

# CLAY COUNTY ZONING ORDINANCE

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

*Updated with Amendments through Ordinance No. 2022-16*

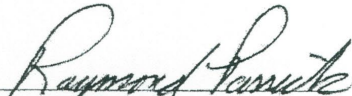
ORDINANCE NO. 2013-04

AN ORDINANCE ADOPTING THE 2013 REVISED  
ZONING REGULATIONS FOR CLAY COUNTY


BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CLAY  
COUNTY, SD:

*Section 1.* That this Ordinance adopts the revised zoning regulations, as set forth in the document titled 2013 Revised Zoning Ordinance for Clay County; provides restrictions, district boundaries and zoning map; provides for the administration, enforcement and amendment of this Ordinance; and repeals any other ordinance or parts thereof in conflict with this Ordinance.

Dated this 4<sup>th</sup> day of June, 2013.

  
Raymond Passick, Chairman  
Clay County, Board of Commission

ATTEST:

  
County Auditor-Ruth A. Bremer



First Reading: May 28, 2013

Second Reading: June 4, 2013

Adoption: June 4, 2013

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# ARTICLE 1

## TITLE AND APPLICATION

### Section 1.01 Title.

These regulations shall be referred to as the 2013 Revised Zoning Ordinance for Clay County.

### Section 1.02 Jurisdiction.

The regulations and zoning district boundaries set forth in this Ordinance shall apply to all unincorporated land within Clay County except those areas which have been approved for municipal joint zoning jurisdiction.

### 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 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.**

If the Zoning Administrator determines that a violation of the provisions of this Ordinance has occurred, they shall issue a notice of violation and give the landowner time to comply with the Ordinance. If the person fails to comply within the time designated, then a citation shall be issued and the landowner assessed a civil penalty, which shall be set by resolution of the Board of County Commissioners. Each day that the violation continues shall be considered a separate offense and subject them to additional civil penalties. The County may file legal proceedings to collect the civil penalties and/or to correct the violation.

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 also assessed a civil penalty.

**Section 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.

**Section 1.08 Repeal of Conflicting Ordinances.**

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

**Section 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.

**ADULT ARCADE** - Any place to which the public is permitted or invited and in which coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images involving specific sexual activities or specific anatomical areas to persons in booths or viewing rooms.

**ADULT BOOKSTORE OR VIDEO STORE** - A commercial establishment that offers for sale or rent any of the following as one of its principal business purposes:

1. Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, videocassettes or reproductions or slides, or other visual representations that depict or describe specific sexual activities or specific anatomical areas.
2. Instruments, devices, or paraphernalia that are designed for use in connection with specific sexual activities.

**ADULT CABARET** - Any nightclub, bar, restaurant, or other similar commercial establishment that regularly features:

1. Persons who appear in a state of nudity or seminudity.
2. Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.
3. Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas.

**ADULT MOTION PICTURE THEATER** - A commercial establishment in which, for any form of consideration, films, motion pictures, videocassettes, slides, or other similar photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas are predominantly shown.

**ADULT ORIENTED BUSINESS** - Any adult arcade, adult bookstore or video store, cabaret, adult live entertainment establishment, adult motion picture theater, adult theater, massage establishment that offers adult service, or nude model studios.

**ADULT SERVICE** - Dancing, serving food or beverages, modeling, posing, wrestling, singing, reading, talking, listening, or other performances or activities conducted for any consideration in an adult oriented business by a person who is nude or seminude during all or part of the time that the person is providing the service.



**ADULT THEATER** - A theater, concert hall, auditorium, or similar commercial establishment that predominantly features persons who appear in a state of nudity or who engage in live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.

**AGRIBUSINESS** - Any business establishment including buildings, structures, lots, parcels or parts thereof which provides services, goods, storage, transportation or other activities directly related to agricultural production.

**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 and 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. This does not include packing plants or animal rendering operations.

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

**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 forty-five days or more in any twelve 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 or more games as an accessory use.

AREA OF SPECIAL FLOOD HAZARD – 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 – 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.

BLIGHTED AREA: an area characterized by traits such as dilapidation, overcrowding, deterioration, dangerous structures, unsanitary, inadequate infrastructure, nuisance, or other factors which inhibit the growth and development of an area.

*(Amended: Ordinance No. 2022-01, 6/9/2022)*

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 - A structure, not including offices or studio, for the transmission or broadcast of radio, television, radar, microwaves or communication signals.

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** - Area, building, or portions thereof used for washing buses and/or trucks.

**CAMPING UNIT** – Any trailer, tent camper, camper, camping cabin, tent, recreational park trailer, or other equipment that may be used by the traveling public at individual campsites located at campgrounds or areas used by the public as campgrounds.

*(Amended: Ordinance No. 2022-06, 4/5/2022)*

**CAMPGROUND** - A plot of ground consisting of two or more campsites 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.

**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.

**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.

**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 criteria for a large, medium or small concentrated animal feeding operation:

1. A large concentrated animal feeding operation as described in Table 1 of Section 3.07.
2. A medium concentrated animal feeding operation as described in Table 1 of Section 3.07 and meets one of the following conditions: 1) Pollutants are discharged into waters of the state through a man-

made ditch, flushing system, or other similar man-made device; or 2) 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 in Section 3.07 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.

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

**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 Planning Commission 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.

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

**COUNTY COMMISSION** - 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 by the square footage of usable space available. The ratio is presently thirty-five square feet per child indoors and fifty 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 adults or six children under fourteen. Included in that count are the providers' own children six years and under. See (Home Occupation).

**DAY CARE, GROUP** - Is normally in a family home. The number of persons cared for is seven to twelve adults or children under the age of fourteen including the provider's own children six 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 primarily for human habitation, including single-family dwellings, but not including hotels, motels, or lodging houses.

**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 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 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 inches, with concrete block or poured walls of a height of not less than eight 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.

**GARDEN CENTER** - 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.

**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.

**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 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 3.09.

**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.

INJECTION WELL - A conduit through which potentially contaminated or hazardous fluids moves from the land surface to the subsurface.

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.

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.

LICENSED INSURANCE PROFESSIONAL - An individual licensed by the State to sell insurance for one or more specific insurance companies.

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

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 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.

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 - Part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of said Register of Deeds prior to (ORDINANCE EFFECTIVE DATE).

MANUFACTURING:

1. LIGHT MANUFACTURING. Those manufacturing processes which are not a nuisance due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building.
2. GENERAL MANUFACTURING. Those manufacturing processes including light manufacturing which have the potential to be a nuisance due to dust, odor, noise, vibration, pollution, smoke, heat, glare, or the operation of the processes outside the building.

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.

MASSAGE ESTABLISHMENT - An establishment in which a person, firm, association, or corporation engages in or permits massage activities, including any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of external soft parts of the body with the hands or with the aid of any mechanical apparatus or electrical apparatus or appliance. This definition does not apply to:

1. Physicians who are licensed pursuant to SDCL Ch. 36-4 or a podiatrist licensed pursuant to SDCL Ch. 36-8.
2. Registered nurses or licensed practical nurses who are licensed pursuant to SDCL

Ch. 36-9.

3. Physician assistants who are licensed pursuant to SDCL Ch. 36-4A or certified nurse practitioners and certified nurse midwives who are licensed pursuant to SDCL Ch. 36-9A.
4. Physical therapists licensed pursuant to SDCL Ch. 36-10.
5. Athletic trainers licensed pursuant to SDCL Ch. 36-29.
6. Massage therapists licensed pursuant to SDCL Ch. 36-35.
7. Chiropractors licensed pursuant to SDCL Ch. 36-5.

MEDICAL CANNABIS OR CANNABIS. Marijuana as defined in SDCL § 22-42-1 and SDCL 34-20G-1.

*(Amended: Ordinance No. 2022-01, 6/9/2022)*

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-situ 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.

MOBILE HOME/MANUFACTURED HOME – Any single-family permanent living quarters, more than eight feet wide and thirty-two feet in length, and designed and built to be towed on its own chassis.

MOBILE HOME PARK – A parcel or tract of land designed and maintained for the purpose of providing a location for mobile homes and manufactured homes as living quarters and where private roads provide access to individual lots. This definition shall specifically exclude sales lots for mobile homes, manufactured homes, travel trailers and similar operations.

MOTEL – 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 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, 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 sixteen 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 “SALVAGE YARD.”

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 fifteen 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.

NON-LICENSED CANNABIS ESTABLISHMENT: an entity which would otherwise meet the definition of a cannabis establishment but which is not legally licensed.

*(Amended: Ordinance No. 2022-01, 6/9/2022)*

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.

NUDE MODEL STUDIO - A place in which a person who appears in a state of nudity or who displays specific anatomical areas is observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by other persons who pay money or other considerations. The term, nude model studio, does not

include a proprietary school that is licensed by this state, a college, or a university that is supported entirely or in part by taxation, a private college or university that maintains and operates educational programs in which credits are transferable to a college or university that is supported entirely or in part by taxation or a structure to which the following apply:

1. A sign is not visible from exterior of the structure and no other advertising appears indicating that a nude person is available for viewing.
2. A Student must enroll at least three days in advance of a class in order to participate.
3. No more than one nude or seminude model is on the premises at any time.

NUDE, NUDITY OR STATE OF NUDITY - Any of the following:

1. The appearance of a human anus, genitals, or a female breast below a point immediately above the top of the areola.
2. A state of dress that fails to opaquely cover a human anus, genitals, or a female breast below a point immediately above the top of the areola.

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 by 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.

ORDINARY HIGH WATER MARK - The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The ordinary high water mark defines the channel of a stream as determined by the appropriate state or federal agency.

OUTDOOR STORAGE - The keeping, in an unroofed area, of any goods, material, merchandise, or vehicles in the same place for more than twenty-four hours. Goods, material, merchandise, or vehicles shall not include items listed, nor be of a nature as indicated in the definition of salvage yard 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, considering requests for conditional permits 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 involving a process that is considered printing, imprinting, reproducing, or duplicating images and using printing methods including, but not limited to, offset printing, lithography, web offset, photo imaging, flexographic and/or screen process printing.

**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.

**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.

**QUARTER-QUARTER SECTION** - A quarter of a quarter section as determined by the United States Rectangular Land Survey land survey system shall be considered a quarter-quarter section for purposes of these regulations. For purposes of these regulations, rights-of-way for public or private transportation shall not impact the completeness of a quarter-quarter section.

**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. (To include, but not limited to: commercial campground, riding stables, river float activities, shooting sports, events centers, etc.)

*(Amended: Ordinance No. 2022-06, 4/5/2022)*

RECREATION FACILITY, PRIVATE – A recreation facility operated by a nonprofit organization and open only to bona fide members and guests of such nonprofit organization. (To include, but not limited to: 4-H grounds, Girl/Boy Scout camps, religious retreats, rodeo clubs, etc.)

*(Amended: Ordinance No. 2022-06, 4/5/2022)*

RECREATION FACILITY, PUBLIC – A recreation facility open to the general public. Generally, public recreation facilities are usually owned and operated by a governmental agency. (To include, but not limited to: public parks, public campgrounds, picnic areas, scenic overlooks, etc.)

*(Amended: Ordinance No. 2022-06, 4/5/2022)*

RECREATION FACILITY, INDIVIDUAL – 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 owned by the residential property owner. Use of the facility(s) shall be limited to the property owner, their family members, and non-paying guests. (To include up to four (4) campsites as well as, but not limited to, basketball courts, swimming pools, private animal riding facilities, etc.)

*(Amended: Ordinance No. 2022-06, 4/5/2022)*

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 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 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 concentrated animal feeding operations.

**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).

**SALVAGE YARD** - An open area where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to: scrap iron and other metals, paper, rags, rubber tires, bottles, and motor vehicles. This definition includes an automobile wrecking or dismantling yard, but does not include uses established entirely within enclosed buildings.

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

**SANITARY LANDFILL** - A site for the disposal of municipal solid waste and other refuse material as defined by state or federal law.

**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.

**SEMINUDE** - A state of dress in which clothing covers no more than the genitals, pubic region, and female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices.

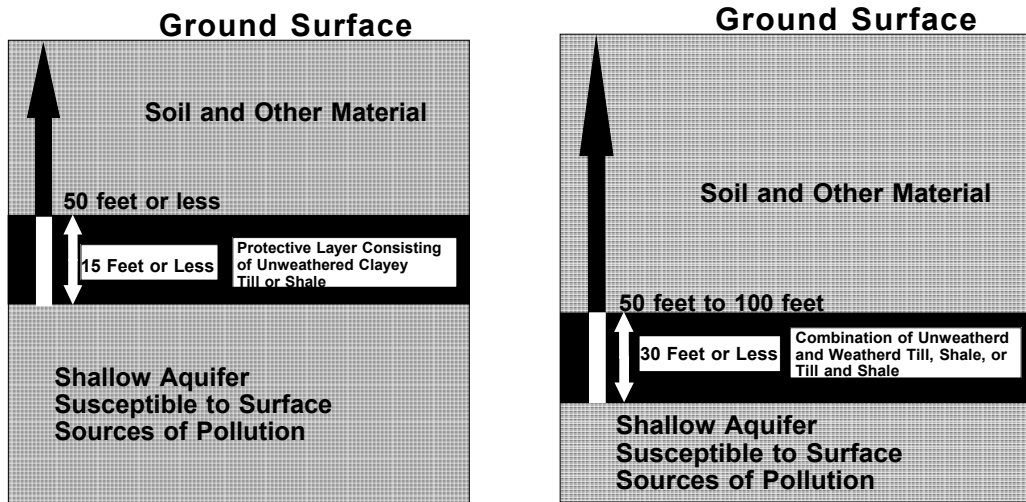
**SETBACK/SETBACK LINE** - That line that is the required minimum distance from any lot line that establishes the area within which the principal use must be erected or placed. The definition of setback as defined in Section 3.07 (5(A)) shall apply to issues related to concentrated animal feeding operations.

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

1. The shallow aquifer is further defined as an aquifer within fifty feet or less below the land surface with fifteen 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 feet but less than one hundred feet below the land surface with thirty

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.

### Illustration 1 Shallow Aquifer



**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 twelve 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.

**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.

SPECIFIED ANATOMICAL AREAS - Any of the following:

1. A human anus, genitals, the pubic region, or a female breast below a point immediately above the top of the areola that is less than completely and opaquely covered.
2. Male genitals in a discernibly turgid state even if completely and opaquely covered.

SPECIFIC SEXUAL ACTIVITIES - Any of the following:

1. Human genitals in a state of sexual stimulation or arousal.
2. Sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation, or sodomy.
3. Fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breast.
4. Excretory functions as part of or in connection with any of the activities under subsection (1), (2), or (3) of this subdivision.

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 - 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 feet above grade as defined herein for more than fifty percent of the total perimeter or is more than twelve 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** - 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 feet, and a body length not exceeding thirty 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.

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 located or 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.

**ZONING ADMINISTRATOR** - The person who is charged with the responsibility of administering and enforcing the zoning ordinance.

# ARTICLE 3

## GENERAL DISTRICT REGULATIONS

### Section 3.01 Visibility at Intersections

- A. Shelter Belts: Shelter belts of one or more rows shall be setback thirty-five 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.

### Section 3.02 Accessory Use and Structures

Accessory uses and structures shall conform to the following standards:

- A. Any accessory building which covers more than 200 square feet shall be secured to the ground to prevent the structure from being moved or damaged by high winds.
- B. Accessory buildings may not be used for dwelling purposes.
- C. Yard setbacks may be adjusted as according to Article 5.

### Section 3.03 Off-Street Parking

- A. 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**

<b>USES &amp; STRUCTURES</b>	<b>MINIMUM PARKING REQUIREMENTS</b>
<b>Single Family Dwellings</b>	Two spaces per unit.
<b>Rooming and Boarding Houses</b>	One space per two beds.
<b>Church or Temple</b>	One space for each four seats in main auditorium.
<b>High School</b>	One space for each three students.
<b>Middle School</b>	Twenty-five spaces plus one space for each teacher and staff person.
<b>Elementary School</b>	Five spaces plus one space for each teacher and staff person.
<b>Hospital</b>	One space per bed.

<b>USES &amp; STRUCTURES</b>	<b>MINIMUM PARKING REQUIREMENTS</b>
<b>Sanitarium or Institutional Home</b>	One space for each three beds.
<b>Auditoriums &amp; Theaters</b>	One space for each four seats.
<b>Hotel or Motel</b>	Five spaces plus one for each sleeping room or suite.
<b>Manufacturing, processing, assembly, industry, contractors shop, storage building, research laboratory, bottling plant, warehouse, or car wash</b>	One parking spaces for each employee on the maximum shift and additional space for trucks and vehicles used in connection with the proposed use.
<b>Restaurant, bar, cafe, or recreation/amusement establishment</b>	One space for each hundred square feet of floor area.
<b>Bowling Alley</b>	Three spaces per alley.
<b>Day care centers</b>	Two spaces for every three staff persons and one space for every eight children licensed.
<b>Retail and all other uses</b>	One space for each three hundred square feet of floor area.

All other uses not specified above shall have minimum off-street parking spaces as determined by the Planning Commission.

### **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.

<b>Use</b>	<b>Gross square feet floor area</b>	<b>Number of Off-street loading spaces</b>
<b>Office Buildings</b>	25,000 - 50,000 every additional 75,000	One 14' x 35' space Add one 14' x 35' space
<b>Retail, Service and Trade Establishments and Industrial and Wholesale Commercial</b>	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 days.
7. Signs projecting over a street, alley or other public space shall project not more than ten feet and be no closer than two feet to a plumb line from curblines; clearance below such signs shall be a minimum of nine 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 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 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 square feet and is not lighted; said sign may be wall, pedestal, or ground type.

C. Agricultural and Natural Resource Conservation 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 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 two 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 square feet in area; said sign may be wall, pedestal, ground or projecting type.

- E. C, I-1 and I-2 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, I-1 and I-2 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 days.
  7. Signs projecting over a street, alley or other public space shall project not more than ten feet and be no closer than two feet to a plumb line from curblines; clearance below such signs shall be a minimum of nine feet.

### **Section 3.07 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. When a General Water Pollution Control Permit is required by the South Dakota Department of Environment and Natural Resources (DENR), the operator shall file copies of all state-approved construction plans with the County.
3. County Conditional Use Permit. Any person who owns, operates, or proposes to own or operate a

Large, Medium, /or Small Concentrated Animal Feeding Operation (CAFO) or a Medium Animal Feeding Operation (AFO) shall obtain a Conditional Use Permit wherever the following occurs:

- a new operation is proposed where one does not exist; or
- a new owner takes over an existing operation; or
- the number of animals at an existing or permitted operation increases beyond what a current permit allows; or
- the species of confined animals changes; or
- a signed complaint is received or made by the Clay 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 or,
- a facility has been non-operational for forty eight (48) months.

The applicant shall obtain a letter opinion from the Natural Resource Conversation Service District (NRCS) to determine whether the operation will be considered an Animal Feeding Operation (AFO) or a Concentrated Animal Feeding Operation (CAFO). The letter shall state how the NRCS made that determination.

A County Conditional Use Permit for Concentrated Animal Feeding Operations may be approved conditioned on receiving final State approval.

4. Number of Animals for Animal Feeding Operations and Concentrated Animal Feeding Operations. For the purpose of these regulations, AFOs and CAFOs are divided into Large, Medium, and Small operations. The following table defines each type of animal confinement (species) with the number of animals indicated.

<b>Table 1. Number of Animals to Define Large, Medium, and Small Concentrated Animal Feeding Operations</b>				
<b>Species of Animal Feeding Operation</b>	<b>Large Animal Numbers Equal to:</b>	<b>Medium Animal Numbers Equal to:</b>	<b>Small A<sup>4</sup> Animal Numbers Equal to:</b>	<b>Small B<sup>5</sup> Animal Numbers Equal to:</b>
Dairy cows (mature milked or dry)	(see paragraph A below)	200 to 699	1 to 199	1 to 199
Veal Calves	1,000 to 5,000*	300 to 999	1 to 299	1 to 299
Cattle other than mature dairy cows or veal calves <sup>1</sup>	1,000 to 5,000*	300 to 999	1 to 299	1 to 299
Swine (weighing more than 55 pounds)	2,500 to 12,500*	750 to 2,499	1 to 749	1 to 749
Swine (weighing less than 55 pounds)	10,000 to 50,000*	3,000 to 9,999	1 to 2,999	1 to 2,999
Horses	500 to 2,500*	150 to 499	1 to 149	1 to 149
Sheep or Lambs	10,000 to 50,000*	3,000 to 9,999	1 to 2,999	1 to 2,999
Turkeys	55,000 to 275,000*	16,500 to 54,999	1 to 16,499	1 to 16,499

<b>Table 1. Number of Animals to Define Large, Medium, and Small Concentrated Animal Feeding Operations</b>				
<b>Species of Animal Feeding Operation</b>	<b>Large Animal Numbers Equal to:</b>	<b>Medium Animal Numbers Equal to:</b>	<b>Small A<sup>4</sup> Animal Numbers Equal to:</b>	<b>Small B<sup>5</sup> Animal Numbers Equal to:</b>
Laying hens or broilers <sup>2</sup>	30,000 to 150,000*	9,000 to 29,999	1 to 8,999	1 to 8,999
Chickens, other than laying hens <sup>3</sup>	125,000 to 625,000*	37,500 to 124,999	1 to 37,499	1 to 37,499
Laying hens <sup>3</sup>	82,000 to 410,000*	25,000 to 81,999	1 to 24,999	1 to 24,999
Ducks <sup>2</sup>	5,000 to 25,000*	1,500 to 4,999	1 to 1,499	1 to 1,499
Ducks <sup>3</sup>	30,000 to 150,000*	10,000 to 29,999	1 to 9,999	1 to 9,999
Geese	30,000 to 150,000*	10,000 to 29,999	1 to 9,999	1 to 9,999

\* 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> Operation uses a liquid manure handling systems.

<sup>3</sup> Operation uses other than a liquid manure handling system.

<sup>4</sup> Potential water pollution hazard.

<sup>5</sup> No pollution hazard.

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

A. Any person who owns or operates or proposes to own or operate a dairy of seven hundred (700) or more animals shall be identified as a Large CAFO and shall be required to obtain a Conditional Use Permit from Clay County prior to construction and/or operation of such dairy. This includes new operations, expansion of a current operation, changing the species of a current operation to dairy, and/or restocking a previously permitted operation which has been vacant and not operating. The maximum number of animals allowed in a Large Dairy CAFO is four thousand (4,000). An operator can request to increase the number of dairy animals to five thousand (5,000) if the CAFO has been in continuous lawful operation for a period of eighteen (18) months without an adverse incident by requesting a Conditional Use permit.

The applicant shall include the following information in the application:

- The highest estimated number of animals that would be part of the CAFO, including cow/calf pairs. Clay County recognizes that animal numbers fluctuate in a CAFO and requests the applicant to project animal numbers at the highest the operation would support.
- An operational plan of the truck traffic for hauling milk, feed, and manure.
- A manure management plan including signed agreements securing sufficient land for disposal of manure or waste as required by the size of the operation (may be part of the General Water Pollution Control permit).

The Planning Commission has the authority to deny a conditional use permit to any dairy operator if the operation is deemed too large to be supported by the infrastructure in Clay County and/or poses an unreasonable environmental hazard to Clay County.

5. Standards for Concentrated Animal Feeding Operations

A. Required Minimum Setbacks, Reverse Setbacks and Separation Distances for Animal Feeding Operations, Concentrated Animal Feeding Operations, and Manure Storage. There shall be a minimum setbacks, reverse setbacks and separation distances for all new and expanded AFOs and CAFOs, change in operation thereto, 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”.

<b>SETBACKS</b>	<b>Large</b>	<b>Medium</b>	<b>Small A</b>
Dwellings, Churches, Schools, Businesses, Cemeteries, and Designated State and County Parks	3,960 feet	2,640 feet	1,320 feet
Incorporated Municipality Limits (Irene, Vermillion*, and Wakonda)	5,280 feet	5,280 feet	5,280
Swine Feeding Operation	6,600 feet	3,960 feet	2,640 feet
Public Water Supplies	2,640 feet	2,640 feet	1,320 feet
Private Wells (other than owner’s or operator’s)	1,320 feet	1,320 feet	1,320 feet
Private Wells (owner’s or operator’s)	150 feet	150 feet	150 feet
Waters of the State (lakes, rivers, and streams)	300 feet	300 feet	200 feet
Federal, State, & County Road ROW	150 feet	150 feet	150 feet
Township Road ROW	150 feet	150 feet	150 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***
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\*For Vermillion, also see requirements of Joint Jurisdiction Zoning, City of Vermillion/Clay County.

\*\*The Planning Commission 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 AFO or a CAFO closer than the separation distances from manmade structures set forth in these regulations, the Applicant can request an exception for the separation distance from the Planning Commission. The Planning Commission 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 shall run with the land.

C. Manure Application Setbacks. The following manure application setbacks apply to all classes of AFOs and CAFOs.

**COUNTY MANURE APPLICATION SETBACKS**

<b>CATEGORY</b>	<b>SURFACE OR IRRIGATION APPLIED</b>	<b>INCORPORATED OR INJECTED</b>
Waters of the State (lakes, rivers and streams)	200 feet	100 feet
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
Public Wells	1,000 feet	1,000 feet
Private Wells	250 feet	250 feet
Residence other than 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. AFOs and CAFOs shall dispose of dead animals, manure, and wastewater in such a manner as to control odors and flies. The Planning Commission 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 any containment structures 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. AFOs and CAFOs may utilize vertical storage systems, deep pit concrete lined holding ponds, or holding ponds with approved impermeable liners for manure storage using standards developed for design, construction, operation and maintenance of CAFOs approved by the South Dakota DENR.
- E. The Planning Commission may request information relating to the operation not contained in these regulations.
- F. The Planning Commission 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 Planning Commission will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has had an interest in.
- I. All AFOs and CAFOs shall comply with the South Dakota Department of Environment and Natural Resources manure storage requirements and construction specifications.
- J. Water containing waste must not be allowed to migrate from the area of application.
- K. An applicant may expand a Small AFO/CAFO to a Medium AFO/CAFO even if a dwelling is located within the separation distance, provided the applicant meets the following requirements:
- The use is allowed in the zoning district;
  - The operation must be in existence prior to the promulgation of the September 26, 2017 regulations.
  - The operation must exist as a Small AFO/CAFO prior to the dwelling/structure being built;

- Operator must provide plans for a barrier between the operation and the structure such as trees, berm, or other barrier approved by the Planning Commission; and
- The expansion must take place in a direction that does not reduce the existing setback between the operation and the dwelling/structure.

These requirements may be waived by the Planning Commission due to extenuating circumstances such as lay of the land or a water course. The affected landowner may provide a written waiver of these requirements as stated in paragraph 3.07(5)(B).

6. Information Required for Concentrated Animal Feeding Operation Permit.

Prior to consideration by the Planning Commission, the applicant for a Conditional Use Permit for a Medium AFO or a CAFO shall provide the following information to the Clay County Zoning Administrator:

- A. Owner's, manager's, management company's and all similar entity's names, addresses and telephone numbers.
- B. Legal description of site.
- C. Number and species.
- 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 if required. A letter shall be requested from the DENR as to whether the site requires a GWPC.
- G. A plan for disposal of dead animals and manure.
- H. Information on soils, shallow aquifers, designated wellhead protection areas, and one hundred (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. Road haul/maintenance agreements with the township, county, or state.
- K. Applicant is required to obtain and maintain liability insurance of an adequate amount determined by a licensed insurance professional. This insurance is intended to provide funds to ensure proper clean-up of any environmental damage caused by the operation of the AFO or CAFO and/or to ensure proper closure of the confinement operation. Applicant will provide the County with Proof of Insurance when insurance is obtained or thirty (30) days after construction is completed. Zoning Administrator will also request the insurance company to



notify Zoning Administrator if insurance is not maintained.

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

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

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

- A. Intent and Purpose. The unique and diverse landscapes of Clay County are among its most valuable assets. Destroying these assets risks undermining the very characteristics responsible for our economic vitality and future potential. Protecting these assets will require that location and design of tower facilities be sensitive to, and in scale and harmony with, the aesthetics of Clay County. This section will provide standards for the proper placement and design of tower facilities in order to ensure their compatibility with surrounding aesthetics and development.

The purpose of this section is to provide predictable and balanced standards for the siting and screening of tower facilities on both public and private property within the jurisdiction of Clay County. These standards will protect the health, safety and general welfare of persons in the area(s) surrounding such tower facilities from possible adverse effects related to the placement, construction or modification of such tower facilities.

Leasing of public buildings, publicly owned structures, and/or public rights-of-way for the purposes of locating wireless telecommunication services facilities and/or equipment is encouraged. In cases where a facility is proposed on County property, specific locations and compensation to the County shall be negotiated in lease agreements between the County and the provider on a case-by-case basis, and would be subject to all of the review criteria contained in this section. Such agreements would not provide exclusive arrangements that could tie up access to the negotiated site(s) or limit competition, and must allow for the possibility of "co-locating" (sharing of facilities) with other providers.

Regulations regarding development of telecommunications towers, antenna support structures and wireless communications facilities are intended to encourage development of a competitive wireless communications market place while protecting the health, safety and welfare of the public and maintaining the aesthetic integrity of the County. The regulations cover placement, construction and modification of telecommunications towers, antenna support structures and wireless communications facilities. The intent of this section includes the following:

1. To regulate the location of telecommunication towers, antenna support structures and wireless communication facilities.
2. To protect residential areas and land uses from potential adverse impact of telecommunications towers, antenna support structures and wireless communication facilities.

3. To minimize adverse visual impact of tower sites through design, siting, landscaping and innovate camouflaging techniques.
4. To promote shared use and co-location of sites.
5. To insure telecommunications towers, antenna support structures and wireless communication facilities are compatible with surrounding land uses.
6. To facilitate the provision of services to residents and businesses in an orderly fashion.
7. To promote the location of telecommunications towers, antenna support structures and wireless communication facilities in non-residential areas.
8. To avoid potential damage to property caused by telecommunications towers, antenna support structures and wireless communication facilities by insuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or when determined to be structurally unsound. Specifically, the Telecommunication Act of 1996 affirms the local government's right to control the siting, construction and modification of cellular and other wireless telecommunication facilities. The permitting process of this article will not discriminate among providers of functionally equivalent services and will not prohibit the provisions of personal wireless services.

B. Applicability. It shall be unlawful for any person, firm, or corporation to erect, construct in place, or place any tower facility without first receiving a permit(s) from the Zoning Administrator. Nor may any person, firm, or corporation alter, modify, transform, add to or change in any way an existing tower facility without first receiving a permit(s) from the Zoning Administrator.

C. Co-Location Requirements for New Tower Facilities. New tower facilities shall be designed and constructed to permit the future co-location of other commercial wireless telecommunications services, according to the following criteria:

<u>Height of Structure</u>	<u>Additional Users Facility Must Accommodate</u>
Less than 100'	No Co-location required
Between 100' and 130'	1 additional user accommodated
Between 130' and 160'	2 additional users accommodated
161 ' and greater	3 additional users accommodated

In satisfying co-location requirements, the owner of the tower must provide adequate access to the tower site and space within the owned or leased area to accommodate co-location user's equipment. Nothing in these regulations shall prevent the owner of the tower from requiring remuneration from a co-location user, provided that such remuneration is rate reasonable. The owner of the tower may also establish reasonable technical requirements for co-location to protect the owner's investment and guarantee effective telecommunication service. The owner of the tower shall have the authority to review all plans for co-location uses and require reasonable modifications for such plans to ensure safe and efficient operations of the communication services and protect the owner's investment.

#### D. General Standards.

**Setback:** There shall be a minimum setback of 600' from the tower base to any existing residence or proposed residential development area based on the land use plan except the farmstead residence on the proposed site. Building structures must meet County setback requirements. Towers shall be no more than 200' in height. Towers exceeding 200' may be considered, if FCC and FAA approval is received.

**Fencing:** The tower facility shall be protected by a security fence from six feet to eight feet in height around the perimeter of the site.

**Signage:** The owner's name, telephone number and site ID number shall be posted on the gate of a perimeter fence. No other advertising or identification sign of any kind is permitted on the tower facility, except applicable warning and equipment information as required by the manufacturer or by federal, state or local authorities.

**Lighting:** The light source for any necessary security lighting shall feature down-directional, sharp cut-off luminaries that insure there is no spillage of illumination off the parcel or easement boundary.

Towers shall be of a monopole design unless it is determined that an alternative design would be appropriate for the particular site or circumstance.

All sites and equipment shall be maintained in good condition, order and repair so they shall not endanger the life or property of any person.

#### E. Application Requirements

1. Zoning Administrator may contract with an independent technical expert to review technical materials submitted by the applicant, and/or to determine if additional information is necessary. The tower facility applicant shall pay the cost of such review and/or independent analysis.
2. Name and address of the tower facility owner, record landowner of parcel and any duly appointed agents of the parties.
3. A visual study depicting where within a one mile radius any portion of the proposed tower facility will be visible.
4. Site plan(s) drawn to a scale of one inch equals twenty feet or less, specifying the location of the tower facility, support structures, transmission buildings and/or other accessory uses, access, parking, fences, signs, lighting, landscaped areas and all adjacent land uses within two hundred forty feet of the base.
5. Elevation drawings of "before" and "after" simulating and specifying ground levels, the location and height of antenna(s), support structures, equipment buildings and/or other accessory uses, fences and signs of the tower facility.

6. Map showing the search radius for the antenna location and the proposed broadcast coverage obtained by the tower facility, including a narrative describing a search radius of not less than one (1) mile for the requested site, clearly explaining why the site was selected, identifying and locating landing and takeoff areas of aircraft within the search radius, locating all existing tower facilities, and identifying all other structures that may be potential co-location sites.
  7. Description of the tower facility design. (e.g. monopole)
  8. An affidavit attesting to the fact that the Applicant made reasonable, but unsuccessful, efforts to obtain permission for installation at a co-location facility.
  9. Written, technical evidence from an engineer(s) that the proposed tower or communication facility cannot be co-located to other tower sites.
  10. Written, technical evidence that an engineer registered in the State of South Dakota has provided the design for this specific tower facility and site ensuring the proper standards for design.
- F. Other Requirements. The County may require additional information from the applicant and impose additional standards, regulations or requirements as deemed necessary to protect the public health, safety and welfare. If the Planning Commission considers the information provided inadequate or if the applicant fails to supply required information, the Planning Commission may deny the application on this basis. Other requirements include, but are not limited to, the following:
1. A letter that requires the tower facility owner and successors to allow the shared use of the tower facility if an additional user(s) agrees in writing to meet reasonable industry terms and conditions for shared use.
  2. A copy of the FAA determination or a signed statement that the proposed tower facility has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or that no compliance with Part 77 is required, and the reasons therefore.
  3. A copy of the FCC's license or a signed statement from the proposed operator of the tower facility attesting to the fact that the tower facility complies with current FCC regulations, including compliance with the regulations of the FCC with regard to maximum radio frequency and electromagnetic frequency emissions, or a statement from the applicant that no such compliance is necessary, and the reasons therefore.
  4. Copy of a certificate of insurance for liability and workers compensation insurance that requires notification to Zoning Administrator prior to cancellation will be furnished.
  5. Documentation demonstrating that the tower facility has been designed to conform to applicable state structural building standards and accepted electrical engineering methods and practices as specified in applicable provisions of the National Electrical Code and a sworn statement that following completion of construction the tower facility will be

inspected at the applicant's expense by a qualified engineer licensed by the State of South Dakota.

6. The applicant shall submit proof, in the form of a signed affidavit, demonstrating a good faith effort to lease or purchase space on an adjacent existing tower facility. The affidavit shall state why space is not available, such as:
  - a. The planned tower facility would exceed the structural capacity of the tower facility and the structural capacity cannot reasonably be increased;
  - b. The planned tower facility would cause interference with the usability of other existing or planned equipment at the tower facility; and/or
  - c. An existing tower facility cannot accommodate the planned antenna at a height necessary to function reasonably.

G. Exemptions. Towers exempt from the permitting process include the following:

1. Residential use no more than ten feet above average existing tree canopy or roof line.
2. Normal maintenance to existing tower facilities.

H. Annual Notification - Failure to Comply Deemed Abandonment. The owner of the facility shall file an annual notification in writing to the Zoning Administrator as to the current operation of the tower facility. This annual report due on or before January 15th of each year shall include, but not be limited to, the following information:

1. Tower usage - type of usage, tower in service or out of service.
2. Documentation of antenna - number of co-locates.
3. Certification by owner of compliance with this section - signage, landscaping, lighting.
4. Annual maintenance performed.
5. Any changes from the original conditional use permit.

Failure to comply with this section will deem the tower facility abandoned.

I. Abandonment. Tower facilities that are not in use for one hundred eighty consecutive days shall be considered abandoned and shall be removed by the owner within one hundred eighty days. The applicant must furnish a copy of the relevant portion of an executed lease, which identifies the applicant's obligation to remove abandoned or unused towers, concrete footings, anchors, supporting equipment and antennae prior to the issuance of a conditional use permit to erect a tower.

Removal includes the complete tower facility including related infrastructures, footings and other underground improvements to a depth of thirty-six inches below existing grade, and

restoration to pre-existing vegetative cover. Failure to do so shall be just cause for Clay County to seek legal avenues that will remove the tower facility and restore the site.

The County shall require financial assurances including bonds in an amount sufficient to cover costs of removal of towers, buildings, concrete footings, anchors, supporting equipment, and antennae. Said financial assurances shall be submitted with the conditional use permit application. An engineer's cost estimate is to assist the County in determining the amount of financial assurance necessary to cover removal costs of said towers, buildings, concrete footings, anchors, supporting equipment and antennae.

In the event any towers, buildings, concrete footings, anchors, supporting equipment and antennae have not been removed within one hundred eighty days written notice by the County after abandonment, the County shall have the right to remove the towers, buildings, concrete footings, anchors, supporting equipment and antennae and assess the property for the costs incurred in the removal.

- J. Existing Tower Facilities. Existing tower facilities may continue in use and perform routine maintenance for the purpose now used and may not alter, convert, modify, transform, vary, add to or change in any way the form without complying with Section 3.08. Existing tower facilities shall be considered for the co-location of other antenna(s). The owner of an existing tower facility shall file an annual notification in writing to the Zoning Administrator as to the continuing operation of every tower facility constructed (see subsection H- Annual Notification). Failure to do so shall be determined to mean that the tower facility is no longer in use and considered abandoned.
- K. Maintenance. All tower facilities shall be maintained in a safe and clean manner. The tower facility owner shall be responsible for maintaining a graffiti, debris and litter free site. The landscape plan shall be maintained for the life of the tower facility. Trimming the tops of trees on site shall be allowed, only to maintain the average height of the canopy used to establish tower facility height. All tower facilities shall be subject to periodic inspection to ensure continuing compliance with all conditions of the application submitted and approval requirements.

Telecommunications towers, antenna support structures and wireless communications facilities shall be maintained in compliance with Electronic Industries Association/Telecommunications Industries Associations Standards (latest revision), and so as not to interfere with the use of other property all applicable laws.

Upon the Zoning Administrator's determination that a tower site is a hazard to public safety, the owner shall be required to perform an inspection by a registered professional engineer and make all recommended corrections at the owner's expense.

- L. Time Limit on Tower Facility Construction. Construction of an approved tower facility must be completed within two years following the date of the approval. Landscaping must be installed within the first growing season immediately following construction.

### **Section 3.09 Home Occupations**

**Section 3.09(A) Minor Home Occupation.** In all zoning districts permitting residential dwellings, minor home occupations in compliance with each of the following standards are permitted as accessory uses. Due to their incidental and residential nature, minor home occupations are relatively common accessory uses which are not easily detectable and are not reasonable or desirable to regulate through a conditional use permit.

1. The occupation shall be conducted entirely within a dwelling and clearly incidental to the use of the structure for residential purposes.
2. There shall be no change in the outside appearance of the dwelling.
3. Only residents of the dwelling shall be employed by or participate in the occupation.
4. The storage of equipment, vehicles, or supplies associated with the occupation shall not occur outside the dwelling. Accessory buildings or structures shall not be used for storage.
5. There shall be no display of products visible in any manner when viewed from outside the dwelling.
6. No advertising or display signs shall be permitted other than a nameplate attached to the dwelling. The nameplate shall not be illuminated and shall not be more than two square feet in area. No off premise signs shall be used.
7. The occupation shall not require internal alterations or involve construction features not customary in a dwelling. External alterations intended to create a separate entrance or other feature exclusively for the occupation is prohibited.
8. There shall be only limited and incidental sale of products conducted on the premise.
9. The occupation shall not generate more than four visits per day from clients or customers averaged over a period of seven consecutive days.
10. The occupation shall not result in additional off-street parking spaces for clients or customers.
11. Toxic, explosive, flammable, combustible, corrosive, radioactive or other restricted materials are prohibited.
12. No equipment or process shall be used in the occupation which creates noise, vibration, glare, fumes, or odor detectable to the normal senses off the property.
13. No equipment or process shall be used in the occupation which creates visual or audible electrical interference in any radio or television receiver or causes fluctuations in line voltage off the property.

14. The number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.

**Section 3.09(B) Major Home Occupation.** It is recognized that home occupations which exceed the requirements of Section 3.09(A) may be appropriate in a low density residential setting or if associated with an agricultural use. For the purpose of this ordinance, such uses are classified as either a Class 1 or Class 2 major home occupation, and shall be evaluated giving consideration to the following criteria:

A. Class 1:

1. The occupation shall be conducted entirely within a dwelling and/or accessory building and clearly incidental to the use of the structure for residential purposes.
2. The occupation shall be operated by a member of the family residing in the dwelling.
3. Employees of the occupation shall be limited to residents of the dwelling and up to two non-resident employees, not to exceed four employees on site.
4. In addition to the dwelling, up to two thousand square feet of accessory building space may be used for the occupation.
5. The occupation shall not create noise which, when measured off the property, exceeds 60 decibels between the hours of 8:00 a.m. and 6:00 p.m. The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 p.m. and 8:00 a.m. These off the property noise standards shall not apply to public and railroad rights-of-way.
6. The occupation shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the property.
7. No outside storage, display of goods or merchandise, or external evidence of the occupation shall occur except as outlined in this section.
8. A non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building. Additionally, one nonilluminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.
9. The occupation shall not generate more than ten visits per day from clients or customers averaged over a period of seven consecutive days.
10. There shall be only limited and incidental sale of products conducted on the premise.
11. The number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.



B. Class 2:

1. The occupation shall be conducted in a dwelling or agricultural building accessory to the dwelling which comprise the headquarters for the agricultural use, and such agricultural use is conducted on one or more parcels of land with a total area of at least one-half of a quarter section or equivalent area which must be contiguous to or in close proximity to the headquarters.
2. The occupation shall be clearly secondary to the principal use of the land for agricultural purposes.
3. The owner or occupant of the dwelling shall be engaged in the occupation.
4. The occupation shall have no more than five employees, including residents of the property.
5. The occupation shall be conducted within a completely enclosed building typical of farm buildings. Such building shall be located behind the dwelling, or shall be located at least 200 feet from the nearest road right-of-way.
6. All materials, supplies and products associated with the occupation shall be stored within a building or if open storage of materials or equipment is required it shall be concealed with appropriate screening or landscaping.
7. A non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or agricultural building. Additionally, one nonilluminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.
8. The use shall cease operating when the property is no longer in conformance with Section 3.09(B)(B)(1).

**Section 3.09(C) Major Home Occupation - Permit Procedure.** A conditional use application is required for a major home occupation in accordance with the requirements of Article 11. The application shall be evaluated and conditions established using the criteria in Section 3.09(A) or (B).

**Section 3.10 Mobile Homes/Manufactured Homes.** Regulations regarding mobile homes and manufactured homes shall be as follows:

- A. A park intended for the placement of mobile homes and manufactured homes on rented lots and where the roads are not publicly dedicated shall meet the following minimum standards:
  1. A plan shall be prepared showing the layout of the park, including lot lines, the road system and spacing diagram for all structures. Upon approval of the conditional use for the park, the plan shall be filed with the Zoning Administrator and govern all future development.

2. Each lot shall have a minimum size required for the zoning district in which the park is located. However, a smaller lot size may be approved as part of the conditional use.
  3. No dwelling or any structure, addition, or appurtenance thereto shall be located less than the minimum setback required by the district in which the park is located. The setback requirements may be changed as part of the approval of the conditional use.
  4. Each lot shall abut or face a clear unoccupied space, roadway, or street having a width of at least 34 feet where parking is permitted on both sides, 27 feet in width where parking is restricted to one side only and 24 feet wide where parking is prohibited, or be connected to such street or roadway by a private driveway not less than 12 feet in width, serving no more than four lots. A hard surfaced material shall be used on all roadways.
  5. The park shall be a minimum of ten acres in size.
- B. A subdivision for mobile homes and manufactured homes shall be required to meet the subdivision regulations and the density, area and yard requirements for the district in which it is located. The subdivision shall be a minimum of ten acres in size.
- C. A manufactured home may be considered for a conditional use as specified in the district regulations only if the following requirements are met:
1. The structure shall have been constructed on or after July 15, 1976.
  2. The structure shall be supported by a foundation system consisting of walls along the perimeter and piers on the interior. All foundation walls and piers shall extend a minimum of 42 inches below final grade.
  3. The roofing and siding material shall be consistent with the material used in site-built dwellings.
  4. The roof pitch shall not be less than a 3 in 12 slope.
- D. Mobile homes which are nonconforming uses may be replaced with another such structure by making application for a conditional use. The compatibility of the replacement dwelling with neighboring dwellings shall be considered in reviewing the conditional use request.
- E. A mobile home or manufactured dwelling may be located temporarily on land owned by the occupant during the construction of a dwelling. Placement shall not occur until construction has actually commenced. The unit shall be removed after one year or upon completion of the dwelling, whichever occurs first.
- F. All mobile homes and manufactured homes as defined in Article 26.00 must be located in conformance with these requirements.

### **Section 3.11 Bed and Breakfast Establishments**

- A. Bed and Breakfast establishments 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 bedrooms in such dwelling structure shall be used for such purpose.
- D. Off-street parking requirements shall be one half space per guest room and shall be in addition to parking requirements for the principal use. A tandem arrangement of parking spaces stacked end to end on a hard-surfaced driveway may be used for the off-street parking requirements.
- E. The length of stay shall not exceed fourteen days during any 120-day consecutive period.
- F. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.
- G. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and a floor plan showing a location of sleeping rooms, lavatories, bathing facilities and kitchen shall be submitted with the application.
- H. Signs shall not be more than four square feet in area.

### **Section 3.12 Wind Energy Conversion Systems (WECS)**

The regulations regarding Wind Energy Conversion Systems (hereafter referred to as WECS) shall be as follows:

- A. Intent. The intent of regulations for Wind Energy Conversion Systems is to encourage the development of alternative sources of energy while protecting the health, safety and welfare of the public.
- B. Accessory WECS. The applicant shall provide to the Zoning Administrator documentation that the tower structure for the system has received a professional structural engineer's certification.
  - 1. Height.
    - a. The lowest portion of the blade shall be at least thirty feet above the ground.
    - b. WECS are exempt from the maximum height requirements of this Ordinance.
  - 2. Setbacks.

- a. The WECS shall be located in the rear yard only and shall be set back 1.25 times the total WECS height from the property lines.
  - b. Contiguous property owners and planned developments may construct a WECS for their use in common. If property held by more than one single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Planning Commissions for their approval.
3. Illumination and Security.
  - a. Illumination and markings shall be limited to the requirements of the FAA. There shall be no lights on the tower other than what is required by the FAA. FAA approved red lights shall be used from dusk till dawn. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.
  - b. Access to the WECS shall be restricted by one or more of the following means:
    - i. Tower-climbing apparatus located no closer than twelve (12) feet the ground; or
    - ii. A locking anti-climb device installed on the tower; or
    - iii. Enclosure of the tower by a fence at least six (6) feet high with locking portals.
4. Noise. The noise level of the WECS shall not exceed 50 dB(A) as measured at any property line or the WECS shall not create noise beyond the lot containing the WECS which exceeds 60 dB(A) as measured at the nearest habitable dwelling.
5. Signs. One sign, not to exceed four (4) square feet, shall be posted at the base of the tower and display suitable warning of danger to unauthorized persons, the system's manufacturer, and emergency shut-down procedures. No other signage shall be allowed.
6. Electromagnetic interference. The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within two miles of the proposed WECS location upon application to Clay County for permits. The applicant and/or operator of the facility shall be responsible for the full cost of any remediation necessary to correct any problems, including relocation or removal of the facility, caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers and other components related thereto.
7. 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.
8. Interconnect. The WECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

C. Commercial WECS. Commercial WECS shall be permitted only on lands zoned A-1 Agricultural, C Commercial, I-1 or I-2 Industrial, or RC Recreation/Conservation.

1. Equipment Design.

- a. Tower. The tower(s) shall be of singular tubular steel construction.
- b. Color. The color of the turbines and equipment buildings shall be unobtrusive and non-reflective with a galvanized or matte finish. Black blades are acceptable for mitigation of icing.
- c. Height. The lowest portion of the blade shall be at least thirty (30) feet above the ground and thirty feet above the highest existing structure within a radius of two hundred fifty feet. WECS are exempt from the maximum height requirements of this Ordinance.
- d. Distribution Lines/Power Poles. All on-site electrical wires associated with the WECS shall be installed underground and maintained in conformance with the National Electric Safety Code or other applicable codes.

2. Setbacks.

- a. WECS shall be set back 2 times the total WECS height from any exterior property line.
- b. WECS shall be set back 1.25 times the total WECS height from the right-of-way line of any public road or highway.
- c. WECS shall be set back 3 times the total WECS height from any habitable structure.

3. Illumination and Security.

- a. Illumination and markings shall be limited to the requirements of the FAA. There shall be no lights on the tower other than what is required by the FAA. FAA approved red lights shall be used from dusk till dawn. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.
- b. Each turbine shall be equipped with a braking system and blade pitch control.
- c. All guy wires shall be distinctly marked.
- d. Signs warning of the electrical and other hazards associated with the WECS shall be posted at the base of each tower.
- e. Anti-climbing devices shall be installed on each tower.

4. Noise. The noise level of the WECS shall not exceed 65 dB(A) as measured at any property line.

5. Signs.
  - a. No advertising signs or logos shall be permitted on the WECS.
  - b. One project identification sign, not to exceed twenty-five square feet, shall be allowed.
6. Inoperable or Unsafe WECS/Site Reclamation.
  - a. Unsafe commercial WECS, inoperable commercial WECS, and commercial WECS for which the permit has expired shall be removed by the owner. All safety hazards created by the installment and operation of the WECS shall be eliminated and the site shall be restored to its natural condition to the extent feasible. A bond or other appropriate form of security may be required to cover the cost of removal and site restoration.
  - b. A Commercial WECS shall be deemed inoperable if it has not generated power for twelve consecutive months.
7. Roads.
  - a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township “haul roads” that will be used for the WECS project and shall notify the governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WECS. Where practical all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate governmental body having jurisdiction over approved haul roads for construction of the WECS for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and components. The permittees shall notify the Zoning Administrator of such arrangements.
  - b. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
  - c. Private Roads. The permittee shall promptly repair private roads, easements or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

- d. Dust Control. The permittees shall utilize all reasonable measures and practices of construction to control dust.
8. Soil Erosion and Sediment Control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the Zoning Administrator. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.
  9. Decommissioning/Restoration/Abandonment.
    - a. Decommission Plan. Within 120 days of completion of construction, the permittees shall submit to the Zoning Administrator a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide the resources necessary to fulfill these requirements. The Zoning Administrator may at any time request the permittees to file a report with the Zoning Administrator describing how the permittees are fulfilling this obligation.
    - b. Site Restoration. Upon expiration of this permit, or upon earlier termination of operation of the WECS, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet. To the extent possible, the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the Zoning Administrator and shall show the locations of all such foundations. All such agreements between permittees and the affected landowner shall be submitted to the Zoning Administrator prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.
    - c. Abandoned Turbines. The permittee shall advise the Zoning Administrator of any turbines that are abandoned prior to termination of operation of the WECS. The Zoning Administrator may require the permittees to decommission any abandoned turbine.

- d. Providing Surety. The Zoning Administrator shall decide if it is prudent to include provisions that ensure financial resources will be available for decommissioning. This may include establishing an escrow account into which the project developer/owner will deposit funds on a regular basis over the life of the project. The unit of government shall then have access to the escrow account for the explicit purpose of decommission. Financial provisions shall not be so onerous as to make WECS projects unfeasible.
10. Application Contents. Every application for a commercial WECS permit shall include the following information:
- a. Name and address of the applicant.
  - b. Evidence that the applicant is the owner of the property involved or has written permission of the owner to make such application.
  - c. A plot and development plan drawn in sufficient detail to clearly describe the following:
    - i. Physical dimensions and locations of the property, existing structures, and proposed structures.
    - ii. Location of electrical lines and facilities.
    - iii. Existing topography.
    - iv. Proposed grading and removal of natural vegetation.
    - v. Wind characteristics and dominant wind direction is the direction from which 50 percent or more of the energy contained in the wind flows.
    - vi. Setbacks.
    - vii. Ingress and egress identifying the following factors:
      - 1. Location and distance to the nearest publicly maintained road;
      - 2. A description of the access route from the nearest publicly maintained road to include:
        - a. Road surface material stating the type and amount of surface cover;
        - b. Width and length of access route;
        - c. Dust control procedures;
        - d. A road maintenance schedule or program;
        - e. Utilization of the property under the requested permit.



- d. Utility interconnection data and a copy of written notification to the utility of the proposed interconnection.
- e. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each WECS model, tower and electrical transmission equipment.
- f. A location map to scale of all dwellings within ½ mile of the boundary of the property upon which the WECS are to be located.
- g. If the Zoning Administrator determines it is necessary, the application shall be accompanied by a photograph or detailed drawing of each model of WECS including the tower and foundation; and one or more detailed computer or photographic simulation drawing showing the site fully developed with all proposed WECS and accessory structures.
- h. An application including any WECS which is located within a 100-year flood plain area, as such flood hazard areas are shown on the maps designated by FEMA, shall be accompanied by a Flood Plain Development Permit.
- i. An application including any WECS which is located within two miles of any microwave communications link shall be accompanied by a copy of written notification to the operator of the link.
- j. The types and quantities of wastes, fluids, or pollutants that are proposed to be handled, processed, treated, stored, disposed of, emitted, or discharged at each vessel containing fluid and for the entire project.
- k. Project schedule.
- l. Such additional information as shall be required by the Zoning Administrator.

#### D. Application Review.

1. **Administrative Review.** An Accessory WECS shall require an administrative review. The Zoning Administrator will make a decision to approve or deny within fifteen days of submittal or the application is deemed approved. If a third-party technical study is required, a decision to approve or deny an application may be postponed until the study is complete. Any decision to deny a request to place, construct or modify facilities must be in writing and include specific reasons for the action. The Zoning Administrator's decision can be appealed by the applicant within five working days to the Planning Commission.
2. **Conditional Use Permit.** A conditional use permit is required for a Commercial WECS.
3. **Technical Issues and Expert Review.** Wind Energy Conversion Systems may involve complex technical issues that require review and input that is beyond the expertise of

County staff. The Zoning Administrator may require the applicant to pay reasonable costs of a third-party technical study of a proposed facility. Selection of expert(s) to review the proposal will be in the sole discretion of the County.

4. Building Permit. Administrative and Conditional Use Permit approval of Wind Energy Conversion Systems is separate from the building permit process. Building permits for the construction of facilities can not be issued until the facility is approved through the administrative or conditional use permit process.

**Section 3.13 Irrigation Systems.** The regulations regarding irrigation systems shall be as follows:

- A. To eliminate direct water spray over public roads, it shall be unlawful for any person, persons, or entity to erect, allow to be erected, and/or maintain an irrigation system that sprays water and/or mist directly on or over public roads within Clay County.

**Section 3.14 Medical Cannabis Establishments**

In order to minimize the negative effects cannabis establishments have on adjacent land uses, and to promote the public health, safety, and general welfare of the County, the County Commission adopts the following regulations, recognizing that it has a great interest in the present and future character of the County's agricultural and commercial areas.

- A. Regulations Relating to Medical Cannabis Facilities no medical cannabis cultivation facility shall be owned or operated at a location within the County's zoning jurisdiction except as provided by this section:
  1. A medical cannabis testing facility, medical cannabis manufacturing facility, medical cannabis dispensary, & medical cannabis cultivation facility shall be considered a conditional use in the following districts: C-1: Commercial & I-2: General Industrial.
- B. Setbacks: No medical cannabis facility shall operate within two-thousand six hundred and forty feet (2640') of a residential building, cemetery, church, daycare, or school existing before the date of the cannabis dispensary application. Setback distances shall be measured from the nearest property line of the designated cannabis facility to the subject's closest edge. Such setback distance requirements may be waived provided that the Applicant obtains waivers from all owners of such property within the separation distance. Any unauthorized 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 shall run with the land.
  1. No medical cannabis facility shall operate within one thousand feet (1,000') of another cannabis manufacturing facility. However, co-location of different types of cannabis establishments, under common ownership, shall be allowed on the same location.
- C. Additional Variance and Conditional Use Factors for Cannabis Establishments:

In addition to any other factor which may be properly considered in the grant or denial of a variance or conditional use permit, the following factors shall be relevant for variance and conditional use requests relating to cannabis establishments:

1. That the proposed land use is consistent with the intent of this chapter and will not be contrary to public interest or injurious to nearby properties
2. That the proposed land use will not cause or contribute to the formation or expansion of blighted area.
3. Co-location of different types of cannabis establishments, under common ownership, shall be allowed on the same location.

D. Prohibited Districts for Cannabis Establishments

1. All types of medical cannabis establishments are prohibited in the following districts:  
NRC: Natural Resource Conservation & RR: Rural Residential.
2. All non-licensed medical cannabis establishments are prohibited in all zoning districts.

E. County Conditional Use Permit. Any person or entity who proposes to own or operate cannabis establishments shall obtain a Conditional Use Permit in accordance with the requirements of Article 11.

1. Each individual medical cannabis establishment shall be required to obtain a conditional use permit, regardless of ownership or co-location.
2. No medical cannabis establishment may convert from one medical cannabis establishment type to another without first obtaining a conditional use permit.
3. The applicant will be required to submit background checks in accordance with the Clay County Licensing Regulations for Cannabis Establishments as part of the conditional use permit. The background checks will not be considered by the Planning and Zoning Commissions when reviewing conditional use permits.

F. A County Conditional Use Permit for Medical Cannabis Establishments may be approved conditioned on obtaining both a County and State medical cannabis establishments license.

G. Standards for issuance of a building permit for a medical cannabis establishments:

1. No building permit shall be issued by the Zoning Administrator until the Applicant has received their County and State medical cannabis establishments license(s)
2. Should a signed and approved County building permit be required by an agency before a County and/or State cannabis establishments license(s) are granted, a building permit may

be issued the Zoning Administrator. However, any construction of structures shall not commence until the Applicant has provided copies of their completed County and State cannabis establishments license(s) to the Zoning Administrator.

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

**Section 3.15 CAMPGROUND FACILITIES.** A conditional use application is required for a Campground Facilities with more than four (4) campsites (Private, Public, or Commercial Recreation Facility) following the requirements of Article 11. The application shall be evaluated, and conditions established using the criteria in Section 3.15.

- A. A designated campground intended for the placement of more than four (4) campsites camping units on rented lots and where the internal service roads are not publicly dedicated shall meet the following minimum standards:
1. A site plan for the designated campground shall be prepared to show the campground's layout including lot lines, the road system, camping units, and a spacing diagram for all structures/lots. Upon approval of the conditional use for the designated campground, the plan shall be filed with the Zoning Administrator and govern all future development.
  2. Access roads shall be provided to each campsite, and all access roads shall have a minimum unobstructed width of fourteen (14) feet for all one-way roads, and twenty (20) feet for all two-way roads. Road surface shall be, at minimum, gravel or crushed rock.
  3. Each lot shall have a minimum of at least two thousand five hundred (2500) square feet size in which the designated camping unit/campground is located.
  4. No mobile homes/manufactured homes shall be located in any campground, except that 1 (one) shall be permitted as an office for the campground.
  5. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or water/air pollution.
  6. The campground shall provide a sanitary method of disposing of solid waste & wastewater in compliance with state laws, rules, and regulations.
  7. Accessory buildings, electrical, water, and sewer facilities shall be designed to provide services adequate for the type of recreational vehicles and/or tent camps to be served. The adequacy will be reviewed by the Planning Commission at the hearing for the Conditional Use.
  8. The Planning and Zoning board may impose other conditions to ensure that the use of property related to the campground is conducted in a manner to be compatible with the surrounding neighborhood.

9. If the road access for the designated private or public campground is not along a county or state highway, there shall be a road haul/maintenance agreement with the township.
10. The Planning and Zoning board may also impose limits on the maximum number of units as a condition to granting the application.
11. A setback distance of 2640 ft shall be required between a designated campground and any residential building. The setback shall be measured from the nearest property line of the designated campground to the residential building closest edge. Any authorized landowner that is within the setback distance may waive the separation distance through a written instrument to be filed with the Clay County Register of Deeds. This waiver shall run with the land.

*(Amended: Ordinance No. 2022-05, 4/5/2022)*

*(Amended: Ordinance No. 2022-16, 3/16/2023)*

# 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
RR	Rural Residential
C	Commercial
I-1	Light Industrial
I-2	General 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, protect natural drainage courses in their capacity to carry runoff water, limit permanent structures and uses of land in areas subject to flooding, protect views, preserve natural settings for wildlife habitats, add to the aesthetic quality of the community, prevent the destruction or pollution of valuable and irreplaceable natural resources, and 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. RR Rural Residential District. The purpose of this district is to provide locations for single-family residential areas with low population densities.
4. 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.
5. 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 the provision of adequate off-street parking and loading space.
6. General 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 require provision of adequate off-street parking and loading space.

7. 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	61
4.05.02 A-1: Agricultural	64
4.05.03 RR: Rural Residential	67
4.05.05 C-1: Commercial	69
4.05.06 I-1: Light Industrial	71
4.05.07 I-2: General Industrial	72
4.05.08 APO: Aquifer Protection Overlay	74



## **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, protect natural drainage courses in their capacity to carry runoff water, limit permanent structures and uses of land in areas subject to flooding, protect views, preserve natural settings for wildlife habitats, add to the aesthetic quality of the community, prevent the destruction or pollution of valuable and irreplaceable natural resources, and lessen the urban density.

### **Permitted Uses**

Agriculture

Farm drainage

Irrigation systems

Historic sites

Fences

Public parks and recreation areas

Fish hatcheries

Recreation Facility, Individual

Minor home occupation in conformance with Section 3.09(A)

Wireless communication facility on existing support structure

Accessory use and structure

Single-family dwelling if the following provisions for building eligibility are met:

1. Each quarter-quarter section shall have three (3) building eligibilities when all the following conditions are met:
  - a. The lot area shall be a minimum of two (2) acres.
  - b. Approval has been granted by the appropriate governing entity for access onto a public road.
  - c. The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
  - d. Prior to any building permit being issued for any new single family residence located in the NRC: Natural Resource Conservation District, a Right to Farm Covenant shall be filed with the Clay County Register of Deeds on the parcel of land upon which the new structure will be located. Only the following shall constitute a Right to Farm Covenant:

#### **“RIGHT TO FARM NOTICE COVENANT**

You are hereby notified that the property on which you are constructing a structure is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural 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 application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; draining of lands; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors,

fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to the issuance of a building permit, may not be removed from the record title without consent of the Clay County Planning Commission.”

Minor home occupation in conformance with Section 3.09(A)

**Conditional Uses**

Golf courses

Private outdoor recreation areas

Public utilities

Major home occupation in conformance with Sections 3.09(B) and 3.09(C)

Bed and breakfast establishment

Utility facility

Electrical substation

Wind energy conversion systems

The transfer of a building eligibility from one parcel to another parcel when all the following conditions are met:

1. The transfer of building eligibility shall occur only between contiguous parcels under the same ownership. For purposes of this section, same ownership means: Two or more parcels of land owned or controlled by an individual or combination of individuals, corporations, partnerships, or other legal entities; with said owners described uniformly on the deed or other legally binding conveyance of each parcel.
2. The minimum lot size shall be two acres but a larger area may be required when soil conditions warrant.
3. The parcel from which the eligibility is transferred shall continue as agricultural land or remain in its present use.
4. Approval has been granted by the appropriate governing entity for access onto a public road.

Mobile home/manufactured home in conformance with Section 3.10 and a building eligibility shall exist on the parcel

Single-family dwelling located on a lot of record

**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	200 feet see #1	50 feet	30 feet	75 feet	None*

**\*Must comply with the Vermillion-Clay Airport Zoning Ordinance, if applicable.**

**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 two hundred (200) 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.
2. There shall be setbacks from the ordinary high water mark (OHWM) on lots that abut or are within seventy-five (75) feet of a navigable waterbody. The setback for all structures shall be one hundred twenty-five (125) feet from the OHWM of the Missouri National Recreational River (MNRR) and seventy-five (75) feet from the OHWM of any other navigable waters to the nearest part of such structure, except for boathouses, boat shelters, piers, private sewage systems, water wells, stairways, walkways and lifts which may be permitted by the terms and conditions of this Ordinance.

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

*(Amended: Ordinance No. 2018-05, 1/3/2019)*

*(Amended: Ordinance No. 2022-06, 4/5/2022)*

## 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  
Historic sites  
Kennels  
Public parks and recreation areas  
Recreation Facility, Individual  
Roadside stands  
Greenhouse/nursery  
Accessory use and structure

A single-family dwelling if the following provisions for building eligibility are met:

1. Each quarter-quarter section shall have three (3) building eligibilities when all the following conditions are met:
  - a. The lot area shall be a minimum of two (2) acres.
  - b. Approval has been granted by the appropriate governing entity for access onto a public road.
  - c. The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
  - d. Prior to any building permit being issued for any new single family residence located in the A-1 Agriculture District, a Right to Farm Covenant shall be filed with the Clay County Register of Deeds on the parcel of land upon which the new structure will be located. Only the following shall constitute a Right to Farm Covenant:

#### **“RIGHT TO FARM NOTICE COVENANT**

You are hereby notified that the property on which you are constructing a structure is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural 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 application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; draining of lands; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required

pursuant to the issuance of a building permit, may not be removed from the record title without consent of the Clay County Planning Commission.”

Animal feeding operations (Small)

Minor home occupation in conformance with Section 3.09(A)

### **Conditional Uses**

The transfer of a building eligibility from one parcel to another parcel when all the following conditions are met:

1. The transfer of building eligibility shall occur only between contiguous parcels under the same ownership. For purposes of this section, same ownership means: Two or more parcels of land owned or controlled by an individual or combination of individuals, corporations, partnerships, or other legal entities; with said owners described uniformly on the deed or other legally binding conveyance of each parcel.
2. The minimum lot size shall be two (2) acres but a larger area may be required when soil conditions warrant.
3. The parcel from which the eligibility is transferred shall continue as agricultural land or remain in its present use.
4. Approval has been granted by the appropriate governing entity for access onto a public road.

Airports

Schools

Churches

Cemeteries

Quarry

Animal feeding operations (Medium)

Concentrated animal feeding operations

Major home occupation in conformance with Sections 3.09(B) and 3.09(C)

Stockyards

Manufactured home

Private recreation areas

Public service facility

Utility and service structure

Recreational facilities

Golf courses

Solid waste transfer station

Wastewater treatment facilities

Water treatment facilities

Bed and breakfast establishment

Electrical substation

Wireless communication facility on existing support structure

Wind energy conversion systems

Kennels

Mobile home/manufactured home in conformance with Section 3.10 and a building eligibility shall exist on the parcel

Agriculturally related operations involving the handling, storage and shipping of farm products

Additional dwelling within a farmstead (Provided there will be no more than two dwellings within the farmstead and the residential structure may be a single-family dwelling, manufactured home or mobile home)

Single-family dwelling located on a lot of record

**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	200 feet	75 feet	30 feet	50 feet	None*

**\*Must comply with the Vermillion-Clay Airport Zoning Ordinance, if applicable.**

**Exceptions:**

1. There shall be setbacks from the ordinary high water mark (OHWM) on lots that abut or are within seventy-five (75) feet of a navigable waterbody. The setback for all structures shall be one hundred twenty-five (125) feet from the OHWM of the Missouri National Recreational River (MNRR) and seventy-five (75) feet from the OHWM of any other navigable waters to the nearest part of such structure, except for boathouses, boat shelters, piers, private sewage systems, water wells, stairways, walkways and lifts which may be permitted by the terms and conditions of this Ordinance.

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

*(Amended: Ordinance No. 2018-05, 1/3/2019)*

*(Amended: Ordinance No. 2022-06, 4/5/2022)*

### 4.05.03 RR: RURAL 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  
Churches  
Neighborhood utilities  
Electrical substation  
Accessory structure  
Fences  
Minor home occupation in conformance with Section 3.09(A)  
Recreation Facility, Individual

#### Conditional Uses

Bed and breakfast establishment  
Cemeteries  
Day care center  
Golf course  
Group home  
Major home occupation in conformance with Sections 3.09(B) and 3.09(C)  
Private outdoor recreation areas  
Public parks and recreation facilities  
Public service facility  
Utility facility  
Schools  
Wireless communication facility on existing support structure  
Mobile home/manufactured home in conformance with Section 3.10 and a building eligibility shall exist on the parcel  
Mobile home/manufactured home subdivision in conformance with Section 3.10

#### 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	1 acre	125 feet	30 feet	10 feet	30 feet	None*

\*Must comply with the Vermillion-Clay Airport Zoning Ordinance, if applicable.

#### Exceptions:

1. There shall be setbacks from the ordinary high water mark (OHWM) on lots that abut or are within seventy-five feet of a navigable waterbody. The setback for all structures shall be one

hundred twenty-five feet from the OHWM of the Missouri National Recreational River (MNRR) and seventy-five feet from the OHWM of any other navigable waters to the nearest part of such structure, except for boathouses, boat shelters, piers, private sewage systems, water wells, stairways, walkways and lifts which may be permitted by the terms and conditions of this Ordinance.

*(Amended: Ordinance No. 2018-05, 1/3/2019)*

*(Amended: Ordinance No. 2022-06, 4/5/2022)*



#### **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 along the major highway corridors (SD Hwy 50, 19, & 46) with specific attention to the carrying capacity of roads and streets, and to encourage the provision of adequate off-street parking and loading spaces.

Commercial uses may locate in parts of the County away from the major highway corridors but only along paved/hard surfaced county roads (with exemptions for small or incidental uses). Their potential impact on residential properties, business, agricultural operations, public uses, natural resources, and historic areas should be considered as part of the rezoning process.

##### **Permitted Uses**

Retail trade or service  
Office  
Personal service  
Hotel/motel  
Motor vehicle service station/gas dispensing station  
Hospital/clinic  
Museums  
Libraries  
Historical sites  
Electrical substation  
Wireless communication facility on existing support structure  
Telecommunications tower  
Day care center  
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  
Wholesale merchandising/trade  
Farm implement sales, display, and service  
Farm store, feed store

##### **Conditional Uses**

Food lockers  
 General and household goods warehousing and storage  
 Motor freight terminals, garaging, equipment maintenance  
 Refrigerated warehousing  
 Veterinarian, animal Hospital, kennel  
 On-sale alcoholic beverage establishment  
 Agribusiness  
 Adult oriented business

**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>	NA	NA	30 feet	10 feet	20 feet	None*

**\*Must comply with the Vermillion-Clay Airport Zoning Ordinance, if applicable.**

*(Amended: Ordinance No. 2018-05, 1/3/2019)*  
*(Amended: Ordinance No. 2022-04, 3/22/2022)*

**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 require 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
- 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	None*

**\*Must comply with the Vermillion-Clay Airport Zoning Ordinance, if applicable.**

*(Amended: Ordinance No. 2018-05, 1/3/2019)*

#### **4.05.07 I-2: GENERAL 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 require 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  
Off-premise signs

##### **Conditional Uses\***

Stockyards/slaughtering of animals  
Rendering  
Distillation of products  
Refining  
Tank farm; petroleum products terminal  
Manufacture and storage of electric transformers  
Mining  
Quarry  
Airport

Solid waste transfer facility  
 Salvage yard  
 Wind energy conversion systems  
 Sanitary landfills

\*In addition to the requirements of Article 11, a conditional use permit may be approved as long as the following information is provided:

1. A description of the proposed project, including a site plan showing the location and purpose of each structure, road and access point.
2. At the discretion of the Planning Commission, the conditional use permit application shall be expanded to include:
  - a. A Community and Environmental Impact Statement describing the full range of anticipated impacts on the County, the environment and natural resources; potential alternatives to the proposal which might mitigate potentially harmful impacts on the community and the environment.

**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	None*

**\*Must comply with the Vermillion-Clay Airport Zoning Ordinance, if applicable.**

*(Amended: Ordinance No. 2018-05, 1/3/2019)*

#### **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 by 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 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 and not specifically prohibited 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 and not specifically prohibited may be

allowed provided they can meet the performance standards as outlined for the Aquifer Protection Overlay District.

### **Prohibited Uses**

Animal feeding operations 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  
Cemetery  
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  
Industrial uses that produce hazardous waste or have the potential to pollute the aquifer

### **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 and not specifically prohibited may be allowed provided they can meet the performance standards as outlined for the Aquifer Protection Overlay District.

### **Conditional Uses**

Small or Medium Animal Feeding Operations (AFOs) and Small or Medium Concentrated Animal Feeding Operations (CAFOs) 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 or that the soil above a shallow/surficial aquifer is proven to have extremely low permeability, and further provided that a SD General Water Pollution Control Permit has been obtained. For the purposes of this Section, a permeability standard set by the State of South Dakota shall be used; however, this

standard may be made more stringent by the Planning Commission on a case-by-case basis.

All uses as outlined in the underlying zoning districts and not specifically prohibited may be allowed provided they can meet the performance standards as outlined for the Aquifer Protection Overlay District.

### **Prohibited Uses**

Large concentrated animal feeding operations (CAFO) installed after the adoption of this ordinance

Land spreading of petroleum contaminated soil

Land spreading or dumping of waste oil

Injection wells

Industrial uses that produce hazardous waste or have the potential to pollute the aquifer

### **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.
4. Any commercial or industrial facility, not addressed by 2 or 3 above, involving the collection, handling, manufacture, use, storage or transfer of any solid or liquid material or waste, except for spreading of manure, in excess of one thousand (1,000) pounds and/or one hundred (100) gallons which has the potential to contaminate 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.
7. Auto service, repair or painting facilities and 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 or transfer of hazardous materials must prepare and have on file with the Zoning Administrator 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 one hundred (100) year frequency flood level. For above ground facilities, an impervious dike, above the one hundred (100) year flood level and capable of containing one hundred twenty (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 overfill 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 to the Zoning administrator and Clay County Sherriff.
  - d. Agricultural operations are exempted from the reporting standards of Performance Standard 8, except those required in Performance Standard 8(c) regarding hazardous substance releases.
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 Zoning Administrator, Clay County Sherriff and the Department of Environment and Natural Resources shall be informed within twenty four (24) hours of all leaks and spills of materials that might potentially contaminate groundwater.
11. Any Transmission Facilities, permitted in Zone B, designed to transport liquid hydrocarbon products across or within Clay County that will cross any waters of the state, including but not limited to the Yankton-Clay Ditch, Clay Creek or Vermillion River shall file proof of satisfaction of all federal, state and industry standards for coming into proximity to such valuable water resources.

*(Amended: Ordinance No. 2017-01, 9/26/2017)*

# ARTICLE 5

## ADJUSTMENT TO YARD REGULATIONS

### Section 5.01 Location of Some Accessory Buildings.

Accessory structures located ten feet or more from the main building may be erected within five feet of the side and rear property lines. In all cases, accessory structures shall not occupy more than thirty 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 provided 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 or rear yard thirty-six inches, exclusive of gutters;
- B. Eaves may project into a side yard twenty-four inches, exclusive of gutters;
- C. Ordinary projection of sills, belt courses, cornices, vertical solar screen and ornamental features which may project twelve inches;
- D. Air conditioners, not to exceed five ton unit or parts thereof, may project into a required side yard, provided that such projections shall be distant at least three feet from the adjacent lot line and shall not extend more than three feet from the building. Such air conditioners may project into a required front yard, but shall not extend more than three feet from the building, and such air conditioner may extend into one side of a corner lot;
- E. An open, unenclosed porch may project into a required front yard for a distance not exceeding ten feet while balconies and paved terraces may project six (6) feet into a required front yard; and
- F. Terraces, uncovered porches, platforms, decks, and ornamental features which do not extend above the level of ground (first) floor may project into a required yard, provided these projections be distances at least two 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 provided 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 ordinance and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than fifty 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. Exception: Single-family dwellings may be restored.

### **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 or his or her representative 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 or his or her representative 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 or his or her authorized representative 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 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.

B. If the work described in any permit has not begun within ninety days or been substantially completed within one 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 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 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 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.

# 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.

### 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 the Zoning Administrator and shall be a public record.

### 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 Zoning Administrator. Such application shall be provided by the Zoning Administrator and be completed in full by the applicant. All information and records concerning the application shall be transmitted by the Zoning Administrator to the Board of Adjustment within ten (10) business days of the filing.

### 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.

### 9.05 Hearing.

Upon the filing of an application, the Zoning Administrator 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 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.

### **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.
  - 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.

### **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.

### **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.

# 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 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 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 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 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 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.

### 11.02 Application.

To obtain a conditional use permit, the applicant shall file an application with the Zoning Administrator 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 Zoning Administrator.

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.

### 11.03 Fees.

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

### 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.

### **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 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 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.

**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 Zoning Administrator 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.

**11.07 Amendments.**

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

**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. 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.

**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.

**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 months from the date of the final action on the petition.

#### **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 Planning Commission. The 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.