

Mellette County Zoning Ordinance

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DEFINITIONS

Definitions

For the purpose of this Ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall means mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied.

Terms

For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

Abutting - Having a common border with or being separated from such a common border by a right-of-way, alley, or easement.

Accessory Agricultural Structure - A structure customarily incidental and necessary to farming and the raising of animals including barns and other animal shelters, corrals and fences, silos and storage sheds for machinery and crops.

Accessory Building - A subordinate building, the use of which is purely incidental to the main building, is less than one hundred (100) percent of the area of the largest floor of the principal building and is unattached from the principal building at least ten (10) feet.

Accessory Use - A use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use.

Actual Construction - Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially commenced, preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Addition - Any construction that increases the size of a building such as a porch, attached garage or carport, or a new room.

Administrative Review – A process brought forth by the Zoning Administrator to clarify a provision of the Zoning Ordinance. A review may include policy interpretation or procedural questions but shall not include the appeals process as detailed herein.

Adult Entertainment – Any premises or part thereof in which a principal feature or characteristic is the nudity or partial nudity of any person; to include a place or part thereof where, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations.

Advertising Sign - An advertising sign, billboard, or poster panel which directs attention to a business, commodity, service, or entertainment not exclusively related to the premises where such advertising sign is located or to which it is affixed, but does not include those business signs which direct attention to the business on the premises to a brand name of a product or commodity with which the business is specifically identified and which is sold on the premises.

Agriculture - The planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards along with the raising and/or feeding of less than (1,000) animal units of livestock and/or poultry in an animal feeding operation as defined by this ordinance.

An animal feeding operation as defined by this ordinance is not considered an agricultural use. The processing and/or storage of raw agricultural products, including facilities such as grain elevators and ethanol plants, shall not be considered an agricultural use if such use constitutes the main or principal use on a lot or parcel.

Agriculture Product Processing Facility - A business activity customarily designed to process raw agricultural products into value added products. Agricultural processing facilities include, but are not limited to; feed mills, ethanol plants, soybean processing facilities, cheese plants, milk processors, packing plants and rendering facilities.

Agricultural Use Covenant Running with the Land - An agreement required by ordinance by which parties, hereafter known as grantors acknowledge that adjacent land may be subjected to conditions resulting from agricultural operations. Once executed, said agreement runs with the land and cannot be separated from the land nor transferred without it.

Airport – A place where aircraft can land and take off, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

Alley - A way which affords only a secondary means of access to abutting property.

Amendment - A change in the wording or substance of this ordinance or a change in the boundaries or classifications upon the Official Zoning Map.

Amusement Park - A facility, primarily outdoors, that may include structures and buildings, where there are various devices for entertainment including rides, booths for the conduct of games or sale of items, buildings for shows and entertainment and restaurants and souvenir sales.

Animal Feeding Operation: An animal feeding operation is a lot or facility where an established number of animal units are confined, stabled, fed, or maintained 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-harvest residues in the normal growing season. Two or more facilities under common ownership are a single animal operation if they adjoin each other (within one mile), or if they use a common area or system for the disposal of manure. For the purposes of these regulations, Animal Feeding Operations are divided into the following classes:

<u>Class</u>	<u>Animal Units</u>
Class A	1,000 and Above

Animal Feeding Operation or CAFO, New: An animal feeding operation or Concentrated Animal Feeding Operation, CAFO, constructed after the effective date of this ordinance or any subsequent amendment of applicable Articles or Sections. Operations in existence upon adoption or prior to future amendments may be considered a new operation if the facility is expanded to facilitate an increase of more than one hundred (100) animal units. Any new construction relating to an expansion must comply with the applicable performance standards. The Planning Commission and Board of Adjustment shall have the authority to decrease or waive any standard deemed contradictory to the intent of the zoning ordinance upon review and in accordance with the conditional use and variance process described herein.

Animal Units - A unit of measure for livestock equated as follows; one animal unit is equivalent to ___ head:

Cow, feeder, or slaughter beef animal, excluding calves under 300 pounds	1.0
Cow, feeder, or slaughter Bison/Buffalo animal, excluding calves under 300 pounds	1.0
Horse	.5
Lama or Alpaca	.5
Mature dairy cattle, excluding dairy calves under 300 pounds	.7
Farrow-to-finish sows	.27
Swine in a production unit	2.13
Nursery swine less than 55 pounds	.10
Finisher swine over 55 pounds	2.5
Sheep or lambs	.10
Laying hens or broilers	.03
Ducks and/or geese	.05
Turkeys	.055

Animal Unit Conversion Table – A conversion table designed to integrate the definition of animal feeding operations with the animal unit definition.

Animal Species	Class A
Cow, feeder or slaughter beef animal, excluding calves under 300 pounds	1,000
Cow, feeder, or slaughter Bison/Buffalo animal, excluding calves under 300 pounds	1,000
Horses	500
Lama or Alpaca	500
Mature dairy cattle, excluding calves under 300 pounds	700
Farrow to finish sows	270
Swine in a production unit	2,130
Nursery swine less than 55 pounds	10,000
Finisher swine over 55 pounds	2,500
Sheep	10,000
Laying hens	82,000
Broiler	125,000
Ducks and/or geese	5,000
Turkeys	55,000

Animal Waste Facility - A structure designed and constructed to store and/or process animal waste. Animal waste facilities include but are not limited to; holding basins, lagoons, pits and slurry stores. The term “Animal Waste Facility” shall be solely associated with Animal Feeding Operations as defined herein.

Apartment - A portion of a multiple dwelling used as a separate housing unit and having cooking facilities and a private bath.

Applicant - For purposes of this Ordinance a person shall be deemed to be an applicant if they are the owner of the proposed facility; an officer or director of the owner thereof; or an owner of any interest, direct or indirect, in any company, except a publicly traded company, which is the owner of the proposed development.

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

Automobile-Machinery Service Station - Building and premises where motor fuel, oil, grease, batteries, tires, and parts may be supplied and dispensed at retail, and where, in addition, customary repair services may be rendered.

Bar - A building or part thereof where, in consideration of payment therefor, liquor, beer, or wine or any combination thereof are served for consumption on the premises, with or without food.

Basement - A portion of a building with the floor located below the mean grade level. For the purpose of this ordinance, any such basement with more than four (4) feet above grade level shall be counted as a story. No dwelling unit shall be situated in a basement having less than four (4) feet above grade level.

Bed and Breakfast – A dwelling occupied by a family and used incidentally to provide accommodation and meals to guests for remuneration, but shall not include a boarding house, residential care facility, hotel, motel, or other similar uses.

Billboard - See Sign, Off-Site.

Board of Adjustment - The Mellette County Commissioners shall serve as the Board of Adjustment.

Buildable Area - The portions of a lot remaining after required yards have been provided.

Building - The word "building" includes the word structure and is a structure that is entirely separate from any other structure by space or by walls in which there is no communicating doors or windows or similar openings. A principal building including covered porches and paved patios, is a building in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

Building Line, Front - A line parallel to the street, or right-of-way intersecting the foremost point of the building, excluding uncovered steps.

Building Setback Lines - A line parallel or approximately parallel to the lot lines at a specified distance there from, marking the minimum distance from the lot line that the building may be erected.

Building Site - A lot or parcel, or portion thereof, whether a lot of record or described by metes and bounds, used or intended to be used as the location of a building for housing one or two families.

Camper - See Travel Trailer.

Campground - Any premises where two (2) or more camping units are parked or placed for camping purposes, or any premises used or set apart for supplying to the public camping space for two (2) or more camping units for camping purposes, which include any buildings, structures, vehicles or enclosures, uses or intended for use or intended wholly, or in part, for the accommodation of transient campers.

Camping Unit - Any vehicle, tent, trailer or portable shelter used for camping 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 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.

Casino - A room or rooms in which legal gaming is conducted.

Cemetery - Land that is set apart or used as a place for the interment of the dead or in which human bodies have been buried. "Cemetery" may include a structure for the purpose of the cremation of human remains and may include facilities for storing ashes of human remains that have been cremated or the interment of the dead in sealed crypts or compartments.

Church - A building wherein persons regularly assemble for religious worship, and which is maintained and controlled by a religious body organized to sustain public worship.

Clinic - A building or part of a building used solely for the purpose of consultation, diagnosis and treatment of patients by one or more legally qualified physicians, dentists, optometrists, podiatrists, chiropractors, or drugless practitioners, together with their qualified assistants, and without limiting the generality of the foregoing, the building may include administrative offices, waiting rooms, treatment rooms, laboratories, pharmacies and dispensaries directly associate with the clinic, but shall not include accommodation for in-patient care or operating rooms for major surgery.

Club - A building owned, leased, or hired by a non-profit association of persons the use of which is generally restricted to due-paying members and their guests. Such club may periodically be rented, or leased, to non-members for gathering such as weddings, anniversaries, and dances, but no portion of the building shall continuously be used for business purposes.

Commercial Trucking Terminal - A building or structure where commercially licensed truck(s) or tractor(s) are rented, leased, kept for hire, or stored or parked for compensation, or from which truck(s) or tractor(s), stored or parked on the property, are dispatched for hire as common carriers, and which may include warehouse space.

Company - For purposes of this ordinance the term, "company" includes, but is not limited to, any corporation, partnership, limited liability company, limited liability partnership, limited partnership, business trust and any other business entity.

Comprehensive Plan - Any legally adopted part or element of the Mellette County Comprehensive Plan.

Conditional Use - A conditional use is a use that would not be appropriate, generally or without restriction, throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning district as conditional uses, if specific provision for such conditional use is made in this Ordinance.

Construction Services - A yard, structure, or combination thereof of any general contractor or builder where equipment and materials are stored or where a contractor performs shop or assembly work but does not include any other yard or establishment otherwise defined or classified herein.

Contiguous - Next to, abutting, or touching and having a boundary, or portion thereof, which is adjoining.

Contractor - The person who contracts with an individual or developer to construct a building on a parcel of land prepared by a developer.

Convenience Store - A retail store in which articles for sale are restricted to gasoline sales and a limited range of food items such as milk, bread, soft drinks, ice cream, canned and bottled goods, snacks and candy. Retail sales may also include the limited sale of magazines, books, house wares, toiletries, bait, alcoholic beverages and tobacco.

Court - Any open space, unobstructed from ground to sky, other than a yard, that is on the same lot with and bounded on two or more sides by the walls of a building.

Covenant - An agreement, convention, or promise of two or more parties, by deed in writing, signed and delivered, by which either of the parties pledges himself to the other that something is either done, or shall be done, or shall not be done. The term is currently used primarily with respect to promises in conveyance or other instruments relating to real estate.

Cul-de-sac - A local right-of-way with only one outlet that terminates in a vehicular turnaround and having an appropriate terminal for the safe and convenient reversal of traffic turnaround.

Day Care – The providing of care and supervision of children or adults as a supplement to regular parental or home care, without transfer of legal custody or placement for adoption, with or without compensation, on a regular basis for a part of a day.

Day Care Center - Any type of group day care programs including nurseries for children of working parents, nursery schools for children under minimum age for education in public schools, parent cooperative nursery schools, playgroups for pre-school children, programs covering after-school care for school children provided such establishment is licensed by the State and conducted in accordance with State requirements.

Day Care, Family – The provision of regular care and supervision of no more than twelve (12) children including the provider’s own children who are under the age of six (6) years for part of a twenty-four (24) hour period as a supplement to regular parental care.

Day Care, Group Family Home – The provision of regular care and supervision of thirteen (13) to twenty (20) children either in the provider’s home or in a facility outside the provider’s home for part of a twenty-four (24) hour period as a supplement to regular parental care.

Deck - A structure abutting a dwelling with no roof or walls except for visual partitions and railings that is constructed on piers or a foundation above-grade for use as an outdoor living area.

Developer - The owner of the property being platted or replatted or the person designated by the owner as being responsible for the development of the property. The terms “subdivider” and “developer” are synonymous and used interchangeably, and shall include any person, partnership, firm, association, corporation and/or any officer, agent, employee and trustee thereof who does or participates in the doing of any act toward the subdivision of land within the intent, scope and purview of this Ordinance. The developer shall also be defined as the builder or contractor if they are responsible for the construction of buildings and/or structures or permanent improvements.

Domesticated Large Animals - 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, and mules.

Drive-in Restaurant or Refreshment Stand - Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.

Due Diligence - Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard but depending on the relevant facts of the special case.

Dwelling - A building or portion of a building designed for residential purposes, including one and two-family dwellings, but not including hotels, motels or lodging houses.

Dwelling Unit - One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking and sleeping facilities.

Dwelling, Efficiency Unit - A dwelling unit having only one room exclusive of bathroom, kitchen, laundry, pantry, foyer, communicating corridor, closets, or any dining alcove. An efficiency unit shall be permitted in a multi-family dwelling.

Dwelling, Multiple Family - A residential building designed for, or occupied by, two (2) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Single Family - A detached residential dwelling unit other than a manufactured home designed for or occupied by one (1) family only.

Easement - Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of their property. For the purposes of this Ordinance the term shall primarily be used to describe utility access.

Employee(s) - In regard to off right-of-way parking requirements, all who work in the enterprise, including owners.

Environmental Assessment – A report compiled by a professionally licensed engineer or environmental scientist assessing existing environmental contaminants at an identified location. The environmental assessment shall assess potential impacts from the presence of suspected industrial/agricultural chemicals, petroleum and derivatives, abandoned sanitary sewer and septic systems, asbestos, and other hazardous materials.

Exhibition Areas - A building, group of buildings, or place where art, objects, articles, or livestock or agricultural projects are placed on display for the public.

Facility – A building, piece of land or any combination thereof owned and operated by the same owner and dedicated to a specific use or uses. The term shall include those operations where indoor and outdoor activities may be conducted in concert and are integral or compliment the operation as a whole. An example may be an automobile dealership with office spaces, a small indoor display area, separate maintenance facility, and an outdoor display area.

Fairground - An agricultural fairground where farm produce is on display for judging and for sale, and livestock shows, horseracing and other sports events are held and on occasion for auctions, flea markets and concession stands.

Family - Any number of individuals living together as a single housekeeping unit, in which not more than four (4) individuals are unrelated by blood, marriage or adoption.

Farm Building - All buildings and structures needed in agricultural operation, including dwellings for owners, operators, farm laborers employed on the farm, and other family members.

Farm Drainage Systems - The term shall include all waterways, ditches, flood control, tiling watershed, and erosion control structures and devices provided each individual system or structure comply with the applicable local, state, and federal regulations.

Farm Occupation - A business activity customarily carried out on a farm by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal farm operations, without the employment of persons not residing in the home, which does not cause the generation of additional traffic in the area. Farm occupations include, but are not limited to, seed sales and custom combining support facilities.

Farm Unit - All buildings and structures needed in an agricultural operation, including dwellings for owners, operators, and other family members.

Farm, Ranch, Orchard - An area of not less than ten (10) acres of unplatted land, or is a part of a contiguous ownership of not less than eighty (80) acres of unplatted land, which is used for growing usual farm products, vegetables, fruits, trees, hay, alfalfa and grain, and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle, hogs and sheep, and including the necessary accessory uses for raising, treating, and storing products raised on the premises; but excluding an Animal Feeding Operation.

The processing and storage of raw agricultural products, such as grain elevators and ethanol plants, shall not be considered a farm, ranch or orchard if such constitutes the main or principal use on the lot or parcel.

Farmstead - The area within or adjacent to the shelterbelt protecting the house and main buildings, including, the driveway and the land lying between the farmstead and the road.

Fence - An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

Financial Institutions - The premises of a bank, trust, finance, mortgage, or investment company.

Fireworks, Sales - A building, structure, or place where fireworks are sold, pursuant to all applicable state statutes.

Flammable or Combustible Liquids, or Hazardous Material - Flammable material is any material that will readily ignite from common sources of heat, or that will ignite at a temperature of 600^oF or less. Flammable liquid is any liquid having a flash point below 100^oF and having vapor pressure not exceeding forty (40) pounds per square inch (absolute) at 100^oF. Combustible liquid is any liquid having a flash point at or above 100^oF. Hazardous material includes any flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hypergolic materials, pyrophoric materials, and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of wetlands, lakes, streams, tributaries, or other water bodies; and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without an accumulative increase in the water surface.

Food Product Processing Facility - A commercial establishment in which food or food-related products are processed, packaged, or otherwise prepared for human consumption but not consumed on the premises.

Footprint – The land area covered or occupied by a building and a facility as defined herein. The term shall also include any land area dedicated to a use such as outdoor storage or any area utilized for storage, display, or livestock confinement as part of or in support of the building or use.

Game Farm - An area of five (5) acres or more, which is used for producing hatchery, raised game and nondomestic animals for sale to private shooting preserves.

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

Gaming Device or Gaming Equipment - Any mechanical contrivance or machine used in connection with gaming or any game.

Gaming or Gambling - The dealing, operating, carrying on, conducting, maintaining, or exposing for pay of any game.

Gaming or Gambling Establishment - Any premises wherein or whereon gaming is done.

Garage - An accessory building or portion of a building including a carport which is designed or used for the sheltering of private motor vehicles and the storage of household equipment incidental to the residential occupancy and in which there are no facilities for repairing or servicing of such vehicles for remuneration or commercial use.

Garage, Public - A building or portion thereof used for the housing or care of motor vehicles for the general public or where such vehicles are equipped or repaired for remuneration or kept for hire or sale. This may include premises commonly known as "gasoline stations" or "service stations".

Gasoline Station - Any area of land, including structures thereon, that is used for the sale of gasoline or other motor vehicle fuel, and oil or other lubrication substances; and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning such vehicles.

Golf Course - A public or private area operated for the purpose of playing golf, and includes a par 3 golf course, club house and recreational facilities, driving ranges, and miniature golf courses, and similar uses.

Grain Elevator - Grain storage facilities, which are the principal and primary use of the lot. Said facilities are generally equipped with devices for housing and discharging significant quantities of grain. This definition does not include normal farm product storage and warehousing facilities such as grain bins and where such storage is an accessory use to the parcel.

Grandfather – For the purposes of this ordinance the term "grandfather" shall be defined as a lay term used to describe structures, land uses, facilities, operations or similar activities in existence prior to adoption of the zoning ordinance. The term is generally applied to uses not allowed or further regulated within the new ordinance. The act or condition of grandfathered is more fully addressed in the non-conforming Article herein.

Greenhouse, Commercial - A building for the growing of flowers, plants, shrubs, trees, and similar vegetation which are not necessarily transplanted outdoors on the same lot containing such greenhouse but are sold directly from such lot at wholesale or retail.

Group Home - See Residential Care Facility.

Hobby Farm - An activity carried out in rural residential areas which includes the planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards.

The raising and feeding of livestock and poultry shall be considered as part of a hobby farm if the area, in which the livestock or poultry is kept, is two (2) acres or more in area for every two (2) domesticated large animals, and if such livestock does not exceed ten (10) animals; or the raising of livestock and

poultry is incidental or supplemental to the residential use and is not primarily for the growing of crops or raising of livestock.

Home Occupation - A business activity customarily carried on in the home by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal household operations, without the employment of more than two (2) persons not residing in the home, which does not cause the generation of traffic in excess of that experienced on an average right-of-way of similar design, noise, electrical interference, fumes, odors, etc.

Horticulture - The science or art of cultivating fruits, vegetables, flowers, and plants.

Horticulture Sales - The on-site retail sale of farm produce, flora, fauna, or similar items. The majority of the produce sold shall be seasonal in nature and grown on-site. An exception may be a cooperative venture between numerous producers.

Hospital - An institution devoted primarily to the operation of facilities of the diagnosis, treatment, and cure of disease, illness, injury, or other abnormal physical conditions with provisions for keeping patients overnight.

Hotel - An establishment of transient guests having sleeping rooms without individual cooking facilities for more than six (6) persons for compensation and may or may not provide meals.

Irrigation Systems - This term shall include all canals, ditches, piping, center pivot, and other methods utilized to irrigate cropland. This term does not include systems designed to land apply waste or water from animal feeding operations as defined herein. All irrigation systems shall comply with local, state, and federal regulations.

Kenel - Any place where ten (10) or more dogs, cats, or other domesticated animals of breeding age are housed, groomed, bred, boarded, trained, harbored, kept or sold for commercial purposes.

Lagoon - Any pond, basin, or other impoundment made by excavation or earth fill for storage or treatment of animal waste.

Landing Strip - A strip of ground used or capable of being used for the landing and take-off of aircraft.

Loading Area - A completely off right-of-way, space, or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public right-of-way.

Loading Space, Off Right-of-Way - Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off right-of-way loading space is not to be used as off right-of-way parking space in computation of required off right-of-way parking space.

Locker - A meat processing plant and any other facility where meat, poultry or eggs are cooked, cured, smoked, or otherwise processed or packed, provided that all activities are carried out indoors. This term shall not include a delicatessen, stockyard, slaughterhouse, tannery, a poultry killing establishment, an animal food factory, or an animal by-products plant.

Lot - For purposes of this ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public right-of-way, or on an approved private right-of-way, and may consist of a single lot of record; a portion of a lot of record; a combination of complete lots of record, of complete lots of record and portions of lots of record, a parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance.

Lot Coverage - The percent of the area of a lot occupied by buildings, or structures, including accessory building or structures.

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

Lot Frontage - The portion of the lot nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under Yards in this article.

Lot Frontage Pie Shaped - A lot usually abutting a cul-de-sac. For the purpose of determining frontage, said distance shall be measured perpendicularly to the said lot lines at a point thirty (30) feet from the front line.

Lot Line - The legally defined limits of any lot.

Lot, Corner - A lot situated at the intersection of two (2) right-of-ways, the interior angle of such intersection not exceeding one hundred thirty-five (135) degrees.

Lot, Double Frontage - A lot having frontage on two (2) non-intersecting right-of-ways, as distinguished from a corner lot.

Lot Line, Exterior - The side lot line, which abuts the right-of-way on a corner lot.

Lot Line, Rear - The lot line or point of intersection of the side lot lines farthest from and opposite the front lot line.

Lot Line, Side - A lot line other than a front or rear lot line.

Lot of Record - A lot which is part of a subdivision recorded in the office of the County Register of Deeds,

or a lot or parcel described by metes and bounds, the description of which has been so recorded. For the purposes of this Ordinance, a legally transacted parcel prior to adoption may be considered as a lot of record.

Lot, Corner - A corner lot is defined as a lot located at the intersection of two (2) or more right-of-ways. A lot abutting on a curved right-of-way(s) shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees.

Lot, Interior - An interior lot is defined as a lot other than a corner lot with only one frontage on a right-of-way.

Lot, Through - A through lot is defined as a lot other than a corner lot with frontage on more than one right-of-way. Through lots abutting two right-of-ways may be referred to as double frontage lot.

Lot, Reversed Frontage - A reversed frontage lot is defined as a lot on which the frontage is at right angles or approximately right angles, interior angle less than one hundred thirty-five (135) degrees, to the general pattern in the area. A reversed frontage lot may also be a corner or a through lot.

Lot Width - The mean horizontal distance between the side lot lines of a lot measured at right angles to the depth or the same distance measured at the front building line.

Manufactured Home - A moveable or portable dwelling which is eight (8) feet or more in width and thirty-two (32) feet or more in length, constructed on a chassis, and which is designed to be towed, designed for year-round occupancy, primarily to be used without a permanent foundation, but which may sit on a permanent foundation, and designed to be connected to utilities. It may consist of one or more units, separately transportable, but designed to be joined together into one integral unit.

The following shall not be included in this definition:

1. Travel trailers, pickup coaches, motor homes, camping trailers, or other recreational vehicles.
2. Manufactured modular housing which is designed to be set on a permanent foundation, and which uses standard sheathing, roofing, siding, and electrical, plumbing, and heating systems.

Manufactured Home Park - A parcel of land under single ownership, which has been planned and improved for the placement of, manufactured homes for non-transient use.

Manufacturing - The use of land, buildings or structures for the purpose of manufacturing, assembly, making, preparing, inspecting, finishing, treating, altering, repairing, warehousing or storing or adapting for sale of any goods, substance, article, thing or service.

Mining – See Quarry

Mobile Home - A transportable, factory-built home, designed to be used as a year-round residential dwelling and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976.

Modular Home - A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence; transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning, and electrical systems contained within the structure.

Motel - A group of attached or detached buildings on the same lot containing sleeping quarters for rental to transients.

Motor Vehicle Track or Play Area - A area of land utilized for the racing or recreational riding of motor vehicles with or without a defined area or track. The term may include a racetrack with spectators and an established racing affiliation, or a day use area utilized by a club, group, or independent individuals. A motor vehicle may include cars, trucks, motorcycles, all terrain vehicles or similar items.

Museum - A building or buildings used, or to be used, for the preservation of a collection of paintings and/or other works of art, and/or of objects of natural history, and/or of mechanical, scientific and/or philosophical inventions, instruments, models and/or designs and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and/or other offices and premises used or to be used in connection therewith.

Nonconforming Lot - A lot of record existing on the date of passage of this ordinance which does not have the minimum width or contain the minimum area for the zone in which it is located.

Nonconforming Structure - A lawful structure which exists on the date of passage of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yard setbacks, or other characteristics of the structure.

Nonconforming Use - A land use or building or structure or portion thereof lawfully existing at the effective date of this ordinance or at the time of any amendment thereto, which does not conform to the regulations of the zone in which it is located.

Non-Permanent – The term shall apply to items such as structures, products, equipment or the like not existing or intended to exist for an indefinite time. It may also include the term, "Temporary". Items generally interpreted to be non-permanent are operational machinery and implements, baled agricultural products, and seasonal storage; items that are easily moved or relocated without significant effort or expense and commonly occurring in a rural or agricultural setting.

Noxious - When used with reference to any use or activity in respect of any land, building or structure or a use or activity which, from its nature or from the manner of carrying on same, creates or is liable to create, by reason or destructive gas or fumes, dust, objectionable odor, noise or vibration or unsightly storage of goods, wares, merchandise, salvage, machinery parts, junk, waste or other material, a condition which may become hazardous or injurious as regards to health or safety or which prejudices the character of the surrounding area or interferes with or may interfere with the normal enjoyment of any use of activity in respect of any land, building or structure.

Nuisance – An activity which arises from unreasonable, unwarranted, or unlawful use by a person of his own property, working obstruction or injury to right of another, or to the public, and producing such material annoyance, inconvenience and discomfort that law will presume damage.

Nursery - A facility confining a specific number of small and/or young swine averaging ten (10) to fifty-five (55) pounds in size.

Nursing Home, Rest Home, Convalescent Home - A place which undertakes through its ownership or management to provide maintenance, personal, or nursing care for three or more persons who by reason of illness, physical deformity, or old age are unable to care for themselves. (to include Independent and Assisted Living)

Obstruction - Any structure or vegetation that blocks the complete vision of people.

Office - A building or part thereof, designed, intended or used for the practice of a profession, the carrying on of a business, the conduct of public administration, or, where not conducted on the site thereof, the administration of an industry, but shall not include a retail commercial use, any industrial use, clinic, financial institution or place of amusement or place of assembly.

Open Sales Area - Any open land or area used or occupied for the purpose of displaying for sale new or secondhand merchandise, including but not limited to, passenger cars or trucks, farm machinery, construction machinery, motor scooters or motorcycles, boats, trailers, aircraft, and monuments.

Outdoor Storage Area - Any open land or area used for the purpose of storage of any items, vehicles, recreational equipment for remuneration or product or part of a product either before, during, or after manufacturing, servicing, or repairing and not displayed for retail sale. This does not include open sales areas.

Owner - The record owners of the fee or a vendee in possession, including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided.

Ownership Line - A line defining ownership of property under one owner of record.

Parcel - A legally defined piece of property including a platted lot, legally described portion, or similarly described piece of property primarily used as an identifier within taxation.

Park - An area consisting largely of open space, which may include a recreational area, playground, or similar use but shall not include a mobile home park, a campground or trailer park.

Parking Space - An off-right-of-way space available for parking of a motor vehicle and which is held to be an area for dimension of which are ten (10) feet by twenty (20) feet or which covers two hundred (200) square feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto. Off right-of-way parking shall be on or adjacent to the property on which the principal use is located.

Parking Space, Off Right-of-Way - For the purposes of this ordinance, an off-right-of-way parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a right-of-way and maneuvering room. Required off right-of-way parking areas for three (3) or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any right-of-way, and so that any automobile may be parked and un-parked without moving another.

For purposes of rough computation, an off-right-of-way parking space and necessary access and maneuvering may be estimated at three hundred (300) square feet, but off right-of-way parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinances and regulations of the County.

Pawnshop - An establishment where money is loaned on the security of personal property pledged in the keeping of the pawnbroker.

Performance Standards - Criterion established for the purposes of:

1. Assigning proposed land uses to proper districts; and
2. Controlling noise, odor, glare, smoke, toxic matter, aesthetics, vibration, fire/explosive hazards generated by, or inherent in, uses of land or buildings.

Permitted Use - A use by right, which is specifically authorized in a particular zoning district.

Person - Any individual or group of individuals, or any corporation, general or limited partnership, joint venture, unincorporated association, or governmental or quasi-governmental entity.

Places of Assembly - Places where people gather or congregate for amusement, worship, learning, etc. This includes schools, churches, theaters, playgrounds, etc.

Planning Commission - The Planning Commission of Mellette County. The term Planning Commission shall be synonymous with Planning and Zoning Commission and Commission but shall not include Board of Adjustment or Zoning Board.

Plaza - A public square or similar open area.

Portable Processing Plant - Any equipment for the crushing, screening or washing of sand and gravel aggregate materials, but not including a concrete batching plant or an asphalt plant, which equipment is capable of being readily drawn or readily propelled by a motor vehicle and which equipment is not considered permanently affixed to the site.

Principal Use - The main use of land or structures as distinguished from a secondary or accessory use.

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

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

Property Line - The division between two parcels of land, or between a parcel of land and the right-of-way.

Public - Promotion of a public cause or service, including utilities having a franchise from Mellette County or other governmental entity, but excluding other for-profit organizations.

Public Building - Any building which is owned, leased, primarily used, and/or primarily occupied by a school district or municipal, county, state, or federal government, or any subdivision or agency of the school district, municipal, county, state, or federal government.

Quarry - A place where consolidated rock, gravel, or similar items has been or is being removed by means of an open excavation to supply material for construction, industrial, or manufacturing purposes, but does not include a wayside quarry or open pit metal mine.

Ranch Building - See Farm Building.

Ranch Occupation - See Farm Occupation.

Ranch Unit - See Farm Unit.

Recreational Equipment - The term recreational equipment shall include boats and boat trailers, jet skis, snowmobiles, travel trailers, pick-up campers or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers, and the like, and case or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

Recycling Center - A building in which used material is separated and processed prior to shipment to others who will use those materials to manufacture new products.

Remote Fuel Depots - A structure, usually unmanned, that is used for the sale of gasoline, diesel, or other motor vehicle fuel.

Rent-All Shop - A building or part of a building where residential and commercial equipment is kept for rental to the general public and includes such things as lawn and garden tools, floor cleaning equipment, masonry tools, painting and decorating equipment, moving tools, plumbing tools and power tools.

Repair Shop, Auto Body - A general industrial establishment for the repair of damage to a motor vehicle caused by collision, accident, corrosion or age, and, without limiting the generality of the foregoing, includes the reconstruction of motor vehicles, the painting or repainting of motor vehicles and the rebuilding or conversion of automotive engines or engine parts, but does not include a motor vehicle repair shop, an impounding yard, an automobile service station or a gas station.

Repair Shop, Motor Vehicle - A service commercial or general industrial establishment for the repair or replacement of parts in a motor vehicle and without limiting the generality of the foregoing, shocks, transmissions, gears, brakes, clutch assemblies, steering assemblies, radiators, heating or cooling systems, ignition systems, mechanical or electrical parts or systems, the installation of undercoating, engine tuning, lubrication and engine conversion or replacement, but does not include an auto body repair shop, an impounding yard, an automobile service station or a gas station.

Residential Care Facility - A family home, group care facility, or similar facility for twenty-four (24) hour non-medical care of persons in need of personal services, supervision or assistance for sustaining the activities of daily living or for the protection of the individual.

Restaurant - A business establishment consisting of a kitchen and dining room, whose primary purpose is to prepare and serve food to be eaten by customers seated in the dining room.

Restaurant, Drive-In - A business establishment consisting of a kitchen, with or without a dining room, where food is prepared and packaged to eat either off the premises or within automobiles parked on the premises.

Restaurant, In-House - A private business establishment consisting of a kitchen, with or without a dining room, whose primary purpose is to prepare and serve food to be eaten by employees of the principal

employer. For the purposes of this ordinance, the term "cafeteria" shall be synonymous with "Restaurant, In-House."

Rest Home - See Nursing Homes.

Retail Sales - A building where goods, wares, merchandise, substances, articles, or items are offered or kept for sale at retail, including storage of limited quantities of such goods, wares, merchandise, substances, articles, or items sufficient only to service such store.

Retail Store - A building where goods, wares, merchandise, substances, articles or items are offered or kept for sale at retail, including storage of limited quantities of such goods, wares, merchandise, substances, articles or items sufficient only to service such store.

Retaining Wall - A structure constructed to hold back or support an earthen bank.

Riding Stable - Any place that has more than fifteen (15) stalls or horse spaces to board, train, or provide recreational equine activities.

Right-of-Way - An area of land that is legally described in a registered deed for the provision of public access within which there is usually a road or street. The term right-of-way shall include any defined access route or point including but not limited to public and private accesses, road easements, streets, roads, and drives other than a private drive serving a single owner.

Right-of-Way Line - A dividing line between a lot, tract, or parcel of land and the public right-of-way.

Roadside Stand - A structure having a ground area of not more than three hundred (300) square feet, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed and to be used solely for the sale of farm products produced on the premises, bait, and other approved products.

Rodeo Grounds - A building or place where rodeo events such as roping, and riding are done for practice or competition.

Row of Trees - Ten (10) or more trees planted in a line, separated by a distance of forty (40) feet or less.

Running Gear - The parts which allow a manufactured home to be mobile including the tires, wheels, axles, running lights, and hitch. This definition shall include all mobility items exclusive of the parts of the chassis that make up the structural integrity of the manufactured home.

Salvage Yard - The use of more than one (1) acre of open storage on any lot, portion of lot, or tract of land for the sale, storage, keeping, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

School, Denominational or Private - A school under the sponsorship of a private agency, corporation, or religious entity, having a curriculum generally equivalent to public elementary or secondary schools and accredited by the State of South Dakota; but excluding private trade or commercial schools. "Day Care Centers" as herein defined, shall not be considered schools as applicable to this definition.

School, Public - A school under the sponsorship of a public agency providing elementary or secondary curriculum and accredited by the State of South Dakota; but excluding private trade or commercial schools.

Screening - A continuous fence, wall, compact evergreen hedge or combination thereof, supplemented with landscape planting, which would effectively screen the property which it encloses, and is broken only by access drives and walks.

Secondhand Shop - The use of land or building or structure or part thereof where used goods, wares, merchandise, substances, or articles are offered or kept for sale but shall not include a pawnshop.

Self-Storage Warehouse - A building containing separate, individual self-storage units divided from the floor to the ceiling by a wall with an independent entrance from the exterior of the building, designed to be rented or leased on a short-term basis to the general public for private storage of personal goods, materials and equipment.

Semi-Portable Agricultural Structures - Anything which requires placement on the ground for agriculture related purposes. Semi-portable agricultural structures include, but are not limited to, feed bunks, calving, lambing, or farrowing sheds, and temporary grain storage facilities.

Services - Establishments, primarily engaged in providing services for individuals, business and government establishments and other organizations, including hotels and other lodging places, establishments providing personal business, repair, and amusement services, health, legal, engineering, and other professional services, educational institutions, membership organizations, and other miscellaneous services.

Service Establishment - Establishments primarily engaged in providing services for individuals, business and government establishments and other organizations, including hotels and other lodging places, establishments providing personal business, repair, and amusement services, health, legal, engineering, and other professional services, educational institutions, membership organizations and other miscellaneous services.

Setback - The minimum horizontal distance from a lot line, to a wall of the building, exclusive of permitted projections. The setback shall be measured at right angles to such lot lines.

Distances noted throughout the Ordinance other than those specifically addressing yards shall be measured from the closest main wall or similar structural elements such as a post, beam, and berm to

the same from which the setback is so required. In the case of setbacks or offsets from property lines, the distance shall be measured in a similar fashion to the property line or right-of-way.

Shelterbelt - Five or more rows of trees and/or shrubs that reduce erosion and protects against the effects of wind and storms.

Shelterbelt Restoration - The removal and replacement of two or more rows of trees or of trees totaling one-half acre or more, whichever is greater, in an existing shelterbelt.

Side Wall – The measurement from the highest point of the finished floor at grade to the height of the highest point of wall framing.

Sight Triangle – See “Traffic Visibility Triangle”.

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

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

Sign, Banner - A temporary sign, which has a maximum area of twelve (12) square feet, composed of lightweight material either enclosed or not 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, balloon, or other gas-filled figures, ribbons, or other similar moving devices) and intended to be displayed for a limited period of time.

Sign, Bulletin Board - An exterior sign, which has a maximum area of thirty-five (35) square feet, used by public, charitable, and religious institutions for the purpose of informing the public about activities of their organization.

Sign, Directional Off-Site - An exterior sign that is generally informational, that has a purpose secondary to the use of the primary use on a property that is not adjacent to the property on which the directional off-site sign exists. Said sign shall include only those signs placed by a political subdivision and shall include those signs standardized by the South Dakota Department of Transportation.

Sign, Directional On-Site - An exterior sign that is generally informational, that has a purpose secondary to the use of the property on which it is located, such as "no parking," "entrance," and "loading only." Said sign shall conform to standards adopted or approved by the regulating public agency.

Sign, Easement and Utility - An exterior sign, which has a maximum area of five (5) square feet, used to identify the location of easements, property lines, utilities, hazards, or otherwise providing notice of restrictions on public access.

Sign, Exterior On-site - An exterior sign relating in subject to the premises upon which it is located, or to products, accommodations, services, or activities on the premises. Exterior on-site signs do not include signs erected by outdoor advertising industry in the conduct of the outdoor advertising business, such as billboards, which are off-site signs.

Sign, Flag - Any fabric or bunting containing distinctive colors, patterns, or symbols, which has a maximum area of twenty (20) square feet and is used as a symbol of government, political subdivision, or other entity.

Sign, Ground and Monument - An exterior sign permanently attached to the ground to identify churches, schools, institutional, and public uses. Said sign may also identify a specific neighborhood by displaying the name of the tract. Ground and monument signs:

1. Are generally constructed of concrete or other masonry material;
2. Shall not exceed twenty (20) feet in height above the mean right-of-way centerline or grade;
3. Shall meet a minimum of one-half ($\frac{1}{2}$) of the yard requirements for the district in which it is located; and
4. Shall not exceed one hundred (100) square feet on one (1) side or two hundred (200) square feet on all sides of anyone (1) premise.

Sign, Mounted Wall - A sign, which has a maximum area of one hundred (100) square feet, that is attached to or erected against a wall of a building and shall project no more than twelve (12) inches from the wall of the building. Said sign is intended to be read from directly in front of the face of the building.

Sign, Name and Address Plate - A sign, which has a maximum area of two (2) square feet, that is affixed to the side of a building informing the public as to the residents, occupation, and/or address of the building.

Sign, Off-Site - A sign other than an on-site sign. Off-site signs are conventionally known as billboards regardless of size.

Sign, Portable - Any sign, which has a maximum area of twenty (20) square feet, not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A or T-frames; menu and sandwich board signs. Signs attached to or painted on vehicles parked and visible from the public right-of-way shall not be included in this definition and shall be prohibited unless said vehicle is used in normal day-to-day operations of the business. Said sign is intended to be displayed for a limited period of time.

Sign, Projecting - Any sign, which has a maximum area of one hundred (100) square feet, that is affixed to a building or wall in such a manner that its face is perpendicular to the face of the building and the sign extends more than twelve (12) inches beyond the surface of such building or wall.

Sign, Real Estate - An exterior sign for the purpose of advertising the sale, rental, lease of real property. Said sign is located on the premises for sale, rental, or lease and shall be of a temporary nature and shall have a maximum area of four (4) square feet except in the Commercial, Highway Commercial, or Industrial Districts where the maximum area shall be thirty-two (32) square feet.

Sign, Roof - Any sign, which has maximum area of three hundred (300) square feet that is erected upon, against, or directly above a roof or on top of the parapet of a building.

Active Solar Energy System - A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

Building-integrated Solar Energy Systems - An active solar energy system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include but are not limited to photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.

Grid-intertie Solar Energy System - A photovoltaic solar energy system that is connected to an electric circuit served by an electric utility company.

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

Off-grid Solar Energy System - A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility company.

Passive Solar Energy System - A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

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

Roof Mount - A solar energy system that is mounted on a rack that is fastened onto a building roof.

Solar Access - Unobstructed access to direct sunlight on a lot or building through the entire year, including access across adjacent parcel air rights, for the purpose of capturing direct sunlight to operate a solar energy system.

Solar Collector - An assembly, structure, and the associated equipment and housing, designed for gathering, concentrating, or absorbing direct and indirect solar energy for which the primary purpose is to convert or transform solar radiant energy into thermal, mechanical, chemical or electrical energy.

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

Solar Energy System (SES) - All components required to become a complete assembly or structure that will convert solar energy into electricity for use. Solar Energy System Addition: A private solar energy system which is structurally attached to a building or structure on the zoning lot on which said system is located. Said system shall be considered part of the building and shall comply with all provisions of this ordinance pertaining thereto.

Solar Energy System, Private - A collection of one (1) or more solar collectors designed for use by the occupant(s) of the zoning lot on which said system is located; excess power generation is limited to net metering or similar technology with regulations set by the local power utility, community, county, and state. Private solar energy system equipment shall conform to applicable industry standards, and applicants for building permits for private solar energy systems shall submit certificates from equipment manufacturers that the equipment is manufactured in compliance with industry standards.

Solar Farm - A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A solar farm is the principal land use for the parcel on which it is located.

Solar Garden - A commercial solar-electric (photovoltaic) array, of no more than 20 acres in size, that provides retail electric power (or a financial proxy for retail power) to multiple households or businesses residing in or located off-site from the location of the solar energy system. A county solar garden may be either an accessory use, when a part of an existing or a proposed subdivision or a special use if it is a stand-alone garden.

Solar Heat Exchanger - A component of a solar energy device that is used to transfer heat from one substance to another, either liquid or gas.

Solar Hot Air System - An active solar energy system (also referred to as Solar Air Heat or Solar Furnace) that includes a solar collector to provide direct supplemental space heating by heating and recirculating conditioned building air.

Solar Hot Water System - A system (also referred to as Solar Thermal) that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs, including residential domestic hot water and hot water for commercial processes.

Solar Mounting Devices - Racking, frames, or other devices that allow the mounting of a solar collector onto a roof surface or the ground.

Solar Storage Unit - A component of a solar energy device that is used to store solar generated electricity or heat for later use.

Special Permitted Use - A special permitted use is not subject to any public hearing or other requirements for review and approval of conditional uses. Upon adoption of certification provisions, the land use is a permitted use subject to the criteria and enforcement in the same manner as a permitted use. A special permitted use application is not subject to the requirements set forth in SDCL § 11-2-17.4 (Conditional Use) .

Street - A right-of-way established by a recorded plat to provide the primary means of access to abutting property. The term shall also include the term "road" or other similar means of conveyance or access.

Street Line - The right-of-way line of a street.

Street, Arterial - A public street or highway intended to be used primarily for fast or heavy through traffic.

Structure - Anything constructed or erected which requires location on the ground or attached to something having a fixed location on the ground. Among other things, structures include, but are not limited to, buildings and manufactured homes. This definition does not include semi-portable agricultural structures.

Structural Alterations - Any change in the supporting members of a structure such as bearing walls, columns, beams or girders, foundations and poles. See Building, Alterations of.

Swimming Pool - A water filled enclosure, permanently constructed or portable, having a depth of more than twenty-four inches below the level of the surrounding land, or an above ground pool, having a depth of more than thirty inches, designed used and maintained for swimming and bathing.

Swine Production Unit - An operation confining a specific number of female breeding age swine for the purpose of farrowing. The operation shall farrow no more than an average of one-third (1/3) of the total herd at any one time and the total herd shall not farrow more than an average of two and one-half (2 ½) times within a twelve-month period. All farrowed swine shall be relocated to an off-site nursery facility, as defined by this ordinance, at approximately ten (10) pounds or said swine shall be calculated as part of the total animal units.

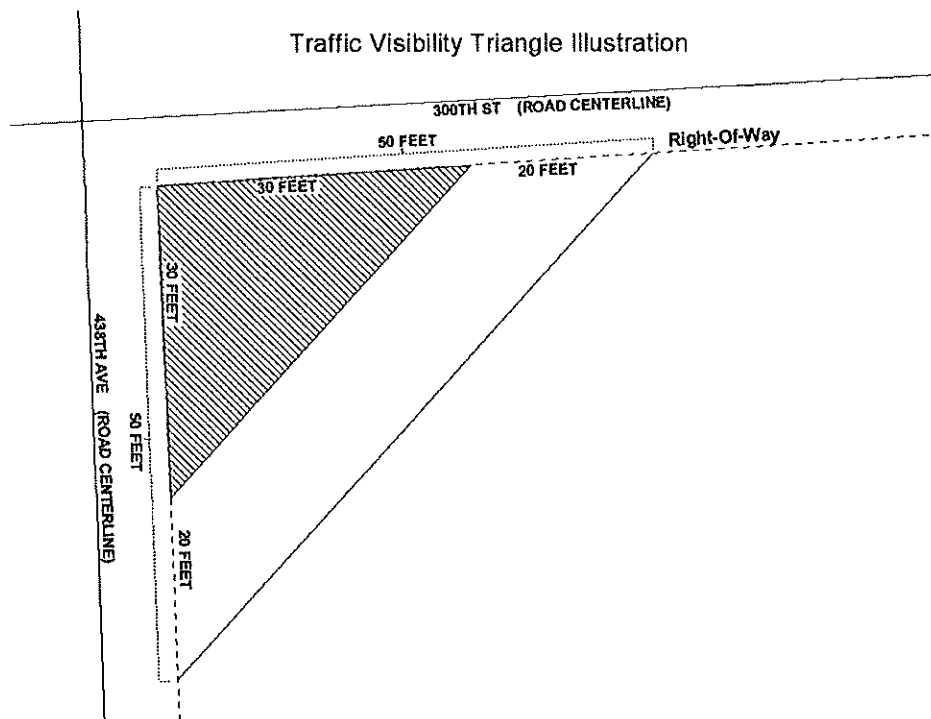
Tank Farm - A facility having two or more storage containers for the transfer of inorganic liquids or gases and from which wholesale sales of fuel to the public is or may be conducted.

Temporary Construction Facilities –Parcels of land or structures where construction or mining support facilities are constructed or placed at or near a job site to provide materials and support mechanisms for construction or mining projects. The term shall include but is not limited to portable offices, signage, trailers, stationary and mobile equipment, and scales. Common uses include portable concrete, processing, or asphalt plants, job site trailers, and areas for equipment parking, material storage or stockpiling. The term temporary shall be flexible yet is generally tied to a related construction project with defined start-up and completion times.

Thrift Shop - A shop operated by a charitable organization, which sells, donated used merchandise only. All such merchandise shall be displayed and/or stored in an enclosed building.

Tower - A structure situated on a nonresidential site that is intended for transmitting or receiving television, radio, or telephone communications, excluding those used exclusively for governmental dispatch communications.

Traffic Visibility Triangle - The triangular space formed by the right-of-way lines of a corner lot and driveways with a line drawn from a point in one right-of-way line to a point in the other right-of-way line, each such point being thirty (30) feet from the point of intersection of the right-of-way lines (measured along the right-of-ways lines). Where the two (2) right-of-way lines do not intersect at a point, the point of intersection of the right-of-way lines shall be deemed to be the intersection of the projection of the right-of-way lines or the intersection of the tangents to the right-of-way lines. In the case of arterial highways intersecting with other arterial highways or railways, the distances establishing the sight triangle shall be increased to fifty (50) feet.



Trailer Park – This definition shall include the following existing trailer courts or parks:

Travel Trailer - A moveable vehicle with wheels designed or used as living and sleeping quarters or for recreation or business purposes, and such vehicles that have not had the wheels removed. Including campers, recreation vehicles, and trailer coaches.

Truck or Equipment Terminal - A building, structure or place where six (6) or more commercially licensed trucks are rented, leased, kept for hire, stored, or parked for compensation, or from which trucks or transports, stored or parked on the property, are dispatched for hire as common carriers, and which may include warehouse space.

Use - Use shall mean the purpose for which a lot or a building or structure, or any portion thereof, is designed, arranged, intended, occupies, or maintained, and “used” shall have a corresponding meaning.

Utility Facilities - Any above-ground structures or facilities, other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities, owned by a governmental entity, a nonprofit organization, a corporation, or any entity defined as a public utility for any purpose and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil, or electronic signals.

Variance - A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for area and size of

structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining district or because of conditions created by the landowner.

Vehicle Wash - An establishment having facilities for washing motor vehicles by production line methods which may include a conveyor system or similar mechanical devices. This definition may also include a self-service operation.

Veterinary Clinic - A building or part of a building used for the care, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention. Such clinics may or may not provide long-term lodging for ill or unwanted animals or lodging for healthy animals on a fee basis. No outside runs, pens, or facilities shall be permitted.

Veterinary Service - Shall be defined as a veterinary clinic except that outside pens and runs are allowed.

Vision Clearance - An unoccupied triangular space at the intersection of right-of-ways with other right-of-ways or at the intersection of right-of-ways with railroads. See Traffic Visibility Triangle.

Warehouse - A building or part of a building used for the storage and distribution of goods, wares, merchandise, substances, or articles and may include facilities for a wholesale or retail commercial outlet but shall not include facilities for a truck or transport terminal or yard.

Wholesale - The sale of commodities to retailers or jobbers and shall include the sale of commodities for the purpose of carrying on any trade or business even if the said trade of business is the consumer or end user of the commodity.

Wind Energy System - A structure or place, such as a wind turbine, designed and constructed to generate power for distribution to off-site users. This definition shall not include private facilities with a single tower or turbine less than seventy-five (75) feet in height and not designed for distribution of power to off-site users.

Windbreak - Any non-opaque manmade structure constructed of any material and erected adjacent to an animal feeding, calving, or other such lot of which its principal use is that of protecting livestock from the effects of the wind.

Yard - An open space at grade, other than a court or plaza, between a structure and the adjacent lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward.

Yard, Front - An open, unoccupied space on a lot facing a street and extending across the front of the lot between the side lot lines; measured from the road right-of-way to the structure.

Yard, Rear - An open, unoccupied space extending across the rear of a lot from one side lot line to the other side lot line.

Yard, Side - An open, unoccupied space on the same lot with a building situated between the building and sideline of the lot and extending through from the front yard to the required rear yard. Any lot line not the rear line or a front line shall be deemed a sideline.

Zone - An area within which, in accordance with the provisions of this Ordinance, certain uses of lands, buildings, and structures are permitted and certain others are prohibited, where yards and other open spaces are required, where lot areas, building height limits, and other requirements are established, all of the foregoing being identical for the zone and district in which they apply.

Zoning Administrator - An official of the County appointed by the Chairman and confirmed by the County Commission, charged with the responsibility of administering this ordinance.

ARTICLE 1

JURISDICTION

Section 101 General

This Ordinance shall be known and shall be cited and referred to as "The Zoning Ordinance of Mellette County, South Dakota", to the same effect as if the full title were stated.

Section 103 Jurisdiction

The provisions of this Ordinance shall apply within the unincorporated areas of Mellette County, South Dakota, excluding the incorporated communities of White River, and Wood, as established on the map entitled "The Official Zoning Map of Mellette County, South Dakota".

Section 105 Provisions of this Ordinance Declared to the 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 yards, courts or other spaces, 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. Wherever the provisions of any other ordinance require a greater width or size of yards, courts, or other open spaces, 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 2

APPLICATION OF DISTRICT REGULATIONS

Section 201 General

The 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, except as hereinafter provided.

Section 203 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 regulations herein specified for the district in which it is located.

Section 205 Performance Standards

No building or other structure shall hereafter be erected or altered, without obtaining a permit, to:

1. Accommodate or house a greater number of families;
2. Occupy a greater area of the lot; and
3. Have narrower or smaller rear yards, front yards, side yards, or other open spaces.

Section 207 Yard and Lot Reduction Prohibited

No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimensions 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.

ARTICLE 3

ESTABLISHMENT OF DISTRICTS

Section 301 Districts Created

For the purpose of this Ordinance, there are hereby created four (4) types of districts by which the jurisdictional area defined in Section 103 shall be divided.

- AG - Agricultural
- RR - Rural Residential
- RC - Rural Commercial
- PTR - Platted Town Site Residential District

ARTICLE 4

OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

Section 401 General

The County is hereby divided into zones, or districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairman of the County Commissioners, attested by the Auditor, and bearing the seal of the County, under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 401 of Ordinance No. 2018-01 of Mellette County, South Dakota," together with the date of the adoption of this Ordinance.

Section 403 Zoning Map Changes

If, in accordance with the provisions of this Ordinance, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the County Commissioners, with an entry on the Official Zoning Map as follows: "on [date], by official action of the Mellette County Commission, the following [change] changes were made in the Official Zoning Map: [brief description of nature of change]," which entry shall be signed by the Chairman of the Commission and attested by the Auditor. No amendment to this Ordinance which involves matters portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made in the Official Zoning Map or matters shown thereon except in conformity with the procedures set forth in this Ordinance.

Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Section 1503.

Regardless of the existence of purported copies of the Official Zoning Map which may, from time to time, be made or published, the Official Zoning Map which shall be located in the office of the Zoning Administrator shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

Section 405 Zoning Map Replacement

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Mellette County Commission may, by resolution, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof.

The new Official Zoning Map shall be identified by the signature of the Chairman of the County Commission, attested by the Auditor, and bearing the seal of the County, under the following words:

"This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted [date of adoption of map being replaced] as part of Ordinance No. 2018-01 of "Mellette County, South Dakota."

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

Section 407 Rules for Interpretation of District Boundaries

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

Boundaries indicated, as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines;

1. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
2. Boundaries indicated, as approximately following city limits shall be construed as following such city limits;
3. Boundaries indicated, as following railroad lines shall be construed to be midway between the main tracks;
4. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
5. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map; and
6. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 6 above, the Planning Commission shall interpret the district boundaries.

ARTICLE 5

AGRICULTURAL DISTRICTS (AG)

Section 501 Intent

The intent of Agricultural Districts (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 service delivery.

Section 503 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Agricultural Districts (AG):

1. Agriculture;
2. Cemeteries;
3. Churches;
4. Day cares, family;
5. Dwellings, single-family;
6. Dwellings, additional farm (one);
7. Farms;
8. Hobby farms;
9. Farm buildings;
10. Farm drainage systems;
11. Historic sites;
12. Horticulture;
13. Manufactured homes, pursuant to Section 915;
14. Modular homes;
15. Orchard;
16. Ranch;
17. Schools – denominational or private;
18. Schools – public;
19. Utility facilities; and
20. Veterinary services.

Section 505 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in the Agricultural Districts (AG):

1. Accessory agricultural structures;
2. Home and farm occupations;
3. Irrigation systems, other than equipment utilized to irrigate manure or any byproduct;
4. Professional offices;
5. Roadside stands;

6. Shelterbelts;
7. Signs, banner;
8. Signs, directional on-site;
9. Signs, directional off-site;
10. Signs, easement and utility;
11. Signs, off-site;
12. Signs, flag;
13. Signs, name and address plate;
14. Signs, exterior on-site;
15. Signs, real estate; and

Section 507 Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in Agricultural Districts (AG):

1. Airports;
2. Agricultural, fertilizer, and chemical sales and applications;
3. Agricultural product processing facilities;
4. Animal feeding operations;
5. Aquaculture;
6. Auction yards and barns;
7. Bars;
8. Bed and breakfast operations;
9. Buying stations;
10. Campgrounds;
11. Churches;
12. Commercial trucking terminal;
13. Construction services;
14. Day cares, group family home;
15. Dwellings, additional farm in excess of one (1), pursuant to Section 513;
16. Exhibition areas;
17. Fairgrounds;
18. Feed mills;
19. Fireworks sales;
20. Food product processing;
21. Game farms;
22. Game lodges;
23. Golf courses;
24. Grain elevators;
25. Individual septic or sewage treatment facilities, pursuant to Section 917;
26. Kennels;
27. Landing Strips;
28. Manufacturing, light;
29. Manure irrigation;

30. Motor vehicle tracks or play areas;
31. Municipal, commercial, or residential central containment, sewage disposal, treatment, or application sites;
32. Open sales areas;
33. Outdoor shooting/archery ranges;
34. Outdoor storage areas
35. Parks;
36. Portable processing plants;
37. Private recreation areas;
38. Private shooting preserves;
39. Public parks and public recreational areas;
40. Quarries;
41. Remote fuel depots;
42. Repair shops, auto-body;
43. Repair shops, motor vehicle and equipment;
44. Riding stables;
45. Rodeo grounds;
46. Salvage yards;
47. Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);
48. Self-storage warehouses;
49. Spreading, injection, or other application of animal waste generated by an Animal Feeding Operation, as defined herein, pursuant to Section 517(8)(9)(10);
50. Swimming pools;
51. Temporary construction facilities; (asphalt and concrete plants)
52. Towers;
53. Vehicle Washing facilities;
54. Wind energy systems.
55. Marijuana Growing
56. Marijuana Testing

Feed lots
Pasture
Outfallo

Section 509 Classification of Unlisted Uses

In order to ensure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory or conditional use in a District shall be deemed a permitted, accessory or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 511 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 509 shall be prohibited.

Section 513 Minimum Lot Requirements

1. The minimum lot area per single-family dwelling unit shall be ten (2.0) acres.
2. The minimum lot frontage shall be two hundred fifty (250) feet.
3. The Zoning Administrator may allow construction of single and multi-family dwelling units not in conformance with this provision only on those lands organized as a 501(d), non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.

Additional dwelling units may be allowed if they are to be occupied by other members of the family farm unit; the Board of Adjustment may reduce the required area following the procedures of a conditional use.

Section 515 Minimum Yard Requirements for Dwellings and Manufactured Homes

1. There shall be a front yard of not less than a depth of seventy-five (75) feet.
2. There shall be a rear yard of not less than a depth of fifty (50) feet.
3. There shall be two (2) side yards, each of which shall not be less than twenty-five (25) feet.

This shall apply to all dwellings.

Section 517 Animal Feeding Operation Performance Standards

Animal Feeding Operations are considered conditional uses and shall comply with the Conditional Use Process, all applicable state and federal requirements, and the applicable requirements as defined in this section:

Class A (1,000 and Above)

Section 517(1,2,3,4,5(a),6(a),7,8,9,10,11)

1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction. and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Agriculture and Natural Resources.
2. Prior to construction, such facilities shall obtain a storm water permit for construction activities from the South Dakota Department of Agriculture and Natural Resources. The storm water plan required by the permit must be developed and implemented upon the start of construction.

3. Animal Feeding Operation confinement and waste facilities shall comply with the following setbacks:

- | | |
|---|-----------|
| a. Property lines delineating a change in ownership | 100 feet |
| b. Road rights of ways | 250 feet |
| c. Public wells | 2640 feet |
| d. Private wells | 2640 feet |
| e. Operators wells | 2640 feet |
| f. Lakes, rivers, streams classified as fisheries | 5280 feet |
| g. Stock dams | 2640 feet |

4. Applicants must present a manure management plan, with the initial application documents. Said plan shall assure offensive odors, and runoff will be kept to a minimum.

Examples of such management shall include at least:

- a. Proposed maintenance of holding ponds;
- b. Manure transportation equipment free of leaks or spillage hazards;
- c. Land application process and/or methods; and
- d. Legal description(s) and map of area to be utilized for manure application.

5. Animal Feeding Operations and their waste facilities shall be located no closer than the following regulations prescribe from any incorporated municipality.

- | | |
|------------|---------|
| a. Class A | 2 miles |
|------------|---------|

6. Animal Feeding Operations and their waste facilities shall be located no closer than following regulations prescribe from any church, school, residential dwelling, or rural residential district:

- | | |
|------------|--------|
| a. Class A | 1 mile |
|------------|--------|

Any individual may request the Board of Adjustment to review the facility and the Board may, by variance, waive or decrease the required separation distance. An agricultural use covenant or easement must then be recorded with the County Register of Deeds in order that any future owners can be informed.

The County reserves the right to waive the aforementioned approval and signature requirements for any church, school, commercially zoned area, or residential dwelling within the prescribed setbacks. These powers shall be limited to when, in the Board of Adjustment's opinion, the

failure or inability to obtain approval is not directly related to the real or perceived impacts of the proposed operation. The concurring vote of two-thirds (2/3) of the full membership of the Board of Adjustment shall be necessary to waive the aforementioned approval and signature requirements.”

7. Animal Feeding Operations shall have a minimum lot size of (2) acres.
8. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is incorporated or injected:

a. All Public and Private Wells	1,000 feet
b. Lakes, Rivers and Streams classified as Fisheries	150 feet
c. All Public Road Right of Ways	10 feet
d. Incorporated Communities, Residential Districts	300 feet
e. A Residence other than the Operators, Church or School	300 feet

9. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is irrigated or surface applied:

a. Public Wells	1,000 feet
b. Private Wells	250 feet
c. Operators Well	150 feet
d. Lakes, Rivers and Streams Classified as Fisheries	1,000 feet
e. All Public Road Right of Ways (Surface)	100 feet
f. All Public Road Right of Ways (Irrigated)	200 feet
g. Incorporated Communities, Residential	1,320 feet
h. Incorporated Communities,	2,640 feet
i. A Residence other than the Operators, Church or School (Surface)	300 feet
j. A Residence other than the Operators, Church or School (Irrigated)	300 feet

10. Animal Feeding Operations shall prepare a facility management plan. The plan shall be designed to dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. The County Board of Adjustment will review the need for control measures on a site-specific basis, taking into consideration prevailing wind direction and topography. The following procedures to control flies and odors should be considered in a management control plan:

- a. Operational plans for manure collection, storage treatment and use must be kept updated and implemented;
- b. Methods to be utilized to dispose of dead animals should be included in the management plan;

- c. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds, and/or lagoons;
- d. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized;
- e. Store solid manure in containment areas having good drainage to minimize odor production;
- f. Remove manure from open pens as frequently as possible to minimize odor production;
- g. Should utilize scientifically proven odor reduction methods on manure storage and treatment facilities or systems to reduce odor and fly production;
- h. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities; and
- i. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

Section 519 Prohibition of View Obstruction

The purpose of this Section is to keep the right-of-way free and clear of snow build-up and, further, to promote traffic safety along road rights-of-ways and at intersections.

1. There shall be no obstruction, such as buildings, structures, grain bins, baled or stacked agricultural products, large rocks or rock piles, dead plant material, volunteer trees, and shelter belts that may cause view obstruction, snow build-up or safety hazards within one hundred fifty (150) feet from the centerline of the road on the North and West sides and one hundred (100) feet from the centerline on the South and East between the dates of November 1 and April 1 on all lands lying outside of a farmstead as defined herein.
2. Non-permanent items, as defined herein, to include operational machinery and seasonal storage of agricultural products are not subject to the setbacks note in Section 519 (1) and may be placed abutting the public right-of-way within the area defined as the "Farmstead". Placement of such items shall be approved in writing by the Zoning Administrator provided it can be proven that the placement of such items will not create a safety hazard to include obstruction of visibility or creation of adverse driving conditions upon the abutting public road(s).
3. Structures, perennial, or similar vegetation planted on or immediately adjacent to a public road right-of-way shall be approved in writing by the Zoning Administrator prior to construction or planting. No such vegetation between the heights of thirty (30) inches and ten (10) feet shall encroach upon the right-of-way at the time of planting or future growth. The Zoning Administrator reserves the right to refer such requests to Township Supervisors, the County Highway Superintendent, or other officials.

Shelterbelts and/or a row of trees shall not be planted within one hundred (100) feet of all property delineating a change in ownership.

Section 521 Conditional Use Permit for an Animal Feeding Operation Not Permitted if Applicant Applies for the Permit for the Purpose of Selling, Transferring, or Brokering.

The Board of Adjustment shall not grant a Conditional Use Permit for an Animal Feeding Operation if the Applicant is applying for the Permit for the purpose of selling, transferring, or brokering the Permit.

For the purposes of this Ordinance, any sale or transfer of the Permit from the Applicant to any other person or entity within two (2) years of the date that the Permit is issued shall be considered to be prima facie evidence that such Permit was obtained for the purpose of selling, transferring or brokering the Permit.

Any evidence that is presented by any person that any Conditional Use Permit for an Animal Feeding Operation was sought for the purpose of selling, transferring, or brokering the Permit may be considered by the Board of Adjustment in considering a new application for Conditional Use Permit and may be the basis for a denial or revocation of the application or a conditional use permit by the Board of Adjustment.

Section 523 Animal Feeding Operation Conditional Use Transfer

The Zoning Administrator will automatically transfer a conditional use permit for all land approved as a conditional use for the purpose of operating an Animal Feeding Operation if:

1. The current owner notifies the Zoning Administrator and Secretary of the Department of Environment and Natural Resources least thirty (30) days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new owners containing a specific date for transfer of permit responsibility, coverage and liability between them; and
3. The new owner or operator submits a Certification of Applicant Form to the County Zoning Administrator and the Secretary of the Department of Environment and Natural Resources.

ARTICLE 6

RURAL RESIDENTIAL DISTRICTS (RR)

Section 601 Intent

The intent of Rural Residential Districts (RR) is to provide for residential uses of varying types and other compatible uses in a pleasant and stable environment.

Section 603 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Rural Residential Districts (RR):

1. Cemeteries;
2. Convalescent, nursing, independent living, assisted living, and rest homes;
3. Dwellings, multi-family;
4. Dwellings, single-family;
5. Governmental services;
6. Horticulture;
7. Manufactured homes;
8. Medical and other health facilities;
9. Modular homes;
10. Nursery, primary, intermediate, secondary schools and day care facilities;
11. Public recreational and park facilities; and
12. Utility facilities.

Section 605 Permitted Accessory Uses and Structures

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district; and
2. Home occupations and professional offices.

Section 607 Conditional Uses

After the provisions of this Ordinance, relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in Rural Residential Districts (RR):

1. Campgrounds;
2. Churches, synagogues, and temples;
3. Colleges and universities;
4. Convenience stores;
5. Equipment repair and welding;
6. Game lodges;
7. Golf courses, fairgrounds, rodeo grounds, and country clubs;

8. Hobby farms; and
9. Retail sales.

Section 609 Classification of Unlisted Uses

In order to ensure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory or conditional use in a District shall be deemed a permitted, accessory or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 611 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 609 shall be prohibited.

Section 613 Minimum Lot Requirements

1. The minimum lot area shall be one (1) acre for a single-family dwelling unit.
2. The minimum lot area for a multi-family dwelling unit shall be ten thousand (10,000) square feet per unit.
3. The minimum lot width shall be one hundred fifty (150) feet, for single and multiple family units.

Section 615 Minimum Yard Requirements

1. There shall be a front yard of not less than a depth of seventy-five (75) feet.
2. There shall be a rear yard of not less than a depth of fifty (50) feet.
3. Each side yard shall not be less than twenty-five (25) feet.

This shall apply to all buildings and structures, including decks, patio, and car ports.

ARTICLE 7

RURAL COMMERCIAL DISTRICT (RC)

Section 701 Intent

The intent of the Rural Commercial District (RC) is to provide commercial areas for those establishments which can function most satisfactorily in an area directly related to a major vehicular circulation route due to the nature of the merchandise handled and the display space required, particularly items requiring expansive display area such as motor vehicles, trailers, and farm implements; the method of transport required of the purchaser for the merchandise handled, particularly goods customarily traded in bulk such as lumber or feed requiring access for the customer to the sales area; primary dependence upon vehicular, as opposed to pedestrian, access such as drive-in facilities and all types of automotive and farm implement services; or the clientele toward which the establishments are primarily oriented.

Section 703 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Rural Commercial Districts (RC):

1. Automobile and machinery sales, repair and services;
2. Automobile service stations;
3. Bus garaging and equipment maintenance;
4. Commercial trucking terminals;
5. Contract construction services;
6. Farm products warehousing and storage;
7. Funeral and crematory services and supplies;
8. General warehousing and storage;
9. Household goods warehousing and storage;
10. Libraries; museums, art galleries; planetaria; aquariums; historic and monument sites; auditoriums; exhibition halls; and arcades;
11. Mini golf, gymnasiums and athletic clubs, swimming pools, tennis courts, ice skating, roller skating;
12. Motels;
13. Motor freight terminals, garaging, maintenance;
14. Off-site and on-site signs;
15. Parks;
16. Refrigerated warehousing;
17. Retail sales;
18. Theaters; stadiums; drive-in movies; arenas and field houses; race tracks; fairgrounds; amusement parks, golf driving ranges; go-cart tracks; golf courses and country clubs; riding stables; playfields and athletic fields; bowling;
19. Utility facilities;
20. Veterinary services; and
21. Wholesale sales.

Section 705 Permitted Accessory Uses and Structures

The following accessory uses, and structures shall be permitted in Rural Commercial District (RC):

1. An accessory use normally appurtenant to the permitted principal uses and structures when established in conformance within the space limits of this district.

Section 706 Special Permitted Uses

The following uses are considered special permitted uses and shall be permitted in accordance with SDCL 11-2-17.5 & 17.6 in Rural Commercial District (RC):

1. Cannabis Dispensaries fully authorized by applicable state permits, state regulations, and afforded requisite County operational permitting.

Section 707 Conditional Uses

After the provisions of this resolution relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Rural Commercial District (RC):

1. Other trade and service uses which are similar to the permitted principal uses and which are in harmony with the intent of this district;
2. Campgrounds;
3. Any facility engaged in the manufacture, wholesale distribution, retail sale or storage of flammable or combustible liquids, or hazardous material;
4. Grain elevators; and
Towers.

Section 709 Classification of Unlisted Uses

In order to ensure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory or conditional use in a District shall be deemed a permitted, accessory or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 711 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 709 shall be prohibited.

Section 713 Minimum Lot Requirements

1. The minimum lot area shall be one (1) acre.
2. The minimum lot width shall be one hundred and fifty (150) feet.

Section 715 Minimum Yard Requirements

1. There shall be a front yard of not less than a depth of seventy-five (75) feet.
2. There shall be a rear yard of not less than a depth of fifty (50) feet.
3. Each side yard shall be not less than twenty-five (25) feet

ARTICLE 8

PLATTED TOWN SITE RESIDENTIAL DISTRICT (PTR)

Section 801 Intent

The intent of Platted Town Site Districts (PTR) is to provide for residential uses of currently platted town sites, such as Norris and Mosher, and other compatible uses in a pleasant and stable environment.

Section 803 Permitted Principal Uses and Structures

The following principal uses, and structures shall be permitted in a Platted Town Site District (PTR):

1. Agriculture.
2. Cemeteries;
3. Clinics;
4. Day care centers; and
5. Dwellings, multi-family;
6. Dwellings, single-family;
7. Dwellings, two-family;
8. Game lodges;
9. Governmental services;
10. Horticulture;
11. Hospitals;
12. Manufactured homes;
13. Modular homes;
14. Nursing, congregate care, and residential care facilities;
15. Parks;
16. Schools, denominational and private;
17. Schools, public;
18. Utility facilities;

Section 805 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in a Platted Town Site District (PTR):

1. Home and farm occupations; and
2. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district.

Section 807 Conditional Uses

After the provisions of this Ordinance, relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in a Platted Town Site District (PTR):

1. Campgrounds;
2. Churches, synagogues, and temples;
3. Convenience stores;
4. Exhibition areas;
5. Fairgrounds;
6. Golf courses;
7. Hobby farms;
8. Manufactured home parks;
3. Repair shops, auto-body.
4. Repair shops, motor vehicle; and
5. Retail sales;
6. Riding stables;
7. Rodeo arenas;

Section 809 Classification of Unlisted Uses

In order to ensure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 811 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 809 shall be prohibited.

Section 813 Minimum Lot Requirements

1. The minimum lot area shall be seven thousand five hundred (7,500) square feet;
2. The minimum lot width shall be fifty (50) feet; and
3. The minimum lot depth shall be one hundred (100) feet.

Section 815 Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. This Section shall apply to all buildings and structures, including but not limited to decks, patios, and carports:

1. There shall be a front yard of not less than a depth of twenty-five (25) feet;
2. There shall be a rear yard of not less than a depth of twenty-five (25) feet; and
3. Each side yard shall not be less than six (6) feet.

ARTICLE 9

SUPPLEMENTARY DISTRICT REGULATIONS

Section 901 Accessory Buildings

No accessory building shall be erected in any required yard area and no separate accessory building shall be erected within five (5) feet of any other building.

Section 903 Erection of More than One Principal Structure on a Lot

In any district, more than one structure, housing a permitted or permissible principal use, may be erected on a single lot, provided, that yard and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot.

Section 905 Recording of Conditions

All zoning agreements including conditions prescribed by the Board of Adjustment must be recorded at the Register of Deeds Office prior to issuance of a building permit.

Section 909 County Road Use

Whenever the use of property generates an above normal traffic load of which results in a complaint from the public as to speed, frequency, traffic, loads, noise, dust or other such effect upon an unimproved or gravel road the responsible party shall cooperate with the County Highway Superintendent to formulate a plan to mitigate the impact on properties adjacent to the use or the routes of travel. The County shall review such use and assess the impact of said use in order to mitigate and assess costs deemed necessary to mitigate impacts upon those adjacent properties. The County shall utilize SD DOT Road Load Standards as the basis of its analysis of use impact and necessary mediation of use impact. The responsible user as identified by the County shall participate in all costs at a predetermined percentage as determined by the County. Please refer to ordinance 928.03-I pertaining to haul road agreements for controlling guidance of necessary use agreements and terms. The impact fee may be calculated by average daily traffic counts or other such calculation.

Section 910 Soil Erosion and Sedimentation Control

Before issuing a building permit, the Administrative Official may require a filing of a certificate of intent to adhere to the county soil loss standards developed by the Mellette County Conservation District. The Administrative Official shall consult the most recent USDA-NRCS soils survey report before determining if the proposed activity requires such a certificate of intent.

If a complaint is received regarding a violation of the county soil loss standards caused by non-agricultural activity, the Administrative Official shall undertake those actions outlined in the Mellette County Soil Erosion and Sedimentation Control Ordinance in order to bring about compliance.

Section 911 Manufactured/Mobile Homes

No camping unit, mobile, or manufactured homes shall be parked and occupied in any district for more than forty-eight (48) hours, except upon a special permit issued by the Zoning Administrator. Such permit shall be issued for a period not to exceed fourteen (14) days and shall not be renewable within the same calendar year. Provided, however, a permit may be issued for parking and occupying a camping unit, mobile, or manufactured home on land owned by the occupant or occupants, during the construction of a house thereon or for a period not exceeding one (1) year and which shall be renewable for an additional period not exceeding one (1) year. However, if material progress with site development or house construction is not made within forty-five (45) days from the issuance of a permit, or if site or construction work ceases for a consecutive period of forty-five (45) days, said permit shall become void. This Section shall not be applicable when a manufactured home is used for agricultural-related (non-human habitation) purposes.

Section 913 Manufactured Home Performance Standards I

Manufactured homes placed within the applicable zoning district, shall comply with the following requirements:

1. The roof shall be shingled with conventional roofing products;
2. The pitch of the main roof shall be not less than one (1) foot of rise for each three (3) feet of horizontal run;
3. The exterior walls shall be encased with conventional house siding; flat or corrugated sheet metal is prohibited;
4. The manufactured home shall be placed on and anchored to a permanent foundation constructed of wood or masonry. At a minimum, the foundation shall include frost footings, piers, and anchor bolts as prescribed with the manufactured home's design. The foundation shall be inspected and approved by the Zoning Administrator prior to placement of the home;
5. A semi-permanent structure replicating an exterior foundation wall shall form a complete enclosure around the perimeter of the home from the lower edge to the ground. The design and materials list shall be approved by the Zoning Administrator prior to placement of the home;
6. The minimum width of the main body of the manufactured home as assembled on the site shall not be less than twenty (20) feet, as measured across the narrowest portion;
7. The running gear and hitch shall be removed;
8. Anchored to the ground to resist tipping and lateral movement in the manner contemplated by the manufactured design;
9. The manufactured home shall meet or exceed the federal HUD Manufactured Home Construction and Safety Standards; and
10. Prior to placement of home on the foundation, the County Zoning Administrator must approve the foundation and exterior foundation wall.

Nothing contained in this Regulation shall prevent a permanent manufactured home from being placed on an established farmstead, to be used as a secondary residence, so long as it is connected to the existing farm operation on non-deeded land.

Section 915 Manufactured Home Performance Standards II (Mobile/Tiny)

Mobile/Tiny homes placed within the applicable zoning district, shall comply with the following requirements:

1. The roof shall be shingled with conventional roofing products;
2. The pitch of the main roof shall be not less than one (1) foot of rise for each three (3) feet of horizontal run;
3. The exterior walls shall be encased with conventional house siding; flat or corrugated sheet metal is prohibited;
4. The minimum width of the main body of the manufactured home as assembled on the site shall not be less than fourteen (14) feet for Mobile home, 8' for Tiny homes, as measured across the narrowest portion;
5. The manufactured home shall be skirted with a material which is not highly combustible and installed around the perimeter of the home from the bottom of the home to the ground;
6. Anchored to the ground to resist tipping and lateral movement in the manner contemplated by the manufactured design; and
7. The manufactured home shall meet or exceed the federal HUD Manufactured Home Construction and Safety Standards.

Nothing contained in this Regulation shall prevent a permanent manufactured home from being placed on an established farmstead, to be used as a secondary residence, so long as it is connected to the existing farm operation on non-deeded land.

Section 916 Moved In Buildings

1. Any building to be moved requires a building permit. The Administrative Official may attach conditions to the issuance of the moved in building permit. No permit shall be issued until the following requirements are met.
 - a. The fee for said permit as prescribed in Section 3.01.03, shall have been paid.
 - b. That the work is to be completed within twelve (12) months after the permit has been issued by the Administrative Official.
 - c. The applicant may also be required to file with the County Auditor a sufficient bond conditioned so that the applicant will indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the county, the Administrative Official shall have the power to deny the granting of a moving permit on the grounds that the intended use of the

structure or location thereof is contrary to the provisions of this chapter.

- d. Any building, which is not newly constructed to be used for first occupancy, shall also meet the following minimum requirements to obtain a permit.
 1. The written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site. In the Town Districts "TD" the applicant will comply with the above and further obtain the consent of more than fifty (50) percent of the number of owners of property within one hundred fifty 150 feet (excluding streets and alleys) of said proposed location has been received.

Section 917 Individual Septic System Performance Standards

Individual septic systems or similar systems proposed for lots one (1) acre or less in size or where the concentration of development shall merit such review as determined by the Zoning Administrator, prior to construction or development of a lot: Refer to South Dakota DENR

1. Soil suitability;
2. Percolation test; and
3. Impact of proposed system on existing systems within the area.

Section 919 Right-of-Way Preservation Standards

No structure shall be permitted to occupy any right-of-way or future public right-of-way. Right-of-way or future public right-of-way shall include a minimum of a sixty-six (66) foot corridor centered on each one quarter (1/4) line and each one sixteenth (1/16) line. This section shall apply to legally established sections within the township and range system. This section shall be subject to the Planning Commission's and Board of Adjustment's determination of applicability and implementation.

Section 920 Refuse

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

Section 921 Campgrounds

Any campgrounds shall be no less than five (5) acres in size and be of contiguous or abutting lands.

Section 922 Camping Units

No camping unit as defined herein shall be parked and occupied upon a lot and not within a designated campground for a period greater than fourteen (14) days within a calendar year unless in accordance with Section 1505. Any camping unit placed with the intent to occupy said unit for a period greater than fourteen (14) days within a calendar year and not pursuant to Section 911 shall obtain a conditional use

prior to occupying said camping unit on the fifteenth or greater day. This Section shall apply whether the camping unit is placed for a continuous period or intermittently throughout a calendar year.

Section 923 Agricultural Use Covenant Required

All building permits for residential dwellings, the transference of a residential dwelling within agriculturally zoned lands, or requests for rezoning of agricultural land shall be accompanied by an Agricultural Use Covenant as defined herein. Said covenant must be approved by the County Zoning Administrator and recorded in accordance with SDCL prior to issuance of the building permit or commencement of the rezoning process.

The developer, contractor, or owner of all property platted or developed shall execute a perpetual agricultural farm use covenant running with the land prior to recording a plat or securing a building permit.

Section 924 Target Range Requirements

Section 924.01 Conditional Use Permits.

1. No Range shall be established within the Mellette County without first obtaining a Conditional Use Permit.

Section 924.02 General Regulations for All Ranges.

1. No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment):
 - a. A safety plan shall be submitted along with the application. The plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum the safety plan must state:
 - i. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.
 - ii. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.
 - iii. The policy for the site for the use of alcohol.
 - iv. Controlled substances are prohibited on the site.
 - v. Rules for the safe handling of weapons.
 - vi. A building and grounds maintenance plan.
 - vii. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program

development, range supervision and other items such as sign-in procedures.

- viii. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.
- ix. The penalties that are in force for violations of the safety plan.
- x. The method used to control trespass or unauthorized access to the range or preserve.
- b. On an annual basis, applicants must provide proof of insurance.
- c. Applicants shall continuously keep the City informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.
- d. All Ranges must control entrance to their sites.
- e. No alcohol licenses shall be granted to any site which has a Range.
- f. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

Section 924.03 Special Regulations for Ranges.

1. Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:
 - a. A survey delineating the layout of all individual Ranges.
 - b. Setbacks to all property lines.
 - c. Method of containing projectiles within each individual range (such as earthen berms or other method).
 - d. Methods to be employed to reduce noise, including impulse noise.
 - i. The maximum noise that may escape the range into areas not controlled by the owner is 125 dB.
 - e. All Ranges shall be designed using the NRA Range Source Book as a guideline.

Section 924.04 Application Requirements.

1. Each application for a Range shall, at a minimum, include the following:
 - a. A description of specific activities to be conducted on-site.
 - b. The hours and days of operation.
 - c. The maximum number of people using the facility at any one time.

- d. A plan, if applicable, for collecting and recycling used shot.
- e. A delineation of any special events, if any.
- f. A sewage, water and solid waste management plan.

Section 924.05 Area Regulations.

- 1. Minimum Lot Size: Ten (10) acres.
- 2. Minimum Front Yard: One hundred fifty (150) feet.
- 3. Minimum Side Yard: Three hundred (300) feet.
- 4. Back of the Range Setback: A minimum of one thousand (1000) feet from any buildings and/or roads.
- 5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.
- 6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.
- 7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.
- 8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.

Section 924.06 Miscellaneous Regulations,

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

Section 925 Sand Gravel or Quarry Operation; Rock Crushers; Mineral Exploration and Development; Concrete and Asphalt Mixing Plants Requirements.

Section 925.01 Application.

- 1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:
 - a. A description of the mineral or minerals which are the subject of the mining or milling.
 - b. Maps showing the general area within which the mining or milling operation will be conducted.
 - c. Present topography, soil types, and depth to groundwater.

- d. Location of existing water drainage, existing buildings, existing shelterbelts.
- e. Identification of roads leading to the site.
- f. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
- g. Proposed monitoring wells, etc.

Section 925.02 State and Federal Requirements.

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

Section 925.03 Setbacks.

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

Section 925.04 General Provisions:

1. Haul Roads.

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

2. Air, Noise, and Water Pollution.

The applicant may be required to provide information regarding how potential air, noise, and water pollution would be minimized.

3. Land Reclamation.

The applicant shall provide for a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands. The reclamation plan shall include:

- a. A reclamation schedule.
- b. Methods of plugging drill holes.
- c. Methods of severing and returning topsoil and subsoil.
- d. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
- e. Methods of waste management and disposal, including liquid and solid wastes.
- f. Method of revegetation.

4. Performance Bond.

The applicant may be required to post a surety performance bond in an amount to be determined by the County Commission to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of affected ground and surface waters. The amount shall be set by the County Commission based on an estimate of the cost of reclamation and decontamination. The bond shall be released five (5) years after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.

5. Utilities/Easements.

No excavation shall occur within recorded easements. The Board of Adjustment may specify a maximum slope at which excavation may occur in relation to any utility pole or recorded easement.

6. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination,

shall be cause for an immediate cessation of mining and milling activities.

7. Solution mining - mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

Section 926 Wireless Communications Towers and Facilities

926.01 Purpose.

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

Specifically, the purposes of this Ordinance are:

1. To regulate the location of Towers and Telecommunications Facilities in the County;
2. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
3. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
4. To promote and encourage shared use/co-location of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
5. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
6. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
7. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

926.02 Development of Towers.

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three (3) other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Mellette County mount law-enforcement or public safety communications apparatus.

3. An Application to develop a Tower shall include:
 - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
 - b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
 - c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including County-owned property.
 - d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
 - e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or co-locate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or co-locate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially unreasonable.
 - f. Written technical evidence from a Professional Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or co-located on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.
 - g. A written statement from a Professional Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - h. Written, technical evidence from a Professional Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
 - i. Written, technical evidence from a qualified Professional Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
 - j. The FCC has sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications

Facilities and demonstrate how this meets FCC standards.

- k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

926.03 Setbacks.

1. All Towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
2. Towers in excess of one hundred (100) feet in height shall meet the following:
 - a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.
 - b. Distance from public right-of-way shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.
 - c. Distance from any property line shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.
3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
4. Setback requirements may be modified, as provided in, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

926.04 Structural Requirements.

All Towers must be designed and certified by a Professional Engineer to be structurally sound and, at minimum, in conformance with applicable building codes, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

926.05 Separation or Buffer Requirements.

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

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

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-

supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.

2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. The separation requirements contained in 4.22.05 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

926.06 Method of Determining Tower Height.

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

926.07 Illumination.

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

926.09 Modification Of Towers.

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

926.10 Certifications and Inspections.

1. All Towers shall be certified by a Professional Engineer to be structurally sound and in conformance with the requirements of this ordinance and all other construction standards set forth by federal and state law. For new monopole Towers, such certification shall be submitted with an Application pursuant to of this Ordinance and every five (5) years thereafter. For existing monopole Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to this Ordinance and every two (2) years thereafter. The Tower owner may be required by the County to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized.
2. The County or its authorized agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law. Notice to the Tower owner shall be provided by the County prior to facility inspection and any citations of non-compliance resulting from an inspection shall be furnished in writing to the Tower owner by the County or its authorized agents.
3. The County reserves the right to conduct such inspections at any time to determine compliance with this ordinance and conditions established by a conditional use permit, upon reasonable notice to the Tower owner.

926.11 Maintenance.

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

926.12 Criteria for Site Plan Development Modifications.

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the

requirements may be approved by the Board of Adjustment as a conditional use in accordance with the following:

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

residential use of land of, if the Person provides written technical evidence from a Professional Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.

- c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
 - i. Facilitate co-location of Telecommunications Facilities in order to avoid construction of a new Tower; or
 - ii. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from a Professional Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

926.13 Abandonment.

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

926.14 Permit Expiration.

The permit shall become void if not functional within three (3) years of issuance.

Section 927 Private Wind Energy Conservation System (PWECS).

The regulations regarding private wind energy conversion systems (hereafter referred to as pweecs) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
2. Setback Requirements. The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and dwellings shall be equal to no less than one hundred ten percent (110%) the system height, unless written permission is granted by the affected entity.

3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.
4. Tower Access. Climbing access to the PWECS tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.
5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

Section 928 Large Wind Energy System (LWES) Requirements.

928.01 Applicability.

1. The requirements of these regulations shall apply to all LWES facilities except private facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.

928.02 Federal and State Requirements.

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

928.03 General Provisions.

1. Mitigation Measures
 - a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWES.
 - b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
 - c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
 - d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases

of the project's life.

- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. Roads
 - i. Haul Road Agreements. As required as a condition of permit application, haul road agreements shall be established between the County and LWES project owner(s). Haul road agreements shall contain agreed upon provisions concerning an approved haul road list, map of all public and private haul roads to be used, establishment of a haul road maintenance plan during haul road use for the construction of said LWES project, temporary haul road entrance/gate accesses, requirements for temporary traffic restrictions and requisite traffic signage, a dust and debris control plan, and inclusion of a sufficient bond provided by the LWES owner to ensure performance of the Haul Road Agreement when deemed necessary by the County.
 - ii. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the LWES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the LWES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
 - iii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the LWES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and LWES components. The permittees shall notify the County of such arrangements upon request of the County.
 - iv. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
 - v. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site.
 - vi. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust during LWES project construction and use of all haul roads. A dust control plan shall be included in the haul road agreement.
 - vii. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure

adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

- a. Distance from existing off-site residences, business, churches, and buildings owned and/or maintained by a governmental entity shall be at least 3 miles. Distance from on-site or lessor's residence shall be at least 3 miles. Distance to be measured from the wall line of the neighboring principal building to the base of the WES tower.
 - b. Distance from centerline of public roads shall be at least five hundred (500) feet or one hundred ten percent (110%) the height of the wind turbines, measured from the ground surface to the tip of the blade when in a fully vertical position.
 - c. Distance from any property line shall be at least five hundred (500) feet or one hundred ten percent (110%) the height of the wind turbine, whichever distance is greater, measured from the ground surface to the tip of the blade when in a fully vertical position.
 - i. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above, if the adjoining landowners agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Mellette County Administrative Official.
3. Electromagnetic Interference. The permittees shall not operate the LWES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.
 4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
 5. Turbine Spacing. The turbines shall be spaced no closer than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a string. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.
 6. Footprint Minimization. The permittees shall design and construct the LWES so as to minimize the amount of land that is impacted by the LWES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers.

7. Collector Lines. Collector lines are the conductors of electric energy from the Large Wind Energy System to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the LWES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access. This paragraph does not apply to feeder lines.
8. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.
9. Decommissioning/Restoration/Abandonment
 - a. Decommissioning Plan. Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
 - b. Site Restoration. The decommissioning of the LWES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the LWES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the LWES. The permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. Any turbine oils, lubricants, and chemical byproducts contacting the ground related to operation or installation of the LWES facility must be remediated immediately upon discovery on the project site and necessary site mitigation measures shall be employed during site restoration. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County Zoning Administrator prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.
 - c. Cost Responsibility. The 1. owner or operator or 2. parent company or 3. prior entity benefiting from the sale of the generated power of a LWES, is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

- d. Financial Assurance. The Board will require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the LWES facility.
 - e. Failure to Decommission. If the LWES facility 1. owner or operator or 2. parent company or 3. prior entity benefiting from the sale of the generated power does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a LWES facility.
10. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the LWES. The County may require the permittees to decommission any abandoned turbine.
 11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
 12. Towers.
 - a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
 - b. All towers shall be singular tubular design.
 13. Noise. Noise level shall not exceed 50 dBA, average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.
 14. Change of Ownership. Requires an addendum to the permit, with proof of bond.
 15. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.
 16. Required Information for Permit.
 - a. Boundaries of the site proposed for LWES and associated facilities on United States Geological Survey Map or other map as appropriate.
 - b. Map of easements for LWES.
 - c. Affidavit attesting that necessary easement agreements with landowners have been obtained.
 - d. Map of occupied residential structures, businesses and buildings owned and/or maintained by a governmental entity.
 - e. Preliminary map of sites for LWES, access roads and collector and feeder lines. Final map of sites for LWES, access roads and utility lines to be submitted sixty (60) days prior to construction.

- f. Proof of right-of-way easement for access to transmission lines and/or utility interconnection.
- g. Location of other LWES in general area.
- h. Project schedule.
- i. Mitigation measures.
- j. Project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with state and federal wildlife agencies. Evidence of such consultation shall be included in the application.
- k. Final haul road agreements to be submitted sixty (60) days prior to construction.
- l. Stated: 1. owner or operator and 2. parent company (if applicable) and 3. entity benefiting from the sale of the generated power.

Section 930 Solar Energy System Requirements. (SES)

1. Purpose: The purpose of this Section is to provide regulations for the construction, installation, and operation Solar Energy Systems (SES) in unincorporated Mellette County, while ensuring the health, safety, and welfare of the residents of Mellette County by promoting the safe, effective, and efficient use of solar energy to reduce on-site consumption of fossil fuels or utility-supplied electrical energy. Also, to avoid adverse impact to important areas such as agricultural land, endangered species habitats, conservation land, and other sensitive lands. This ordinance shall not be deemed to nullify any provision of local, state, or federal law. The contents of this Section shall apply to all solar energy installations in unincorporated Mellette County

2. Types

a. Private SES:

A single ground mount, roof mount or building integrated private solar energy system for residential/business use is permitted as an Accessory Use in ALL Zoning Districts where there is a principal structure, and shall be subject to the regulations for accessory uses.

b. Solar Gardens:

Solar Gardens are allowed in ALL Zoning Districts, and shall require a Special Use Permit whether the accessory or principal use of the property. Except as otherwise noted in this Section, solar gardens must comply with all required standards for structures in the district in which the system is located.

1). Rooftop Solar Gardens are permitted in all zoning districts where buildings are permitted.

2). Ground-mount solar gardens must be less than twenty (20) acres in total size. Ground-mount solar developments covering more than twenty (20) acres shall be considered solar farms.

3). An interconnection agreement must be completed with the electric utility in whose service territory the system is located.

c. Solar Farms:

Solar Farms are ground-mounted SES that are the primary use on the lot(s) on which it is located, designed for providing energy to off-site uses or export to the wholesale market. Solar farms are allowed as Special Use in the A-1 Zoning District, and shall require a Special Use Permit. Except as otherwise noted in this Section, solar farms must comply with all required standards for structures in the district in which the system is located.

1). Ground Cover and Buffer Areas. Topsoils shall not be removed during development, unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil.

2). Foundations. A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.

3). Power and Communication Lines. Power and communication lines running between banks of solar panels and to on-site electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by Mellette County in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines, or distance makes undergrounding infeasible.

4. Content of an SES Special Use Permit Application:

A Special Use Permit application shall also require the following:

a. The application shall include three (3) printed copies and one electronic copy of the entire application (including: the application forms and any attachments or other submittals included therein).

b. Site Plan. A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, farm tile, electric equipment, fencing, and screening materials and all other characteristics requested by Mellette County. The site plan should also show all zoning districts, and overlay districts.

c. Endangered Species and Wetlands. An SES developer shall be required to initiate a natural resource review consultation with the South Dakota Department of Natural Resources.

5. Design and Installation Requirements:

a. Setback Requirements

1). Set back requirements for all SES shall meet the structure minimum set back requirements when the SES is oriented at any & all positions.

2). Roof mounted SES shall not extend beyond the exterior perimeter of the building on which the system is mounted.

3). The solar array and all components of the solar collector system in a Solar Farm shall be kept at least one hundred (100) feet from a property line or right-of-way.

b. Height Requirements

1). Building or roof mounted SES shall not exceed the maximum allowed height in any Zoning District, as stated.

2). Ground or pole mounted SES shall not exceed the maximum height, when oriented at maximum tilt, for the zoning district in which it is located.

c. Stormwater and NPDES. Solar gardens and solar farms are subject to Mellette County's Stormwater Management regulations, erosion and sediment control provisions and NPDES permit requirements.

d. Aviation Protection. For SES located within 500 feet of an airport or within approach zones of an airport, the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.

e. Standards and Codes: All solar gardens and solar farms shall be in compliance with all applicable local, state and federal regulatory codes, including, but not limited to: the State of South Dakota Plumbing Code; The State of South Dakota Electric Code; The State of South Dakota Energy Code; the State of South Dakota Uniform Building Code, as amended; the National Electric Code, as amended.

f. Fencing. No fencing is required however if installed on the property the fencing shall have a maximum height of eight (8) feet. The fence shall contain appropriate warning signage that is posted such

that is clearly visible on the site.

g. Lighting. Any lighting for SES shall be installed for security and safety purposes only. Except for lightening that is required by the FCC or FAA, all lighting shall be shielded so that no glare extends substantially beyond the boundaries of the facility.

h. Reflection angles for solar collectors shall be oriented such that they do not project glare onto adjacent properties.

i. Approved SES Components. Electric SES components must have a UL listing, or approved equivalent, and must be designed with anti-reflective properties. Solar hot water systems must have an SRCC rating.

j. Utility Notification: All grid-intertie SES shall comply with the interconnection requirements of the electric utility. Off-grid systems are exempt from this requirement.

k. Design Standards: Active SES shall be designed to conform to the Mellette County Comprehensive Plan and to blend into the architecture of the building or may be required to be screened from routine view from public right-of-ways other than alleys. Screening may be required to the extent it does not affect the operation of the system. The color of the solar collector is not required to be consistent with other roofing materials

1). Building Integrated Photovoltaic Systems. Building integrated photovoltaic SES shall be allowed regardless of whether the system is visible from the public right-of-way, provided the building component in which the system is integrated meets all required setback, land use or performance standards for the district in which the building is located.

2). SES with Mounting Devices. SES using roof mounting devices or ground-mount SES shall not be restricted if the system is not visible from the closest edge of any public right-of-way or immediately adjacent to a residential structure.

3). Reflectors. All SES using a reflector to enhance solar production shall minimize glare from the reflector affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.

l. Coverage: Roof or building mounted solar energy systems, excluding building-integrated systems, shall allow for adequate roof access for fire-fighting purposes to the south-facing or flat roof upon which the panels are mounted. Ground-mount private solar energy systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation. Foundations, gravel, or compacted soils are considered impervious.

m. Plan Approval Required: All solar energy systems shall require administrative plan approval by the Mellette County Building official via the review of the application for a building permit

1). Plan Applications. Plan applications for solar energy systems shall be accompanied by horizontal and vertical (elevation) drawings. The drawings must show the location of the system on the building or on the property for a ground-mount system, including the property lines.

a). Pitched Roof Mounted Solar Energy Systems. For all roof-mounted systems other than a flat roof the elevation must show the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.

b). Flat Roof Mounted Solar Energy Systems. For flat roof applications a drawing shall be submitted showing the distance to the roof edge and any parapets on the building and shall identify the height of the building on the street frontage side, the shortest distance of the system from the street frontage edge of the building, and the highest finished height of the solar collector above the finished surface of the roof.

2). Plan Approvals. Applications that meet the design requirements of this ordinance, and do not require an administrative variance, shall be granted administrative approval by the Zoning Administrator and shall not require Planning and Zoning Committee review. Plan approval does not indicate compliance with Building Code or Electric Code. Supplemental District Regulations Page 5-13

6. Operation and Maintenance

a. Upon request from the Mellette County Commissioners, an owner of a commercial SES must provide documentation, within thirty (30) days, that the SES is still in use. If it is not, the owner of the System will have 180 days, after notification from the Zoning Department, to remove the SES from the property.

b. Upon request from the Mellette County Commissioners, the owner or operator of a Solar Farm or a Solar Garden must submit, within 14 days, a current operation and maintenance report to the Department.

c. All active SES shall meet approval of county building code officials, consistent with the State of South Dakota Building Code and solar thermal systems shall comply with HVAC-related requirements of the Energy Code. Any county adopted building codes will apply and take precedence where applicable

7. Decommissioning or Abandonment of The SES

a. A decommissioning plan shall be required to be submitted when applying for all Solar Farms and Solar Gardens, to ensure that facilities are properly removed after their useful life.

b. Decommissioning of solar panels must occur in the event they are not in use for 90 consecutive days.

c. The owner or operator will have 6 months to complete the decommissioning plan after operation of a Solar Farm or Solar Garden stops being operational.

d. The decommissioning plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site.

e. The Mellette County Commissioners requires a bond, letter of credit or the establishment of an escrow account to ensure the proper decommissioning. The posting of a bond shall be required prior to the issuance of a building permit for the facility.

f. In the event that the State of South Dakota enacts a law with regards to the decommissioning of a Solar Farm, the strictest requirements shall prevail.

8. Liability Insurance and Indemnification

a. For Solar Farms and Solar Gardens, commencing with the issuance of building permits, the Applicant, Owner, or Operator shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$3 million per occurrence and \$5 million in the aggregate. Such insurance may be provided pursuant to a plan of self- insurance, by a party with a net worth of \$20 million or more. The County shall be named as an individual insured on the policy to the extent the county is entitled to indemnification.

b. For Private / Individual SES(s), commencing with the issuance of building permits, the Applicant or Owner shall maintain a current liability policy covering bodily injuries and any damage that may occur, on their home owner's policy or other applicable policy as approved by the Commissioners

c. Any SES(s), Applicant, Owner, or Operator, whether individual or commercial, shall defend, indemnify, and hold harmless the County and its officials, employees, and agents (collectively and individually, the "Indemnified Parties") from and against any and all claims, demands, losses, suits, causes of actions, damages, injuries, costs, expenses, and liabilities whatsoever, including reasonable attorney's fees, except to the extent arising in whole or part out of negligence or intentional acts of such Indemnified Parties (such liabilities together known as "liability") arising out of Applicant, Owner, or Operators selection, construction, operation, and removal of the SES(S) and affiliated equipment including, without limitation, liability for property damage or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not Supplement District Regulations Page 5-14 be construed as limited or qualifying the county's other indemnification rights available under the law.

ARTICLE 10

ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

Section 1001 Mellette County Zoning Administrator

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Mellette County Commission shall administer and enforce this ordinance. They may be provided with the assistance of such other persons as the County Commission may direct.

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, they shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. They shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by the Ordinance to insure compliance with or to prevent violation to its provisions.

Section 1003 Right of Entry

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

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

Section 1005 Mellette County Planning Commission

The Mellette County Commission shall appoint a Planning Commission of no less than five members, the total membership of which shall be an uneven number and at least one member shall be county commissioners. The term of each of the appointed members of the Planning Commission shall be for three to five years. When the Planning Commission is first appointed the lengths of the terms shall be varied so that no more than one-third of the terms shall expire in the same year. Meetings shall be

regularly scheduled and held at the call of the Chairman, at such other times as the Planning Commission may determine. The Chairman, or in their absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

Upon notification of a proposed revision, modification, change or amendment to the zoning ordinance or any part thereof the Planning Commission shall schedule a public hearing. Said public hearing shall not be held less than ten (10) days after notice has been published in a legal newspaper of general circulation in the area affected. Any person may appear and request or protest the proposed change.

The Planning Commission shall keep a record of all proceedings, including minutes, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the Zoning Administrator. The Planning Commission may undertake review of conditional use and variance permit requests and advise the County Commission upon the request of the Zoning Administrator to assist in determining conformance to the Conditional Use and Variance permit application process afforded within the Ordinance. The Planning Commission shall adopt from time to time, subject to the approval of the county commission, rules and regulations as it may deem necessary for the conduct of its affairs and to carry the appropriate provisions of this Ordinance into effect.

Section 1007 Mellette County Board of Adjustment

The Mellette County Commission shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all requests for variances, conditional uses and zoning appeals. The Board of Adjustment may, in specific cases to avoid unwarranted hardship which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, make upon an affirmative vote of two-thirds (2/3) of membership present of the Board of Adjustment, conditional uses or grant variances to the terms of the regulations or controls, subject to appropriate conditions or safeguards being adopted by the Board of County Commissioners.

The County Auditor shall act as secretary to the Board of Adjustment when acting in zoning cases but shall take no part in the deliberations. Meetings of the Board of Adjustment acting in zoning cases shall be held at the call of the Chairperson and at such other times, as the Board shall determine. Such Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Mellette County Board of Adjustment shall have minutes of its proceedings recorded.

All meetings of the Board of Adjustment shall be open to the public. The Board, acting in zoning appeal cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record. The Board of Adjustment, acting in zoning appeals cases, shall adopt from time to time, subject to the approval of the County Commission, such rules and regulations as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

Section 1009 Mellette County Commission

The Mellette County Commission may amend, supplement, change, modify, or repeal any regulation, restriction, boundary, or enforcement provision established in the comprehensive plan or adjuncts thereto.

The County Commission shall forward a copy of the proposed changes to the Planning Commission for public review. Upon receipt of the comments from the Planning Commission the County Commission shall provide public notice in accordance with Article 13 herein. The Board of County Commissioners shall thereafter either adopt or reject such amendment, supplement, change, modification, or repeal. If adopted the Board of County Commissioners shall direct the Planning Commission to prepare a summary of the action. Upon completion of the summary the states attorney shall review the same and direct the County Auditor to have said summary published once in the official newspaper.

The Mellette County Commission may appoint alternates to the Planning Commission and Board of Adjustment. Alternates may be utilized at those times when scheduling conflicts, acts of nature, or conflicts of interest would prevent a quorum thus rendering either entity ineffective and placing an undue hardship upon the public.

The Mellette County Commission shall establish guidance regarding conflict or interests related to planning and zoning actions. Said guidance shall clearly dictate those instances where individual members shall excuse themselves from proceedings where such a conflict or the perception thereof could impact the proceedings

Section 1011 Building Permits Required

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

Section 1013 Applications for Building Permits, Conditional Uses and Variances

All applications for building permits, conditional uses and variances must be signed or approved in writing by the owner of record. In the event the owner of record has a binding purchase or lease agreement contingent on the approval of the application, the potential purchaser or lessee may submit and sign all documents required for application. All building permit, conditional use and variance applications shall be accompanied by a site plan including but not limited to the following items; drawn to scale, including a north arrow, showing the property lines, actual dimensions and shape of the lot to be built upon, the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. Refer to document entitled Site Plan Requirements for a detailed example of site plan requirements.

The application shall include such other information as may be lawfully required by the Zoning Administrator, including: existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, rental units, or animal units the building is

designed to accommodate; conditions existing on the lot to include environmental contamination or suspected environmental contaminations; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this Ordinance. Properties which are suspected to have environmental contaminations to include petroleum and derivatives, commercial and agricultural chemicals, asbestos, sanitary sewer and septic systems, and other hazardous substances may require additional environmental assessment to be furnished prior to permit approval.

One copy of the plans shall be returned to the applicant by the Zoning Administrator after they shall have marked such copy either as approved or disapproved and attested to the same by their signature on such copy. If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The Zoning Administrator shall retain the original and one copy of the plans, similarly marked. The issuance of a building permit, shall, in no case, be construed as waiving any provisions of this Ordinance.

Section 1015 Expiration of Building Permit, Conditional Uses and Variances

If the work described in any building permit, conditional use or variance application has not begun within one hundred and eighty (180) days or has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Administrator and written notice thereof shall be given to the persons affected. The notice shall state that further work as described in the canceled permit or application shall not proceed unless, and until, a new building permit, conditional use or variance application has been approved and all required fees have been paid.

Section 1017 Construction and Use to be as Provided in Application, Plans, Permits, and Application for Zoning Compliance

Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 1503 of this ordinance.

Section 1019 Schedule of Fees, Charges, and Expenses

The Mellette County Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, variances, conditional uses, amendments, appeals and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Mellette County Commission. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

Section 1021 Building Permit in a Conspicuous Place

All building permits issued by the Zoning Administrator must be readily accessible for inspection at the building site for the duration of the work described.

Section 1023 Bad Actor Legislation

The Mellette County Commission may reject an application for any permit filed for a variance, conditional use or otherwise for the reasons and on the grounds set forth in SDCL 1-40-27, as revised and amended. Such rejection shall be based upon a specific finding by the Commission that the applicant has engaged in the activity identified in the aforesaid statute. The burden on the Commission to make the specific finding provided for herein shall be by a preponderance of the evidence.

Section 1025 Setback or Off Set Measurements

Distances noted throughout the Ordinance shall be measured from the closest main wall or similar structural elements such as a post, beam, and berm to the same from which the setback is so required. In the case of setbacks or offsets from property lines, the distance shall be measured in a similar fashion to the property line or right-of-way.

Section 1105 Hearings and Notice

Each meeting at which a hearing is held shall be a public meeting with notice of hearing to be published at least ten (10) days prior to the date of the hearing in the official newspaper of general circulation in the affected area. In addition, public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, shall be provided by posting a copy of the notice, visible to the public, at the County Courthouse. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the County's website upon dissemination of the notice, if such a website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each public body shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit.

ARTICLE 11

BOARD OF ADJUSTMENT APPEALS, VARIANCES AND CONDITIONAL USES

Section 1101 Members, Terms, Meetings, Rules

The Mellette County Commission shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all requests for variances, conditional uses, and zoning appeals. The Mellette County Planning Commission shall furnish all materials related to applications reviewed for zoning determinations to the Board of Adjustment. The County Auditor shall act as secretary to the Board of Adjustment when acting in zoning cases but shall take no part in the deliberations. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board shall determine. Such Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

All meetings of the Board of Adjustment shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record. The Board of Adjustment shall adopt from time to time, subject to the approval of the County Commission, such rules and regulations, as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

Section 1103 Appeals to Board of Adjustment, Record of Appeals, Hearing, and Stays

Any decision rendered by the Zoning Administrator may be appealed to the Board of Adjustment. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer for whom the appeal is taken and on due cause shown.

Section 1105 Board of Adjustment Hearings and Notice

Each session of the Board of Adjustment at which a hearing is held shall be a public meeting with notice of hearing to be published at least ten (10) days prior to the date of the hearing in the official newspaper of general circulation in the affected area. In addition, the Board shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, by posting a copy of the notice, visible to the public, at the County Courthouse. The proposed agenda shall include the date, time, and location of the meeting. The

notice shall also be posted on the County's website upon dissemination of the notice, if such a website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each public body shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit.

Section 1107 Powers and Duties

The Board of Adjustment shall have the following powers and duties:

APPEALS:

- A. In accordance with SDCL 11-2-(55-57), the Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map. An appeal will not be heard until:
1. The applicant or any other person aggrieved by the decision of an administrative official or agency shall file a written appeal with the Zoning Administrator within five working days after publication of the decision. All appeals relating to a particular action or property shall be consolidated and heard on an expedited basis.
 2. The administrative official or agency from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken.
 3. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of general circulation. Parties in interest shall be notified by USPS regular mail to be postmarked no less than seven (7) days in advance of hearing. The notice shall also be posted on the County's website upon dissemination of the notice, if such a website exists.
 4. The administrative official or agency shall present their decision to the Board of Adjustment for review.
 5. The Board of Adjustment shall either uphold, overrule or amend the decision of the Zoning Administrator

CONDITIONAL USES

- B. The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this ordinance to pass; 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. A conditional use shall not be granted by the Board unless and until:

1. A written application for a conditional use is submitted, indicating the section of this ordinance under which the conditional use is sought and stating the grounds on which it is requested;
2. A public notice is posted with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, visible to the public at the County Courthouse. The proposed agenda shall include the date, time, and location of the meeting.
3. A copy of the public notice shall be mailed to the applicant by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
4. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of general circulation. The notice shall also be posted on the County's website upon dissemination of the notice, if such a website exists.
5. A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than twenty-four inches (24") wide and eighteen inches (18") tall with bold lettering. Such posted notice shall be so placed upon such premises that it is easily visible from the road and shall be so posted at least seven (7) days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearings.
6. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
7. The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the conditional use, grant with conditions, or deny the conditional use, and that the granting of the conditional use will not adversely affect the public interest;
8. Before any conditional use is granted, the Board of Adjustment shall 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; with particular attention to the items in (a) above and the economic, noise, glare, odor or other 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;
- h. general compatibility with adjacent properties and other property in the district;

VARIANCES

- C. The Board of Adjustment shall have the power to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to grant such variances only when the following provisions apply:
 - 1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
 - 2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance.
 - 3. 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.
 - 4. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
 - 5. Notice of public hearing shall be given, as in Section 1107 (B) (2 - 5) 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.

6. 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 and punishable under Section 1503 of this ordinance.
 7. 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.
- D. The Board of Adjustment has the powers of a Zoning Administrator on Appeals and Reversing Decision of the Zoning Administrator.

In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of two-thirds (2/3) of the full membership of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation in this Ordinance.

Any persons jointly or severally aggrieved by a decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may appeal to a court of competent jurisdiction in a manner provided by the laws of the State of South Dakota.

ARTICLE 12

DUTIES OF THE ZONING ADMINISTRATOR, BOARD OF COUNTY COMMISSIONERS AND COURTS ON MATTERS OF APPEAL

Section 1201 Duties of Zoning Administrator, Board of Adjustment, County Commission and Courts
on Matters of Appeal

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, and that such questions shall be presented to a court of competent jurisdiction in a manner provided by the laws of the State of South Dakota only on appeal from the decision of the Board of Adjustment.

ARTICLE 13

AMENDMENTS

Section 1301 Regulations

The regulations, restrictions, and boundaries set forth in this Ordinance may from time to time be amended, supplemented, changed, or repealed, provided that such modification or repeal in each instance be proposed in an Ordinance presented to the governing body for adoption in the same manner and upon the same notice as required for the adoption of the original Ordinance.

The Planning Commission and County Commission shall have the power to hear requests for amendments to this Ordinance and/or Map. Prior to consideration of amending, supplementing, changing, modifying or repealing this Ordinance or map, notice of public hearings shall be provided as follows:

1. A public notice is posted with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hour immediately preceding any meeting, visible to the public at the County Courthouse. The proposed agenda shall include the date, time, and location of the meeting.
2. A copy of the public notice shall be mailed to the applicant by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date.
3. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of general circulation. The notice shall also be posted on the County's website upon dissemination of the notice, if such a website exists.
4. A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than twenty-four inches (24") wide and eighteen inches (18") tall with bold lettering. Such posted notice shall be so placed upon such premises that it is easily visible from the road and shall be so posted at least seven (7) days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearings.
5. The Applicant shall provide notice to all landowners abutting or adjoining the property proposed for rezoning. Said notice shall be like that described in (1) above and sent via registered or certified mail no less than ten (10) days prior to the hearing date.
6. The Planning Commission shall hold the Public Hearing, review the proposed amendment(s) and make recommendations to the County Commission
7. Notice shall be provided in accordance with Section 1301 (1-5)
8. The County Commission shall hold the Public Hearing, review the proposed amendment(s) and by Ordinance deny or pass the recommendations.
9. If the changes are adopted the Planning Commission shall prepare a summary of the changes.
10. Once the summary to include a notice of adoption is prepared the States Attorney shall review the changes and forward the changes to the County Auditor for publishing.
11. Publication shall be completed in accordance with SDCL 7-18A-5 as amended. Changes will take effect twenty (20) days after publication in accordance with State Statute.

ARTICLE 14

NONCONFORMANCE

Section 1401 General

Within the districts established by this Ordinance or amendments that may later be adopted, there exists (a) lots, (b) structures, (c) uses of land and structures, and (d) characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment; it is the intent to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this revised Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Section 1403 Nonconforming Lots of Record

In any district in which single-family dwellings are permitted, single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lots must be in separate ownership and not of continuous frontage with other lots in

the same ownership. This provision shall apply even though such lots fail to meet requirements for area or width, or both, that are generally applicable in the in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

Variance of other yard requirements shall be obtained only through action of the Board of Adjustment.

Section 1405 Nonconforming Uses of Land or Land with Minor Structures Only

Where at the time of passage of this revised Ordinance lawful use of land exists, which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding one thousand (1,000) dollars, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If any such nonconforming use of land ceases, for any reason, for a period of more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located; and
4. No additional structure, not conforming to the requirement of this Ordinance, shall be erected in connection with such nonconforming use of land.

Section 1407 Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance, that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in any way, which increases its nonconformity, but any structure, or portion thereof, may be altered to decrease its nonconformity.
2. Should such nonconforming structure, or nonconforming portion of structure, be destroyed by any means, to an extent of more than seventy-five (75) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance; and
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 1409 Nonconforming Uses of Structures or of Structures and Premises in Combination

If the nonconforming use involving individual structures with a replacement cost of one thousand (1,000) dollars or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structure and premises may, as a special exception, be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Ordinance.
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for a period of more than one (1) year (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 1411 Uses Under Conditional Use Provisions are Conforming Uses

Any use, which is permitted as a special exception in a district, under the terms of this Ordinance, shall be deemed a conforming use in such district without further action. A nonconforming use can never be allowed in a defined district without a change in the district definition or boundaries.

Permitted Principal Uses	Conditional Uses	Nonconforming
Allowed with permit within defined district.	Allowed within defined district AFTER Board grants permission.	Never allowed within defined district without change in district definitions or boundaries.

ARTICLE 15

VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

Section 1501 Complaints Regarding Violations

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

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, they shall notify, in writing by certified mail with return receipt, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The party responsible for the violation shall respond within seven (7) working days from receipt of the letter; otherwise, they will be considered in violation and punishable under Section 1503.

Section 1503 Penalties for Violations

The owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist, or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be guilty of a Class II misdemeanor and shall be punished by a fine not to exceed five hundred dollars (\$500) or imprisonment for not more than thirty (30) days in the County jail, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be a separate offense.

Any architect, engineer, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

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 this Ordinance, appropriate authorities of the county may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE 16

LEGAL STATUS PROVISIONS

Section 1601 Separability

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

Section 1603 Purpose of Sub-Titles

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

Section 1605 Repeal of Conflicting Ordinances

All ordinances or parts of resolutions in conflict with this Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 1607 Effective Date

This Ordinance shall take effect and be in force from and after its adoption.

