

# BRULE COUNTY

## ZONING

### MANUAL

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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:

Abut - 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 or Structure - A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

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 building, 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 feeding of livestock and/or poultry shall be considered an agricultural use. Grain elevators or Agricultural Product Processing Facilities 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, soy bean 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.

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 - Plus
Class B	700 - 999
Class C	10 - 699

Animal Feeding Operation or CAFO, New: An animal feeding operation or CAFO, (see definitions), 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 three hundred (300) 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 head is equivalent to \_\_\_ animal units:

Cow, feeder, or slaughter beef animal, excluding calves under 300 pounds	1.0 A.U.
Horse, excluding colts one year old and/or under	1.0 A.U.
Mature dairy cattle, excluding dairy calves under 300 pounds	0.7 A.U.
Farrow-to-finish sows	2.7 A.U.
Swine in a production unit	2.13A.U.
Nursery swine less than 55 pounds	10 A.U.
Finisher swine over 55 pounds	2.5 A.U.
Sheep or lambs	10 A.U.
Laying hens or broilers 30 A.U. Ducks and/or geese	5 A.U.
Turkeys	55 A.U.

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	Class B	Class C
Cow, feeder or slaughter beef animal, excluding calves under 300 pounds	1,000 - Plus	700 - 999	10 - 699
Horses	500 - Plus	350 - 499	5 - 349
Mature dairy cattle, excluding calves under 300 pounds	714 - Plus	490 - 713	7 - 489
Farrow to finish sows	270 - Plus	189- 269	3 - 188
Swine in a production unit	2,128 – Plus	1,489 – 2,127	21 – 1,488
Nursery swine less than 55 pounds	10,000 - Plus	7,000 - 9,999	100 – 6,999
Finisher swine over 55 pounds	2,500 - Plus	1,750 - 2,499	25 – 1,749
Sheep	10,000 - Plus	7,000 - 9,999	100 – 6,999
Laying hens	30,303 - Plus	21,212 - 30,302	303 – 21,211
Ducks and/or geese	5,000 - Plus	3,500 - 4,999	50 – 3,499
Turkeys	55,555 - Plus	38,889 - 55,554	555 – 38,888

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.

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.

Arcade - A place of business where an individual, association, partnership or corporation maintains four or more amusement devices for public use.

Auction Barn - Any premises used predominantly as a livestock auction facility and may include the auction of agriculturally related items on an incidental or accessory basis only. The term may also include a building or structure or lands used for the storage of goods and materials which are to be sold on the premises by public auction, and for the sale of the said goods and materials by public auction and on an occasional basis.

Auction Yard – Any premises used predominantly as an auction pavilion or any area dedicated to consignment auctions or similar activities. A yard may include structures, open, and fenced display areas.

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

Automobile Wrecking Yard - Any premises on which two or more self-propelled vehicles not in running order or operating condition are stored in the open. See also Junkyard and Salvage Yard.

Bar - A building or part thereof where, in consideration of payment therefore, 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 Brule County Commission 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. Setbacks are measured from the nearest edge of a right of way line.

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.

Building, Alterations of - Any change or rearrangement of the supporting members (such as bearing walls, beams, columns, or girders) of a building, an addition to a building, or movement of a building from one location to another. See Structural Alterations.

Building, Height of - The vertical distance measured from the average grade of the building level of the highest and lowest elevations of the site covered by the building to the top of the roof or parapet of the highest story.

Building, Principal - A building in which is conducted the main use of the lot on which said building is located.

Bus Depot - A building or premises where commercial motor vehicles pick up and discharge fare-paying, passengers. Accessory uses may include ticket offices, luggage checking facilities and similar uses.

Business Sign - A sign which directs attention to a business or profession conducted or to a commodity, service, or entertainment sold or offered upon the premises on which such sign is located or to which it is affixed. See also on-site and off-site signs.

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. (hemp) 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 - a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

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

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

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

Car 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.

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

Cellar - A portion of a building between two floor levels which is partly or wholly underground and which has more than one-half (½) of its height, from finished floor to finished ceiling or to the underside of the floor joists of the story next above, as the case may be, below the average finished grade level adjacent the exterior walls of the building.

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 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.

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 Brule County Comprehensive Plan.

Concentrated Animal Feeding Operation: An animal feeding operation that holds more than 1,000 animal units and smaller operations that discharge pollutants that impair a stream or other surface water are Concentrated Animal Feeding Operations (CAFOs).

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.

Congregate Housing - Housing units that provide a semi-independent living environment, which offers residential accommodations, central dining facilities (where at least one (1) meal a day is provided seven (7) days a week), related facilities, and supporting staff and services to persons of at least sixty-two (62) years of age or with disabilities.

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, sheep, and mules.

Dormitory - A building or part of a building operated by an institution and containing a room or rooms forming one or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

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 - A room or suite of rooms designed for and occupied by one family and having not more than one kitchen facility.

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, three (3) 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.

Dwelling, Two Family - A building containing two dwelling units designed exclusively for occupancy by two families living independently of each other.

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.

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 five (5) individuals are unrelated by blood, marriage or adoption. This definition shall not include foster families as regulated by the State.

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, 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 more than two (2) 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, Hobby - 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 one (1) acre or more in area for every one (1) animal unit, and if such livestock does not exceed ten (10) animal units.

Farm, Ranch, Orchard - An area of not less than twenty (20) 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, 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 – A place with empirical evidence of a previous farmstead including at a minimum foundations, structures, or a tree belt. For the purposes of this ordinance the Zoning Administrator or Planning Commission shall determine the eligibility of a farmstead as a building site as described within Section 513(3).

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.

Fishery - As defined by South Dakota Administrative Rules, Sections 74:51:02:02 and 74:51:02:03 (January 27, 1999). Brule County as described in Section 74:51:02:10. Lakes Wanalain and Wells (Section 74:51:02:03(5)) are warm water semi-permanent fish life propagation waters; Lakes American, Sharping, and Sixteen (Section 74:51:02:03(6)) are warm water marginal fish life propagation waters. The Missouri River (Section 74:51:03:05(1,4,7,8,11)) is a domestic water supply, warm water permanent fish life propagation waters, immersion recreation waters, limited contact recreation waters, and commerce and industry waters. American Creek, (Section 74:51:03:05(6,8)), are warm water marginal fish life propagation waters and limited contact recreation waters.

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°F or less. Flammable liquid is any liquid having a flash point below 100°F and having vapor pressure not exceeding forty (40) pounds per square inch (absolute) at 100°F. Combustible liquid is any liquid having a flash point at or above 100°F. Hazardous material includes any flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hyperbolic 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.

Flood Hazard Boundary Map (FHBM) - The official map issued by the Federal Insurance Administration where the areas of special flood hazard have been designated Zone A.

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 non-domestic animals for sale to private shooting preserves.

Game Lodge - A building or group of 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 nonconforming 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.

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, floral, 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.

Interchange - A grade-separated intersection with one (1) or more direct connections for vehicular travel between the intersecting right-of-ways.

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.

Junkyard - A place where non-recyclable waste, having no economic values, or waste, which is recyclable, but has no chance of being recycled is deposited.

Kennel - Any place where more than twenty (20) 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 earthen fill for storage or treatment of human sewage or 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 right-of-way; for the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to right-of-ways shall be considered frontage, and yards shall be provided as indicated under "Yards" in this ordinance.

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, 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 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.

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.

Major Road Plan - The Transportation Plan in the Brule County Comprehensive Plan.

Major Recreational Equipment - Major recreational equipment is defined as including boats and boat trailers, 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.

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. Manufactured homes are built according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Manufactured homes are not mobile homes.

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.

Manufacturing Light - 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. Light manufacturing shall have no more than ten employees.

Massage Establishment - Any premises or part thereof where massages are given, offered or solicited in pursuance of a trade or calling, business or occupation provided that the service is rendered by a person duly trained, licensed and registered under the appropriate statute.

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.

Navigable Waters - A body of water presently being used or is suitable for use for transportation and commerce, or if it has been so used or was suitable for such use in the past, or if it could be made suitable for such use in the future by reasonable improvements.

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.

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 - Any condition existing that is or may become injurious or dangerous to health or that prevents or hinders or may prevent or hinder in any manner the suppression of a disease.

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.

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 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 Brule 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 and/or larger 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 Brule 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.

Publicly Traded Company - For purposes of this Ordinance a “publicly traded company” means a company, the shares or other interests in which are regularly traded on the New York Stock Exchange, the American Stock Exchange, NASDAQ or similar recognized security market.

Quarry - A place where consolidated rock 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 seven hundred fifty (750) square feet 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.

Satellite Dish/Receiver - A device incorporating a reflective surface that is solid, open mesh, or bar configured and is the shape of a shallow dish or cone designed and used for the reception of television signals related back to earth from a terrestrially and/or orbital based communications satellite.

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

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.

School, Trade or Commercial - An establishment other than an accredited or licensed public, private or denominational school, offering training or instruction in art, occupation or trade.

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.

Security Dwelling Unit - A building or portion thereof designed for occupancy by a security employee.

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 that 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. Setbacks are measured from the nearest edge of a right of way line.

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.

Shuttle Loader Grain Facilities – A grain handling complex designed to quickly and efficiently load and unload large volumes of grain onto rail cars. These facilities may or may not include additional services such as fertilizer sales, agricultural chemical sales, and freight storage.

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 (½) 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 any one (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 know 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.

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 1/2) 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.

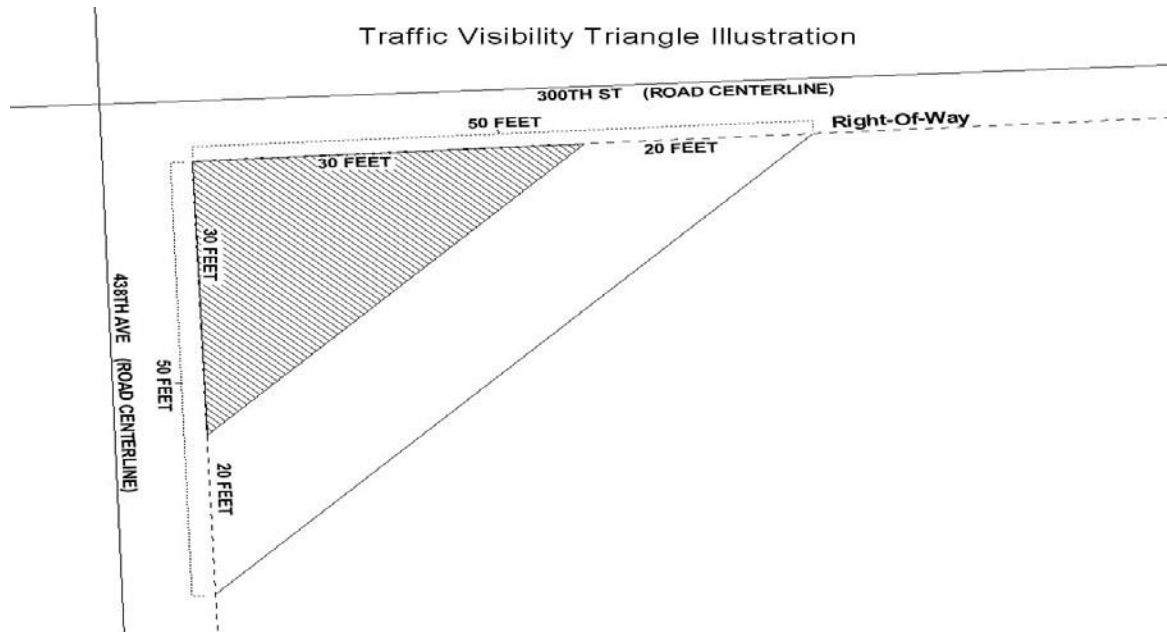
Tank Farm - A facility having two or more storage containers for the transfer of inorganic liquids or gases and from which wholesale sales of fuel to the public is or may be conducted.

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.



**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.

**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.

Video Rental Shop - The use of land, building or structure for the purpose of renting video cassette recorders and/or video disc players and/or the rental of video tapes and/or discs.

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 right-of-way 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 administrating this ordinance.

## ARTICLE 1 JURISDICTION

### Section 101    General

This Ordinance shall be known and shall be cited and referred to as “The Official Zoning Ordinance of Brule 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 Brule County, South Dakota, including organized and unorganized townships, and excluding the incorporated communities of Chamberlain, Kimball and Pukwana including the extraterritorial jurisdictional area as defined herein, as established on the map entitled “The Official Zoning Map of Brule 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; or
3. Have narrower or smaller rear yards, front yards, side yards, or other open spaces.

### Section 207    Yard, Lot, and Parcel Reduction Prohibited

No yard, lot, or parcel existing at the time of passage of this Ordinance shall be reduced in dimensions or area below the minimum requirements set forth herein. Yards, lots, or parcels 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 seven (7) types of districts by which the jurisdictional area defined in Section 103 shall be divided.

- AG - Agricultural
- AR - Agricultural-Residential
- R1 - Moderate Density Rural Residential
- R2 - High Density Rural Residential
- MHP – Manufactured Home Park
- HC - Highway Commercial
- PUD - Planned Unit Development



## **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. 16 of "Brule 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 Brule 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 2103 .

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 Brule 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. 16 of “Brule 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:

1. Boundaries indicated, as approximately following the centerlines of right-of-ways, roads, highways, or alleys shall be construed to follow such centerlines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated, as approximately following city limits shall be construed as following such city limits;
4. Boundaries indicated, as following railroad lines shall be construed to be midway between the main tracks;
5. 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;
6. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. The scale of the map shall determine distances not specifically indicated on the Official Zoning Map; and

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 DISTRICT (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 an Agricultural District (AG):

1. Agriculture;
2. Cemeteries;
3. Day cares, family;
4. Dwellings, single-family;
5. Dwellings, additional farm in excess of one (1), pursuant to Sections 513 (5) and 1309;
6. Farms;
7. Farm buildings;
8. Historic sites;
9. Horticulture;
10. Manufactured homes, pursuant to Section 1309;
11. Modular homes;
12. Plant Nurseries;
13. Riding Stables;
14. Truck gardens;
15. Utility facilities, above ground and <10,000 gallons; and
16. Veterinary services.

### Section 505    Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in an Agricultural District (AG):

1. Accessory agricultural structures;
2. Customary water irrigation systems, other than manure irrigation equipment;
3. Farm drainage systems; tiling and ditching with vested water rights; in compliance with the County Drainage Ordinance.
4. Home and farm occupations;
5. Shelterbelts;

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

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 an Agricultural District (AG):

1. Animal feeding operations;
2. Agricultural, fertilizer, and chemical sales and applications;
3. Agricultural product processing facilities;
4. Aquaculture;
5. Auction yards and barns;
6. Bars;
7. Bed and breakfast operations;
8. Buying stations;
9. Campgrounds;
10. Churches;
11. Construction services;
12. Day cares, group family home;
13. Exhibition areas ;
14. Fairgrounds;
15. Fireworks sales;
16. Game farms;
17. Game lodges;
18. Golf courses;
19. Grain elevators;

20. Home and farm occupations;
21. Indoor shooting/archery ranges;
22. Kennels;
23. Landing Strips;
24. Manufacturing, light;
25. Motels;
26. Motor vehicle tracks or play areas;
27. Manure irrigation;
28. Municipal, commercial, or residential central containment, sewage disposal, treatment, or application sites;
29. Open sales areas;
30. Outdoor shooting/archery ranges;
31. Parks;
32. Portable processing plants;
33. Private recreation areas;
34. Private shooting preserves;
35. Quarries, pursuant to Section 1315;
36. Remote fuel depots;
37. Repair shops, auto-body;
38. Repair shops, motor vehicle and equipment;
42. Roadside stands;
43. Rodeo arenas;
44. Salvage yards;
45. Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);
46. Self-Storage Warehouse;
47. Shuttle Loader Grain Facilities;
48. Spreading, injection, or other application of manure or animal waste generated by an Animal Feeding Operation as described herein, or other livestock production means located outside of Brule County pursuant to Section 521 (10) (11);
49. Swimming pools;
50. Temporary construction facilities;
51. Towers;
52. Utility facilities, above ground and >10,000 gallons;
53. Wildlife and game production areas; and

54. Wind energy systems.

Section 509            Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Planning Commission and 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 Agricultural District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed. The review shall be heard at a regular meeting of the aforementioned bodies and may be required to adhere to the notification requirements as described in Section 1803(3-5).

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 shall be ten (10) acres;
2. The minimum lot width, at its frontage shall be two hundred fifty (250) feet;
3. The Zoning Administrator may allow a smaller minimum lot requirement where a permit for a permitted principal uses and structures and conditional uses is requested on an existing farmstead site, as defined herein;
4. Lots of record, as defined herein, existing prior to adoption of this ordinance may be developed pursuant to Article 14 and as approved by the Zoning Administrator;
5. An additional dwelling unit is allowed within the farmstead upon approval of the building permit application if it is to be occupied by other members of the family farm unit, provided the property is not transacted or prepared, platted, or described for transaction; and
6. 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.
7. Agriculture Easement/Waiver: All new residential development (farm and non-farm) shall be required to file an "Agricultural Use Covenant Running with the Land" with the Register of Deeds before the issuance of a building permit.
8. Applicants for residential development (farm and non-farm) are required to obtain a Agricultural Use Covenant Running with the Land from the owner/operator of any

existing concentrated animal feeding operation which is closer than one (1) mile from the proposed residential building site. If the applicant is unable to obtain the Agricultural Use Covenant Running with the Land, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. The waiver is to be filed with the Register of Deeds.

Section 515     Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines, or if platted, from the nearest edge of the right of way line. This Section shall apply to all buildings and structures, including but not limited to decks and patios:

1. There shall be a front yard of not less than a depth of fifty (50) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. There shall be two (2) side yards, each of which shall not be less than ten (10) feet;
4. Buildings and structures on corner lots as defined herein shall maintain two (2) front yards for the property abutting the road right-of-ways; and
5. 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.

Section 517     Traffic Visibility

1. There shall be no obstructions, such as buildings, structures, grain bins, wind breaks, baled agricultural products, or other objects within fifty (50) feet from the right-of-way.
2. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
3. Structures, perennial, or similar vegetation planted on or immediately adjacent to a road right-of-way public 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.
4. Trees may be planted in a front or side yard as long as the tree or trees are twenty-five (25) feet from a road right of way at the time of planting.

Section 519    Animal Feeding Operation Requirements

Animal Feeding Operations are required to obtain a conditional use permit whenever any of the following occur:

1. A new Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows.
3. An expansion by 300 animal units, after adoption of this ordinance, of an existing animal feeding operation, when the total animal units will meet or exceed the requirements for a Class A or B animal feeding operation.
4. An existing Animal Feeding Operation is to be restocked after being idle for five (5) or more years.
5. A signed complaint has been received by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Animal Feeding Operation is in violation of County or State regulations.
6. 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:
  - a) The current owner notifies the Zoning Administrator and Secretary of the Department of Environment and Natural Resources at least thirty (30) days in advance of the proposed transfer date;
  - b) 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
  - c) The new owner or operator submits a Certification of Applicant Form to the County and DENR.

Section 521    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 – Plus)	Section 521 (1,2,3,4,5,6,7, 8, 9,10,11)
Class B (700 - 999)	Section 521 (9)
Class C (10 - 699)	Exempt

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



Environment and Natural Resources or as amended by the State of South Dakota or the South Dakota Department of Environment and Natural Resources.

2. Prior to construction, such facilities shall obtain a Storm Water Permit for Construction Activities from the South Dakota Department of Environment and Natural Resources. The Storm Water Pollution Prevention Plan required by the permit must be developed and implemented upon the start of construction.
3. Animal confinement and waste facilities shall comply with the following facility setback requirements:

A. Public Wells	1,000 feet
B. Private Wells	250 feet
C. Private Wells (Operator's) Streams Classified as a Public	150 feet
D. Drinking Water Supply	1,000 feet
E. Lakes, Rivers, Streams Classified as Fisheries	1,000 feet
F. Designated 100 Year Flood Plain	PROHIBITED
4. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification. Examples of such management shall include at least:
  - A. Proposed maintenance of waste facilities;
  - B. Land application process and/or methods;
  - C. Legal description and map, including documented proof of area to be utilized for nutrient application; and
  - D. All CAFO's are required to obtain a South Dakota State General Permit that outlines the manure management practices that an operator must follow to prevent water pollution and protect public health.
5. Animal waste facilities shall be setback six hundred and sixty six (660) feet from a property line delineating a change in ownership and any right-of-way line.
6. New Class "A" animal confinement and waste facilities shall be located no closer than two (2) miles from any incorporated municipality or residentially zoned area.
7. New Class "A" animal confinement and waste facilities shall be located no closer than one (1) mile from any residential dwelling; one dwelling unit is allowed on the facility site. The owner(s) of an animal feeding operation and/or residential dwelling may request the required setback be lessened or waived in accordance with the variance procedures as detailed herein. Agricultural Use Covenant Running with the Land forms are obtainable from the Zoning Administrator. This waiver would run with the land and be filed with the Brule County Register of Deeds.
8. 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 Planning Commission and 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 shall be addressed in a management control plan:

- A. An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented;
  - B. The methods utilized to dispose of dead animals shall be identified.
  - C. A screening and/or buffering section to include the planting of trees and shrubs of adequate size to control wind movement and dispersion of odors generated by the facility;
  - D. A storm water management section shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining dryer confinement areas to reduce odor production.
  - E. A solid manure storage plan detailing the number and size of containment areas and methods of controlling drainage to minimize odor production;
  - F. A description of the method and timeframe for removal of manure from open pens to minimize odor production;
  - G. The applicability, economics, and effect of Industry Best Management Practices shall be covered;
  - H. A notification section should be formulated by the applicant. It is to include the names, addresses, and phone numbers of all occupied residences and public gathering places, within one-half (1/2) mile of applicant's manure application fields. The preferred hauling and application process shall be detailed and include timetables of probable application periods. Application of manure on weekends, holidays, and evenings during the warmer seasons shall be avoided whenever possible. Complaints could lead to having to give 48 hour notice in advance of manure applications. Annual notification advising of an upcoming 30 day window should be given.
  - I. A review of weather conditions shall be included reviewing the effect of climate upon manure application. This section shall also include the preferred times and conditions for application to mitigate the potential effects upon neighboring properties while outlining the least advantageous climatic conditions.
9. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is injected or incorporated within twenty-four (24) hours:
- |  |            |
|--|------------|
| A. Public Wells                                  | 1,000 feet |
| B. Private Wells                                 | 250 feet   |
| C. Private Wells (Operator's)                    | 150 feet   |
| D. Lakes, Rivers, Streams Classified as a Public |            |

- |  |            |
|--|------------|
| Drinking Water Supply                                | 1,000 feet |
| E. Lakes, Rivers and Streams Classified as Fisheries | 200 feet   |
| F. All Public Road Right-of-ways                     | 10 feet    |
| G. Incorporated Communities                          | 660 feet   |
| H. A Residence other than the Operators              | 100 feet   |
10. 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  | 1,000feet  |
| B. Private Wells   | 250feet    |
| C. Private Wells (Operator’s)  | 150feet    |
| D. Lakes, Rivers, Steams Classified as a Public<br>Drinking Water Supply | 1,000feet  |
| E. Lakes, Rivers and Streams Classified as Fisheries                     | 660 feet   |
| F. All Public Road Right-of-ways (Surface Applied)                       | 10 feet    |
| G. All Public Road Right-of-ways (Irrigated Application)                 | 100 feet   |
| H. Incorporated Communities (Surface Applied)                            | 1,000 feet |
| I. Incorporated Communities (Irrigated Application)                      | 2,640 feet |
| J. A Residence other than the Operators (Surface Applied)                | 330 feet   |
| K. A Residence other than the Operators (Irrigated Application)          | 750 feet   |
11. If irrigation is used for removal of liquid manure, dewatering a lagoon (gray water) basin, or any type of liquid manure holding pit, these rules apply:
- A. Drops must be used on systems that disperse the liquid no higher than 18” off the ground if no crop is actively growing on the field.
  - B. If a crop is actively growing on the field, the liquid must then be dispersed below the crop canopy.
  - C. No runoff or diffused spray from the system onto neighboring property or public right-
  - D. No irrigation of liquid on frozen ground or over FSA designated wetlands.
  - E. “Big Gun” type irrigation systems not be utilized for liquid manure or dewatering lagoons or other manure containment systems by any new operation permitted after the date of adoption of this Ordinance or and subsequent amendment thereto.

Section 523 Minimum Setback Requirements for Wind Energy Systems

All wind energy systems shall be located at least 1,000 feet from an occupied dwelling. A wind energy system may be built within 1,000 feet of an occupied dwelling if the applicant obtains written approval of the dwelling’s occupants or their designated representative. This approval must state that the dwelling’s occupants have no objection to the construction of the proposed wind energy system.

**THIS PAGE RESERVED FOR FUTURE USE**

## **ARTICLE 6 AGRICULTURAL–RESIDENTIAL DISTRICT (AR)**

### Section 601    Intent

The intent of Agricultural - Residential Districts (AR) is to protect agricultural lands and lands consisting of natural growth from incompatible land uses while providing for single family residential uses in a pleasant and stable environment; yet to encourage in-fill development of rural areas which currently support rural residential developments and to limit increased residential development to areas where they are best suited for reasons of practicality and service delivery.

### Section 603    Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in an Agricultural-Residential District (AR):

1. Agriculture;
2. Cemeteries;
3. Day cares, family;
4. Dwellings, single-family;
5. Farms;
6. Farms, hobby;
7. Farm buildings;
8. Historic sites;
9. Horticulture;
10. Manufactured homes, pursuant to Section 1307;
11. Modular homes;
12. Schools – denominational or private;
13. Schools – public;
14. Utility facilities; and
15. Veterinary services.

### Section 605    Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in an Agricultural-Residential District (AR):

1. Accessory agricultural structures;
2. Customary water irrigation systems, other than manure irrigation equipment;
3. Farm drainage systems;
4. Home and farm occupations;
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, exterior off-site, pursuant to Section 1201;
12. Signs, flag;
13. Signs, name and address plate;
14. Signs, on-site;
15. Signs, real estate; and
16. Stock dams.

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 an Agricultural-Residential District (AR):

1. Agricultural, fertilizer, and chemical sales and applications;
2. Agricultural product processing facilities;
3. Aquaculture;
4. Auction yards and barns;
5. Bars;
6. Bed and breakfast operations;
7. Buying stations;
8. Campgrounds;
9. Churches;
10. Construction services;
11. Day cares, group family home;
12. Drive in Theaters;
13. Dwellings, additional farm in excess of one (1), pursuant to Section 513(5)
14. Exhibition areas;
15. Fairgrounds;
16. Feed mills;
17. Fireworks sales;
18. Food product processing;
19. Game farms;

20. Game lodges;
21. Golf courses;
22. Grain elevators;
23. Kennels;
24. Landing Strips;
25. Manufacturing, light;
26. Motor vehicle tracks or play areas;
27. Municipal, commercial, or residential central containment, sewage disposal, treatment, or application sites;
28. Open sales areas;
29. Outdoor shooting/archery ranges;
30. Parks;
31. Portable processing plants;
32. Private recreation areas;
33. Private shooting preserves;
34. Quarries, pursuant to Section 1315;
35. Remote fuel depots;
36. Repair shops, auto-body;
37. Repair shops, motor vehicle and equipment;
38. Riding stables;
39. Rodeo arenas;
40. Salvage yards;
41. Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);
42. Spreading, injection, or other application of manure or animal waste generated by an Animal Feeding Operation, as defined herein, pursuant to Section 521(10)(11);
43. Swimming pools;
44. Temporary construction facilities;
45. Towers;
46. Wildlife and game production areas; and
47. Wind energy systems.

Section 609     Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Planning Commission and 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 Agricultural District

shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed. The review shall be heard at a regular meeting of the aforementioned bodies and may be required to adhere to the notification requirements as described in Section 1603(3-5).

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 and one-half (1.5) acres;
2. The minimum lot width shall be one hundred (100) feet;
3. Lots of record, as defined herein, existing prior to adoption of this ordinance may be developed pursuant to Article 14 and as approved by the Zoning Administrator;
4. An additional dwelling unit is allowed within the farmstead upon approval of the building permit application if it is to be occupied by other members of the family farm unit, provided the property is not transacted or prepared, platted, or described for transaction; and

Section 615                     Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines or if platted, from the nearest edge of the right of way line. . This Section shall apply to all buildings and structures, including but not limited to decks and patios:

1. There shall be a front yard of not less than a depth of fifty (50) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. There shall be two (2) side yards, each of which shall not be less than ten (10) feet;
4. Buildings and structures on corner lots as defined herein shall maintain two (2) front yards for the property abutting the road right-of-ways; and

Section 617     Maximum Height

1. The height of any dwelling unit shall not exceed thirty-five (35) feet or two and one-half (2 ½) stories;
2. The height of any structure designed and manufactured for human occupation shall not exceed thirty-five (35) feet and two and one-half (2 ½) stories.



Section 619    Traffic Visibility

1. There shall be no obstructions, such as buildings, structures, grain bins, wind breaks, baled agricultural products, or other objects within fifty (50) feet from the right-of-way, between the months of November 1<sup>st</sup> and April 1<sup>st</sup>.
2. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
3. Structures, perennial, or similar vegetation planted on or immediately adjacent to a road right-of-way public 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.
4. Trees may be planted in a front or side yard as long as the tree or trees are twenty-five (25) feet from a road right of way at the time of planting.

Section 621    Minimum Setback Requirements for Wind Energy Systems

All wind energy systems shall be located at least 1,000 feet from an occupied dwelling. A wind energy system may be built within 1,000 feet of an occupied dwelling if the applicant obtains written approval of the dwelling's occupants or their designated representative. This approval must state that the dwelling's occupants have no objection to the construction of the proposed wind energy system.

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## **ARTICLE 7 MODERATE DENSITY RURAL RESIDENTIAL DISTRICT (R1)**

### Section 701    Intent

The intent of Moderate Density Rural Residential Districts (R1) is to provide for residential uses of moderate lots and other compatible uses in a pleasant and stable environment.

### Section 703    Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in a Moderate Density Rural Residential District (R1):

1. Day cares, family;
2. Dwellings, single-family;
3. Governmental services;
4. Horticulture;
5. Modular homes; and
6. Utility facilities.

### Section 705    Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in a Moderate Density Rural Residential District (R1):

1. A (one) 1,200 square foot accessory structure. Side wall height shall not exceed twelve (12) feet as measured from the highest point of the finished floor at grade to the highest point of wall framing.
2. Home occupations;
3. Signs, banner;
4. Signs, directional on-site;
5. Signs, directional off-site;
6. Signs, easement and utility;
7. Signs, flag;
8. Signs, name and address plate; and
9. Signs, real estate.

Section 707    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 Moderate Density Rural Residential District (R1):

1. Bed and breakfasts;
2. Campgrounds, pursuant to 1321;
3. Churches;
4. Day cares, group family home;
5. Dwellings, multi-family;
6. Dwellings, two family;
7. Manufactured homes, pursuant to Section 1307;
8. Parks;
9. Schools, public;
10. Signs, off-site;
11. Swimming pools; and
12. Towers.

Section 709 Classification of Unlisted Uses

In order to insure 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 Moderate Density Residential 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 or forty thousand (40,000) square feet;
2. The minimum lot area for multi-family dwellings in areas of two (2) units shall be one (1) acre or forty thousand (40,000) square feet and an additional five thousand (5,000) square feet for each unit in excess of the first two (2); and
3. The minimum lot width shall be one hundred (100) feet.

Section 715     Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. A front lot line, or lot frontage, is measured from the nearest edge of the right of way line. 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 thirty (30) feet, except when said lot is adjacent to or abutting a arterial or collector right-of-way then the depth shall be fifty (50) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. There shall be two (2) side yards, each of which shall not be less than ten (10) feet;
4. Buildings and structures on corner lots as defined herein shall maintain two (2) front yards for the property abutting the road right-of-ways.

Section 717     Traffic Visibility

1. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
2. Structures, perennial or similar vegetation planted on or immediately adjacent to a road right-of-way public 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.

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## ARTICLE 8

### HIGH DENSITY RURAL RESIDENTIAL DISTRICT (R2)

#### Section 801    Intent

The intent of High Density Rural Residential Districts (R2) is to provide existing concentrated residential subdivisions as recorded with the Register of Deeds and other compatible uses a pleasant and stable environment. Yet, not allow an extension of these areas beyond their respective boundaries as recorded at the time of zoning ordinance adoption.

#### Section 803    Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in a High Density Rural Residential Districts (R2):

1. Day cares, family;
2. Dwellings, single-family;
3. Governmental services; and
4. Horticulture;
5. Modular homes;
6. Utility facilities;

#### Section 805    Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in a High Density Rural Residential Districts (R2):

1. A (one) 800 square foot accessory structure. Side wall height shall not exceed ten (10) feet as measured from the highest point of the finished floor at grade to the highest point of wall framing.
2. Home occupations;
3. Signs, banner;
4. Signs, directional on-site;
5. Signs, directional off-site;
6. Signs, easement and utility;
7. Signs, flag;
8. Signs, name and address plate; and
9. Signs, real estate.

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 High Density Rural Residential Districts (R2):

1. Day cares, group family home;
2. Dwellings, multi-family;
3. Dwellings, two family;
4. Manufactured homes, pursuant to Section 1307;
5. Parks;
6. Signs, off-site;
7. Swimming pools; and
8. Towers, pursuant to Section 1323.

Section 809     Classification of Unlisted Uses

In order to insure 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 High Density Residential 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 one-half (1/2) acre or twenty thousand (20,000) square feet;
2. The minimum lot area for multi-family dwellings shall be one-half (1/2) acre or twenty thousand (20,000) square feet and an additional five thousand (5,000) square feet for each unit in excess of the first two (2); and
3. The minimum lot width shall be seventy five (75) feet.

Section 815     Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. A front lot line, or lot frontage, is measured from the nearest edge of the right of way line. 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 thirty (30) feet, except when said lot is adjacent to or abutting an arterial or collector right-of-way then the depth shall be fifty (50) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. There shall be two (2) side yards, each of which shall not be less than ten (10) feet; and
4. Buildings and structures on corner lots as defined herein shall maintain two (2) front yards for the property abutting the road right-of-ways.

Section 817      Traffic Visibility

1. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
2. Structures, perennial or similar vegetation planted on or immediately adjacent to a road right-of-way public 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.

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## ARTICLE 9

### MANUFACTURED HOME PARK DISTRICT (MHP)

#### Section 901    Intent

The intent of the Manufactured Home Park District (MHP) is to preserve and enhance property values by providing designated, distinctive areas in which manufactured homes may be situated as a residential dwelling. It is the intent that this district be a desirable, prominent area providing adequate open space and essentially the same considerations given to citizens of other residential districts.

#### Section 903    Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in a Manufactured Home Park District (MHP):

1. Dwellings, single family;
2. Manufactured homes, pursuant to Section 1309;
3. Modular homes;
4. Parks; and
5. Utility facilities.

#### Section 905    Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in a Manufactured Home Park District (MHP):

1. Accessory buildings;
2. Garages;
3. Home occupations;
4. Signs, banner;
5. Signs, directional on-site;
6. Signs, directional off-site;
7. Signs, easement and utility;
8. Signs, flag;
9. Signs, name and address plate; and
10. Signs, real estate.

Section 907    Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in a Manufactured Home Park District (MHP):

1. Day care centers;
2. Day cares, family;
3. Day cares, group family home;
4. Dwellings, two family;
5. Laundry facilities;
6. Self-storage warehouses;
7. Signs, bulletin board;
8. Signs, ground and monument;
9. Signs, mounted wall;
10. Signs, off-site;
11. Signs, portable;
12. Swimming pools; and
13. Towers.

Section 909    Classification of Unlisted Uses

In order to insure 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 911    Prohibited Uses and Structures

No part of any park shall be used for nonresidential purposes, except such uses that are required for the direct servicing and well being of park residents and for the management and maintenance of the park.

Section 913    Minimum Lot Requirements

1. The minimum park size is three (3) acres;
2. The minimum park width is three hundred (300) feet;
3. The minimum lot area for individual manufactured homes shall be four thousand (4,000) square feet;
4. The density of any manufactured home park shall not exceed eight (8) units per gross acre; and

5. The net density of any particular acre shall not exceed ten (10) units per net (gross reduced by required yards, right-of-ways, etc.) acre.

Section 915     Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot line. A front lot line, or lot frontage, is measured from the nearest edge of the right of way line. This Section shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. The minimum distance required for the separation of a manufactured home from side and rear lot lines shall be ten (10) feet. In no case shall a manufactured home be closer than twenty (20) feet from another manufactured home;
2. The minimum setback distance required from a private drive or public right-of-way shall be thirty (30) feet; and
3. Accessory buildings shall not encroach on minimum yard requirements.

Section 917     Manufactured Home Park Application Requirements

The applicant follows the rezoning process pursuant to Articles 15-18;

2. A request for a change in zoning districts to a Manufactured Home Park District shall set forth the location and legal description of the proposed manufactured home park property;
3. Each application for a manufactured home park shall be accompanied by a detailed site development plan incorporating the regulations established herein. The plan shall be drawn to scale and indicate the following:
  - A. Location and topography of the proposed manufactured home park, including adjacent property owners and proximity to federal and state highways, and to county, township, or city roads;
  - B. Exterior and interior property or individual lot lines with dimensions and square footage of the proposed park;
  - C. Location and dimensions of all easements and right-of-ways;
  - D. Proposed lot layout, including parking and recreational areas;
  - E. General pedestrian access or transportation plan;
  - F. General utility, water, and sewer plan with proximity and proposed connection to municipal and/or private utilities; and
  - G. Site drainage plan and development impact on culverts, etc.

4. Certification of compliance with all ordinances and regulations regarding manufactured home park licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations.

Section 919     Manufactured Home Regulations within a Manufactured Home Park

1. Manufactured home developments should be located to avoid the need for excessive traffic movement from the park to pass through an existing single-family residential area or area suitable for future single-family residential development; and
2. Access and Right-of-way Requirements:
  - A. All manufactured home spaces must be served from internal private right-of-ways within the manufactured home park and there shall be no direct access from a manufactured home space to a public right-of-way;
  - B. Internal private right-of-ways must be graveled at a minimum and kept in good repair to prevent excessive potholes or pooling of water;
  - C. A minimum of two (2) off right-of-way parking spaces shall be provided for each manufactured home lot; guest parking of one (1) parking space per five (5) manufactured home spaces shall be interspersed throughout the manufactured home park;
  - D. No internal private right-of-way access to public right-of-ways shall be located closer than one hundred (100) feet to any public right-of-way intersection;
  - E. Stop signs shall be placed at all public right-of-way intersections and Yield signs placed appropriately on internal private right-of-way;
  - F. Entrance to manufactured home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such public roads; and
  - G. Travel surfaces should be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of traveled way with twelve (12) feet minimum moving lanes for collector roads, twelve (12) feet minimum moving lanes for minor roads, and eight (8) feet minimum lanes for parallel parking.
3. Other Requirements:
  - A. Manufactured homes may be of single or multiple sections and shall not be less than fourteen (14) feet as assembled on the site, as measured across the narrowest portion;

- B. Manufactured homes shall be skirted with materials that are not highly combustible. The skirting shall be installed around the perimeter of the home from the chassis of the manufactured home to the prevailing grade;
- C. The hitch shall be removed;
- D. All electric service shall be underground;
- E. Each manufactured home lot shall be connected to a sanitary sewer system and central water system including individual utility service lines and valves as approved by the Zoning Administrator or their designee;
- F. If individual refuse collection points are not available, each manufactured home park shall provide screened areas or enclosed containers accessible for refuse collection of an adequate size for the number of units served, and shall provide for the disposal of such refuse on a regularly scheduled basis;
- G. Manufactured homes shall be anchored to the ground to resist tipping and lateral movement in the manner contemplated by the manufactured design;
- H. Not less than ten (10) percent of the gross site area shall be devoted and maintained as recreational facilities for occupant needs;
- I. No manufactured home shall occupy more than fifty (50) percent of the area of the lot on which it is situated;
- J. In accordance with Section 921 a landscaped buffer area of ten (10) feet in width shall be provided and maintained around the perimeter of the park, except where the park abuts a public right-of-way then the buffer shall be thirty (30) feet. This does not include those places where walks and drives penetrate the buffer;
- K. The manufactured home shall meet or exceed the federal Manufactured Home Construction and Safety Standards (HUD code); and
- L. Additional development requirements may be prescribed as conditions for approval when determined to be necessary to ensure protection of the neighboring property's character, compatibility with land uses, and health and safety of manufactured home park occupants.

Section 921      Traffic Visibility

1. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
2. Structures, perennial or similar vegetation planted on or immediately adjacent to a road right-of-way public 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.



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## **ARTICLE 10 HIGHWAY COMMERCIAL DISTRICT (HC)**

### Section 1001 Intent

The intent of the Highway Commercial District (C) is to provide commercial areas for those establishments that can function most satisfactorily in an area related to a rural or municipal fringe environment requiring major vehicular circulation routes and off right-of-way parking and loading due to the nature of the merchandise handled and the display space required.

### Section 1003 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in a Highway Commercial District (C):

1. Arcades;
2. Bars;
3. Cannabis Establishment – pursuant to Section 1325 Cannabis Establishment Regulations
4. Day care centers;
5. Financial institutions;
6. Funeral homes;
7. Garages, public;
8. Gasoline stations;
9. Golf courses;
10. Governmental services;
11. Historic sites;
12. Hotels;
13. Indoor archery/shooting ranges;
14. Lockers;
15. Manufacturing, light;
16. Motels;
17. Open sales areas;
18. Parks;
19. Repair shops, auto-body;
20. Repair shops, motor vehicle;
21. Restaurants;
22. Restaurants, drive-in;
23. Restaurants, in-house;
24. Retail sales;

25. Self-storage warehouses;
26. Service establishments;
27. Theaters;
28. Utility facilities;
29. Veterinary clinics;
30. Warehousing facilities; and
31. Wholesale sales.

Section 1005 Permitted Accessory Uses and Structures

Those accessory uses and structures normally appurtenant to the permitted principal uses and structures shall be permitted in a Highway Commercial District (C) when established in conformance within the space limits of this district.

1. Signs, banner;
2. Signs, directional off-site;
3. Signs, directional on-site;
4. Signs, easement and utility;
5. Signs, flag;
6. Signs, name and address plate;
7. Signs, on-site; and
8. Signs, real estate.

Section 1007 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 a Highway Commercial District (C):

1. Adult entertainment;
2. Agricultural fertilizer and chemical manufacturing, sales, and applications;
3. Agricultural product processing;
4. Amusement parks; and
5. Asphalt plants;
6. Buying stations;
7. Campgrounds;
8. Concrete plants;
9. Construction services;
10. Dwellings, single-family;
11. Dwellings, two-family;

12. Grain elevators;
13. Manufacturing;
14. Manufacturing, distribution, sale, or storage of flammable, combustible, or hazardous material;
15. Outdoor shooting/archery ranges.
16. Sale and auction yards and barns;
17. Salvage yards;
18. Sanitary landfills and restricted use sites, permitted by DENR;
19. Signs, off-site, pursuant to Article 12;
20. Swimming pools;
21. Tank farms;
22. Towers;
23. Truck or equipment terminals; 24. Veterinary services; and
25. Wind energy systems.

Section 1009 Classification of Unlisted Uses

In order to insure 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 Highway Commercial District (C) shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 1011 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 1009 shall be prohibited.

Section 1013 Minimum Lot Requirements

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

Section 1015 Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. A front lot line, or lot frontage, is measured from the nearest edge of the right of way line. This Section shall apply to all buildings and structures, including but not limited to loading docks, decks, patios, and covered areas:

1. There shall be a front yard of not less than a depth of one hundred (100) feet;
2. There shall be a rear yard of not less than a depth of fifty (50) feet; and

3. Each side yard shall be not less than twenty-five (25) feet.

Section 1017    Traffic Visibility

1. A traffic visibility triangle as defined herein shall be maintained at all road intersections, public and private, driveways, railway crossings, or similar situation as determined by the Zoning Administrator; and
2. Structures, perennial or similar vegetation planted on or immediately adjacent to a road right-of-way public 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.

## **ARTICLE 11 PLANNED UNIT DEVELOPMENT (PUD)**

### Section 1101 Intent

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

1. In accordance with the comprehensive plans of the county, including all plans for redevelopment and renewal;
2. Composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the county;
3. So designed in its space allocation, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the county; and
4. A minimum of five (5) acres in land area.

### Section 1103 Application Procedure

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit to the County Planning Commission a site plan for the proposed planned unit development. The plan shall indicate:
  - A. The location and extent of the proposed planned unit development, including its relationship to surrounding properties;
  - B. The exact nature and extent of improvements to be developed or erected upon the tract, including contoured site plans, building plans and elevations, and plans for landscaping and paved areas, transportation patterns, and water and sewer services; and
  - C. Such other information as may be required by the County Planning Commission to determine if the proposed planned unit development is consistent with the intent of the district.

2. The County Planning Commission shall, within sixty (60) days of receiving the plan for the proposed planned unit development, consider such plan at a minimum of one public hearing pursuant to Section 1509. Upon consideration, the County Planning Commission shall inform the applicant in writing of its approval or denial of the plan. In the event of denial, the Commission shall inform the applicant of the reason(s) for denial, including any recommended modifications in the plan, which would cause the Commission to reconsider.
3. Upon approval of the plan by the County Planning Commission, it shall forward its written recommendations to the Board of County Commissioners along with a copy of the approved plan, that the tract be designated a Planned Unit Development (PUD) by amendment of the Official Zoning Map.
4. Upon receiving the County Planning Commissioner's written recommendation, the Board of County Commissioners shall consider the proposed development and possible amendment of the Official Zoning Map in accordance with Section 2201.
5. Following the amendment of the Official Zoning Map by the Board of County Commissioners, the County Zoning Administrator may, upon proper application, issue a building permit for construction of the planned unit development in accordance with the approved plan.

#### Section 1105    Subsequent Performance

Following issuance of a building permit for the planned unit development by the Zoning Administrator, the applicant shall begin construction within a period of six (6) months. Failure to do so shall invalidate the building permit. Construction shall follow precisely the plan approved by the County Planning Commission to which modifications may be granted only by the County Planning Commission upon the filing of an amended plan. Failure to follow the approved plan on the part of the applicant or their agent shall be considered a violation of this Ordinance punishable as herein prescribed.

## **ARTICLE 12 SIGN REGULATIONS**

#### Section 1201    Off-Site Signs

Off-site signs established as conditional uses pursuant to the provisions set forth in this Section, SDCL 31-29, and ARSD 70:04:03:

1. Sign(s) or sign structure(s) shall not exceed thirty (30) feet in height and sixty (60) feet in width;
2. The sign face(s) shall not exceed six hundred (600) square feet per site and direction of viewing;
3. A sign structure shall not be sited within a three hundred (300) feet of any other offsite sign intended to be read from the same road rights-of-way;

4. A sign shall not be within a three hundred (300) foot radius of any other off-site sign intended to be read from a different road right-of-way;
5. No sign shall utilize blinking, revolving, or flashing lights;
6. No part of the sign structure or face shall be located in or intrude into a required yard or public road right-of-way; and
7. The light from illuminated signs shall be shielded or directed to avoid adverse effect on surrounding premises or the vision of motor vehicle operators traveling public roads.

Section 1203 Off-Site Sign Exemptions

The following off-site signs shall be exempt from this Section:

1. Personal or nonprofit directional or address signs less than thirty-two (32) square feet;
2. On site signs or signs placed on property owned by and adjacent to the advertised business;
3. Political campaign signs provided the signs are removed within five (5) days after the election; and
4. Signs advertising special events, such as auctions and sales, shall be exempt for a seven (7) day period prior to and during the event and shall be removed within seven (7) days after the event.

Section 1205 Prohibited Signs

The following signs shall be prohibited:

1. Vehicle or trailer signs which display advertising to the public right-of-way; and
2. Signs that imitate an official traffic sign or are of a size, location, movement content, coloring or manner of illumination that may be confused as a traffic control device or which may conceal any traffic control device or directional sign.

Section 1207 Maintenance and Removal

All off-site signs shall be maintained in good structural and aesthetic condition at all times. Any abandoned, unsafe or unsightly sign shall be renovated or removed within sixty (60) days of written notice. If the owner of said sign fails to comply with the written order the County may remove such sign at the owner's expense.



## ARTICLE 13 SUPPLEMENTARY DISTRICT REGULATIONS

### Section 1301   Accessory Buildings

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

### Section 1303   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 1305   Manufactured 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 (nonhuman habitation) purposes.

### Section 1307   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 1309 Manufactured Home Performance Standards II

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 minimum width of the main body of the manufactured home as assembled on the site shall not be less than fourteen (14) feet, 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 1311 Existing Trailer Park Performance Standards

Prior to any changes, replacement, modification, addition, or increase to any existing Trailer Parks, as defined herein, the owner of said property shall provide, at a minimum, a site development plan pursuant to Section 1523.

The Zoning Administrator and Planning Commission shall review the plan. No activity as mentioned herein shall continue until the Planning Commission has approved said plan. The Planning Commission shall have the discretion to review the plan at a meeting format of their choice.

In addition, existing Trailer Parks shall comply with the following standards:

1. The minimum distance required for the separation of a manufactured home from side and rear lot lines shall be ten (10) feet. In no case shall a manufactured home be closer than twenty (20) feet from another manufactured home;
2. The minimum setback distance required from a public right-of-way shall be thirty (30) feet; and
3. Accessory structures shall be located no closer than three (3) feet from the lot line.

#### Section 1313 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:

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

#### Section 1315 Quarries and/or Mining

All mining activity shall be conducted in accordance with SDCL 45-6.

#### Section 1319 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 1321 Campgrounds

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

Section 1323 Towers

For the purposes of this ordinance any tower of less than seventy five (75) feet in height and painted with a neutral color shall be an accessory use and not subject to the conditional use provisions described herein.

Section 1325 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 1305 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 1327 Cannabis Establishments Regulations– Refer to Brule County Ordinance 2021-2 for further license and operational regulations.

Maximum Number of Cannabis Establishments.

1. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
2. Brule County shall allow up to one cannabis cultivation facility, one cannabis testing facility, one cannabis product manufacturing facility and one cannabis dispensary, provided the time, place, and manner of said dispensaries comply with this ordinance.

Required Separation Distances

1. A cannabis establishment shall be located not less than 1,000 feet from a public or private school existing before the date of the cannabis establishment application;
2. A cannabis establishment shall be located not less than 1,000 feet from churches, residences, public parks, libraries, daycare facilities, other cannabis establishments, and medical facilities to include clinics, congregate housing and nursing homes existing before the date of the cannabis establishment application;
3. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:

- a. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
4. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the establishment is proposed

#### Prohibited Operations

1. Permanent or temporary establishment are prohibited in all other zoning districts and not eligible for a home or farm occupation use.
2. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

#### Permit Issuance

The zoning Administrator is authorized to issue permits (building/use) for cannabis establishments subject to following:

1. Submission of a site plan containing the following:
  - a. Any information required for applicable building permit,
  - b. Ingress and egress plan
  - c. Parking plan
  - d. Lighting plan (including security lighting)
  - e. Screening/security fencing plan,
  - f. Refuse plan;
  - g. Hours of Operation;
  - h. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
2. Documentation of ability to meet setback/separation requirements.
3. Documentation of State Licensure:

## ARTICLE 14 NONCONFORMANCE

### Section 1401    General

Within the districts established by this Ordinance or amendments that may later be adopted, there exists

1. Lots;
2. Structures;
3. Uses of land and structures; and
4. 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. A non-conforming lot may be expanded to less than the required ten acre lot size as long as the acreage of the lot that acres are taken from remains ten acres or more.

Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, 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.

### Section 1403    Nonconforming Lots of Record

In any district in which, permitted principal uses and structures and conditional uses are permitted, these structures 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. This provision shall apply even though such lots fail to meet requirements for area or width, or both, that are generally applicable 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. Such lots must be in separate ownership, not of continuous frontage with other lots in the same ownership, and/or not recorded prior to January 1, 1995. Variance of other yard requirements shall be obtained only through action of the Planning Commission and Board of Adjustment, pursuant to Sections 1607 and 1707.

### 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. Any structure specifically identified as a permitted principal use in a district, under the terms of this Ordinance, shall be deemed a conforming use without further action. Said structure shall be subject to all remaining provisions of this Ordinance. As a conforming use the structure is entitled to the administrative and legislative provisions identified herein;
2. 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;
3. A structure shall be allowed to expand by no more than twenty five (25) feet provided such expansion does not further extend the nonconformity beyond the nonconforming plane of the existing structures;
4. 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
5. 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 or facility;
3. A structure shall be allowed to expand by no more than twenty five (25) feet provided such expansion does not further extend the nonconformity beyond the nonconforming plane of the existing structures;
4. If no structural alterations are made, any nonconforming use of a structure or structure and premises may, as a conditional use, 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;
5. 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;
6. 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
7. 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 conditional use 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. As a conforming use the structure is entitled to the administrative and legislative provisions identified herein.

Any use subject to the provisions of this section shall apply for a conditional use and receive approval prior to constructing, erecting, placing, or siting any structure directly associated with the identified conditional use.

<b>Permitted Principal Uses</b>	<b>Conditional Uses</b>	<b>Nonconforming</b>
Allowed 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 ADMINISTRATIVE PROCEDURE AND ENFORCEMENT**

### Section 1501 Brule County Zoning Administrator

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Brule 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. The Zoning Administrator shall report all actions to the Planning Commission and County Commission at the next general meeting of each.

### Section 1503 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.

### Section 1505 Planning Commission Appointment and Terms

The Brule County Commission shall appoint a Planning Commission, as provided in SDCL 11-2-2. The County Planning Commission shall consist of an odd number of members, including at least one (1) county commissioner. The term of each of the appointed members of the County Planning Commission shall be for three (3) years; provided, that when the Planning Commission is first appointed, the lengths of the terms shall be varied so that no more than one-third (1/3) of the terms shall expire in the same year. Any appointed member of the County Planning Commission may be removed for cause, after hearing prior to the expiration of their term by a majority vote of the elected members of the Board of County Commissioners. Administrative officials of the county may be appointed as ex officio members of the commission.

The Planning Commission shall adopt rules necessary for the conduct of its affairs and keeping with the provisions of this Ordinance including the selection of a Chairperson and Vice-Chairperson. The Commission shall have a quorum present prior to conducting official business. A quorum shall be defined as fifty one (51) percent of the Commission's total membership. The term of the Chairman and Vice-Chairman shall be for one (1) year. The Planning Commission shall keep a record of all proceedings. Meetings shall be regularly scheduled and held at the call of the Chairman, at such other times as the

Planning Commission may determine, but in no event, shall the Commission meet less than once (1) every three (3) months. All meetings of the Planning Commission shall be open to the public except as provided by SDCL 1-25-5. Those meetings designated as public hearings shall allow for testimony from all interested parties.

Section 1507 Planning Commission Voting Requirements

The Planning Commission shall keep minutes of its proceedings, 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 filed with the Director of Equalization. All votes shall be by simple majority of the members present. An abstention vote shall not be considered as a vote in the positive or negative. The Planning Commission shall adopt from time to time, additional regulations, as it may deem necessary to carry appropriate provisions of this Ordinance into effect. No official action or vote shall be acted upon without a quorum present in accordance with Section 1505.

Section 1509 Planning Commission Amendment and Rezoning Duties

Upon notification of a request for an amendment or rezone or any part thereof the Planning Commission shall schedule a public hearing. The Commission shall discuss the application and formulate a recommended action. The recommendation should be in the form of a motion clearly stating the Commission's recommended action. The Commission shall forward its recommendation to the County Commission at least ten (10) days in advance of the County Commission meeting at which the application is being considered.

Section 1511 Planning Commission Appeal, Variance, and Conditional Use Duties

The Planning Commission shall review all applications for appeals, variances, or conditional uses at an official public hearing of the Commission. Notice of the time and place of the hearing shall be given pursuant to Section 1603 (3-5). Any person may appear and support or protest the pending action. Upon receipt of an appeal the Commission shall discuss the appeal and formulate a decision. In hearing conditional use and variance applications the Commission shall discuss the application and formulate a recommended action. The recommendation should be in the form of a motion clearly stating the Commission's recommendation. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

Section 1513 Board of Adjustment Appointment and Terms

The Brule 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 appeals from the Planning Commission.

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.

All meetings of the Board of Adjustment shall be open to the public. Those meetings designated as public hearings shall allow for testimony from all interested parties. The Board, acting in zoning 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 filed in the office of the County Auditor by 5:00 P.M. the following business day and shall be a public record.

Section 1515                    Board of Adjustment Voting Requirements

In specific cases to avoid unwarranted hardship, the Board of Adjustment may overrule the Zoning Administrator or Planning Commission and grant conditional uses or variances in accordance with the terms of this ordinance. Such action by the Board of Adjustment shall be made upon an affirmative vote of two-thirds (2/3) (4 of 5) of the full membership of the Board of Adjustment. For the purposes of this Section, unwarranted hardship shall constitute an unreasonable deprivation of use as distinguished from the mere grant of a privilege.

Section 1517    Board of Adjustment Appeal, Variance, and Conditional Use Duties

Upon notification of a request for an appeal, variance, conditional use, or any part thereof the Board of Adjustment shall schedule a public hearing. Notice of the time and place of the hearing shall be given pursuant to Section 1703 (5-7). Any person may appear and support or protest the pending action. The Board shall discuss the application and formulate a decision. The decision should be in the form of a motion clearly stating the Board's decision and the reasons supporting said decision. All requests shall be in accordance with Articles 16-18. Appeals of a Board decision shall be done pursuant to Section 1901.

Section 1519    County Commission Amendment and Rezoning Duties

The County Commission may amend, supplement, change, modify, or repeal any regulation, restriction, boundary, or enforcement provision established in the zoning ordinance or Zoning Map. The County Commission shall forward a copy of the proposed changes to the Planning Commission for public review and comment pursuant to Section 1609. Upon receipt of the comments from the Planning Commission the County Commission shall provide a notice of public hearing pursuant to Section 2001. The County Commission shall thereafter either adopt or reject such amendment, supplement, change, modification, or repeal. If adopted the County Commission shall publish a notice of fact of adoption once in a legal newspaper of the County and take effect on the twentieth day after its publication. (SDCL 11-2-30)

Section 1521    Building Permits

No construction shall commence on any building or structure, which meets any one (1) of the criteria listed below without a permit therefore, issued by the Zoning Administrator. A building permit shall not 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. All building permits are subject to the appeal process; therefore, any work begun prior to the five (5) day appeal period shall be at the owner's risk.

Building permits are required in the following instances:

1. For any structure or building in which the structure or building is erected, partially erected, moved, added to, or structurally altered;
2. For any structure or building in which the use for that structure or building is significantly changed; or

3. For any structure or building, regardless of cost, if additional land or area is required for the improvements to be sited on.

An exemption/exception from a building permit does not automatically preclude the activity from the remaining zoning regulations. Exceptions to building permits shall be:

1. Remodeling, improvements, or maintenance provided such activity does not include structural alterations or require additional land or space;
2. Concrete slabs on grade;
3. Fences, corrals, and windbreaks pursuant to Section 517;

Section 1523 Applications for Building Permits, Conditional Uses, Variances, and Amendments

All applications for building permits, conditional uses, variances, amendments, and rezoning must be signed or approved in writing by the owner of record. In the event the owner of record has a binding purchase agreement contingent on the approval of the building permit, conditional use, or variance the potential purchaser may submit and sign all documents required for application. All applications for building permits shall be accompanied by a site plan.

The site development plan shall be drawn to scale and indicate the following:

1. Location and topography of the proposed structure(s), including adjacent property owners and proximity to federal, state highways, and to county, township, or city roads;
2. A north arrow;
3. The actual dimensions and shape of the lot to be built upon;
4. 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;
5. Property lines and square footage of the proposed structure(s);
6. Location and dimensions of all easements and right-of-ways;
7. General road and pedestrian walkway plan;
8. General utility and sewer plans with proximity and proposed connection to central or individual services; and
9. Site drainage plan and development impact on culverts, etc.

Refer to document entitled Site Plan Requirements for a detailed example of a site plan.

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; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this Ordinance. The Zoning Administrator shall return one (1) copy of the application to the applicant after they shall have marked such copy either as approved or disapproved and attested to 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 (1) copy of the application, similarly marked. The issuance of a building permit shall in no case be construed as waiving any provisions of this Ordinance.

#### Section 1525 Expiration of Building Permits, Conditional Uses and Variances

If the work described in any building permit, conditional use, or variance has not begun within one hundred eighty (180) days, or been completed within two (2) years from 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, together with notice that further work, as described in the canceled permit, shall not proceed unless and until a renewed permit has been obtained at no additional cost unless substantial changes have been made to the initial permit application.

#### Section 1527 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 2103 of this ordinance.

#### Section 1529 Schedule of Fees, Charges, and Expenses

The Brule County Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for 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 Brule 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 1531 Building Permit in a Conspicuous Place

All building permits issued by the Zoning Administrator must be placed in a conspicuous location on the building site for the duration of the construction of work described.

#### Section 1533 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.

Section 1535    Bad Actor Legislation

The Brule County Commission may reject an application for any permit filed for a building permit, variance, conditional use, amendment, rezoning, 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.

**ARTICLE 16 PLANNING COMMISSION**

Section 1601    Powers and Duties

The Planning Commission shall have the power to hear requests for conditional uses, variances, amendments, change in zone, and appeals of a decision rendered by the Zoning Administrator or other official actions.

Section 1603    Appeals

Any decision rendered by the Zoning Administrator may be appealed to the Planning Commission. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Planning Commission, 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 a court of competent jurisdiction on application or notice to the officer for whom the appeal is taken and on due cause shown.

The Planning Commission 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 the Zoning Administrator 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. Prior to hearing an appeal the following requirements shall be completed.

1. The applicant or any other person aggrieved by the decision of the Zoning Administrator shall file a written appeal with the Zoning Administrator within five (5) working days of the decision;
2. The Zoning Administrator or from whom the appeal is taken shall forthwith transmit to the Planning Commission all the papers constituting the record upon which the action appealed was taken;
3. Notice of the hearing date shall be given at least ten (10) days in advance by publication in a legal newspaper of the county;

4. Written notice shall be sent to the appellant, applicant, and all owners of real property in accordance with the following provisions:
  - A. Projects within lands zoned Agriculture shall notify all property owners lying within two thousand six hundred forty (2,640) feet of the property on which the appeal is pending, if a particular piece of property is in question.
  - B. Projects within lands not zoned Agriculture shall notify all property owners lying within one thousand three hundred twenty (1,320) feet of the property on which the appeal is pending, if a particular piece of property is in question.

The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;

5. A notification sign shall be posted on the property upon which action is pending at least seven (7) days prior to the hearing date. Such signs shall be placed along the property's access frontage so as to be visible from the nearest public access point. If a property does not have a road frontage, then such signs shall be placed upon the closest available right-of-way and upon the property. Said signs shall be not less than one hundred and eighty-seven (187) square inches in size. It shall be unlawful for any person to remove, mutilate, destroy, or change such posted notice prior to such hearings;
6. The Zoning Administrator or whomever shall present their decision to the Planning Commission for review; and
7. The Planning Commission shall uphold, overrule, or amend the decision pending before the Commission.

#### Section 1605   Conditional Uses

The Planning Commission shall have the power to hear and make recommendations, in accordance with the provisions of this Ordinance, upon conditional uses. The Commission shall not review a conditional use request unless and until all documents required for said use have been satisfactorily completed and all required fees have been paid in full. The Planning Commission shall review all conditional use applications at an official public hearing of the Commission. Prior to hearing a request for a conditional use the following requirements shall be met.

1. The applicant shall specifically cite, within the application the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested;
2. Notice of public hearing shall be given, as in Section 1603 (3-5);
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
4. The Planning Commission shall make a finding and recommendation that it is empowered under the section of this Ordinance described in the application, to include:



- A. Recommend granting of the conditional use;
  - B. Recommend granting with conditions; or
  - C. Recommend denial of the conditional use.
5. Before any conditional use is decided, the Planning Commission 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 right-of-way parking and loading areas where required; with particular attention to the items in (A) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district;
  - C. Refuse and service areas, with particular reference to the items in (A) and (B) above;
  - D. Utilities, with reference to locations, availability, and compatibility;
  - E. Screening and buffering with reference to type, dimensions, and character;
  - F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
  - G. Required yards and other open spaces; and
  - H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest.

Section 1607   Variances

The Planning Commission shall have the power to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to recommend approval only in accordance with this ordinance. The Commission shall not review a variance unless and until all documents required for application for said request have been satisfactorily completed and all required fees have been paid in full.

- 1. No such variance shall be recommended for approval by the Planning Commission unless it finds:

- A. The strict application of the ordinance would produce undue hardship;
  - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  - C. 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
  - D. 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 recommended for approval unless the Planning Commission finds 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 recommendation of approval concerning a variance from the terms of this ordinance shall not be founded by the Planning Commission unless and until:
    - A. 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;
    - B. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
    - C. The special conditions and circumstances do not result from the actions of the applicant; and
    - D. The granting of 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 nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
  5. Notice of public hearing shall be given, as in Section 1603 (3-5).
  6. The public hearing shall be held. Any party may appear in person for by agent or by attorney.
  7. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a variance; the Commission shall further make a finding that the reasons set forth in the application justify the recommendation of granting the variance, and

the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Planning Commission 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.

8. In recommending approval of any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance.
9. Under no circumstances shall the Planning Commission recommend granting 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.

The recommendation should be in the form of a motion clearly stating the Commission's recommended action. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

#### Section 1609 Amendments and Rezoning

The Planning Commission shall have the power to hear and make recommendations, in accordance with provisions of this Ordinance, on requests for amendment or change in zoning. A petition for an amendment or change in zoning will not be acted upon until:

1. All documents required for application for said request have been satisfactorily completed and all required fees have been paid in full.
2. The individual petitioner provides a completed amendment or change in zone request. Said request must clearly state:
  - A. Special conditions and circumstances exist which require the land to be rezoned;
  - B. The special conditions and circumstances do not result from the actions of the applicant; and
  - C. The granting of the amendment or change in zoning will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the area.
3. Notice of public hearing shall be given, as in Section 1603 (3-5).
4. The public hearing shall be held. Any party may appear in person or by agent or attorney.
5. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for an amendment or change in zone, to include:
  - A. The reasons set forth in the application justify a recommendation to approve the amendment or change in zone;

- B. The amendment or change in zone will make possible the reasonable use of the land, building, or structure;
  - C. A recommendation to grant the amendment or change in zone will be in harmony with the general purpose and intent of this ordinance; and
  - D. A recommendation of approval will not be injurious to the neighborhood, or otherwise detrimental to the public welfare as presented and testified to by the applicant.
6. No petition for amendment or change in zone shall be recommended for approval unless the Planning Commission finds that the condition, situation or the intended use of the property concerned is unique, required, or necessary as to make reasonably practicable the amendment or change in zone.
7. Before any amendment or petition for rezoning is recommended for approval, the Planning Commission shall make written findings certifying compliance with:
- A. The Comprehensive Plan;
  - B. Specific rules governing land uses;
  - C. Zoning district regulations; and
  - D. Satisfactory provision and arrangement has been made concerning the following, where applicable:
    - 1. Certification of compliance with all ordinances and regulations regarding licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations;
    - 2. 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;
    - 3. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and the economic, noise, glare or odor effects of the amendment or rezone on adjoining properties and properties generally in the district;
    - 4. Refuse and service areas, with particular reference to the items in (A) and (B) above;
    - 5. Utilities, with reference to locations, availability, and compatibility;
    - 6. Screening and buffering with reference to type, dimensions, and character;

7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
  8. Required yards and other open spaces; and
  9. General compatibility with adjacent properties and other property in the district.
8. In recommending approval of any petition for amendment or change in zone, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance.

The recommendation should be in the form of a motion clearly stating the Commission's recommendation. The Commission shall forward its recommendation to the County Commission at least ten (10) days in advance of the County Commission meeting at which the application is being considered.

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## ARTICLE 17 BOARD OF ADJUSTMENT

### Section 1701 Powers and Duties

The Board of Adjustment shall have the power to hear requests for variances, conditional uses and appeals of a decision rendered by the Zoning Administrator or Planning Commission.

### Section 1703 Appeals

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 the Zoning Administrator or Planning Commission 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 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, 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 a court of competent jurisdiction on application or notice to the officer for whom the appeal is taken and on due cause shown. Prior to hearing an appeal the following requirements shall be completed.

1. The County, appellant, and Planning Commission shall act upon appeals pursuant to Section 1901.
2. The Planning Commission shall have reviewed the application pursuant to Section 1603 of this Ordinance;
3. The applicant or any other person aggrieved by the decision of the Zoning Administrator or Planning Commission shall file a written appeal with the Zoning Administrator within five (5) working days of the decision;
4. The Zoning Administrator or Planning Commission secretary 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;
5. Notice of the hearing date shall be given at least ten (10) days in advance by publication in a legal newspaper of the county;
6. Written notice shall be sent to the appellant, applicant, and all owners of real property in accordance with the following provisions:
  - A. Projects within lands zoned Agricultural shall notify all property owners lying within two thousand six hundred forty (2,640) feet of the property on which the appeal is pending, if a particular piece of property is in question.

- B. Projects within lands not zoned Agricultural shall notify all property owners lying within one thousand three hundred twenty (1,320) feet of the property on which the appeal is pending, if a particular piece of property is in question.
- C The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
- 7. A notification sign shall be posted on the property upon which action is pending at least seven (7) days prior to the hearing date. Such signs shall be placed along the property's access frontage so as to be visible from the nearest public access point. If a property does not have a road frontage, then such signs shall be placed upon the closest available right-of-way and upon the property. Said signs shall be not less than one hundred and eighty seven (187) square inches in size. It shall be unlawful for any person to remove, mutilate, destroy, or change such posted notice prior to such hearings;
- 8. The Zoning Administrator or Planning Commission Chairperson shall present their decision to the Board of Adjustment for review; and
- 9. The Board of Adjustment shall uphold, overrule, or amend the decision pending before the Board.
- 10. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction pursuant to Section 1901.

Section 1705    Conditional Uses

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. Prior to hearing a request for a conditional use the following requirements shall be met.

- 1. The applicant shall specifically cite, within the application the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested;
- 2. The Planning Commission has reviewed the application pursuant to Section 1605 of this Ordinance;
- 3. Notice of public hearing shall be given, as in Section 1603 (3-5);
- 4. The public hearing shall be held. Any party may appear in person, or by agent or attorney;



5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to:
  - A. Grant the conditional use;
  - B. Grant with conditions; or
  - C. Deny the conditional use.
  
6. Before any conditional use is issued, 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 right-of-way parking and loading areas where required; with particular attention to the items in (A) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district;
  - C. Refuse and service areas, with particular reference to the items in (A) and (B) above;
  - D. Utilities, with reference to locations, availability, and compatibility;
  - E. Screening and buffering with reference to type, dimensions, and character;
  - F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
  - G. Required yards and other open spaces; and
  - H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest.

Section 1707   Variances

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:
  - A. The strict application of the ordinance would produce undue hardship;
  - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  - C. 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
  - D. 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. 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;
  - B. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
  - C. The special conditions and circumstances do not result from the actions of the applicant; and
  - D. The granting of 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 nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
5. The Planning Commission has reviewed the application pursuant to Section 1607 of this Ordinance.
6. Notice of public hearing shall be given, as in Section 1603 (3-5).
7. The public hearing shall be held. Any party may appear in person for by agent or by attorney.
8. 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.
9. 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 2103 of this ordinance.
10. 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.

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## ARTICLE 18 COUNTY COMMISSION

### Section 1801 Powers and Duties

The County Commission shall have the power to hear requests for rezoning and amendment of the Zoning Ordinance.

### Section 1803 Amendments or Changes in Zone

The County Commission shall have the power to hear and decide, in accordance with provisions of this ordinance, petitions for amendment or change in zoning. A petition for change in zoning will not be decided until:

1. The individual petitioner provides a completed amendment or change in zone request. Said request must clearly state:
  - A. Special conditions and circumstances exist which require the land to be rezoned;
  - B. The special conditions and circumstances do not result from the actions of the applicant; and
  - C. The granting of the amendment or change in zoning will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the area.
2. The Planning Commission has reviewed the application pursuant to Section 1609 of this Ordinance.
3. Notice of public hearing shall be given, as in Section 1603 (3-5).
4. The public hearing shall be held. Any party may appear in person or by agent or attorney.
5. The County Commission shall make findings that the requirements of this Section have been met by the applicant for an amendment or change in zone to include:
  - A. The reasons set forth in the application justify the granting of the amendment or change in zone;
  - B. The amendment or change in zone will make possible the reasonable use of the land, building, or structure;
  - C. The granting of the amendment or change in zone will be in harmony with the general purpose and intent of this ordinance; and
  - D. Approval of the request will not be injurious to the neighborhood, or otherwise detrimental to the public welfare as presented and testified to by the applicant.

6. No petition for amendment or change in zone shall be authorized unless the County Commission finds that the condition, situation or the intended use of the property concerned is unique, required, or necessary as to make reasonably practicable the amendment or change in zone.
7. Before any amendment or petition for rezoning is approved, the County Commission shall make written findings certifying compliance with:
  - A. The comprehensive plan;
  - B. Specific rules governing land uses;
  - C. Zoning district regulations; and
  - D. Satisfactory provision and arrangement has been made concerning the following, where applicable:
    1. Certification of compliance with all ordinances and regulations regarding licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations;
    2. 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;
    3. Off right-of-way parking and loading areas where required; with particular attention to the items in (D(1)) above and the economic, noise, glare or odor effects of the amendment or rezone on adjoining properties and properties generally in the district;
    4. Refuse and service areas, with particular reference to the items in (1) and (2) above;
    5. Utilities, with reference to locations, availability, and compatibility;
    6. Screening and buffering with reference to type, dimensions, and character;
    7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
    8. Required yards and other open spaces; and
    9. General compatibility with adjacent properties and other property in the district.

8. In granting any petition for amendment or change in zone, the County Commission 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 amendment or change in zone is granted, shall be deemed a violation of this ordinance and punishable under Section 2103 of this ordinance.

#### Section 1805

If the County Commission or Planning Commission has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of the Brule County Zoning Ordinance or if new territory for which plans or controls have not been adopted is annexed, the County Commission may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

1. No interim ordinance may halt, delay, or impede a presumptively valid application filed prior to the effective date of the interim ordinance. The County Commission may extend the interim ordinance after a public hearing if necessary based upon Section 2001 (1)(A)(B). The public hearing must be held at least 15 days but no more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing. The interim ordinance may be extended for the following conditions and durations:
  - A. Up to an additional 120 days following the receipt of the final approval or review by a federal, state or metropolitan agency when the approval is required by law and the review or approval has not been completed and received by the county at least 30 days before the expiration of the interim ordinance; or
  - B. Up to an additional 120 days following the completion of any other process required by a state statute, federal law, or court order, when the process is not completed at least 30 days before the expiration of the interim ordinance.

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## **ARTICLE 19 DUTIES ON MATTERS OF APPEAL**

### Section 1901 Duties of Zoning Administrator, Planning Commission, Board of Adjustment, 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, then the Planning Commission and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Planning Commission. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction.

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## ARTICLE 20 AMENDMENTS OR REZONING

### Section 2001   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. Any amendment or rezoning request shall be made in accordance with the provisions of Sections 1603, 1605, 1607, and 1609.

Prior to consideration of amending, supplementing, changing, modifying or repealing this ordinance by the governing body, notice of public hearings shall be provided as follows:

1. Notice of the hearing date shall be given at least ten (10) days in advance by publication in a legal newspaper of the county;
2. Written notice shall be sent to the appellant, applicant, and all owners of real property in accordance with the following provisions:
  - A. Projects within lands zoned Agriculture shall notify all property owners lying within two thousand six hundred forty (2,640) feet of the property on which the application is pending, if a particular piece of property is in question.
  - B. Projects within lands not zoned Agriculture shall notify all property owners lying within one thousand three hundred twenty (1,320) feet of the property on which the application is pending, if a particular piece of property is in question.
  - C. The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
3. A notification sign shall be posted on the property upon which action is pending at least seven (7) days prior to the hearing date. Such signs shall be placed along all along the property's road frontage so as to be visible from the road. If a property does not have a road frontage, then such signs shall be placed upon the closest available right-of-way and upon the property. Said signs shall be not less than one hundred and eighty seven (187) square inches in size. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearings;
4. The Planning Commission shall hold the Public Hearing, review the proposed amendment(s) with regards to Section 1609 and make recommendations to the County Commission;
5. Notice of the time and place of the County Commission hearing shall be given pursuant to Section 1603 (3-5);

6. The County Commission shall hold the Public Hearing, review the proposed amendment(s) with regards to Section 2001 and by resolution or ordinance deny or pass the recommendations;
7. If the changes are adopted the Planning Commission shall prepare a complete copy of the changes;
8. Once the summary is prepared the States Attorney shall review the complete copy and forward the changes to the County Auditor for publishing; and
9. The changes must be published once in the in the County's legal newspaper(s). The changes will take effect 20 days after publication.

## **ARTICLE 21 VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES**

### Section 2101 Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. 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 2103.

### Section 2103 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 subject to any or all of the following:

1. A fine not to exceed two hundred (200) dollars for each violation;
2. Imprisonment for a period not to exceed thirty (30) days for each violation; or
3. By both fine and imprisonment; and
4. An action for civil injunctive relief, pursuant to SDCL 21-8.

In addition, all costs and expenses involved in the case shall be paid by the defendant; 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 violation of the Ordinance and be subject to the same 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, the Zoning Administrator or a designee as determined by the County Commission 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.

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## **ARTICLE 22 LEGAL STATUS PROVISIONS**

### Section 2201   Severability

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 2203   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 2205   Effective Date

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

***THIS PAGE RESERVED FOR FUTURE USE***