision of land within Deuel County.
- b. To review proposals for subdivision to determine whether such subdivisions comply with the subdivision ordinance of Deuel County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.

4. Amendments:

The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive plan, zoning ordinance, and subdivision regulations subject to SDCL 11-2-28.

**Section 606. Procedures for Meetings.**

1. The members of the Planning Commission shall select one (1) of their members as Chairperson and another as Vice-chairperson, who shall act as Chairperson in the Chairperson's absence. Both shall serve one (1) year and until their successors have been selected. Meetings of the Planning Commission shall be held at the call of the Chairperson and at such times as the Commission shall determine.
2. The Chairperson, or in his or her absence the acting Chairperson, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.
3. All meetings of the Planning Commission shall be open to the public and conducted in accordance with the rules established by the Planning Commission. The Planning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Deuel County Development Office and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.
4. A simple majority vote of a quorum of members of the Zoning Board in attendance is required to forward a recommendation, pertaining to its duties described in Section 605, on to the Board of County Commissioners.

**ARTICLE VII**  
**SCHEDULE OF FEES, CHARGES, AND EXPENSES**

**Section 701.** The Board of County Commissioners shall by resolution establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, administrative fees and other matters pertaining this Ordinance. The schedule of fees shall be posted in the office of the County Zoning Officer and may be altered or amended only by the Board of County Commissioners. Changes in the zoning regulations or map which are initiated by incorporated communities or the County shall not require a fee.

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

**ARTICLE VIII**  
**ADMINISTRATIVE PROCEDURE AND ENFORCEMENT**

**Section 801. Enforcing Officer.** The provisions of this regulation shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners. The Zoning Officer may be provided with the assistance of such other persons as the County Commission may direct.

**Section 801.01. Zoning Officer Duties.**

The powers and duties of the Zoning Officer shall be as follows:

1. Issue all building/use permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within time established within the notification.
6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Deuel County Planning Commission and/or the Deuel County Board of Adjustment and/or Deuel County Commissioners.
8. Provide public information relative to all matters arising out of this Ordinance.
9. Forward to the Planning Commission all plats and/or applications for amendments to this Ordinance.
10. Forward to the Board of Adjustment, applications for appeals, conditional uses, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.
11. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission.
12. The Zoning Officer shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.

- a. For building/use permits and special permitted use permits the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
- b. For Conditional Uses and Variances, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.
- c. For Zoning Amendments, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Planning Commission and Board of County Commissioners.

**Section 801.02. Procedures for Approval of Special Permitted Use Permit**

- 1. The special permitted use procedure is an administrative review process, where the Zoning Officer shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a special permitted use permit. Requests for special permitted uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. A special permitted use permit shall not be granted unless and until:
  - a. A written application for a special permitted use is submitted, indicating the section of this Ordinance under which the special permitted use is sought and stating the grounds on which it is requested.
  - b. The Zoning Officer shall review the application for conformance with this ordinance.
  - c. If the Zoning Officer determines that the application is in conformance with the prescribed performance standards, the Zoning Officer shall make written findings certifying compliance with the specific standards governing the specific special permitted use permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the special permitted use permit.
  - d. The Zoning Officer shall then issue the special permitted use permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the Zoning Officer for the specific special permitted use permit.
  - e. The Zoning Officer shall then issue any other associated building/use permits.
  - f. If the application does not meet all of the prescribed performance standards for the special permitted use, the Zoning Officer shall determine that the application is not in conformance with this Section and appropriate special permitted use standards and shall deny the application. The applicant may, as appropriate:
    - i. Apply for a variance from lot area, size of structure(s) or size of yards and open spaces
    - ii. Apply for conditional use permit, if eligible.
    - iii. Appeal the decision of the Zoning Officer in accordance with Section 503.

- g. A special permitted use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Zoning Officer and prior to the special permitted use expiration date, a one (1) year time extension for the special permitted use may be granted by the Zoning Officer.
- h. If a decision by the Zoning Officer to issue a special permitted use permit is appealed to circuit court the special permitted use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

#### **Section 802. Right of Entry.**

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

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

#### **Section 803. Stop Order**

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

#### **Section 8.04 Occupancy Violation.**

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

### **Section 805. Building Permit.**

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

It shall be unlawful to commence the excavation for the construction of any structure or to commence the moving onto a property, or alteration of any structures, until the Zoning Officer has issued a building permit for such work. A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction.

2. Issuance of a Building Permit. In applying to the County Zoning Officer for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, and height and location of all buildings, to be erected, altered, or moved and of any building already on the lot. He shall also state the existing and intended use of all such buildings, the location of existing or proposed water and sewer facilities, and supply such other information as may be required by the County Zoning Officer for determining whether the provisions of this regulation are being observed.

If the proposed excavation or construction as set forth in the application are in conformity with the provisions of this regulation, and other regulations of the County then in force, the County Zoning Officer shall issue a building permit for such excavation or construction. If a building permit is refused, the County Zoning Officer shall state such refusal in writing, with the cause, and shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The County Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.

3. If the work described in any building permit has not begun within one hundred and eighty (180) days or has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Officer and written notice thereof shall be given to the persons affected. The notice shall state that further work as described in the canceled permit shall not proceed unless, and until, a new building permit has been obtained. If substantial progress has been made within two (2) years from the issuance of the permit but has not been completed, the Zoning Officer may extend the building/use permit and additional twelve (12) months.
4. All building permits issued by the Zoning Officer must be placed in a conspicuous location on the building site for the duration of the construction of work described.

### **Section 806. Construction and Use to be as Provided in Application, Plans, Permits, and Application for Zoning Compliance.**

Building permits issued on the basis of plans and applications approved by the Zoning Officer authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance, and punishable as provided by Section 808 of this regulation. The issuance of a building permit, shall, in no case, be construed as waiving any provisions of this ordinance.

### **Section 807. Complaints Regarding Violations.**

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Officer. The Zoning Officer shall record properly such complaint with the Board of Adjustment and investigate and take action thereon as provided by this Ordinance.

### **Section 808. Violation and Penalty.**

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

- a. Any person who starts work for which a permit (building, special permitted use, conditional use, variance, rezoning) is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All fees assessed there under shall be rounded to the nearest whole dollar.
  - i. Upon finding such violation, staff shall send written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the fee for the permit plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
  - ii. If application for said permit is filed after the deadline of seven working days following receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the permit fee. The payment of the administrative fee shall not relieve such person from the provisions of (b) below.
  - iii. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.
- b. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the County Auditor and shall be credited to the General Fund of the County.

The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

- c. In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Deuel County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation, to prevent the occupancy of said building; structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.
- d. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.



## **ARTICLE IX AMENDMENTS**

### **Section 901. Amendments to Zoning Ordinance.**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be in the following manners:
  - a. The Board of County Commissioners may direct the Planning Commission, to consider a change of zoning district boundaries or regulations;
  - b. The Planning Commission may initiate a change of zoning district boundaries or regulations;
  - c. One (1) or more of the owners of property within the area requested proposed to be rezoned may present a request to change the zoning district boundaries;
  - d. Initiated petitions specifying and requesting amendments to the regulations of this ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Zoning Officer.
2. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.

### **Section 902. Procedure for Amendments.**

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

1. The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Officer. Completed applications shall be returned to the Zoning Officer for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:
  - a. Any required attachments and fees, including Registered or Certified Mail.
  - b. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
  - c. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.

- d. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- e. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.
- f. The Planning Commission shall either recommend approval or denial of the amendment to the Board of County Commissioners.
- g. The Board of County Commissioners shall either approve or deny the ordinance describing the proposed changes to these zoning regulations, in accordance with standard procedures for reading, approval, publication, and effective date.
- h. After passage the Ordinance Amendment shall take effect on the 20th day after its publication in the official newspaper of the County.

**Section 903. Reapplication.** No application requesting a zoning district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of County Commissioners, shall again be considered by the Planning Commission before the expiration of six (6) months from the date of the final action of the Board.

**ARTICLE X  
(RESERVED)**

## **ARTICLE XI ZONING DISTRICTS**

### **Section 1101. "A" Agricultural District.**

#### **Section 1101.01. 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, commercial and industrial development will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

**Section 1101.02 Permitted Uses.** The following principal uses and structures shall be permitted in the Agricultural District:

1. Agricultural activities and farm related buildings, including Type D Concentrated Animal Feeding Operations;
2. (Reserved);
3. Site-built single-family residences;
4. Type A and Type B manufactured homes provided they meet the requirements of Section 1236;
5. Modular homes provided they meet the requirements of Section 1236;
6. Fisheries services and game propagation areas;
7. Horticultural services;
8. Orchards, tree farms, truck gardening, nurseries and greenhouses;
9. Public parks and recreation areas;
10. Home occupations;
11. Accessory uses and buildings.
12. Temporary roadside stands for sales of agricultural products grown or produced on the premises;
13. Private Wind Energy Conversion System (PWECs provided they meet the requirements of Section 1228;

**Section 1101.03. Special Permitted Uses.**

1. Camper on a lot with or without a principal structure for a specific time period, subject to receiving permission from adjoining landowners.
2. Shelterbelt subject to Section 1208.

**Section 1101.04 Conditional Uses.**

1. Airports and airstrips;
2. Church or cemetery;
3. Golf course, clubhouse, golf driving range;
4. Sand, gravel or quarry operation, Mineral exploration and extraction, Rock crushers, concrete and asphalt mixing plants provided they meet requirements of Section 1219;
5. Sanitary landfills, rubble sites composting sites, waste tire sites, restricted use sites, and other sites governed by South Dakota Department of Agriculture and Natural Resources permits for solid waste provided they meet the requirements of Section 1232;
6. Institution farms;
7. Domestic Sanitary Sewer Treatment plant/Facility provided they meet requirements of Section 1233;
8. Class A, Class B, and Class C Concentrated Animal Feeding Operations provided they meet requirements of Article XIII.
9. Commercial Stables, fur farms, dog/cat kennels;
10. Veterinary clinics;
11. Junkyards/salvage yards, provided that they meet the following requirements of Section 1234;
12. Essential services
13. Wireless Telecommunication Towers and Facilities provided they meet requirements of Section 1216;
14. 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;
15. Seasonal retail stands, including fireworks stands that require a permanent structure;
16. Extended Home Occupation provided they meet the requirements of Section 1210;

17. Caretaker residences associated with public or private enterprise.
18. Bed and breakfast provided they meet the requirements of Section 1229;
19. Game Lodge;
20. Private Shooting Preserve;
21. Group Home;
22. Wind Energy System (WES) provided they meet the requirements of Section 1215;
23. On premise and Off-premise Sign provided they meet the requirements of Section 1214;
24. Breweries, wineries and distilleries provided they meet the requirements of Section 1218;
25. Agribusiness activities provided they meet the requirements of Section 1240.
26. Automotive Tow Business/Impound Lot provided they meet requirements of Section 1235.
27. Target/shooting Range provided they meet the requirements of Section 1225;
28. Solar Energy System provided they meet the requirements of Section 1241;
29. Private Campground, provided they meet the requirements of Section 1231;
30. Accessory Agricultural Housing provided they meet the requirements of Section 1244;
31. Religious Farming Community provided they meet the requirements of Section 1243.

**Section 1101.05. Area Regulations.**

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

1. Lot Size: All residential lots shall be a minimum of three (3) acres, except as provided in item 7 below. All other permitted uses and conditional use permits shall have a minimum area and setback regulations as determined by the Board of Adjustment.
2. Front Yard

The minimum depth of the front yard shall be not less than sixty-five (65) feet and in no case shall an accessory building be located or extend into the front yard. In the case of a corner lot, front yards shall be provided on both streets.

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 twenty-five (25) feet.

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

6. Intensity of Use:

- a. The Board of Adjustment may allow a higher residential density for the "A" Agricultural District. Where a permit for an additional single-family farm dwelling is requested on an existing farmstead, provided:
  - i. The dwelling is located on the same legal description as the existing farmstead.
  - ii. Minimum site of three (3) acres is required;
  - iii. The maximum density shall not exceed two (2) residences;
  - iv. The dwelling is occupied by employees or relatives of the farm owner.
  - v. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.

**Section 1101.06. Height Regulations.**

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

- 1. Agricultural buildings;
- 2. Chimneys, smokestacks, cooling towers;
- 3. Wireless Telecommunications Towers and Facilities provided they meet the requirements of Section 1216;
- 4. Water tanks;
- 5. Elevators;
- 6. Wind Energy System (WES) provided they meet the requirements of Section 1215;
- 7. Others, as determined by the Board of Adjustment, providing that they are not used for human occupancy.

**Section 1101.07. Access.**

1. The drive-way serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:
  - a. Local road: 100 feet;
  - b. Collector road: 300 feet;
  - c. Arterial: 500 feet;
  - d. Minimum distance from intersection of two or more of the above: 100 feet
2. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

**Section 1101.08. Easements/Waivers.**

1. An Agricultural easement must 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. (See Section 1224)
2. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site. This waiver shall be filed with the Register of Deeds. If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. (See Section 1226). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.



## **Section 1102. "CI" Commercial/Industrial District.**

### **Section 1102.01. Purpose.**

The "CI" District is intended for commercial and industrial uses which due to their size and nature require highway access.

### **Section 1102.02. Permitted Use.**

1. On-premise Signs provided they meet the requirements of Section 1214;
2. Cannabis Dispensary provided they meet the requirements of Section 1217.
3. Field crops and grasslands;
4. Orchards and tree farms;
5. Temporary structures used for sales of agricultural products provided that there have been no past violations regarding previous sales;
6. Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use;
7. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past violations regarding previous sales.

### **Section 1102.03. Special Permitted Uses.**

1. None.

### **Section 1102.04. Conditional Uses.**

1. Implement automobile and machinery sales and service;
2. Truck terminals and freight warehouses;
3. Seed sales and grain storage, fertilizer and chemical storage and sales;
4. Highway and street maintenance shops operated by a government institution;
5. Welding and machine shops;
6. Gas, oil and liquid propane stations including bulk stations;
7. Public and private utilities;
8. Livestock sales;

9. Contractors' shops and yards;
10. Wholesale distributing companies;
11. Eating and drinking establishments;
12. Motels/hotels;
13. Commercial stable;
14. Adult Uses provided they meet requirements of Section 1227;
15. Off-premise sign provided they meet the requirements of Section 1214;
16. Recreation vehicle sales and park;
17. Agricultural-based industries such as ethanol plants and corn/soybean processing.
18. (Reserved);
19. Custom Processing and Slaughterhouse activities provided they meet requirements of Section 1242;
20. Kennel with or without animal grooming;
21. Veterinary clinics
22. Wireless telecommunication towers and facilities provided they meet requirements of Section 1216
23. Convenience store/service station;
24. Seasonal retail stands utilizing a permanent structure;
25. Commercial orchards, tree farms, truck gardening, and Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
26. Greenhouses – with retail sales;
27. Light manufacturing;
28. Agri-business Activity provided they meet requirements of Section 1240;
29. Private wind energy conversion system (PWECS) provided they meet requirements of Section 1228;
30. Automotive tow business/Impound lot provided they meet requirements of Section 1235;

31. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 where there have been past violations regarding previous sales.

**Section 1102.05. Minimum Lot Area and Yard Regulations. See Table 1102.**

Table 1102

	Minimum Lot Area <sup>4</sup>	Minimum Lot Width	Minimum Front Yard <sup>1</sup>	Minimum Side Yard <sup>2</sup>	Minimum Rear Yard <sup>3</sup>
Uses on Lots of Record	3 Acres	100 Feet	100 Feet	50 Feet	50 Feet
Uses on lots created after July 1, 2022	5 Acres	300 Feet	150 Feet	50 Feet	50 Feet

1. Two (2) Front yards required on all corner lots
2. On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area.
3. The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.
4. For commercial and industrial uses, buildings shall occupy no more than fifty percent (50%) of the lot.

**Section 1102.06. Access.**

1. All property in the "CI" District must have access to an asphalt paved or concrete road or a County gravel road with approval of the County Highway Superintendent.
2. The drive-way serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:
  - a. Local road: 100 feet;
  - b. Collector road: 300 feet;
  - c. Arterial: 500 feet;
  - d. Minimum distance from intersection of two or more of the above: 100 feet
3. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

**Section 1102.07. Service or Access Roads.** Service or access roads may be required at the discretion of the Board of Adjustment.

**Section 1102.08. Sewage Disposal Systems.** Individual and small on-site wastewater systems are regulated by South Dakota Department of Agriculture & Natural Resources guidelines for sewage disposal (Title 74, Chapter 74:53:01). In addition, the applicant shall provide the name of the certified installer that is responsible for supervision.

**Section 1102.09. Storage.** All outdoor storage within five hundred (500) feet of a residential dwelling must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stockpile which fence shall be maintained in safe and good repair. The County may require asphalt or concrete surfacing of parking lots.

**Section 1102.10. Section Performance Standards.**

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.
5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Commissioners
8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

### **Section 1103. "LP" Lake-Park District.**

#### **Section 1103.01. Purpose.**

The Lake-Park District is established to provide for orderly residential and recreational development, together with certain public facilities, customary home occupations, and certain recreation oriented commercial establishments, normally associated with lake shore development.

#### **Section 1103.02. Area Contained in "LP" District.**

All land, unless otherwise zoned, within one thousand (1,000) feet of the established normal high-water line of Lake Cochrane or any land which has been specifically zoned Lake Park by the Deuel County Commission.

#### **Section 1103.03. Permitted Uses.**

1. Site-built Single-family residential usage;
2. Public parks and recreation areas;
3. Agriculture and horticulture uses excluding concentrated animal feeding operations;
4. Type A and B Manufactured Homes provided they meet the requirements of Section 1236;
6. Modular Homes provided they meet the requirements of Section 1236;
7. Essential public services.
8. Accessory structures including piers and docks

#### **Section 1103.04. Special Permitted Uses.**

1. Camper on a lot with or without a principal structure for a specific time period, subject to receiving permission from adjoining landowners.
2. Shoreline stabilization projects including filling, grading, lagooning, dredging, rip rapping and retaining walls, in a strip paralleling the shoreline and extending thirty-five (35) feet inland from all points along the high-water mark of the shoreline subject to 1103.07.5

#### **Section 1103.05. Conditional Uses.**

1. Private parks and campgrounds, except in the Lake Park District within 1,000 feet of the established normal high-water line of Lake Cochrane, provided they meet the requirements of Section 1231;
2. Resorts;
3. Restaurants;

4. Home occupations provided they meet the requirements of Section 1209;
5. Shoreline stabilization projects including filling, grading, lagooning, dredging, rip rapping, and retaining walls, in a strip paralleling the shoreline and extending thirty-five (35) feet inland from all points along the high-water mark of the shoreline that do not comply with Section 1103.07.5.a.i.
6. Multiple family dwellings;
7. Bed and Breakfast provided they meet the requirements of Section 1229;
8. Accessory structures located on a lot adjacent to a lot with principle structure which is separated by a public or private road.
9. Commercial storage facilities provided they meet the requirements of Section 1246;
10. Laundromats;
11. Boat houses existing prior to July 1, 2022;
12. Bait shop;
13. Grocery store;
14. Bar, tavern, or lounge;
15. Convenience store;
16. Recreational sales;
17. Rental services;
18. Golf course, driving range, clubhouse and related accessory uses

**Section 1103.06. Minimum Lot Area and Yard Regulations.**

1. Each lot shall have a lot depth of not less than one hundred and fifty (150) feet.
2. Each lot shall have a shoreline frontage of not less than seventy-five (75) feet in width.
3. Each lot shall have a road frontage of not less than fifty (50) feet in width.
4. Each building shall be set back not less than fifty (50) feet from the established normal high-water mark and or have a rear yard of fifty (50) feet.

5. Each building shall be set back not less than fifty (50) feet from the right-of-way of State or Federal highways. For all other roads, the front yard setback shall at least thirty (30) feet from the edge of the road, but in no circumstance shall the structure be located within the right-of-way. Side yards shall have a ten (10) foot setback from the side yard property line . Exception: On those lots platted prior to June 8, 1976, which have a lot width of less than seventy-five (75) feet, each building shall have a side yard of not less than a distance equal to ten (10) percent of the lot width. Under no circumstances shall a building have a side yard of less than five (5) feet. Roof overhangs may infringe upon the side yard requirements no more than one and one-half (1.5) feet.
6. For lakes and ponds: No structure except piers and docks shall be placed at an elevation such that the lowest floor, including basement, is less than one (1) foot above the established normal high-water mark. In those instances where sufficient data on known high water levels are not available, the elevation line of permanent terrestrial vegetation shall be used as the estimated high-water elevation. When fill is required to meet this elevation, the fill shall be required to stabilize or be tamped down before construction is begun.
7. Sealed holding tanks for individual cabins and homes are required for all lots containing less than twenty thousand (20,000) square feet and not within the Lake Cochrane Sanitary District.
8. There shall be no more than one primary residential building on any parcel of land.
9. Where two parcels of land are purchased and joined together by one common boundary, the setbacks established above shall pertain to the perimeter of the combined lots.

**Section 1103.07. Shoreline Stabilization, Filling, Grading, Lagooning and Dredging.**

1. Shoreline stabilization, filling, grading, lagooning or dredging which would result in substantial detriment to natural waters by reason of erosion, sedimentation or impairment of fish and aquatic life is prohibited.
2. A permit is not required for soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.
3. Building permits shall be required for all retaining walls or structures.
4. Small filling and grading projects and small shoreline repair or stabilization projects limited to one hundred (100) square feet shall not require a Permit.
5. Shoreline stabilization (including but not limited to riprapping and retaining wall(s) , filling, grading, lagooning or dredging projects shall require a special permitted use permit.
  - a. A special permitted use permit shall be issued by the Zoning Officer if the project complies with all of the following:
    - i. Approval from adjoining property owners

- b. A conditional use permit may be issued by the Board of Adjustment if the project does not comply with 1103.07.5.a.i.



**Section 1104. "NR" Natural Resource District.**

**Section 1104.01 Purpose.**

The purpose of the Natural Resource District is to provide for the retaining of natural vegetation of a particular area, to preserve the natural environment and resources from destructive land uses and to protect wildlife habitat. Such an area may include but is not limited to flood plains of rivers, streams, and lakes, abandoned quarries, certain wetlands, natural prairies, and historical sites.

**Section 1104.02. Area Contained in "NR" District.**

All lands, unless otherwise zoned, that are totally or partially owned by the State or Federal governments as wildlife production or public shooting areas and meandered lakes.

**Section 1104.03. Permitted Uses.**

1. Wildlife production areas;
2. Game refuges;
3. Historic sites and/or monuments;
4. Designated natural prairies;
5. Public hunting and fishing access areas.
6. Horticulture uses and livestock grazing.

**Section 1104.04. Uses Permitted by Conditional Use permit if Deemed Not Detrimental to District.**

1. Transportation and utility easements and rights-of-way.
1. Essential Public services;
2. Public parks and/or playgrounds;
3. Transportation and utility easements and rights-of-way.

## **Section 1105. Aquifer Protection Overlay District.**

### **Section 1105.01. Purpose and Intent.**

The Deuel County Zoning Commission recognizes (1) that residents of Deuel County rely exclusively on ground water for a safe drinking water supply and (2) that certain land uses in Deuel County can contaminate ground water particularly in shallow/surficial aquifers.

The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow/surficial aquifers of Deuel County. It is the intent to accomplish this, as much as possible, by public education and securing public cooperation.

Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. It is not the intent to grandfather in existing land uses which pose a serious threat to public health through potential contamination of public water supply wellhead areas.

### **Section 1105.02. (Reserved).**

### **Section 1105.03. Delineation and Regulation of Aquifer Protection Overlay Zones.**

Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on maps prepared by the East Dakota Water Development District (EDWDD), Brookings, South Dakota and by the South Dakota Geologic Survey, Vermillion, South Dakota. In addition to East Dakota Water Development District Map, the South Dakota Department of Agriculture and Natural Resources, Division of Financial and Technical Assistance, Geological Survey created a map entitled "First Occurrence of Aquifer Materials in Deuel County, South Dakota" dated March 13, 2003. This map will be used to further identify aquifer boundaries. In the event of a conflict between such maps as to the area covered by the aquifer at a given location, borings will be required by the County to determine the incidence of shallow aquifer. Said maps are hereby adopted by reference as part of these regulations as if the maps were fully described herein.

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

### **Section 1105.04. Zone A -- Aquifer Critical Impact Zones.**

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

### **Section 1105.05 Permitted Uses in Zone A:**

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

1. Agriculture;
  - a. Application of manure is permitted with approved nutrient management plan.
2. Horticulture;
3. Parks, greenways or publicly owned recreational areas;
4. Necessary public utilities/facilities designed so as to prevent contamination of groundwater.
5. All "Permitted Uses" listed in the underlying zoning districts, with the exception of those expressly prohibited in Zone B, provided that they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones

**Section 1105.06. 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 Performance Standards outlined for Aquifer Protection Overlay Zones.

1. Expansion modification, alteration, or relocation of existing uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.
2. All conditional uses listed in the underlying districts, with the exception of those expressly prohibited in Zone A, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.
3. New public water supply wells located within two thousand five hundred (2,500) feet of a concentrated animal feeding operation.

**Section 1105.07. Prohibited Uses in Zone A.**

The following uses are expressly prohibited in Zone A:

1. New Concentrated Animal Feeding Operations, including Class A, Class B, Class C, ~~Class D~~, and Class ~~E~~D.
2. Manure storage areas;
3. Disposal of solid waste except spreading of manure;
4. Outside unenclosed storage of road salt;
5. Disposal of snow containing de-icing chemicals;
6. Processing and storage of PCB contaminated oil;

7. Car washes;
9. Auto service, repair or painting facilities and junk or salvage yards;
9. Disposal of radioactive waste;
10. Graveyards or animal burial sites;
11. Detonation sites;
12. Open burning except ditches, fields and non-hazardous yard and household wastes such as paper, wood and leaves.
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. Fall application of nitrogen fertilizer except spreading of manure;
15. Land spreading of petroleum contaminated soil;
16. Land spreading or dumping of waste oil;
17. Class V injection wells;.
18. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of three hundred (300) animal units.
19. Earthen storage basins and lagoons;
20. Stockpiling of solid waste;
21. Chemigation with liquid fertilizer, pesticides and/or herbicides
22. Storage of liquid fertilizer, pesticides and/or herbicides without an approved permanent secondary storage system.

**Section 1105.08. Zone B -- Aquifer Secondary Impact Zones.**

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

**Section 1105.09. Permitted Uses in Zone B.**

1. All “Permitted Uses” listed in the underlying zoning districts, with the exception of those expressly prohibited in Zone B, provided that they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones

**Section 1105.10. Conditional Uses in Zone B.**

1. All conditional uses listed in the underlying districts, with the exception of those expressly prohibited in Zone B, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zone.
2. Expansion modification, alteration, or relocation of existing uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use. All new and expansion of existing concentrated animal feeding operations may be required to conduct shall require soil borings to determine impermeable material between land surface and the aquifer.
3. Earthen storage basins and lagoons may be approved by the Board of Adjustment after site-specific review. Earthen storage basins and lagoons shall require soil borings to determine impermeable material between land surface and the aquifer. The Board reserves the right to require an impermeable liner to prevent ground water contamination.

**Section 1105.11. Prohibited Uses in Zone B.**

The following uses are expressly prohibited in Zone B:

- a. Fall application of nitrogen fertilizer except spreading of manure
- b. Land spreading of petroleum contaminated soil;
- c. Land spreading or dumping of waste oil;
- d. Class V injection wells;
- e. New Class A, Class B, or Class C (with over five hundred (500) animal units) Concentrated Animal Feeding Operations.
- f. Expansion of existing Class A, B, C, and D concentrated animal feeding operations;

**Section 1105.12. Performance Standards For Aquifer Protection Overlay Zones.**

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

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

2. (Reserved)
3. Storage of petroleum products in quantities exceeding (100) gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks larger than one thousand (1,000) gallons must have secondary containment system where it is deemed necessary by the County Zoning Office.
4. Any commercial or industrial facility, not addressed by ~~(2)~~ or (3) above, involving collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste, except for spreading of manure, in excess of one thousand (1,000) pounds and/or one hundred (100) gallons which has the potential to contaminate ground water must have a secondary containment system which is 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.
5. When pastured animals are concentrated for winter feeding and the number of animal units exceeds two hundred (200), measures shall be employed to prevent runoff of manure
6. Owners/operators of active or abandoned feedlots shall handle and dispose of manure in accordance with Soil Conservation Service South Dakota engineering Standard, Nutrient Management System (680)
7. Discharge of industrial process water is prohibited without County Zoning Office approval.
8. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.
9. Any facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials must prepare and have on file in the County Zoning Office an acceptable contingency plan for preventing hazardous chemicals from contaminating the shallow/surficial aquifer should floods, fire, other natural catastrophes or equipment failure occur:
  - a. For flood control, all underground facilities shall include a monitoring system and a secondary standpipe above the 100-year frequency flood level. All above ground facilities, an impervious dike, above the 100-year flood level and capable of containing 120 percent of the largest storage volume, with an overflow recovery catchment area (sump).
  - b. For fire control, all facilities shall include a fire-retardant system and provision for dealing safely with both health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are overhead and buried electrical lines, pipes, other buried objects and other hazardous liquids, chemicals or open flames in the immediate vicinity.
  - c. For equipment failures, plans shall include but not limited to:
    - i. Below ground level, provision for removal and replacement of leaking parts, a leak detection system with monitoring, and overfill protection system.
    - ii. Above ground level, provision for monitoring, replacement, repair, and cleanup of primary containment systems.

- d. For other natural or man-caused disasters occurring, the owner and/or operator shall report all incidents involving liquid or chemical material which may endanger health and/or of disaster personnel and/or the general public.
  - e. Agricultural operations are exempted from performance standard (9) unless chemicals are stored which are on the Superfund and Reauthorization Act of 1986 (SARA Title III) extremely hazardous substance list in quantities exceeding the threshold planning quantity at any one time.
  - f. The County Zoning Office, Public Water Supplies, and Department of Agriculture and Natural Resources shall be informed within 24 hours of any leak, spill or release of materials that might potentially contaminate groundwater.
10. Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

**Section 1105.13. Grant of Permit, Alteration of Use.**

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

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

Whenever any person has an existing use, activity or development and thereafter desires alteration or expansion of the authorized use, such persons shall apply for a permit. The owner/developer may appeal a County Zoning Officer's decision to modify or deny a requested permit to the Board of Adjustment

Any lawful use in existence on the effective date of this ordinance shall be permitted to continue provided it can be shown such use does not threaten public health and safety by potential contamination of water in the shallow/surficial aquifers.

**Exceptions:**

- 1. Storage of liquids, chemicals and fertilizers used by an individual or corporation in their agricultural operations during planting and crop cultivation are exempt from the requirements of this ordinance March 1 to October 1. However, Best Management Practices are encouraged, particularly in Zone A. Tanks used for chemigation are exempt from secondary containment regulations but secondary containment is encouraged.
- 2. Storage of liquid or dry fertilizer in amounts equal to or less than 1,000 pounds or 100 gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.
- 3. A non-conforming facility in Zone A will become a prohibited use if such facility is inactive for five (5) years.

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

**Section 1105.14. Limitation of County Liability.**

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

**Section 1105.15. Underlying Zones:**

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



## **Section 1106. "TD" Town District**

### **Section 1106.01. Purpose.**

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

### **Section 1106.02. Permitted Uses.**

1. Single-family residential usage, including Type A and Type B Manufactured Homes, provided that provisions of Section 1236 are met.
2. Public parks.
3. Agriculture and horticulture uses, excluding Concentrated Animal Feeding Operations.
4. Home occupations provided they meet the requirements of Section 1209.
5. Accessory uses.

### **Section 1106.03. Special Permitted Uses.**

1. None

### **Section 1106.04. Conditional Uses.**

1. Retail and service businesses.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Contractors' offices, shops, and yards.
7. Manufactured Home Park;
8. Private storage facilities provided they meet the requirements of Section 1245;

## **Section 1106.04. Area Regulations.**

### **Residential**

Minimum Yard Requirements: Front-----Twenty-five (25) feet  
Side-----Fifteen (~~6~~) **(15)** feet  
Rear-----Twenty-five (25) feet

Minimum Lot Size:

Public Water Supply/Septic Tank-----20,000 Sq. Ft.  
Well/Septic Tank-----43,560 Sq. Ft.  
Public Water Supply/Public Sewer-----9,600 Sq. Ft.

### **Commercial Uses/Lots**

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

### **Industrial Uses/Lots**

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

## **Section 1107. “FP” Floodplain Protection District.**

### **Section 1107.01. Statutory Authorization, Findings of Fact, Purpose And Methods.**

#### **1. Statutory Authorization**

The Legislature of the State of South Dakota has in SDCL 7-18-14 & 7-18-15 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Commissioners of Deuel County, South Dakota, does ordain as follows:

Deuel County elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program (NFIP) is a voluntary program administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security, and Deuel County’s community officials have elected to join the program, participate, and enforce this Flood Damage Prevention Ordinance and the requirements and regulations of the NFIP. The NFIP, established in the aforesaid act, provides that areas of Deuel County having a special flood hazard be identified by FEMA, and that floodplain management measures be applied in such flood hazard areas. Furthermore, Deuel County may elect to administer the Flood Damage Prevention Ordinance to areas not identified as Special Flood Hazard Areas (SFHAs) by FEMA on the community’s effective Flood Insurance Rate Map (FIRM), if the community has documentation to support that there is an inherent risk of flooding in such areas.

#### **2. Findings of Fact**

The flood hazard areas of Deuel County are subject to periodic inundation by flood waters, which results in potential loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief; all of which adversely affect the public health, safety and general welfare of the inhabitants of Deuel County.

These potential flood losses are caused by:

1. The cumulative effect of obstructions in floodplains that are known to cause increases in flood heights and velocities;
2. The occupancy of flood hazard areas by structures vulnerable to floods because they are inadequately elevated or otherwise unprotected from flood damages; and
3. Uses deemed unsuitable for floodplain areas or that do not account for the increased flood risk.

#### **3. Statement of Purpose**

It is the purpose of this ordinance to promote the public health, safety and general welfare of the community and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize damage to public infrastructure, including but not limited to utilities, streets, and bridges that are susceptible to flooding;
3. Minimize prolonged business interruptions caused by flooding;

4. Minimize public expenditures on flood control projects;
5. Minimize the need for rescue and relief efforts associated with flooding and are generally undertaken at the expense of the public;
6. Protect and safeguard the welfare and safety of first responders should an emergency response is needed;
7. Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas; and
8. Promote that potential buyers are notified if properties are in a flood area.

### **3. Methods of Reducing Flood Losses**

To accomplish the purposes outlined in **3. STATEMENT OF PURPOSE**, this ordinance applies the following methods:

1. Restricts or prohibits land uses that are dangerous to health, safety, or property in times of flooding, or cause excessive increases in flood heights or velocities;
2. Requires that land uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
3. Controls the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Controls filling, grading, dredging and other developments that may increase flood damage; and
5. Prevents or regulates the construction of flood barriers that will unnaturally divert floodwaters or may increase flood hazards to other lands.

#### **Section 1107.02. Definitions.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**100-Year Flood** means a flood having a recurrence interval that has a 1-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms “100-hundred-year flood” and “1-percent-annual-chance flood” are synonymous. The term does not imply that the flood will necessarily happen once every 100 hundred years. Mandatory flood insurance requirements may apply.

**100-Year Floodplain** means the area of land susceptible to being inundated due to the occurrence of a 1-percent-annual-chance flood.

**500-Year Flood** means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-annual-chance flood). The term does not imply that the flood will necessarily happen once every 500 years and mandatory flood insurance requirement generally does not apply.

**500-Year Floodplain** means the area of land susceptible to being inundated due to the occurrence of a 0.2-percent-annual-chance flood.

**Accessory Structure** is a structure that is on the same parcel of property as a principal structure. Its use is incidental to the use of the principal structure the ownership of the accessory structure is the same owner as of the principal structure. An accessory structure is a non-residential structure of low value that is used solely for the parking of vehicles and storage of tools, materials, or equipment. No human habitation is allowed within an accessory structure.

**Addition** is any improvement that expands the enclosed footprint or increases the square footage of an existing structure. This includes lateral additions added to the side, front, or rear of a structure; vertical additions added on top of a structure; and enclosures added underneath a structure.

**Alluvial Fan Flooding** means flooding occurring on the surface of an alluvial fan or similar landform that originates at the apex. It is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

**Apex** means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

**Appurtenant Structure**—see **Accessory Structure**.

**Area of Future-Conditions Flood Hazard** means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood, based on future-conditions hydrology.

**Area of Shallow Flooding** means a designated AO, AH, AR/AO, or AR/AH zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood-Related Erosion Hazard** is the land within a community that is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area, in preparation for publication of the FIRM, Zone E may be further refined.

**Area of Special Flood Hazard** is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

**Base Flood** means the flood having a 1-percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation (BFE)** is the water surface elevation of the 1-percent-annual-chance flood event. It is the height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas. It is also the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1-percent chance of equaling or exceeding that level in any given year.

**Basement** means any area of the building having its floor subgrade (below ground level) on all sides. A walkout basement that does not require a step up to grade is not considered a basement.

**Best Available Data** is existing flood hazard information adopted by a community and reflected on an effective FIRM, FBFM, and/or within an FIS report; or draft or preliminary flood hazard information supplied by FEMA or from another source. Other sources may include, but are not limited to, state, other federal agencies, or local studies, the more restrictive of which would be reasonably used by the community.

**Breakaway Wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system. Any walls below the lowest floor in a building in a V or VE Zone should give way under wind and water loads without causing collapse, displacement, or other damage to the elevated portion of the building or the supporting pilings or columns. Breakaway walls apply only to V or VE Zones.

**Building**—see **Structure**.

**Channelization** means the artificial creation, enlargement, realignment, or alteration of a stream channel's slope, shape, or alignment. Streambank restoration may be deemed as channelization.

**Code of Federal Regulations (CFR)** is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

**Conditional Letter of Map Revision (CLOMR)** is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, and/or the SFHA. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

**Conditional Letter of Map Revision Based on Fill (CLOMR-F)** is FEMA's comment on a proposed structure or property. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be removed from the floodplain.

**Crawlspace** means an under-floor space that has its interior floor area (finished or not) no more than 4 feet from the bottom floor joist to the next higher floor elevation, designed with proper openings that equalize hydrostatic pressures of flood water, and is not used for habitation. Reference: **2.E. CRAWLSPACE**

**Critical Facility** means a facility or building where even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, schools, storage of critical records, assisted living and similar facilities.

**Deed Restriction** refers to a clause in a deed that limits the future use of the property in some respect. Deed restrictions may impose a vast variety of limitations and conditions. For example, they may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or from being used at all.

**Detached Garage** is a building that is used solely for storage of materials or vehicle parking for up to four housing occupants. If a detached garage is designed or used for habitation or conducting business, or has multiple stories, then the building is not considered a detached garage under the NFIP.

**Development** means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, demolition, excavation or drilling operations, or storage either temporary or permanent of equipment or materials.

**Elevated Building** is a non-basement building built, in the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (post and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, an “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

**Enclosure** refers to an enclosed walled-in area below the lowest floor of an elevated building. Enclosures below the BFE may only be used for building access, vehicle parking, and storage.

**Erosion** means the process of the gradual wearing away of land masses by wind, water, or other natural agents.

**Existing Construction** refers to structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. It may also be referred to as **Existing Structures**.

**Existing Manufactured Home Park or Subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Existing Structures**—see **Existing Construction**.

**Expansion to an Existing Manufactured Home Park or Subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FEMA** means the Federal Emergency Management Agency.

**Fill** refers to the placement of materials, such as dirt, sand, or rock to elevate a structure, property, or portion of a property above the natural elevation of the site, regardless of where the material was obtained from. The common practice of removing unsuitable material and replacing with engineered material is not considered fill if the elevations are returned to the existing conditions. Any fill placed or used prior to the area being mapped as a flood hazard area is not deemed as fill.

**Flood or Flooding** means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters.
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. Mudslides (i.e., mudflows) that are proximately caused by flooding as defined in this ordinance and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
3. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this ordinance.

**Flood Insurance Manual** is the document FEMA produces twice a year and is used to write flood insurance policies underwritten by the NFIP. The document contains definitions, policy rates, coverage and limitations, application and insurance policy forms.

**Flood Insurance Rate Map (FIRM)** means an official map of a community, on which the Administrator has delineated both the SFHAs and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS) or Flood elevation study** means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Floodplain Development Permit** is a community issued permit or document that is used for any development that occurs within an SFHA identified by FEMA or the community. It is used to address the proposed development to ensure compliance with the community's ordinance.

**Floodplain or Flood-Prone Area** means any land area susceptible to being inundated by water from any source whether or not identified by FEMA (see definition of **Flooding**).

**Floodplain Management** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, mitigation plans, and floodplain management regulations.

**Floodplain Management Regulations** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for flood damage prevention and reduction.

**Flood Opening** refers to an opening in the wall of an enclosed structure that allows floodwaters to automatically enter and exit the enclosure. Refer to FEMA Technical Bulletin 1.



**Flood Protection System** means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to an SFHA and to reduce the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized, flood modifying works are those constructed in conformance with sound engineering standards. FEMA only accredits levees, both private and public, that have been certified by a professional engineer or firm in which the certification shows that the levee have met and continue to meet the minimum regulatory standards cited in Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR 65.10).

**Floodproofing** means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents. Floodproofing can either be accomplished in the form of dry floodproofing in which the structure is watertight below the levels that need flood protection, or wet floodproofing in permanent or contingent measures applied to a structure that prevent or provide resistance to damage from flooding, while allowing floodwaters to enter the structure or area.

**Floodway**—see **Regulatory Floodway**.

**Floodway encroachment lines** mean the lines marking the limits of floodways on federal, state, and local flood plain maps.

**Freeboard** means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

**Functionally Dependent Use** means a development that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and repair facilities. It does not include long-term storage or related manufacturing facilities.

**Highest Adjacent Grade (HAG)** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. In AO Zones, the highest adjacent grade is utilized by comparing the lowest floor elevation to that of the highest adjacent grade and the depth of the AO Zone. Reference: **ARTICLE V, SECTION D. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)**.

**Historic Structure** means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs that have been approved by the Secretary of the Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior, or
  - b. Directly by the Secretary of the Interior in states without approved programs.

**Letter of Map Amendment (LOMA)** means an official amendment, by letter, to an effective FIRM. A LOMA establishes a property's location in relation to the SFHA. It is usually issued because a property or structure has been inadvertently mapped as being in the floodplain, when the property or structure is actually on natural high ground above the BFE.

**Letter of Map Revision (LOMR)** means FEMA's modification or revision to an entire or portion of the effective FIRM, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, or the SFHA.

**Letter of Map Revision Based on Fill (LOMR-F)** means FEMA's amendment, by letter, to an effective FIRM where fill was brought in or used to elevate a property, portion of property or structure above the BFE.

**Levee** means a man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**Levee System** means a flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**Lowest Adjacent Grade (LAG)** means the lowest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. For an existing structure, it means the lowest point where the structure and ground touch, including but not limited to attached garages, decks, stairs, and basement windows.

**Lowest Floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 60.3.

**Manufactured Home** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle"; however, a manufactured home may be used for both residential and non-residential use.

**Manufactured Home Park or Subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Map** means the FHBM or the FIRM for a community issued by FEMA.

**Mean Sea Level** means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BFEs shown on a community's FIRM are referenced.

**Mixed Use Structures** are structures with both a business and a residential component, but where the area used for business is less than 50 percent of the total floor area of the structure.

**New Construction** means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

**New Manufactured Home Park or Subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**No-Rise Certifications** are formal certifications signed and stamped by a professional engineer licensed to practice in the state, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that a proposed development will not result in any increase (0.00 feet) in flood levels within the community during the occurrence of a base flood event.

**Physical Map Revision (PMR)** is FEMA's action whereby one or more map panels are physically revised and republished.

**Recreational Vehicle** means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily, not for use as a permanent dwelling but, as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory Floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Riverine** means relating to, formed by, or resembling a river (including tributaries), stream, brook, creek, etcetera, which can be intermittent or perennial.

**Section 1316** refers to the section of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any property that the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Section 1316 is issued for a property, not a property owner, and remains with the property even after a change of ownership.

**Special Flood Hazard Area**—see **Area of Special Flood Hazard**.

**Start of Construction** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** means, for floodplain management purposes, a walled and roofed building, culvert, bridge, dam, or a gas or liquid storage tank that is principally above ground, as well as a manufactured home. **Structure**, for insurance purposes, means:

- (1) A building with two or more outside rigid walls and a fully secured roof, which is affixed to a permanent site;
- (2) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- (3) A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For insurance purposes, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

**Substantial Damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

The term does not, however, include:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
2. Any alteration of a “historic structure”, if the alteration will not preclude the structure's continued designation as a “historic structure.”

**Variance** means a grant of relief by a community from the terms of a flood plain management regulation.  
Reference: **1107.05 VARIANCE PROCEDURES**

**Violation** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**Water surface elevation** means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies, such as the 1-percent-annual-chance flood event, in the flood plains of coastal or riverine areas.

**Watercourse** means the channel and banks of an identifiable water in a creek, brook, stream, river, ditch or other similar feature.

### **Section 1107.03. General Provisions.**

#### **1. Lands to Which this Ordinance Applies**

The ordinance shall apply to all areas of special flood hazard identified by FEMA or areas of identified and documented flood risk supported using Best Available Data within the jurisdiction of Deuel County

#### **2. Basis for Establishing the Areas of Special Flood Hazard**

The areas of special flood hazard identified by FEMA in a scientific and engineering report entitled, "The Flood Insurance Study for Deuel County, South Dakota and Incorporated Areas, dated August 29, 2022, accompanying FIRMs, and any revisions thereto are hereby automatically adopted by reference and declared to be a part of this ordinance.

#### **3. Establishment of Development Permit**

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

#### **4. Abrogation and Greater Restrictions**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **5. Interpretation**

In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

## **6. Warning And Disclaimer Or Liability**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by human-made or natural causes.

This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

## **7. Severability**

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

## **8. Compliance**

No structures or developments including buildings, recreation vehicles, or manufactured homes or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations. Nothing herein shall prevent Deuel County Commissioners from taking such lawful action as is necessary to prevent or remedy any violations.

## **9. Stop Work Order**

1. Authority. Whenever the floodplain administrator or other community official discovers any work or activity regulated by this ordinance being performed in a manner contrary to the provision of this ordinance, the floodplain administrator is authorized to issue a stop work order.
2. Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.
3. Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by local or state law including but not limited to the penalties outlined in **10. PENALTIES FOR NONCOMPLIANCE**.

## **10. Penalties For Noncompliance**

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the NFIP regulation, to qualify for the sale of federally subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions." In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e. mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or codes."

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 or imprisoned for not more than 30 days, or both, for each violation assessed daily, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Deuel County from taking such other lawful action as is necessary to prevent or remedy any violation

#### **Section 1107.04. Administration.**

##### **1. Designation of the Floodplain Administrator**

Deuel County Zoning Officer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of the NFIP Regulations and 44 CFR pertaining to floodplain management.

##### **2. Duties And Responsibilities of the Floodplain Administrator**

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Uphold the goals of the community and the NFIP to reduce risk when possible and increase the community's resistance to future disasters.
2. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation of the lowest floor (including basement or crawlspace) of all new or substantially improved structures and any floodproofing certificates, including the data supporting such certificates.
3. Maintain and hold open for public inspection maps that identify and locate the boundaries of the SFHAs to which this ordinance applies, including, but not limited to, the FIRM.
4. Review development proposals to determine whether a proposed building site, including sites designed for the placement of manufactured homes, will be reasonably safe from flooding.
5. Review, approve, or deny all applications for development permits required by adoption of this ordinance.
6. Ensure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 and the Endangered Species Act of 1973) from which prior approval is required.
7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
8. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
9. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
10. When BFE data has not been provided by FEMA, the Floodplain Administrator shall obtain, review, and reasonably utilize any BFE data and floodway data available from a federal, state, or other source including data provided by the applicant, in order to administer the provisions of this ordinance.

11. When a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30, AE, and AH on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1.00 foot at any point within the community.
12. Under the provisions of 44 CFR Chapter 1, Section 65.12 of the NFIP Regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM, which increases the water surface elevation of the base flood by more than 1.00 foot, provided that the community first meets the requirements of Section 65.12 for a conditional FIRM revision through FEMA's CLOMR process.
13. If the project is determined or reasonably believed to cause an adverse effect on the BFE(s), boundaries of the floodplain or any insurable structures, technical justification for the proposed development shall be submitted and the community may require a CLOMR or LOMR to be submitted prior to the permit approval or as a requirement of the permit.

### **3. Requirement to Submit New Technical Data**

1. The property owner or developer shall notify FEMA by submittal of a LOMR within 6 months of project completion when an applicant had obtained a CLOMR from FEMA or when development altered a watercourse, modified floodplain boundaries, or modified BFE.
2. The property owner or developer shall be responsible for preparing technical data to support the CLOMR or LOMR application and paying any processing or application fees to FEMA. The property owner or developer is responsible for submitting the CLOMR and LOMR to FEMA and shall provide all necessary data to FEMA if requested during the review process to ensure the CLOMR or LOMR is issued.
3. The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this ordinance and all applicable state federal, and local laws.

### **Section 1107.05. Permit Procedures.**

Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to:

1. Duplicated plans drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations.
2. Duplicated plans drawn to scale showing the location, dimensions, and elevation of existing and proposed structures, including the placement of manufactured homes.
3. Location of the foregoing in relation to SFHAs.
4. Elevation (in relation to mean sea level), of the lowest floor (including basement and crawlspace) of all new and substantially improved structures, if applicable;
5. Elevation (in relation to mean sea level), to which any nonresidential structure (if applicable) shall be floodproofed.
6. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure (if applicable) shall meet the floodproofing criteria of this ordinance and the NFIP Regulations.
7. Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development, if applicable.



8. At the community's discretion, the community may charge a fee for issuance of floodplain development permits.
9. Copies of all floodplain development permits and the associated documents shall become property of the community and a permanent record.

Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage.
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
3. The danger that materials may be swept onto other lands to the injury of others.
4. The compatibility of the proposed use with existing and anticipated development.
5. The safety of access to the property in times of flood for ordinary and emergency vehicles.
6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems.
7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
8. The necessity to the facility of a waterfront location, where applicable.
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
10. The relationship of the proposed use to the comprehensive plan for that area.

#### **Section 1107.06. Variance Procedures.**

The Board of Adjustment or Variance Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this ordinance after a floodplain development permit has been denied.

1. Any person or persons aggrieved by the decision of the Board of Adjustment may appeal such decision in the courts of competent jurisdiction.
2. The Board of Adjustment, as established by the community, shall hear and render judgement on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement of administration of this ordinance.
3. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to FEMA and the State Coordinating Agency upon issuing a variance.
4. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in **1107.06. VARIANCE PROCEDURES** have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
5. Upon consideration of the factors noted above and the intent of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.
6. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

7. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

Prerequisites for granting variances:

1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. Variances shall only be issued upon:
  - a. Showing a good and sufficient cause.
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant.
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, conflict with existing local laws or ordinances, considers the need of ingress and egress during times of floods, and does not jeopardize first responders' health and welfare.
2. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the BFE, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
3. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - a. The criteria outlined in **1107.06 VARIANCE PROCEDURES** are met; and
  - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

**Section 1107.07. Provisions for Flood Hazard Reduction.**

**1. General Standards**

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
7. On-site waste disposal systems shall be designed or located to avoid impairment to them or contamination from them during flooding.

**A. Substantial Improvement**

Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, if the cumulative cost of the entire project equals or exceeds 50 percent of the market value of the structure only (not of the structure and land value combined) before the improvement or repair is started then the work shall be considered as substantial improvement. If the structure has sustained substantial damage, any repairs are considered substantial improvements regardless of the actual repair work performed. For Substantial Damage, refer to **B. SUBSTANTIAL DAMAGE**. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

**B. Substantial Damage**

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure only, unless a higher standard option is selected, before the damage occurred. This term also applies to structures which have incurred any damage that equals or exceeds 50 percent of the structure's market value regardless of the actual repair work performed. When a structure or building has been determined as substantially damaged, any work or repair on said structure or building will be considered as substantial improvement and will be required to meet the development requirements set forth within this ordinance for substantial improvement.

**C. Substantial Improvement and Substantial Damage Determination**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the applicable community officials and staff, shall:

1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure only, not of land and building, before the start of construction of the proposed work. In the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.
3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the **A. SUBSTANTIAL IMPROVEMENT**.
4. Utilize FEMA's Substantial Improvement/Substantial Desk Reference when making any determination on Substantial Improvement and/or Substantial Damage.

5. The substantial improvement regulations apply to all of the work that is proposed as the improvement, even if multiple permits are issued. Therefore, the determination of the cost of the improvement should consider all costs of all phases of the work before issuance of the first permit.
6. Notify the applicant that if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood, this ordinance is required.

## **2. Specific Standards**

In all SFHAs, and if **USE OF BEST AVAILABLE DATA** has been selected, areas of known or suspected flood risk areas, the following provisions are required:

### **A. Residential Construction**

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to the BFE, unless a freeboard option is noted below. If a freeboard option is noted, new construction and substantial improvement shall have the lowest floor (including basement) elevated to the freeboard elevation. A registered professional engineer, architect, or land surveyor shall submit certified elevations to the Floodplain Administrator that the standards of this ordinance are satisfied.

### **B. Residential Construction Freeboard**

Deuel County has elected to adopt a freeboard option for new construction and substantial improvement of any residential structure. The freeboard option requires that lowest floor elevation to be built above the BFE by the height selected. Deuel County has elected a:

1. 1 foot of freeboard meaning the lowest floor must be built 1 foot above the BFE.

### **C. Nonresidential Construction**

New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to the base flood level, unless a freeboard option is noted below, or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification that includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. If the use or occupancy of the building changes in the future to residential, then the dry floodproofing of the structure cannot be used when determining compliance of the structure to the residential construction of this ordinance, **2.A. RESIDENTIAL CONSTRUCTION** and **2.B. RESIDENTIAL CONSTRUCTION FREEBOARD**. As such, the building will not be grandfathered into compliance and will be required to be brought into compliance with the residential construction requirements of this ordinance. **2.C. NONRESIDENTIAL CONSTRUCTION FREEBOARD**

Deuel County has elected to adopt a freeboard option for new construction and substantial improvement of any nonresidential structure. The freeboard option requires that lowest floor elevation to be built above the BFE by the height selected. Deuel County has elected a:

1. 1 foot of freeboard meaning the lowest floor must be built 1 foot above the BFE.

#### **D. Enclosures**

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are to be used solely for parking of vehicles, building access, or storage in an area other than a basement, and are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:

1. A minimum of two openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
2. The bottom of all openings shall be no higher than 1 foot above grade.
3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

The development and construction of the structure must conform with the provision in FEMA/Federal Insurance Administration (FIA)-Technical Bulletins 1 and 2. Certification and documentation from a professional, licensed engineer or architect is required if the structure's lowest floor is built below the BFE.

#### **E. Crawlpace**

New construction and substantial improvements built on a crawlpace or sub-grade (below grade) crawlpace may be permitted if the development is designed and meets or exceeds the standards found in FEMA's Technical Bulletins 1, 2, and 11, which include but are not limited to the following:

1. The structure must be affixed to a permanent foundation, designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Because of hydrodynamic loads, crawlpace construction is not allowed in areas with flood velocities greater than 5 feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
2. The crawlpace is an enclosed area below the BFE and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than 1 foot above the LAG.
3. The crawlpace enclosure must have proper openings that allow equalization of hydrostatic pressure by allowing automatic entry and exit of floodwaters. To achieve this, a minimum of 1 square inch of flood opening is required per 1 square foot of the enclosed area subject to flooding.
4. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlpace used to elevate the building, but also any joists, insulation, piers, or other materials that extend below the BFE. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
5. Any building utility systems within the crawlpace must be elevated above the BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
6. The interior grade of a crawlpace below the BFE must not be more than 2 feet below the LAG.
7. The height of the below-grade crawlpace, measured from the lowest interior grade of the crawlpace floor to the bottom of the floor joist of the next higher floor cannot exceed 4 feet at any point.
8. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlpace. The enclosed area should be drained within a reasonable time after a flood event.

9. Buildings with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation at or above the LAG.

#### **F. Manufactured Homes**

1. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
2. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites outside of a manufactured home park or subdivision;) in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the BFE, unless a higher standard option was selected, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
3. In A-1-30, AH, AO and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at or above the BFE, unless a higher standard option was selected; or the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

#### **G. Recreational Vehicles**

Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days unless the community has elected a higher standard option and be fully licensed and ready for highway use;
  - a. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
2. Or meet the permit requirements of **1107.05 PERMIT PROCEDURES**, and the elevation and anchoring requirements for "manufactured homes" of this section.

### **3. Standards For Subdivision Proposals**

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
2. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
3. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
4. BFE data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or 5 acres, or whichever is lesser.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

6. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

#### **4. Floodways**

Floodways located within SFHAs are extremely hazardous areas due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

1. Designate a regulatory floodway that will not increase the base flood level more than 1 foot.
2. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase greater than 0.00 feet, unless higher standard option selected, in flood levels within the community during the occurrence of the base flood discharge.
3. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V in this ordinance.
4. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

## **ARTICLE XII GENERAL REQUIREMENTS**

**Section 1201. Screening.** Where any commercial or industrial Zoning District use is adjacent to any residential use, that use (building, parking or storage) shall be appropriately screened from the residential use by a fence or planting, approved by the Board of Adjustment except where the fence or planting may be in conflict with Section 1202.

**Section 1202. Visibility at Intersections.** On any corner lot in any zoning district, no planting, structure or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight-line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Town District, and Lake Park District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight-line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

**Section 1203. Refuse.** In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lot shall be responsible for keeping their property free of trash. Normal farming operations excluded.

**Section 1204. Unlicensed Vehicles.** Vehicles not in use and without current license may not be kept in any uncovered area other than a designated junk, salvage yard, or designated collection site. EXCEPTION: 1. Vehicles used in normal farming operations and 2. Antique cars being refurbished shall not be required to be kept in a covered area or in above designated areas.

**Section 1205. Moved in Buildings.**

1. Any building moved into or within any use district must secure a building permit from the County Zoning Officer.
2. Any residence moved into any use district must have signature by petition of sixty-six (66) percent of the adjoining landowners and of seventy-five (75) percent of the landowners within two hundred (200) feet. EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location shall not require adjoining landowners' approval.
3. At the discretion of the Zoning Officer, the applicant may also be required to file with the County Auditor a sufficient bond conditioned so that the applicant will indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the county, the Zoning Officer shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this section.



**Section 1206. Minimum Water and Sewer Requirements.** A water and sewer system cannot be approved until it meets the following standards:

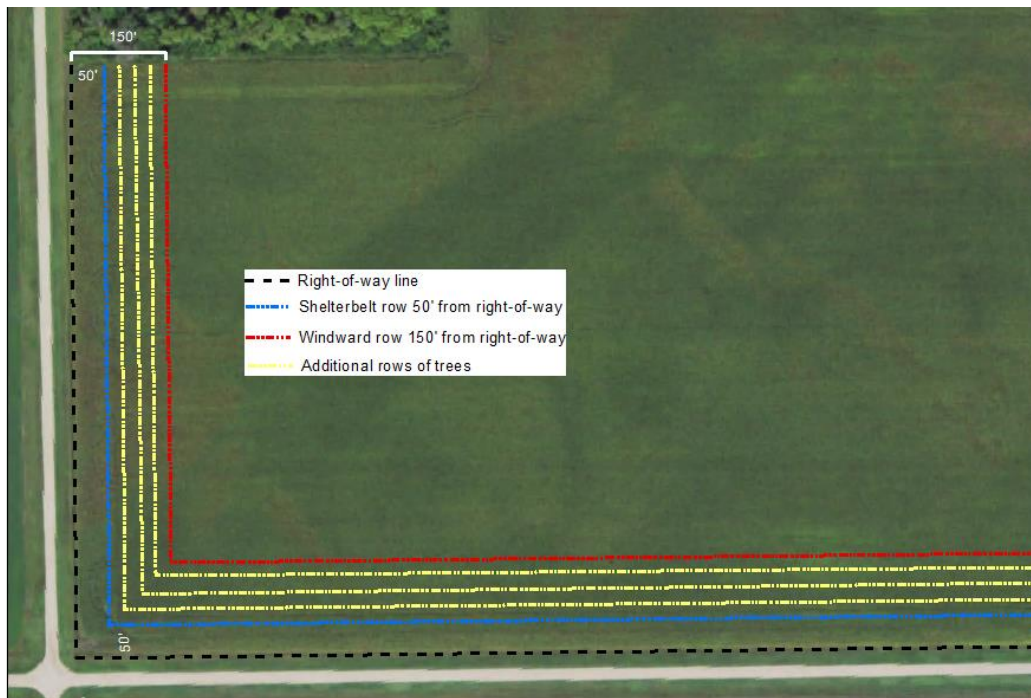
1. All public utilities and facilities shall be located, elevated, and constructed to minimize or eliminate flood damage;
2. All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of Water and Natural Resources Administrative Rule Chapter 74:53:01, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
3. All subsurface absorption systems shall be at least one hundred (100) feet from any water supply well, eighty (80) feet from any lake, stream, or water course, and twenty-five (25) feet from property lines.
4. The bottom of the drain area or tile field should be at least four (4) feet above the maximum high ground water level and five (5) feet above rock or impervious soil strata and not more than five (5) feet below ground surface.
5. All structures used for human habitation or commercial or industrial use must be connected to a sewage disposal system which meets South Dakota Department of Agriculture and Natural Resources Administrative Rules and be approved by the Zoning Officer. If a public sewer is available, all such structures must be connected to said public sewer.

**Section 1207. (Reserved).**

**Section 1208. Shelterbelt Setback Requirements.**

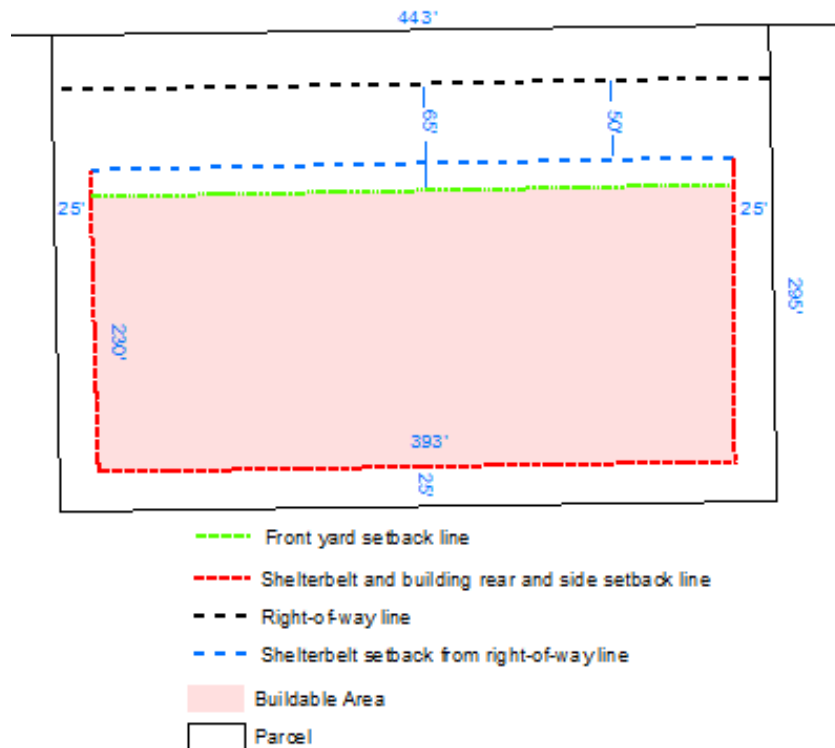
1. Permits are required for all shelterbelt plantings.
2. A shelterbelt, consisting of a single row of trees shall not be established within one hundred fifty (150) feet of a public road right-of-way line.
3. A shelterbelt may be established within fifty (50) feet of the public road right-of-way line if the windward row of trees is established one hundred fifty (150) feet from the public road right-of-way line. Further, the shelter belt will consist of at least three (3) rows of trees with the windward row of trees consisting of shrubbery or tree species which aid in the containment of snow. See Figure 1208.1.

**Figure 1208.1**



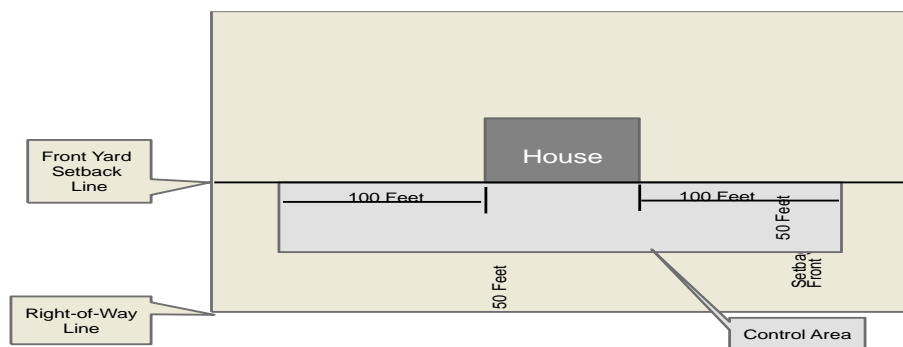
4. The setback requirements also apply to volunteer trees that the landowner allows to grow.
5. Shelterbelts shall not be established within twenty-five (25) feet of adjoining property lines without written permission of adjoining property owners. See Figure 1208.2

**Figure 1208.2**



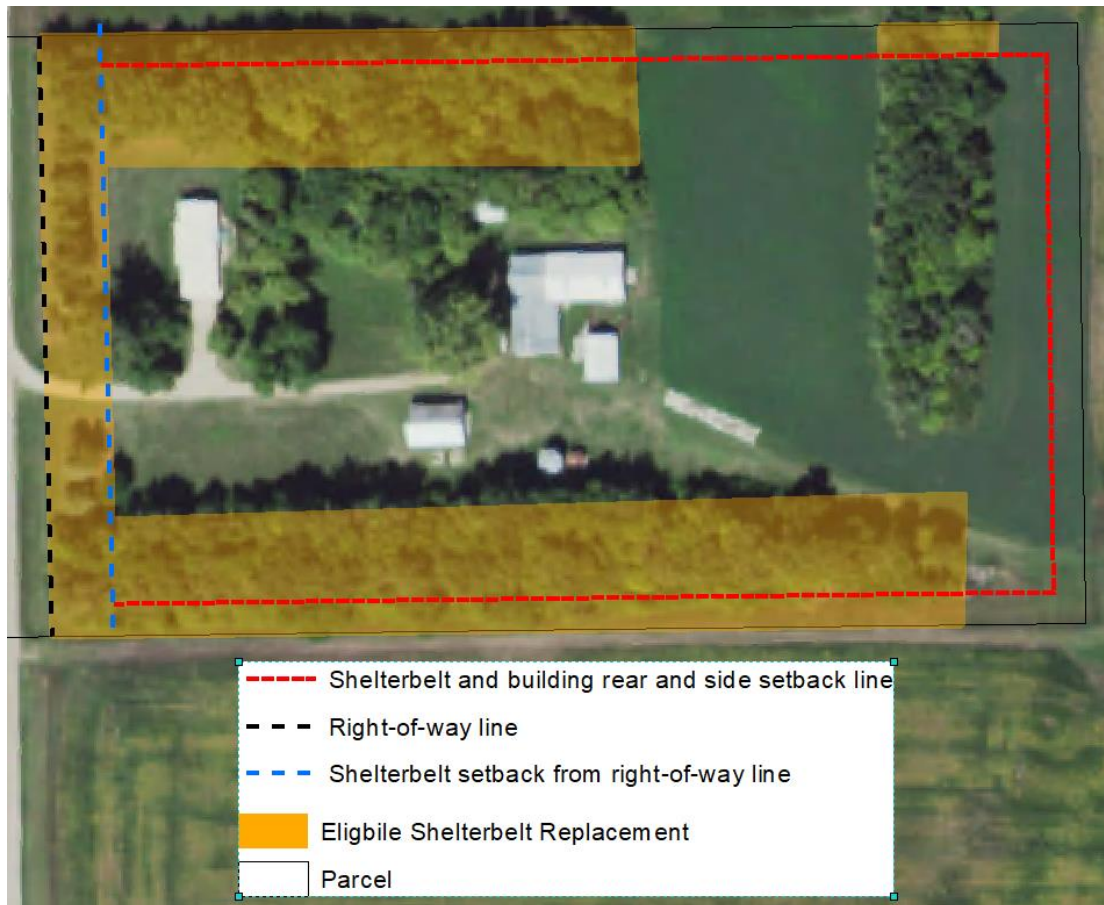
6. Shelterbelts around building sites shall not be established within fifty (50) feet of the right-of-way line. See Figure 1208.2 without written permission of Road Authority
7. Shade trees, ornamental trees or shrubs generally used for landscaping and windbreak are allowed in a controlled area. The controlled area is defined as the area within one hundred (100) feet of homes or farm buildings, but not closer to the right-of-way than fifty (50) feet. Except for the following, plantings within the controlled area are exempt from this regulation. Four or more trees in a row are not allowed with the controlled area. Deciduous trees which are spotted or staggered within the controlled area can be no closer than twenty (20) feet. Conifer trees which are spotted or staggered within the controlled area can be no closer than twenty-five (25) feet. The distance between trees shall be determined by measuring distance between tree trunks. See Figure 1208.3.

**Figure 1208.3 Controlled Area Illustration**



8. A recommendation from the Road Authority is required prior to the issuance of any variance of the shelterbelt setback from a public right-of-way.
9. Shelterbelts existing prior to July 1, 2022. Shelterbelts which do not conform to the regulations of this Section may be replaced, but not enlarged, subject to Zoning Officer and/or Road Authority approval. See Figure 1208.4

**Figure 1208.4 Eligible Shelter Belt Replacement Illustration**



**Section 1209. Home Occupation.** Home occupations shall be subject to the following requirements.

1. Such use shall be conducted entirely within a dwelling. No person other than members of the family residing on the premises shall be engaged in such occupation;
2. Such use shall be clearly incidental and secondary to the use of the dwelling purpose and shall not change the residential character thereof.
3. The total area used for such purposes shall not exceed the equivalent of one-fourth ( $1/4$ ) the floor area, in square feet, of dwelling unit.
4. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: (1) there is used no sign other than a non-lighted and non reflecting name plate not more than sixteen (16) square feet in area, which name plate may designate the home occupation carried on within, and which name plate must be clearly visible at the entrance to the premises where said home occupation is carried on and must be attached to the building wherein the home occupation is conducted.

5. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity.
6. There shall be no exterior storage on the premises of material used in the home occupation nor of any highly explosive or combustible material.
7. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.
8. A home occupation, including studios or rooms for instruction, shall provide an additional off-street parking area adequate to accommodate needs created by the home occupation of not less than two (2) parking spaces plus the parking spaces required for the dwelling unit. Such parking shall be provided on the same lot as the home occupation.
9. No home occupation shall be conducted in any accessory building.

**Section 1210. Extended Home Occupation.** There are significant differences between home occupations and extended home occupations. While each use is based on supplementing income, the location and type of business in which each is practiced has unique characteristics. Specifically, a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building

1. For the purpose of this section, provided all requirements are met, the following shall be considered extended home occupations:
  - a. Those businesses that support agricultural needs to include but not limited to vehicle and implement repair, implement sales, welding repair; veterinarian's office; seed sales; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses.
2. Performance Standards
  - a. An extended home occupation may not be changed to another home occupation except by the issuance of a separate conditional use permit.
  - b. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
  - c. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign, not to exceed eighty (80) square feet in area, non-illuminated.
  - d. Off premise signage for extended home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
  - e. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales.

- f. Extended home occupations should be agriculturally related and be conducted in an accessory building.
- g. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.
- h. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

**Section 1211. Animal Units on Small Acreages.**

On parcels of ten (10) acres or less in the Lake Park District, a maximum of one (1) animal unit per acre will be allowed. Concentrated animal feeding operations with permit are excluded from this requirement.

**Section 1212. Buildings Being Moved off County Zoned Property.**

Any person desiring to move any building or structure in the County shall apply for a permit. The applicant shall also deposit with the County Zoning Officer an amount to be determined by the Board of County Commissioners. This deposit will be held until such time that the property is reclaimed to a clean and safe condition, and that any damage to utilities, roads, or other public or private property is compensated for. The applicant must furnish proof that all real estate taxes legally assessed and due against the property have been paid before any permit is granted.

**Section 1213. Fireworks Retailer or Wholesalers.**

The selling of fireworks shall require a permit from the County Zoning Officer. All buildings shall be in compliance with all appropriate state regulations and are subject to inspection by any County officer.

**Section 1214. On-Premise and Off-Premise Signs.**

- 1. No private sign shall be erected or maintained which:
  - a. Creates a hazard due to collapse, fire, collision, decay, or abandonment; or
  - b. Creates traffic hazards, by either:
    - i. Confusing or distracting motorists; or
    - ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles, or
    - iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
    - iv. Creates a nuisance to persons using a public right-of-way; or

- v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement
  - c. Any vehicle or trailer parking on public right-of-way, public property or private property so as to be visible from the public right-of-way and which displays an advertising message, unless said vehicle is used in the regular course of a business is prohibited.
- 2. Signs shall be permitted in all zoning districts, subject to the following provisions:
  - a. Wall signs may be located anywhere on the wall of a building.
  - b. Freestanding signs shall not project over public property.
  - c. Freestanding signs shall not be erected adjacent to a corner of two intersecting streets, unless such signs are constructed to not obstruct the view of said intersection.
  - d. Each sign's size, lighting, and location in the County shall at least meet the standards established by the South Dakota Department of Transportation.
  - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the County Zoning Officer and the said Official grants a permit.
- 3. The Zoning Officer shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies with Codes relating to outdoor advertising.
- 4. On-premise Signs: Each sign erected as an on-premise sign in those districts where permitted shall unless specified elsewhere in this ordinance, conform to the following requirements:
  - a. Unless otherwise specified herein, each sign erected as an on-premise sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. Each sign shall meet clear view triangle standards identified in Section 1202. The maximum cumulative amount of all on-premise signage allowed shall not exceed eighty (80) square feet.
  - b. No on-premise sign may be converted to an off-premise sign.
- 5. Off-Premise Signs: Off-premise signs erected in those districts where permitted shall conform to the following requirements:
  - a. Each sign shall have a maximum surface area of one thousand two hundred (1,200) square feet, and maximum dimensions of thirty (30) feet in height, and forty (40) feet in length.
  - b. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted off-premise sign on the same side of the street or road.

- c. Signs shall not be located within the street right-of-way.
  - d. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
  - e. Stacked signs (two or more signs stacked vertically on a single sign structure) are prohibited.
  - f. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.
6. Temporary signs, may be displayed on any lot under the following conditions:
- a. Temporary signs shall be readily movable and attached to the ground or another permanent structure;
  - b. Temporary signs shall be constructed with a material capable of withstanding impacts, winds or blown snow;
  - c. Temporary signs shall consist of a flat construction with a maximum of two display sides;
  - d. Temporary signs shall not be placed within a required clear view triangle or a required parking area;
  - e. Additional Locations and Area Regulations are regulated by Table 1214.1.

**Table 1214.1. Location and Area Regulations**

		<b>All Zoning Districts</b>
<b>Minimum Distance from Edge of Right-of-Way (Front Yard Setback)</b>		1'
<b>Rear Yard</b>		Same as setback for accessory structures in underlying zoning district
<b>Front Yard</b>		Same as setback for accessory structures in underlying zoning district
<b>Number of Signs on a Lot</b>	(A) Maximum throughout year except as in (B)	One (1) plus one (1) per frontage
	(B) Maximum during the period sixty (60) days before and five (5) days after an election	6
<b>Maximum Height</b>		3'
<b>Maximum Area per sign (a)</b>		6 sq. ft

## **Section 1215. Wind Energy System (Wes) Requirements.**

### **Section 1215.01. Applicability.**

The requirements of these regulations shall apply to all WES facilities except private non-commercial facilities with a single tower height of less than one-hundred forty (140) feet and used primarily for on-site consumption of power.



### **Section 1215.02 Federal and State Requirements.**

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

### **Section 1215.03. General Provisions.**

#### **1. Mitigation Measures**

- a. **Site Clearance.** The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
- b. **Topsoil Protection.** The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. **Compaction.** The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d. **Livestock Protection.** The permittees shall take precautions to protect livestock during all phases of the project's life.
- e. **Fences.** The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. **Roads**
  - i. **Public Roads.** Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement or concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
  - ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.
  - iii. **Turbine Access Roads.** Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

- iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.
- vi. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

## 2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

- a. Distance from existing Non-participating residences and businesses shall not be less than four times the height of the wind turbine. Distance from existing Participating residences, businesses and public buildings shall not be less than fifteen hundred feet. Non-participating property owners shall have the right to waive the respective setback requirements. For purposes of this section only, the term "business" does not include agricultural uses
- b. Distance from public right-of-way shall be one hundred ten percent (110%) the height of the wind turbines, measured from the ground surface to the tip of the blade when in a fully vertical position.
- c. Distance from any property line shall be one hundred ten percent (110%) the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.
- d. Distance from the Lake Park District located at Lake Cochrane: 3 miles; Distance from the Lake Park District located at Lake Alice: 2 miles; and 1 mile from the Lake park District located at Bullhead Lake.
- e. Distance from the municipalities of Altamont, Astoria, Brandt and Goodwin of 1 mile from the nearest residence and 1 ½ miles from the city limits of the towns of Gary, Toronto and Clear Lake, except the area of Clear Lake located in sections 11, 12 and 14.

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.
4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
5. Turbine Spacing. The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
7. Electrical Cables. The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. Feeder Lines. The permittees may place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.

9. Decommissioning/Restoration/Abandonment

- a. Decommissioning Plan. Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees will ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation. The decommissioning plan shall include the requirement that Permittee post a bond or other adequate security sufficient to pay the entire cost of the decommission process.
  - b. Site Restoration. Upon expiration of this permit, or upon earlier termination of operation of the WES, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.
10. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
12. Towers.
- a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
  - b. All towers shall be singular tubular design. With the exception of those towers identified in Section 12.15.01.
13. Noise and Shadow Flicker.
- a. Noise level for non-participating residences shall not exceed 45 DBA, average A-Weighted Sound pressure. The noise level is to be measured at the perimeter of existing non-participating residences.
  - b. Limit for allowable shadow flicker at existing residences to no more than 30 hours annually.

14. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.

15. Required Information for Permit.

- a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
- b. Map of easements for WES.
- c. Copy of easement agreements with landowners.
- d. Map of occupied residential structures, businesses and public buildings.
- e. Map of sites for WES, access roads and utility lines.
- f. Proof of utility right-of-way easement for access to transmission lines.
- g. Location of other WES in general area.
- h. Project schedule.

**Section 1216. Wireless Telecommunications Towers and Facilities.**

**Section 1216.01. Purpose.**

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

Specifically, the purposes of this Ordinance are:

1. To regulate the location of Towers and Telecommunications Facilities in the County;
2. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
3. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
4. To promote and encourage shared use/co-location of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
5. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;

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

**Section 1216.02. Reserved.**

**Section 1216.03. Development of Towers.**

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Deuel County mount law-enforcement or public safety communications apparatus.
3. An Application to develop a Tower shall include:
  - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
  - b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
  - c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including County-owned property.
  - d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
  - e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or co-locate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or co-locate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially unreasonable.

- f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or co-located on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.
  - g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
  - h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
  - i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
  - j. The FCC has sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.
  - k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

**Section 1216.04. Setbacks.**

- 1. All Towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
- 2. Towers in excess of one hundred (100) feet in height shall meet the following:
  - a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.
  - b. Distance from public right-of-way shall be the height of the tower.

- c. Distance from any property line shall be the height of the tower.
3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
4. Setback requirements may be modified, as provided in, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

#### **Section 1216.05. Structural Requirements.**

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

#### **Section 1216.06. Separation or Buffer Requirements.**

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

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

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. The separation requirements contained in 1216.06 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

#### **Section 1216.07. Method Of Determining Tower Height.**

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



#### **Section 1216.08. Illumination.**

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

#### **Section 1216.09. Exterior Finish.**

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

#### **Section 1216.10. Modification Of Towers.**

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such non-conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
  - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
  - b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The granting of a development permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
  - c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.
2. Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

**Section 1216.11. Certifications And Inspections.**

1. All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of this ordinance and all other construction standards set forth by federal and state law. For new monopole Towers, such certification shall be submitted with an Application pursuant to of this Ordinance and every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to this Ordinance and every two (2) years thereafter. The Tower owner may be required by the County to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized.
2. The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.
3. The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

**Section 1216.12. Maintenance.**

1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
3. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
4. The property in which Towers, Telecommunications Facilities, and Antenna Support Structures are situated shall be maintained in a manner to control noxious weeds.
5. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.
6. All Towers shall maintain compliance with current RF emission standards of the FCC.
7. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

**Section 1216.13. Criteria for Site Plan Development Modifications.**

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a conditional use permit in accordance with the following:
  - a. In addition to the requirement for a Tower Application, the Application for modification shall include the following:
    - i. A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
    - ii. A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
    - iii. A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.
    - iv. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for co-location, and the result of such attempts.
    - v. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.
2. The Board of Adjustment shall consider the Application for modification based on the following criteria:
  - a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
  - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
  - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.
3. In addition to the requirements of subparagraph (2) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:

- a. In the case of a requested modification to the setback requirement, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.
- b. In the case of a request for modification of the separation and buffer requirements from residential use of land of, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.
- c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
  - i. Facilitate co-location of Telecommunications Facilities in order to avoid construction of a new Tower; or
    - a. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

**Section 1216.14. Abandonment.**

- 1. If any Tower shall cease to be used for a period of 365 consecutive days, the Planning Commission shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the Planning Commission that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the Planning Commission shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.
- 2. To secure the obligation set forth in this Section, the Applicant [and/or Owner] may be required to post a bond.

**Section 1216.15. Action of the Board of Adjustment.**

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

2. Deuel County shall approve or deny an application for a new wireless telecommunications facility within one hundred fifty (150) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.
3. The Board of Adjustment may not deny the application on the basis that a competing provider already provides coverage.

#### **SECTION 1217. Cannabis Dispensaries.**

1. Maximum Number of Cannabis Dispensaries.
  - a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
  - b. The County shall allow up to one (1) cannabis dispensary provided the time, place, and manner of said dispensaries comply with this ordinance.
2. Required Separation Distances
  - a. A cannabis dispensary shall be located not less than 1500 feet from a public or private school, public or private parks and playgrounds, public or private youth centers, and swimming pools existing before the date of the cannabis dispensary application;
  - b. A cannabis dispensary shall be located not less than 1500 feet from any churches, residences, libraries, daycare facilities, other cannabis dispensaries existing before the date of the cannabis dispensary application;
  - c. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
    - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
3. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed
4. Other Locational Requirements
  - a. Permanent or temporary dispensaries are prohibited in all other zoning districts, other than the "CI" Commercial/Industrial District and not eligible for a home occupation use.

- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.
- 5. Controlled Access - No cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.
- 6. Documentation of State Licensure.
  - a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.
- 7. The Zoning Officer is authorized to issue permits (building/use) for cannabis dispensaries subject to following:
  - a. Submission of a site plan containing the following:
    - i. Any information required for applicable building permit,
    - ii. Ingress and egress plan
    - iii. Parking plan
    - iv. Lighting plan (including security lighting)
    - v. Screening/security fencing plan,
    - vi. Refuse plan;
    - vii. Hours of Operation;
    - viii. Any other information as lawfully may be required by the Zoning Officer to determine compliance with this ordinance
  - b. Documentation of ability to meet setback/separation requirements
  - c. Documentation of State Licensure
  - d. All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

**SECTION 1218. Breweries, Wineries and Distilleries.**

- 1. Description. The retail and manufacturing premises of a brewery, winery, or distillery pursuant to Chapter 35 of South Dakota Codified Laws.

2. Retail. Tasting room for sampling of beer or liquor, and other beverages made by the brewery or distillery. Bottles of beer or liquor, beer or liquor related items such as t-shirts, bags, caps, brew books, and non-prepared food.
3. Food Concessions. Breweries, Wineries, and Distilleries will be allowed limited food services on-site.
4. The brewery, winery, or distillery shall remain secondary to the principal use of the property as a site for agricultural production. The brewery or distillery and the site for agricultural production may be owned by multiple entities so long as a majority of the shares or interests in the separate entities are under common ownership. If the agricultural production on the site ceases, the brewery or distillery shall cease operation.
5. That some of the components need to be raised on site or by the distiller.
6. Parking.
  - a. Parking facilities may be located on a grass or gravel area for seasonal uses such as produce stands, u-pick operations and agricultural mazes. All parking area shall be defined by either gravel, cut lawn, sand, or other visible markings.
  - b. All parking areas shall be located in such a manner to avoid traffic hazards associated with entering and exiting the public roadway.
7. Signs
  - a. Only one sign shall be allowed.
  - b. The sign shall not exceed 32 square feet in area.
  - c. A conditional use permit and a building permit is required for the sign

**Section 1219. Sand, Gravel or Quarry Operation; Rock Crushers; Mineral Exploration and Development and Concrete and Asphalt Mixing Plants Requirements.**

**Section 1219.01. Application.**

1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:
  - a. A description of the mineral or minerals which are the subject of the mining or milling.
  - b. A detailed site Map(s) showing
    - i. The general area within which the mining or milling operation will be conducted.
    - ii. Present topography, soil types, and depth to groundwater.
    - iii. Location of existing water drainage, existing buildings, existing shelterbelts.

- iv. Identification of roads leading to the site.
  - v. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - vi. Proposed monitoring wells.
2. The applicant shall provide maps indicating the location of affected sites to the nearest section of land, a technical description of the mining or milling process, the types of equipment to be used, and the estimated timetable for each phase of work and for final completion of the program.
3. The applicant shall provide:
- a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
  - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.
4. The applicant shall provide for a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands. The reclamation plan shall include:
- a. A reclamation schedule.
  - b. Methods of plugging drill holds.
  - c. Methods of severing and returning topsoil and subsoil.
  - d. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
  - e. Methods of waste management and disposal, including liquid and solid wastes.
  - f. Method of revegetation.
5. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.
6. Solution mining, in situ mining of an ore body with circulation of chemicals through injection and recovery wells, for Minerals is prohibited.



### **Section 1219.02 State and Federal Requirements.**

1. All applicants for sand, gravel or quarry operations; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants shall demonstrate prior to the commencement of operation that the site meets the requirements of the State Department of Agriculture and Natural Resources.
2. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the conditional use permit is granted, the permit shall identify such inspection and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Board of Adjustment.

### **Section 1219.03 Setbacks**

1. Sand, gravel or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one thousand (1,000) feet of a residence. The setback will be measured from the Mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest residence. The exception to this standard would apply to residences owned and lived in by the operator of the Mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants. The Board of Adjustment may allow a relaxation of the separation distance as a special permitted use if the applicant obtains the written consent of all property owners with a residence within one thousand (1,000) feet for which the exception is requested.
2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at least one hundred (100) feet from any public right-of-way.
3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of Minerals, sand, or gravel provided the following conditions are met:
  - a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.
  - b. No excavation is allowed within five (5) feet of any rear or side property line.
  - c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

### **Section 1219.04 General Provisions:**

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

2. Noise Pollution. The applicant may be required to provide information regarding how potential noise, pollution would be minimized.
3. Utilities/Easements. No excavation shall occur within recorded easements. The Board of Adjustment may specify a maximum slope at which excavation may occur in relation to any utility pole or recorded easement.
4. The applicant shall further provide:
  - a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
  - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.

**Section 1220. Erection of More than One Principal Structure on a Lot.**

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

**Section 1221. Structures to Have Access.**

1. Every building hereafter erected or moved shall be on a lot adjacent to a street and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.

**Section 1222. Utility Easements.**

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

**Section 1223. Fences.**

**Section 1223.01. Purpose.**

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

**Section 1223.02. Permit required.**

1. Except for customary farm and animal fencing in the Agricultural District, all fences, and walls shall require a building permit. Customary farm and animal fencing is exempt from the requirements of this Section.

### **Section 1223.03. Location/Construction Requirements.**

1. Notwithstanding other provisions of this Ordinance, fences, walls, and hedges may be permitted in any required yard. Except fences, walls, and hedges which are more than thirty (30) percent solid shall meet the requirements of Section 1202.
2. Fences, with a maximum height of not more than ninety-six (96) inches, may be erected on any part of a lot other than in the required front yard which shall be limited to a height of forty-eight (48) inches.
3. The County does not provide surveying services. The property owner is responsible for locating property lines.
4. In Lake Park and Town Districts:
  - a. Fences may be built no closer than one (1) foot up to the property line, not to include the public right-of-way. Fences constructed within an identified easement face the potential of removal in the event of necessary work to be conducted within the easement. Replacement of the removed fence is the responsibility of the owner of said fence.
  - b. Fences, walls, or hedges, which are more than thirty (30) percent solid shall not be constructed/placed within thirty (30) feet of a public right-of-way or private road
  - c. Fences shall be set back a minimum of fifty (50) feet from high water mark.
  - d. The “finished side” of the fence shall face neighboring properties or the road.
  - e. Approved fencing materials include stone, brick, wood, vinyl, and chain link. No barbed wire or electric fences shall be allowed in conjunction with residential uses in the Town or Lake Park District, unless approval has been given by the adjoining property owner.
5. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.
6. Fences can be built on the property line when the fence is shared between property owners.

### **Section 1224. Right to Farm Notice Covenant.**

The following easement is to be utilized as required for farm and non-farm residential development within the Agricultural and Lake Park Residential Districts.

Prepared by:

Deuel County Zoning Officer (or by Grantor or Grantor’s Attorney)

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

Clear Lake SD 57226 (or Grantor’s or Grantor’s Attorney’s city)

## RIGHT TO FARM NOTICE COVENANT

You are hereby notified that the property you are purchasing or constructing upon 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 operations permitted by Deuel County zoning regulations. 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 manure; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. 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 agricultural operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to obtaining a building permit, may not be removed from the record title without consent of the Deuel County Board of Adjustment.

Legal Description: \_\_\_\_\_

\_\_\_\_\_  
Signature

STATE OF SOUTH DAKOTA COUNTY OF DEUEL

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 \_\_\_\_\_

### **Section 1225. Range Requirements.**

#### **Section 1225.01. Conditional Use Permits.**

No Range shall be established within the Deuel County without first obtaining a Conditional Use Permit.  
Section 1225.02. General Regulations for All Ranges.

No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment):

1. A safety plan shall be submitted along with the application. The plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum, the safety plan must state:

- a. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.
  - b. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.
  - c. The policy for the site for the use of alcohol.
  - d. Controlled substances are prohibited on the site.
  - e. Rules for the safe handling of weapons.
  - f. A building and grounds maintenance plan.
  - g. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program development, range supervision and other items such as sign-in procedures.
  - h. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.
  - i. The penalties that are in force for violations of the safety plan.
  - j. The method used to control trespass or unauthorized access to the range or preserve.
- 2. On an annual basis, applicants must provide proof of insurance.
  - 3. Applicants shall continuously keep the County informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.
  - 4. All Ranges must control entrance to their sites.
  - 5. No alcohol licenses shall be granted to any site which has a Range.
  - 6. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

**Section 1225.03. Special Regulations for Ranges.**

Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:

- 1. A survey delineating the layout of all individual Ranges.
- 2. Setbacks to all property lines.

3. Method of containing projectiles within each individual range (such as earthen berms or other method).
4. Methods to be employed to reduce noise, including impulse noise.
  - a. The maximum noise that may escape the range into areas not controlled by the owner is 125 dB.
5. All Ranges shall be designed using the NRA Range Source Book as a guideline.

**Section 1225.04. Application Requirements.**

Each application for a Range shall, at a minimum, include the following:

1. A description of specific activities to be conducted on-site.
2. The hours and days of operation.
3. The maximum number of people using the facility at any one time.
4. A plan, if applicable, for collecting and recycling used shot.
5. A delineation of any special events, if any.
6. A sewage, water and solid waste management plan.

**Section 1225.05. Area Regulations.**

1. Minimum Lot Size: Ten (10) acres.
2. Minimum Front Yard: One hundred fifty (150) feet.
3. Minimum Side Yard: Three hundred (300) feet.
4. Back of the Range Setback: A minimum of one thousand (1,000) feet from any buildings and/or roads.
5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.
6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.
7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.
8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.

**Section 1225.06. Miscellaneous Regulations.**

1. In the event that any provision of Section 1225 or the Conditional Use Permit is violated, or the County otherwise reasonably believes that the health, safety or general welfare of the public is endangered by the use, or if the County reasonably believes that a public nuisance has been created, then, upon ten (10) days written notice, the County may originate action to either modify or cancel any Conditional Use Permit.

**Section 1226. Waiver of Setback from Existing Concentrated Animal Feeding Operation.**

The following waiver is to be utilized as required for farm and non-farm residential development in the Agricultural and Lake Park Zoning Districts which is located within one-half (1/2) mile of an existing concentrated animal feeding operation in the Agricultural Zoning District (See Section 1101.08)

Prepared by:

Deuel County Zoning Officer (or by Grantor or Grantor's Attorney)  
Zoning Officer Address (or Grantor's or Grantor's Attorney's address)  
Clear Lake, SD 57226 (or Grantor's or Grantor's Attorney's city)

WAIVER OF SETBACK FROM  
EXISTING CONCENTRATED ANIMAL FEEDING OPERATION

The following waiver is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within one-half (1/2) mile of an existing Concentrated Animal Feeding Operation. The waiver shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development.

1. Purpose. This waiver is required for any dwelling to be constructed within one-half (1/2) mile of an existing concentrated animal feeding operation as defined by the Deuel County Zoning Ordinance.
2. Waiver:

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

\_\_\_\_\_

In accordance with the conditions set forth in the decision of Deuel County, dated \_\_\_\_\_ 20\_\_\_\_, approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within one-half (1/2) mile of the existing concentrated animal feeding operation \_\_\_\_\_ located \_\_\_\_\_ at \_\_\_\_\_ the \_\_\_\_\_ following \_\_\_\_\_ property, \_\_\_\_\_ and in consideration of such approval, Grantors agree to the perpetual non-exclusive easement as follows:

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within one-half (1/2) mile of an existing concentrated animal feeding operation. This easement waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Deuel County Zoning Ordinance.

2. Further, the grantors hereby waive all common law rights to appeal any decision of Deuel County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description.

IN WITNESS WHEREOF, \_\_\_\_\_, 20\_\_

Grantors (Print) \_\_\_\_\_

Grantors (Signature) \_\_\_\_\_

STATE OF SOUTH DAKOTA

SS:

COUNTY OF DEUEL

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_  
(Grantors).

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Section 1227. Adult Use Regulations.**

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

**Section 1227.01. Setbacks.**

1. None of the following uses may be established, operated or maintained within one thousand (1,000) feet of a residence, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park.
  - a. Adult bookstore.
  - b. Adult motion picture theater.
  - c. Adult photo studio.
  - d. Adult Entertainment Facility.
  - e. Any use which has as a part of its operation an adult use component including but not limited to, a restaurant or eating place, a bar, lounge or tavern.
  - f. Any use intended to provide adult amusement or entertainment.



2. Not more than two of the following uses may be established, operated or maintained within one thousand (1,000) feet of each other:
  - a. Adult bookstore.
  - b. Adult motion picture theater.
  - c. Adult photo studio.
  - d. Adult entertainment facility.
  - e. Any use which has as a part of its operation an adult use component including but not limited to, a restaurant or eating place, a bar, lounge or tavern.
  - f. Any use intended to provide adult amusement or entertainment.
  - g. A bar.
  - h. A liquor store.
3. The 1,000-foot restriction provided for in 1227.01.2 above may be waived and a conditional use permit issued upon proper application if the Board of Adjustment finds:
  - a. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed.
  - b. That the proposed use will not enlarge or encourage the development of a 'skid row' area.
  - c. That all applicable regulations will be observed.

**Section 1227.02. Required License.**

It shall be unlawful for any person to engage in the business of operating an adult use in Deuel County without first having obtained a license from the Deuel County Commissioners.

**Section 1227.03. Application; Standards for Issuance.**

1. Application for an adult use license shall be made in writing and shall state the following:
  - a. The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.
  - b. The location of the adult use business.
  - c. The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.

- d. A statement by the applicant that he is familiar with the provisions of this article and is in compliance with them.
  - e. A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.
  - f. A statement that no manager or principal operating the business has been convicted of any offense of prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use in any other community revoked within the last two (2) years.
2. Within fifteen (15) days after receipt of an application for an adult use license, the Deuel County Commissioners shall investigate the information contained in the application and shall determine the following:
- a. That the premises designated by the applicant as the location of the business are in full compliance with all applicable ordinances of Deuel County, including zoning ordinances.
  - b. That the premises and each manager and employee comply with the provisions of Section 1227.03.1 as such provisions apply to them.
  - c. That the applicant, each manager and each employee are over twenty-one (21) years of age.
  - d. That no manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use revoked within the last two (2) years.
3. If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted and each manager and employee, if applicable, with each of the requirements established in subsections (1) and (2) of this section, and with the conditions and regulations set forth in Section 1227.03 within fifteen (15) days after completion of such investigation, the Deuel County Commissioners shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.
4. If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (1) of this section, and with the conditions and regulations set forth in Section 1227.03 within fifteen (15) days after completion of such investigation, the Deuel County Commissioners shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the County with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

**Section 1227.04. Conditions & Regulations Governing Operation; Violation; Penalty.**

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

- a. No person under twenty-one (21) years of age shall be allowed on the licensed premises.
  - b. At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.
  - c. Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the County Commissioners written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five (5) regular business days, provide the information concerning the new manager which is required in Section 1227.03.
  - d. No adult use shall be located on-premises for which a license to sell alcoholic liquor has been issued, and no alcoholic liquor shall be permitted on such premises.
  - e. No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.
  - f. No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the South Dakota Compiled Statutes.
  - g. No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.
  - h. No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.
2. In addition to the requirements established in Section 1227.04.1, the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on-premises by use of motion picture devices or other such operations means:
- a. All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure.
  - b. There shall be no aperture whatsoever in any wall or partition between viewing areas.
  - c. Each viewing area shall be lighted at a minimum level of ten (10) foot candles in all parts thereof.
3. In addition to the requirements established in Section (1) of this section, the following regulations shall govern and control the operation of an adult entertainment cabaret:
- a. All performers shall be at least twenty-one (21) years of age.
  - b. All performances, exhibitions or displays shall take place on a platform raised at least two (2) feet from the level of the floor and located at least ten (10) feet from any patron.

- c. No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.
  - d. No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.
4. It shall be unlawful for any person licensed to engage in the business of operating an adult use within the County to fail to comply with the conditions and regulations set forth in subsections 1227.03 and 1227.04 of this section as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.
5. Any person convicted of a violation of this section shall be subject to a fine pursuant to Section 1.02.03 of this Ordinance.

**Section 1227.05 Suspension or Revocation.**

Nothing in the terms of this article shall preclude the right of the Deuel County Commissioners to suspend or revoke the license of the licensee, as follows:

1. The Deuel County Commissioners may temporarily suspend any license issued under the terms of this article when he has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the seven (7)-day period, and further provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.
2. The Deuel County Commissioners may suspend or revoke any license issued under the terms of this article upon ten (10) days' notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the Deuel County Commissioners determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

### **Section 1228. Private Wind Energy Conversion Systems (PWECS).**

The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
2. Setback Requirements. The minimum distance between the property line, overhead utility lines or another wind turban, and any tower support base of a PWECS shall be equal to the proposed tower height (plus the radius of the rotor for the horizontal access machines).
3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.
4. Tower Access. Climbing access to the PWECS tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.
5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

### **Section 1229. Bed and Breakfast Establishments.**

The regulations regarding Bed and Breakfast Establishments (hereafter referred to as B & B's) shall be as follows:

1. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.
2. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than two (2) square foot in area.
3. Such uses shall be an incidental use with an owner-occupied principal dwelling structure provided that not more than four (4) bedrooms in such dwelling structure shall be used for such purpose.

4. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.
5. The length of stay shall not exceed fourteen (14) consecutive days during any one hundred twenty (120) day period.
6. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.

#### **Section 1230. Pipeline Structures.**

Any above ground structure associated with a pipeline requiring South Dakota Public Utilities Commission approval shall also require a Deuel County conditional use permit and building permit. The conditional use permit shall be issued by the Board of Adjustment if the applicant adheres to all requirements of the South Dakota Public Utilities Commission which may include various Deuel County recommendations regarding such issues such as but not limited to right-of-way, haul roads, and building permits. The requirement of the conditional use permit may be waived in the event said permit requirement is contrary to federal law. Deuel county does not regulate below ground pipelines requiring South Dakota Public Utilities Commission approval. In regard to the South Dakota Public Utilities Commission hearings on pipeline structures, Deuel County may claim party status.

#### **Section 1231 Private Campground**

##### **Section 1231.01 Purpose.**

The purpose of this section is to provide for areas in the county for recreational vehicles to be located and occupied as temporary living quarters in a campground setting.

##### **Section 1231.02 Minimum Requirements.**

1. A private campground shall comply with the following conditions:
  - a. A private campground may not be permitted on a parcel that contains an existing single-family residence.
  - b. Each campsite shall contain at least four thousand (4,000) square feet.
  - c. Access roads shall be provided to each campsite and all access roads shall have a minimum unobstructed width of fourteen (14) feet for all one-way roads, and twenty (20) feet for all two-way roads.
  - d. No manufactured homes shall be located in the campground.
  - e. The campground shall be supplied with electricity, potable water and sanitary sewage disposal facilities.

- f. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The campground shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations. It is recommended that one (1) refuse collection station shall be provided, with a minimum of one (1) two-yard dumpster situated on a concrete pad, screened on four sides, for each twelve (12) tenants or fractions thereof, conveniently located to serve tenants not more than one hundred fifty (150) feet from any camper served, and to be conveniently located for collection.
- g. The grounds shall be kept free of rubbish, trash, or debris, which could become a safety hazard.
- h. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
- i. A private campground shall have a responsible person on duty/point of contact at all times.
- j. The owner of the private campground shall keep accurate record of guests. Such a record shall be available for inspection and copying by the Secretary of Health or Zoning Officer for the purpose of protecting the health or life of persons or for an emergency which may affect the public health. The registry shall contain the name of the guest, the number in the party, the place of permanent residence of the guest, the date of registration, the date of departure, and the motor vehicle license number of the registrant. These records shall be kept for a minimum of one (1) year.
- k. Public Safety Access – The owner of the private campground shall allow Law Enforcement and Deuel County personnel immediate access to determine if the terms and conditions within the conditional use permit are complied with.
- l. In the event the private campground does not comply with the terms of the conditional use permit and said permit is revoked, the owner of the private campground may be required, at their expense, to restore the site to a condition determined by the Board of Adjustment, including the removal of all campers or RV's, dumpsters, and other related vehicles, or to a use permitted by the zoning ordinance.
- m. All applicable requirements of the South Dakota Department of Health shall be met.

**Section 1231.03. Application Requirements. An application for a private campground shall be filed with the Zoning Officer.** The application shall contain the following:

- 1. The address and legal description of all property upon which the campground is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
- 2. Plans for supplying water including the source, amount available and location of outlets.
- 3. The plans for providing toilet and bathing facilities including the source, number and location, type and the means of disposing of waste deposited.
- 4. The plans for holding, collecting and disposing of solid waste material.
- 5. The plans, if any, to illuminate the campground, including the source and amount of power and the location of lamps.

6. A sketch plan of the property showing:
  - a. Location of Camping Pads/sites.
  - b. All amenities (bathrooms, showers, drinking water, outlets, light poles, roads, storm shelter)
  - c. All existing and proposed buildings or additions.
  - d. Dimensions of all buildings.
  - e. Distance from all campsites/buildings to the property lines at the closest points.
  - f. Dimensions of all property lines.
  - g. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.
  - h. Name and location of all adjacent streets, alleys, waterways and other public places.
  - i. Proposed grading and drainage pattern.
  - j. Proposed interior circulation pattern indicating the status of street ownership and maintenance agreement.
  - k. Proposed open space uses.
  - l. Utility (water, sewer, electricity) plans.
  - m. Relation of the proposed development to the surrounding area and comprehensive plan.

**Section 1232. Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites, and Restricted Use Sites Requirements.**

1. The site meets the requirements of the State Department of Agriculture and Natural Resources.
2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells.



- f. A minimum of two thousand six hundred forty (2,640) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest residence or commercial use; excluding: the residence of the landfill operator.
- g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site is conducted in a manner to be compatible with the surrounding neighborhood.

**Section 1233. Domestic Sanitary Sewer Treatment Plant/Facility Requirements.**

- 1. The site meets the requirements of the State Department of Agriculture and Natural Resources.
- 2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, and depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells.
  - f. No sewage treatment plant/facility will be allowed within one thousand three hundred twenty (1,320) feet to the nearest residence; excluding: the residence of the sewage treatment plant/facility operator.
  - g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the domestic sanitary sewer treatment plant/facility is conducted in a manner to be compatible with the surrounding neighborhood.

**Section 1234. Junkyards/Salvage Yards Requirements.**

- 1. Storage for junkyards/salvage yards shall be set back a minimum of two hundred (200) feet from any adjoining property line or road right-of-way.
- 2. Junkyards/salvage yards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
- 3. No junkyards/salvage yards will be allowed within one thousand (1,000) feet from the property line of the junkyard/salvage yard to the nearest residence; excluding: the residence of the junkyard/salvage yard operator.
- 4. All junkyards/salvage yards must have a minimum lot of ten (10) acres.

5. The Board of Adjustment may impose other conditions to ensure that the use of property related to the junkyard/salvage yard is conducted in a manner to be compatible with the surrounding neighborhood.

**Section 1235. Automotive Tow Business/Impound Lot Requirements.** Impound lots, incident to the operation of an automotive tow business, may be established within districts pursuant to the zoning laws of the County for the storage of vehicles under the following conditions and requirements:

1. The area used for an impound lot must be free of debris and regularly maintained.
2. The area used for an impound lot must be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet or a fence which is two (2) feet higher than the tallest vehicle being stored, whichever height is greater; and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from adjoining properties.
3. An impound lot may be used for the temporary storage of vehicles from which major parts have not been removed, and which are capable of being made fully operable.
4. An impound lot may be used for the storage of not more than twenty (20) vehicles at any one time.
5. Vehicle parts shall not be stored within an impound lot.
6. Vehicle parts shall not be taken or sold from vehicles stored within an impound lot.
7. Vehicles stored in an impound lot must be parked neatly in rows and meet or exceed all County, State and Federal laws governing the same.
8. The Board of Adjustment may impose other conditions to ensure that the use of property related to the automotive tow business/impound lot is conducted in a manner to be compatible with the surrounding neighborhood.

**Section 1236. Manufactured and Modular Home Regulations.**

**Section 1236.01 Type A and Type B Manufactured Homes**

1. A manufactured home is an industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year-round occupancy as a single dwelling. For the purpose of this Ordinance, manufactured homes will be regulated by types. Two (2) types of homes are defined under these regulations.
  - a. Type A manufactured home shall:
    - i. Have more than 1,100 square feet of occupied space in a double-section or larger multi-section unit.
    - ii. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.

- iii. Utilize a perimeter enclosure of metal, vinyl, wood, or Styrofoam in accordance with manufacturer's specifications.
- iv. Have a gabled roof with a pitch of at least 2/12 feet.
- v. Have siding material of a type customarily used on site-constructed residences.
- vi. Have roofing material of a type customarily used on site-constructed residences.

b. Type B manufactured home shall:

- i. Have more than 700 square feet of occupied space in a single, unit. Minimum width for a Type B mobile home is fourteen (14) feet.
- ii. Utilize a perimeter enclosure of metal, vinyl, wood or Styrofoam in accordance with manufacturer's specifications.
- iii. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.
- i. Be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the Defense Civil Preparedness Agency TR-75, issued June 1972, by the U.S. Department of Defense or by the NFPA 225 Model Manufactured Home Installation Standards.
- iv. Have siding material of a type customarily used on site-constructed residences.
- v. Have roofing material of a type customarily used on site-constructed residences.
- vi. Be placed onto a support system, in accordance with approved installation standards, as specified in subsection (2), Installation Standards.

2. Installation Standards.

a. Support System.

- i. All HUD-Code manufactured homes of the Type A classification shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.
- ii. Type B manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the NFPA 225 Model Manufactured Home Installation Standards.

b. Foundation/Skirting

- i. Those manufactured homes designated in this Ordinance (Type A), as requiring a permanent foundation and permanent perimeter enclosure must have footings and crawl space or basement walls.

- a. A crawl space must be constructed of concrete or masonry block grouted solid with one (1) number four or (1/2") horizontal rebar, continuous tied to number four or (1/2") rebar verticals placed in the footing four feet (4') on center.
  - b. The foundation shall be (a) an approved wood basement constructed of 2 x 6 framework and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block.
  - c. The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade and the bottom of the footing to be below the frost line.
  - d. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).
- ii. All manufactured homes without a permanent perimeter enclosure (Type B) shall have an approved foundation/siding/skirting enclosing the entire perimeter of the home.

### 3. Replacement of Nonconforming Homes.

Thereafter, upon application to the Zoning Officer and subsequent approval thereof, a Type A or Type B manufactured home, located upon any lot or lots of record at the time of the adoption of this ordinance, deemed a legal nonconforming use, may be replaced by a—manufactured home, provided the replacement is of an equal or higher type. Equal or higher type means a Type B manufactured home could be replaced with a Type A or B manufactured home; a Type A manufactured home could be replaced with another Type A manufactured home.

### 4. Variance from Maximum Age Requirement

Type A and B manufactured homes may receive a variance from the maximum age requirement. The Board of Adjustment may grant a variance if the manufactured home meets the following requirements:

- a. The applicant shall provide a photograph of the manufactured home's exterior and interior.
- b. That it shall have been shown to the satisfaction of the Zoning Officer that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Deuel County.
- c. That the applicant shall obtain the written consent of sixty-six (66) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and the consent of fifty (50) percent of the property owners within two hundred (200) feet (excluding streets and alleys) of said proposed location has been received.

## **Section 1236.02. Modular Homes.**

### 1. Modular homes shall meet the following regulations.

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

- b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.
- c. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.
- d. Modular homes shall not have attached running gear and a trailer hitch.
- e. Modular homes shall have a minimum of a 4/12-roof pitch.
- f. Have siding material of a type customarily used on site-constructed residences.
- g. Have roofing material of a type customarily used on site-constructed residences.

**Section 1237. Permanent Foundations Required for Dwellings.**

- 1. No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exempted from this requirement are manufactured homes and/or temporary structures as defined herein.

**Section 1238. Accessory Buildings.**

- 1. Only specifically authorized accessory uses allowed; accessory uses must be subordinate to principal use.
- 2. No accessory use shall be permitted in any district unless such principal use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
- 3. No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building.
- 4. No accessory building may be used for residential dwelling purposes at any time.
- 5. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
- 6. Commercial and Industrial Districts. In any Commercial or Industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
- 7. Town and Lake Park Districts. Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Town and Lake Park Districts only in accordance with the provisions of the Table 1238.1.

**Table 1238-1**  
**Permitted Accessory Uses: LP and TD Districts**

<b>Principal Use</b>	<b>Permitted Accessory Uses</b>
<b>Single-family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers</b>	<ol style="list-style-type: none"> <li>1. Private garages. <ol style="list-style-type: none"> <li>a. Attached and unattached garages shall be limited to maximum dimensions contained herein and conform to the design of the house.</li> <li>b. Attached garages shall be limited to a maximum of 4/12 roof pitch or to conform to the design of the house.</li> <li>c. Unattached garages shall be limited to maximum sidewalls of fourteen (14) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house.</li> </ol> </li> <li>2. Buildings or structures for customary residential storage purposes not over ten (10) feet in height and not exceeding one hundred fifty (150) square feet in gross floor area.</li> <li>3. Readily moveable sports, recreation, or outdoor cooking equipment.</li> <li>4. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved.</li> <li>5. Home occupations but only as defined herein.</li> <li>6. Non-commercial greenhouses provided that greenhouses over one hundred (100) square feet in floor area must have an approved site plan.</li> <li>7. Off-street parking and storage of vehicles.</li> </ol>
<b>Churches, Convents and Monasteries</b>	<ol style="list-style-type: none"> <li>1. All customarily incidental uses reasonably necessary to allow the free exercise of religion, but not to include commercial use.</li> </ol>
<b>All conditional uses</b>	<ol style="list-style-type: none"> <li>1. All customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use.</li> </ol>
<b>All other items</b>	<ol style="list-style-type: none"> <li>1. No accessory uses permitted.</li> </ol>

**Section 1239. Yards.**

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

**Section 1239.01. Yards, Reduction in Size.**

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

### **Section 1239.02. Additional Yard Requirements.**

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

1. A corner lot must have a front yard on both streets.
2. On developed property, in the TD – Town District and LP – Lake Park District, fronting on one side of the street between two (2) streets where one or more residences already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.
3. In the TD and LP Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.
4. In the TD and LP Districts, required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

### **Section 1239.03. Exceptions to Yard Requirements.**

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

1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.
2. In commercial and industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.
3. An accessory building may be located in a rear yard but not occupy more than 30 percent of a rear yard.
4. Any accessory buildings closer than ten (10) feet to a main building shall be considered as part of the main building and shall be provided with the same side and rear yard requirements as the main building.

### **Section 1240. Agribusiness Activities.**

#### **Section 1240.01. Intent**

Agribusiness activities include identified commercial activities involving the handling, storage, processing and distribution of agricultural products. Agribusiness activities are intended to be operated as a principle use on a property. They may be operated as an extended home occupation, when such activities are accessory to the residential use of the lot.

## **Section 1240.02. Requirements.**

1. Agribusiness activities must have access to either:
  - a. A concrete or bituminous asphalt street;
  - b. A county-maintained gravel street; or
  - c. A Township-maintained gravel street with a Township approved haul road agreement.
2. Operators of agribusiness activities shall enter into and comply with a haul road agreement for the applicable streets if deemed necessary by the applicable road authority for the maintenance of identified haul routes attendant to the operation of the proposed business.
3. Lighting on the site shall be limited to downward directed lights or other lighting customarily used for agricultural operations.
4. The number, size, and illumination standards for signs shall be determined by the Board of Adjustment.
5. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.
6. All vehicles and equipment stored outside shall be operable.
7. Permits for an agribusiness activity may only be changed to another agribusiness activity if specifically authorized by the Board of Adjustment.
8. Permits for agribusiness activities may be transferred, unless otherwise stated by the Board of Adjustment.

## **Section 1241. Solar Energy Systems (SES)**

### **Section 1241.01. Purpose.**

The purpose of this Section is to facilitate the construction, installation, operation and decommission of Solar Energy Systems in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands and other sensitive lands. This ordinance will not impede personal or business solar collector development for the primary use of self-sustaining energy. This ordinance is not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not nullify any provisions of local, state or federal law.



### **Section 1241.02. Private Solar Energy System (PSES).**

PSES shall be permitted as an accessory use and shall meet the requirements of the zoning district. A PSES shall be for a single use commercial or residential structure and used primarily for on-site consumption of power.

### **Section 1241.03. Permitting.**

1. No SES shall be erected, built, or constructed without a conditional use permit having been approved by the Board of Adjustment.
2. Application(s) for SES Conditional Use Permits shall be accompanied by:
  - a. Site plan as required by 1241.05 (4)
  - b. Boundaries of the site proposed for SES and associated facilities on United States Geological Survey Map or another map as appropriate.
  - c. Map of easements for SES, if applicable.
  - d. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable.
  - e. Aviation/Airport protection if required. See 1241.05 (6)
  - f. The fencing and gates required to be around the exterior perimeter. See 1241.05 (8)
  - g. The storm water pollution and prevention plan. See 1241.04 (1)
  - h. The decommissioning plan. See 1241.06
  - i. Weed/Grass control plan 1 See 643.05 (12)
  - j. Haul roads identified. See 1241.05 (13)
  - k. Project schedule
  - l. Any other factors relevant to the proposed system.
3. All copies of the plan must be submitted, signed and sealed by an engineer.
4. The Board of Adjustment may require an independent engineer, chosen by the County, to review plans at the petitioner's expense. Findings by the independent engineering firm are to be submitted to the Board of Adjustment.

#### **Section 1241.04. Compliance.**

1. All SES are subject to the State of South Dakota Storm Water Management regulations, erosion and sediment control provisions if adopted and National Pollutant Discharge Elimination System (NPDES) permit requirements, if applicable.
2. The Board of Adjustment may provide for a final site inspection before the facility is authorized to become operational.
3. An emergency contact name and phone number must be posted at the point of access on all SES sites.
4. The permit holder will allow the County, or its Authorized Agent (appointed by the County), access to the property within one (1) day of an inspection request by the County. In the event of an emergency, the County, or its Authorized Agent, has the right to access the premises.
5. All SES shall meet or exceed applicable standards and regulations of any state or federal agency.

#### **Section 1241.05. General Provisions for Solar Energy Systems.**

Ground-mount solar energy, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. Ground Cover and Buffer Areas. Ground-mount systems shall be maintained. Topsoils shall not be removed during development unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil. It is required that any crops planted follow all federal and state laws protecting endangered species. This will also include pollinators such as bees. Foundations, gravel or compacted soils are considered impervious. Ground-mount systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation, including any access or service roads. A minimum thirty (30) foot managed vegetative buffer shall always be present and maintained around the perimeter of the site.
2. Foundations. A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.
3. Power and Communication Lines. Power and communication lines running between banks of solar panels are allowed. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings may be required to be buried underground. Exemptions may be granted in instances where the natural landscape interferes with the ability to bury lines, or distance makes undergrounding infeasible.
4. Site Plan Required. A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by the Board of Adjustment.

5. Setbacks. Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties. Solar panels will be kept at least five hundred (500) feet from a residence. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distance identified if the applicant obtains waivers from all dwellings and owners of property within the separation distance. If approved, such agreement is to be recorded and filed with the County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
  - a. Every SES shall observe a minimum rear and side yard setback of thirty (30) feet.
  - b. Every SES shall meet the minimum front yard setback of the applicable zoning district.
  - c. Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream or river.
6. Aviation/Airport Protection: If required by state or federal agencies the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
7. Glare: All solar energy systems shall minimize glare from affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
8. Safety Fencing/Gates and Locks.
  - a. All SES shall be fenced around the exterior of the SES with a fence at least six (6) feet in height.
  - b. All fencing and gates shall be constructed to substantially lessen the likelihood of entry into a SES by unauthorized individuals.
  - c. All gates to the fences of all SES shall be equipped with locks and shall always remained locked except for those times when the owner and/or operator, or their respective agents is/are using the gate for ingress and/or egress or is/are otherwise present and monitoring the SES.
  - d. The fencing and gates shall be maintained in serviceable condition. Failure to maintain the fencing or gates required hereunder shall constitute a violation of this ordinance.
  - e. The fencing and gate requirements specified hereunder shall continue notwithstanding the fact that a SES is no longer operational and/or falls into disuse unless and until the SES is properly decommissioned.
  - f. Fences are exempt from Section 1616.03 and may further be constructed on property and right-of-way lines.
9. Maximum height: Solar panel arrays shall be no more than twenty (20) feet in height, not including power lines.

10. Lighting: If lighting is provided at the project site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
11. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar energy system shall be allowed.
12. Weed/Grass Control Plan: The applicant shall submit an acceptable weed/grass control plan for property inside and outside the fenced area for the entire property. The operating company or successor during the operation of the SES shall adhere to the approved weed/grass control plan.
13. Roads.
  - a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the SES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the SES. Where practical, all-weather roads shall be used to deliver cement, solar collectors and components, and all other heavy components to and from the site.
  - b. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the SES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and SES components. The permittees shall notify the County of such arrangements upon request of the County.
  - c. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
  - d. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.
14. Permit Expiration. Unless otherwise determined by the BOA, the permit shall become void if no substantial construction has been completed within three (3) years of issuance.

**Section 1241.06. Decommissioning/Restoration/Abandonment.**

1. Cost Responsibility. The owner or operator of a SES is responsible for all costs associated with decommissioning the SES facility and any associated facilities.

2. Decommissioning Plan. At least thirty (30) days prior to construction, the applicant shall file a decommissioning plan for Board of Adjustment approval in accordance with the requirements of paragraphs (2), (3) and (4) below. The plan shall include an acceptable financial assurance plan which estimates the decommissioning cost and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
3. Financial Assurance. The Board of Adjustment shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board of Adjustment to cover the anticipated costs of decommissioning the SES facility. The financial assurance plan is subject to the following provisions:
  - a. A decommissioning account is to be funded by the project owner annually at a rate of two thousand five hundred dollars (\$2,500) per megawatt of installed DC capacity per year for the first 30 years, commencing no later than the commercial operation date.
  - b. The Board of Adjustment may allow a decreased annual payment, if the Board of Adjustment determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning.
  - c. All interest earned by any financial assurance account remains in the account.
  - d. A financial assurances statement is to be provided upon request to the Zoning Officer.
  - e. The financial assurance plan follows ownership of the SES. The Board of Adjustment may allow current and subsequent SES owners to request a change in the type of financial assurance instrument to be utilized.
  - f. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.
  - g. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the SES owner shall submit to the Board of Adjustment an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Board of Adjustment may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.
  - h. Funds from the financial assurances are to be paid to the SES owner at the time of decommissioning. Said funds are to be paid as decommissioning costs are incurred and paid for by the SES owner.
  - i. If the SES owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
  - j. In the event the South Dakota Public Utilities Commission requires a Decommissioning Plan which includes a financial instrument to decommission to be filed with the State. The county may waive its required financial instrument.

4. Site Restoration. The decommissioning of the SES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the SES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the SES. The permittees shall have the obligation to dismantle and remove from the site all solar collectors and components, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.
5. Failure to Decommission. If the SES owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond or other forms of final assurances. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of Adjustment may take such action as may be necessary to decommission a SES facility.

#### **Section 1242. Custom Processing and Slaughterhouse Activities.**

##### **Section 1242.01. Purpose and Intent.**

The purpose of the provisions on Custom Processing and Slaughterhouse activities is to:

1. Recognize that food, in its various forms, is essential to the health and well-being of Deuel County, and that the unregulated operation of processing facilities and slaughterhouses may create health hazards, or otherwise jeopardize the public health and welfare of the residents of Deuel County.
2. It is the intent of Deuel County to attempt to frame this Ordinance consistently with the definitions and regulations already in place in state law so as to provide for the consistent and convenient regulation of custom processing and slaughterhouses.
3. It shall be unlawful for any person to operate a custom processing or slaughterhouse facility for the butchering of animals in Deuel County except in conformance with this Ordinance.

##### **Section 1242.02. Regulations.**

1. No person may, with respect to any animal or meat food product, slaughter any animal or prepare an article that is usable as human food, at any establishment or place of business within Deuel County except in compliance with this Ordinance. Additionally, no person may operate any Slaughterhouse or Custom Processing activity except in compliance with this Ordinance.

2. The operation of a Slaughterhouse or Custom Processing activity is allowed as a Conditional Use only in the "CI" Commercial/Industrial Zoning District. All such uses must, however, be in strict conformance with all federal and state laws for the operation of such facilities. The following are general conditions to govern Slaughterhouse and Custom Processing activities in Deuel County:
  - a. Slaughter of animals shall take place inside a closed building in a confined area to substantially prevent the transmission of sound associated with the slaughter to the outside of the closed building.
  - b. The transport of animals and by-products from the slaughter or to support the business shall be pursuant to the conditions set forth in the Conditional Use Permit issued by Deuel County.
  - c. Off street parking sufficient to handle all customers, employees, trucks or transport vehicles shall be provided. Parking for all traffic utilizing the business shall be provided for on-site and off public roads, and other easements.
  - d. The applicant shall provide a traffic impact analysis prior to the issuance of a building permit for the construction of any structure.
  - e. The main entrance of traffic to a Slaughterhouse must be located on a state highway, or county road. Access shall not be permitted through a residential area.
  - f. The site must be served by an approved on-site sewage treatment system. Disposal of waste shall be in accordance with all applicable laws and regulations. This is meant to include, but is not limited to, all sewage, processed and unprocessed animal parts, manure, entrails, blood, hides and bones.
  - g. The facility must have all necessary federal, state and county licenses and approvals, and comply with all state and federal health and safety regulations.
  - h. The maximum area (indoor, outdoor or combination thereof) for the keeping or slaughtering of animals shall not exceed sixty percent (60%) of the individual lot or parcel site. This does not include the size of the facility as a whole but is limited to the size of area where animals are kept and the area inside the facility where animals are actually slaughtered. The Conditional Use Permit will limit the number of animals for the keeping or slaughtering.
  - i. The facility hours of operations shall be pursuant to those set forth in the Conditional Use Permit issued by Deuel County.
  - j. Exterior storage areas, including animal storage areas, and vehicle and trailer storage, shall be reasonably fenced and/or otherwise screened from adjacent property and public rights of way. Fencing shall be sufficient to provide adequate screening and contain animals securely on the owner's property at all times.
  - k. Animals shall be enclosed in gated enclosures with a minimum height of six (6) feet.
  - l. Manufactured steel pipe panels shall have a minimum pipe diameter of two (2) inches and shall have a minimum of six (6) horizontal pipes.

- m. Except in extraordinary circumstances, live animals may be held on the site for no more than twenty-four (24) hours.
  - n. Waste slaughter byproducts shall be disposed of in accordance with all applicable federal, state, and local regulations. Waste shall be stored in airtight containers and shall be confined in fully enclosed structures. Manure from holding areas shall be removed from the site daily or stored in a manner to control odor as approved by Deuel County.
  - o. The Conditional Use permit shall be subject to a facility management plan, nutrient management plan, waste handling plan, site plan, and noise and odor control plan approved in writing by the Deuel County Board of Adjustment.
  - p. All exterior structures and improvements or fences for the keeping or confinement of slaughter animals shall satisfy setbacks from residences, churches, businesses, and incorporated municipal limits as required of Class C & D Concentrated Animal Feeding Operations as set forth in Section 1303 of the Deuel County Zoning Ordinance. If the Slaughterhouse processes more than 499 Animal Units per day, the minimum setbacks shall be increased as set forth in Section 1303 of the Deuel County Zoning Ordinance. The Board of Adjustment reserves the right to increase the minimum required setbacks on a site-specific review to safeguard air or water quality or to protect the public health, safety and welfare. Variances of the setbacks contemplated by Section 1303 may be considered by the Board of Adjustment.
  - q. All loading and unloading areas shall be reasonably screened from view from adjacent properties and public rights of way.
- 3. The County Board of Adjustment or Board of County Commissioners may make reasonable requests for additional information relating to a Slaughterhouse or Custom Processing facility not contained in these regulations.
  - 4. The County Board of Adjustment or Board of County Commissioners may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment or Board of County Commissioners consider necessary to protect the public health, safety and welfare.
  - 5. Conditional Use permit applicants will be required to file a letter of assurance as required by the Board of Adjustment.

**Section 1242.03. Permitted Uses.**

- 1. Said provisions of Section 1402 will not apply in the following cases unless such activity is of a level, nature or scope that a permit, license, or other approval from federal, state, or local unit of government is needed. In the event that such approval is warranted, then the provisions of Section 1402 shall apply and a Conditional Use Permit shall be required:



- a. The processing by a person of the person's own animals and the owner's preparation and transportation in intrastate commerce of the carcasses, parts of carcasses, meat, and meat food products of those animals exclusively for use by the owner and members of the owner's household, non-paying guests, and employees, or to the Custom Processing by a person of animals delivered by the owner for processing.
- b. The butchering, slaughtering or processing of any wild game taken by permit issued by the South Dakota Department of Game, Fish and Parks, or on Private Game Farms, is a permitted accessory use in all zoning districts of the County.

**Section 1242.04. Required Information for Custom Processing and Slaughterhouse Conditional Use Permit.**

1. Owner's name, address and telephone number.
2. Legal description of site and site plan.
3. Maximum number and type of live animals allowed on site in a 24-hour period.
4. Maximum number and type of animals to be slaughtered in a 24-hour period.
5. Nutrient management plan.
6. Manure management and operation plan.
7. Management plan for fly and odor control.
8. Information on ability to meet designated setback requirements, including site plan to scale.
9. Review of plans and specifications and nutrient management plan by the South Dakota Department of Agriculture & Natural Resources if using lagoon or earthen storage basin.
10. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
11. Notification of whomever maintains the access road (township, county and state).
12. Notification of public water supply officials.
13. Any other information as contained in the application and requested by the County Zoning Officer, the Board of Adjustment or the Board of County Commissioners.

**Section 1242.05. State and Federal Licenses or Permits.**

1. No person or entity shall operate a Slaughterhouse or Custom Processing facility unless that person or entity has first obtained all required state or federal licenses or permits.

## **SECTION 1243. Religious Farming Community**

### **Section 1243.01 Purpose.**

The purpose of this chapter is to provide for areas in the county for religious farming communities to be located and occupied. A permit to establish a religious farming community shall not imply consent to operate any other use for which a separate permit is required.

### **Section 1243.02 Minimum Requirements.**

1. A religious farming community shall comply with the following conditions:
  - a. A religious farming community shall be prohibited if proposed to be located on a parcel situated over Zone A or B of the Deuel County Aquifer Protection District.
  - b. The minimum lot area for a religious farming community shall be thirty-five (35) acres.
  - c. Direct access to public roads shall be limited.
  - d. Access for emergency vehicles shall be provided to all structures.
  - e. The religious farming community shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets and bathing facilities, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.
  - f. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The religious farming community shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations.
  - g. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
  - h. The Board of Adjustment may impose other conditions to ensure that the use of property related to the religious farming community is conducted in a manner to be compatible with the surrounding neighborhood.

### **Section 1243.03 Application Requirements.**

An application for a religious farming community shall be filed with the Zoning Officer. The application shall contain the following:

1. The address and legal description of all property upon which the religious farming community is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
2. Plans for supplying potable water including the source.

3. The plans for providing private wastewater facilities, i.e., septic tanks, holding tanks, sanitary sewer treatment systems.
4. The plans for holding, collecting and disposing of solid waste material.
5. A sketch plan of the property showing:
  - a. Proposed location of residences, agricultural activities, commercial/industrial activities, places of assembly.
  - b. Dimensions of all buildings.
  - c. Distance from all buildings/uses to the property lines at the closest points.
  - d. Dimensions of all property lines.
  - e. Name and location of all adjacent streets and roads.
  - f. Proposed grading and drainage pattern.
  - g. Proposed interior circulation pattern of roads.
  - h. Utility (water, sewer, electricity) plans.

**Section 1243.04. Separate Permits Required.**

1. Any use proposed in conjunction with the religious farming community requiring a conditional use permit shall be considered separately from the conditional use permit for the religious farming community.
2. Building permits are required in accordance with Section 805 of this ordinance. The Zoning Officer may only issue building permits and allow uses in accordance with the approved site plan for each specific conditional use permit. Upon approval of the site plan, the Board of Adjustment may indicate what, if any, uses may be additionally allowed and under what conditions without the Board's reconsideration. Similarly, upon approval of the site plan the Board of Adjustment may indicate if the location or size of any structures may be changed between the Board's approval and the approval of the Zoning Officer.

**Section 1244. Accessory Agricultural Housing.**

1. Accessory Agricultural Housing is a permitted accessory use to Class A Concentrated Animal Feeding Operations (CAFOs).
2. Accessory Agricultural Housing must be approved by the Board of Adjustment.
  - a. Any Class A CAFO, permitted after July 1, 2022 is required to submit a request for accessory agricultural housing at the time of the initial CAFO application.

- b. Any Class A CAFO, permitted before July 1, 2022 may submit a request for Accessory Agricultural Housing if such request is made prior to January 1, 2024.
3. Accessory Agricultural Housing is recommended to be located within the same section of land as the permitted Class A CAFO, but shall be no further than five (5) miles from the permitted Class A CAFO, provided the property is owned by the permit-holder.
4. Minimum lot area shall consist of at least two (2) acres per accessory agricultural housing dwelling unit , including the residence of the agricultural employer if on the same lot.
5. Accessory agricultural housing shall be in accordance with the following table:

<b>Number of Animal Units</b>	<b>Maximum Number of Dwellings</b>	<b>Maximum number of persons in Accessory Agricultural Housing</b>
<b>1,000 to 5,999 AU's</b>	6	18
<b>6,000 to 8,999 AU's</b>	9	27
<b>9,000 to 12,999 AU's</b>	13	39
<b>Over 13,000 AU's</b>	16	48

6. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with the most recently adopted version of the International Building Code in accordance with SDCL 11-10-6 for any dwelling structure with two (2) or more dwelling units.
7. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with any South Dakota Administrative Rules 74:53.
8. The dwelling/shared dwelling shall be removed or renovated into a single-family dwelling in the event the permit for the CAFO becomes void.
9. In the event the accessory agricultural housing dwelling/shared dwelling remains unoccupied for a period of one (1) year; or is not used in conformance with this Chapter, the accessory agricultural housing dwelling/shared dwelling shall be removed or with permission of the Board of Adjustment may be used for any use accessory to the CAFO.

**Section 1245. Private Storage Facility.**

1. Private storage facilities shall be in accordance with height and placement regulations of the district they are located within.
2. Only one (1) private storage facility per lot.
3. A private storage facility's maximum side wall height shall be in accordance of Section 1238.
4. Maximum size shall not exceed two thousand four hundred (2,400) square feet or thirty percent (30%) of lot area, whichever is greater.

**Section 1246. Commercial Storage Facility.**

1. Lot Area. Lot area shall be determined by need, side yards, rear yards, parking requirements, building site and future expansion; however, in no case shall the lot have less than one (1) acre.
2. Outdoor Storage. Any outdoor storage associated with the commercial storage facility within three (300) feet of a residential dwelling, commercial business or structure, public park, public roadway, or approved campground, shall be enclosed by a solid wall fence, with the building materials to be approved by the Board of Adjustment. Said fence shall be at least two (2) feet above the highest point of storage material. The fence shall be maintained in safe and good repair. The County may require asphalt or concrete surface of the parking area.
3. Fire Hazard. No flammable substance may be stored unless handling of said materials is in conformance with the standard of the National Board of Fire Underwriters.
4. Physical Appearance. All structures should have an appearance consistent with the character of the neighborhood in which they are located. Physical appearance must be approved by the Deuel County Board of Adjustment prior to construction.

**ARTICLE XIII**  
**CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS**

**Section 1300. 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. Concentrated Animal Feeding Operations (CAFOs) and the manure generated from those facilities must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

**Section 1301. Animal Units.**

Deuel County uses an animal unit equivalency ratio to determine the head count of a specific animal species for the purpose of defining the specific class of Concentrated Animal Feeding Operation by animal unit. The animal species equivalents are based upon a species' manure production. The standards for determining an animal unit to animal head count equivalency are derived from the Environmental Protection Agency and the State of South Dakota General Permit. Table 1301.1 details the classes of concentrated animal feeding operations and the specific animal unit equivalency ratio. Note that the figures in Table 1301.1 relate to inventory rather than annual production

**Table 1301.1**  
**Number of Animals to Define Classes of Concentrated Animal Feeding Operations**

<b>Animal Species</b>	<b>Class A CAFO (Over 2,000 Animal Units)</b>	<b>Class B CAFO (1,000-1,999 Animal Units)</b>	<b>Class C CAFO (50 to 499 Units – Zone A Shallow Aquifer)</b>	<b>Class D CAFO (50 to 999 Units – No Aquifer)</b>	<b>Animal Unit Equivalency Ratio</b>
	<b>Animal numbers equal to or more than:</b>	<b>Animal numbers equal to:</b>	<b>Animal numbers equal to:</b>	<b>Animal numbers equal to:</b>	
<b>Cattle other than mature dairy cows or veal calves <sup>1,2</sup></b>	2,000	1,000 to 1,999	50 to 499	50 to 999	1.0
<b>Mature Dairy Cattle (milked or dry)</b>	1,400	700 to 1,399	35 to 349	35 to 699	1.43
<b>Swine (weighing over 55 lbs. )</b>	5,000	2,500 to 4,999	125 to 1,249	125 to 2,499	0.4
<b>Swine (weighing less than 55 lbs. )</b>	20,000	10,000 to 19,999	500 to 9,999	500 to 9,999	0.1
<b>Horses</b>	1,000	500 to 999	25 to 249	25 to 499	2.0
<b>Sheep or lambs</b>	20,000	10,000 to 19,999	1,000 to 4,999	1000 to 9,999	0.1
<b>Turkeys</b>	110,000	55,000 to 109,999	2,775 to 27,499	2,775 to 54,999	0.018
<b>Chickens, other than laying hens using other than liquid manure handling system</b>	250,000	125,000 to 249,999	6,250 to 62,499	6,250 to 124,999	.008
<b>Laying hens using other than liquid manure handling system</b>	164,000	82,000 to 163,999	4,100 to 40,999	4,100 to 81,999	.0122
<b>Laying Hens &amp; Broilers using liquid manure handling system</b>	60,000	30,000 to 59,999	1,500 to 14,999	1,500 to 29,999	.0333
<b>Ducks Using liquid manure Handling system</b>	10,000	5,000 to 9,999	250 to 2,499	250 to 4,999	0.2
<b>Ducks using other than liquid manure handling system)</b>	60,000	30,000 to 59,999	1,500 to 14,999	1,500 to 29,999	.0333
<b>Geese</b>	60,000	30,000 to 59,999	1,500 to 14,999	1,500 to 29,999	.0333

1. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.
2. Animals are counted individually once they are separated from the mother
3. Only in accordance with Article 11 Aquifer Protection District.

## **Section 1302. Classes of Concentrated Animal Feeding Operations**

Concentrated Animal Feeding Operations are divided into the following classes:

	<u>ANIMAL UNITS</u>
Class A	2,000 or more
Class B	1,000 to 1,999
Class C	50 to 499 (Situating over Zone A or B Shallow Aquifer)
Class D	50 to 999

## **Section 1303. Concentrated Animal Feeding Operation Permit Requirements**

Owners of Class A, Class B, Class C, and Class D, Concentrated Animal Feeding Operations are required to complete, where applicable, a building permit, permitted use, special permitted use and/or conditional use permit application whenever any of the following occur:

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion of a concentrated animal feeding operation is proposed that exceeds the number of animal units allowed by an existing county-issued permit..
3. An expansion in the number of animal units of a Concentrated Animal Feeding Operation, without a county-issued permit, which existed prior to July 1, 2022, which would result in the creation of either a Class A, B, C, or D concentrated animal feeding operation.
4. If a Class A or B concentrated animal feeding operation, which has a previously issued county permit, changes ownership, the new owner has sixty (60) days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.
5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) years.
6. A signed complaint has been received by the County Zoning Officer or South Dakota Department of E Agriculture and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of County or State regulations.
7. A change in ownership of any concentrated animal feeding operation with a history of pollution documented by the County Zoning Office or State of South Dakota.
8. Notwithstanding 1103.4 (above) a change in ownership of a Class A or Class B concentrated animal feeding operation which does not have a previously issued county-permit.



#### **Section 1304. Concentrated Animal Feeding Operation Control Requirements.**

##### **1. No Significant Contribution of Pollution**

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution as determined by the South Dakota Department of Agriculture and Natural Resources.

##### **2. State General Permit**

Classes A and B concentrated animal feeding operations shall obtain a State General Permit. A County permit for a concentrated animal feeding operation may be approved conditioned on receiving a State General permit. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.

It shall be at the discretion of the Zoning Officer and/or the Board of Adjustment to require an applicant to submit plans for a Class C or Class D concentrated animal feeding operation to be reviewed to determine general compliance with standards adopted for a State General Permit

##### **3. Nutrient Management Plan.**

- a. New Class A, B and C concentrated animal feeding operations are required to have a nutrient management plan.
- b. Nutrient management plan(s) for Class A and Class B concentrated animal feeding operations shall be reviewed and approved by the South Dakota Department of Agriculture & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.
- c. The nutrient management plan(s) for Class C be developed by a Certified Crop Advisor and meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standards and all other applicable South Dakota Department of Agriculture & Natural Resources and Deuel County regulations.
- d. The applicant must maintain records to show compliance with the approved nutrient management plan.
- e. The applicant must comply with Manure Application Setbacks found in 1304.9.1.
- f. Documentation of land spreading agreements shall be available upon request by the County.

#### 4. Manure Management and Operation Plan

New Class A, B, C and D (with more than five hundred (500) animal units) Concentrated Animal Feeding Operations are required to have a Manure Management and Operation Plan.

The manure management and operation plan for Class A and Class B concentrated animal feeding operations reviewed and approved by the South Dakota Department of Agriculture & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved manure management and operation plan.

Manure Management and Operation Plans for Class C & Class D (with more than five hundred (500) animal units) shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all applicable SDDENR and Deuel County Zoning Standards.

- a. Manure Management and Operation Plan must include:
  - i. The location and specifics of proposed animal manure management facilities.
  - ii. The operation procedures and maintenance of manure management facilities.
  - iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Manure management treatment facilities will require inspection by an engineer.
  - iv. Manure shall not be store longer than two (2) years unless approved by Board of Adjustment.
  - v. Manure management containment structures shall provide for a minimum design volume of three hundred sixty-five (365) days of storage. In addition, open outdoor storage shall include minimum storage for direct precipitation and/or runoff from a 25-year, 24-hour storm.
  - vi. Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields. Manure management facilities utilizing methane digesters may receive on and off-site generated manure and/or organic wastes.
  - vii. The applicant will provide information regarding how manure from the concentrated animal feeding operation site will be transported to fields identified in the nutrient management plan. This may require the need for a haul road agreement and/or the applicable agreement for pipes to occupy the right-of-way or private property. Unless otherwise agreed to between the Road Authority and the applicant, the applicant to abide by minimum requirements of the adopted findings of facts for the applicable size of operation.
- b. As a condition of the permit, the Zoning Officer and/or Board of Adjustment may require the applicant to participate in environmental training programs.

## 5. Management Plan for Fly and Odor Control

New Class A, B, C, and D (with more than five hundred (500) animal units) Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The Zoning Officer and/or Board of Adjustment will review the need for control measures on a site-specific basis. The following procedures to control flies and odors shall be considered in a management control plan:

New Class A, B, C, and D Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The Zoning Officer and/or Board of Adjustment will review the need for control measures on a site-specific basis. The following procedures to control flies and odors shall be considered in a management control plan:

- a. Operational plans for manure collection, storage, treatment and how said plans will be updated and implemented.
- b. Methods to be utilized to dispose of dead animals shall be included.
- c. Location of existing and proposed tree/shrub plantings.
- d. The County recommends the following Best Management Practices in the development of a fly and odor management plan:
  - i. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
  - ii. Store solid manure in containment areas having good drainage to minimize odor production.
  - iii. Remove manure from open pens as frequently as possible to minimize odor production.
  - iv. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.
  - v. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.
- e. To assist in mitigating odors, the County may require any or all of the following:
  - i. Use of covers on open storage systems for liquid manure systems to reduce odor production.
  - ii. The storage of solid manure in self-contained containment areas to minimize odor production.
  - iii. The use of bio-filters or other proven odor mitigation technologies on enclosed concentrated animal feeding operation barns/structures to reduce odor production. The design and installation of said bio-filters shall be reviewed by specialists at South Dakota State University or others designated by the Board of Adjustment.

6. Required Setbacks and Separation Distance for New Class A, B, C, and D, concentrated animal feeding operations and those existing, non-permitted concentrated animal feeding operations expanding into a Class A, B, C, or D Concentrated animal Feeding Operations after November 15, 2022. See Table 1304.6.2.

**Table 1304.6.2**  
**Required Minimum Separation Distances And Setbacks <sup>1,4</sup>**

Number of Animal Units	Under 500 Animal Units	500 to 999 Animal Units	1,000 to 1,999 Animal Units	2,000 to 4,999 Animal Units	5,000 to 7,500 Animal Units	Over 7,500 Animal Units
<b>Established Residences<sup>2,3</sup></b>	1,320 feet	1,320 feet	1,760 feet	2,640 feet	3,960 feet	5,280 feet
<b>Churches, Businesses and Commercially Zoned Areas</b>	1,320 feet	1,320 feet	2,640 feet	2,640 feet	3,960 feet	5,280 feet
<b>Incorporated Municipality Limits<sup>3</sup></b>	1,320 feet	2,640 feet	5,280 feet plus	5,280 feet plus 440' for each 1,000 animal units over 2,000 animal units or portions thereof	6,600 feet plus 440 feet for each additional 1,000 animal units over 5,000 animal units	8,800 feet plus 440 feet for each additional 1,000 animal units over 10,000 animal units
<b>Established Private Water Well<sup>5,6</sup></b>	1,320 feet	1,320 feet	1,760 feet	2,640 feet	2,640 feet	2,640 feet
<b>Existing Public Water Well</b>	1,320 feet	1,320 feet	1,760 feet	2,640 feet	2,640 feet	2,640 feet
<b>Lakes and Streams classified as Fisheries as identified by the State</b>	200 feet	200 feet	500 feet	500 feet	500 feet	500 feet
<b>Federal, State &amp; County Road ROW</b>						
<b>Confinement</b>	200 feet	200 feet	300 feet	300 feet	300 feet	300 feet
<b>Open Lot</b>	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet
<b>Township Road ROW</b>						
<b>Confinement</b>	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet
<b>Open Lot</b>	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet

- Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.
- Established residences do not include any residence established after June 3, 1997 less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.
- The Board of Adjustment may allow a setback of less than the minimum required provided a written waiver by the entity deriving the benefit of the setback is filed with the application
- The Board of Adjustment may utilize Section 1304.7 to increase or decrease the required setback.
- Setback does not apply to the wells of the CAFO operator.
- Established private water wells refer to wells used as a source of potable water for human consumption for at least one (1) week within one (1) year prior to application date for the proposed CAFO.

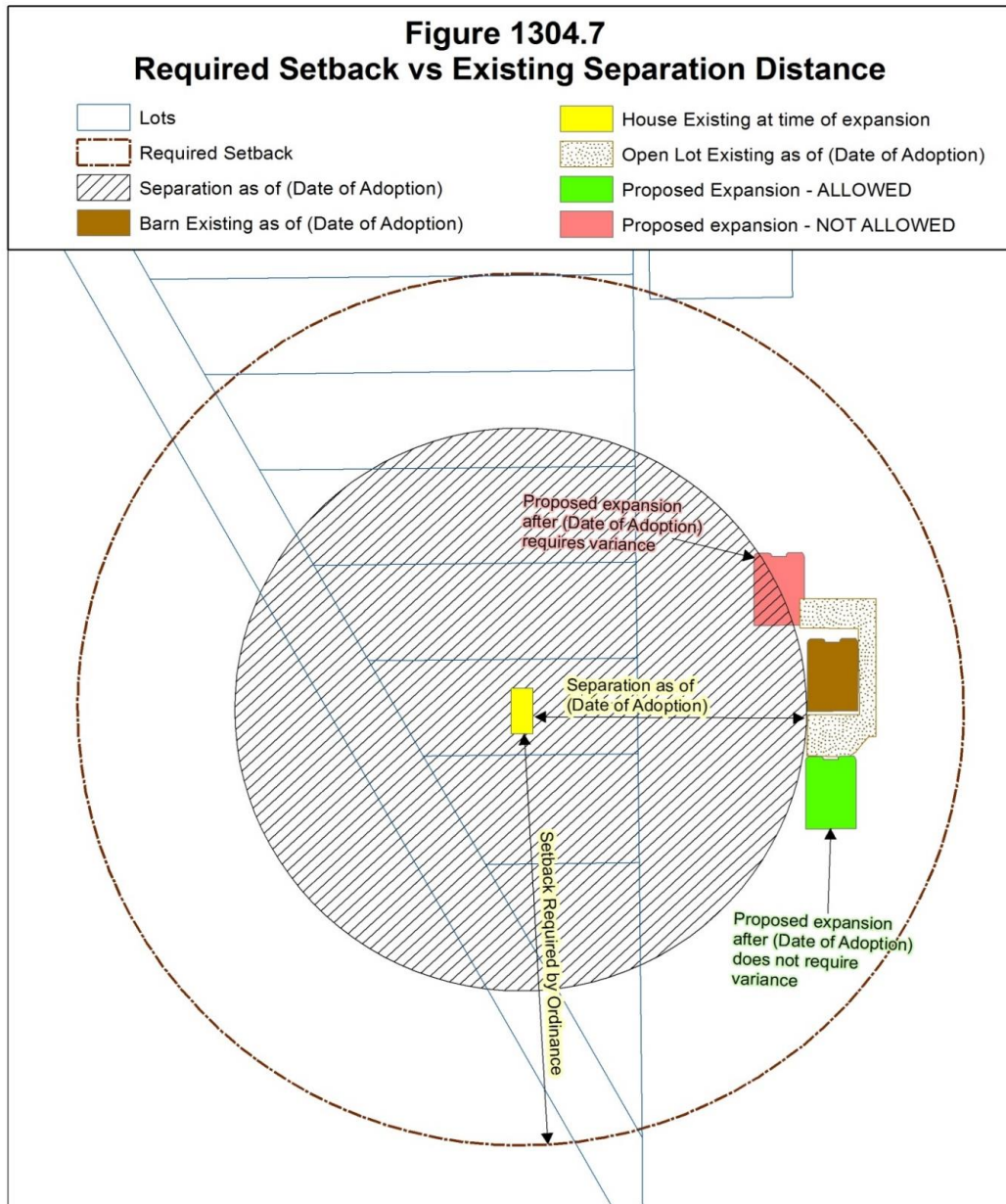
**7. Exemptions to Separation and/or Setback Distance Requirements**

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

- 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 structure 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 is the residence, commercial enterprise, individual or individuals, governmental entity, religious institution, or educational institution from which separation is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
- c. A Concentrated Animal Feeding Operation which-prior to the creation of residence, educational institution, commercial enterprise, religious institution, incorporated community, if the residence, educational institution, commercial enterprise or religious institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the concentrated animal feeding operation was established. The date that the Concentrated Animal Feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.
- d. A Concentrated Animal Feeding Operation constructed or expanded closer than the required separation distance within the corporate limits of an incorporated community if the incorporated community approves a written waiver.
- e. A Concentrated Animal Feeding Operation which is expanded or constructed less than the required setback from a right-of-way (ROW) provided approval of the applicable road authority is submitted to the Zoning Officer prior to issuance of any applicable building permits or stocking of the Concentrated Animal Feeding Operation if no building permits are required. County Highway Department (County right-of-way), Township Board of Supervisors (Township right-of-way), or State Department of Transportation (state right-of-way) are authorized to provide approval on behalf of the respective road authority. Other entities may provide approval on behalf of the listed entities if documentation of their authority to grant such approval is submitted.
- f. All Concentrated Animal Feeding Operations in operation prior to July 1, 2022 which do not comply with the required minimum setback/separation requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from the suggested separation distance:
  - i.. Example 1: A Class D CAFO expands to a Class A or B CAFO
  - ii. Example 2: A Class B CAFO expands to a Class A CAFO.
  - iii. Example 3: A Class A CAFO expands by 10% of the number of animal units

Provided, that the expansion does not further encroach the setback/separation distance existing on July 1, 2022. See Figure 1304.7.

- g. Any Concentrated Animal Feeding Operation in operation as of July 1, 2020 which does not comply with the suggested minimum setback/separation distance requirements is allowed to be replaced in the event of a calamity without obtaining a variance. Provided, that the replacement does not further encroach the setback/separation distance existing at the time of the calamity. See Figure 1304.7.



## 8. Additional Setback and Separation Distance Requirements for Class A, B, C and D CAFOs

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

a. Considerations to Increase Setbacks/Separation Distances

- i. Existing Concentration. A Concentrated Animal Feeding Operation of two thousand (2,000) or more animal units is proposed to be located in an area where a concentration of two thousand (2,000) animal units currently exists within one (1) mile of the proposed Concentrated Animal Feeding Operation site.

In the event the Board determines that a concentration of animal units already exists and an increase in animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment to determine the need to increase setback and/or separation requirements.

- ii. Due to topography and prevailing wind direction, and/or concentration of animal units, an additional setback and separation distance is appropriate to safeguard air or water quality. The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to increase setback and/or separation requirements.
- iii. Siting of a Concentrated Animal Feeding Operation is in excess of 5,000 animal units. In the event the Board determines that the siting of a concentrated animal feeding operation, where one did not previously exist, with more than five thousand (5,000) animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint or other instrument accepted by the Board of Adjustment to determine the need to increase the suggested setback and/or separation requirements.

b. Considerations To Decrease Setbacks And Separation Distances

- i. The Board of Adjustment may reduce suggested setbacks/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:

- (a) The Board of Adjustment may reduce setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:

- 1. The South Dakota Odor Footprint Tool or other comparable instrument accepted by the Board of Adjustment may be utilized to determine the need to decrease suggested setback and/or separation distances.

- 2. Review of the operation of the Concentrated Animal Feeding Operation as it pertains to the type of manure handling system and manure application methods to be used.

- a) Due to the type of manure handling and management of the concentrated animal feeding operation, little or no impact on adjacent property is expected. The use of Bio-filters, neoprene lagoon covers, and/or methane digesters are examples of improvements which may result in the reduction of suggested setbacks and separation distances.

- b) Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected
- c) By limiting the proposed expansion to specific number of animal units no adverse impacts are expected.

#### 9. Manure Application Setbacks

- a. Table 1304.9.1 provides The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.
- b. The Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.
- c. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

**Table 1304.9.1  
County Manure Application Setbacks**

CATEGORY	SURFACE APPLIED	INCORPORATED OR INJECTED
<b>Lakes, Rivers and Streams Classified as Fisheries</b>	300 feet*	100 feet*
<b>Streams and Lakes Classified as Drinking Water Supplies</b>	1,000 feet	300 feet
<b>Public Roads</b>	25 feet (surface) from right-of-way 300 feet (irrigation) from right-of-way	10 feet from right-of-way
<b>Area of 10 or More Residences</b>	300 feet (surface) 1,000 feet (irrigation)	300 feet
<b>Public Wells</b>	1,000 feet	1,000 feet
<b>Established Private Water Well</b>	250 feet	250 feet
<b>A Residence Other Than the Operator</b>	300 feet (surface) 1,000 feet (irrigation)	300 feet
<b>Natural or Manmade Surface Drainage</b>	200 feet*	50 feet

\*Or as prescribed within the South Dakota General Permit for Manure Application on Saturated, Snow Covered, or Frozen Soil



#### 10. Standards for Conditional Use Permits

- a. The Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- c. Conditional use permits for concentrated animal feeding operations shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.
- d. When considering an application, the Board of Adjustment will take into consideration current and past violations, documented by the Environmental Protection Agency, the South Dakota Department of Agriculture and Natural Resources, or similar applicable agency in other states, in relating to Concentrated Animal Feeding Operations that the applicant has or had an interest in.
- e. Conditional Use Permit applicants will be required to file a letter of assurances as required by the Zoning Officer or Board of Adjustment. The letter of assurances will be prepared by the Zoning Officer and/or Board of Adjustment and signed by both the applicant and the Zoning Officer or Board of Adjustment's designee. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and associated 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 timeline for compliance. If compliance is not met, the permit shall be revoked, and the permit holder ordered to cease operations.

#### 11. The following information may be requested and reviewed by the Board of Adjustment prior to the issuance or as a condition to the issuance of a conditional use permit for any class of CAFO.

- a. Owner/Applicant(s)'s name, address and telephone number.
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. Preliminary Nutrient management plan, if required.
- e. Preliminary Manure management and operation plan, if required.
- f. Preliminary Management plan for fly and odor control.
- g. Information on ability to meet designated setback requirements.

- h. As a condition of approval of any Concentrated Animal Feeding Operation over 1,000 animal units or as determined by the Board of Adjustment, the documentation of an approved General Permit from the South Dakota Department of Agriculture & Natural Resources for animal species is required. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.
- i. Documentation of notice to public water supply officials.
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- k. Documentation of notice to whomever maintains the access road (township, county and state).
- l. Documentation of notice to all owners of property within required setback.
- m. Any other information as contained in the application and requested by the County Zoning Officer.