

## **ORDINANCE NO. 97-3**

**AN ORDINANCE RELATING TO PLANNING AND ZONING INCLUDING AIRPORT NOISE AND HAZARD ZONING WITHIN THE BOUNDARIES OF HUGHES COUNTY, SOUTH DAKOTA (EXCEPT AREAS OF THE COUNTY WHERE INCORPORATED PLACES HAVE EXERTED JURISDICTION PURSUANT TO STATUTE). SAID ORDINANCE IS TO PROMOTE THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE COUNTY OF HUGHES BY REGULATING AND RESTRICTING THE HEIGHT, NUMBER OF STORIES, AND SIZE OF BUILDINGS AND OTHER STRUCTURES, THE PERCENTAGE OF 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.**

**BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF HUGHES COUNTY, SOUTH DAKOTA:**

*Sections 1-101 to 116, inclusive. Definitions and General Provisions.*

### **Section 1-101. Designating the legal boundaries of Hughes County, South Dakota.**

All property within the boundaries of Hughes County (except areas of the county where incorporated places have exerted jurisdiction pursuant to statute).

**Source:** Ord. No. 2006-05, 2006.

### **Section 1-102. Definitions.**

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

All words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural construction of the wording indicates otherwise. The words “shall” are mandatory and not directory. The word “used” shall be deemed also to include “designed, intended, or arranged to be used.”

“Accessory Buildings and Uses” is a subordinate use, which is incidental to that of the main building or to the main use of the premises.

“Adjacent Property” shall mean all property, which is contiguous, and including property separated by a public right-of-way.

“Agriculture” means the act or science of cultivating the ground, including the maintenance and harvesting of crops and the breeding, raising and management of livestock and poultry.

“Agricultural Building” is a building located on agricultural property and used to shelter farm implements, hay, grain, poultry, livestock, or other farm produce, in which there is no human habitation, and which is not used by the public.

“Airport” is any area of land which is used, or intended for the landing and take-off of aircraft, and any appurtenant areas which are used or intended for use as right-of-way, including taxi ways, aircraft storage and tie down areas, hangars and other related buildings and open spaces.

“Alley” is a narrow service way providing a secondary means of access to abutting properties.

“Alter or Alteration” is any change, addition or modification in construction or occupancy.

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

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

“Animal Feeding Operation Structure” means an anaerobic lagoon, formed manure storage structure, egg wash water storage structure, earthen manure storage basin, or confinement building.

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

“Animal Unit” shall mean an equivalent unit of measurement relating to solid and liquid waste generated by confined livestock or poultry. Other species equivalents, which are not listed, will be based on species’ waste production. See Table A.

**TABLE A**

**EQUIVALENT NUMBER OF A SPECIES TO EQUAL:**

<b>ANIMAL SPECIES</b>	<b>200 AU</b>	<b>700 AU</b>	<b>2,000 AU</b>	<b>ANIMAL UNIT EQUIVALENT SPECIES/AU</b>
<b>Feeder or Slaughter Cattle</b>	<b>200 HD</b>	<b>700 HD</b>	<b>2,000 HD</b>	<b>1.0</b>
<b>Mature Dairy Cattle</b>	<b>140 HD</b>	<b>500 HD</b>	<b>1,425 HD</b>	<b>1.4</b>
<b>Finisher Swine (over 55 lbs)</b>	<b>500 HD</b>	<b>1,750 HD</b>	<b>5,000 HD</b>	<b>0.4</b>
<b>Nursery Swine (less than 55 lbs)</b>	<b>2,000 HD</b>	<b>7,000 HD</b>	<b>20,000 HD</b>	<b>0.1</b>
<b>Farrow to Finish*</b>	<b>50 HD</b>	<b>185 HD</b>	<b>540 HD</b>	<b>3.7</b>
<b>Sow to Litter</b>	<b>215 HD</b>	<b>750 HD</b>	<b>2,150 HD</b>	<b>0.93</b>
<b>Horses</b>	<b>100 HD</b>	<b>350 HD</b>	<b>1,000 HD</b>	<b>2.0</b>
<b>Sheep</b>	<b>2,000 HD</b>	<b>7,000 HD</b>	<b>20,000 HD</b>	<b>0.1</b>
<b>Turkeys</b>	<b>11,110 HD</b>	<b>38,880 HD</b>	<b>111,110 HD</b>	<b>0.018</b>
<b>Laying Hens and Broilers (Continuous overflow watering in facility)</b>	<b>20,000 HD</b>	<b>70,000 HD</b>	<b>200,000 HD</b>	<b>0.01</b>
<b>Laying Hens and Broilers (Liquid handling system in confinement facility)</b>	<b>6,060 HD</b>	<b>21,210 HD</b>	<b>60,600 HD</b>	<b>0.033</b>
<b>Ducks</b>	<b>1,000 HD</b>	<b>3,500 HD</b>	<b>10,000 HD</b>	<b>0.2</b>

\* Figures in the farrow to finish column include sows, pigs born and fed to market weight at one site, at one time.

“Apartment” shall mean a dwelling unit as defined in this ordinance.

“Apartment House” is any building, or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the said building, and shall include flats and apartments.

“Applicant” is an individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

“Aquaculture” means the farming or culture of food fish, shell fish, or other aquatic plants or animals and may require development such as fish hatcheries rearing pens, and structures and shellfish rafts, as well as use of natural spawning and rearing areas. The term aquaculture also includes activities related to either growing, handling, harvesting, or processing of aquatic produce, such as fish and crab, including, but not limited to, propagation, stocking, holding, nurturing, disease treatment, waste disposal, water use, development of habitat and structures, and processing for market. Depending on the specific activities involved, ordinance sections regarding Concentrated Animal Feeding Operations may apply.

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

“Assisted Living Center” is any institution, rest home, boarding home, place, building, or agency which is maintained and operated to provide personal care and services which meet some need beyond basic provision of food, shelter, and laundry in a free-standing, physically separate facility which is not otherwise required to be licensed under SDCL 34-12.

“Auto Wrecking” is the collecting, burning out, dismantling or wrecking of used motor vehicles, wheeled or track laying equipment, or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked motor vehicles, wheeled or trailers or their parts. The dismantling and rebuilding other than custom repair, of more than one motor vehicle, piece of wheeled or track laying equipment, or trailer at a time even though not for profit or a principal use of a parcel of land shall be defined as auto wrecking. The storage of a partially dismantled motor vehicle, piece of wheeled or track laying equipment or trailer shall be considered auto wrecking.

“Basement” is that portion of a building between floor and ceiling, which is partly below and partly above grade.

“Best Management Practices (BMP)” means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating

procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.

“Billboard” is any structure or portion thereof, situated on private premises, on which lettered, figured or pictorial matter is displayed for advertising purposes, except the name and occupation of the user of the premises, the nature of the business conducted on the premises or the products primarily sold or manufactured on the premises and having an area of 100 square feet or more. Any signboard carrying a message expected in this definition, which also carries extraneous advertising of 100 square feet or more, shall be considered a billboard. This definition shall not include any board, sign or surface used to display any official notices issued by a court or public duty, or bulletin boards used to display announcement of meetings to be held on the premises on which such bulletin boards are located, nor shall it include a real estate sign advertising for sale or rent the property upon which it stands when such sign does not exceed 100 square feet.

“Block” means an area of land within an addition or subdivision that is entirely bounded by a street or streets, and the exterior boundary or boundaries of the addition or subdivision, railroad rights-of-way, a river or lake, or a combination of the above.

“Board” is the Board of County Commissioners of Hughes County, South Dakota.

“Board of Adjustment” is the Board of Adjustment of the County of Hughes, South Dakota.

“Building” is any structure for the support, shelter, enclosure of persons, animals, chattels, or property of any kind.

“Building Accessory” is any subordinate building or structure, the use of which is incidental to the principal building on the same lot, including, but not limited to:

- a. Private Garages, Car Ports, Sheds and Agricultural Buildings; and,
- b. Tanks and Towers.

“Building, Existing” is a building erected prior to the adoption of this chapter or one for which a legal building permit has been issued.

“Building, Principal” is a building in which is conducted the primary use of the site on which it is situated. In any residential district any dwelling shall be deemed to be the principal building of the site on which it is located.

“Bypass”. When used in the context of a Concentrated Animal Feeding operation, refers to the intentional diversion of waste streams from any portion of a treatment facility.

“Campground”- Any plot of ground for public use upon which two or more campsites are located, established, maintained, advertised, or held out to the public to be a place where camping units can be located and occupied as temporary living quarters.

“Camping unit” – Any vehicle, tent, trailer, tent camper, recreational vehicle, portable shelter, or other equipment used for camping or other temporary lodging purposes.

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

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

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

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

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

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

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

“Certificate of Occupancy” is a permit issued by the Zoning Administrator whereby the building permittee affirms that the use of the building or land in question is in conformity with this ordinance or that there has been a legal variance there from as provided by said ordinance.

“Change in Operation”. When used in the context of a Concentrated Animal Feeding operation, refers to a cumulative increase of more than 50 animal units, which are confined at an un-permitted concentrated feeding operation.

“Chronic or Catastrophic Event”. When used in the context of a Concentrated Animal Feeding operation, refers to a single precipitation event, or a series of rainfall events in a short period of time that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

“Clinic, Medical” is a building or portion of a building containing the offices and associated facilities of one or more practitioners providing medical, dental, psychiatric, osteopathic, chiropractor, physical therapy or similar services for out-patients only, with or without share or common spaces and equipment. A common area pharmacy or drug dispensary available to persons other than patients being treated therein or making charges separate from bills for professional services of said practitioners shall not be considered as a medical clinic use.

“Club” shall include clubhouse and shall mean a voluntary association of persons organized for cultural, recreational, fraternal, civic, charitable or similar purpose, but shall not include an organization or premises, the chief activity of which is a service or activity customarily carried on as a business even though it may be chartered and named for purposes herein defining a club.

“Commercial Use” is the use of any land or building designed for commercial purposes, which shall include the use of land or buildings used for retail sales and offices.

“Common Ownership” is defined as single, corporate, cooperative or other joint operation or venture.

“Concentrated Animal Feeding Operation” (CAFO) is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 56 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility 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 if they use a common area or system for disposal of manure. For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

ANIMAL UNITS (AU)

Class A	2,000 or more
Class B	700 to 1,999
Class C	200 to 699
Class D	50 to 199
Class E	1 to 49

“Conditional Use”. A Conditional Use is a use which is not allowed in the district as a matter of right and would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as Conditional Uses, as specific provisions for such exceptions is made in these zoning regulations. The County Commission or Board of Adjustment may, after notice and hearing, revoke a Conditional Use in the event of a violation of any of such conditions. In addition, the Conditional Use permit may not be transferred during any violation.

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

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

“Corner lot” is a lot with two front yards on adjacent sides.

“Country Club” for the purpose of this ordinance shall include golf course, par-3 golf courses, swimming pools, tennis clubs and neighborhood clubhouses any and each of which shall be located on a site of not less than one acre and open only to membership subscribing for the use of all facilities for a term of not less than one year and members non-paying guests. Sleeping facilities other than quarters for one caretaker or manager and his family shall be prohibited. Clubs operated exclusively as restaurants, cocktail lounges, card rooms, beer taverns, bowling alleys, pool and billiard parlors and similar activities normally carried on as business shall be excluded from the definition of a country club. Nothing herein shall be construed to limit the method of operation of such facilities enumerated in this definition when owned or operated by a governmental agency.

“County Commission” is the Board of County Commissioners of Hughes County, South Dakota.

“Court” is a space, open and unobstructed to the sky, located at or above grade level on a lot and bound on three or more sides by walls or a building.



“Coverage” is the percentage of lot area covered by buildings.

“Density of Confinement” shall mean the owner or operator of a housed lot feeding operation shall have in their control a minimum of .2 of one acre per animal unit. (i.e. 8,000 head of finisher swine per 640 acres.)

“Disclosure Statement” is a statement to be certified on all plats in rural Hughes County designating the current zoning of the property and the use of all adjacent property.

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

“Dwelling” is a building or portion thereof, designed or used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, multi-family dwellings and group dwellings; provided however that the following are not dwellings:

- a. Hotels, motels, tourist courts, cabins and hunting camps;
- b. In a building that contains one or more dwelling units or lodging rooms in addition to one or more non-residential uses, the portion of such building that is devoted to such residential uses, except when accessory to the residential uses; and,
- c. Used for the institutional care of people such as hospitals, rest homes, orphanages, and homes for the aged.

“Dwelling - Multiple Family” is a building or portion thereof accommodating three or more families living independently of each other.

“Dwelling - Single Family” is a building containing one dwelling unit only.

“Dwelling - Two Family” is a building containing two dwelling units only.

“Dwelling - Unit” is one or more habitable rooms which are occupied or which are intended or designed to be occupied by one family with facilities for living, sleeping, cooking, and eating.

“Dwelling - Mobile” is a vehicle used or so constructed as to permit its being used as

a conveyance upon a public street or highway and duly licensable as such, and shall include self-propelled vehicles so designed, constructed, reconstructed, or added to by means, in such manner as will permit the occupancy thereof as a dwelling or sleeping place of one or more persons and supported by wheels, jacks, or similar supports. Transportable dwellings not meeting building code requirements for dwellings shall be treated as mobile dwellings.

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

“Established Residence” is any residence established by a personal presence in a fixed and permanent dwelling having occupied such dwelling for at least 180 days with the intention to remain there.

“Family” is an individual or two or more persons related by blood or marriage or a group of not more than five persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.

“Farm” means any parcel of land containing at least thirty-five (35) acres of land together with fields, buildings, farm implements, animals and personnel for the intended purpose of producing crops or raising livestock as a principal source of income for the residents or owner.

“Farmer” means one whose occupation is farming.

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

“Farming,” means the occupation of producing crops or raising livestock on a farm.

“Feedlot, Commercial” means a place where the principal business is the feeding, raising or holding of livestock in a confined area which is not subordinate to the production of crops on the premises. Under normal operating conditions, the livestock held are fattened by feed, which is produced off the site.

“Feedlot, Farm” means a place where there is feeding, raising or holding of livestock in a confined area as a subordinate use to the raising of crops upon the premises. Under normal growing conditions the crops produced upon the premises constitute the main source of feed for the livestock being held.

“Feedlot Operator” means an individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or

control of one or more concentrated animal feeding operations.

“Filling Station” is any area of land, including structures thereon designed or used for the retail sale of motor vehicle fuel.

“Flammable Liquids” shall mean any liquid having a flash point below 200<sup>0</sup> F and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100<sup>0</sup>F. Flammable liquids shall be divided into three classes as follows:

Class 1. Shall include those having flash points below 20<sup>0</sup>F.

Class 2. Shall include those having flash points above 20<sup>0</sup>F, but at or below 70<sup>0</sup>F and,

Class 3. Shall include those having flash points above 70<sup>0</sup>F.

“Floor Area” is the area included within the surrounding exterior walls of a building or portion thereof exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

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

“Fowl” means any bird, domestic or wild, raised in a confined or contained area. Specifically not included are small household pets commonly kept caged in residences.

“Game Lodge” is a building, other than a hotel or apartment building, where for compensation and by pre-arrangement for definite periods, lodging, meals, hunting or a combination are provided for two or more persons.

“Garage” is a building or portion thereof in which a self-propelled vehicle contains gasoline, distillate or other volatile, flammable liquid in its tank, is stored, repaired, or kept.

“Garage, Private” is a building, or portion of a building, not more than fifteen hundred square feet (1,500 sq. ft.) in area, designed or used for the storage of personal motor vehicles and other customary household articles which are owned and used by the occupants of the building to which it is accessory.

“General Permit” shall mean the permit issued by the State of South Dakota Department of Environment and Natural Resources (DENR) for concentrated swine feeding operations.

“Golf Course” as used herein, shall mean standard sized layouts of at least nine holes

and shall not include miniature golf courses, par-3 golf courses, pitch and put courses or driving ranges.

“Grade (Adjacent Ground Elevation)” is the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point five (5) feet distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than five

(5) feet distant from said wall. In case walls are parallel to and within five (5) feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way.

“Ground Coverage” is the area of a zoning lot occupied by all buildings expressed as a percentage of the gross area of the zoning lot.

“Home Occupation - General” is a business, occupation or professional carried on within a residential dwelling by the resident thereof; and which shall have the following characteristics:

- a. There shall be no external evidence of the occupation with the exception of one unlighted nameplate of not more than one square foot in area attached flat against the building. Advertising displays and advertising devices displayed through a window of the building shall not be permitted.
- b. There shall be no emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or electronic disturbance detectable at the zoning lot line.
- c. The activity shall employ only members of the immediate family of the resident of the dwelling.
- d. There shall not be a stock of goods on the premises in excess of 30 cubic feet in volume, none of which shall be of a flammable nature.
- e. There shall be no signs, radio, television, newspaper, handbill or similar types of advertising linking the address of the premises with the home occupation.
- f. Said home occupation shall not involve continual visits by the general public.
- g. The above listed characteristics of the at home occupation shall not be construed to restrict the sale of garden produce grown on the premises, provided this exception shall not extend to allow the operation of a commercial green house or nursery, or the existence of stands or

booths for the display of produce grown on the premises.

- h. Said occupation may include the caring for not more than 12 children at one time for hire.
- i. Room or board of hire, but not for more than 2 persons.

Any business, occupation or profession the operation of which does not meet the aforesaid characteristics shall not be interpreted to be a home operation despite the fact that it may attempt to operate in a residential building.

The conducting of a barber and/or beauty shop, a clinic, a commercial stable, a commercial kennel, a tourist home, a restaurant or a tearoom, a convalescent home, a mortuary establishment or any similar use shall not be deemed to be a home occupation. Conducting associated agriculture enterprises is not designated as a home occupation.

“Hospital” is an institution in which sick or injured persons are given medical or surgical care.

“Hotel” is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

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

“Junk or Salvage Yard” is a place where waste, discarded or salvaged metals, building materials, paper, textiles, used plumbing fixtures, or other used materials are bought, sold, exchanged, stored, baled, or cleaned and places or yards for the storage of salvaged metal, materials and equipment, but not including pawn shops and establishments for the sale, purchase or storage of used cars or trucks in operable condition, boats, or trailers in operable condition, salvaged machinery in operable condition, and used furniture and household equipment in usable condition and not including the processing of used, discarded or salvaged materials as part of manufacturing operations.

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

“Lot” is a zoning lot unless the context shall clearly indicate a lot of record, in which case a “lot” is a lot of record.

“Lot, Corner” is a zoning lot situated at the intersection of two streets, or bounded on

two or more adjacent sides by street right-of-way lines or in the case of curved right-of-way lines, when the extension of tangents at the side lot lines yields an internal angle which does not exceed 135 degrees.

“Lot, Interior” is a zoning lot other than a corner lot.

“Lot, Depth of” is the mean horizontal distance between the front and rear lot lines.

“Lot Line” is a boundary of zoning lot. Lot line is synonymous with property line.

“Lot of Record” is land designated as a separate and distinct parcel in a subdivision, the plat of which has been recorded in the office of the county Register of Deeds of Hughes County, South Dakota, parcel of land, the deed to which was recorded in the office of said recorder prior to the adoption of this ordinance.

“Lot Width” is the distance between side lot lines measured at the rear of the required front yard on a line parallel with a line tangent to the street right-of-way line.

“Man-made drainage” (used in the context of a concentrated animal feeding operation) means a pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.

“Manufactured Home” is a structure built on a chassis, off site, to be used as a dwelling with or without a permanent foundation.

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

“Minor Repair - Automobile” is the replacement of minor assemblies or parts and tune up of automobiles, or trucks of less than 15,000 pounds gross license weight, but not including body and fender work, painting, engine overhaul or similar type of work.

“Mobile Home” is a mobile dwelling.

“Mobile or Manufactured Home Park” is a tract of land that is used, designed, maintained, or held out for rent to accommodate one or more mobile or manufactured homes. Mobile or manufactured homes located in a mobile home park are used to provide living and sleeping accommodations, a mobile home park does not include an automobile or mobile home sales lot on which unoccupied mobile homes or manufactured homes are parked for inspection or sale. The term mobile or manufactured home shall include mobile dwelling.

“Motel” is a group of attached or detached living units with individual toilet facilities operated for transient guests and so constructed that guests’ automobiles may be parked at or near the living unit.

“Natural Production use” is a production use, which shall be directly dependent upon the natural resources of the area; such as gravel pits, rock quarry, and areas containing natural gas.

“Non-conforming Building” is a building or structure or portion thereof, lawfully existing at the time this ordinance or an amendment thereto becomes effective, which does not meet the bulk, height, yard, parking, loading or other requirements of this ordinance or any amendment thereto.

“Non-conforming Use” is a use which lawfully occupies a building or land at the time this ordinance or an amendment thereto becomes effective but does not meet the requirements of this ordinance or any amendment thereto.

“Non-farm Dwelling” means any occupied dwelling, which is not a farm dwelling.

“No-till Cropland” means land which is subject to a conservation farming practice where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel;

and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.

“Occupancy” is the purpose for which a building is used or intended to be used. The term shall also include the building or room housing such use. Change of occupancy is not intended to include change of tenants or proprietors.

“Open Feedlot” is an un-roofed or partially roofed animal feeding operation in which no crops, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.

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

“Open Space” is all area including off-street parking spaces not covered by buildings or structures.

“Parking Space Off-Street” is an off-street space available for the parking of one

motor vehicle and having an area of not less than one hundred eighty (180) square feet exclusive of driveways and having direct access to a street or alley.

“Planned Unit Development” is a method to permit diversification in development of land in the county without in any way jeopardizing or reducing zoning standards which promote the public safety, convenience, health, general welfare, as well as preserve personal and property rights.

“Planning Commission” is the Hughes County Rural/Urban Development Zoning Commission.

“Principal Permitted Use” is that use of a zoning lot, which is among the uses allowed as a matter of right as the exclusive use of a lot under the zoning classification.

“Private Camping” – Any use of a camping unit, either occupied or unoccupied, for which no fee is charged or compensation accepted and which is not advertised. Private camping will generally be the use of a camping unit on a rural agricultural or residential lot by family and friends of the lot owner. No private camping will be allowed in front of the front setback on any lot. Private camping will be considered customarily appurtenant to a principal permitted use in Agricultural Zoning Districts.

“Private Camping Pad” – Any spot for the parking or location of camping units which has been developed specifically for that purpose for which no fee is charged or compensation accepted and which is not advertised. Camping pad development could include provision of a concrete or gravel pad, or provision of electric, sewer, water, or other services or utilities specifically for ease of use by camping unit. Private camping pads will be considered customarily appurtenant to a principal permitted use in Agricultural Zoning Districts.

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

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

“Producer” means the owner or operator of the concentrated animal feeding operation.

“Repair” is the reconstruction or renewal of any part of an existing building for the purpose of its maintenance. The word “Repair” or “Repairs” shall not apply to any change of construction.



“Residential Use” is use of land or buildings designed for residential purpose which shall include such land or buildings used for one or two-family residency, apartment houses and multiple family dwellings.

“Rooming House or Lodging House” is any building or portion thereof, containing not more than five guest rooms which are used by not more than five guests where rent is paid in money, goods, labor or otherwise. A lodging house shall comply with all the requirements of this ordinance for dwellings.

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

“Setback” is the minimum horizontal distance between the property line and building.

“Severe Property Damage”. When used in the context of a Concentrated Animal Feeding operation, refers to substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

“Shallow Aquifer” is an aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

“Shallow Well” is a well that is located in a shallow aquifer.

“Shed” is a non-occupied detached accessory structure, not more than one hundred and twenty (120 sq. ft.) in area, commonly used for storage of tools, yard maintenance equipment and other household items which are owned or used by the occupants of the property. A building permit is not generally required for a shed.

“Shelterbelt” is one or more rows of trees greater than one hundred (100) feet in length.

“Shooting Preserve” is an acreage either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee over an extended season.

“Should” means that the condition is a recommendation. If violations of the permit occur, the County Zoning Commission will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

“Sign” is any device, which directs attention to business, commodity, service or entertainment but not including any flag, badge, or insignia or any government agency, or any civic, charitable, religious, patriotic or similar organizations.

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

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

“Solid Waste” (reference SDCL 34A-6-1.3, 17.) any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

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

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

“Stable - Private” is an accessory building in which all of the animals housed are the property of the owner or lessee or of his immediate family.

“Stable - Public” is a building in which any animals are kept for remuneration, hire or sale.

“Story” is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six feet (6 ft.) above grade as defined herein

for more than 50 percent of the total perimeter or is more than twelve feet (12 ft.) above grade as defined herein at any point, such basement, cellar or unused under-floor space shall be considered as a story.

“Story - Half” is a story under a gable, hip or gambrel roof, the wall plates of which, on at least two opposite exterior walls, are not more than two feet above the finished floor of such story.

“Street” is any thoroughfare of public space not less than thirty feet (30 ft.) in width, which has been dedicated or deeded to the public for public use.

“Structure” is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

“Structural Alteration” is any change in the structural members of a building, such as walls, columns, beams or girders. Vehicles duly licensed for operation upon public streets or highways shall not be considered structures.

“Temporary Private Camping” – Any temporary use of a camping unit, either occupied or unoccupied, for which no fee is charged or compensation accepted and which is not advertised. For these purposes, temporary will be considered up to 14 total days in a calendar year. Temporary private camping will generally be the use of a camping unit on an unoccupied rural residential lot by family and friends of the lot owner. No private camping will be allowed in front of the front setback on any lot.

“Unauthorized Releases”. When used in the context of a Concentrated Animal Feeding operation, refers to the discharge of water from the lower end of the treatment or containment system through a release structure or over or through retention dikes. An unauthorized release is distinguished from a bypass in that a bypass discharges wastewater prior to any treatment or containment.

“Use” is the purpose or purposes for which land or building is designed, arranged, or intended, or to which said land or building is occupied, maintained or leased.

“Use - Accessory” is a use customarily incidental to a principal permitted use or building and located on the same zoning lot with such principal use or building.

“Use - Specifically Excluded” is a use of land or a structure which is excluded from a district by the operation of other regulations of the district, and which is specifically enumerated as excluded for purposes of clarity of intent and ease of reference.

“Waters of the State” means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or

private, situated wholly or partly within or bordering upon the state.

“Wildlife Mitigation Areas” are areas of take land along the Missouri River not designated for park and recreation use.

“Yard” is an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this ordinance on the lot on which a building is situated.

“Yard - Front” is an open space extending the full width of the zoning lot, between the principal building and the front lot line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height except as provided herein, the depth of which shall be measured as the least distance between the front lot line and the front of such main building. Front lot line being the lot line adjacent to any public right of way.

“Yard - Rear” is an open space extending the full width of the zoning lot between the principal building and the rear lot line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height except as provided herein, the depth of which shall be measured as the least distance between the rear lot line and the rear of such principal buildings.

“Yard - Side” is an open space extending from the front yard to the rear yard, between the principal building and the side lot line, unoccupied and unobstructed by buildings or structures in excess of 30 inches in height, except as provided herein, the depth of which shall be measured as the least distance between the side lot line and the side of such principal buildings.

“Zoning Administrator” is the Director of Planning and Zoning of Hughes County, South Dakota, and is charged with the administration and enforcement of this ordinance or his regularly authorized deputy.

“Zoning Complaints”. All zoning complaints must be in writing and signed.

“Zoning, Lot” is a single tract of land located within a single block, which at the time of filing for a building permit or a certificate of occupancy, is designated by the owner or developer as a tract to be used, developed or built upon as a unit, under single or unified ownership or control, and assigned to the particular use, building or structure, for which the building permit or certificate of occupancy are issued and including such area of land as may be required by the provisions of this ordinance for such use, building or structure.

**Source:** Ord. No. 98-17, 1998; Ord. No. 98-19, 1998; Ord. No. 99-18, 1999; Ord. No. 2006-05, 2006; Ord. No. 2007-08, 2007; Ord. No. 2011-05, 2011; Ord. No. 2013-03, 2013; Ord. No. 2015-10, 2015; Ord. No. 2021-10, 2021.

**Section 1-103. Adoption of official zoning map and descriptions - custody of and maintenance by Zoning Administrator.**

The location, size, shape and boundaries of the zones to which the provisions of the text of this chapter are applicable, shall be indicated on the official zoning map in the zoning administrator's office and by descriptions incorporated herein and by this reference made a part hereof and said map, after being adopted by reference as a part of this ordinance, and so certified by the county auditor, and said map shall be the official zoning map, for the purpose of enforcement of this ordinance. In case of doubt or dispute, the description of said zones shall govern.

**Source:** Ord. No. 2006-05, 2006.

**Section 1-104. Establishment, designation and requirements of zoning lots.**

In order to facilitate the enforcement of this ordinance the device of zoning lots as defined herein shall be used. A parcel of land shall be designated and suitably recorded by the Zoning Administrator as forming the site of each new building, structure or use of land or the site of any building structure or use of land designated for any alteration or modification requiring a building permit or certificate of occupancy. Said parcel shall conform in dimensions and area to the provisions of this ordinance. A zoning lot may or may not coincide with platted lot lines. Each zoning lot shall front on a public street of not less than 25 feet in width for a distance of not less than 20 feet or shall have a permanent access to such a public street by an unobstructed easement of not less than 20 feet in width.

**Source:** Ord. No. 2006-05, 2006.

**Section 1-105. Buildings, structures and land conforming to requirements of ordinance.**

No building, structure, or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.

**Source:** Ord. No. 2006-05, 2006.

**Section 1-106. Open space and other area conforming to requirements of ordinance.**

No open space surrounding any building shall be encroached or reduced in any manner, except in conformity with the yard, lot area, and building location regulations herein designated for the district which such building or open space is located. No yard, off-street parking space, off-street loading space, or other space surrounding any building for the purpose of complying with the provision of this ordinance except as otherwise specified herein, shall be considered as providing a yard or open space for any other building, and no yard or other open space on one platted lot shall be considered as the required open space on another platted lot unless the other platted lot is in the same ownership and is declared as a

single zoning lot in applying for a building permit, and provided no land so considered has previously been considered as part of a required building site or zoning lot in the application for a building permit for an existing building. The required yard or open space for any use, building or structure shall be contained in the same zone as required for the principal use, its buildings or accessory buildings.

No lot, yard, off-street loading space, off-street parking space or other open space required for an existing building by the regulations contained herein shall be hereafter reduced in dimension or area below the minimum requirements set forth herein for said building or structure, except to provide for the extension, establishment of widening of a public street or highway.

**Source:** Ord. No. 2006-05, 2006.

#### **Section 1-107. Interpretation of ordinance - conflict with other rights.**

It is not the intention of this ordinance to defeat the purposes of any contract, deed restriction or protective covenant when such instrument is inconsistent with the ordinance or contains more restrictive requirements. In the event this ordinance conflicts with other provisions of this code, ordinances, rules and regulations adopted pursuant to law, or state or federal law, then the more strict provisions shall apply.

Areas, which are included within the boundaries of an urban renewal plan, or other area plan which has been officially adopted and approved by the commission and a contract with the federal or other government consummated as a consequence thereof, shall not be the subject of any zoning change, which will defeat the purposes of such contract.

**Source:** Ord. No. 2006-05, 2006.

#### **Section 1-108. Interpretation of ordinance - conflict with other laws.**

In the interpreting or applying the provisions of this zoning ordinance, the minimum requirements adopted for the promotion of the public health, morals, safety, convenience, comfort, and general welfare shall be strictly conformed to. Wherever the requirements of this ordinance are in conflict with the requirements of any other local statute, ordinance, or regulation, the most restrictive, or that imposing the higher standards, shall govern.

**Source:** Ord. No. 2006-05, 2006.

#### **Section 1-109. Interpretation of ordinance - certain uses prohibited.**

Any use that is not specifically permitted in a district as a principal use, an accessory use or a conditional use, is hereby specifically prohibited. In the regulations for some zones specific excluded uses are enumerated for clarification of intent, but such lists of excluded uses are not to be interpreted as including all excluded uses.

**Source:** Ord. No. 2006-05, 2006.

### **Section 1-110. Application of ordinance to non-conforming uses.**

The lawful use of any building or premises existing at the time of the effective date of this chapter shall be allowed to continue although the use does not conform to the regulations of the ordinance in the respective district, and such building may be reconstructed or structurally altered and the non-conforming use changed subject to the following regulations:

- A. Any structure or part thereof that is declared unsafe may be restored to a safe condition.
- B. Any non-conforming building may not be reconstructed or structurally altered during its life to exceed a cost of fifty (50) percent of the assessed value of the building unless the building is changed to conform with the regulations of the district.
- C. There shall be no extension of any building for a non-conforming use, but an extension to said building may be allowed for a conforming use.
- D. Any building damaged by fire or other causes to the extent of fifty (50) percent of its assessed value shall not be repaired or rebuilt unless it is in conformity with the regulations for the respective district.
- E. Upon the discontinuance of a non-conforming use for a period of one year the use shall not be re-established. Any future use shall be in conformity with the regulations of the respective district.
- F. No non-conforming use once changed to a conforming use shall be allowed to revert back to a non-conforming use.
- G. No non-conforming use shall be extended to replace a conforming use.
- H. If the boundaries of a district shall be changed so as to transfer an area from one district to another district with different regulations, the above provisions shall apply to any non-conforming uses existing in the district to which the area is transferred.

**Source:** Ord. No. 2006-05, 2006.

### **Section 1-111. Administration and enforcement of ordinance - building permits - powers and duties of Zoning Administrator and Board of Adjustment.**

#### ***A. Administration and Enforcement.***

- 1. This zoning ordinance, except as provided in this ordinance, shall be administered and enforced by the zoning administrator. An appeal concerning the decision of the zoning administrator may be made to the Board of Adjustment as herein provided.

#### ***B. Building Permits.***

- 1. There shall be no building or structure erected, added to or structurally altered unless

there has been a permit issued by the zoning administrator. Except upon a written request from the Board of Adjustment, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition or alteration or use thereof will not conform to the regulations of this ordinance.

2. With all applications for building permits there shall be submitted one copy of a layout or plot plan, drawn to scale, showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and any other information necessary to determine and provide for the enforcement of this zoning ordinance. A careful record of these applications and plat plans shall be kept in the office of the zoning administrator.
3. Prior to any building permit being issued for any new single family residence, or for improvements or maintenance of an existing residence equal to or greater than \$20,000 value, located in Agriculture District A or Agriculture District B or Agriculture District B2 or Agriculture District C, a Right to Farm Covenant shall be recorded on the parcel of land upon which the new structure will be located. Only the following shall constitute a Right to Farm Covenant:

**RIGHT TO FARM COVENANT** (Titleholder(s)) herein called grantor(s) are the owners of the real property described as follows: (legal description of parcel). In consideration of approval of a Building Permit for construction or placement of a residence, stick-built, modular or manufactured, or modifying of an existing residence, grantor(s) hereby grant to Hughes County a perpetual non-exclusive Right to Farm Covenant as follows: Grantors, their heirs, successors and assigns hereby acknowledge that the above described property is situated in or near agricultural land, agricultural operations, or agricultural processing facilities or operations in Hughes County, South Dakota, and may be subjected to conditions resulting from lawful agricultural or agricultural processing operations. Such operations may include, but are not limited to: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. Said Grantors hereby waive all common law rights to object to normal, necessary, and non-negligent agricultural activities legally conducted that may conflict with grantors' use of grantors' property for residential or other land uses not related to agricultural purposes. This covenant is appurtenant to all property adjacent to the above described property and shall bind the heirs, successors and assigns of grantors and shall endure for the benefit of the adjacent landowners, their heirs, successors and assigns. Adjacent landowners, their heirs, successors and assigns are hereby expressly granted the right of third party enforcement of this covenant. IN WITNESS WHEREOF, the grantors have executed this covenant on (date).



The Right to Farm Covenant shall run with the land so long as it is used for residential purposes.

***C. The Zoning Administrator shall be appointed by the County Manager.***

***D. Permit Fees shall be as set by the County Commission.***

***E. Board of Adjustment.***

1. Creation of Organization.

The Board of Adjustment is hereby established pursuant to SDCL 11-2-49. The Board of Adjustment shall consist of five members, each to be appointed by the Board of County Commissioners. In order to provide for staggered terms and minimize the impact of turnover on the Board of Adjustment, initial appointments shall provide for one member with a one year term, two persons with a two year term and two persons with a three year term. Subsequently, all members shall be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. A first alternate and a second alternate shall also be appointed for a term of three years each. If a member is unable to attend a meeting, the first alternate, or second alternate, in turn, shall serve in the member's place. If a member resigns or is removed for cause, the County Commission shall appoint a new member to fill the remainder of that original term. Members shall receive compensation for each meeting attended in an amount determined by the Board of County Commissioners as partial reimbursement for expenses.

2. Meetings and Minutes.

- a. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. All Conditional Use Permit findings of the Board of Adjustment shall require the approval of a majority of the five members. All other findings by the Board of Adjustment shall require a two thirds majority of the five voting members. A quorum shall consist of four members.
- b. A copy of the Agenda for meetings of the Board of Adjustment shall be provided to the Board of County Commissioners and to the Planning Commission in advance of the meeting.
- c. The board shall keep minutes of its proceedings pursuant to SDCL 11-2-52, which shall be immediately filed in the office of the Zoning Administrator or with the County Finance Officer and shall be a public record. All written findings of the Board of Adjustment shall be recorded in the minutes.

3. Powers and Duties.

The powers and duties of the Board of Adjustment as prescribed by laws (SDCL 11-2-49 thru 11-2-65) and this ordinance are specified as follows:

a. Interpretation/Appeals.

To hear and decide all appeals from the decisions of the Zoning Administrator involving the interpretation of any regulation of this Ordinance.

b. Conditional Use and Special Use Permits.

To hear and decide, in accordance with the provisions of this Ordinance, requests (i) for conditional uses, or (ii) for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass, or (iii) for the extension of use, as it existed at the time this ordinance went into effect, into a contiguous or more restricted district, but not for any other purpose or use; to decide such questions as are involved in determining whether conditional or special uses should be granted; and to grant conditional or special uses with such conditions and safeguards as are appropriate under this Ordinance, or to deny conditional or special uses when not in harmony with the purpose and intent of this Ordinance. A conditional or special use shall not be granted by the Board of Adjustment unless and until:

- i. Written application for a conditional/special use is submitted, indicating the section of this Ordinance under which the conditional/special use is sought and stating the grounds on which it is requested;
- ii. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of the County;
- iii. The Zoning Administrator or their designee shall notify by mail all owners of abutting property for which action is sought, property within 200 feet, and others identified as having a material interest. Notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
- iv. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
- v. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional/special use, and that the granting of the conditional/special use will not be injurious to the neighborhood or detrimental to the public welfare;
- vi. Before any conditional/special use is issued, the Board of Adjustment shall make written findings, certifying compliance with the specific rules governing

individual conditional/special 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; with particular attention to the items in (a) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district,
- (c) Refuse and service areas, with particular reference to the items in (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 properties in the district,
- (g) Required yards and other open spaces, and
- (h) General compatibility with adjacent properties and other property in the district.

c. Variances.

To vary or adapt any regulation of this ordinance when any such regulation results in practical difficulty or unnecessary hardship that would prohibit the owner from the reasonable use of the land or building involved, but in no other case.

No variance of any regulation shall be granted by the Board of Adjustment unless they find:

- i. That there is proof that the strict application of the Ordinance would produce undue hardship as distinguished from variations for purposes of convenience, profit and caprice, and the conditions and circumstances are peculiar to such land or buildings, and that these conditions and circumstances do not generally apply to other properties in the same zoning district and the same vicinity.
- ii. That the variance granted by the Board of Adjustment is the minimum variance possible to accomplish the purpose of providing for the reasonable use of the land or building.

- iii. That the granting of the variance does not change the essential character of the neighborhood, will not be of substantial detriment to adjacent property and shall be in accordance with the general purpose and intent of this Ordinance.
- iv. A variance may be granted in cases where this ordinance refers it to the Board of Adjustment directly.
- v. A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; that 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; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structure, or buildings in the same district.
- vi. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- vii. Notice of public hearing shall be given as in Section 1-111.E.3.b.ii thru iii above; the public hearing shall be held. Any party may appear in person for by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this Section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.

Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

#### 4. Procedures.

The Board of Adjustment shall act in strict compliance with the procedure prescribed by law and this zoning ordinance. The appeals and application made to the Board of Adjustment shall be made in writing on forms prescribed by the Board of Adjustment. Each appeal or application shall state the interpretation that is claimed, the use for which the permit is sought, or the details of the proposal and the reasons why the request should be granted.

**Source:** Ord. No. 2006-05, 2006; 2009-06, 2009, 2021-1, 2021.

#### **Section 1-112. Inspections by Zoning Administrator.**

Upon completion of the job, the Zoning Administrator may make a final inspection to determine conformity to this ordinance.

**Source:** Ord. No. 2006-05, 2006.

#### **Section 1-113. Procedures for amending, changing, modifying or repealing portions of zoning ordinance.**

##### Amendments and Changes

##### Procedures

1. The County Commission may from time to time amend, change, modify or repeal any portion of the Zoning Ordinance. Every proposed amendment or change shall be accomplished in accordance with procedures outlined in SDCL 11-2-28 to 11-2-30 inclusive.

**Source:** Ord. No. 2006-05, 2006.

#### **Section 1-114. Penalty Provisions.**

A violation of this Ordinance shall be considered a misdemeanor punishable by a fine not exceeding One Hundred Dollars (\$100.00). Each day that the violation continues to exist shall constitute a separate offense.

**Source:** Ord. No. 2006-05, 2006.

#### **Section 1-115. Severability**

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such portion shall not affect the validity of the remaining portion or portions of this Ordinance. The Board of County Commissioners declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof,

irrespective of the fact that any one or more parts hereof be declared unconstitutional.

**Source:** Ord. No. 2006-05, 2006.

**Section 1-116. Jurisdiction and Acquisition Thereof**

1. This Ordinance shall not apply to land controlled by Indian Tribal Jurisdiction.
2. All territory which may hereafter come under the jurisdiction of this Ordinance shall automatically be zoned Agriculture A, until such time as it shall be zoned otherwise by the County Commission.

**Source:** Ord. No. 2006-05, 2006.

***Sections 1-117 to 199, inclusive, Reserved.***