

**2008 Revised Zoning Regulations**  
**for**  
**Union County**

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

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ARTICLE 1

TITLE AND PURPOSE

Section 101. Title. These regulations may be referred to as the 2008 Revised Zoning Regulations for Union County.

Section 102. Purpose. These regulations have been based upon the County Comprehensive Development Plan adopted on July 5<sup>th</sup>, 2005 by the Board of County Commissioners and effective on August 17<sup>th</sup>, 2005, and are in conformance with Chapter 11-2 of the South Dakota Compiled Laws. These regulations are designed to carry out the goals and objectives of the plan, but especially to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; and to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provision of transportation, water, drainage, sewerage, schools, parks, or other public requirements. These regulations have been made with reasonable consideration to the character and intensity of the various land uses and the need for public facilities and services that would develop from those uses. These regulations are necessary for the best physical development of the county. The regulations are intended to preserve and protect existing property uses and values against adverse or unharmonious adjacent uses by zoning all unincorporated land except those areas where joint zoning jurisdiction has been granted to a municipality.

ARTICLE 2

JURISDICTION

Section 201. Jurisdiction. Pursuant to Chapter 11-2, South Dakota Compiled Laws, the provisions of this Ordinance shall apply within the unincorporated portion of Union County, South Dakota, as established on the map entitled "The Official Zoning Map of Union County, South Dakota".

ARTICLE 3

APPLICATION OF REGULATIONS

Section 301. General. The zoning regulations set forth by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided.

Section 302. Zoning Affects Every Building and Use. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the zoning regulations herein specified for the district in which it is located.

Section 303. Performance Standards. No building or other structure shall hereafter be erected or altered:

1. To exceed the height or bulk;
2. To accommodate or house a greater number of families;
3. To occupy a greater percentage of lot area;
4. To have narrower or smaller rear yards, front yards, side yards, or other open spaces; than herein required; or in any other manner contrary to the provisions of this Ordinance.

Section 304. Open Space, or Off-Street Parking or Loading Space. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

Section 305. Yard and Lot Reduction Prohibited. No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

Section 306. Provisions of Ordinance Declared to be Minimum Requirements. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this Ordinance require a greater width or size of yard, courts or other spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other ordinance, the provisions of this Ordinance shall govern. Whenever the provisions of any other ordinance require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the provisions of this Ordinance, the provisions of such ordinance shall govern.

#### ARTICLE 4

#### DISTRICTS

Section 401. Districts Designated. In order to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of a lot that may be occupied; the size of the yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes; the county is hereby divided into the following districts:

- AG Agricultural
- RR Rural Residential
- C Commercial
- LI Light Industrial
- HI Heavy Industrial
- FPC Floodplain Conservation
- PD Planned Development

The following district shall be designated as a zoning overlay district, imposing special regulations on the properties that fall within this overlay district without abrogating the requirements imposed by the underlying land use district regulations:

APO Aquifer Protection

#### ARTICLE 5

#### BOUNDARY INFORMATION

Section 501. Incorporated by Reference. The following are hereby adopted and incorporated by reference:

- A. The official zoning map(s) of the 1978 Revised Zoning Ordinance, together with all the explanatory matter thereon and attached thereto, is hereby adopted by reference and is declared to be a part of these regulations. The maps shall be filed with the Register of Deeds.
- B. The Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of these regulations. Areas shown as Zone A, AO, or A1- A30 on the F.I.R.M. but which are zoned AG Agricultural on the zoning map shall be governed by the provisions of the FPC Floodplain Conservation District.
- C. The approved plans submitted in conjunction with any Planned Development are hereby adopted by reference and declared to be a part of these regulations.

Section 502. Boundaries of Districts, Maps. The boundaries of the districts are shown upon the maps which have been made a part hereof by reference. The various districts and their boundaries which have been designated on these maps shall have the same force and effect as if they were all fully set forth herein.

Section 503. Rules Where Uncertainty as to Boundaries Arises. Where uncertainty exists with respect to the boundaries of the various districts shown on the maps accompanying and made a part of these regulations by reference, the following rules shall apply:

- 1. The district boundaries are roads unless otherwise shown, and where the districts are bounded approximately by roads, the road shall be construed to be the boundary of the district.
- 2. Where the property has been or may hereafter be divided into blocks and platted lots, the district boundary shall be construed to coincide with the nearest platted lot lines; and where the districts are bounded approximately by platted lot lines, the platted lot lines shall be construed to be the boundary of the district, unless the boundaries are otherwise indicated on the maps.
- 3. In unplatted property, the district boundary lines shall be determined by use of the scale appearing on the map or the legal description as indicated.

Section 504. Vacation of Streets and Roads. Whenever any street, road or other public way is vacated, the zoning district adjoining each side of such street, road, or other public way is extended to the center of such vacation; and all area included in the vacation shall then and henceforth be subject to the appropriate regulations of the extended districts.

## ARTICLE 6

### AGRICULTURAL DISTRICT (AG)

Section 601. Intent. The intent of Agricultural District (AG) is to protect agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and fiscal integrity.

Section 602. Permitted Uses. A building or premises shall be permitted to be used for the following purposes in the Agricultural District (AG):

1. Agriculture.
2. A single-family dwelling if the following provisions for building eligibility are met:
  - a. Each quarter-quarter section shall have one building eligibility when all the following conditions are met:
    - i. There are no other dwellings on the quarter-quarter section.
    - ii. The building site shall be a minimum of two and a half acres.
    - iii. Approval has been granted by the appropriate governing entity for access onto a public road.
    - iv. The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
3. Public parks and public recreation areas.
4. Railroad track right-of-way.
5. On-site signs.
6. Off-premise signs in conformance with Article 19.
7. Historical sites.
8. Neighborhood utilities.
9. Antenna support structure.
10. Wind energy conversion system in conformance with Section 1401.
11. Greenhouses and nurseries provided there is no retail sale of products conducted on the premise.
12. A single-family dwelling located on a lot of record in accordance with the following:
  - a. A lot of record consisting of less than 80 acres and containing no other dwellings shall have one building eligibility.
  - b. A lot of record consisting of 80 acres or more shall qualify for building eligibility as follows:
    - i. The acreage of the lot of record shall be divided by 40 acres. The resulting whole number minus the number of existing dwellings shall represent building eligibility.

- c. Approval has been granted by the appropriate governing entity for access onto a public road.
  - d. Any parcel conveyed from a lot of record must be a minimum of two and a half acres. The remaining portion of the lot shall be retained as agricultural land or in its present use.
13. Small Concentrated Animal Feeding Operation provided:
- a. The operation shall either be located in a farmstead, or shall be separated from a dwelling, church, school or business by a minimum distance of 1,320 feet and a municipality by a minimum distance of 1 mile.
  - b. The operation shall meet the requirements of Section 1407 (D) and Section 1407 (F).
  - c. The operation shall not be in the Aquifer Protection Overlay District, over a mapped shallow aquifer or a floodplain.
14. Medium Concentrated Animal Feeding Operation provided:
- a. The operation shall either be located in a farmstead, or shall be separated from a dwelling, church, school or business by a minimum distance of 2,640 feet and a municipality by a minimum distance of 1 mile.
  - b. The operation shall meet the requirements of Section 1407 (D) and Section 1407 (F).
  - c. The operation shall not be in the Aquifer Protection Overlay District, over a mapped shallow aquifer or a floodplain.
15. Concentrated animal feeding operation (existing) shall be allowed to expand by up to 500 animal units provided:
- a. The operation is located in a farmstead or property contiguous to, and smaller than, the aforementioned farmstead.
  - b. The operation shall not be in the Aquifer Protection Overlay District, over a mapped shallow aquifer or a floodplain.
  - c. The operation shall not exceed 1000 animal units.
  - d. There is conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed waste containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
  - e. Results of a geotechnical test boring are provided to the Planning Director which were performed in conformance with Section 1407. If a shallow aquifer is present, measures shall be employed to protect the groundwater from

contamination. The County may call upon the expertise of the South Dakota Geological Survey in making a determination on whether a shallow aquifer exists on the site as based on the soil boring data.

- f. Approval by the Planning Director of a nutrient management plan which has been prepared in conformance with the South Dakota Department of Environment and Natural Resources standards.
  - g. The operation shall meet the requirements of Section 1407 (D) and Section 1407 (F).
  - h. All liquid waste generated by the additional animal units shall be injected. In the event of an extraordinary circumstance, surface application may be allowed in accordance with the provisions of Section 1407 (D). The Planning Director may approve the surface application of livestock production surplus water in accordance with Section 1407 (D).
- 16. Hunting lodge.
  - 17. Hunting preserve.
  - 18. One additional single-family dwelling within a farmstead provided:
    - a. There will be no more than two dwellings within the farmstead.
    - b. The residential structure may be a single-family dwelling, manufactured home or mobile home.
    - c. The residential structure will be utilized by another family member or hired help engaged in the farming operation.

Section 603. Conditional Uses. A building or premises may be used for the following purposes in the Agricultural District (AG) if a conditional use has been obtained in conformance with the requirements of Section 2204:

- 1. Electrical substations.
- 2. Airport/heliport.
- 3. Cemetery.
- 4. Golf course, golf driving ranges.
- 5. Church.
- 6. Elementary or high school.
- 7. Large Concentrated Animal Feeding Operation.
- 8. Manufactured home in conformance with Section 1404(C) if there is building eligibility



- on the parcel.
9. Sanitary landfill, solid waste transfer station, rubble dump, commercial compost site.
  10. Off-premise signs not in conformance with Article 19.
  11. Rock, sand, or gravel extraction.
  12. Mineral exploration.
  13. One additional single-family dwelling within a farmstead or rural residential acreage provided:
    - a. There will be no more than two dwellings within the farmstead or rural residential acreage.
    - b. The residential structure shall be a manufactured home or mobile home.
    - c. The residential structure will be utilized by another family member.
    - d. The need for a residential structure for a family member shall be justified for reasons of health, employment, or upkeep of property. For this section, the term family member would include a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece. This relationship may be by blood or marriage.
    - e. The property is not transacted or prepared, platted or described for transaction.
  14. Group day care.
  15. Garden center.
  16. Pet cemetery.
  17. Kennel.
  18. Stable.
  19. Roadside stand.
  20. Fireworks sales provided the length of sales does not exceed nine (9) days.
  21. Private outdoor recreation facility.
  22. Trap shoot, rifle range, pistol range.
  23. Telecommunications tower, subject to:
    - a. There shall be a minimum setback of 600' from the tower base to any existing residence or proposed residential development area based on the County's

adopted 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.

- a. Stealth design approved by the County Planning Director.
24. Public facility owned and operated by a governmental entity.
  25. The transfer of an eligible building site from one quarter-quarter section to another quarter-quarter section within that quarter section when all the following conditions are met:
    - a. There are no dwellings on the quarter-quarter section from which the building eligibility is being transferred.
    - b. The transfer of building eligibility shall occur only between contiguous parcels under the same ownership.
    - c. Suitability as a building site based on the following factors:
      - i. Agricultural productivity of the soil.
      - ii. Soil limitations.
      - iii. Orientation of the building site(s) with respect to road circulation and access to public rights-of-way.
    - d. The minimum lot size shall be 2 1/2 acres but a larger area may be required when soil conditions warrant.
    - e. The quarter-quarter section from which the eligibility is transferred shall continue as agricultural land or remain in its present use.
    - f. Approval has been granted by the appropriate governing entity for access onto a public road.
  26. Bed and breakfast establishment.
  27. Sewage disposal pond.
  28. Livestock sales barn.
  29. Large Concentrated Animal Feeding Operation.
  30. Broadcast tower.
  31. Public utility facility.
  32. Agriculturally related operations involving the handling, storage and shipping of farm

products.

33. Temporary asphalt, concrete, stockpiling or crushing plants.
34. Major home occupation in conformance with Sections 140202 and 140203.
35. Facilities for the storage and distribution of anhydrous ammonia.
36. Wind energy conversion system.
37. One additional single-family dwelling within a farmstead or rural residential acreage provided (if a building eligibility does not exist):
  - a. There will be no more than two dwellings within the farmstead or rural residential acreage.
  - b. The residential structure may be a single-family dwelling, manufactured home or mobile home.
  - c. The residential structure will be utilized by another family member.
  - d. The need for a residential structure for a family member shall be justified for reasons of health, employment, or upkeep of property. For this section, the term family member would include a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece. This relationship may be by blood or marriage.
  - e. The minimum lot size shall be 2.5 acres.
  - f. The proposed building site shall be surveyed, platted and the plat recorded with the Register of Deeds prior to issuance of a building permit.

Section 604. Accessory Uses. Accessory uses and buildings permitted in the Agricultural District (AG) are buildings and uses customarily incident to any permitted use in the district.

Section 605. Parking Regulations. All parking within the Agricultural District (AG) shall be regulated in conformance with the provisions of Article 17.

Section 606. Sign Regulations. Signs within the Agricultural District (AG) shall be regulated in conformance with the provisions of Article 18.

Section 607. Density, Area, Yard and Height Regulations. The maximum height and minimum lot requirements within the AG Agricultural District shall be as follows:

- A. General Requirements:
  - Lot area..... 2 ½ acres
  - Lot width..... 200'
  - Front yard..... 50'
  - Side yard..... 20'

Rear yard..... 30'  
Maximum height..... 35' \*

\* There shall be no height limit for farm structures or wind energy conversion systems except in an airport approach zone. A conditional use permit will be required for any structure having a maximum height exceeding 35 feet. (See 2204)

- B. There shall be a required front yard on each street of a double frontage lot.
- C. If a lot of record has less area or width than herein required and its boundary lines along the entire length abutted lands under other ownership on November 12, 2008, and have not since been changed, such parcel of land may be used for any use permitted in this district.

ARTICLE 7

RURAL RESIDENTIAL DISTRICT (RR)

Section 701. Intent. This district is intended to protect a vigorous agricultural industry by limiting the areas in which the RR Rural Residential District can be used. The RR Rural Residential District, where permitted, shall generally be located where provisions can be made to adequately handle sewage disposal, where the value of the land for agricultural use is marginal, and where the water supply, roads and emergency services are easily and economically available.

Section 702. Permitted Uses. A building or premises shall be permitted to be used for the following purposes in the Rural Residential District (RR):

- 1. Single family dwelling.
- 2. Public park, playground or swimming pool.
- 3. Neighborhood utilities.
- 4. Church subject to:
  - a. Said building being adjacent to an arterial street or section line road.

Section 703. Conditional Uses. A building or premises may be used for the following purposes in the RR Rural Residential District if a Conditional Use for such use has been obtained in conformance with the requirements of Section 2204:

- 1. Manufactured home park in conformance with Section 1404.
- 2. Elementary and high school subject to:
  - a. One of the principle frontages of the premises shall abut upon an arterial or collector street.
  - b. The main building shall be set back 25 feet from the side lot line.

3. Golf course, except miniature course and driving range.
4. Cemetery.
5. Public utility facility.
6. Nursing home.
7. Day care center.
8. Group day care.
9. Group home.
10. Bed and breakfast establishment.
11. Public facility owned and operated by a governmental entity.
12. Wind Energy Conversion System in conformance with the requirements of Section 1401.
13. Electrical substation.

Section 704. Accessory Uses. Accessory uses and buildings permitted in the Rural Residential District (RR) are buildings and uses customarily incident to any of the permitted uses in the district.

Section 705. Parking Regulations. All parking within the Rural Residential District (RR) shall be regulated in conformance with the provisions of Article 17.

Section 706. Sign Regulations. Signs within the Rural Residential District (RR) shall be regulated in conformance with the provisions of Article 18.

Section 707. Density, Area, Yard and Height Regulations. The maximum height and minimum lot requirements within the Rural Residential District (RR) shall be as follows:

A. General requirements:

All Uses

- Density..... 2 ½ acres \*
- Lot area..... 2 ½ acres \*
- Lot width..... 200' \*
- Front yard..... 50'
- Side yard..... 20'
- Rear yard..... 30'
- Maximum height..... 35'

\* Where a central sanitary sewer is available, the required lot area may be reduced to 1 acre and the lot width reduced to 125 feet.

B. There shall be a required front yard on each street of a double frontage lot.

- C. Buildings with side yard setbacks less than required herein, may have additions erected in line with the existing building and provided further that said additions will be erected no closer to the lot line than the existing building.

## ARTICLE 8

### COMMERCIAL DISTRICT (C)

Section 801. Intent. This district is intended to provide for a wide variety of commercial uses generally located at major intersections and along major roads. This district will include general commercial uses requiring large land areas, extensive retail operations, and outdoor display.

Section 802. Permitted Uses. A building or premises shall be permitted to be used for the following purposes in the Commercial District (C):

1. Office.
2. Bank or financial institution.
3. Group day care, day care center, group home.
4. Mortuary.
5. Indoor recreational facility.
6. Nursery or greenhouse.
7. Church.
8. Antenna support structure.
9. Retail sales and trade, personal services, communication facilities, and warehousing.
10. Veterinarian clinic provided there is no outside kenneling of dogs.
11. Wholesale trade.
12. Motor vehicle sales, display, service and rental.
13. Hotel or motel.
14. Transportation, including gasoline service station, truck stop, and terminal.
15. Public utility facility.
16. Electrical substation.
17. Fireworks sales provided sales are conducted from a permanent building when business operations exceed nine (9) days.

18. Lumberyard.
19. Contractor's shop and storage yard.
20. Motor vehicle repair shop.
21. Frozen food locker provided there is no slaughtering of animals on the premises.
22. Auto body shop.

Section 803. Conditional Uses. A building or premises may be used for the following purposes in the Commercial District (C) if a conditional use for such use has been obtained in conformance with the requirements in Section 2204:

1. Bar or lounge.
2. Equipment sales, display and repair.
3. Commercial recreation facility.
4. Recycling facility.
5. Uses which store or handle a regulated substance.
6. Off-premise signs in conformance with Article 19.
7. Telecommunication and broadcast tower in conformance with Section 1409.
8. Car wash.
9. Airport/heliport.
10. Hospital.
11. Wind energy conversion system.
12. Campground.
13. Adult oriented business.

Section 804. Accessory Uses. Accessory uses permitted in the Commercial District (C) are accessory buildings and uses customarily incident to any permitted uses in this district.

Section 805. Parking Regulations. Parking within the Commercial District (C) shall be regulated in conformance with the provisions of Article 17.

Section 806. Sign Regulations. Signs within the Commercial District (C) shall be regulated in conformance with the provisions of Article 18.

Section 807. Density, Area, Yard and Height Regulations. A maximum height and minimum lot

requirements within the C Commercial District shall be as follows:

A. General Requirements:

All Uses

- Density..... ----
- Lot Area..... 1 acre \*
- Lot Width..... 90'
- Front Yard..... 40'
- Side Yard..... 10'
- Rear Yard..... 20'
- Maximum Height..... 45' \*\*

\*Less than 1 acre requires approval through a conditional use.

\*\*A conditional use permit will be required for any structure having a maximum height exceeding 45 feet. (See 2204)

- B. There shall be a required front yard on each street side of double frontage lots.
- C. There shall be a required front yard on each street side of a corner lot.
- D. Any accessory uses shall be required to comply with the height, front, rear and side yard requirements of the main building.

ARTICLE 9

LIGHT INDUSTRIAL DISTRICT (LI)

Section 901. Intent. This district is intended to provide for a number of light manufacturing, wholesale, warehousing, and service uses in an attractive industrial park like setting. These uses do not depend on frequent personal visits from customers or clients and do not include residences, apartments, or commercial uses which are primarily retail in nature. It is the intention of this district to provide high amenity industrial development along the major roads and adjacent to residential areas, while allowing for slightly heavier development in the interior of the industrial areas.

Section 902. Permitted Uses. A building or premises shall be permitted to be used for the following purposes in the LI Light Industrial District:

1. Off- premise signs in conformance with Article 19.
2. Motor vehicle repair shop.
3. Public utility facility, electrical substation.
4. Antenna support structure.
5. Telecommunications tower, subject to:



- a. There shall be a minimum setback of 600' from the tower base to any existing residence or proposed residential development area based on the County's adopted 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.
  - b. Stealth design approved by the County Planning Director.
6. General manufacturing.
  7. Office.
  8. Communication facilities, warehousing and wholesale trade.
  9. Equipment sales, display and repair.
  10. Lumberyard.
  11. Auto body shop.
  12. Contractor's shop and storage yard.
  13. Frozen food locker provided there is no slaughtering of animals on the premises.
  14. Veterinarian clinic provided there is no outside kenneling of dogs.
  15. Transportation, including gasoline service station, truck stop, and terminal.

Section 903. Conditional Uses. A building or premises may be used for the following purposes in the LI Light Industrial District if a Conditional Use for such use has been obtained in conformance with the requirements of Section 2204:

1. Airport/heliport.
2. Extraction of rock, sand and gravel.
3. Mineral exploration and development.
4. Off-premise signs in conformance with Article 19.
5. Hospital.
6. Recycling facility.
7. Uses which store or handle a regulated substance.
8. Car wash.
9. Broadcast tower.

10. Wind energy conversion system.
11. Industrial uses not listed as a permitted use or conditional use provided the following performance standards are met:
  - a. Physical Appearance. All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored in an open area. Normal daily waste of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from the street.
  - b. Fire Hazard. No operation shall involve the use of highly flammable gases, acids, liquids, grinding processes or other inherent fire hazard. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gases when handled in accordance with other County ordinances.
  - c. Noise. No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour of traffic volume. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
  - d. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations. In addition, no operation shall be carried on in violation of the State of South Dakota or United States of America water pollution regulations.
  - e. Air Contaminants. Air contaminants and smoke shall not exceed standards as established by the State of South Dakota and United States of America.
  - f. Odor. Emission of odors shall not exceed standards established by the State of South Dakota and the United States of America.
  - g. Vibration. All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three-thousandths (3/1000) of an inch measured at the property line. The use of steam or broad hammers shall not be permitted in the Light Industrial District.
  - h. Glare and Heat. All glare, such as welding arcs and open furnaces, shall be shielded from view from the property line. No heat from furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.
  - i. Gasses. Emission of gasses shall not exceed standards established by the State of South Dakota and the United States of America.

- j. Air Contamination Policy. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health or safety of any such considerable number of persons or to have the public in general or to cause or have a natural tendency to cause injury or damage to business, vegetation or property.

Section 904. Accessory Uses. Accessory uses and buildings permitted in the Light Industrial District (LI) are accessory buildings and uses customarily incident to any permitted uses in this district.

Section 905. Parking Regulations. Parking within the Light Industrial District (LI) shall be regulated in conformance with the provisions of Article 17.

Section 906. Sign Regulations. Signs within the Light Industrial District (LI) shall be regulated in conformance with the provisions of Article 18.

Section 907. Density, Area, Yard and Height Regulations. The maximum height and minimum lot requirements within the Light Industrial District (LI) shall be as follows:

A. General requirements:

All Uses

Density.....	----
Lot Area.....	1 acre *
Lot Width.....	80'
Front Yard.....	25'
Side Yard.....	10' **
Rear Yard.....	20' **
Maximum Height.....	75' ***

\*Less than 1 acre requires approval through a conditional use.

\*\*Lots adjacent to a Residential District shall have a minimum side and rear yard of twenty-five (25) feet along that portion of the lot adjacent to the Residential District.

\*\*\*A conditional use permit will be required for any structure having a maximum height exceeding 75 feet. (See 2204)

ARTICLE 10

HEAVY INDUSTRIAL DISTRICT (HI)

Section 1001. Intent. This district is intended to provide for heavy industrial uses which may create some nuisance and which are not properly associated with nor compatible with residential, office, institutional or planned or neighborhood commercial establishments. All uses in this district shall comply with any state regulations regarding noise, emissions, dust, odor, glare, vibration or heat when applicable.

Section 1002. Permitted Uses. A building or premises shall be permitted to be used for the following purposes in the Heavy Industrial District (HI):

1. Public utility facility, electrical substation.
2. Antenna support structure.
3. Wind energy conversion system.
4. Off-premise signs in conformance with Article 19.
5. Telecommunications tower, subject to:
  - a. There shall be a minimum setback of 600' from the tower base to any existing residence or proposed residential development area based on the County's adopted 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.
  - b. Stealth design approved by the County Planning Director.
6. General manufacturing.
7. Office.
8. Communication facilities, warehousing and wholesale trade provided.
9. Equipment sales, display and repair.
10. Lumberyard.
11. Auto body shop.
12. Contractor's shop and storage yard.
13. Frozen food locker provided there is no slaughtering of animals on the premises.
14. Motor vehicle repair shop.
15. Veterinarian clinic provided there is no outside kenneling of dogs.
16. Transportation, including gasoline service station, truck stop, and terminal.

Section 1003. Conditional Uses. A building or premises may be used for the following purposes in the HI Heavy Industrial District if a Conditional Use for such use has been obtained in conformance with the requirements of Section 2204:

1. Stockyards/slaughtering of animals.

2. Airport/heliport.
3. Extraction of rock, sand and gravel.
4. Mineral exploration and development.
5. Rendering.
6. Distillation of products.
7. Refining.
8. Sanitary landfill, solid waste receiving station.
9. Paper manufacturing.
10. Tank farm; petroleum products terminal.
11. Salvage or junkyard.
12. Any similar use not heretofore specified.
13. Recycling facility.
14. Uses which store or handle a regulated substance.
15. Car/Truck wash.
16. Broadcast tower.
17. Industrial uses not listed as a permitted use or conditional use provided the following performance standards are met:
  - a. Physical Appearance. Junk, salvage, auto wrecking and similar operations shall be shielded from view from streets and from adjacent properties in another district by means of a sturdy, sight-obstructing fence in good repair, or two rows of alternate planted evergreen or red cedar trees.
  - b. Fire Hazard. All flammable substances involved in any activity established in this district shall be handled in conformance with the latest edition of the Fire Prevention Code published by the American Insurance Association and other county ordinances.
  - c. Noise. All noises and noise-causing activities shall be muffled so that they will not create a disturbance greater than normal peak hour traffic noise on a major street when observed from any area Residential District. Major street noise for comparison purposes shall be measured at the property line.
  - d. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any

radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations. In addition, no operation shall be carried on in violation of the State of South Dakota or United States of America water pollution regulations.

- e. Air Contaminants. Air contaminants and smoke shall not exceed standards as established by the State of South Dakota and United States of America.
- f. Odor. Emission of odors shall not exceed standards established by the State of South Dakota and the United States of America.
- g. Vibration. All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three-thousandths (3/1000) of an inch measured at the property line. The use of steam or broad hammers shall not be permitted in the Heavy Industrial District.
- h. Glare and Heat. All glare, such as welding arcs and open furnaces, shall be shielded from view from the property line. No heat from furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.
- i. Gasses. Emission of gasses shall not exceed standards established by the State of South Dakota and the United States of America.
- j. Air Contamination Policy. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health or safety of any such considerable number of persons or to have the public in general or to cause or have a natural tendency to cause injury or damage to business, vegetation or property.

Section 1004. Density, Area, Yard and Height Regulations. The maximum height and minimum lot requirements within the Heavy Industrial District (HI) shall be as follows:

A. General requirements:

All Uses

Density.....	----
Lot Area.....	1 acre *
Lot Width.....	80'
Front Yard.....	25'
Side Yard.....	10' **
Rear Yard.....	20' **
Maximum Height.....	75' ***

\*Less than 1 acre requires approval through a conditional use.

\*\*Lots adjacent to a Residential District shall have a minimum side and rear yard of twenty-five (25) feet along that portion of the lot adjacent to the Residential District.

\*\*\*A conditional use permit will be required for any structure having a maximum height exceeding 75 feet. (See 2204)

## ARTICLE 11

### FLOODPLAIN CONSERVATION DISTRICT (FPC)

Section 1101. Intent. This district is intended to protect natural drainage courses in their capacity to carry run-off water, to limit permanent structures and uses of land in areas subject to flooding, to prevent the pollution of underground water supplies (aquifers), to provide open space and natural areas for recreation, and add to the aesthetic quality of the area.

Section 1102. Permitted Uses. A building or premises shall be permitted to be used for the following purposes in the FPC Floodplain Conservation District:

1. Agriculture.
2. Public park; forest preserve.
3. Public parks and public recreation areas.
4. Public golf course.
5. Historic sites.
6. A single-family dwelling if the following provisions for building eligibility are met:
  - a. Each quarter-quarter section shall have one building eligibility when all the following conditions are met:
    - i. There are no other dwellings on the quarter-quarter section.
    - ii. The building site is not in the 100-year floodplain as identified on the Flood Insurance Rate Map.
    - iii. Approval has been granted by the appropriate governing entity for access onto a public road.
    - iv. The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
7. Antenna support structure.
8. Hunting Preserve

9. Hunting Lodge

Section 1103. Conditional Uses. A building or premises may be used for the following purposes in the FPC Floodplain/Conservation District if a Conditional Use for such use has been obtained in conformance with the requirements of Section 2204:

1. Manufactured home in conformance with Section 1404 (C) if there is building eligibility on the parcel.
2. Private outdoor recreation facility.
3. Day or summer camp.
4. Rifle and pistol range; trap shoot.
5. Stable.
6. Kennel.
7. Fairgrounds.
8. Rock, sand and gravel extraction.
9. Electrical substation.
10. Public utility facility.
11. Major home occupation in conformance with Sections 140202 and 140203.
12. A single-family dwelling located on a lot of record in accordance with the following:
  - a. A lot of record consisting of less than 80 acres and containing no other dwellings shall have one eligible building site.
  - b. The building site is not in the 100-year floodplain as identified on the Flood Insurance Rate Map.
  - c. A lot of record consisting of 80 acres or more shall qualify for building eligibility as follows:
  - d. The acreage of the lot of record shall be divided by 40 acres. The resulting whole number minus the number of existing dwellings shall represent building eligibility.
  - e. Approval has been granted by the appropriate governing entity for access onto a public road.
  - f. Any parcel conveyed from a lot of record must be a minimum of five acres. The remaining portion of the lot shall be retained as agricultural land or in its present use.



13. One additional single family dwelling within a farmstead or rural residential acreage provided:
  - a. There will be no more than two dwellings within the farmstead or rural residential acreage.
  - b. The residential structure may be a single family dwelling, manufactured home or mobile home.
  - c. The residential structure will be utilized by another family member or hired help engaged in the farming operation.
  - d. The residential structure shall not be located in the 100-year floodplain as identified on the Flood Insurance Rate Map.
14. Plant nursery provided there are no buildings located in the 100 year floodplain as identified on the Flood Insurance Rate Map.
15. The transfer of an eligible building site from one quarter-quarter section to another quarter-quarter section within that quarter section when all the following conditions are met:
  - a. There are no dwellings on the quarter-quarter section from which the building eligibility is being transferred.
  - b. The transfer of building eligibility shall occur only between contiguous parcels under the same ownership.
  - c. Suitability as a building site based on the following factors:
    - i. Agricultural productivity of the soil.
    - ii. Soil limitations.
    - iii. Orientation of the building site(s) with respect to road circulation and access to public rights-of-way.
  - d. The minimum lot size shall be 5 acres but a larger area may be required when soil conditions warrant.
  - e. The quarter-quarter section from which the eligibility is transferred shall continue as agricultural land or remain in its present use.
  - f. Approval has been granted by the appropriate governing entity for access onto a public road.
16. Off-premise signs in conformance with Article 19.
17. Telecommunications tower, subject to:

- a. There shall be a minimum setback of 600' from the tower base to any existing residence or proposed residential development area based on the County's adopted 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.
- b. Stealth design approved by the County Planning Director.

18. Broadcast tower.

Section 1104. Accessory Uses. Accessory uses permitted in the Floodplain Conservation District (FPC) are accessory buildings and uses customarily incident to any permitted uses in this district.

Section 1105. Parking Regulations. Parking within the Floodplain Conservation District (FPC) shall be regulated in conformance with the provisions of Article 17.

Section 1106. Sign Regulations. Signs within the Floodplain Conservation District (FPC) shall be regulated in conformance with the provisions of Article 18.

Section 1107. Density, Area, Yard and Height Regulations. The maximum height and minimum lot requirements within the FPC Floodplain Conservation District shall be as follows:

A. General requirements:

Lot Area.....	5 acres
Lot Width.....	300'
Front Yard.....	75'
Side Yard.....	30'
Rear Yard.....	30'
Maximum Height.....	35' *

\*There shall be no height limit for accessory farm structures or wind energy conversion systems except in the airport approach zone.

Section 1108. Flood Damage Prevention Ordinance.

Part 1. Statutory authorization, findings of fact, purpose and objectives.

- 1. Statutory Authorization. The Legislature of the State of South Dakota has in SDCL 11-2 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the Board of Commissioners of Union County, South Dakota does ordain as follows:

- 2. Findings of Fact.
  - a. The flood hazard areas of Union County are subject to a periodic inundation which results in loss of life and property, health and safety hazards,

disruption of commerce and governmental services, extraordinary public expenditures for flood protections and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

- b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.
3. Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:
- a. To protect human life and health;
  - b. To minimize expenditure of public money for costly flood control projects;
  - c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - d. To minimize prolonged business interruptions;
  - e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
  - f. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
  - g. To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
  - h. To ensure that those who occupy the areas of special flood hazards assume responsibility for their actions.
4. Methods of Reducing Flood Losses. In order to accomplish its purposes, this ordinance includes methods and provisions for:
- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
  - b. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
  - c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

- d. Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- e. Preventing or regulating the construction of flood barriers which will unnaturally divert waters or which may increase flood hazards in other areas.

## Part 2. Definitions

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

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading paving, excavation or drilling operations located within the area of special flood hazard.

"Flood" or "flooding" means a general and temporary condition or partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" means an official map of the community on which the Federal Emergency Management Agency has delineated areas of special flood hazard designated as Zone A.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. This term also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

"Structure" means a walled and roofed building or manufactured home that is principally above ground.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- a. before the improvement or repair is started, or
- b. if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects

the external dimensions of the structure.

The term does not, however, include either;

- a. any project for improvement of a structure to comply with existing State of local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- b. any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

### Part 3. General Provisions

1. **Lands to Which This Ordinance Applies.** This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Union County.
2. **Basis for Establishing the Areas of Special Flood Hazard.** The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map (FIRM), dated February 1, 1987, is adopted by reference and declared to be part of this ordinance. The FIRM is on file at Office of the Planning Director in Union County Courthouse at Elk Point, South Dakota.
3. **Compliance.** No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of this ordinance and other applicable regulations.
4. **Abrogation and Greater Restrictions.** This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
5. **Interpretation.** In the interpretation of this ordinance, all provisions shall be:
  - a. Considered as a minimum requirements;
  - b. Liberally construed in favor of the governing body; and
  - c. Deemed neither to limit nor repeal any other powers granted under State statutes.
6. **Warning and Disclaimer of Liability.** The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Union County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

#### Part 4. Administration

1. Establishment of Development Permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Part 3(2). Application for a development permit shall be made on forms furnished by the Planning Director and may include, but not be limited to: Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:
  - a. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
  - b. Elevation in relation to mean sea level to which any structure has been floodproofed;
  - c. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Part 5(2)(b) and,
  - d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
2. Designation of the Floodplain Manager. The Planning Director is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.
3. Duties and Responsibilities of the Floodplain Manager. Duties of the Floodplain Manger shall include but not be limited:
  - a. Permit Review
    - i. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
    - ii. Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
    - iii. Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purposes of this ordinance, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas.
      - (1) If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further consideration.

- (2) If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer's certification) for the proposed development shall be required.
  - (3) If the proposed development is a building, then the provisions of this ordinance shall apply.
- b. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Part 3(2), Basis for Establishing the Areas of Special Flood Hazard, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring that new construction, substantial improvements, or other development of Zone A are administered in accordance with Part 5(2) Specific Standards.
- c. Information to be Obtained and Maintained.
  - i. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
  - ii. For all new or substantially improved floodproofed structures:
    - (1) Verify and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed.
    - (2) Maintain the floodproofing certifications required by Part 4(1)(c).
  - iii. Maintain for public inspection all records pertaining to the provisions of this ordinance.
- d. Alteration of Watercourses.
  - i. Notify adjacent communities and the State Emergency Management Agency prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
  - ii. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- e. Interpretation of FIRM Boundaries. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).

## Part 5. Provisions for Flood Hazard Reduction

1. General Standards. In all areas of special flood hazards, the following standards are required:
  - a. Anchoring
    - i. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
    - ii. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. Specific requirements may be:
      - (1) over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with manufactured homes less than 50 feet long requiring one additional tie per side;
      - (2) frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;
      - (3) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and
      - (4) any additions to the manufactured home be similarly anchored.
  - b. Construction Materials and Methods.
    - i. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
    - ii. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
    - iii. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.



- c. Utilities
    - i. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
    - ii. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
    - iii. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding
  - d. Subdivision Proposals
    - i. All subdivision proposals shall be consistent with the need to minimize flood damage;
    - ii. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
    - iii. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
    - iv. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).
  - e. Encroachments. Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.
2. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided or as set forth in Part 4(3)(b), Use of Other Base Flood Data, the following standards are required:
- a. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation.
  - b. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to the level of the base flood elevation; or together with attendant utility and sanitary facilities, shall:
    - i. be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - ii. have structural components capable of resisting hydrostatic and

hydrodynamic loads and effects of buoyancy; and

- iii. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certifications shall be provided to the official as set forth in Part 4(3)(c).

## ARTICLE 12

### PLANNED DEVELOPMENT DISTRICT (PD)

Section 1201. Intent. The provisions of this article are to be applied in instances where tracts of land of considerable size are developed, redeveloped or renewed as integrated and harmonious units, and where the overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in this Ordinance. A planned development, to be eligible under this Article, must be:

1. In accordance with the comprehensive plans of the County, including all plans for redevelopment and renewal;
2. Composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the County;
3. So designed in its space allocation, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the County;
4. So arranged as to provide a minimum of sixty (60) percent of gross planned development area for usable open space on the tract.

Section 1202. Tract. The tract for which application is made must have the following minimum area:

1. For a Planned Development Unit under subsection 1204 (1) below, one (1) acre in the case of dwellings only, and two (2) acres in all other cases;
2. For a Planned Development District under subsection 1204 (2) below, one (1) acre in the case of dwellings only, and two (2) acres in all other cases.

Section 1203. Who May Apply. An application may be filed by (1) the owner or owners or lessee or lessees of all land and structures included within the tract, or (2) any governmental agency. The holder of a written option or contract to purchase or lease land and/or structures shall, for the purposes of such application, be deemed the owner or lessee of the land and/or structures covered by such option or contract.

Section 1204. Application and General Plans. Each application shall state the proposed modifications of existing zoning, and shall be accompanied by General Plans, including contoured site plans. The General Plans shall show the improvements to be erected upon the tract, the open spaces to be provided, the nature and location of the proposed use or uses, the relationship of the proposed development of surrounding properties, and other pertinent information.

The application and general plans shall be sufficient in scope and character to determine that the intent of this Article stated in Section 1201 above will be met. Any proposed division of the tract into separately owned and operated units shall be indicated. The Application and General Plans shall be filed and acted upon in the following manner;

1. Where the proposed modifications of existing zoning concern only the bulk and placement of structures and the size and shape of lots, regulation of lot area, average lot width, distance between buildings, size of courts, yards, gross floor area, building height, and/or building coverage, or involve a reduction of lot area per dwelling unit of no more than thirty-three (33) percent, such Application and General Plans shall be filed with the County Planning Commission and acted upon as a conditional use. If such Application and General Plans are approved by the County Planning Commission upon specific findings that the intent stated in Section 1201 above will be met, such approval shall be construed to modify provisions contained elsewhere in this Ordinance, insofar, and only insofar, as specific deletions, additions and changes are made which related to land and structures in the tract, and the tract shall be designated a Planned Development Unit within the existing zoning district, provided that the requirements in Section 1205 below are met.
2. In any other case, the Application and General Plans shall be filed with the Board of County Commissioners and acted upon as a proposed amendment to this Ordinance. If such Application and General Plans are approved by the Board of County Commissioners, following a favorable recommendation by the Planning Commission, upon specific finding that the intent stated in Section 1201 above will be met, such approval shall be construed to amend this Ordinance insofar, and only insofar, as specific deletions, additions and changes are made which are related to the land and structures in the tract, and the tract shall be designated as a separate Planned Development District, provided that the requirements of Section 1205 below are met.

Section 1205. Subsequent Performance. The Official Zoning Map shall carry a notation of the location and boundaries of any Planned Development Unit or Planned Development District approved as above, giving a reference to a file in which full information concerning the provisions applying to the same may be found.

1. After the approval of the Application and General Plans, the applicant shall file Detailed Plans for review by the Planning Commission, showing the details of the proposed development as fully as possible, and including elevations and perspectives of proposed construction. If the applicant later wishes to change any of the details of the proposed development, further Detailed Plans shall be filed for review by the Planning Commission. No building permit for the proposed development or any part thereof shall be issued until the Planning Commission has determined that the pertinent Detailed Plans are in accordance with the Application and General Plans as approved and with the intent stated in Section 1201 above. If any Detailed Plans are not acted upon by the Planning Commission within sixty (60) days after they are submitted to it, they shall be deemed to be approved.
2. Within three (3) months after the approval of the Application and General Plans, a certified copy of such application and General Plans shall be filed by the applicant at his or its own expense in the office of the County Auditor.

3. If construction of improvements is not begun and diligently prosecuted to completion within a reasonable time established by the Planning Commission at the time of approval of Detailed Plans, and if an extension of time is not given by the Planning Commission for good cause shown, the modifications or amendments of this Ordinance provided for in Section 1205 above shall become null and void, and the tract shall revert to all the requirements of its previous zoning. No certificate of zoning compliance shall be issued until a detailed report is submitted by the applicant to the Planning Commission showing the outcome of construction and the Planning Commission certifies that all requirements of this Article 12 relating to planned developments have been met.

Section 1206. Subdivision Regulation Variance. The standards and requirements of this Ordinance relating to subdivision regulation may be modified by the Board of County Commissioner in the case of a plan for Planned Development, which, in the judgment of the Board of County Commissioners, provide adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and which also provide such covenants or other legal provisions as will assure conformity to and achievement of the plan.

\*\*\*\*\**INSERT ALL PLANNED DEVELOPMENT DISTRICTS HERE*\*\*\*\*\*

*(Ordinance 2008-1)*

## **ENERGY CENTER PLANNED DEVELOPMENT DISTRICT**

### **ARTICLE 1**

#### **BACKGROUND**

Hyperion Refining, LLC ("**Applicant**") proposes to develop a state-of-the-art greenfield refinery, designed for efficient production of ultra low-sulfur fuels and other products with the best available control technology (BACT), and with an Integrated Gasification Combined Cycle (IGCC) facility to supply most on-site electric power requirements, and related office, industrial, temporary residential, and other uses ("**Project**") on an approximately 3,292-acre site described on **Exhibit A** attached to this Ordinance ("**Subject Property**"). The Applicant has submitted to the County an application, along with supplemental and supporting material and information, for the rezoning of the Subject Property to Planned Development and the approval of a planned development district for the Subject Property and the Project ("**Application**"), all in accordance with the Union County Zoning Ordinance (1978), as amended ("**Zoning Ordinance**").

The Planning Commission held a public hearing on the Application on January 16, 2008. Public notice for the public hearing by the Planning Commission was published in the December 27, 2007 edition of the Alcester Union, the January 3, 2008 edition of the Beresford Republic, the December 27, 2007 edition of the Leader Courier, and the December 27, 2007 edition of the North Sioux City Times. The Applicant provided at least seven days prior notice of the petitioned zoning change and public hearing by the Planning Commission to all landowners of record abutting the Subject Property by registered mail. The County Auditor provided at least ten days prior notice of the proposed zoning change by certified mail to the Clay County Auditor and the Lincoln County Auditor. On January 16, 2008, the Planning Commission made a favorable recommendation of the Application in accordance with

the requirements of the Zoning Ordinance. All written testimony submitted to the Planning Commission at the public hearing has been made available to the public, and has been provided to the members of the Board of Commissioners of Union County ("**Board**").

The Board held a public hearing on the Application on March 3, 2008. Public notice for the public hearing by the Board was published in the February 21, 2008 and February 28, 2008 editions of the Alcester Union, the February 21, 2008 and February 28, 2008 editions of the Beresford Republic, the February 21, 2008 and February 28, 2008 editions of the Leader Courier, and the February 21, 2008 and February 28, 2008 editions of the North Sioux City Times. The Applicant provided at least seven days prior notice of the petitioned zoning change and public hearing by the Board to all landowners of record abutting the Subject Property by registered mail.

## ARTICLE 2

### FINDINGS PURSUANT TO SECTION 1301 OF THE ZONING ORDINANCE

The Board has reviewed and considered the Application, the general plans for the Project, the written testimony submitted to the Planning Commission at the January 16, 2008 public hearing, the favorable recommendation of the Planning Commission made at the conclusion of the January 16, 2008 public hearing, and the information and testimony provided in the March 3, 2008 public hearing held by the Board, and does hereby find and determine as follows:

1. The Subject Property is of considerable size; and the Project will allow for the development of the Subject Property as an integrated and harmonious unit through the coordinated development of industrial and related uses and the sharing of infrastructure.
2. The Project is composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the County.
3. The design of the Project is unique and outstanding, and will result in a refinery and power plant that are among the cleanest, most environmentally-advanced in the world. The Project will incorporate:
  - a. Best Available Control Technology (BACT): BACT is an emission control technology mandated by the Federal Clean Air Act, 42 U.S.C. § 7601 *et seq.*, that requires implementation of significant pollution reduction measures;
  - b. Integrated Gasification Combined Cycle (IGCC) Technology: IGCC technology will produce combustible gas to operate an efficient combined-cycle combustion turbine generator as a source of clean power, converting waste produced by the refinery into clean energy. The IGCC plant also produces hydrogen through the gasification process, which will be consumed by the refinery;
  - c. Water quality and reuse strategies: The Project will minimize water consumption and maximize water reuse, and provide discharged water from the Project pursuant to all state and federal requirements; and
  - d. Innovative controls: The Project will employ innovative site layout, designs, control technologies, processes, and construction methods to minimize light, noise, odor and other impacts from the Subject Property.

4. The planned development proposed in the Application is designed to minimize the impact of heavy industrial uses on surrounding properties, and provides a minimum of 60% of the Subject Property for usable open space.
5. The Project is so designed in its space allocation, orientation, texture, materials, landscaping, and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding area, and showing such unusual merit as to reflect credit upon the Applicant and the County.
6. The Project will include the first greenfield refinery constructed and completed in the United States since 1976.
7. The Project will establish a more secure energy supply for the United States, incentivize Canadian production to stay in North America, lessen the United States' dependence on foreign oil, and advance national security interests.
8. In order to construct and operate the Project, the Applicant must secure numerous permits and approvals from the State of South Dakota and various agencies and authorities of the United States Government, to include, without limitation, the following primary permits and approvals:
  - a. State construction storm water discharge permit;
  - b. State wastewater discharge permit;
  - c. State water rights permit;
  - d. State Prevention of Significant Deterioration (PSD) air quality permit;
  - e. State Section 106 National Historic Preservation Act (NHPA) consultation;
  - f. State and Federal Section 401 water quality certification;
  - g. Federal Section 404/10 permit for impacts on waters of the United States (including wetlands under federal jurisdiction);
  - h. Federal Section 7 Endangered Species Act (ESA) consultation; and
  - i. Federal Aviation Administration (FAA) obstruction and lighting clearance (together with any other permits and approvals required by state and federal law, the "***State and Federal Approvals***").
9. The Applicant may need to modify the design and layout of the Project to obtain the State and Federal Approvals. Accordingly, the zoning and subdivision approvals set forth in this Ordinance are intended to be as flexible as permitted by law to allow for and accommodate such modifications.
10. The planned development proposed in the Application is in accordance with the Union County Comprehensive Plan, 2005-2025, and all other County plans for development, redevelopment, and renewal (collectively, the "***County Plans***"):

- a. The County Plans seek to promote the economic growth and social development of Union County as a partner in cooperation with the private sector. The Project will directly create on average approximately 4,500 jobs during construction, and approximately 1,800 full-time jobs when fully operational.
  - b. The County Plans recognize that certain industrial uses can be appropriately sited within rural areas. The Project will optimize the land use of the Subject Property and is appropriately sited within a rural area because: (i) the Project will develop its own on-site infrastructure to support its operations; (ii) the Project requires convenient highway and rail access, which the Subject Property provides; (iii) agricultural uses in South Dakota and elsewhere rely on products which will be produced by the Project; (iv) the Project will not have an adverse impact on livestock or other agricultural uses; and (v) the Project will provide off-farm employment opportunities for residents of Union County and other nearby counties.
11. All other applicable standards and requirements for establishing a planned development district and granting the requested approvals in the Application have been satisfied, and such relief should be granted, subject to and contingent upon the conditions, restrictions, and provisions set forth in this Ordinance.

### ARTICLE 3

#### AMENDMENT OF ZONING MAP

The Official Zoning Map of Union County shall be, and is hereby, amended to re-designate the Subject Property from Agricultural District (AG) to Planned Development (PD). The Board shall, and does hereby, authorize the establishment of the Energy Center Planned Development (**ECPD**) District as a planned development district pursuant to Subsection 1304 (2) of the Zoning Ordinance on the Subject Property and for the Project, subject to the terms and provisions of this Ordinance.

### ARTICLE 4

#### ENERGY CENTER PLANNED DEVELOPMENT DISTRICT REGULATIONS

##### Section 401. General Provisions.

A. Intent. It is the intent of the ECPD District to provide land for the development and operation of (i) a highly complex, full conversion refinery facility producing ultra low-sulfur gasoline, ultra low-sulfur diesel fuels, and other products; (ii) an integrated gasification combined cycle (IGCC) power plant producing hydrogen, power and steam; and (iii) other uses as further described in this Article 4 and on **Exhibit C** attached to this Ordinance.

B. Phases of Development. The Project may be developed in multiple phases of development.

C. General Plans. The general plans for the Project submitted with the Application ("**General Plans**") identify the nature of the improvements that the Applicant intends to construct on the Subject Property within the first phase of development, the relationship between and among uses within the Project, and the relationship of the Project to properties surrounding the Subject Property. The Applicant intends that the improvements to be constructed within the first phase of development will be

located as generally designated on the General Plans. However, the final location of such improvements may be modified by the Applicant during the final design and engineering process and as necessary to secure all necessary State and Federal Approvals.

D. Zones of Development. The ECPD District consists of the following two zones of development, with separate requirements applicable to development within each zone as set forth in this Ordinance:

1. Industrial Zone: The "**Industrial Zone**" requirements shall apply to all portions of the Subject Property that are designated and depicted as "Industrial Zone" on the Master Zone Plan attached to this Ordinance as **Exhibit B**. The Applicant may, at any time, include additional portions of the Subject Property within the Industrial Zone by delivering a revised Master Zone Plan to the Zoning Administrator, provided that the Industrial Zone must always be located more than one-eighth (1/8) of a mile (660 feet) inward from the outside property line separating the Subject Property from surrounding properties. Any such revised Master Plan shall, automatically and without further action by the Board, be deemed to be incorporated into this Ordinance as a revised **Exhibit B**.
2. Industrial Transition Zone: The "**Industrial Transition Zone**" requirements shall apply to all portions of the Subject Property that are not within the Industrial Zone.

**Section 402. Permitted Principal Uses and Structures.** The list of permitted principal uses and structures for each zone of development is set forth on **Exhibit C** attached to this Ordinance. More than one permitted principal use may be established on a lot within the ECPD District.

**Section 403. Permitted Accessory Uses and Structures.** The list of permitted accessory uses and structures for the ECPD District is set forth on **Exhibit D** attached to this Ordinance.

**Section 404. Permitted Conditional Uses.** None.

**Section 405. Prohibited Uses and Structures.** Each use not specifically allowed as a permitted principal use or permitted accessory use shall be prohibited.

**Section 406. Performance Standards.** Industrial uses in the ECPD District must meet the following performance standards:

- A. State and Federal Approvals. Air contaminants, odor, and gasses from the Project and the Subject Property shall comply with the State and Federal Approvals.
- B. Additional Performance Standards. In addition to the requirements of State and Federal Approvals, the following performance standards shall apply to industrial uses in the ECPD District.
  1. Fire Hazard. Procedures for handling all flammable substances involved in any activity established within the ECPD District shall conform to the latest edition of the Fire Prevention Code published by the American Insurance Association.
  2. Noise. All noises and noise-causing activities from industrial operations shall be controlled so that they do not exceed the greater of the following sound levels, as



measured at any portion of the property line separating the Subject Property from surrounding properties used for residential purposes: (a) the acceptable day-night average sound level for U.S. Department of Housing and Urban Development (HUD) programs specified in 24 CFR § 51.03; or (b) a sound level of 5dB(A) greater than the background day-night average sound level. All sound level measurements shall be in accordance with the criteria and standards for sound level measurement set forth in 24 CFR § 51.

3. **Sewage and Liquid Wastes.** No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid wastes of a hazardous nature that are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations. In addition, no operation shall be carried on in violation of South Dakota or United States law or regulations.
4. **Vibration.** All machines including punch presses and stamping machines shall be so mounted as to minimize vibration. Vibration shall not be so excessive that it interferes with industrial operations on properties surrounding the Subject Property.

**Section 407. Minimum Lot Requirements.** In the event the Subject Property is subdivided to create multiple interior lots, the minimum lot area of each lot so created shall be ten thousand (10,000) square feet. The minimum lot width of each lot so created shall be eighty (80) feet.

**Section 408. Minimum Yard Requirements.** No minimum yard requirements shall apply to any building or structure in the ECPD District, provided that all buildings and structures in the Industrial Transition Zone shall be located at least fifty (50) feet from any public right-of-way or from the property line of the Subject Property.

**Section 409. Maximum Lot Coverage.**

1. A minimum of 60% percent of the total lot area of the Subject Property shall be usable open space.
2. A minimum of 80% of the total lot area of the Industrial Transition Zone shall be usable open space.

For purposes of this Ordinance, the term “usable open space” shall have the same meaning as "required open space" contained within the definition of "Yard" set forth in Section 2302 of the Zoning Ordinance.

**Section 410. Maximum Height.**

1. In the Industrial Zone, no building predominantly designed for human occupancy shall be in excess of seventy-five feet in height. For purposes of this Ordinance, any portions of a building or structure that are accessed only for maintenance or inspections shall not be deemed to be designed for human occupancy. All other buildings and structures in the Industrial Zone shall be of such height as is consistent with prevailing standards within the refining and energy industries.
2. In the Industrial Transition Zone, the maximum height limitation shall be the same as in the Light Industrial District (I-1) as set forth in Article 10 of the Zoning Ordinance,

except that the foregoing height limitation shall not apply to any communication or utility lines or towers or any of the "Exceptions to Height Regulations" as set forth in Section 1405 of the Zoning Ordinance.

**Section 411. Prohibition of Off-Site Advertising Signage.** No off-site commercial signage shall be erected within the ECPD District. For purposes of this Ordinance, directional and informational signage shall not constitute off-site commercial signage.

**Section 412. Waste Products and Materials.** Any solid, hazardous, or other waste which is produced in the ECPD District shall be stored or disposed of in accordance with the Resource Conservation Recovery Act ("RCRA") and other applicable federal and state law and regulations. The provisions of the Union County Zoning Ordinance relating to rubbish, refuse, waste materials, or garbage shall apply only to the storage or disposal of rubbish, refuse, waste materials, and garbage that is not regulated by RCRA or by State or Federal regulatory agencies.

**Section 413. Stormwater and Drainage Systems.** The stormwater and drainage systems for the Project shall: (i) comply with State and Federal Approvals; (ii) incorporate stormwater Best Management Practices (BMPs) to minimize increases in runoff rate, runoff volume, and pollutant loading; (iii) allow no discharge of point source pollutants into Brule Creek; and (iv) prevent discharges of regulated non-point source pollutants into Brule Creek in violation of State and Federal Approvals.

## **ARTICLE 5**

### **PLAN APPROVALS**

**Section 501. Submission of Detailed Plans.** The Applicant shall submit detailed plans for the construction of improvements for any phase of development of the Project in accordance with Subsection 1305 of the Zoning Ordinance. The detailed plans shall be reviewed by the Planning Commission and Land Use Administrator. The five criteria against which the detailed plans shall be measured are set forth below. The Planning Commission shall approve the detailed plans if each and every one of the following five criteria is met:

1. The detailed plans include the plans and level of detail required by Section 1305 of the Zoning Ordinance;
2. The detailed plans demonstrate that the proposed improvements will comply with all of the following requirements of Article 4 of this Ordinance:
  - a. the use limitations set forth in Sections 402 through 405;
  - b. the performance standards set forth in Section 406 (if the proposed improvement is an industrial use), which performance standards govern fire hazards, noise, sewage and liquid wastes, and vibration;
  - c. the applicable lot, coverage, and height requirements set forth in Sections 407 through 410;
  - d. the signage restriction in Section 411;

- e. the requirements pertaining to waste products and materials set forth in Section 412; and
  - f. the stormwater and drainage system requirements in Section 413.
3. The detailed plans demonstrate the proposed improvements address light and odor impacts from the Subject Property to the extent practicable consistent with current industry standards with respect to the project;
  4. The detailed plans include an emergency response and evacuation plan demonstrating that the Applicant will respond in accordance with industry standards and applicable state and federal requirements in the event of any accident, discharge, fire, or explosion with respect to the Project. The emergency response and evacuation plan shall demonstrate how the Applicant will work cooperatively and establish communication protocols with fire protection and emergency response agencies in Union County and other nearby counties, if necessary; and
  5. The detailed plans include a security plan for both construction and operations demonstrating the Applicant will provide its own security forces sufficient to address security and police protection needs for residential uses and other Project elements. The security plan shall demonstrate how the Applicant will work cooperatively and establish communication protocols with law enforcement agencies in Union County and other nearby counties, if necessary.

**Section 502. Time for Commencement and Completion of Improvements.** The time period for the construction of improvements that is required to be established by the Planning Commission pursuant to Subsection 1305 (3) of the Zoning Ordinance shall: (i) be consistent with and based upon the estimated construction schedule submitted by the Applicant with the detailed plans and the applicable building permit; and (ii) be extended to include any period of time during which construction has not commenced or is not complete, but the Applicant is using reasonable diligence to commence or complete construction, as the case may be. For purposes of Subsection 1305 (3) of the Zoning Ordinance, "good cause shown" for the granting of extensions of time by the Planning Commission shall include delays in obtaining State and Federal Approvals, delays in obtaining Project financing, and any other causes beyond the direct and sole control of the Applicant.

## **ARTICLE 6**

### **MODIFICATION OF GENERAL ZONING REQUIREMENTS**

**Section 601. Applicability of General Regulations.** The terms and provisions of this Ordinance apply to the ECPD District in lieu of any zoning regulations or requirements contained in Articles 6 through 12 and Article 14 (except Section 1415) of the Zoning Ordinance. Therefore, the terms and provisions of this Ordinance do not allow for the establishment of either a Junk Yard (as described as a conditional use in 1413) or a Sanitary Landfill (as described as a conditional use in 1414) inside the ECPD District without an additional application and approval and modification to this ordinance.

**Section 602. Building Permit.** Building permits for the Project will be issued for a period of: (a) two years; or (b) if the work described in the building permit request is of such a size, nature and/or scope so as to require a longer period based upon standard construction practices (as certified by a licensed South Dakota engineer or architect) the period of time needed, to complete the work. In determining the length

of a building permit, the Land Use Administrator shall consider (i) the proposed construction schedule as outlined in the detailed plans required by sections 501 and 502 above, (ii) standard construction practices for projects within the refining and energy industries, and (iii) the advice of an independent engineer or architect, if any is retained by the Land Use Administrator. The Land Use Administrator may cancel a building permit only if the work described in the building permit has not been substantially completed according to the estimated construction schedule, unless the Applicant can demonstrate with documentation to the Land Use Administrator that the Applicant's failure to comply with the schedule was caused by: (i) delays in obtaining State and Federal Approvals; (ii) delays in obtaining Project financing; (iii) delays in obtaining equipment, materials, or labor; and (iv) any other cause beyond the direct and sole control of the permit holder. If a building permit is cancelled, the Land Use Administrator shall provide written notice thereof to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained. The County may enter into a contractual agreement with the Applicant to specify all building permit fees over the course of construction.

**Section 603. Schedule of Fees, Charges, and Expenses.** The Board does not relinquish its right to establish fees, charges, and expenses in a fair and consistent manner within the county consistent with State Law or the State Constitution.

## **ARTICLE 7**

### **MODIFICATION OF SUBDIVISION REQUIREMENTS**

**Section 701. Findings.** In accordance with Section 1306 of the Zoning Ordinance, the Board does hereby find and determine that the modifications set forth in this Article 7 to the County's subdivision requirements contained in the Zoning Ordinance and the 2007 Revised Subdivision Ordinance of Union County, South Dakota ("*Subdivision Ordinance*") provide adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the ECPD District when fully developed and populated, and also provide such legal protections as will assure conformity to and achievement of the plan of development for the ECPD District.

**Section 702. Separate Ownership Permitted.** The Subject Property may be subdivided into two or more lots, and the ownership of property within the ECPD District or any portion or interest thereof may be transferred to any person or entity. With respect to the portion of the Subject Property owned by any person or entity other than the Applicant, such owner (i) shall be subject to all of the terms and provisions of this Ordinance applicable to the ownership interest; and (ii) may exercise the rights of the Applicant set forth in this Ordinance.

**Section 703. Subdivision Design Standards.** Any subdivision within the ECPD District will be exempt from the standards and requirements of Article 16 of the Zoning Ordinance (Subdivision Design Standards) and Articles 7 and 8 of the Subdivision Ordinance. In lieu of the foregoing standards and requirements, the following design standards and requirements will apply to any subdivision within the ECPD District:

1. The subdivision must provide sufficient easements for access to any newly created lot;
2. The subdivision must allow the newly created lot to be used safely for its intended purposes without danger to health or peril from fire, flood, erosion or other menace;

3. The arrangement, character, extent, width grade, and location of any streets created within the ECPD District shall promote the convenience and safety of the intended users, and will appropriately relate to the proposed uses of land to be served by such streets;
4. Any streets created within the ECPD District must be designed to provide for the discharge of surface water from the pavement and from the right-of-way by grading and drainage. For adequate drainage, the minimum street grade shall not be less than one-half (1/2) of one (1) percent; and
5. The lot size, width, depth, shape and orientation for a newly created lot shall be appropriate for the type of development and use contemplated.

**Section 704. Required Subdivision Improvements.** The terms and provisions of Article 18 of the Zoning Ordinance (Required Subdivision Improvements Prerequisite to Issuance of Building Permits) have been superseded by the Subdivision Ordinance, and therefore do not apply to the ECPD District. Article 11 of the Subdivision Ordinance shall not be applicable to the ECPD District, except that the Applicant and the County may enter into contracts associated with the construction of improvements containing such terms and provisions as the parties may mutually agree.

## **ARTICLE 8**

### **LEGAL STATUS PROVISIONS**

**Section 801. Severability.** If any provision of this Ordinance is held invalid by any court of competent jurisdiction, such invalidity shall not affect the application or validity of any other provision of this Ordinance, and, for such purposes, this Ordinance is declared to be severable.

**Section 802. Interpretation.** Capitalized terms not defined in this Ordinance shall have the meaning set forth in the Zoning Ordinance. All Article and Section headings in this Ordinance are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not. In the event of any conflict, inconsistency, or ambiguity regarding the various requirements applicable to the development and operation of the ECPD District, the following order of precedence shall govern:

1. State and Federal Approvals;
2. This Ordinance; and
3. The Zoning Ordinance and Subdivision Ordinance, to the extent not modified by this Ordinance.

**Section 803. References to Zoning Ordinance and Subdivision Ordinance.** The zoning and subdivision standards and requirements applicable to the ECPD District consist solely of the standards and requirements set forth in this Ordinance and the Zoning Ordinance and Subdivision Ordinance as in effect on the effective date of this Ordinance. Pursuant to Article 13, once all the conditions have been met, the official Zoning map shall carry a notation of the location and boundaries of the ECPD District and shall give a reference to a file in which full information concerning the provisions applying to the district may be found.

**Section 804. Declaration and Abatement of Public Nuisances.** The County does not abrogate its

authority under the following: 1) The County's Ordinance for the Declaration and Abatement of Public Nuisances; 2) SDCL § 7-8-33; or 3) SDCL § 21-10. Any one or more of the following conditions shall be deemed to constitute a public nuisance for purposes of the County's Ordinance for the Declaration and Abatement of Public Nuisances ("**Nuisance Ordinance**"):

1. the abandonment of an open construction site;
2. the abandonment of unused construction materials left at the construction site; or
3. the abandonment of the Subject Property along with the abandonment of crude oil, or crude oil derivatives.

For purposes of this Ordinance, the terms used in this Section shall be as defined in Section 1 of the Nuisance Ordinance. In order to declare any of the foregoing conditions a public nuisance under the County's Ordinance for the Declaration and Abatement of Public Nuisances, the Land Use Administrator must first provide notice of intent to declare a public nuisance to the Applicant, and provide the Applicant with a reasonable period of time to cure the condition, which period of time shall be extended for so long as the Applicant: (a) has established measures to protect users and occupants of the Subject Property and surrounding properties; and (b) is diligently attempting to cure the condition, subject only to delays caused by reasons outside of the control of the Applicant. In any event, the period of time provided by the Land Use Administrator to cure the condition shall be not less than one year. The timeframes for declaring a public nuisance under this Section shall prevail over any timeframes set forth in the Nuisance Ordinance. The County may enter into a contractual agreement with the Applicant to establish a surety or other assurances mutually acceptable to the parties to protect against the abatement of a nuisance.

**Section 805. Repeal of Conflicting Ordinances.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**Section 806. Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication according to law.

## **EXHIBIT A**

### **SUBJECT PROPERTY**

Section Ten (10) less the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Eleven (11) less the Southwest Quarter (SW<sup>1</sup>/<sub>4</sub>), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Twelve (12) less the Southeast Quarter of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>) and less the North Half of the Northeast Quarter (N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>) and less the East 1697.5 feet of the South 330 feet of the South Half of the Southwest Quarter (S<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>) and less parcel conveyed for cemetery in Book 27 of Deeds on page 429 and less the Northeast corner of the Southeast Quarter of the Northeast Quarter (SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section One (1) less the East Half of the Southeast Quarter (E<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>) and less the Southwest Quarter of the Southeast Quarter (SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>) and less the East Half of Lots 1 & 2 of the Northeast Quarter,

Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Two (2) Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Three (3) less the South Half of the Northeast Quarter (S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>) and less the Northwest Quarter (NW<sup>1</sup>/<sub>4</sub>), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

The West Half of the Southwest Quarter (W<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>) of Section Thirty-five (35), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Replat of Quam Tract Three (3) being the Southeast Quarter of the Southwest Quarter (SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>) and parts of the Northeast Quarter of the Southwest Quarter (NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>) and the Northwest Quarter of the Southeast Quarter (NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>), Section Thirty-five (35), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

The Southwest Quarter of the Southeast Quarter (SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>) and the Southeast Quarter of the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>), Section Thirty-five (35), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Lot C in the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>) in Section Thirty-four (34), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

The East Half of the Southeast Quarter (E<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>) less Tract 1 of Hatton's Addition in the Northeast Quarter of the Southeast Quarter (NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>), Section Thirty-four (34), Township Ninety-three (93) North, Range Fifty (50), West of the 5th P.M., Union County, South Dakota.

All public rights of way within and abutting the border of the Planned Development are included as a part of the Planned Development.

## **EXHIBIT B**

### **MASTER ZONE PLAN**

## **EXHIBIT C**

### **PERMITTED USES AND STRUCTURES**

#### **A. Industrial Zone Permitted Uses and Structures**

1. Any industrial use that can meet the performance standards set forth in Section 406 of this Ordinance. For purposes of this Ordinance, the term "industrial use" includes, without limitation:
  - a. Refineries, power plants, and all related appurtenances and supporting infrastructure, including: (i) emergency flares; (ii) cooling towers; (iii) gas sequestration projects and facilities without on-site underground storage; and (iv) pipelines.

- b. Tanks, facilities, and areas for the permanent and temporary storage of: (i) all liquids, gases, wastes, and other matters used in or generated by permitted industrial operations; and (ii) all waste resulting from such activities.
  - c. Manufacturing of any type.
  - d. Any use necessary to support the production or manufacture of ethanol and biofuels.
  - e. Wind generation facilities.
  - f. On-site aggregate mining.
  - g. Transportation-related infrastructure and facilities of any type, including road and rail rights-of-way, bridges, and structures; truck and rail loading and unloading; temporary and permanent parking; rail spurs; rail yards; rail car storage; truck and rail cleaning and washing facilities; garages; heliports/helipads; privately owned and operated airports, landing fields and landing strips licensed by the South Dakota Aeronautics Commission; maintenance and repair facilities; locomotive service areas; and intermodal transportation facilities.
2. Residential housing, including modular housing units, residential accessory uses, and residential supporting infrastructure; provided, however, that only the following persons and their families shall be permitted to reside in such residential housing: (a) construction workers and contractors working on the Project; and (b) security, fire protection, and supervisory personnel serving or related to the Project.
  3. Fire protection systems and equipment.
  4. Any principal or accessory use or structure permitted in the Light Industrial District (I-1) as set forth in Sections 1002 and 1003 of the Zoning Ordinance.
  5. Any principal or accessory use or structure permitted in the Industrial Transition Zone.

**B. Industrial Transition Zone Permitted Uses and Structures**

1. Agricultural uses, but excluding sales and auction yard and concentrated animal feeding operations as defined by the South Dakota DENR.
2. Any appurtenance or supporting infrastructure to an industrial or transportation use: (i) located within usable open space; or (ii) otherwise approved by the Planning Commission as part of the detailed plans submitted in accordance with Section 501 of this Ordinance and Subsection 1305 (1) of the Zoning Ordinance as not detrimentally impacting the use and enjoyment of or viewsheds from surrounding properties.
3. Pipelines.
4. Communication and utility uses, including, without limitation, electrical distribution systems and facilities, substations, utility lines, fiber optic cables, poles, and towers.
5. Water distribution, wastewater, stormwater management and drainage, and sewer facilities and improvements of any type.



## EXHIBIT D

### ACCESSORY USES AND STRUCTURES

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the bulk limits of the ECPD District including, without limitation, streets, sidewalks, plazas, fencing, gates, signs, landscaping, and all related appurtenances and supporting infrastructure.
2. Retail, office, and service uses and structures for the benefit of project workers or otherwise accessory to permitted principal uses and structures when established within the bulk limits of the ECPD District.
3. Temporary uses and structures related to Project construction, including trailers, indoor and outdoor storage, and construction staging or laydown areas.

## ARTICLE 13

### AQUIFER PROTECTION OVERLAY DISTRICT (APO)

Section 1301. Intent. 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 1302. Establishment/Delineation/Regulation of an Aquifer Protection Overlay District. The boundaries of the Aquifer Protection Overlay District are shown upon the map which has been made a part hereof by reference. The map shall be signed by the Chairman of the Board of County Commissioners and filed with the County Register of Deeds. The map shall have the same force and effect as if it were all fully set forth herein. The shallow/surficial aquifer boundary was mapped using data from the South Dakota Geological Survey and the United States Geological Survey. The map 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 additional site/area specific information is obtained. Additional information shall be utilized whenever available to more precisely determine aquifer locations and depths. Actual site-specific aquifer boundaries and depths may differ from those shown on the map. The mapped boundaries are drawn at the discretion of geologists and hydrologists based on best available information. Site-specific hydro-geologic information may be necessary to verify the location of a proposed use in relation to an underlying shallow aquifer. An applicant that is identified as being within the aquifer protection overlay zone, as denoted on the map, can provide drilling logs from soil borings on and/or near the site of the proposed use to conclusively prove that it is not located above a shallow/surficial aquifer area. The standards utilized by the South Dakota Department of Environment and Natural Resources for soil borings will be followed.

## **Zone A – Aquifer Critical Impact Zones**

Zone A, the wellhead protection area, is the mapped zone of contribution around all public water supply wells or wellfields in shallow/surficial aquifers and includes land upgradient from the well or wellfield to the ten year time of travel boundary plus any delineated adjacent lands not underlain by the aquifer with sufficient slope that contaminated surface water could flow directly onto Zone A.

### **Permitted Uses**

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

### **Conditional Uses**

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

### **Prohibited Uses**

1. Concentrated Animal Feeding Operation (CAFO) installed after adoption of this ordinance.
2. Manure storage areas except above ground tanks.
3. Disposal of solid waste except spreading of manure.
4. Outside unenclosed storage of road salt.
5. Disposal of snow containing de-icing chemicals.
6. Disposal of radioactive waste.
7. Graveyards or animal burial sites.
8. Detonation sites.
9. Open burning except ditches, fields and non-hazardous yard and household wastes such as paper, wood and leaves.
10. Public sewer systems and waste water lagoons.
11. Fall application of nitrogen fertilizer except spreading of manure.
12. Land spreading of petroleum contaminated soil.
13. Land spreading or dumping of waste oil.
14. Class V injection wells.

15. Transmission facilities designed to transport liquid hydrocarbons or liquid hydrocarbon products.
16. All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality.

### **Zone B – Aquifer Secondary Impact Zones**

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

#### **Permitted Uses**

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

#### **Conditional Uses**

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

#### **Prohibited Uses**

1. Land spreading of petroleum contaminated soil.
2. Land spreading or dumping of waste oil.
3. Class V injection wells.

#### **Performance Standards**

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

1. New or replacement septic tanks and associated drain fields for containment and disposal of human or animal wastes must conform with regulations established by the South Dakota Department of Environment and Natural Resources.
2. Manure storage areas may be permitted in Zone B but must be constructed in conformance with good engineering practices as recommended by the Natural Resource Conservation Service and/or the South Dakota Department of Environment and Natural Resources for Waste Storage Ponds.
3. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system where it is

deemed necessary by the Office of Planning and Zoning.

4. Any commercial or industrial facility, not addressed by (2) or (3) above, involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste, except for spreading of manure, in excess of 1,000 pounds and/or 100 gallons which has the potential to contaminate groundwater must have a secondary containment system which is easily inspected and whose purpose is to intercept any leak or discharge from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have double walls and accessible sumps.
5. When pastured animals are concentrated for winter feeding, measures shall be employed to prevent runoff of manure.
6. Discharge of industrial process water on site is prohibited without Office of Planning and Zoning approval.
7. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.
8. Any facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials must prepare and have on file in the Office of Planning and Zoning an acceptable contingency plan for preventing hazardous materials from contaminating the shallow/surficial aquifer should floods, fire, other natural catastrophes or equipment failure occur:
  - a. For flood control, all underground facilities shall include a monitoring system and a secondary standpipe above the 100 year frequency flood level. For above ground facilities, an impervious dike, above the 100 year flood level and capable of containing 120 percent of the largest storage volume, will be provided with an overflow recovery catchment area (sump).
  - b. For equipment failures, plans shall include but not be limited to:

Below ground level, provision for removal and replacement of leaking parts, a leak detection system with monitoring and an 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.
  - d. Agricultural operations are exempted from performance standard (8) unless chemicals stored which are on the Superfund Amendments and Re-authorization Act of 1986 (SARA Title III) extremely hazardous substance list in quantities exceeding the threshold planning quantity at any one time.
9. All abandoned wells shall be plugged in conformance with South Dakota Well

Construction Standards, Chapter 74:02:67-70, to prevent contamination of groundwater by surface water.

10. Office of Planning and Zoning and the Department of Environment and Natural Resources shall be informed within 24 hours of all leaks and spills of materials that might potentially contaminate groundwater.
11. Any Transmission Facilities, permitted in Zone B, designed to transport liquid hydrocarbons or liquid hydrocarbon products that will cross either the Richland Creek, Brule Creek, Scott Creek, Union Creek, Green Creek, Sayles Creek or Lewison Ditch (Big Ditch) shall have a pipe wall thickness that meets or exceeds current federal and/or state standards.

#### ARTICLE 14

#### ADDITIONAL USE REGULATIONS

Section 1401. Wind Energy Conversion Systems. The regulations regarding Wind Energy Conversion Systems (hereafter referred to as WECS) shall be as follows:

- A. Limited use. No WECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
- B. Setback requirements. The minimum distance between the property line, overhead utility lines or another wind turbine, and any tower support base of a WECS shall be equal to the proposed tower height (plus the radius of the rotor for the horizontal access machines).

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.

- C. Tower access. Climbing access to the WECS tower shall be limited either by means of a fence six feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than 12 feet from the ground.
- D. Electromagnetic interference. If a WECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the WECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the WECS.
- E. 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.
- F. Interconnect. The WECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

Section 1402. Home Occupations. It is deemed appropriate to allow limited nonresidential activities to operate in conjunction with a residence in those zoning districts where residential dwellings are permitted, provided the regulations protect the character and integrity of the unincorporated area.

The objective of these regulations is to allow limited commercial type activities associated with a residence only to the extent that the activity is clearly subordinate to the residential or agricultural use of the property. Uses such as motor vehicle repair or body shop, motor vehicle sales, recycling center, retail business or similar type uses shall not be considered a home occupation. Due to the diverse pattern of development in the rural area, the regulations provide for both minor and major home occupations.

Section 140201. 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.

- A. The occupation shall be conducted entirely within a dwelling and clearly incidental to the use of the structure for residential purposes.
- B. There shall be no change in the outside appearance of the dwelling or any visible evidence of the conduct of the occupation.
- C. Only residents of the dwelling shall be employed by or participate in the occupation.
- D. 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.
- E. There shall be no display of products visible in any manner when viewed from outside the dwelling.
- F. 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.
- G. 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.
- H. There shall be only limited and incidental sale of products conducted on the premise.
- I. The occupation shall not generate more than four (4) visits per day from clients or customers averaged over a period of seven (7) consecutive days.
- J. The occupation shall not result in additional off-street parking spaces for clients or customers.
- K. Toxic, explosive, flammable, combustible, corrosive, radioactive or other restricted materials are prohibited.

- L. 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.
- M. 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.
- N. 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 140202. Major Home Occupation. It is recognized that home occupations which exceed the requirements of Section 140201 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 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 (2) non-resident employees, not to exceed four (4) employees on site.
  4. In addition to the dwelling, up to 750 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 non-illuminated 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 10 visits per day from clients or customers averaged over a period of seven (7) 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 (5) 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 non-illuminated 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 140202 (B) (1).

Section 140203. Major Home Occupation - Permit Procedure. A conditional use application is required for a major home occupation in accordance with the requirements of Section 2204. The application shall be evaluated and conditions established using the criteria in Section 140202 (A) or (B).

Section 1403. Reserved.

Section 1404. 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 in the Office of Planning and Zoning 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 within the park.
  5. The park shall be a minimum of 20 acres in size.
  6. The park shall not be located within a floodplain or floodway.
- 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 20 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 exterior dimensions of the structure, measured by excluding overhangs, shall not be less than 24 feet.
  3. 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.
  4. The roofing and siding material shall be consistent with the material used in site-built dwellings.
  5. The roof pitch shall not be less than a 3 in 12 slope.
- D. Manufactured homes and 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. All mobile homes and manufactured homes as defined in Article 26 must be located in conformance with these requirements.

Section 1405. Accessory Building and Uses. The regulations regarding accessory buildings and uses shall be as follows:

- A. **Limited Use.** Accessory buildings and uses are buildings and uses customarily incident to any of the permitted uses in the district in which it is located. In the AG and RR districts, accessory buildings and uses are limited to:
  - 1. A noncommercial greenhouse that does not exceed in floor area 25 percent of the ground floor area on the main building.
  - 2. A private residential garage used only for the storage of noncommercial vehicles and other related material.
  - 3. Tennis court, swimming pool, garden house, pergola, ornamental gate, barbeque oven, fireplace, and similar uses customarily accessory to residential uses.
  - 4. Home occupation in conformance with Section 1402.
  - 5. Temporary storage and distribution of seed and similar type products provided the use is located within a farmstead, the product is stored within a completely enclosed building typical of farm buildings and the use is limited to the seasonal sale of products from the premises.
- B. **Time of Construction.** No accessory buildings shall be constructed upon a lot until the construction of a main building has been actually commenced, and no accessory buildings shall be used unless the main building on the lot is also being used. Accessory buildings may not be used for dwelling purposes.
- C. **Setback Requirements.**
  - 1. Accessory buildings which are attached to or located within 10 feet of the main building shall be considered a part of the main building and shall comply with the same yard requirements as the main building.
  - 2. Accessory buildings not a part of the main building, when located in the required front, side or rear yard, shall comply with the same requirements as the main building.

Section 1406. Reserved.

Section 1407. Concentrated Animal Feeding Operations.

- A. **General Requirements:** This section applies to any concentrated animal feeding operation (CAFO) constructed or used after the effective date of this section. Any

facility shall be sufficiently separated from other land uses so as not to unreasonably interfere with or burden the enjoyment of other neighboring lands, consistent with the policy established under this Ordinance.

- B. State General Permit: A General Water Pollution Control Permit shall be obtained from the Department of Environment and Natural Resources for all Concentrated Animal Feeding Operations (CAFOs) sited in Union County.
- C. Number of Animals for Concentrated Animal Feeding Operations: For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into Large, Medium, and Small operations. The following table defines each type of animal confinement (species) with the number of animals indicated. All animal classifications are based upon the standard animal numbers incorporated into the SD Department of Environment and Natural Resources (SD DENR) General Permit for feedlot operation.

<b>Type of Concentration Animal Feeding Operation</b>	<b>Large Animal Numbers Equal to or More Than:</b>	<b>Medium Animal Numbers Equal to:</b>	<b>Small Animal Numbers Less Than:</b>
Dairy cows (mature – milked or dry)	700	200 to 699	200
Veal Calves	1,000	300 to 999	300
Cattle other than mature dairy cows or veal calves <sup>1</sup>	1,000	300 to 999	300
Finisher Swine (weighing over 55lbs)	2,500	750 to 2,499	750
Nursery Swine (weighing less than 55lbs)	10,000	3,000 to 9,999	3,000
Farrow-to-Finish (sows)	540	270 to 539	270
Horses	500	150 to 499	150
Sheep or Lambs	10,000	3,000 to 9,999	3,000
Turkeys	55,000	16,500 to 54,999	16,500
Laying hens or broilers <sup>2</sup>	30,000	9,000 to 29,999	9,000
Chickens, other than laying hens <sup>3</sup>	125,000	37,500 to 124,999	37,500
Laying hens <sup>3</sup>	82,000	25,000 to 81,999	25,000

Ducks <sup>2</sup>	5,000	1,500 to 4,999	1,500
Ducks <sup>3</sup>	30,000	10,000 to 29,999	10,000
Geese	30,000	10,000 to 29,999	10,000

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

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

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

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

- D. **Waste Management Plan:** All concentrated animal feeding operations shall have a waste management plan (“WMP”). Waste application provisions can be found under (E) Waste Application. The WMP shall be prepared with the assistance of an engineer, licensed in the state of South Dakota, or other qualified professional (at the applicant’s expense), be in writing, and be updated or amended periodically to conform to facility operating conditions or requirements. In addition, an engineer that is licensed in the state of South Dakota shall approve and sign off on all building and waste storage facility plans associated with the concentrated animal feeding operation.

All concentrated animal feeding operations, as defined by these regulations, shall be required to have the WMP reviewed and approved by the South Dakota Department of Environment and Natural Resources. Waste management plans for Large, Medium and Small concentrated animal feeding operations may be reviewed periodically by the Planning Commission if deemed necessary. The following minimum requirements (unless varied from or waived by the CUP) shall apply:

1. Pest and odor control shall be maintained using conscientious methods, both as to the facility and the waste disposal site.
2. Unless otherwise required by state or federal law, all waste shall be collected in self-contained, enclosed pits, and transport equipment conveying wastes to the disposal site shall be fully enclosed and structurally sound to prevent leakage or spillage.
3. The legal description of all tillable agricultural lands where waste disposal is to be conducted. All waste produced must be knifed, injected or surface applied. If surface applied it shall be incorporated within 24 hours. Livestock production surplus water from lagoons and settling basins may be applied through irrigation pivots according to the standards of the South Dakota Department of Environment and Natural Resources.
4. Written agreements with all owners of waste disposal sites (other than those of the facility owner) for the use of such land for waste disposal, with provision no such land shall be withdrawn from use without written notice to the Planning Commission. Contracts shall be for a minimum three-year time period.
5. Waste disposal at all sites shall meet the following separation distance requirements:

<b>CATEGORY</b>	<b>ANIMAL WASTE SURFACE APPLIED</b>	<b>ANIMAL WASTE INCORPORATED OR INJECTED</b>
Lakes, Rivers, and Streams Classified as Fisheries	300 feet	100 feet (lake) 50 feet (river or stream)
Streams & Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Public Wells	1,000 feet	1,000 feet
Private Wells	250 feet	250 feet
Residence (other than the operator)	300 feet (surface)	300 feet
Municipality or Community Improvement District	1,000 feet	1,000 feet

E. **Waste Application:** In order to regulate waste application practices, landowners receiving and utilizing manure generated from a concentrated animal feeding operation not permitted by Union County shall be required to submit a waste management plan for land application of said manure within the Agricultural District. The waste management plan shall be the same as for a permitted site.

F. **Minimum Separation Distances:** There shall be a minimum setback and/or separation distance for all new and expanded concentrated animal feeding operations, change in operations, 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 definition shall apply:

**Setback –** The required minimum separation 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”.

If an applicant wishes to place a concentrated animal feeding operation or other use closer than the separation distances set forth in these regulations, the applicant can request an exception for the separation distance.

When a proposed operation does not meet the minimum separation criteria, the applicant shall submit sufficient documentation of one of the following:

1. A signed waiver from each landowner located closer than the minimum setback separation criteria (see setback chart). No application for a permit shall be

considered unless a minimum of 51% of the possible waivers are obtained. No building permit shall be issued until the waivers are filed with the County Register of Deeds.

2. In the absence of a minimum of 51% of possible waivers, the applicant shall present documentation which would substantiate a reduction in the minimum separation criteria. If the Planning Director receives documentation that would substantiate a reduction in the minimum separation criteria, the applicant may proceed with an application to the Union County Board of Adjustment for a Conditional Use Permit. In no case shall the separation distance for a Large CAFO be less than 2,640 feet. Conditional use evaluation will consider factors, but not be limited to factors, such as topography, producer's history in relation to operating CAFOs, public's opinion related to gaseous emissions, odors from existing CAFOs, etc.

<b>SETBACK CHART</b>	Large CAFO	Medium CAFO	Small CAFO
Dwellings other than owner of the facility	3,960 feet plus 200 feet per additional 1,000 animal units over 2,000 animal units	2,640 feet	1,320 feet
Municipality or Community Improvement District	5,280 feet plus 400 feet per each additional 1,000 animal units over 2,000 animal units	5,280 feet	5,280 feet
Churches, Schools, Businesses, Cemeteries, Designated State Parks and Designated County Parks	3,960 feet plus 200 feet per additional 1,000 animal units over 2,000 animal units	2,640 feet	1,320 feet
Public Water Supplies	2,640 feet	2,640 feet	2,640 feet
Private Wells (other than owner's or operator's)	250 feet	250 feet	250 feet
Private Wells (owner's or operator's)	150 feet	150 feet	150 feet
Lakes, Rivers and Streams Classified as Fisheries	500 feet	500 feet	500 feet
Federal, State, County and Township ROW	200 feet	200 feet	200 feet
Designated 100 Year Flood District	Prohibited	Prohibited	Prohibited

Designated Aquifer Protection Dist.	Prohibited, unless the applicant can show by appropriate soil borings that the site is appropriate.	Prohibited, unless the applicant can show by appropriate soil borings that the site is appropriate.	Prohibited, unless the applicant can show by appropriate soil borings that the site is appropriate.
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G. Information Required for the Consideration of Large Concentrated Animal Feeding Operation Conditional Use Permits:

Any applicant for a Union County Conditional Use Permit for concentrated animal feeding operations shall provide the following information to the Planning Director prior to consideration by the Planning Commission:

1. The owners', managers', management company's or similar entities' name, address and telephone number.
2. Legal description of the site, including acreage of tract of the proposed CAFO.
3. The number and type of animals to be housed by the proposed concentrated animal feeding operation.
4. A fly and odor control plan.
5. Methods to be utilized for the disposal of dead animals.
6. Information on ability to meet designated setback requirements, including maps showing measured distances.
7. Plans and specifications of the proposed site and a nutrient management plan.
8. Information on the types of soils at the site, and whether there are any shallow aquifers, designated wellhead protection areas, and/or 100-year floodplain designations at or within one half mile of the proposed site.
9. A map illustrating all land to be utilized for manure application.
10. A site plan of the proposed facility including:
  - a. A landscaping plan designed to assist in the dispersal of odors.
  - b. A grading plan designed to help keep pens and solid waste containment areas dry.
  - c. Best available topographic map of facility site and adjacent area within 1½ mile radius.

11. Provide farm service agency wetland map.
12. Test boring location and test boring results. The standards utilized by the South Dakota Department of Environment and Natural Resources for soil borings shall be followed.
13. Information on whether the applicant has ever violated any of the conditions or provisions of any Union County conditional use permit, Union County conditional use permit for concentrated animal feeding operations, or similar permit in any other county in the State of South Dakota, or any state in the United States.
14. The Union County Planning Commission or the Planning Director may request information reasonably related to a concentrated animal feeding operation not contained in these regulations.

H. Notification Requirements:

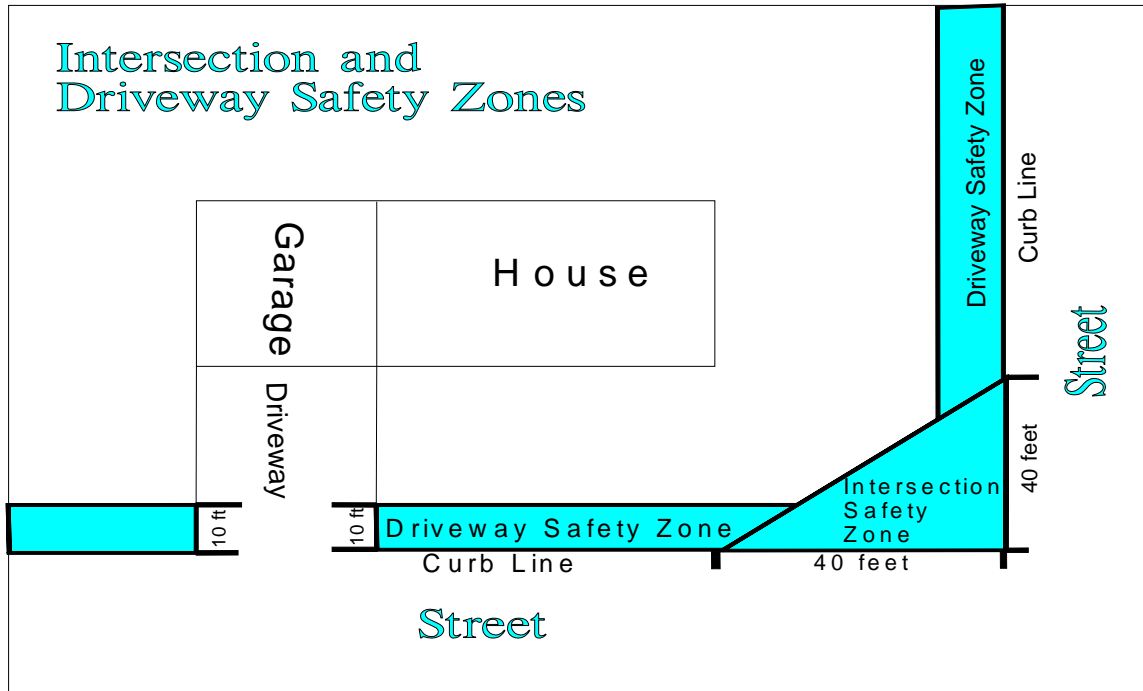
1. In addition to the requirements of Section 2204 (B), the Planning Director shall notify by U.S. mail all property owners of record within  $\frac{3}{4}$  mile of the proposed large concentrated animal feeding operation of the time, date, place and purpose of the conditional use permit public hearing. Such notification shall occur at least ten days prior to the hearing.

Section 1408. Visibility at Intersections.

- A. Intersection safety zones: No monument style sign or other sign with its face less than twelve (12) feet above grade or any fence, wall, shrub or other obstruction to vision exceeding three (3) feet in height above the established street grade shall be erected, planted or maintained within a triangular area of a corner lot that is included by measuring straight lines along the curb lines at points 40 feet distant in each direction from the intersection of the curb line and a straight line connecting the first two lines. (See Figure 1)
- B. Driveway safety zones: No monument style sign or other sign with its face less than ten (10) feet above grade or any fence, wall, shrub, or other obstruction to vision exceeding three feet in height above the established street grade shall be erected, planted, or maintained within the area from the curb line to ten feet behind the curb line. (See Figure 1)
- C. Shelter Belts: Shelter belts of one or more rows shall be setback a minimum of 10 feet from property lines and 20 feet from the road right-of-way line. Replacement of or addition to rows in an existing shelter belt shall be exempt from this requirement, as long as no further encroachment into the required setback occurs.



Figure 1



Section 1409. Telecommunications Towers, Antenna Support Structures, and Wireless Communications Facilities.

- A. Intent. Regulations regarding development of telecommunications towers, antenna support structures, and wireless communications facilities are intended to encourage the development of a competitive wireless communications marketplace while protecting the health, safety, and welfare of the public and maintaining the aesthetic integrity of the community. The regulations cover the placement, construction, and modification of telecommunications towers, antenna support structures, and wireless communications facilities. The specific intent of this section is:
1. To regulate the location of telecommunications towers, antenna support structures, and wireless communications facilities.
  2. To protect residential areas and land uses from potential adverse impact of telecommunications towers, antenna support structures, and wireless communications facilities.
  3. To minimize adverse visual impact of telecommunications towers, antenna support structures, and wireless communications facilities through careful design, siting, landscaping, and innovative camouflaging techniques.
  4. To promote and encourage shared use/co-location of telecommunications towers, antenna support structures, and wireless communications facilities.
  5. To avoid potential damage to property caused by telecommunications towers,

antenna support structure, and wireless communications facilities by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or when determined to be structurally unsound.

6. To ensure that telecommunications towers, antenna support structures, and wireless communications facilities are compatible with surrounding land uses.
  7. To facilitate the provision of wireless communications services to residents and businesses in an orderly fashion.
  8. To promote the location of telecommunications towers in nonresidential areas.
- B. Application Required. The following item must be satisfactorily addressed in a formal application to obtain a building permit at any given location in any zoning district:
1. Compliance with all applicable building codes, Federal Aviation Administration Regulations and Airport Approach Zones.
- C. Location/Setbacks.
1. Where a telecommunications tower is located within 600 feet of any residential zoning district, existing residential use except a farmstead, or future residential area, the minimum distance from the telecommunications tower base to the nearest existing residential structure or building setback line is not less than the proposed height of the tower.
  2. Where a telecommunications tower is required to meet Federal Aviation Administration paint and/or lighting regulations, the distance between the telecommunications tower and any residential zoning district or use, or any Floodplain Conservation District, shall not be less than one-half mile.
- D. Design Character.
1. Telecommunications towers and antenna support structure design shall use materials, colors, textures, screening, and landscaping that create compatibility with the natural setting and surrounding structures.
  2. Telecommunications towers shall be protected from corrosion or rusting, and if painted, be a neutral color, unless otherwise required by the Federal Aviation Administration.
- E. Stealth. Telecommunications towers in any nonresidential district where located within 300 feet of a residential zoning district or existing residential use except a farmstead shall be monopole design.
- F. Interference with Public Safety Radio Services. In order to ensure that public safety radio services will be free from harmful or destructive interference, any applicant requesting a permit to site a telecommunications tower, antenna support structure, or wireless communications facility shall provide documented Federal Communications

Commission approval prior to permit issuance.

- G. Illumination. Telecommunications towers shall not be artificially lighted except as required by the Federal Aviation Administration.
- H. Maintenance.
  - 1. All telecommunications towers, antenna support structures, and wireless communications facilities shall be maintained in good condition, order, and repair so that they shall not endanger the life or property of any person.
  - 2. Telecommunications towers, antenna support structures, and wireless communications facilities shall be maintained in compliance with Electronic Industries Association/Telecommunications Industries Association Standard EIA/TIA 222 (latest revision), all applicable laws, and so as not to interfere with the use of other property. Upon the County Planning Director's determination that a tower structure 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.
  - 3. All maintenance or construction on telecommunications towers, antenna support structures, and wireless communications facilities shall be performed by persons employed by, or under contract to the owner.
  - 4. If an owner discontinues use of a telecommunications tower, or if an owner files notice with the Federal Communications Commission of its intent to cease operating the tower, the owner shall give written notice to the County Planning Director of the date of such discontinuance.
- I. Abandonment.
  - 1. If the County receives notice of discontinuance, or if any telecommunications tower is not used for 365 consecutive days, the owner may be notified that a determination of abandonment has been made. If, within 30 days of receipt of notice, the owner fails to show that the tower has been in use or under repair during the period, the County Planning Director may determine that the site has been abandoned.
  - 2. Within 75 days of notice of such determination of abandonment, the owner shall remove the tower from the site. If an owner fails to do so, the County may remove the tower and recover the cost from the owner.

## ARTICLE 15

### ADDITIONAL YARD REGULATIONS

Section 1501. Number of Main Buildings on Tract. No more than one main building shall be located on a tract or lot when used for residential purposes. Where a lot or tract is used for an agricultural, commercial, or industrial purpose, more than one main building may be located upon the lot or tract, but only when such buildings conform to all open space requirements around the lot or tract for the district in

which the lot or tract is located.

Section 1502. Adjustment to Front Yard Requirements. Where, on the effective date of this ordinance, forty percent (40%) or more of a frontage was occupied by two or more buildings, then the front yard is established in the following manner:

- A. Where the building further most from the street provides a front yard not more than ten (10) feet deeper than the building closest to the street, then the front yard for the frontage is and remains an average of the then existing front yards.
- B. Where this (A) is not the case and a lot is within one hundred (100) feet of a building on each side, then the front yard is a line drawn from the closest front corners of these two adjacent buildings.
- C. Where neither (A) nor (B) is the case, and the lot is within one hundred (100) feet of an existing building on one side only, then the front yard is the same as that of the existing adjacent building.

Section 1503. Adjustment to Side Yard Requirements. Buildings with side yard setbacks less than required by this ordinance, may have additions erected in line with the existing building and provided further that said addition will be erected no closer to the lot line than the existing building.

Section 1504. Projections 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 (36) inches, exclusive of gutters;
- B. Eaves may project into a side yard twenty-four (24) inches, exclusive of gutters;
- C. Ordinary projection of sills, belt courses, cornices, vertical solar screen, and ornamental features which may project twelve (12) inches;
- D. Air conditioners, not to exceed five (5) ton unit or parts thereof, may project into a required side yard, provided that such projections shall be distant at least three (3) feet from the adjacent lot line and shall not extend more than three (3) feet from the building. Such air conditioners may project into a required front yard, but shall not extend more than three (3) feet from the building, and such air conditioner may extend into one side of a corner lot;
- E. Solar collectors which are a part of the main building may extend into a required rear yard for a distance not to exceed ten (10) feet.

Section 1505. Chimneys, Porches, Decks and Terraces. Chimneys, when not more than four (4) feet wide, may extend two (2) feet into any required yard space. Any uncovered porch, deck or terrace may extend two (2) feet into any required side yard, five (5) feet into any required front yard and twelve (12) feet into any required rear yard.

Section 1506. Double Frontage Lots. Where lots have double frontage, the required front yard shall be provided on both streets.

ARTICLE 16

ADDITIONAL HEIGHT REGULATIONS

Section 1601. Exceptions. The height regulations established in this ordinance shall not be applied to flag poles, domestic television antennas, church spires, chimneys, broadcast towers, amateur radio towers and waters towers.

Section 1602. Mechanical Appurtenances. All necessary mechanical appurtenances placed on the roof, including but not limited to, air conditioning units, heating units, elevator penthouses, communications towers, and satellite receiving dishes, located on top of a building, are exempt from the height regulations of this ordinance as follows:

- A. No such appurtenances shall exceed 12 feet in height above the maximum permitted in the district in which they are located.
- B. All said appurtenances must be set back a minimum of 12 feet from all faces of a building when said faces are adjacent to the street.

ARTICLE 17

PARKING AND LOADING REGULATIONS

Section 1701. Location. All parking required by this article shall be located in conformance with the following requirements:

- A. The parking lot shall maintain a minimum setback of 15 feet from the front property line.
- B. Parking spaces for all structures shall be located on the same site as the structure such parking is intended to serve; except that by conditional use, parking may be located within 300 feet of the use it is intended to serve.

Section 1702. Off-Street Parking Requirements. Off-street parking for specific uses shall be required as follows:

<b>USES &amp; STRUCTURES</b>	<b>MINIMUM PARKING REQUIREMENTS</b>
<b>Single-Family and Two-Family Dwellings</b>	1 space for each dwelling unit
<b>Multiple-Family Dwellings</b>	1 ½ spaces for each dwelling unit or 1 space per bedroom, whichever is greater
<b>Rooming and Boarding Houses, Sororities, and Fraternities</b>	1 space per 2 beds
<b>Private Club or Lodge</b>	1 space for each 300 square feet of floor area
<b>Church or Temple</b>	1 space for each 4 seats in main auditorium

USES & STRUCTURES	MINIMUM PARKING REQUIREMENTS
<b>Colleges and Universities</b>	Because of the unique parking needs of colleges and universities, a permit application for new construction must include a parking study prepared by the applicant of the parking needs of the entire campus including the new use and the study must address a plan to meet the parking needs of the staff and students.
<b>High School</b>	1 space for each 3 students based on the building's design capacity
<b>Junior High School</b>	25 spaces plus 1 parking space for each teacher and staff member
<b>Elementary School</b>	5 spaces plus 1 parking space for each teacher and staff member
<b>Hospital</b>	1 ½ parking spaces for each bed
<b>Sanitarium or Institutional Home</b>	1 space for each 3 beds
<b>Mortuary</b>	1 space for each 50 square feet of floor area in slumber rooms or 1 space for each 4 seats in the chapel, whichever is greater
<b>Auditoriums, Theaters, Other Places of Public Assembly</b>	1 space for each 4 seats
<b>Community Center, Library, Museum or Similar Public or Semi-public Buildings</b>	10 spaces plus 1 additional space for each additional 300 square feet of floor area in excess of 2,000 square feet
<b>Hotel or Motel</b>	5 spaces plus 1 space for each sleeping room or suite
<b>Medical Office Building</b>	1 space for each 2 employees, plus 1 space for each 600 square feet of floor area
<b>Manufacturing or Industrial Establishments, Research or Testing Laboratory, Bottling Plant, Warehouse, or other Similar Establishments</b>	2 spaces for each 3 employees on the maximum shift, plus space to accommodate all trucks and other vehicles used in connection therewith
<b>Restaurant, Bar, Café or Recreation or Amusement Establishment Not Specified Herein</b>	1 space for each 100 square feet of floor area or 1 space per 3 fixed seats, whichever is greater
<b>Bowling Alley</b>	3 spaces per alley
<b>Personal Services</b>	1 space for each 200 square feet of floor area
<b>Retail Sales Establishments</b>	1 space for each 300 square feet of floor area
<b>Wholesale and Distribution Establishments</b>	1 space for each 2 employees on the maximum working shift
<b>All Nonresidential Buildings, Except Those Specified Above</b>	1 space for each 300 square feet of floor area

Section 1703. Rules for Computing Parking Spaces. In computing the number of required off-street parking spaces, the following rules shall be applied:

- A. Floor area shall mean the gross floor area of the specific use, excluding any floor or

portion thereof used for parking as herein defined.

- B. Where fractional spaces result, the number of parking spaces required shall be the nearest whole number.

Section 1704. Minimum Improvement and Maintenance Standards. Driveways, parking lots, and loading/unloading areas shall conform with the following improvement and maintenance standards:

- A. Any driveways, parking lots, or loading/unloading areas in a commercial or industrial zoning district shall be constructed with a hard surface when the property is accessed from a hard surface road.
- B. If a driveway, parking lot or loading/unloading area is not hard surfaced with concrete or asphalt, a gravel surface shall be provided. The gravel surface shall be maintained to a minimum thickness of at least six inches.
- C. Adequate provisions shall be made for the disposal of storm water from a driveway, parking lot or loading/unloading area and the owner shall insure that such water does not flow onto adjoining property in a quantity or manner that would be detrimental thereto.
- D. An opaque fence, wall, berm, or landscaping of a height and character necessary for adequate screening of the parking lot from adjacent residentially used property shall be provided. Where there is a difference in elevation between the property which needs the screening and the property receiving the benefit of the screening, the height of the screen barrier shall be measured on the high side.
- E. The entrances and exits to and from any parking lot or loading/unloading areas shall be approved by the Planning Director. Proper directional signs shall be provided.

Section 1705. Off-Street Loading Requirements.

- A. There shall be provided at the time any building is erected or structurally altered, off-street loading spaces in accordance with the following requirements:

Use	Gross Square Feet Floor Area	Number of Off-street Loading Spaces
<b>Office Buildings</b>	5,000 – 25,000 sq. ft.	1 – 12' X 20' Loading space
	25,001 – 50,000 sq. ft.	1 – 14' X 35' Loading space
	50,001 – 200,000 sq. ft.	* 2 – 14' X 35' Loading spaces
<b>Retail or Service Establishment</b>	Less than 5,000 sq. ft.	1 – 12' X 20' Loading space
	5,001 – 20,000 sq. ft.	1 – 14' X 35' Loading space
	20,001 – 100,000 sq. ft.	** 2 - 14' X 35' Loading spaces
<b>Wholesale, Commercial Use</b>	2,000 – 20,000 sq. ft.	1 – 14' X 35' Loading space
	20,000 – 100,000 sq. ft.	*** 2 – 14' X 35' Loading spaces
<b>Manufacturing or Industrial</b>	10,000 sq. ft.	1 – 14' X 35' Loading space plus 1 – 14' X 35' space for each portion thereof in excess of 50,000 sq. ft.

\*Add one additional 14' X 35' loading space for each 75,000 square feet of gross floor area above 200,000 square feet.

\*\*Add one additional space for each 75,000 square feet of gross floor area above 100,000 square feet.

\*\*\*Add one additional space for each 75,000 square feet of gross floor area above 100,000 square feet.

- B. Loading spaces are to be provided on each lot in compliance with the following requirements.
  - 1. The loading space shall be completely contained on the lot it is intended to serve.
  - 2. The loading space shall be arranged on the lot in such a way as to allow normal movement of traffic in and around the loading area.
  - 3. No loading space shall be permitted to extend into any public right-of-way.

## ARTICLE 18

### ON-PREMISE SIGNS

Section 1801. Intent. These regulations provide standards for the erection and maintenance of private signs. The principal feature of this section is the restriction on the total sign area permissible per site. All private signs shall be erected and maintained in accordance with the following standards. The general objectives of these standards are to promote health, safety, welfare and in part to achieve the following:

- A. Safety. To promote the safety of persons and property by providing that signs:
  - 1. Do not create a hazard due to collapse, fire, collision, decay, or abandonment;
  - 2. Do not create traffic hazards by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to see and interpret any official traffic sign, signal or device.
- B. Communications Efficiency. To promote the efficient transfer of information by providing that:
  - 1. Businesses and services may identify themselves;
  - 2. Customers and persons may locate a business or service;
  - 3. No person or group is arbitrarily denied the use of the sight line from public rights-of-way for communication purposes.
- C. Landscape Quality and Preservation. To protect the public welfare and to enhance the appearance and economic value of the landscape by providing that signs:
  - 1. Do not create a nuisance to persons using the public rights-of-way;



2. Do not constitute a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height or movement.

Section 1802. Permitted Signs and Sign Area. In the following districts, the sign area and height set forth shall apply to all signs on the premises except as provided in Section 1805:

- A. AG Agricultural and FPC Floodplain Conservation Districts.
  1. Signs advertising the use of a particular breed, type, variety, hybrid, or brand of plant, chemical or tillage. No one sign shall exceed 16 square feet in area per face.
  2. Uses which are governed by conditional use may have signs on the premise in accordance with the stipulations of the permit.
  3. No hunting, no trespassing and similar signs.
- B. RR Rural Residential.
  1. A two square foot wall or freestanding sign identifying a home occupation.
- C. C Commercial, LI and HI Industrial:
  1. Wall, roof, or projecting signs:
    - a. The total sign area on structures which are two stories or less in height shall not exceed two square feet for each linear foot of building frontage.
    - b. The total sign area on structures which are greater than two stories in height shall not exceed either two square feet for each linear foot of building frontage, or 15% of the area of the frontage wall, whichever is greater.
  2. Freestanding signs having a total sign area not to exceed one square foot for each linear foot of road frontage or 200 square feet, whichever is less.
  3. The maximum sign height shall be 30 feet.

Section 1803. Regulations and Limitations of Permitted Signs.

- A. Wall Signs. Wall signs may be located anywhere on the wall of a building.
- B. Projecting Signs.
  1. Projecting signs may project no more than five feet from the building face.
  2. Projecting signs shall have a minimum clearance of ten feet above grade level about any yard or sidewalk and 16 feet above any road or drive.
  3. Projecting signs may project no more than five feet above the top of a parapet or

roof line including the framework or support.

- C. Roof Signs. Roof signs shall rise no higher than five feet above the top of a parapet or roof line and shall not exceed the height limits for the zoning district.
- D. Freestanding Signs.
  - 1. Freestanding signs shall be limited to one per street frontage except that businesses on frontages of 300 feet or more may erect two freestanding signs; however, the total sign area for both signs may not exceed that allowed for the street frontage.
  - 2. Freestanding signs shall be located only in the front or side yard.
  - 3. Freestanding signs shall not project over public property.
  - 4. Freestanding signs shall not be erected within the area of a corner of two intersecting streets or a street and railroad. Area of a corner, in this case, shall be the triangular area formed by measuring 40 feet from the intersection along both roads and connecting these two points with a straight line.

Exceptions: Freestanding signs may be located in the area of a corner when the sign and sign structure comply with the following:

- a. The sign face is located 12 feet above grade level; and
- b. The sign structure is of such a size and spacing as to not obstruct the view of said intersection.

Section 1804. Special Situations. This section contains the sign regulations for the following special situations:

- A. Shopping Centers. A freestanding sign shall be allowed on each street frontage stating the name of the center and the major tenants provided no other freestanding signs are erected. The sign area shall be determined independently from the sign area allowed under 1802. A sign area of one square foot for each one lineal feet of street frontage or 200 square feet per frontage, whichever is smaller, shall be allowed. The height shall not exceed 40 feet.
- B. Interstate Highway Interchange. In the C, LI and HI Districts, businesses which are adjacent to both the interstate and the intersecting cross street may by conditional use erect one additional on-premise freestanding sign not to exceed 200 square feet or 60 feet in height.

Section 1805. Exemptions. The following signs may be allowed in addition to the signs permitted in Section 1802, but signs must be in conformance with all other state and local laws.

- A. Automobile Service Station. Gasoline dispensing stations may have, in addition to other signs, one 12 square foot sign on each street frontage. Such signs shall be firmly attached to a structure and shall contain gasoline pricing information only.

- B. Construction Signs. Building contractors, lending institutions and professional firms may post temporary signs on site under construction. The total sign area shall not exceed 100 square feet or 20 feet in height and shall be removed upon completion of the project.
- C. Neighborhood Identification Signs. In any zone, a masonry wall, landscaping and other similar material or feature may be combined to form a display for neighborhood or tract identification, provided that the legend of such signs or display shall consist only of the neighborhood or tract name.
- D. Permanent Identification Signs. Churches, schools, day care centers, institutional and public uses in the agricultural and residential districts may have a sign not exceeding 25 square feet in area per frontage.
- E. Public Signs. Signs of a noncommercial nature and in the public interest, erected by, or on the order of, a public officer in the performance of his duty shall be permitted.
- F. Integral Signs. Names of buildings, dates of erection, monumental citations, commemorable tablets, and the like, of permanent type construction and made an integral part of the building structure shall be permitted.
- G. Private Traffic Directional Signs. Signs directing traffic movement into, out of, or within the commercial premise. Such signs shall not exceed an area of four square feet per sign face and four feet in height.
- H. Real Estate Signs. Temporary real estate signs shall be permitted.

Section 1806. Illumination. Regulations regarding the illumination of signs shall be as follows:

- A. Shading. The light from any illuminated sign or billboard shall be so shielded, shaded, or directed so that the light intensity shall not adversely affect surrounding or facing premises or safe vision of operators of vehicles on public or private roads.
- B. Blinking and Flashing. Blinking, flashing, pulsating, or fluttering lights, or other illuminated devices which have a changing light shall not be located closer than 300 feet from any residential district. This restriction shall not apply to signs displaying the date, time and temperature exclusively.

Section 1807. Temporary and Portable Signs. Temporary and portable signs shall not exceed 32 square feet and may be displayed for 60 days per calendar year in the C, LI and HI Districts. It shall be the duty of the user of the sign to:

- A. Notify and obtain approval from the Planning Director prior to placement of said sign.
- B. Notify the Planning Director upon removal of said sign. The Planning Director shall continue to deduct one day from the 60 days allowed per calendar year until notice of removal is received or a total of 60 days has elapsed.
- C. Place the signs in locations so that the provisions of this article and all other applicable codes and ordinances are complied with. Temporary and portable signs in the AG District, when used in conjunction with roadside stands and fireworks stands, shall be

authorized as part of the conditional use granted to such uses.

Section 1808. Prohibited Signs. The following signs are prohibited:

- A. **Parking of Advertising Vehicles Prohibited.** No person shall park any vehicle or trailer on a public right-of-way, or public property, or on private property so as to be visible from a public right-of-way, which has attached thereto or located thereon, any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same premises or any other premise. This is not intended to prohibit any form of vehicular signage such as a sign attached to a bus or lettering on a motor vehicle.
- B. **Nuisance Signs.** Signs which imitate an official traffic sign or signal or which are of a size, location, movement, content, coloring or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic, street sign or signal shall be removed upon notice.
- C. **Banners.** Banners shall be prohibited except on a temporary basis for a maximum of 21 days during any calendar year.

Section 1809. Maintenance and Removal. Every on-premise sign, including any exempt from this code in respect to permits and permit fees, shall be maintained in good structural and aesthetic condition at all times. Any abandoned, unsafe or unsightly sign shall be removed or renovated within 60 days upon written notice. If the owner fails to remove or renovate the sign within the required time period the County may remove such sign at the owner's expense.

## ARTICLE 19

### OFF-PREMISE SIGNS

Section 1901. Purpose and Intent. The purpose of this article is to prevent the uncontrolled use of off-premise signs so as to promote the health, safety and general welfare of those persons using the public rights-of-way. These regulations are intended to preserve the overall landscape quality of the county while allowing the reasonable use of signs to inform the traveling public. This is accomplished through the application of standards for size, illumination and separation.

Section 1902. General Regulations.

- A. In the AG and FPC Districts, off-premise signs shall be limited to those which provide direction to a business or use and shall be constructed in accordance with the following:
  - 1. A maximum sign area of 9 square feet.
  - 2. The sign shall contain the business name and directional information only.
  - 3. There shall be no more than one sign face per direction of facing.
  - 4. A sign shall not be within a 500 foot radius of any other off-premise sign intended to be read from the same right-of-way. The sign shall not be within a 300 foot radius of any other off-premise sign intended to be read from a different

right-of-way. All spacing measurements in this subsection shall refer to a measurement made along the edge of the right-of-way and shall apply only to structures located on the same side of the highway. These spacing provisions do not apply to signs separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the road right-of-way at any one time.

5. A sign shall not be illuminated nor shall blinking or flashing lights be used.
  6. A maximum height of 16 feet.
- B. The following regulations shall apply to off-premise signs in the C, LI and HI Districts:
1. A maximum sign area of 288 square feet.
  2. There shall be no more than one sign face per direction of facing.
  3. The maximum height shall be 40 feet.
  4. No part of the sign face or structure shall be located in or overlap into the required side or rear yard setbacks or public right-of-way.
  5. A sign shall not be within a 500 foot radius of any other off-premise sign intended to be read from the same right-of-way. The sign shall not be within a 300 foot radius of any other off-premise sign intended to be read from a different right-of-way. All spacing measurements in this subsection shall refer to a measurement made along the right-of-way and shall apply only to structures located on the same side of the highway.

These spacing provisions do not apply to signs separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the road right-of-way at any one time.

6. The light from any illuminated sign shall be so shielded, shaded or directed so that the light intensity shall not adversely affect surrounding or facing premises or the safe vision of operators of vehicles on public roads.

#### Section 1903. Conditional Uses.

- A. Off-premise signs over 288 square feet to a maximum of 672 square feet and signs with more than one sign face per direction of facing in the C, LI and HI Districts.
- B. A conditional use shall be required for off-premise signs within 500 feet of a park, school, church, or designated historic site.

#### Section 1904. Exceptions.

- A. Directional signs for nonprofit organizations not to exceed four square feet per sign face.
- B. Political campaign signs, not exceeding thirty-two (32) square feet, announcing

candidates seeking political office or pertinent political issues provided the signs are removed within five days after the election.

- C. Directional signs, street name signs, or other signs which have been authorized and directed by a governmental unit.

Section 1905. Prohibited Signs. The following signs are prohibited:

- A. Parking of Advertising Vehicles Prohibited. No person shall park any vehicle or trailer on a public right-of-way, or public property, or on private property so as to be visible from a public right-of-way, which has attached thereto or located thereon, any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same premises or any other premise. This is not intended to prohibit any form of vehicular signage such as a sign attached to a bus or lettering on a motor vehicle.
- B. Nuisance Signs. Signs which imitate an official traffic sign or signal or which are of a size, location, movement, content, coloring or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic, street sign or signal shall be removed upon notice.

Section 1906. Maintenance and Removal. Every off-premise sign shall be maintained in good structural and aesthetic condition at all times. Any abandoned, unsafe or unsightly sign shall be removed or renovated within 60 days upon written notice. If the owner fails to remove or renovate the sign within the required time period the County may remove such sign at the owner's expense.

## ARTICLE 20

### NONCONFORMING AND NONSTANDARD USES

Section 2001. Purpose and Intent. The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue.

Section 2002. Continuation of Nonconforming Uses. Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

Section 2003. Use Becoming Nonconforming By Change in Law or Boundaries. Whenever the use of a premise becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

Section 2004. Change in Nonconforming Use. If no structural alterations or additions are made, a nonconforming use may be changed to another nonconforming use of the same or a more restrictive classification. For the purposes of this article, each of the following classifications shall be considered to be "more restrictive" than those it precedes:

1. FPC Floodplain Conservation
2. RR Rural Residential
3. C Commercial

4. LI Light Industrial
5. HI Heavy Industrial

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 2005. 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 except that a conditional use permit may be authorized after the following criteria are given specific consideration:

- A. Effect on surrounding property values.
- B. The density of land use zoning for the subject and adjacent properties.
- C. The degree of hardship upon the applicant which would be caused by failure to grant the permit.
- D. It can be demonstrated that it was the owner's intent to use the entire premises for said use prior to the adoption, revision or amendment of this ordinance.

Section 2006. 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 60 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 if damaged less than 100 percent.

Section 2007. Discontinuance of Nonconforming Use. In the event that a nonconforming use is discontinued for more than one year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.

Section 2008. Effect on Use Which is Illegal Under Prior Law. Nothing in this ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a premises in violation of zoning regulations in effect immediately prior to the effective date of this ordinance.

Section 2009. Continuation of Nonstandard Uses. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

- A. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.
- B. Structural alteration 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 yards 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.

ARTICLE 21

CHANGE OF ZONE

Section 2101. Application to County or by County for Zoning Change. Any person, firm, or corporation desiring a change in regulations, restrictions, or boundaries of the zoning map of any property from one zoning district classification to another zoning district classification under this ordinance, shall make application for such change with the Planning Director. Such application form shall be provided by the Planning Director and be completed in full by the applicant. If the affected property abuts, adjoins, or is within one mile of the county border, the county auditor on behalf of the individual landowner shall also notify, by registered or certified mail, the county auditor in the adjoining county of the petitioned zoning change at least seven days before the public hearing is held on the matter by the planning commission.

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

Section 2102. Fees. Upon the filing of any application for a zoning district classification change with the Planning Director, the applicant shall pay to the County the appropriate fee as designated in Section 2409.

Section 2103. Planning Commission Hearing. Upon the filing of an application and payment of the fee, the Planning Director shall set a date for public hearing at which time the Planning Commission will consider such requests for a change in zoning district classification. The date for a public hearing shall be a day when the Planning Commission is regularly scheduled to meet.

- A. LEGAL NOTICE. The Planning Director shall cause to be published a legal notice as required in SDCL 11-2-29.
- B. SIGNS. A sign(s) to be provided by the Planning Director shall be posted on or near the property at least five days prior to the scheduled hearing.
- C. PLANNING COMMISSION RECOMMENDATION. The Planning Commission shall consider all applications for zoning district classification changes and make a recommendation to the Board of County Commissioners.

Section 2104. Board Hearing. The Board of County Commissioners shall conduct a public hearing on all applications which have been forwarded to them from the Planning Commission.

- A. LEGAL NOTICE. The Board shall cause to be published a legal notice as required in SDCL 11-2-19.
- B. SIGNS. A sign(s) to be provided by the Planning Director shall be posted on or near the property at least five days prior to the scheduled hearing.
- C. HEARING. Upon the day of such public hearing, the Board shall review the decisions and recommendations of the Planning Commission on all applications. The Board, in making its determination on such applications, may make changes in the zoning map in accordance with or in rejection or modification of the recommendations of the Planning Commission.



Section 2105. Reapplication. No application requesting a zoning district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board, shall again be considered by the Planning Commission before the expiration of six (6) months from the date of the final action of the Board.

## ARTICLE 22

### BOARD OF ADJUSTMENT

Section 2201. Establishment. A Board of Adjustment is hereby established for Union County to consist of all members of the Union County Planning Commission, in accordance with SDCL 11-2.

Section 2202. Operational Procedure.

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

Section 2203. Powers and Duties. The Board of Adjustment shall have the following powers and duties:

- A. To hear and decide appeals where it is alleged there is error in any requirement or determination made by the Planning Director in the enforcement of this ordinance.
- B. To hear and decide appeals to decisions made by the Planning Director regarding Building or Zoning Permits.
- C. To hear and decide only such Conditional Uses as the Board of Adjustment is specifically authorized to pass on by the terms of this ordinance; to decide such questions as are involved in determining whether Conditional Uses should be granted; and to grant Conditional Uses with such conditions and safeguards as are appropriate under this ordinance, or to deny Conditional Uses when not in harmony with the purpose and intent of this ordinance.
- D. To hear and decide upon petitions for variances to vary the strict application of the height, area, setback, yard, parking or density requirements as will not be contrary to the public interest. A variance shall not be allowed to vary the use regulations.

Section 2204. Conditional Uses. Conditional Uses are allowed for certain uses in some districts, as identified in each District Regulations. 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. The following procedure for requesting a Conditional Use Permit shall be followed:

- A. An application for a Conditional Use Permit, available from the Planning Director, shall be completed by the landowner requesting the Conditional Use Permit. Completed applications shall be returned to the Planning Director for review.

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

- B. The Planning Director shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Planning Director shall post notices of the public hearing at the County Courthouse and on the property affected by the proposed Conditional Use Permit. No less than ten (10) days before the public hearing, the Planning Director shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed Conditional Use Permit.
- C. The following procedure shall be followed by the Board of Adjustment in considering the recommendations of the Planning Director:
  - 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 Board of Adjustment.
  - 2. Before any Conditional Use Permit shall be granted, the Board of Adjustment may 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 Board of Adjustment 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 Board of Adjustment. 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 Board of Adjustment may make a 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.

Section 2205. 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.

The following procedures for requesting a Variance shall be followed:

- A. An application for a variance, available from the Planning Director, shall be completed by the landowner requesting the variance. Completed applications shall be returned to the Planning Director for review. The Planning Director shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The Planning Director's recommendation shall include a summary of the application, and the reasons and justification for either approval or disapproval of the application.
- B. The Planning Director shall set the date, time and place for a public hearing to be held by the Board of Adjustment. The Planning Director shall post notices of the public hearing at the County Courthouse and on the property affected by the proposed variance. No less than ten (10) days before the public hearing, the Planning Director shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed variance.
- C. The following procedure shall be followed by the Board of Adjustment in considering the recommendation of the Planning Director.
  - 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 Board of Adjustment.
  - 2. Before any variance shall be granted, the Board of Adjustment may make written findings certifying compliance with the specific rules governing individual variances and that satisfactory provision and arrangement has been made

concerning the following, where applicable:

- a. 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.
  - b. 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.
  - c. The special conditions or circumstances are not the result of the applicant's actions.
  - d. Granting the variance requested will not give the applicant any special privilege that is denied to other uses or structures in the district.
  - e. The variance requested is the minimum variance that will make possible the reasonable use of property or structure.
  - f. 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.
  - g. 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.
- D. In order to preserve the intent of the Zoning Ordinance and to protect the public interest, the Board of Adjustment may attach conditions to a variance. A variance shall remain valid only as long as the property owner complies with any terms and conditions of the variance, as attached by the Board of Adjustment.
- E. 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.

Section 2206. Appeal Procedure.

- A. A notice of appeal shall be filed with the Planning Director, who shall transmit to the Board of Adjustment all information and records concerning the appeal within ten (10) business days.
- B. The Board of Adjustment shall keep a public record of all findings and decisions. Meetings shall be held at the call of the Chairman and at such other times as necessary. Each session at which an appeal is to be heard shall be a public meeting. The Planning Director shall publish notice of the public hearing in a legal newspaper of the county no less than ten (10) days before the public hearing.
- C. The public hearing shall be held. The appellant may appear in person, or by agent or

attorney. Minutes of the public hearing shall be recorded and kept in the records of the Board of Adjustment. Written findings certifying compliance with the specific rules governing the action shall be completed by the Board of Adjustment. The concurring vote of two thirds (2/3) of the members of the Board of Adjustment shall be necessary to approve any appeal or arrive at any determination.

Section 2207. Appeals from Decision of Board. Appeals may be taken to the Circuit Court by any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the County, aggrieved by any decision of the Board of Adjustment, in the manner and form provided by the statutes of the State of South Dakota, in such cases made and provided.

## ARTICLE 23

### ADMINISTRATION AND ENFORCEMENT

Section 2301. Powers and Duties.

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

Section 2302. Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Planning Director or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises an ordinance violation, the Planning Director or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Planning Director by this ordinance, provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Planning Director or an authorized representative shall have recourse to every remedy provided by law to secure entry.

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

Section 2303. Stop Order. Whenever any work is being done contrary to the provisions of this ordinance, the Planning Director may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Planning Director to proceed with the work.

Section 2304. Occupancy Violation. Whenever any building or structure regulated by this ordinance is

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

## ARTICLE 24

### BUILDING PERMITS

Section 2401. Building Permits Required. It shall be unlawful for any person, firm or corporation to erect, construct, change, enlarge, alter, repair, move, improve, remove, convert, demolish, use, occupy or maintain any building, structure or land use regulated by this ordinance or cause the same to be done without first obtaining a separate building permit for each building, structure or land use change from the Office of Planning and Zoning. A zoning permit is required prior to a change of use or occupancy within a building or structure.

Section 2402. Application. To obtain a building permit, the applicant shall apply at the Office of Planning and zoning. Every applicant shall:

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

Section 2403. 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, ordinances, rule, and regulations.

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

Section 2404. Issuance. The application, plans and other data filed by an applicant for a building permit shall be reviewed by the Planning Director. Such plans may be reviewed by other departments to verify compliance with any applicable laws or requirements under their jurisdiction.

If the Planning Director finds that the work described in an application for a permit and the plans, and other data filed therewith, conform to the requirements of this ordinance and other pertinent laws and ordinances, and that the fees specified in Section 2409 have been paid, he shall issue a permit.

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

Section 2405. Validity of Permit. The issuance or granting of a permit or approval of plans shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this ordinance or of any other ordinance of the jurisdiction. No permit presuming to give authority to violate or cancel the provisions of this ordinance shall be valid.

Section 2406. Expiration. Every building or zoning permit issued under the provisions of this ordinance shall expire by limitation and become null and void if the building or work or use authorized by such permit is not commenced within 180 days from the date of such permit, or if the building, work, or use authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall first be obtained to do so, provided no changes have been made or will be made in the original plans and specifications for such work.

Section 2407. Suspension or Revocation. The Planning Director may, in writing, suspend or revoke a building or zoning permit issued under the provisions of this ordinance whenever the permit is issued in error or on the basis of incorrect information supplied.

Section 2408. Zoning Permits Required. It shall be unlawful for any person, firm or corporation to change the use or occupancy within any building or structure regulated by this ordinance, or cause the same to be done without first obtaining a separate zoning permit for each use or occupancy change from the Office of Planning and Zoning. If the Planning Director finds that the change described in an application for a permit and the plans, and other data filed therewith, conform to the requirements of this ordinance and other pertinent laws and ordinances, the zoning permit shall be issued. A zoning permit shall be subject to the regulations of Section 2406 Expiration and Section 2407 Suspension or Revocation as outlined in this ordinance.

Section 2409. Schedule of Fees, Charges, and Expenses. 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 Planning Director. 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 25

### GENERAL PROVISIONS

Section 2501. General Regulations. The following general regulations shall apply to all zoning districts:

- A. Except as otherwise provided, no building shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall any structure or land be used:
  1. Except for a purpose permitted in the district in which the structure or land is

located;

2. Except in conformance with the height and minimum lot requirements, and the parking and sign regulations, and any other applicable requirements of the district in which the structure or land is located.
  3. Except in conformance with any Federal, State or County codes as may be applicable. Where these regulations and any other rules and regulations conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- B. The density and yard requirements of these regulations are minimum regulations for each and every building existing at the effective date of these regulations and for any building hereafter erected or structurally altered. No land required for yards or other open spaces about an existing building or any building hereafter erected or structurally altered shall be considered a yard or lot area for more than one building.
- C. Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one main building on a lot except as otherwise provided in these regulations.
- D. Cooperatives, condominiums, and all other forms of property ownership do not affect the provisions of these regulations and all requirements shall be observed as though the property were under single ownership.

Section 2502. Violation and Penalty. Violations shall be treated in the manner specified below:

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

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Union County, in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of said building, structure or land.

Section 2503. Warning and Disclaimer of Liability. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the flood zone or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of Union County or on any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.



Section 2504. Interpretation, Abrogation, and Severability. In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not the intent to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where these regulations and other regulations, easement, covenant or deed restriction conflict or overlap whichever imposes the more stringent restrictions shall prevail. All other regulations inconsistent with these regulations are hereby repealed to the extent of this inconsistency only. If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

Section 2505. Saving Clause. These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect rights or causes of action, either civil or criminal, not in suit that may have already accrued or grown out of any regulations repealed.

Section 2506. Purpose of Catch Heads. The catch heads appearing in connection with the sections of these regulations are inserted simply for convenience to serve the purpose of an index. The introductory statements found at the beginning of each article are to serve as general references only. The catch heads, introductory statements, and illustrative examples of zoning terms shall be wholly disregarded by any person, office, court, or other tribunal in construing the terms and provisions of these regulations.

Section 2507. Effective Date. These regulations shall be in full force and effect from and after its passage and publication as provided by law.

## ARTICLE 26

### DEFINITIONS

Section 2601. Purpose. For the purpose of these regulations certain terms are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word 'building' shall include the word 'structure' and 'premises'; the word 'shall' is mandatory and not directory; the words 'used' or 'occupied' include the words 'intended', 'designed' or 'arranged to be used or occupied'; the word 'lot' includes the words 'plot', 'parcel' or 'tract', and the word 'person' includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. Any word not herein defined shall be as defined in any recognized standard English dictionary.

Section 2602. Definitions.

**ABANDONED SIGN.** A sign or sign structure which contains no sign copy, contains obliterated or obsolete sign copy, or is maintained in an unsafe or unsightly condition for a period of three months shall be considered an abandoned sign.

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

**ACCESSORY BUILDING OR USE.** A subordinate building or portion of the main building, the use of which is incidental to and customary in connection with the main building or the main use of the premises and which is located on the same lot with such main building or use. An accessory use is one which is incidental to the main use of the premises.

**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.

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

feeding operations and agribusiness activities.

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

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

**ANIMAL UNIT.** A unit of measurement based on the amount of waste produced by the animal. For the purposes of this ordinance animal units (AU) shall be calculated according to the following chart. Animal units relate to inventory rather than annual production. Animal units are computed by multiplying the number of head of a particular animal times the corresponding animal unit equivalent. Other animal species equivalent which are not listed will be based on species' waste production.

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

**ANIMAL WASTE, INCORPORATED.** Animal waste applied to the land surface and mechanically mixed into the soil within 24 hours.

**ANIMAL WASTE, INJECTED.** Animal waste injected or tilled into the soil at the time of application.

**ANIMAL WASTE, SURFACE APPLIED.** Animal waste applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal waste in irrigation waters.

**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.

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

**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.

**AQUIFER, SHALLOW.** Any aquifer having the following characteristics:

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

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

**AUTOMOBILE SALES.** The use of any building, land area, or their premises for the display and sale of new or used automobiles, panel trucks or vans, trailers, or recreational vehicles and including any warranty repair work and other repair service conducted as an accessory use.

**AUTOMOBILE SERVICE STATION.** Shall mean any building or premise which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted. Gasoline pumps and gasoline pump islands shall be located more than twelve (12) feet from the nearest property line.

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

**BANNERS.** A temporary sign composed of lightweight material either enclosed or not enclosed in a rigid frame secured or mounted so as to allow movement of the sign caused by movement of the atmosphere; i.e. pennants, twirling signs, balloons, or other gas-filled figures, ribbons, or other similar moving devices.

**BAR/LOUNGE.** An establishment that is licensed to sell alcoholic beverages, including beer, by the drink.

**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.

**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.

**BILLBOARD.** A sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located. Also, an off-premise sign.

**BOARD OF COUNTY COMMISSIONERS.** The governing body of Union County.

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

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

**BUILDABLE AREA.** That portion of the lot that can be occupied by the principal use, thus excluding the front, rear and side yards.

**BUILDING.** Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or movable property of any kind, and which is permanently affixed to the land. When any portion thereof is completely separated from every other portion by masonry or fire wall without any window, which wall extends from the ground to the roof, then such portion shall be deemed to be a separate building.

**BUILDING CODE.** All structures shall be built in conformance with the 2003 International Building Code, or any later edition.

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

**BUILDING ELIGIBILITY.** See (Eligible Building Site).

**BUILDING, HEIGHT OF.** The vertical distance from the grade to (a) the highest point of a flat roof, (b) the deck line of a mansard roof, or (c) the average height between eaves and ridge for gable, hip, and gambrel roofs.

**BUILDING LINE.** Is a line on the lot running parallel to and the required horizontal distance from the nearest property line.

**BUILDING, PRINCIPAL.** A non-accessory building in which is conducted the principal use of the lot on which it is located.

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

**CAMOUFLAGE.** A covering or disguise of any kind to hide or conceal.

**CAMPGROUND.** A plot of ground consisting of two or more campsites where camping units can be located and occupied as temporary living quarters.

**CATHODIC PROTECTION.** A technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell; protection of a tank through the application of either galvanic anodes or impressed current.

**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.

**CLASS V INJECTION WELL.** A conduit through which potentially contaminated but generally non-hazardous fluids can move from the land surface to the subsurface; the types of primary concern in Union County are (1) commercial/industrial facility septic tanks used to dispose of more than domestic wastewater and (2) dry wells for repair/service bay drains at facilities servicing motorized vehicles/equipment.

**COMMERCIAL RECREATION FACILITY.** A recreation facility operated as a business and open to the public for a fee.

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

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

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

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

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

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

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

**CONTAINMENT FACILITY, PRIMARY.** The tank, pit, container, pipe, enclosure, or vessel of first containment of a regulated substance.

**CONTAINMENT FACILITY, SECONDARY.** A second level of containment outside the primary

containment facility designed to prevent a regulated substance from reaching land or waters outside the containment area.

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

**CONTINGENCY PLANS.** Detailed plans for control, containment, recovery and clean up of hazardous materials released during floods, fires, equipment failures, leaks and spills.

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

**CONDITIONAL USE.** A use that would not be appropriate generally or without restriction throughout the zoning district, but which if controlled, would promote the public health, safety and welfare.

**CONTAMINATION, AIR.** A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining or milling operation that increases ambient air radiation levels by 50 mrems from the background levels established prior to the commencement of such activity, measured at the perimeter of the mining or milling site or at the top of an exploration hole.

**CONTAMINATION, WATER.** A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining or milling operation that exceeds the maximum contaminate levels established by the Federal Safe Drinking Water Act and regulations promulgated thereunder.

**CONTRACTOR'S SHOP AND STORAGE YARD.** Use of land or building(s) for storage and preparation of materials used by that same individual(s) in conducting the business of construction and repair work, generally completed at some other on-site location.

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

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

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

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

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

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



**DISTRICT.** An area for which regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

**DWELLING.** Any permanently located building or part thereof, constructed in conformance with the International Building Code, and primarily used for human habitation, including but not limited to single-family, two-family and multiple-family dwellings, but not including hotels, motels, or lodging houses. Unless actually being lived in, an occupied structure would have to be a structure that could reasonably be presumed to be a place capable of being lived in, in present condition. Consideration will be given to the presence of an operational septic system, water, electricity or other accessory utilities in the determination of a residence. Dwellings deemed unoccupied by the county shall not be considered for purpose of setback regulations for concentrated animal feeding operations. This definition does not include a mobile home or manufactured home.

**DWELLING, SINGLE FAMILY.** A building designed for or occupied exclusively by one family.

**DWELLING, TWO FAMILY.** A building designed for or occupied exclusively by two families.

**DWELLING, MULTIPLE.** A building designed for or occupied exclusively by three or more families.

**DWELLING UNIT.** One or more rooms in a dwelling occupied or intended to be occupied as separate living quarters by a single family as defined herein.

**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.

**ELIGIBLE BUILDING SITE (BUILDING ELIGIBILITY).** A site which fulfills the requirements for the construction or placement of a residential dwelling or manufactured home. To compute the number of eligible building sites on a lot of record of forty acres or more, the total acreage of the parcel shall be divided by forty acres. The resulting whole number is the number of building sites eligible on the lot of record.

**EXPLORATION.** The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other facilities related to such work. Any and all shafts, tunnels, or holes shall not exceed 18 inches in diameter unless the conditional use for exploration provides for a larger diameter. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by person not involved in exploration.

**FACILITY.** Something built, installed or established for a particular purpose.

**FAMILY.** One or more individuals, related by blood or law, occupying a dwelling unit and living as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law, in addition to persons actually related by blood or law the following persons shall be considered related by blood or law for the purposes of this ordinance:

1. A person residing with the family for the purpose of adoption;
2. Not more than six (6) persons under eighteen (18) years of age, residing in a foster home licensed or approved by a governmental agency;
3. Not more than four (4) persons nineteen (19) years of age or older residing with the family for the purpose of receiving foster care licensed or approved by a governmental agency; and
4. Any person who is living with the family at the direction of a court.

**FARMSTEAD.** An area consisting of a farm dwelling or dwellings and agricultural buildings and structures devoted to and used in connection with an agricultural operation. A farmstead is generally bounded on one or more sides by a tree belt but does not include crop and pasture land.

**FLOOD INSURANCE RATE MAP (F.I.R.M.).** An official map of Union County on which the Federal Insurance Administration has delineated the areas of flood hazard and their potential for flooding.

**FLOODPLAIN.** A land area adjoining a river, creek, watercourse or lake which is likely to be flooded and which is designated as Zone A, A0, or A1- A30 on the F.I.R.M.

**FLOODPLAIN CONSERVATION DISTRICT.** Any land in a floodplain, floodway or any other special flood hazard area as designated on the F.I.R.M.

**FLOOD PROOFING.** A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding primarily for the reduction or elimination of flood damages to properties, water, and sanitary facilities, structures, and contents of buildings in a flood hazard area.

**FLOODWAY.** The floodway is that portion of the floodplain that must be reserved in order to discharge the base flood without increasing the existing base flood elevation more than one foot. The floodway is designed to limit future increases in flood heights to a one-foot rise by reserving the floodway area from encroachment. Development within a floodway shall be prohibited unless it is certified by a registered professional engineer that the proposed development will not result in any increase in flood heights.

**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.

**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.** All the property on one side of a street or highway, between two intersecting streets (crossing or terminating) or for a distance of 400 feet on either side of a proposed building or structure, measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street, but not including property more than 400 feet distant on either side of a proposed building or structure.

**GARAGE, PRIVATE.** A detached accessory building or portion of a main building housing the automobiles of the occupants of the premises, but not commercial vehicles.

**GARAGE, PUBLIC.** A building or portion thereof, other than a private or storage garage, designed or

used for equipping, servicing, repairing, hiring, selling, storing, or parking motor-driven vehicles. The term repairing shall not include an automobile body repair shop nor the rebuilding, dismantling, or storage of wrecked or junked vehicles.

**GARAGE, STORAGE.** Any building or premises, used for housing only motor-driven vehicles, other than trucks and commercial vehicles.

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

**GREY WATER.** All domestic wastewater except toilet discharge water.

**GROUND SIGN.** See (Freestanding Sign).

**GROUND WATER.** Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.

**GROUP HOME.** A supervised living or counseling arrangement in a family home context providing for the 24 hour care of children or adults.

**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, MINOR.** A business, profession, occupation, or trade conducted for gain or support and located entirely within a dwelling, which use is accessory, incidental, and secondary to the use of the dwelling for residential purposes and does not change the essential residential character or appearance of such dwelling.

**HOME OCCUPATION, MAJOR.** A business, profession, occupation, or trade conducted for gain or support and located entirely within a dwelling, or accessory building thereto, which use is accessory, incidental, and secondary to the use of the property for residential or agricultural purposes and does not change the essential residential or agricultural character or appearance of such property.

**HYDROLOGIC BALANCE.** The relationship between the quality and quantity of inflow to and outflow from the storage in hydrologic units, such as a drainage base and aquifer, soil zone lake, or reservoir it encompasses, the quantity and quality relationships between precipitation, runoff, evaporation and the change in ground and surface water storage.

**HYDROLOGIC REGIME.** The entire state of water movement in a given area which is a function of the climate and includes the entire water cycle for the drainage area.

**KENNEL.** Any premise or portion thereon where dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

**LEAKS AND SPILLS.** Any unplanned or improper discharge of a potential contaminant including any discharge of a hazardous material.

**LIVESTOCK PRODUCTION SURPLUS WATER.** That waste water resulting from an animal feeding operation which does not contain more than 2 percent solids nor more than 1 pound of nitrogen as N per 1000 gallons of water. Such water may include, but not be limited to, rain or snowmelt water from open feeding lots, wash water from a dairy operation, or flush water from a confined feeding operation.

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

**LOT.** A parcel or tract of land having specific boundaries and which has been recorded in the Register of Deeds office. A lot used for residential purposes shall include only one main building together with its accessory buildings, open spaces and parking spaces required by these regulations and shall have its principal frontage upon a road or other approved access.

**LOT AREA.** The lot area is the area of a horizontal plane bounded by the front, side and rear lot lines. Public right-of-way shall not be considered part of the lot area.

**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, DEPTH.** The mean horizontal distance between the front and rear lot lines.

**LOT, DOUBLE FRONTAGE.** A lot having a frontage on two nonintersecting roads, as distinguished from 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 feet to any residential 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 November 12, 2008.

**LOT, WIDTH.** The width of a lot at the front yard line.

**MAIN BUILDING.** See (Principal Building).

**MAJOR STREET.** Streets or roads which have been designated as freeways or arterial routes on the major street plan.

**MANUFACTURING:**

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

**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 regulations that delineate the boundaries of the zoning districts.

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

1. Physicians who are licensed pursuant to SDCL Ch. 36-4 or a podiatrist licensed pursuant to SDCL Ch. 36-8.
2. Registered nurses or licensed practical nurses who are licensed pursuant to SDCL Ch. 36-9.
3. Physician assistants who are licensed pursuant to SDCL Ch. 36-4A or certified nurse practitioners and certified nurse midwives who are licensed pursuant to SDCL Ch. 36-9A.
4. Physical therapists licensed pursuant to SDCL Ch. 36-10.
5. Athletic trainers licensed pursuant to SDCL Ch. 36-29.
6. Massage therapists licensed pursuant to SDCL Ch. 36-35.
7. Chiropractors licensed pursuant to SDCL Ch. 36-5.

**MILLING.** The processing or enhancing of a mineral.

**MINE DEWATERING DISCHARGE.** Water that has been discharged from active or abandoned mines in areas affected by mineral exploration, mining and milling.

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

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

**MOBILE HOME/MANUFACTURED HOME.** Any single-family permanent living quarters, more than fourteen (14) feet wide and seventy (70) 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.

**MOTOR VEHICLE REPAIR SHOP.** Any building or structure in which a business, service or industry involving the maintenance, servicing or repair of vehicles is conducted or rendered. This includes rebuilding of engines, spray paint operations and hourly repair.

**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. This definition does not include an electrical substation.

**NONCONFORMING BUILDING OR STRUCTURE.** Any building or structure which does not comply with all of the regulations of this ordinance or any amendment hereto governing bulk for the zoning district in which such building or structure is located; or is designed or intended for a nonconforming use.

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

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

**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.

OFFICE OF PLANNING AND ZONING. The office designated by the Board of County Commissioners to administer and enforce this ordinance.

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

PARKING SPACE. An area, enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street and permitting ingress and egress of an automobile.

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

PERMISSIVE USES. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

PERMITTED SPECIAL USE. A use allowed in a zoning district subject to the applicable restrictions of that zoning district and additionally subject to certain restrictions for that specific use.

PERSONAL SERVICES. Establishments primarily engaged in providing services involving the care of a person or their apparel. Including but not limited to: laundry or dry cleaning, garment services, coin operated laundry, photographic and art studios, beauty shop, barber shop, shoe repair, reducing salon and health club, and clothing rental.

PLACE OF WORSHIP. A structure where persons regularly assemble for worship, ceremonies, rituals, and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs, or architectural or other features.

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

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

PORTABLE SIGN. Any sign not permanently attached to the ground or building.

PREMISES. A lot, parcel, tract or plot of land together with all buildings and structures thereon.

**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 of any lot.

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

**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.

**RECHARGE CAPACITY.** The ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

**REGULATED SUBSTANCE.** A regulated substance shall include: pesticides and fertilizers, hazardous and toxic substances designated by the EPA thru any of the following; Clean Water Act, Toxic Substances Control Act, Resource Conservation and Recovery Act, or Comprehensive Environmental Response Compensation and Liability Act; petroleum and petroleum substances, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, additives used in refining oils and gasoline. This term does not include sewage and sewage sludge.

**REM (ROENTGEN EQUIVALENT MAN).** A measurement of the biological effects resulting from ionizing radiant energy where roentgen is the amount of radiation leading to the absorption of 88 ergs of energy per gram of air.

**RESIDENCE.** A permanent dwelling place.

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

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



**SANITARY LANDFILL.** A site for the disposal of garbage and other refuse material.

**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 structure must be erected or placed.

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

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

**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.

**SOLID WASTE RECEIVING STATION.** A facility where garbage and other refuse material is collected at a central location, compacted and then transported for disposal at a landfill site.

**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 or cared for in return for remuneration, or are kept for the purpose of sale.

**STATIONARY TANK.** An above ground tank which is fixed permanently in place on a foundation, rack, cradle, stilts or on the ground. The term does not include tanks mounted on wheels, trolleys, skids, pallets or rollers.

**STORY.** That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

**STREET.** A public right-of-way which affords the principal means of access to abutting property. Also referred to as a road or highway.

**STREET LINE.** The line between the public right-of-way and private property.

**STRUCTURE.** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. For the purpose of these regulations, retaining walls, concrete slabs and utility poles are not considered structures.

**SUBDIVISION.** The division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building developments (whether immediate or future). This term includes resubdivision and, when appropriate to the context, is related to the process of subdividing or to the land subdivided.

**SURFACE IMPOUNDMENT.** A facility, or part of a facility which is a natural topographic depression, man-made excavation, or dike area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

**TELECOMMUNICATIONS TOWER.** A self-supporting lattice, guyed-lattice, or monopole structure which supports 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.

**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.

**TRAILER.** Means any of the following:

1. **TRAVEL TRAILER.** A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and, when factory equipped for the road, it shall have a body width not exceeding eight (8) feet, and a body length not exceeding thirty (30) feet.
2. **PICKUP COACH.** A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
3. **MOTOR HOME.** A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self propelled vehicle.
4. **CAMPING TRAILER.** A canvas, folding structure, mounted on wheels and designed for travel, recreation and vacation use.

**TRUCK STOP.** Any building, premises, or land in which or upon which a business, service or industry involving the maintenance, servicing, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into motor vehicles, the sale of accessories or equipment for trucks and similar commercial vehicles. A truck stop also may include overnight accommodations and restaurant facilities.

**UNSAFE SIGN.** A sign on which the display area or structure has deteriorated due to rust, rotting, or physical damage to the point where any portion of the sign has the potential to fall shall be considered unsafe.

**UNSIGHTLY SIGN.** A sign which has deteriorated to the point where at least one-fourth of the display area is no longer clearly recognizable at a distance of twenty feet; or where the paint is peeling, chipping or flaking from the structure shall be considered an unsightly sign.

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

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

**WATER TABLE.** The upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

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

**WIND ENERGY CONVERSION SYSTEM (WECS).** Any mechanism or device designed for the purpose of converting wind energy into electrical or mechanical power.

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

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

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

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

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

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

**ZONING DISTRICT.** A specifically delineated area within which regulations and requirements uniformly govern the use, placement, spacing, and size of land and buildings.

**ZONING PERMIT.** A document signed by the Planning Director or an authorized representative as a condition precedent to the commencement of a use or the erection, construction, reconstruction, restoration, alteration, conversion, or installation of a building, which acknowledges that such use or building complies with the provisions of the zoning regulations or an authorized variance therefrom.