

# **CLAY COUNTY ZONING ORDINANCE**

Prepared by the South Eastern Council of Governments at the direction of the Planning Commission and County Commission of Clay County, South Dakota

# Table of Contents

<b>TITLE AND APPLICATION</b> .....	<b>1</b>
1.01 Repeal and Title.....	1
1.02 Jurisdiction.....	1
1.03 Purpose.....	1
1.04 Provisions of Ordinance Declared to be Minimum Requirements. ....	1
1.05 Provisions for Official Zoning Map.....	1
1.06 Penalties for Violation. ....	2
1.07 Separability Clause. ....	2
1.08 Repeal of Conflicting Ordinances. ....	2
1.09 Effective Date. ....	2
<b>DEFINITIONS</b> .....	<b>3</b>
2.01 Purpose.....	3
2.02 Definitions. ....	3
<b>GENERAL DISTRICT REGULATIONS</b> .....	<b>25</b>
3.01 Visibility at Intersections.....	25
3.02 Accessory Use and Structures.....	25
3.03 Off-Street Parking.....	26
3.04 Off-Street Loading Requirements.....	27
3.05 On-Premise Signs.....	27
3.06 Off-Premise Signs.....	29
3.07 Animal Feeding Operations and Concentrated Animal Feeding Operations ...	29
3.08 Telecommunications Tower, Antenna Support Structures and Wireless Communications Facilities.....	34
3.09 Site-Built Single-Family and Multi-Family Dwelling Standards.....	34
3.10 Road Maintenance Agreements.....	34
3.11 Home Occupations.....	35
3.12 Manufactured Home Requirements.....	35
3.13 Bed and Breakfast Establishments.....	37
3.14 Wind Energy Conversion Systems (WECS).....	37
3.15 Private Outdoor Recreation Area.....	38
<b>DISTRICTS AND BOUNDARIES</b> .....	<b>39</b>
4.01 Districts and Boundaries.....	39
4.02 Adoption of Official Zoning Map.....	40
4.03 Changes to Official Zoning Map.....	40
4.04 Interpretation of District Boundaries.....	40
4.05 District Regulations Established.....	41
NRC: Natural Resource Conservation District.....	42
A-1: Agricultural District.....	44
R-1: Residential District.....	46
R-2: General Residential District.....	47
C-1: Commercial District.....	48
I-1: Light Industrial District.....	50
I-2: Heavy Industrial District.....	51
APO: Aquifer Protection Overlay District.....	53

<b>ADJUSTMENT TO YARD REGULATIONS .....</b>	<b>57</b>
5.01 Location of Some Accessory Buildings .....	57
5.02 Adjustment to Front Yard Requirements .....	57
5.03 Adjustment to Side Yard Requirements .....	57
5.04 Projection From Buildings .....	57
<b>NONCONFORMING AND NONSTANDARD USES .....</b>	<b>58</b>
6.01 Purpose and Intent.....	58
6.02 Continuation of Nonconforming Uses .....	58
6.03 Use Becoming Nonconforming by Change in Law or Boundaries .....	58
6.04 Change of Nonconforming Use.....	58
6.05 Extension or Enlargement.....	58
6.06 Restoration after Damage .....	58
6.07 Effect on Use Which Is Illegal Under Prior Law .....	58
6.08 Continuation of Nonstandard Uses .....	59
<b>ADMINISTRATION AND ENFORCEMENT .....</b>	<b>60</b>
7.01 Powers and Duties .....	60
7.02 Right of Entry .....	60
7.03 Stop Order.....	60
<b>PROCEDURES FOR APPLICATIONS .....</b>	<b>61</b>
8.01 Building, Moving, and Demolition Permits.....	61
8.02 Fees .....	62
Right To Farm Notice Covenant.....	63
<b>BOARD OF ADJUSTMENT .....</b>	<b>64</b>
9.01 Establishment.....	64
9.02 Operational Procedure .....	64
9.03 Application to County for Variance or Appeal .....	64
9.04 Fees .....	64
9.05 Hearing.....	64
9.06 Variances .....	65
9.07 Appeals .....	66
9.08 Appeals from Decision of Board.....	66
<b>AMENDMENTS AND CHANGE OF ZONE .....</b>	<b>67</b>
10.01 Procedure. ....	67
<b>CONDITIONAL USE PERMITS.....</b>	<b>69</b>
11.01 Procedure.....	69
11.02 Application.....	69
11.03 Fees .....	69
11.04 Information on Site Plan.....	70
11.05 Planning Commission Hearing.....	70
11.06 Appeal of Planning Commission Decision .....	72
11.07 Amendments .....	72
11.08 Expiration .....	72

11.09	Preexisting Uses .....	73
11.10	Reapplication .....	73
11.11	Revocation .....	73

# ARTICLE 1

## Title and Application

### Section 1.01 Repeal and Title.

This Ordinance repeals Ordinance Number 95-1 as adopted February 7, 1995, and all acts amendatory thereto and further shall be known and referred to as “The Zoning Ordinance of Clay County, South Dakota.” This ordinance shall include any and all provisions of the document titled Zoning Ordinance, which is adopted by reference as a part of this ordinance.

### Section 1.02 Jurisdiction.

The provisions of this Ordinance shall apply to all unincorporated territory within Clay County, South Dakota, as established on the map entitled, “The Official Zoning Map of Clay County, South Dakota”.

### Section 1.03 Purpose.

The ordinance is based upon the Clay County Comprehensive Plan in conformance with Chapter 11-2 of South Dakota Codified Laws. This ordinance is designed to carry out the goals, objectives and policies of the Comprehensive Plan. The Zoning Ordinance is intended:

- \*to provide for the orderly growth and development of the county;
- \*to lessen congestion in the streets;
- \*to secure safety from fire, panic and other dangers;
- \*to promote public morals, health and the general welfare;
- \*to provide adequate light and air;
- \*to prevent the overcrowding of land;
- \*to conserve the value of property;
- \*to encourage the most appropriate uses of land;
- \*to facilitate the adequate provision of transportation, utilities, schools, parks and other public facilities;
- \*to protect land, water, and natural resources.

### Section 1.04 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, and general welfare of the residents of Clay County. 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 1.05 Provision for Official Zoning Map.

The County is hereby divided into zones, or districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners, attested by the County Auditor, bearing the seal of the County under the

following words: “This is to certify that this is the Official Zoning Map referred to in Section 1.02 of the Zoning Ordinance of Clay County, South Dakota”, together with the date of adoption of this Ordinance.

**Section 1.06 Penalties for Violation.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations of conditions established in the granting of Variances or Conditional Uses, shall constitute a misdemeanor. Each day such violation continues shall be considered a separate offense. The owner or tenant of any building, structure or premises, any architect, builder, contractor, agent or other person who commits, maintains, assists in or participates in such violation may be found guilty of a separate offense and suffer the penalties provided.

**1.07 Separability Clause.**

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

**1.08 Repeal of Conflicting Ordinances.**

All prior ordinances or parts of prior ordinances in conflict with this ordinance are hereby declared repealed.

**1.09 Effective Date.**

The ordinance shall be in full force and effect from and after the passage, approval, publication and effective date of the Zoning Ordinance of Clay County, as provided for by South Dakota law.

# ARTICLE 2

## Definitions

### Section 2.01 Purpose.

In the application of this ordinance, the rules and definitions contained in this section shall be observed and applied, except when the context clearly indicates otherwise.

- A. Words used in the present tense shall include the past and future.
- B. Words used in the singular number shall include the plural number and the plural, the singular.
- C. The word “shall” is mandatory and not discretionary.
- D. The word “may” is permissive.
- E. The words “used” or “occupied” shall include the words “intended,” “designed,” or “arranged to be used or occupied.”
- F. The word “lot” shall include the words “plot,” “parcel” or “tract.”
- G. The word “person” shall include a “firm,” “association,” “organization,” “partnership,” “trust,” “company,” or “corporation” as well as an “individual.”
- H. The word “building” shall include the words “structure” and “premises.”
- I. Any word not herein defined shall be as defined in any recognized standard English dictionary.

### Section 2.02 Definitions.

**25-YEAR, 24-HOUR STORM EVENT** – The amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 3 inches in western South Dakota and 5 inches in eastern South Dakota.

**100-YEAR, 24-HOUR STORM EVENT** – The amount of rainfall in a 24-hour period expected to occur only once every 100 years. Typically, the 100-year, 24-hour storm event is about 4 inches in western South Dakota and 6 inches in eastern South Dakota.

**ABANDONED WELL** – A well no longer used or intended to be used as a water source.

**ABUTTING** – Abutting shall mean adjacent or contiguous property except property which is separated by a publicly dedicated roadway. The term “abutting” implies a closer proximity than the term “adjacent.”

**ACCESSORY BUILDING OR USE** - An accessory building or use is one which:

1. Is customary and clearly incidental to the principal use;

2. Serves exclusively the principal use;
3. Is subordinate in area, extent or purpose to the principal use served;
4. Contributes to the comfort, convenience, or necessity of occupants of the principal use served;
5. Is located on the same zoning lot as the principal use served, with the single exception of such accessory off-street parking facilities as are permitted to locate elsewhere than on the same zoning lot as the building or use served.

**ACTIVITY** - Any application for a permit under this ordinance or any development or use encompassed within the jurisdiction of this Ordinance.

**ADMINISTRATIVE OFFICIAL** – The person who is charged with the responsibility of administering and enforcing the zoning ordinance. Also known as the Zoning Administrator.

**AGRIBUSINESS** – Farming engaged in as a large-scale business operation embracing the production, processing, and distribution of agricultural products and the manufacture of farm machinery, equipment, and supplies.

**AGRICULTURE** - The production, keeping, or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to: forages sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock including beef cattle, sheep, swine, horses, ponies, mules, or goats, or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program.

**AIRPORT** - A place where aircraft can land and take off, usually equipped with hangars, facilities for refueling and repair, and various accommodations for passengers, including Heliports.

**ALLEY** - An alley is a public right-of-way which affords only a secondary means of access to abutting property.

**ANIMAL FEEDING OPERATION** – A lot or facility that stables, confines, and feeds or maintains livestock in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvested residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other (within one mile), or if they use a common area or system for the disposal of manure.

**ANIMAL MANURE** – Fecal material and urine from livestock as well as animal-housing waste water, bedding material, or other materials.

**ANIMAL NURSERY** – A place where young animals grow or are cared for.

**ANTENNA** - Any device that radiates or captures electromagnetic wave signals, including digital voice and data signals, analog voice and data signals, video signals or microwave signals, and is mounted on a structure that allows freedom from obstruction for the radiation and capture of the electromagnetic signals.



**APPLICANT** – An individual, corporation, group of individuals, partnership, joint venture, owners, or any other business entity submitting an application for a permit, amendment, variance, or appeal.

**AQUIFER** - A geologic formation, group of formations, or part of a formation capable of yielding, storing, or transmitting a usable amount of groundwater to wells or springs for domestic or animal use.

**ARCADE** - A building or structure, open to the public, which contains coin operated games and similar entertainment and amusement devices, as the primary use or with five (5) or more games as an accessory use.

**AREA OF SPECIAL FLOOD HAZARD** – Means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

**ASSISTED-LIVING CENTER AND CONGREGATE CARE FACILITY** - A licensed health care facility to provide 24-hour supervision of the frail elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may also provide services, such as recreational activities, financial services, and transportation.

**AUTOMOBILE STORAGE YARD** - The temporary storage of vehicles which are impounded, licensed, and operable, in an unroofed area.

**AWNING/CANOPY** - A roof-like cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

**BASE FLOOD** – Means the flood having a one percent chance of being equaled or exceeded in any given year.

**BED AND BREAKFAST ESTABLISHMENT** - A private single-family residence which is used to provide limited meals and temporary accommodations for a charge to the public.

**BEST MANAGEMENT PRACTICES (BMP)** – Schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, manure stockpiles, or drainage from raw material storage.

**BOARD OF ADJUSTMENT** - Public and quasi judicial agency charged with the duty to hear and determine zoning appeals.

**BOARDINGHOUSE** - A building, other than a hotel or apartment hotel, where for compensation and by prearrangement for definite periods, lodging, meals, or lodging and meals are provided for three or more persons.

**BROADCAST TOWER** - Shall mean a structure, not including offices or studio, for the transmission of radio or television broadcast communications.

**BUILDABLE AREA** - The three-dimensional space within which a building is permitted to be built on a lot and which is defined by maximum height regulations and yard setback regulations.

**BUILDING** - Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or movable property of any kind, and which is constructed or erected on the ground or attached to the ground with a fixed location on the ground.

**BUILDING, DETACHED** - A building surrounded by open space on the same lot.

**BUILDING, HEIGHT** - The vertical distance above grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the average height of the highest roof, or to the average height of the highest gable of a pitched, hipped, or shed roof. The measurement shall be taken from the average elevation of the finished grade within ten feet of the structure.

**BUILDING LINE** - A line parallel to the curb line touching that part of a building or parking lot closest to the street.

**BUILDING PERMIT** - A document signed by the Zoning Administrator as a condition precedent to the commencement of a use or the erection, construction, re-construction, restoration, alteration, conversion, or installation of a building, which acknowledges that such use, or building complies with the provisions of the county zoning ordinance or an authorized variance there from.

**BUILDING, RESIDENTIAL** - A building which is arranged, designed, used or intended to be used for residential occupancy by one or more families or lodgers, and which includes, but is not limited to, the following types:

1. Single-family detached dwellings;
2. Single-family attached dwellings;
3. Multiple-family dwellings (including apartment hotels);
4. Lodging houses; and
5. Fraternity and sorority houses.

**BUS PASSENGER TERMINAL** - A place where the transfer of people between modes of transportation takes place.

**BUS/TRUCK TERMINAL** - An area and building where buses, trucks, and cargo is stored; where loading and unloading is carried on regularly; and where minor maintenance of these types of vehicles is performed.

**BUS/TRUCK WASH** - Any area, building, or portions thereof used for washing buses and/or trucks.

**CAMPGROUND, TRAVEL TRAILER PARKING AREA** - Shall mean a plot of ground for public use 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.

**CAR WASH** - Any area, building, or portions thereof used for washing automobiles.

**CEMETERY** - A place where burials have been or will continue to be made in the future.

**CERTIFICATE OF OCCUPANCY** - A document issued by the proper authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in

compliance with all the applicable county codes and ordinances.

**CHANGE IN OPERATION** – A change in the size of a concentrated animal feeding operation in which an operation moves from one class to another or a change in the species of an operation.

**CHANGE OF OWNERSHIP** – A change where the existing sole proprietor disposes of their entire interest in the agency; or a change in a partnership where all of the existing partners relinquish their entire ownership; or a change in a corporation where all of the existing stockholders relinquish their ownership shares.

**CHANGE OF USE** - Substitution of one thing for another specifically regarding use of land or use of a building.

**CHEMIGATION** – The process of applying agricultural chemicals (fertilizers or pesticides) through an irrigation system by injecting chemicals into the water.

**CHRONIC or CATASTROPHIC EVENT** – A single precipitation event, or a series of rainfall events in a short period of time, that totals or exceeds the volume of a 25-year, 24-hour storm event or a 100-year, 24-hour storm event for new swine, poultry and veal calf operations that commenced construction after February 13, 2003. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

**CHURCH** - A building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated therewith.

**CLASS V INJECTION WELL** – A conduit through which potentially contaminated but generally non-hazardous fluids can move from the land surface to the subsurface; the types of primary concern in Clay 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.

**CLINIC** - An establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists, optometrists, social workers, etc., and where patients are not usually lodged overnight.

**CLUB** - 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.

**COMMERCIAL PARKING LOT/FACILITY** - An approved open or enclosed off-street parking area or structure where licensed and operable motor vehicles are temporarily stored for a fee.

**COMPREHENSIVE PLAN** - The adopted long-range plan intended to guide the growth and development of the community and region, including analysis, recommendations and proposals of the community's population, economy, housing, transportation, community facilities, and land use.

CONCENTRATED ANIMAL FEEDING OPERATION – An animal feeding operation that meets the following State criteria for a large, medium, or small concentrated animal feeding operation:

1. A large concentrated animal feeding operation as described in Table 1.
2. A medium concentrated animal feeding operation as described in Table 1 and meets one of the following conditions:
  - a. Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or
  - b. Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
3. A small concentrated animal feeding operation as described in Table 1 and designated as a concentrated animal feeding operation by the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative, considering the following factors:
  - a. The size of the animal feeding operation and the amount of manure or process wastewater reaching waters of the state;
  - b. The location of the animal feeding operation in relation to waters of the state;
  - c. The means of conveyance of manure and process wastewater into waters of the state; and
  - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure and process wastewater into waters of the state.

Table 1. Number of Animals to Define Large, Medium, and Small Animal Feeding Operations and Concentrated Animal Feeding Operations			
Type of Animal Feeding Operation	Animal Feeding Operation and Concentrated Animal Feeding Operations		
	Large Animal Numbers Equal to:	Medium Animal Numbers Equal to:	Small Animal Numbers Less Than:
Dairy Cows (mature – milked or dry)	700 to 3,500*	200 to 699	200
Veal Calves	1,000 to 5,000*	300 to 999	300
Cattle other than mature dairy cows or veal calves <sup>1</sup>	1,000 to 5,000*	300 to 999	300
Swine (weighing more than 55 pounds)	2,500 to 12,500*	750 to 2,499	750
Swine (weighing less than 55 pounds)	10,000 to 50,000*	3,000 to 9,999	3,000
Horses	500 to 2,500*	150 to 499	150
Sheep or Lambs	10,000 to 50,000*	3,000 to 9,999	3,000
Turkeys	55,000 to 275,000*	16,500 to 54,999	16,500
Laying hens or broilers <sup>2</sup>	30,000 to 150,000*	9,000 to 29,999	9,000
Chickens, other than laying hens <sup>3</sup>	125,000 to 625,000*	37,500 to 124,999	37,500
Laying hens <sup>3</sup>	82,000 to 410,000*	25,000 to 81,999	25,000
Ducks <sup>2</sup>	5,000 to 25,000*	1,500 to 4,999	1,500
Ducks <sup>3</sup>	30,000 to 150,000*	10,000 to 29,999	10,000
Geese	30,000 to 150,000*	10,000 to 29,999	10,000

\*County imposed cap limit is five times the minimum number of animals for a large operation.

<sup>1</sup> Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

<sup>2</sup> Animal feeding operation uses a liquid manure handling system.

<sup>3</sup> Animal feeding operation uses other than a liquid manure handling system.

**NOTE:** Other animal types not listed in the above table may be considered on a case-by-case basis.

**CONDITIONAL USE PERMIT** – A permit providing for a use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, or general welfare. The Board of Adjustment may permit such uses when specific provision is made in the zoning district regulations.

**CONTAMINANT** - Any “regulated substance,” as defined by SDCL 34A-12-1(8), as in effect on the date of passage of this ordinance and as amended from time to time, and all petroleum products, including gasoline, oil, waste oils, and other fuels as well as their hazardous constituents.

**CONTRACTOR’S SHOP AND STORAGE YARD** - Use of land or buildings for storage and preparation of materials used by the same individuals in conducting the business of construction and repair work, generally completed at some other on-site location.

**CONVENT AND MONASTERY** - A place of residence for members of a religious order who carry on religious, medical, educational, or charitable work in adjacent institutions.

**COUNTY** - Means Clay County, South Dakota.

**COUNTY COMMISSION** - Means Board of County Commissioners, Clay County, South Dakota.

**COUNTY HIGHWAY** – Any road or highway on the Clay County highway system which is not specified as a state highway or township road.

**CURB LINE** - The outside lines of the pavement or roadway.

**DAY CARE** - The providing of care and supervision of a child or children/adults as a supplement to regular parental/home care, without transfer of legal custody or placement for adoption, with or without compensation, on a regular basis for a part of a day.

**DAY CARE, CENTER** - Is normally in a facility used only for providing day care, nursery, or pre-kindergarten services, and is limited in number over twelve (12) by the square footage of usable space available. The ratio is presently thirty-five (35) square feet per child indoors and fifty (50) square feet per person outdoors.

**DAY CARE, FAMILY** - Care is done in a family home, and the number of persons cared for is limited to a maximum of six (6) adults or six (6) children under fourteen. Included in that count are the providers’ own children six (6) years and under. See (Home Occupation).

**DAY CARE, GROUP** - Is normally in a family home. The number of persons cared for is seven (7) to twelve (12) adults or children under the age of fourteen including the provider's own children six (6) years and under.

**DENSITY** - The number of families, individuals, dwelling units, or housing structures per unit of land.

**DEVELOPMENT** - The carrying out of any construction, reconstruction, alteration of surface, structure, change or land use or intensity of use, and including but not limited to the deposit of refuse, solid or liquid waste, any mining or drilling operation, or work relating to the creation of a road, street, or parking area.

**DISTILLATION OF PRODUCTS** - A building or premises used for the purification and concentration of a substance by volatilization or evaporation and subsequent condensation.

**DISTRICT** - A part, zone, or geographic area of Clay County within which certain zoning or development regulations apply.

**DRIVE-UP SERVICE WINDOW/DEVICE** - An establishment which accommodates the patron's motor vehicles, from which the occupants may obtain or receive a service or obtain a product through a service window or automated device.

**DWELLING** - A building, or portion, thereof, used exclusively for human habitation, including single-family, two-family, and multiple-family dwellings, but not including hotels, motels, or lodging houses.

**DWELLING, ATTACHED** - A one-family dwelling attached to two or more one-family dwellings by common vertical walls.

**DWELLING, MULTIPLE-FAMILY** - A building, or portion thereof, containing three (3) or more dwelling units.

**DWELLING, SINGLE FAMILY DETACHED** - A dwelling which is designed for and occupied by not more than one family and is surrounded by yards and is not attached to any other dwelling by any means.

**DWELLING, SINGLE FAMILY FARM** - Single family dwelling located on a farm which is used or intended for use by the farm's owner or relative of the owner or a person employed thereon.

**DWELLING, TOWNHOUSE** - One of a group or row of two or more single-family dwellings designed and built as a single structure facing upon a street in which the individual townhouse may or may not be owned separately. The townhouse need not face upon a street if otherwise specifically provided in this title. For the purpose of side yard regulations, the structure containing the row or group of townhouses shall be considered as one building occupying a single lot.

**DWELLING UNIT** - One or more rooms, designed, occupied, or intended for occupancy as a separate living quarters, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

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

**EXISTING ANTENNA SUPPORT STRUCTURE** - Any existing structure that supports wireless communications facilities, such as but not restricted to, telecommunications and broadcast towers, buildings, clock towers, steeples and light poles.

**FAMILY** - One or more individuals, related by blood or law, occupying a dwelling unit and living as a

single household unit. A family shall not include more than three adults who are unrelated by blood or law. In addition to the persons actually related by blood or law, the following persons shall be considered related by blood or law for the purposes of this title:

- (1) A person residing with the family for the purpose of adoption;
- (2) Not more than six persons under eighteen years of age, residing in a foster home licensed or approved by a governmental agency;
- (3) Not more than four persons eighteen years of age or older residing with the family for the purpose of receiving foster care licensed or approved by a governmental agency;
- (4) Any persons living with the family at the direction of a court; and
- (5) Twenty four hour supervised living of persons with physical or mental disabilities, but not including group homes for drug and alcohol rehabilitation or halfway houses for persons adjudicated by a court. Such residential facilities shall be licensed by the State of South Dakota and proof of such licensing shall be required prior to zoning certificate approval.

FARM – A parcel of land used for agricultural purposes, with a minimum of 20 acres in size.

FARM IMPLEMENT DEALER - The use of any building or land area for the display and sale of new and used farm implements, including any warranty repair work and other repair service conducted as an accessory use.

FARMSTEAD - The area of a farm in which the out buildings sit and are normally protected by a grove(s) and not used for crops or grazing.

FARM STORE/FEED STORE - A retail store selling primarily agricultural products, including the bulk storage of fertilizers and related agri-chemicals.

FENCE - An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

FLOOD OR FLOODING – A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) – The official map issued by the Federal Emergency Management Agency where the areas of special flood hazard have been designated Zone A.

FLOOR AREA - The square feet of floor space within the outside line of walls and includes the total of all space on all floors of a building. It does not include porches, garages, or space in a basement, or cellar when said space is used for storage or incidental uses.

FOUNDATION, SITE BUILT – A foundation which has frost depth footings of forty-two (42) inches,

with concrete block or poured walls of a height of not less than eight (8) inches above grade level. There shall also be the means to secure the plate to the foundation.

**FREESTANDING SIGN (Ground Sign)** - A sign supported by one or more uprights, poles, or braces in or upon the ground and not attached to any building.

**FRONTAGE** - That side of a lot abutting on a street; the front lot line.

**FRUIT/VEGETABLE CANNING AND PROCESSING** - A commercial establishment in which food is processed or otherwise prepared for human consumption but not consumed on the premises.

**FUNERAL HOME** – A licensed establishment for the disposition of human bodies.

**GARAGE, PRIVATE** - An accessory building designed or used for the storage of not more than four motor vehicles, excluding all commercial vehicles, owned and used by the occupants of the building to which it is accessory.

**GARDEN CENTER** - Garden center shall mean a building or premises used primarily for the retail sale of items useful in the culture, display, or decoration of lawns, gardens, or indoor plants; including books, appliances, and tools, but not including power tools or tractors.

**GAS DISPENSING STATION** - Any building or premises which provides for the retail sale of gasoline or oil. No automobile repair work or sale of auto accessories, or testing may be done. Gasoline pumps and islands shall be located more than 15 feet from the nearest property line.

**GENERAL MANUFACTURING** - Those manufacturing processes including light manufacturing which have the potential to be a nuisance due to dust, odor, noise, vibration, pollution, smoke, heat, glare, or the operation of the processes outside the building.

**GOLF COURSE** - A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters.

**GRADE** - The average elevation of the land around a building.

**GRAIN TERMINAL** - A facility for the storage of agricultural grains.

**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.

**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.

**GROUNDWATER** - Subsurface water that occurs in soils and geologic formations that are fully saturated.



**HAZARDOUS MATERIAL** - Any contaminant as defined in this ordinance, and any hazardous chemical for which a material safety data sheet must be filed under 42 USC 11021 and 11022 as in effect on the date of publication of this ordinance.

**HOME OCCUPATION** - A home occupation is any occupation carried on by a member of the immediate family residing on the premises, in accordance with Section 3.11.

**HOSPITAL** - An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities, or training facilities.

**HOTEL, MOTEL, MOTOR COURT, MOTOR LODGE, OR TOURIST COURT** - Any building or group of buildings containing guest rooms or dwelling units, some or all of which have a separate entrance leading directly from the outside of the building with garage or parking space conveniently located on the lot, and designed, used or intended wholly or in part for the accommodation of automobile transients.

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

**IRRIGATION SYSTEM** – Any structure or equipment, mechanized or other, used to supply water for commercial agriculture, including, but not limited to: wells, pumps, motors, pipes, culverts, gates, dams, ditches, tanks, ponds, and reservoirs.

**JUNKYARD** - Any lot, land, parcel or portion thereof, used for the storage, wrecking, dismantling, salvage, collection, processing, purchase, sale, or exchange of abandoned or discarded vehicles, goods, waste, and scrap materials, including but not limited to: two or more abandoned or inoperable motor vehicles, waste paper, rags, glass, tires, wood, lumber, appliances, machinery, or automotive and mechanical parts. A junkyard does not include operations entirely enclosed within buildings.

**KENNEL** - Any premise, or portion thereof, where dogs, cats, and other household pets are maintained, boarded, bred, or cared for, in return for remuneration, or are kept for the purpose of sale.

**LANDSCAPED AREA/LIVING GROUND COVER** - An area that is permanently devoted and maintained in blue grass/ creeping red fescue, herbaceous perennials, trees, shrubbery, and flowers.

**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.

**LOADING SPACE** - A space within the main building or on the same lot for the standing, loading, or unloading of trucks.

**LOT** - A parcel of land occupied or intended for occupancy by a use permitted in this ordinance, which may include one (1) main building together with its accessory buildings, the open spaces and parking spaces required by this ordinance, and having its principal frontage upon a street or upon an officially

approved place. See Figure 1.

LOT AREA - The lot area is the area of a horizontal plane bounded by the front, side and rear lot lines.

LOT, CORNER - A lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.

LOT, DOUBLE FRONTAGE - A lot which abuts a street on two opposite sides (not a corner lot).

LOT, FRONTAGE - The length of the front lot line measured at the street right-of-way line.

LOT, INTERIOR - A lot other than a corner lot.

LOT LINE - A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.

LOT LINE, FRONT - The lot line separating a lot from a street right-of-way.

LOT LINE, REAR - The lot line opposite and most distant from the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line. In no case, shall any structure be closer than three (3) feet to any lot line.

LOT LINE, SIDE - Any lot line other than a front or rear lot line.

LOT OF RECORD - A lot of record is a lot which is part of a subdivision or a certified survey map which has been recorded in the office of the County Register of Deeds; or a parcel of land, the deed to which was recorded in the office of said Register of Deeds prior to the effective date of this ordinance.

FIGURE 1

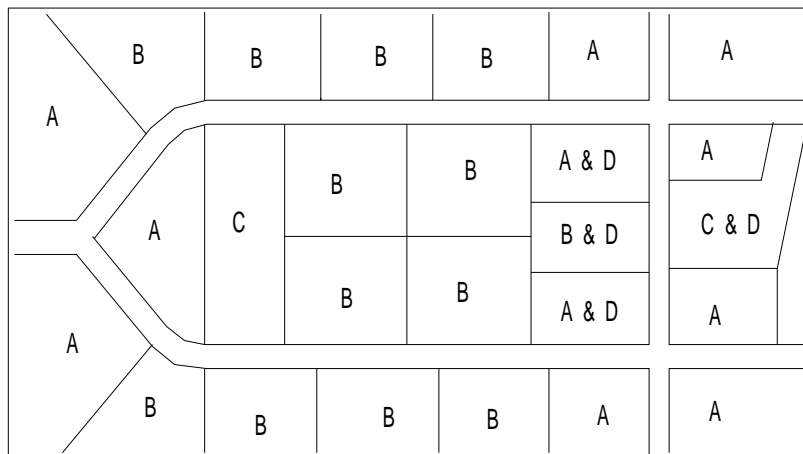


FIGURE 2-1

A = Corner Lot. A lot abutting two or more streets at their intersection.

B = Interior Lot. A lot with frontage on only one street.

C = Through Lot. A lot having frontage on two non intersecting streets, as distinguished from a corner lot.

D = Reverse Frontage Lot. A lot on which the frontage is at approximate right angles to the general pattern of the area.

**MANUFACTURE OF:** ACID, ALCOHOL, AMMONIA, ASPHALT, BLEACH, CEMENT, CHLORINE, DYESTUFFS, EXPLOSIVES, FERTILIZER, GLUE, GYPSUM, LIME, OILS, PLASTER OF PARIS, SHELLAC, SIZING, TURPENTINE OR YEAST, ETC. Establishments engaged in the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins, or liquors.

**MANUFACTURED HOME** - A dwelling unit which is fabricated in one or more sections at a location other than the home site by assembly line-type production techniques or by other construction methods unique to an off-site manufacturing process. A manufactured home is designed to be towed on its own chassis or be site delivered by alternative means. Every section shall bear a label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards. For manufactured homes built prior to June 15, 1976, a label certifying compliance to the Standard for Mobile Homes, NFPA 501, ANSI 119.1, in effect at the time of manufacture is required.

**MANURE** – Manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

**MANURE MANAGEMENT SYSTEM** – Any piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at an animal feeding operation.

**MANURE STORAGE AREA** – An area for the containment of animal manure in excess of 8,000 pounds or 1,000 gallons.

**MAP, OFFICIAL ZONING** - The map or maps, which are legally adopted as a part of the zoning ordinance, that delineate the boundaries of the zoning districts, show the location and size of public rights-of-way, public waterways, and the county limit lines.

**MINING** - The development or extraction of a mineral from its natural occurrence or affected land. The term includes, but is not limited to; surface mining and surface operation, in-site mining, the reprocessing of tailing piles, the disposal of refuse from underground mining, and milling and processing located on land described in the application for a mining permit.

**MOTEL** - A motel is an establishment consisting of a group of attached living or sleeping accommodations with bathroom and closet space, located on a single zoning lot, and designed for use by transient automobile tourists. A motel furnishes customary hotel services such as maid service and laundering of linen, telephone, and secretarial or desk service, and the use and upkeep of furniture. In a motel, less than fifty percent (50%) of the living and sleeping accommodations are occupied or designed for occupancy by persons other than transient automobile tourists. See (Hotel/Motel).

**MOTOR VEHICLE** - Any vehicle which is designed to travel along the ground or in the water and shall include but not be limited to automobiles, vans, buses, motorbikes, trucks, trailers, go carts, golf carts, boats, snowmobiles, and campers.

**MOTOR VEHICLE REPAIR** - Any building or premises involving the repair and/or painting of motor vehicle bodies or parts thereof and the rebuilding and/or overhauling of engines or transmissions.

**MOTOR VEHICLE, COMMERCIAL** - Any vehicle which has more than 16 square feet of signage or which is adapted, designed, equipped, and used to perform a specific commercial function and which does not meet the definition of Motor Vehicle, Personal/Passenger as defined herein.

**MOTOR VEHICLE, INOPERABLE** - A motor vehicle which is not in operating condition due to damage, removal, or inoperability of one or more tires and/or wheels, engine, or other essential parts, or which is not in operating condition due to damage or removal of equipment as required by the State of South Dakota for its lawful operation, or which does not have lawfully affixed thereto a valid state license plate, or which constitutes an immediate health, safety, fire or traffic hazard.

**MOTOR VEHICLE, PERSONAL/PASSENGER** - Any car, pickup-truck, or van which has no more than 16 square feet of signage and which is designed and facilitates personal/passenger travel and has not been externally altered with features not customary to personal usage.

**MOTOR VEHICLE, RECREATIONAL** - Any vehicle which is adapted, designed, and equipped to facilitate leisure time activities including but not limited to the following: ATVs, boats, snowmobiles, along with trailers to haul said vehicles; RVs and travel trailers.

**MOTOR VEHICLE SALES, DISPLAY, AND RENTAL** - The use of any building, land area, or premises, for the display, sale, or rental of new or used motor vehicles, and including any warranty repair work and other repair service conducted as an accessory use. The sale or display of inoperable motor vehicles is not allowable as part of this use category, see "JUNKYARD."

**MOTOR VEHICLE SERVICE STATION** - Any building or premises which provides for the retail sale of gasoline, oil, tires, batteries and accessories for motor vehicles and/or for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Motor vehicle repair work may be done at a motor vehicle service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is conducted. Gasoline pumps and gasoline pump islands shall be located more than 15 feet from the nearest property line.

**NEIGHBORHOOD UTILITY FACILITY** - Telephone, electric, and cable television lines, poles, and equipment; water or gas pipes, mains and valves; sewer pipes and valves; lift stations; telephone exchanges and repeaters; and all other facilities and equipment (excluding buildings that exceed 120 square feet of roof area) necessary for conducting a service by a government or a public utility.

**NONCONFORMING USE** - A use of land, buildings, structures, or premises that lawfully existed prior to the adoption, revision, or amendment to this title, but which fails, by reason of such adoption, revision, or amendment, to conform to the present use restrictions of the zoning district in which it is located.

**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 title 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 title.

**NURSERY** - Land or greenhouses used to raise flowers, shrubs, and plants for sale. See (Greenhouse).

**NURSING HOME** - An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

**OFFICE BUILDING** - A building designed for or used as the office of professional, commercial, industrial, financial, religious, institutional, public, or semipublic persons or organizations. Broadcast stations, offices, and studios shall be considered to be office buildings; broadcast towers as defined in this title shall not be so considered.

**OFF-SALE ALCOHOLIC BEVERAGE ESTABLISHMENT** - Any use which has been licensed to sell alcoholic beverages for consumption off the premises where sold.

**ON-SALE ALCOHOLIC BEVERAGE ESTABLISHMENT** - Any use which has been licensed to sell alcoholic beverages for consumption upon the premises where sold, except for special one-day liquor or special malt beverage licenses.

**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. Open lot is synonymous with other industry terms such as pasture lot, dirt lot, or dry lot.

**OUTDOOR STORAGE** - The keeping, in an unroofed area, of any goods, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours. Goods, material, merchandise, or vehicles shall not include items listed, nor be of a nature as indicated in the definition of junkyard as defined herein.

**OVERFLOW** – The discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure.

**PARKING SPACE** - A hard-surfaced area, enclosed or unenclosed, sufficient in size to park one motor vehicle. A parking space must be provided an unobstructed means of access, and all spaces shall meet the minimum criteria as prescribed by the County’s Highway Department.

**PERMITTED USES** - A use which may be lawfully established in a particular district or districts provided it conforms with all requirements and regulations of such district in which such use is located.

**PERSONAL SERVICES** - Establishments primarily engaged in providing services involving the care of a person or their apparel. Including, but not limited to: laundry or dry cleaning, receiving station; garment services; coin-operated laundries; photographic and art studios; beauty shops; barber shops; shoe repair; reducing salons and health clubs; and clothing rental.

**PLANNING COMMISSION** - The duly designated planning board of the County responsible for reviewing and approving applications for development and preparation of master plans and ordinances.

**PRIMARY CONTAINMENT FACILITY** – A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

**PRINCIPAL BUILDING** - A building in which is conducted the primary or predominant use of the lot on which it is located.

**PRINCIPAL USE** - The primary or predominant use or building of any lot. A principal use includes off-premise advertising.

**PRINTING PLANT** - A commercial printing operation which makes reproductions involving the use of a printing press and the making of photographic plates.

**PRIVATE CLUB** - A group of people organized for a common purpose to pursue common goals, interests, or activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

**PROCESS WASTEWATER** – Water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

**PRODUCTION AREA** – That part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversion which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

**PRODUCER** – The owner or operator of the concentrated animal feeding operation.

**PROJECTING SIGN** - A sign other than a wall sign which is attached to and projects from a structure or building face.

**PROPERTY LINE** - See (Lot Line).

**PUBLIC SERVICE FACILITY** – Government facilities and uses that provide an essential public purpose or service including, but not limited to, a police station, judicial court, fire station, ambulance service, transit or transportation transfer station, community center, public recreation facility, or office, but not including public utility or treatment stations, maintenance facilities, sanitary landfills or facilities for incarcerated persons.

**PUBLIC WELL** – A well that supplies water to one or more of the following:

1. Water distribution systems as defined by SDCL 46-1-6.
2. Community water systems as defined by subdivision 74:04:05:01 (4) of South Dakota Administrative Rules.
3. Water supplied from other common water distribution system to the public from such facilities as campground, tourist attractions, roadside parks, rest areas, churches, hospitals, nursing homes, schools, or eating, drinking, lodging, and other commercial business establishments or for commercial use as defined by subdivision 74:02:01:01 (1) of South Dakota Administrative Rules or for manufacturing or industrial operations.
4. Non-community water systems as defined by subdivision 74:04:05:01 (37) of the South Dakota Administrative Rules.

**QUARRY** - A surface excavation used for the removal of rock, stone, sand, gravel, and fill dirt for sale or use off-site and includes sifting, crushing, and washing and bagging.

**RECREATION FACILITY, COMMERCIAL** - A place designed and equipped for the conduct of sports, leisure-time activities, and other customary and usual recreational activities, either active or passive and operated as a business and open to the public for a fee.

**RECYCLABLE MATERIALS** - Materials or products that may be readily separated from the solid waste stream and may be used or reused as a substitute for raw materials or other items, including but not limited to, aluminum, paper, glass, steel, and plastic.

**RECYCLING COLLECTION FACILITY** - An established facility where recyclable materials are collected for shipment off site, with no processing such as grinding or crushing of the materials. Fully enclosed automated self-service aluminum collection machines not more than 750 square feet are considered recycling collection facilities regardless of whether they contain a crusher or grinder. Facilities which handle recyclable hazardous materials, or waste petroleum products as a primary or substantial portion of their business are not included.

**RECYCLING PROCESSING FACILITY** - An established facility where recyclable materials are collected and/or processed for shipment off site, including processing operations such as grinding or crushing of the materials. No on-site sales of materials or salvage-type automobiles may be processed at these types of facilities. Facilities which handle recyclable hazardous materials, or waste petroleum products as a primary or substantial portion of their business are not included.

**RETAIL SERVICES AND TRADE** - Establishments engaged in selling products, goods, or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services but does not include on-sale or off-sale alcoholic beverage establishments.

**RESTAURANT** - An establishment where food and drink is prepared, served, and consumed primarily within the principal use.

**REVERSE SETBACK** – A required minimum separation distance, as specified in this ordinance, which begins at the lot line of a structure/use and terminates at the lot line of a proposed structure/use. The required minimum separation distance shall be measured from the closest points of the two respective

lots. Reverse setbacks shall be required only when explicitly mandated by this ordinance. The definition of reverse setback as defined in Section 3.07 (5(A)) shall apply to issues related to animal feeding operations and concentrated animal feeding operations.

**RIVER-FRONT RESIDENTIAL DEVELOPMENTS** – A tract located within the NRC and Agricultural District and adjoining or having access to the Vermillion River and/or the Missouri River for location of seasonal or permanent housing.

**ROOF SIGN** - Any sign erected upon, against, or directly above a roof or on top of the parapet of a building.

**ROOMING/BOARDING HOUSE** - See (Boarding House).

**SANITARIUM** – A hospital used for treating chronic and usually long-term illnesses.

**SCHOOL, ELEMENTARY OR SECONDARY (HIGH SCHOOL)** - Any building or part thereof, whether public or private, which is designed, constructed, or used for instruction in elementary or secondary (high school) education.

**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.

**SETBACK/SETBACK LINE** - That line that is the required minimum distance from any lot line that establishes the area within which the principal use must be erected or placed. The definition of setback as defined in Section 3.07 (5(A)) shall apply to issues related to animal feeding operations and concentrated animal feeding operations.

**SHALLOW/SURFICIAL AQUIFER.** Any aquifer having the following characteristics:

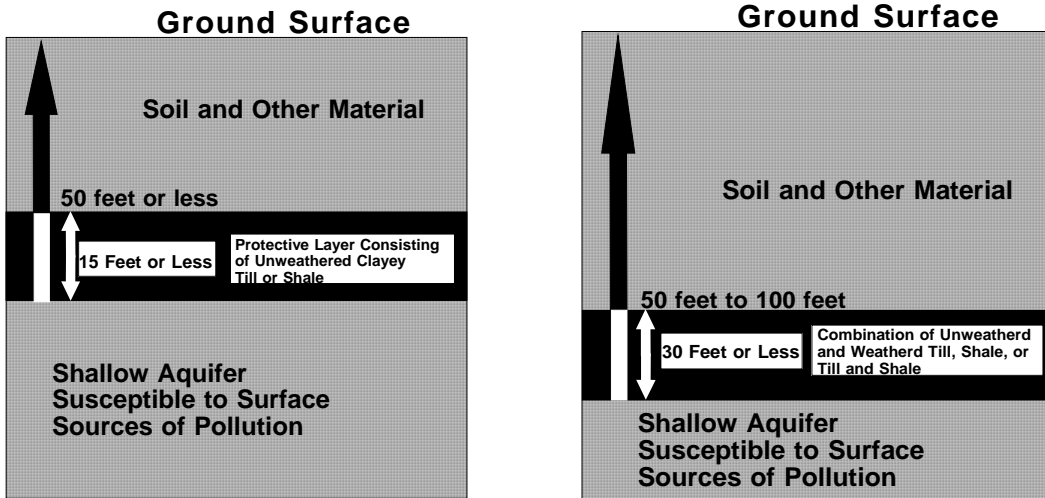
- (1) The shallow aquifer is further defined as an aquifer within fifty (50) feet or less below the land surface with fifteen (15) feet or less of continuous overlying, extremely low permeability material, such as clayey till or shale. Weathered till or highly fractured weathered shale is not an extremely low permeability material for purposes of this ordinance; or
- (2) The aquifer is greater than fifty (50) feet but less than one hundred (100) feet below the land surface with thirty (30) feet or less of continuous overlying low to extremely low permeability geological material that may be a combination of weathered and un-weathered till, shale, or till and shale.

**SHALLOW WELL** – A well which is completed in a shallow aquifer.

**SIGN** - Any object, device, display, or structure, or part thereof, situated outdoors or visible from outdoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. This definition does not include signs not exceeding 12 square feet for advertising the sale or lease of real estate, national or state flags or their emblem or insignia, interior window displays, athletic scoreboards, or the official announcements or signs of government.



## Illustration 1 Shallow Aquifer



**SIGN AREA** - The area of the largest single face of the sign within a perimeter which forms the outside shape including any frame which forms an integral part of the display, but excluding the necessary supports or uprights on which the sign may be placed. If the sign consists of more than one section or module, all areas will be totaled.

**SIGN FACE (DISPLAY SURFACE)** - The entire area of sign on which copy could be placed. See (“Sign Area”).

**SIGN (OFF PREMISE)** - A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

**SIGN (ON PREMISE)** - A sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or to an entertainment offered on the premises where the sign is located.

**SIGN STRUCTURE** - Any structure which supports, has supported, or is capable of supporting a sign.

**SIGN, WALL** - A sign attached to or erected against a wall of a building and projecting no more than twelve (12) inches with the face in a parallel plane to the plane of the building wall.

**SLAUGHTERHOUSE** - A facility for the slaughtering and processing of animals and the refining of their by-products.

**SOLID WASTE TRANSFER FACILITY** - A fixed facility where solid waste from collection vehicles is consolidated and temporarily stored for subsequent transport to a permanent disposal site. This does not include an infectious waste incineration facility.

**STABLE** - Any premise or part thereon where horses or any equine animal are maintained, boarded, bred, trained or cared for in return for remuneration, or are kept for the purpose of sale.

**STOCKYARDS** - A facility for the temporary confinement and marketing of animals.

**STORAGE FACILITY** – A structure containing separate storage spaces of varying sizes leased or rented on an individual basis.

**STORY** - Story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar, or unused underfloor space is more than six (6) feet above grade as defined herein for more than 50 percent of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such basement cellar or unused under-floor space shall be considered a story.

**STREET** - A public way which affords the principal means of access to abutting property.

**STREET, ARTERIAL** - A principal traffic artery, more or less continuous across the county, which acts as a principal connecting street with state and federal highways and includes each street designated as an arterial street on the Major Street Plan.

**STREET, COLLECTOR** - A street which carries traffic from local streets to arterial streets or highways, including the principal entrance streets of a residential development and streets for circulation in such development.

**STREET, LOCAL** - A street intended to provide access to other streets from individual properties and to provide right-of-way beneath it for various utilities but not intended to be used for through traffic.

**STRUCTURAL ALTERATION** - Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or any complete rebuilding of the roof or the exterior walls.

**STRUCTURE** - Anything constructed or erected on the ground or attached to the ground with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, walls, fences, signs, docks, dams, manufactured homes, and sheds.

**TANK FARM** - An open air facility containing a number of above-ground, large containers for the bulk storage in liquid form of petroleum products.

**TELECOMMUNICATIONS TOWER** - A self-supporting lattice, guyed-lattice, or monopole structure which supports wireless communications facilities. The term includes new and existing towers that are used for services such as microwave, common carrier, cellular telephone, personal communication services, two-way radio paging, and other similar services. The term telecommunications tower does not include amateur radio operators' equipment, as licensed by the Federal Communications Commission.

**TELECOMMUNICATIONS TOWER HEIGHT** - The vertical distance above grade to the highest point of the telecommunications tower, including the base pad and any antenna.

**TELECOMMUNICATIONS TOWER SITE** - The telecommunications tower site shall be the lot of

record for which the telecommunications tower is located.

**TEMPORARY SIGN** - A banner, pennant, poster, or advertising display constructed of cloth, canvas, plastic, wallboard, or other like materials, and intended to be displayed for a limited period of time.

**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.

**TRAVEL TRAILER** - Means any of the following:

- (1) **Travel Trailer.** A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and, when factory equipped for the road, it shall have a body width not exceeding eight (8) feet, and a body length not exceeding thirty (30) feet.
- (2) **Pick-up Coach.** A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.
- (3) **Motor-Home.** A portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as any integral part of a self-propelled vehicle.
- (4) **Camping Trailer.** A canvas, folding structure, mounted on wheels and designed for travel, recreation, and vacation use.

**TREE, REQUIRED** - A tree which is required by this ordinance and meets or exceeds the minimum specifications according to tree type.

**USE, ACCESSORY** - See (Accessory Building or Use).

**UTILITY FACILITIES** - See (Neighborhood Utility Facilities). The definition is the same as the Neighborhood except that buildings that exceed 120 square feet in roof area are allowable.

**VEGETATED BUFFER** – A narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purpose of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters. Vegetated buffer areas are maintained and can be harvested if applicable.

**WAREHOUSE** - A building used primarily for the storage of goods and materials.

**WASTE** - Any garbage, refuse, sludge from a waste treatment plant, waste supply treatment plant, or air pollution control facility and other discarded materials, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations, or from community activities, but does not include solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1986, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1986.

**WATERS OF THE STATE** – All waters within the jurisdiction of the 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 TREATMENT FACILITY** – A facility for the collection, treatment, storage, and distribution of potable water from the source of supply to the consumer.

**WHOLESALE MERCHANDISING /WHOLESALE TRADE** - Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

**WIRELESS COMMUNICATIONS FACILITIES** - Any cables, wires, lines, wave guides, antennas, antenna arrays, and any other equipment associated with the transmission or reception of telecommunications signals which a person seeks to locate or have installed upon or near a telecommunications tower or antenna support structure.

**YARD, FRONT** - A yard across the full width of the lot extending from the front line of the main building to the front line of the lot.

**YARD, REAR** - A yard extending a full width of the lot between a principal use and the rear lot line.

**YARD, REQUIRED FRONT** - The required front yard shall extend across the front of a lot between the said property lines. There shall be a required front yard on each street side of a corner lot. The required front yard with the smallest required front yard may be referred to as the side-street-side front yard.

**YARD LINE.** See (Building Line).

**YARD, REQUIRED REAR** - The required rear yard shall extend across the rear of a lot between the said property lines. On corner lots, the required rear yard may be to the rear of either street. On interior lots, the required rear yard shall, in all cases, be at the opposite end of the lot from the front yard.

**YARD, REQUIRED** - Shall mean the required open space between a property line and a building line. The open space shall be unoccupied and unobstructed from the ground upwards except as otherwise provided in this title.

**YARD, REQUIRED SIDE** - The required side yard shall extend between the required front yard line and the required rear yard line. There shall only be one required side yard on a corner lot.

**YARD, SIDE** - A yard between the main building and the side line of the lot and extending from the front yard line to the rear yard line.

**ZONE** - A specifically delineated area or district of Clay County within which regulations and requirements uniformly govern the use, placement, spacing, and size of land and buildings.

**ZONE OF CONTRIBUTION** – The entire area around a well or wellfield that contributes water to the well or wellfield.

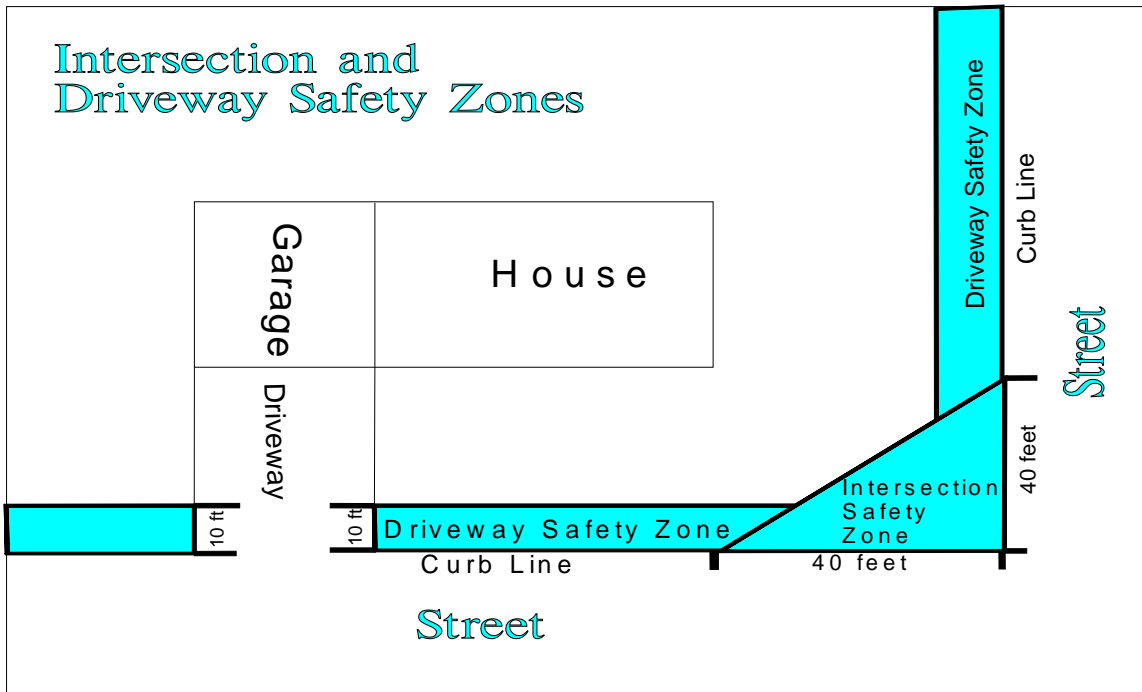
# ARTICLE 3

## GENERAL DISTRICT REGULATIONS

### Section 3.01 Visibility at Intersections

- A. Intersection safety zones: No monument style sign or other sign with its face less than twelve (12) feet above grade or any fence, wall, shrub or other obstruction to vision exceeding three (3) feet in height above the established street grade shall be erected, planted or maintained within a triangular area of a corner lot that is included by measuring straight lines along the curb lines at points 40 feet distant in each direction from the intersection of the curb line and a straight line connecting the first two lines. (See Figure 2)
- B. Driveway safety zones: No monument style sign or other sign with its face less than ten (10) feet above grade or any fence, wall, shrub, or other obstruction to vision exceeding three feet in height above the established street grade shall be erected, planted, or maintained within the area from the curb line to ten feet behind the curb line. (See Figure 2)
- C. Shelter Belts: Shelter belts of one or more rows shall be setback 35 feet from the road right-of-way line. Replacement of or addition to rows in an existing shelter belt shall be exempt from this requirement, as long as no further encroachment into the required setback occurs.

Figure 2



### Section 3.02 Accessory Use and Structures

Accessory uses and structures shall conform to the following standards:

- A. A private residential garage used only for the housing of noncommercial passenger automobiles. The height shall not exceed a one-story dwelling in R-1 and R-2 Residential districts.
- B. Any accessory building which covers more than 144 square feet shall be secured to the ground to prevent the structure from being moved or damaged by high winds.
- C. Accessory buildings may not be used for dwelling purposes.
- D. Yard setbacks may be adjusted as according to Article 5.

**Section 3.03 Off-Street Parking**

A. General Conditions

- 1. No parking spaces are permitted in the required front or side yard in the R-1 and R-2 districts except for portions of the front yard necessary for hard surfaced driveways or as otherwise provided in this title.
- 2. Driveways shall be a minimum of 20 feet in width.
- 3. Parking spaces may be permitted in any required rear yard.
- 4. Each parking space shall be directly accessible to an access aisle.

B. Required Parking Spaces

In computing the number of required off-street parking spaces the floor area shall mean the gross floor area of the specific use, excluding any floor or portion used for parking. Where fractional spaces result, the parking spaces required shall be the nearest whole number. For the number of off-street parking and loading spaces required in all other districts, see TABLE 1 below:

**TABLE 1: Minimum Off-Street Parking & Loading Requirements**

USES & STRUCTURES	MINIMUM PARKING REQUIREMENTS
1 & 2 Family Dwellings	2 spaces per unit
Multiple Dwellings - 2 bedrooms or less	1.5 spaces per unit
Multiple Dwellings - 3 bedrooms or more	2 spaces per unit
Multiple Dwellings -Elderly & Handicapped	1 spaces per unit
Rooming and Boarding Houses	1 space per 2 beds
Church or Temple	1 space for each 4 seats in main auditorium
High School	1 space for each 3 students
Middle School	25 spaces plus 1 space for each teacher and staff person
Elementary School	5 spaces plus 1 space for each teacher and staff person
Hospital	1 ½ spaces per bed

USES & STRUCTURES	MINIMUM PARKING REQUIREMENTS
Sanitarium or Institutional Home	1 space for each 3 beds
Auditoriums & Theaters	1 space for each 4 seats
Hotel or Motel	5 spaces plus 1 for each sleeping room or suite
Manufacturing, processing, assembly, industry, contractors shop, storage building, research laboratory, bottling plant, warehouse, or car wash	1 parking spaces for each employee on the maximum shift and additional space for trucks and vehicles used in connection with the proposed use
Restaurant, bar, cafe, or recreation/amusement establishment	1 space for each 100 square feet of floor area
Bowling Alley	3 spaces per alley
Day care centers	2 space for every 3 staff persons and 1 space for every 8 children licensed
Retail and all other uses	1 space for each 300 square feet of floor area

### Section 3.04 Off-Street Loading Requirements

There shall be provided at the time any building is erected or structurally altered, off-street loading spaces for the following uses.

Use	Gross square feet floor area	Number of Off-street loading spaces
Office Buildings	25,000 - 50,000 every additional 75,000	One 14' x 35' space Add one 14' x 35' space
Retail, Service and Trade Establishments and Industrial and Wholesale Commercial	5,000 - 20,000 20,000 - 100,000 Every additional 75,000	One 14' x 35' space Two 14' x 35' spaces Add one 14' x 35' space

### Section 3.05 On-Premise Signs

The following regulations shall govern the location, area and type of signs:

#### A. General Sign Requirements.

1. All signs shall be structurally safe and shall be securely anchored or otherwise fastened, suspended, or supported so that they will not be a menace to the safety of persons or property.
2. No sign, outdoor commercial advertising device or lighting device constituting a nuisance to an adjacent residential district, because of lighting glare, focus, animation or flashing of a sign, lighting or advertising device shall be erected or continued in operation.
3. No revolving "beacon" or "fountain" sign shall be permitted in any district.
4. No sign in any district shall conflict in any manner with the clear and obvious appearance of public devices controlling public traffic.

5. Ground signs shall not be located on public property except by specific approval of the Board of Adjustment.
6. Temporary signs or banners on or over public property may be authorized by the Board of Adjustment for a period not to exceed ten (10) days.
7. Signs projecting over a street, alley or other public space shall project not more than ten (10) feet and be no closer than two (2) feet to a plumb line from curblines; clearance below such signs shall be a minimum of nine (9) feet.
8. Roadside market signs (those advertising produce grown and sold on the premises on which they are located) shall not remain continuously erected more than six (6) months of any calendar year.

B. Rural Residential Districts.

1. One identification sign shall be permitted per residential use provided such sign does not exceed four (4) square feet in area; said sign may be wall, pedestal, ground, or projecting type (but not projecting over public property).
2. One sign of a temporary nature, such as "for sale" or "for rent" shall be permitted per residential use provided such sign does not exceed six (6) square feet and is not lighted; said sign may be wall, pedestal, or ground type.

C. Agricultural Districts.

Signs advertising use of particular breed, type, variety, hybrid, brand of plant, chemical, or tillage; or similar; shall be permitted providing such signs and devices are located at least five hundred (500) feet from any existing advertising sign or device. No sign shall exceed 32 square feet in area. No trespassing, no hunting and similar signs shall be permitted and shall be limited to 2 square feet.

D. Public or Semi-public Uses.

One identification sign shall be permitted per public or semi-public use provided such sign does not exceed ten (10) square feet in area; said sign may be wall, pedestal, ground or projecting type.

E. Industrial Parks.

No billboards or advertising signs other than those identifying the name, business and products of the person or firm occupying the premises shall be permitted. And all such signs must be wholly supported by and attached to the walls and supports of said building, except that a detached sign not to exceed ten (10) feet by twenty (20) feet in size offering the premises for sale or lease may be permitted.

F. NRC, C, LI and HI Districts. No restrictions except the general sign requirements of Section 3.05 above.



### **Section 3.06 Off Premise Signs**

Off-premise signs are allowed in the C, LI, and HI Districts subject to the following regulations:

- A. Signs shall be located at least 500 feet from any such existing or proposed sign.
- B. General Sign Requirements.
  1. All signs shall be structurally safe and shall be securely anchored or otherwise fastened, suspended, or supported so that they will not be a menace to the safety of persons or property.
  2. No sign, outdoor commercial advertising device or lighting device constituting a nuisance to an adjacent residential district, because of lighting glare, focus, animation or flashing of a sign, lighting or advertising device shall be erected or continued in operation.
  3. No revolving "beacon" or "fountain" sign shall be permitted in any district.
  4. No sign in any district shall conflict in any manner with the clear and obvious appearance of public devices controlling public traffic.
  5. Ground signs shall not be located on public property except by specific approval of the Board of Adjustment.
  6. Temporary signs or banners on or over public property may be authorized by the Board of Adjustment for a period not to exceed ten (10) days.
  7. Signs projecting over a street, alley or other public space shall project not more than ten (10) feet and be no closer than two (2) feet to a plumb line from curbline; clearance below such signs shall be a minimum of nine (9) feet.

### **Section 3.07 Animal Feeding Operations (AFO) and Concentrated Animal Feeding Operations (CAFO)**

#### **1. Intent**

It is the intent of this section to provide for a viable livestock industry within agriculturally zoned areas of Clay County, protect ground and surface waters, and ensure that animal feeding operations and concentrated animal feeding operations are properly sited, maintained and managed.

#### **2. State General Permit**

A General Water Pollution Control Permit shall be obtained from the Department of Environment and Natural Resources for all Concentrated Animal Feeding Operations (CAFOs) sited in Clay County, and certain Animal Feeding Operations (AFOs) sited in Zone B of the Aquifer Protection Overlay District as provided by Section 4.05.08 of these regulations.

#### **3. County Conditional Use Permit**

Any person who owns, operates, or proposes to own or operate any animal feeding operation or concentrated animal feeding operation shall obtain a conditional use permit whenever the following occurs: a new operation is proposed where one does not exist; the number of animals confined at an

existing permitted operation increases beyond what a current permit allows or the species of confined animals changes; the number of animals confined at a pre-existing operation increases or the species of confined animals changes; a signed complaint is received or made by the county zoning administrator or the South Dakota Department of Environment and Natural Resources and inspection reveals that the operation is in violation of county, state or federal regulations. A County conditional use permit for Concentrated Animal Feeding Operations may be approved for whoever applies conditioned on receiving State approval.

#### 4. Number of Animals for Animal Feeding Operations and Concentrated Animal Feeding Operations

For the purpose of these regulations, Animal Feeding Operations and Concentrated Animal Feeding Operations are divided into Large, Medium, and Small operations. The following table defines each type of animal confinement (species) with the number of animals indicated. All animal classifications are based upon the standard animal numbers incorporated into the SD Department of Environment and Natural Resources (SD DENR) General Permit for feedlot operation.

<b>Table 1. Number of Animals to Define Large, Medium, and Small Animal Feeding Operations and Concentrated Animal Feeding Operations</b>			
<b>Type of Animal Feeding Operation</b>	<b>Large Animal Numbers Equal to:</b>	<b>Medium Animal Numbers Equal to:</b>	<b>Small Animal Numbers Less Than:</b>
Dairy cows (mature – milked or dry)	700 to 3,500*	200 to 699	200
Veal Calves	1,000 to 5,000*	300 to 999	300
Cattle other than mature dairy cows or veal calves <sup>1</sup>	1,000 to 5,000*	300 to 999	300
Swine (weighing more than 55 pounds)	2,500 to 12,500*	750 to 2,499	750
Swine (weighing less than 55 pounds)	10,000 to 50,000*	3,000 to 9,999	3,000
Horses	500 to 2,500*	150 to 499	150
Sheep or Lambs	10,000 to 50,000*	3,000 to 9,999	3,000
Turkeys	55,000 to 275,000*	16,500 to 54,999	16,500
Laying hens or broilers <sup>2</sup>	30,000 to 150,000*	9,000 to 29,999	9,000
Chickens, other than laying hens <sup>3</sup>	125,000 to 625,000*	37,500 to 124,999	37,500
Laying hens <sup>3</sup>	82,000 to 410,000*	25,000 to 81,999	25,000
Ducks <sup>2</sup>	5,000 to 25,000*	1,500 to 4,999	1,500
Ducks <sup>3</sup>	30,000 to 150,000*	10,000 to 29,999	10,000
Geese	30,000 to 150,000*	10,000 to 29,999	10,000

\* County imposed cap limit is five times the minimum number of animals for a large operation.

<sup>1</sup> Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

<sup>2</sup> Animal feeding operation uses a liquid manure handling systems.

<sup>3</sup> Animal feeding operation uses other than a liquid manure handling system.

**NOTE:** Other animal types not listed in the above table may be considered on a case-by-case basis.

#### 5. Standards for Animal Feeding Operations and Concentrated Animal Feeding Operations

##### A. Required Minimum Setbacks, Reverse Setbacks and Separation Distances for New and Expanded Animal Feeding Operations, Concentrated Animal Feeding Operations, and

**Manure Storage.** There shall be a minimum setback, reverse setback and separation distance for all new and expanded animal feeding operations, concentrated animal feeding operations, change in operation and manure storage as defined in these regulations. These distances are minimums, and may be increased under the terms of a Conditional Use Permit based on considerations and characteristics of the neighborhood, including but not limited to adjoining or nearby uses within the same or different districts and prevailing wind direction. For the purpose of this section, the following definitions shall apply:

Reverse Setback – A required minimum separation distance, as specified in these regulations, which begins at the production area and terminates at the proposed structure/use. The required minimum separation distance shall be measured from the closest points of the two respective structures/uses. Reverse setbacks shall be required only when explicitly mandated by this ordinance.

Setback - The required minimum distance from any structure/use to a production area. Setbacks shall be measured from the production area to the structure/use as identified on the “Setback Chart”.

	Large	Medium	Small
Dwellings, Churches, Schools, Businesses, Cemetery and Public Use Areas	¾ mile	½ mile	¼ mile
Incorporated Municipalities (Irene, Vermillion*, Wakonda)	1 mile	1 mile	1 mile **
Swine Feeding Operation	1 ¼ miles	¾ mile	½ mile
Public Water Supplies	½ mile	½ mile	¼ mile
Private Shallow Wells	¼ mile	¼ mile	¼ mile
Waters of the State	500 feet	500 feet	500 feet
Federal, State, & County Road ROW	300 feet	200 feet	200 feet
Township Road ROW	300 feet	200 feet	200 feet
Designated 100 Year Flood District	Prohibited	Prohibited	Prohibited
Designated Aquifer Protection District – Zone A	Prohibited	Prohibited	Prohibited
Designated Aquifer Protection District – Zone B	Prohibited	Allowed***	Allowed***

\* For Vermillion, also see requirements of Extra-Territorial Zoning, City of Vermillion/Clay County.

\*\* The Board of Adjustment may adjust the setbacks on a site by site basis.

\*\*\* Allowed provided the use is not prohibited or further regulated by Section 4.05.08 APO: Aquifer Protection Overlay District.

**B. Exemptions from Setbacks, Reverse Setbacks and Separation Distances.** If an Applicant wishes to place an Animal Feeding Operation or Concentrated Animal Feeding Operation closer than the separation distances set forth in these regulations, the Applicant can request an Exception for the separation distance from the Board of Adjustment. The Board of Adjustment may allow an exception from the separation distance provided that the Applicant obtains waivers from the owners of property within the separation distance. Any authorized

landowner that is within the separation distance may waive the separation distance through a written instrument to be filed with the Clay County Register of Deeds. This waiver would run with the land.

**C. Manure Application Setbacks.** The following manure application setbacks apply to all classes of Animal Feeding Operations and Concentrated Animal Feeding Operations.

**COUNTY MANURE APPLICATION SETBACKS**

<b>CATEGORY</b>	<b>SURFACE OR IRRIGATION APPLIED</b>	<b>INCORPORATED OR INJECTED</b>
Waters of the State	300 feet (lakes) 200 feet (river & stream)	100 feet (lake) 100 feet (river & stream)
Stream & Lakes classified as Drinking Water supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation)	10 feet from right-of-way
Dwellings	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1,000 feet	1,000 feet
Private Shallow Wells	250 feet	250 feet
A Residence other than the Operator	300 feet (surface) 1,000 feet (irrigation)	300 feet
Natural or Manmade Drainage Ditch or Canal	100 feet	100 feet

**D. Fly and Odor Control.** Animal Feeding Operations and Concentrated Animal Feeding Operations shall dispose of dead animals, manure, and wastewater in such a manner as to control odors and flies. The County Board of Adjustment will review the need for control measures on a site specific basis, taking into consideration prevailing wind direction and topography. The county permit shall consider the following standards.

1. Methods to be utilized to dispose of dead animals by burial, burning, rendering, or composting approved by the South Dakota Animal Industry Board. If the dead animal is disposed by rendering, it must occur within seven (7) days from date of death.
2. Plant adequate trees and shrubs to screen the lagoons or containment structure to help control odors and improve aesthetics.
3. A grading plan designed to help keep pens and solid waste containment areas dry.
4. Require a plan that details the removal of manure from open pens as frequently as possible to minimize odor production.
5. Animal Feeding Operations and Concentrated Animal Feeding Operations may utilize vertical storage systems, deep pit concrete lined holding ponds, or holding ponds with approved impermeable liners for manure storage.

- E. The County Board of Adjustment may request information relating to the operation not contained in these regulations.**
  - F. The County Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which are reasonable and related to the use being controlled.**
  - G. Conditional use permits 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.**
  - H. When considering an application, the County Board of Adjustment will take into consideration current and past violations relating to Animal Feeding Operations and Concentrated Animal Feeding Operations that the applicant has had an interest in.**
  - I. Change in Ownership. With a change in ownership and completed sale of any AFO or CAFO, the new owner is required to bring the operation's manure management plan and nutrient management plan to current specifications.**
  - J. All Concentrated Animal Feeding Operations shall comply with the South Dakota Department of Environment and Natural Resources manure storage requirements and construction specifications.**
  - K. Water containing waste must not be allowed to migrate from the area of application.**
- 6. Information Required for Animal Feeding Operation and Concentrated Animal Feeding Operation Permit.**

Prior to consideration by the Board of Adjustment, the applicant for a conditional use permit for an animal feeding operation and/or concentrated animal feeding operation shall provide the following information to the zoning administrator:

- A. Owner's, managers', management company's or similar entities' names, addresses and telephone numbers.
- B. Legal description of site.
- C. Number and type of animals.
- D. Fly and odor control plan.
- E. Information on ability to meet designated setback requirements, including maps showing measured distances.
- F. General Water Pollution Control Permit from the South Dakota Department of Environment & Natural Resources as required.
- G. Review of Plans and Specifications and Nutrient Management Plan by the South Dakota Department of Environment & Natural Resources and Clay County.
- H. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- I. Site Plan of the land utilized for manure application and written agreements for application on land not owned by the applicant.

- J. Proof of insurance, bond, or other assurance of adequate funds set aside by the owner of a CAFO in a site-specific amount determined by a competent professional sufficient to ensure proper clean-up of any environmental damages that might occur and to insure proper closure of the confinement operation.
- K. Any other information as contained in the application and requested by the County Zoning Administrator.

### **Section 3.08 Telecommunications Tower, Antenna Support Structures and Wireless Communications Facilities**

Regulations regarding development of telecommunications towers, antenna structures and wireless communications facilities are intended to encourage the development of a competitive wireless communications marketplace while protecting the health, safety, and welfare of the public and maintaining the aesthetic integrity of the community. The regulations cover the placement, construction, and modification of telecommunications facilities.

- A. A minimum separation distance, equal to the height of the tower plus fifty (50) feet, from the telecommunications tower to any residentially zoned or used property and public right-of-way measured from the base of the telecommunications tower to the residential structure or right-of-way.
- B. A minimum distance not to interfere with a pre-existing telecommunications towers measured from the base of one telecommunications tower to the base of another except when an existing antenna support structure is used to co-locate a wireless communication facility.
- C. Building permit shall include documented Federal Communications Commission (FCC) approval prior to permit issuance.
- D. The tower shall be constructed in a manner that will make it inaccessible for unauthorized person to climb.

### **Section 3.09 Site-Built Single-Family and Multi-Family Dwelling Standards**

- A. The pitch of the main roof shall not be less than one foot of rise for each four feet of horizontal run.(3/12 Pitch)
- B. The minimum width of the main body of the site-built dwelling shall not be less than 20 feet, as measured across the narrowest portion.
- C. A wood or masonry foundation shall form a complete enclosure under the exterior walls.

### **Section 3.10 Road Maintenance Agreements**

Whenever a subdivision contains new roads, a road maintenance agreement shall be filed with the plat. The agreement shall establish an association comprised of property owners within the subdivision who are responsible for the maintenance and future improvement of roads and the method for assessment of costs. Zoning and building permits shall not be issued where a road maintenance agreement is not on file with the Register of Deeds.

### **Section 3.11 Home Occupations**

Home occupations are those secondary uses allowed on a premise in conjunction with the following:

- A. The occupation must be conducted within a dwelling unit.
- B. The occupation must be clearly incidental and secondary to the principal use of the dwelling for dwelling purposes.
- C. No change in the outside appearance of the building or premises shall be made, or other visible evidence of the conduct of such business other than one non-illuminated sign, not exceeding thirty-two (32) square feet in area in the A-1 Agricultural District, and four (4) square feet, non-illuminated in the RR Rural Residential District.
- D. No traffic shall be generated by the home occupation in greater volumes than normally expected in a residential district, and parking needed in the conduct of the business shall be met off the street and other than in a required front yard.
- E. Materials that are combustible or toxic matter cannot be stored on the premises.
- F. Any process which will cause odor, dust, glare, noise, heat or vibration which would have a negative effect on adjacent properties would not be allowed.

### **Section 3.12 Manufactured Home Requirements**

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

#### **A. Type I Manufactured Home**

- 1. Have more than 1,200 square feet of occupied space in a double-section or larger multi-section unit.
- 2. The manufactured home shall meet or exceed the federal HUD Manufactured Home Construction and Safety Standards as adopted on June 15, 1976.
- 3. Be placed on a permanent foundation.
- 4. Utilize a permanent perimeter enclosure in accordance with approved installation standards, as specified in Section C, Support Systems.
- 5. Be anchored to the ground, in accordance with manufacturer's specification, or as prescribed by the ANSI/NFPA 501A Standards.
- 6. Have a gabled roof with a pitch of at least 3/12 feet.
- 7. Have siding material of a type customarily used on site-constructed residences.

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

#### B. Type II Manufactured Home

1. Have more than 800 square feet of occupied space in a single, double, expanded, or multi-section unit.
2. The manufactured home shall meet or exceed the federal HUD Manufactured Home Construction and Safety Standards as adopted on June 15, 1976.
3. Utilize a permanent perimeter enclosure in accordance with approved installation standards, as specified in Section C, Support Systems.
4. Be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the ANSI/NFPA 501A Standards.
5. Have siding material of a type customarily used on site-constructed residences.
6. Have roofing material of a type customarily used on site-constructed residences.
7. Have a gabled roof with a pitch of at least 3/12 feet.
8. Be placed on a support system, in accordance with approved installation standards, as specified Section C, Support Systems.

#### C. Installation Standards

1. Permanent Perimeter Enclosure as Required for Type I and II Manufactured Homes.
  - a. Those manufactured homes designated in this Ordinance as requiring permanent perimeter enclosure must have footings and crawl space or basement walls. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).
2. Foundation Siding/Skirting
  - a. All manufactured homes without a permanent perimeter enclosure shall have an approved foundation siding/skirting enclosing the entire perimeter of the home, and must have approved ventilation system.
3. Support System
  - a. All HUD-Code Manufactured Homes of the Type I classification shall be installed with load bearing foundations in conformance with the manufacturer's installation specification.
  - b. Type II manufactured homes not placed on a permanent foundation, shall be installed



on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the ANSI/NFPA 501A installation standards.

- c. **Structural Alteration.** Due to its integral design, any structural alteration or modification of a manufactured home after it is placed on the site must be approved by the Zoning Administrator.

### **Section 3.13 Bed and Breakfast Establishments**

- A. Bed and Breakfast's shall be limited to a residential structure with an overall minimum of 1,800 square feet of floor area.
- B. They shall be in compliance with applicable state laws including South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.
- C. Such uses shall be an incidental use with an owner-occupied principal dwelling structure provided that not more than five (5) bedrooms in such dwelling structure shall be used for such purpose.
- D. Off-street parking requirements shall be one space per guest room and shall be in addition to parking requirements for the residence.

### **Section 3.14 Wind Energy Conversion Systems (WECS)**

- A. **Setback Requirements.** The minimum distance between the property line, overhead utility lines, or another wind turbine, and any tower support base of a WECS shall be equal to the proposed tower height (plus the radius of the rotor for a horizontal access machine). Contiguous property owners and planned developments may construct a WECS for use-in-common. If property held by more than one owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be approved by the Planning Commission.

The minimum distance between a WECS tower and a residential structure other than an owner, shall be one-quarter (1/4) mile.

- B. **Tower Access.** Climbing access to the WECS tower shall be limited either by means of a fence six (6) feet high around the base with a locking portal, or by limiting tower climbing apparatus so direct access is no lower than twelve (12) feet from the ground.
- C. **Electromagnetic Interference.** If a WECS is planned for installation in any location along or within the major access of an existing microwave communications link, the person desiring to install the WECS shall provide a letter or other writing from the communications facility owner or operator stating no objection to the installation of the WECS.
- D. **Air Space.** A WECS 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.

- E. Interconnect. If interconnected to an electric utility distribution system, the WECS shall meet the interconnect requirements of the utility.

**Section 3.15. Private Outdoor Recreation Area.**

A private outdoor recreation area may be established in specified districts according to the procedures for granting a conditional use. The proposed private outdoor recreation area meets all of the following requirements, if applicable:

1. A request for a conditional use shall set forth the location and legal description of the private recreation area property, and a sketch of the proposed private recreation area showing dimensions, driveways, proposed location of trailers or tents, the location of sanitary conveniences, and other buildings and improvements.

# **ARTICLE 4**

## **DISTRICTS AND BOUNDARIES**

### **Section 4.01 Districts and Boundaries**

The county is hereby divided into the following districts:

NRC	Natural Resource Conservation
A-1	Agricultural
R-1	Residential
R-2	General Residential
C	Commercial
LI	Light Industrial
HI	Heavy Industrial
APO	Aquifer Protection Overlay

1. Natural Resource Conservation District. The purpose of this district is to preserve lands best suited for natural drainage areas, public open space, and agricultural uses from encroachment by incompatible uses. The area will also provide protection from floods and erosion, to protect natural drainage courses in their capacity to carry runoff water, to limit permanent structures and uses of land in areas subject to flooding, to protect views, to preserve natural settings for wildlife habitats, to add to the aesthetic quality of the community, to prevent the destruction or pollution of valuable and irreplaceable natural resources, and to lessen the urban density.
2. Agricultural District. The purpose of this district is to provide for a vigorous agricultural industry by preserving for agricultural production those agricultural lands beyond areas of planned development.
3. R-1 Residential District. The purpose of this district is to provide locations for single-family residential areas with low population densities. Restrictions and requirements are intended to preserve and protect the single-family residential character by preventing incompatible uses and facilities from developing.
4. R-2 General Residential District. The purpose of this district is to provide locations for single-family and multi-family dwellings in areas with medium to high density.
5. Commercial District. The purpose of this district is to provide for a wide variety of commercial uses generally located at major intersections and along major roads with specific attention to the carrying capacity of roads and streets, and to encourage provision of adequate off-street parking and loading space. It is not the intent of this district to encourage the extension or enlargement of strip commercial areas.
6. Light Industrial District. The purpose of this district is to provide for a number of light manufacturing, wholesale, warehousing, and service uses in an attractive industrial park-like setting. The industrial uses should be located at major intersections and along major roads with specific attention to the carrying capacity of roads and streets, and to encourage provision of adequate off-street parking and loading space.

7. Heavy Industrial District. The purpose of this district is to provide for general industrial uses which may create some nuisance and which are not properly associated with, nor compatible with residential, office, or commercial establishments. All uses in this district shall comply with any state or local regulations regarding noise, emissions, dust, odor, glare, vibration or heat when applicable. The industrial uses should be located at major intersections and along major roads with specific attention to the carrying capacity of roads and streets, and to encourage provision of adequate off-street parking and loading space.
8. Aquifer Protection Overlay District. The district is intended to preserve the quality and quantity of the area's water resources so as to ensure a safe and adequate supply of drinking water for present and future generations. Restrictions shall apply to land use activities which have the potential to contaminate water resources, including aquifers in use and those having the potential for future use as a public water supply. The purpose of the district is to prohibit certain uses which pose the greatest threat to groundwater contamination and to impose reasonable and adequate safeguards on other uses which exhibit a potential to contaminate the groundwater. The Aquifer Protection Overlay District is an overlay whose boundaries are superimposed on all districts established by this ordinance. It is not intended that this district interfere with, abrogate, or annul any other rules or regulations of this ordinance, except that if the Aquifer Protection Overlay District imposes a greater restriction than the underlying zoning district regulations, the greater restriction shall apply.

#### **Section 4.02 Adoption of Official Zoning Map**

The Official Zoning Map and Zoning Legal Description Manual for Clay County, on record with the Zoning Administrator is hereby adopted by reference and declared to be a part of this ordinance.

#### **Section 4.03 Changes to Official Zoning Map**

Changes to or replacement of the Official Zoning Map and Zoning Legal Description Manual shall require amendment of these regulations by ordinance.

#### **Section 4.04 Interpretation of District Boundaries**

Where uncertainty exists as to the boundaries of the districts as shown on the Official Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following lot lines or county lines shall be interpreted to follow such platted lot lines or county lines;
- B. Boundaries indicated as approximately following railroad lines shall be interpreted to be midway between the main tracks;
- C. Boundaries indicated as approximately following the center lines of streets or other rights-of-way, or streams or other bodies of water, shall be interpreted to follow such center lines;
- D. Distances not specifically indicated on the Official Zoning Map and Zoning Legal Description Manual shall be determined by the scale of map. Where physical or cultural features existing on the ground

are at variance with those shown on the Official Zoning Map and Zoning Legal Description Manual, the Board of Adjustment, as established in Article 9, shall interpret the district boundaries.

#### **Section 4.05 District Regulations Established**

Regulations for each zoning district are hereby established. Such regulations shall be as described on the following pages:

DISTRICT	PAGE
4.05.01 NRC: Natural Resource Conservation	42
4.05.02 A-1: Agricultural	44
4.05.03 R-1: Residential	46
4.05.04 R-2: General Residential	47
4.05.05 C-1: Commercial	48
4.05.06 I-1: Light Industrial	50
4.05.07 I-2: Heavy Industrial	51
4.05.08 APO: Aquifer Protection Overlay	53

#### 4.05.01 NRC: NATURAL RESOURCE CONSERVATION DISTRICT

##### Purpose

The purpose of this district is to preserve lands best suited for natural drainage areas, public open space, and agricultural uses from encroachment by incompatible uses. The area will also provide protection from floods and erosion, to protect natural drainage courses in their capacity to carry runoff water, to limit permanent structures and uses of land in areas subject to flooding, to protect views, to preserve natural settings for wildlife habitats, to add to the aesthetic quality of the community, to prevent the destruction or pollution of valuable and irreplaceable natural resources, and to lessen the urban density.

##### Permitted Uses

Agriculture  
 Farm Drainage  
 Irrigation Systems  
 Historic Sites  
 Fences  
 Public Parks / Recreation Areas  
 Railroad Track Right-of-Way  
 Fish Hatcheries  
 Shelterbelts

##### Conditional Uses

Golf Courses  
 Private Outdoor Recreation Areas  
 Public Utilities  
 Single-Family Dwellings  
 Farm Dwellings, Single-Family  
 Home Occupation  
 Bed and Breakfast  
 Wireless Communication Facility on Existing Support Structure  
 Utility Facility  
 Electrical Substation  
 One additional single-family dwelling or manufactured home  
 Wind Energy Conversion Systems  
 Accessory Use & Structure

##### Lot and Yard Regulations

All measurements shall be taken from the lot line to the building line (see definitions).

	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard	Maximum Height
All Uses	2 acres	250 feet see #1	50 feet	30 feet	75 feet	35 feet

**Exceptions:**

1. A lot having an area or width less than required under the provisions of the NRC zone and which was recorded under separate ownership from adjoining lots at the effective date of this ordinance may be occupied by a single-family dwelling or by any other permitted nonresidential use. Whenever a lot in the NRC District at the effective date of this ordinance has a width of less than 250 feet, the side yards may be reduced to a width of not less than ten (10) percent of the width of the lot, but in no instance shall it be less than eight (8) feet.

## **4.05.02 A-1: AGRICULTURAL DISTRICT**

### **Purpose**

The purpose of this district is to provide for a vigorous agricultural industry by preserving for agricultural production those agricultural lands beyond areas of planned development.

### **Permitted Uses**

Agriculture  
Farm Drainage Systems  
Irrigation Systems  
Farm Dwellings, Single Family  
Fur Farming  
Historic Sites  
Kennels  
Public Parks & Public Recreation Areas  
Railroad Track Right-of-Way  
Roadside Stands  
Shelterbelts  
Greenhouse/Nursery  
Accessory Use & Structure

### **Conditional Uses**

Additional Farm Dwellings  
Agricultural Products Processing  
Single-Family Dwellings  
Airports  
Schools  
Churches  
Cemeteries  
Quarry  
Grain Terminal  
Animal Feeding Operations  
Concentrated Animal Feeding Operations  
Home Occupations  
Stockyards  
Manufactured Home  
Planned Unit Developments  
Private Recreation Areas  
Public Service Facility  
Utility & Service Structure  
Recreational Facilities  
Golf Courses  
Sanitary Landfills  
Solid Waste Transfer Station  
Wastewater Treatment Facilities  
Water Treatment Facilities  
Bed and Breakfast



Agribusiness  
 Electrical Substation  
 One additional single-family dwelling or manufactured home  
 Wireless Communication Facility on existing support structure  
 Wind Energy Conversion Systems

**Lot and Yard Regulations**

All measurements shall be taken from the lot line to the building line (see definitions).

	<b>Lot Area</b>	<b>Lot Width</b>	<b>Front Yard</b>	<b>Side Yard</b>	<b>Rear Yard</b>	<b>Maximum Height</b>
<b>All Uses</b>	2 acres	250 feet	75 feet	30 feet	50 feet	Dwellings: 30 feet Accessory Structures: None

### 4.05.03 R-1: RESIDENTIAL DISTRICT

#### Purpose

The purpose of this district is to provide locations for single-family residential areas with low population densities. Restrictions and requirements are intended to preserve and protect the single-family residential character by preventing incompatible uses and facilities from developing.

#### Permitted Uses

Single-family detached dwellings  
Single-family attached dwellings (up to 2)  
Manufactured Home  
Churches  
Neighborhood Utilities  
Electrical Substation  
Accessory Structure  
Group Daycare  
Fences  
Agriculture

#### Conditional Uses

Bed and Breakfast  
Cemeteries  
Day Care  
Golf Course  
Group Home  
Home Occupations  
Manufactured Home Parks  
Multi-Family Dwellings  
Private Outdoor Recreation Areas  
Public Parks and Recreation Facilities  
Public Service Facility  
Utility Facility  
Schools  
Wireless Communication Facility on existing support structure

#### Lot and Yard Regulations

All measurements shall be taken from the lot line to the building line (see definitions).

	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard	Maximum Height
All Uses	7,000 square feet	125 feet	30 feet	10 feet	50 feet	35 feet

**4.05.04 R-2: GENERAL RESIDENTIAL DISTRICT**

**Purpose**

The purpose of this district is to provide locations for single-family and multi-family dwellings in areas with medium to high density.

**Permitted Uses**

- Single-family detached dwellings
- Single-family attached dwellings (up to 2)
- Multi-Family Dwellings
- Manufactured Homes
- Churches
- Neighborhood Utilities
- Electrical Substation
- Group Daycare
- Fences
- Agriculture
- Accessory Structure

**Conditional Uses**

- Assisted Living Facility
- Boarding House
- Cemeteries
- Day Care
- Fairgrounds/Rodeo Grounds
- Golf Course
- Group Home
- Hospital
- Manufactured Home Parks
- Medical and Health Facilities
- Nursing Home
- Public Parks and Recreation Facilities
- Public Service Facility
- Utility Facility
- Sanitarium

**Lot and Yard Regulations**

All measurements shall be taken from the lot line to the building line (see definition).

	<b>Lot Area</b>	<b>Lot Width</b>	<b>Front Yard</b>	<b>Side Yard</b>	<b>Rear Yard</b>	<b>Maximum Height</b>
<b>Single &amp; Two Family Dwelling</b>	7,500 square feet	60 feet	30 feet	10 feet	50 feet	35 feet
<b>Multi-Family Dwelling</b>	3,000 square feet	50 feet	25 feet	5 feet	25 feet	35 feet
<b>All Other Uses</b>	5,000 square feet	50 feet	25 feet	10 feet	25 feet	35 feet

#### **4.05.05 C-1: COMMERCIAL DISTRICT**

##### **Purpose**

The purpose of this district is to provide for a wide variety of commercial uses generally located at major intersections and along major roads with specific attention to the carrying capacity of roads and streets, and to encourage provision of adequate off-street parking and loading space. It is not the intent of this district to encourage the extension or enlargement of strip commercial areas.

##### **Permitted Uses**

Retail trade or service  
Office  
Personal service  
Hotel/Motel  
Motor vehicle service station/gas dispensing station  
Hospital/Clinic  
Museums  
Libraries  
Historical Sites  
Movie Theaters  
Electrical Substation  
Wireless Communication Facility on existing support structure  
Telecommunications Tower  
Day Care Center  
Schools  
Churches  
Motor Vehicle Repair Shop  
Off-premise signs  
Greenhouse/Nursery  
Drive-in theater  
Car Wash  
Motor vehicle sales, display, and service  
Lumberyard  
Bus/truck terminal  
Broadcast tower  
Commercial Recreation Facility  
Public Service Facility  
Public Parks and Recreational Facilities  
Automobile Parking  
Agribusiness  
Wholesale Merchandising/Trade  
Farm implement sales, display, and service  
Farm store, feed store

##### **Conditional Uses**

Food Lockers  
General & Household Goods Warehousing & Storage  
Motor Freight Terminals, Garaging, Equipment Maintenance

Refrigerated Warehousing  
Tourist Camps  
Veterinarian, Animal Hospital, Kennel

**Lot and Yard Regulations**

All measurements shall be taken from the lot line to the building line (see definitions).

	<b>Lot Area</b>	<b>Lot Width</b>	<b>Front Yard</b>	<b>Side Yard</b>	<b>Rear Yard</b>	<b>Maximum Height</b>
<b>All Uses</b>	10,000 square feet	90 feet	40 feet	25 feet	20 feet	45 feet

**4.05.06 I-1: LIGHT INDUSTRIAL DISTRICT**

**Purpose**

The purpose of this district is to provide for a number of light manufacturing, wholesale, warehousing, and service uses in an attractive industrial park-like setting. The industrial uses should be located at major intersections and along major roads with specific attention to the carrying capacity of roads and streets, and to encourage provision of adequate off-street parking and loading space.

**Permitted Uses**

- Agriculture
- Agribusiness
- Wholesale Trade
- Light manufacturing
- Contractor’s shop/storage yard
- Office
- Public utility facility
- Frozen food locker
- Motor vehicle service station
- Electrical substation
- Bus/truck terminal
- Warehouse, mini-warehouse
- Lumberyard
- Retail trade or service
- Truck or bus wash
- Truck repair, sales, and service
- Farm store or feed store
- Farm Implement sales, display, and service
- Motor vehicle repair shop
- On-Premise signs
- Off-Premise signs

**Conditional Uses**

- Recycling collection or processing facility
- Automobile storage yard

**Lot and Yard Regulations**

All measurements shall be taken from the lot line to the building line (see definitions).

	<b>Lot Area</b>	<b>Lot Width</b>	<b>Front Yard</b>	<b>Side Yard</b>	<b>Rear Yard</b>	<b>Maximum Height</b>
<b>All Uses</b>	10,000 square feet	80 feet	40 feet	25 feet	20 feet	45 feet

## **4.05.07 I-2: HEAVY INDUSTRIAL DISTRICT**

### **Purpose**

The purpose of this district is to provide for general industrial uses which may create some nuisance and which are not properly associated with, nor compatible with residential, office, or commercial establishments. All uses in this district shall comply with any state or local regulations regarding noise, emissions, dust, odor, glare, vibration or heat when applicable. The industrial uses should be located at major intersections and along major roads with specific attention to the carrying capacity of roads and streets, and to encourage provision of adequate off-street parking and loading space.

### **Permitted Uses**

Agriculture  
Agribusiness  
Wholesale Trade  
Light manufacturing  
Contractor's shop/storage yard  
Office  
Public utility facility  
Frozen food locker  
Motor vehicle service station  
Electrical substation  
Bus/truck terminal  
Warehouse, mini-warehouse  
Lumberyard  
Retail trade or service  
Truck or bus wash  
Truck repair, sales, and service  
Recycling collection or processing facility  
Farm store or feed store  
Automobile storage yard  
Farm Implement sales, display, and service  
Motor vehicle repair shop  
On-Premise signs  
Off-Premise signs

### **Conditional Uses**

Stockyards  
Rendering  
Distillation of Products  
Refining  
Tank farm; petroleum products terminal  
Grain terminal; grain processing  
Junkyard  
Manufacture and storage of electric transformers  
Mining  
Quarry

Airport  
Solid Waste transfer facility  
Salvage Yard  
Wind Energy Conversion Systems

**Lot and Yard Regulations**

All measurements shall be taken from the lot line to the building line (see definitions).

	<b>Lot Area</b>	<b>Lot Width</b>	<b>Front Yard</b>	<b>Side Yard</b>	<b>Rear Yard</b>	<b>Maximum Height</b>
<b>All Uses</b>	10,000 square feet	80 feet	40 feet	25 feet	20 feet	45 feet



#### **4.05.08 APO: AQUIFER PROTECTION OVERLAY DISTRICT**

##### **Purpose**

The district is intended to preserve the quality and quantity of the area's water resources so as to ensure a safe and adequate supply of drinking water for present and future generations. Restrictions shall apply to land use activities which have the potential to contaminate water resources, including aquifers in use and those having the potential for future use as a public water supply. The purpose of the district is to prohibit certain uses which pose the greatest threat to groundwater contamination and to impose reasonable and adequate safeguards on other uses which exhibit a potential to contaminate the groundwater. The Aquifer Protection Overlay District is an overlay whose boundaries are superimposed on all districts established by this ordinance. It is not intended that this district interfere with, abrogate, or annul any other rules or regulations of this ordinance, except that if the Aquifer Protection Overlay District imposes a greater restriction than the underlying zoning district regulations, the greater restriction shall apply.

##### **Establishment / Delineation of an Aquifer Protection Overlay District**

The shallow/surficial aquifer boundary was mapped using data from the South Dakota Geological Survey and the United States Geological Survey. The map only serves as a general guide to the locations and depths of the mapped aquifer units. Boundaries shown are general in nature and may be modified in the future as site/area specific information is obtained. Additional information shall be used whenever available to more precisely determine aquifer locations and depths. Actual site-specific aquifer boundaries and depths may differ from those shown on the map. The mapped boundaries are drawn at the discretion of geologists and hydrologists based on best available information. Site-specific hydro-geologic information may be necessary to verify the location of a proposed use in relation to an underlying shallow aquifer. Any applicant that is identified as being within the aquifer protection overlay zone, as denoted on the map, can provide drilling logs from soil borings on and/or near the site of the proposed use to conclusively prove that it is not located above a shallow/surficial aquifer area. The standards utilized by the South Dakota Department of Environment and Natural Resources for soil borings will be followed.

##### **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 plus any delineated adjacent lands not underlain by the aquifer with sufficient slope that contaminated surface water could flow directly onto Zone A.

##### **Permitted Uses**

All uses as outlined in the underlying zoning districts may be allowed provided they can meet the performance standards as outlined for the Aquifer Protection Overlay District.

##### **Conditional Uses**

All uses as outlined in the underlying zoning districts may be allowed provided they can meet the performance standards as outlined for the Aquifer Protection Overlay District.

## **Prohibited Uses**

Animal Feeding Operations (AFO) installed after the adoption of this ordinance  
Concentrated Animal Feeding Operations (CAFO) installed after the adoption of this ordinance  
Manure storage areas except above ground tanks  
Waste Disposal except the Spreading of Solid and Liquid Animal Waste  
Unenclosed Storage of Road Salt  
Disposal of Snow containing De-icing Chemicals  
Disposal of Radioactive Waste  
Injection Well (Class V Well)  
Cemetery  
Junk or Salvage Yard  
Sanitary Landfill, Solid Waste Transfer Facility  
Petroleum Products Terminal  
Manufacture of a Regulated Substance  
Land spreading of petroleum contaminated soil  
Land spreading or dumping of waste oil  
Chemigation  
Transmission Facilities designed to transport liquid hydrocarbons or liquid hydrocarbon products  
*(Amended by Ordinance No. 08-03 7/01/08)*

## **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.

## **Permitted Uses**

All uses as outlined in the underlying zoning districts may be allowed provided they can meet the performance standards as outlined for the Aquifer Protection Overlay District.

## **Conditional Uses**

Small or medium Concentrated Animal Feeding Operations (CAFOs) or Animal Feeding Operations (AFOs) may obtain a conditional use permit provided that site specific borings made to current DENR standards and certified by a South Dakota licensed engineer demonstrate that the proposed site is not located over a shallow/surficial aquifer, and further provided that a SD General Water Pollution Control Permit has been obtained.

Small Animal Feeding Operations (AFOs) with fewer than one-fourth (1/4<sup>th</sup>) the maximum number of animals listed in Table 1. of Section 3.07.4, are not required to obtain a SD General Water Pollution Control Permit provided that such site specific borings demonstrated that the proposed site is not located over a shallow/surficial aquifer.

All uses as outlined in the underlying zoning districts provided they can meet the performance standards as outlined for the Aquifer Protection Overlay District.

### **Prohibited Uses**

Large Concentrated Animal Feeding Operations (CAFO)  
Animal Feeding Operations (AFO) located over a shallow/surficial aquifer  
Land spreading of petroleum contaminated soil  
Land spreading or dumping of waste oil  
Class V injection wells

### **Performance Standards**

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

1. New or replacement septic tanks and associated drain fields for containment and disposal of human or animal wastes must conform with regulations established by the South Dakota Department of Environment and Natural Resources.
2. Manure storage areas may be permitted in Zone B but must be constructed in conformance with good engineering practices as recommended by the Natural Resource Conservation Service and/or the South Dakota Department of Environment and Natural Resources for Waste Storage Ponds.
3. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a 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 the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste, except for spreading of manure, in excess of 1,000 pounds and/or 100 gallons which has the potential to contaminate groundwater 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 accessible sumps.
5. When pastured animals are concentrated for winter feeding, measures shall be employed to prevent runoff of manure.
6. Discharge of industrial process water on site is prohibited without County Zoning Office approval.
7. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.

8. Any facility 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 materials 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. For above ground facilities, an impervious dike, above the 100 year flood level and capable of containing 120 percent of the largest storage volume, will be provided with an overflow recovery catchment area (sump).
  - b. For equipment failures, plans shall include but not be limited to:  
Below ground level, provision for removal and replacement of leaking parts, a leak detection system with monitoring and an overflow protection system.  
  
Above ground level, provision for monitoring, replacement, repair and cleanup of primary containment systems.
  - c. For other natural or man-caused disasters, the owner and/or operator shall report all incidents involving liquid or chemical material which may endanger health and/or safety of disaster personnel and/or general public.
  - d. Agricultural operations are exempted from performance standard 8 unless chemicals stored which are on the Superfund Amendments and Re-authorization Act of 1986 (SARA Title III) extremely hazardous substance list in quantities exceeding the threshold planning quantity at any one time.
9. All abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:67-70, to prevent contamination of groundwater by surface water.
10. The County Zoning Office and the Department of Environment and Natural Resources shall be informed within 24 hours of all leaks and spills of materials that might potentially contaminate groundwater. *(Amended by Ordinance No. 08-03 7/01/08)*
11. Any Transmission Facilities, permitted in Zone B, designed to transport liquid hydrocarbons or liquid hydrocarbon products that will cross either the Yankton-Clay Ditch, Clay Creek or Vermillion River shall have a pipe wall thickness of not less than 0.622". *(Amended by Ordinance No. 08-03 7/01/08)*

# ARTICLE 5

## ADJUSTMENT TO YARD REGULATIONS

### Section 5.01 Location of Some Accessory Buildings.

Accessory structures located ten (10) feet or more from the main building may be erected within five (5) feet of the side and rear property lines. In all cases, accessory structures shall not occupy more than ten (10) percent of the rear yard.

### Section 5.02 Adjustment to Front Yard Requirements.

A front yard may be adjusted to an average of the adjacent structures front yards where existing adjacent structures have a front yard less than required. A new existing farm accessory building may be placed in line with an existing farm accessory building as long as the new building does not conflict with visibility at intersections.

### Section 5.03 Adjustment to Side Yard Requirements.

Buildings constructed prior to the effective date of this Ordinance with side yard setbacks of less than required by this Ordinance, may have additions erected in line with the existing building and provided further that said addition will be erected no closer to the lot line than the existing building.

### Section 5.04 Projection From Buildings.

Every part of any required yard shall be open to the sky and unobstructed except:

- A. Eaves may project into a front, side, or rear yard;
- B. Ordinary projection of sills, belt courses, cornices, vertical solar screen, ornamental features which may project twelve (12) inches;
- C. Air conditioner may project three (3) feet from the building;
- D. An open, unenclosed porch may project into a required front yard for a distance not exceeding ten (10) feet while balconies and paved terraces may project six (6) feet into a required front yard; and
- E. Terraces, uncovered porches, platforms, decks, and ornamental features which do not extend above the level ground (first) floor may project into a required yard, provided these projections be distances at least two (2) feet from the adjacent side or rear lot line.

## **ARTICLE 6**

### **NONCONFORMING AND NONSTANDARD USES**

#### **Section 6.01 Purpose and Intent**

The purpose of this chapter 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.

#### **Section 6.02 Continuation of Nonconforming Uses**

Subject to the provisions of this chapter, the lawful use of a premise existing immediately prior to the effective date of this title may be continued although the use does not conform to the provisions hereof.

#### **Section 6.03 Use Becoming Nonconforming by Change in Law or Boundaries**

Whenever the use of a premises becomes a nonconforming use through a change in the zoning ordinance or district boundaries, such use may be continued although the use does not conform to the provisions hereof.

#### **Section 6.04 Change of Nonconforming Use**

- A. If no structural alterations or additions are made, a nonconforming use may be changed to another nonconforming use of the same or more restrictive classification that:
1. If the proposed use is a permitted use, all conditions must be met or a conditional use permit obtained.
  2. If the proposed use is a conditional use, a conditional use permit must be obtained.

Whenever a nonconforming use has been changed to a more restrictive use or to a permitted use, such use shall not thereafter be changed to a less restrictive use.

#### **Section 6.05 Extension or Enlargement**

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

#### **Section 6.06 Restoration after Damage**

When the use of a building is nonconforming as defined by this title and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than 50 percent of its fair market value, it shall not be restored except in conformity with the provisions of the district in which the building is located or in conformance with the provisions of section 9.04.

#### **Section 6.07 Effect on Use Which Is Illegal Under Prior Law**

Nothing in this title shall be interpreted as authorization for, or approval of, the continuance of the use of

a premise in violation of zoning ordinance in effect immediately prior to the effective date of this title.

### **Section 6.08 Continuation of Nonstandard Uses**

Nonstandard uses existing immediately prior to the effective date of this title 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:

- A. Enlargements, extensions, conversions or structural alterations may be made as required by law or ordinance.
- B. Structural alterations of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yard for the district in which they are located.
- C. 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.

No enlargement, extension, conversion of buildings or structures, structural alterations of buildings or structures shall be made without having first obtained a building permit available from the Zoning Administrator of Clay County.

## **ARTICLE 7**

### **ADMINISTRATION AND ENFORCEMENT**

#### **Section 7.01 Powers and Duties.**

The Zoning Administrator is hereby authorized and directed to enforce all the provisions of the Zoning Ordinance and establish rules for its administration. For such purposes he or she shall have the powers of a law enforcement officer. The Zoning Administrator shall have the power to render interpretations of this ordinance. Such interpretations shall be within the intent and purpose of the Zoning Ordinance, and be set forth in writing. In addition, the Zoning Administrator may appoint or solicit technical advice, inspectors, county officials and other county employees to assist with the administration of the Zoning Ordinance.

#### **Section 7.02 Right of Entry.**

Whenever necessary to make an inspection to enforce any of the provisions of this title, the Zoning Administrator and authorized representatives may enter such building or premises at all reasonable times to inspect. Provided such building or premises is occupied, the Zoning Administrator or authorized representative shall first present proper credentials and request entry. If such building or premises is unoccupied, the Zoning Administrator 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 Administrator or authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Administrator or authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry of the building or premises, no owner or occupant or any other person having charge, care or control of any building or premises shall fail or neglect to promptly permit entry.

#### **Section 7.03 Stop Order.**

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



## **ARTICLE 8**

### **PROCEDURES FOR APPLICATIONS**

#### **Section 8.01 Building, Moving, and Demolition Permits.**

No building, structure, fence, hard surfacing or excavation regulated by ordinance of Clay County shall be erected, constructed, enlarged, altered, prepared, moved, improved, removed, converted or demolished unless a separate permit for each building, structure, fence, hard surfacing or excavation has first been obtained from the Zoning Administrator. No permit shall be issued except in conformity with the provision of this Ordinance, unless a written approval is received for a conditional use, or variance as provided by this Ordinance.

- A. An Application for a Building, Moving, or Demolition Permit, available from the Zoning Administrator, shall be completed by the landowner requesting the Building, Moving, or Demolition Permit. Completed applications shall be returned to the Zoning Administrator for review. To be considered complete, the application form shall be accompanied by the following additional items:
1. Any required attachments and County fees.
  2. Three (3) copies of plans drawn to scale, showing the dimensions and shape of the lot to be built upon, including setback requirements; the sizes and locations of existing buildings, if any; and the location and dimensions of the proposed building or alteration.
  3. Any additional information, as requested by the Zoning Administrator, as lawfully may be required to determine conformance with and provide for the enforcement of this ordinance.
  4. Any “new” construction of housing, in Rural Residential or Agricultural Districts that require a building permit as regulated by the provisions of this ordinance, must also accompany the filing of a Right to Farm Covenant form. The Right to Farm Covenant (RFC) form shall be provided by the Zoning Administrator. Upon receiving the required County fee and a completed RFC form, it shall then be notarized and filed with the Register of Deeds.
- B. If the work described in any permit has not begun with ninety (90) days or been substantially completed within one (1) year of the date of issuance, said permits shall expire and the Zoning Administrator shall give written notice to the applicant, together with notice that further work shall not proceed unless and until a new permit has been obtained.
- C. One (1) copy of the plans shall be returned to the applicant after the Zoning Administrator has marked such copy as either approved or disapproved, and attested to the same by signing said copy of the plans. Two (2) copies of the plans, similarly marked, shall be retained by the Zoning Administrator for County records.
- D. If the Zoning Administrator determines the proposed action would not be in compliance with the provisions of this ordinance, a Building Permit may not be issued, except upon completion of one of the following processes established in this ordinance, as may be applicable to such proposed action. The Zoning Administrator shall inform the applicant when one of the following processes may be applicable:

1. Variance
2. Conditional Use
3. Amendment

E. No building, demolition, or moving permit shall be granted until the applicant files with the Zoning Administrator a promise running to the County that the applicant will promptly repair and make good, to the satisfaction of the County Commission and at the expense of the applicant any and all damage to any pavement, sidewalk, crosswalk, hydrant, street, alley or other property, done or caused by himself or his employees, in the demolition or moving of such building or part thereof, or in connection with the moving or demolition thereof.

Promise shall also be conditioned that the applicant promptly fill in basement areas left open as a result of such moving or demolition and to restore such site(s) to a safe and sanitary condition. The applicant shall indemnify and hold harmless the County against any and all liability for damages, costs, and expenses, arising or be incurred in favor of any person by reason of any negligence or misconduct or act on his part of said building or part thereof or the use of any public ground for such purposes (SDCL 7-8-33).

F. No building or part of a building being moved or demolished shall be allowed to stand still in any public street or any public ground for more than eight (8) hours without written permission from a law enforcement officer.

G. No building moving or demolition permit granted by the County shall authorized the holder thereof to break, injure, or move any telephone, electric light, power or cable TV wire or pole, or to cut, trim, or otherwise interfere with any property without the written permission of the owner or owners thereof .

Issuance of a Building Permit shall indicate that, in the opinion of the Zoning Administrator, the proposed use and/or alterations of existing use are in compliance with the requirements of the Zoning Ordinance. Issuance of a Building Permit shall not be construed as waiving any provisions of this ordinance. Proposed uses and/or alteration of existing uses which are not in compliance with the requirements of the Zoning Ordinance shall not be issued a Building Permit.

### **Section 8.02 Fees.**

A schedule of fees, charges, and expenses for permits, change of zones, appeals, and other matters pertaining to this Zoning Ordinance shall be established by resolution of the County Commission. The current fee schedule shall be available from the Zoning Administrator. All fees shall be the property of the County and shall be paid over to the County Treasurer for credit to the General Fund of the County which under no condition shall be refunded. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

A copy of Clay County's Right to Farm Covenant is listed on the following page.

**RIGHT TO FARM NOTICE COVENANT**

You are hereby notified that the property you are purchasing is located within 1320 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the operation of machinery; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there may be the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs and may not be removed from the record title without consent of the Clay County Planning Commission.

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature

State of South Dakota County of Clay.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactory 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.

\_\_\_\_\_

\_\_\_\_\_

Prepared by:

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

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

## **ARTICLE 9**

### **BOARD OF ADJUSTMENT**

#### **9.01 Establishment.**

The Clay County Commission shall act as the Zoning Board of Adjustment. The Board may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances, and hear appeals to the terms of these regulations in harmony with the general purpose and intent and in accordance with general and specific rules herein contained, in accordance with SDCL 11-2.

*(Amended by Ordinance No. 07-01 6/14/07)*

#### **9.02 Operational Procedure.**

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

*(Amended by Ordinance No. 07-01 6/14/07)*

#### **9.03 Application to County for Variance or Appeal.**

Any person, firm or corporation desiring a variance or wishing to appeal a decision of the Zoning Administrator or authorized representatives shall make application for such request to the Office of Planning and Zoning. Such application shall be provided by the Office and be completed in full by the applicant. All information and records concerning the application shall be transmitted by the Office to the Board of Adjustment within ten (10) business days of the filing.

*(Amended by Ordinance No. 07-01 6/14/07)*

#### **9.04 Fees.**

Upon the filing by the Board of any application for a variance or appeal, the applicant shall pay to Clay County the appropriate fee as designated in Article 8.00. These fees shall be utilized to help defray necessary administrative costs of processing the application as required.

*(Amended by Ordinance No. 07-01 6/14/07)*

#### **9.05 Hearing.**

Upon the filing of an application, the Office of Planning and Zoning shall set a date for public hearing, at which time and place the Zoning Board of Adjustment shall meet to consider the request for variance or appeal. Any person may appear in person, or by agent or attorney.

- A. NOTICE. The Zoning Administrator shall post notices of the public hearing at the County Courthouse and on the property affected at least ten days prior to the scheduled hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a newspaper of general circulation in the area affected, and shall mail notice of the public hearing to adjacent landowners.
- B. DECISION. All requests under this article shall be acted upon at a meeting of the County Commission acting as the Board of Adjustment. Written findings certifying compliance or non-compliance with the specific rules governing the action shall be completed by the Board. The concurring vote of two-thirds of the members of the Board of Adjustment shall be required to approve or modify each request.

*(Amended by Ordinance No. 07-01 6/14/07)*

### **9.06 Variances.**

Variances are designed to allow some flexibility in the Zoning Ordinance, in cases where the exceptional shape of a parcel of land, in cases where use of a property is overwhelmingly affected by exceptional topographic conditions, or any other extraordinary situation or condition of such parcel of land. Variances are to be approved only when a property owner demonstrates that the provisions of all or part of the Zoning Ordinance present an undue hardship on such property owner's use of such parcel of land. A variance shall include a description of the specific regulatory item or items in the Zoning Ordinance which are found to produce said undue hardship. Variances shall also only be granted when the Board of Adjustment finds that such relief from the Zoning Ordinance will be neither detrimental to the public good nor in conflict with the intent of the Zoning Ordinance. A variance shall not be allowed to vary the use regulations.

The following procedures for requesting a Variance shall be followed:

- A. The Zoning Administrator shall review the application for a variance, and shall make a written recommendation to the Board of Adjustment to either approve or not approve said application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application. If any of the information required by 8.01(A) has changed since the original Building Permit application, the revised, updated or corrected information shall accompany the application for a variance.
- B. The Zoning Board of Adjustment shall not vary the regulations unless it shall make written findings based upon the evidence presented to it in each specific case that the specific rules governing individual variances are complied with, and that all of the following conditions are present:
1. Special conditions or circumstances exist which are peculiar to the use or structure involved and are not applicable to other uses or structures in the same district.
  2. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
  3. The special conditions or circumstances are not the result of the applicant's actions.

4. Granting the variance requested will not give the applicant any special privilege that is denied to other uses or structures in the district.
  5. The variance requested is the minimum variance that will make possible the reasonable use of property or structure.
  6. Granting of the variance will comply with the general purpose and intent of this ordinance, and will not be offensive to adjacent areas or to the public welfare.
  7. No nonconforming use or structure in the same district and no permitted or nonconforming use or structure in other districts shall be considered grounds for the issuance of a variance.
- C. In order to preserve the intent of the Zoning Ordinance and to protect the public interest, the Board of Adjustment may attach conditions to a Variance. A Variance shall remain valid only as long as the property owner complies with any terms and conditions of the Variance, as attached by the Board of Adjustment.
- D. The Board of Adjustment shall make a finding that granting such request for Variance either is or is not necessary to relieve an undue hardship on the property owner's use of such parcel of land, and that such decision is consistent with the intent of the Zoning Ordinance.
- E. 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 Administrator shall notify the property owner of record upon invalidation of a variance.

*(Amended by Ordinance No. 07-01 6/14/07)*

### **9.07 Appeals.**

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

*(Amended by Ordinance No. 07-01 6/14/07)*

### **9.08 Appeals from Decision of Board.**

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

*(Amended by Ordinance No. 07-01 6/14/07)*

# **ARTICLE 10**

## **AMENDMENTS AND CHANGE OF ZONE**

### **Section 10.01 Procedure**

Zoning amendments and change of zones are changes to Clay County's Zoning Ordinance. Applications for amendment may be submitted by either the County or any owner of land within the County. The regulations, restrictions and boundaries set forth in this ordinance may from time to time be amended, supplemented, or repealed, provided however, that no such action may be taken until after public hearings, at which parties in interest and citizens shall have an opportunity to be heard.

The following procedure for requesting an amendment shall be followed:

- A. An application, available from the Zoning Administrator, shall be completed and submitted for review and shall be accompanied by any required attachments and fees. The Zoning Administrator shall review the application for amendment or change of zone and forward the application and his/her comments to the Planning Commission for review.
- B. The Zoning Administrator shall set the date, time and place for a Planning Commission public hearing. If an individual landowner has petitioned for a change in zoning of his property, he/she shall notify all adjacent landowners by registered or certified mail on the petitioned zoning change at least seven (7) days prior to the Planning Commission public hearing (SDCL 11-2-28.1) and will be required to bring postal receipts to the public hearing, as well. Property shall be considered as adjacent even though it may be separated from the property of the petitioner by a public road or highway. Notice of the hearing shall be posted on the property for which the rezone or amendment is sought ten (10) days prior to the Planning Commission public hearing. The Zoning Administrator shall also publish notice of the public hearing in a newspaper of general circulation in the area affected for a proposed amendment and change of zone. Such notice shall be published in a legal newspaper of the county once not less than ten (10) days prior to the public hearing.
- C. 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.
- D. The Planning Commission shall either recommend or not recommend approval of the amendment to the County Commission.
- E. The Zoning Administrator shall set the date, time and place for a County Commission public hearing. The Zoning Administrator shall also publish notice of the public hearing in a newspaper of general circulation in the area affected for a proposed amendment or change of zone. Such notice shall be published in a legal newspaper of the county once not less than ten (10) days prior to the County Commission public hearing.
- F. The County Commission shall either approve or not approve the ordinance describing the proposed amendment or change of zone to the Zoning Ordinance, in accordance with standard procedures for reading, approval, publication and effective date (SDCL 7-18A-5).
- G. When a proposed amendment or change of zone is approved by the County Commission, the

amendment shall take effect twenty (20) days after publication, unless the referendum shall have been invoked.



# ARTICLE 11

## CONDITIONAL USE PERMITS

### 11.01 Procedure.

The Planning Commission may authorize by conditional use permit the uses designated in this ordinance when located in a zoning district allowing such use. The Planning Commission shall impose such conditions as are appropriate and necessary to insure compliance with the Comprehensive Plan and to protect the health, safety, and general welfare in the issuance of such conditional use permit. Uses not listed in the District Regulations as eligible for a Conditional Use Permit shall not, in any circumstances, be granted a Conditional Use Permit.

*(Amended by Ordinance No. 07-01 6/14/07)*

### 11.02 Application.

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

- A. Legal description of the land on which such conditional use is requested.
- B. Name, address and phone number of the owner of the property which is the subject of such application.
- C. Name, address and phone number of the person making the application if made by anyone other than the owner.
- D. Zoning district classification under which the property is regulated at the time of such application.
- E. A site plan as described in 11.04.
- F. Any other information concerning the property as may be requested by the Office of Planning and Zoning.

The Zoning Administrator shall review the application, and shall make a recommendation to the Planning Commission to either approve or not approve said application. The Zoning Administrator's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.

*(Amended by Ordinance No. 07-01 6/14/07)*

### 11.03 Fees.

Upon the filing of any application for conditional use with the Office of Planning and Zoning, the applicant shall pay to the County the appropriate fee as designated in Article 8.

*(Amended by Ordinance No. 07-01 6/14/07)*

#### **11.04 Information on Site Plan.**

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

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

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

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

*(Amended by Ordinance No. 07-01 6/14/07)*

#### **11.05 Planning Commission Hearing.**

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

A. NOTICE. The Zoning Administrator shall post notices of the public hearing at the County Courthouse and on the property affected by the proposed Conditional Use Permit at least ten days prior to the scheduled hearing. No less than ten (10) days before the public hearing, the Zoning Administrator shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed Conditional Use Permit, and shall mail notice of the public hearing to adjacent landowners.

If the application covers an Animal Feeding Operation or a Concentrated Animal Feeding Operation, the notice shall contain information on the feeding operation to include the location, number of animals, a brief description of the proposed manure management system, the legal description of the lands in the nutrient management plan, and where to obtain further information.

B. ACTION. The Planning Commission shall decide whether to grant the conditional use with such conditions and safeguards as are appropriate or to deny a conditional use when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Article 11.06.

C. The following procedure shall be followed by the Planning Commission in considering the recommendations of the Zoning Administrator:

1. 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.
2. Before any Conditional Use Permit shall be granted, the Planning Commission must make written findings certifying compliance with the specific rules governing individual Conditional Uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
  - a. Ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - b. Off-street parking and loading areas where required;
  - c. Refuse and service areas, with particular reference to (a) and (b) above;
  - d. Utilities, with reference to locations, availability, and compatibility;
  - e. Screening and buffering with reference to type, dimensions and character;
  - f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with other properties in the district;
  - g. Required yards and other open spaces;

h. General compatibility with adjoining properties and other property in the zoning district in which such use is to be located.

D. In order to preserve the intent of the Zoning Ordinance and to protect the public interest, the Planning Commission may attach conditions to a Conditional Use Permit. A Conditional Use Permit shall remain valid only as long as the original applicant complies with any terms and conditions of the Conditional Use Permit, as attached by the Planning Commission. Failure to comply with the terms and conditions of a Conditional Use Permit may subject the holder of a Conditional Use Permit to revocation or other appropriate action, including, but not limited to, those remedies found in these ordinances, and enforcement actions as authorized herein. The failure to comply with the terms and conditions of a Conditional Use Permit may be considered a violation of the Ordinance.

E. The Planning Commission must make a written finding that it is either empowered or not empowered by the Zoning Ordinance to grant the requested Conditional Use Permit, and that such Conditional Use Permit is either consistent or inconsistent with the intent of the Zoning Ordinance.

*(Amended by Ordinance No. 07-01 6/14/07)*

### **11.06 Appeal of Planning Commission Decision.**

The decision rendered by the Planning Commission on a conditional use permit may be appealed to the Board of County Commissioners. The applicant or any other person aggrieved by the decision of the Planning Commission shall file a written appeal with the Office of Planning and Zoning within five business days of the Planning Commission decision. When an appeal is filed, the Zoning Administrator shall present the Planning Commission's decision to the Board of County Commissioners for review. Notice of the meeting shall be given as required by Article 11.05 (A). The Board shall vote to either uphold, overrule or amend the decision of the Planning Commission.

*(Amended by Ordinance No. 07-01 6/14/07)*

### **11.07 Amendments.**

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

*(Amended by Ordinance No. 07-01 6/14/07)*

### **11.08 Expiration.**

A conditional use permit which has been approved shall expire by limitation and become null and void if the building, work or use authorized by such conditional use permit is not commenced within one year from the date of approval. This provision shall not apply to a conditional use permit approved for a residential use in the A-1 or NRC zoning districts. Upon written request to the Zoning Administrator and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Zoning Administrator, subject to the following conditions:

A. There was no public objection presented during the public hearing process for the original conditional use permit;

B. The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit.

*(Amended by Ordinance No. 07-01 6/14/07)*

### **11.09 Preexisting Uses.**

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

*(Amended by Ordinance No. 07-01 6/14/07)*

### **11.10 Reapplication.**

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

*(Amended by Ordinance No. 07-01 6/14/07)*

### **11.11 Revocation.**

If the County Zoning Administrator finds at any time that the terms, conditions, or requirements of the conditional use permit have not been complied with, or that any phase thereof has not been completed within the time required under the permit or any amendment thereto, the Zoning Administrator shall report this fact to the permittee, landowner, and/or operator, and the Clay County Planning Commission. The County Planning Commission may, after conducting a public hearing, of which the permittee, landowner and/or operator shall be notified, revoke the conditional use permit for failure to comply with the terms, conditions, or requirements of the permit.

*(Amended by Ordinance No. 07-01 6/14/07)*