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## ARTICLE 12

### RURAL TRANSITIONAL DISTRICT (RT)

AN AMENDMENT AMENDING ORDINANCE 16  
REGARDING ARTICLE 12 AND ARTICLE 17, ARTICLE 18,  
ARTICLE 19, ARTICLE 21 & ARTICLE 25  
**ORDINANCE NO 2009 1PZ**

First Reading: 4-7-09

Second Reading: 4-6-10

Adoption Date: 5-8-10

#### Section 1201    Intent

The intent of Rural Transitional Districts (RT) is to protect un-developed and under developed lands lying within or adjacent to expected growth corridors from unstructured or incompatible land uses in order to preserve land best suited for planned development to ensure practicality and service delivery.

#### Section 1203    Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in a Rural Transitional District (RT):

1. Agriculture;
2. Historic sites;
3. Horticulture; and
4. Utility facilities.

#### Section 1205    Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in a Rural Transitional District (RT):

1. Accessory agricultural structures.
2. Customary water irrigation systems, other than manure irrigation equipment;
3. Farm drainage systems;
4. Home and farm occupations;
5. Shelterbelts;
6. Signs, banner;
7. Signs, directional off-site;

8. Signs, directional on-site;
9. Signs, easement and utility;
10. Signs, flag;
11. Signs, name and address plate;
12. Signs, on-site;
13. Signs, real estate;
14. Stock dams; and
15. Temporary/seasonal roadside stands.

#### Section 1207    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 Rural Transitional District (RT):

1. Dwellings, single family.
2. Individual septic or sewage treatment facilities, pursuant to Section 1513;
3. Manure irrigation;
4. Parks;
5. Portable processing plants;
6. Rural Developments, pursuant to Section 1219;
7. Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);
8. Spreading, injection, or other application of manure or animal waste generated by an Animal Feeding Operation, as defined herein, pursuant to Section 519(11)(12);
9. Temporary construction facilities; and

#### Section 1209    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 Rural Transitional District (RT) 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 1211 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 1213 Minimum Lot Requirements

1. The minimum lot area shall be twenty (20) acres;
2. The minimum lot width shall be five hundred (500) feet;
3. The Zoning Administrator may allow a smaller minimum lot requirement where a permit for a single-family home 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 18 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.

Section 1215 Minimum Yard Requirements

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

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;

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 1217    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.

#### Section 1219    Development Standards

1. All platted lots shall be part of planned development or subdivision;
2. All planned developments or subdivisions shall be platted with a minimum of four platted lots and recorded with the Register of Deeds;
3. The minimum lot area shall be one (1) acre;
4. The minimum lot width shall be two hundred (200) feet;
5. All yards must meet the following criteria, which shall apply to all buildings and structures, including decks, patios, and car ports:
  - a. Front yard of not less than a depth of thirty (30) feet;
  - b. Rear yard of not less than a depth of twenty (20) feet; and
  - c. Each side yard shall not be less than a width of ten (10) feet.
6. The proposed development must have controlled public road access;

7. Planned developments or subdivisions shall not be located within the 100-year floodplain;
8. All lots within a planned development or subdivision shall be served by a Department of Environment and Natural Resources approved water system;
9. A site plan and topographic maps shall be submitted with the building permit application, said plan and maps shall include, at a minimum:
  - a. Proposed site layout;
  - b. Storm water drainage;
  - c. Roads and streets, including ingress and egress; and
  - d. Water and sewer service.
10. Water and sewer or sanitary drainage systems shall be installed by certified plumber and shall comply with all applicable South Dakota Department of Environment and Natural Resources regulations.

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## ARTICLE 13

### PLANNED UNIT DEVELOPMENT (PUD)

#### Section 1301    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 1303    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 1809. 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 1305    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.

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## ARTICLE 14 SIGN REGULATIONS

### AN AMENDMENT AMENDING ORDINANCE 16 REGARDING ARTICLE 14 **ORDINANCE NO 2010 1PZ**

First Reading: 1-20-10

Second Reading: 2-2-10

Adoption Date: 4-12-10

#### Section 1401 Signs, Billboards, and Other Advertising Structures

Authority: Yankton County's authority to regulate signs, billboards and other advertising structures is specified in South Dakota Codified Law Ch. 31-29.

Intent: The purpose of this Section shall be to establish effective local regulation of outdoor advertising so as to promote the health, safety, and general welfare of those persons using and residing adjacent to public right-of-ways. The following regulations are intended to promote and preserve the natural aesthetics of Yankton County while providing for the convenience of the traveling public, for the promotion of locally available facilities, goods, and services, and to minimize negative impacts on property adjacent to public right-of-ways.

#### Section 1403 General Provisions:

In any zoning district where signs are allowed, a Yankton County Sign Permit shall be required unless otherwise stated. In addition to all applicable state and federal regulations, any sign erected within the unincorporated area of Yankton County shall be required to conform to the following regulations:

##### 1. New Signs

- A. A Sign Permit shall be required for any new on-premise or off-premise sign installation. At the time of installation, the new sign must conform to all requirements of the Zoning Ordinance at the time of installation. All off-site signs require a Conditional Use Permit.
- B. The provisions of Section 1805 of the Yankton County Zoning Ordinance apply to all Conditional Use Permits. In addition, due consideration shall be given to the relationship between the sign(s) and the natural horizon/view shed in the area of the proposed sign location.
- C. The owner of any sign requiring a permit must apply for and obtain a valid permit as per State Law and this Ordinance before construction or placement of the sign occurs. A sign erected or maintained without a

permit is a public nuisance and subject to abatement by the State Department of Transportation or Yankton County, as the case may be.

2. No off-site sign shall be erected or placed closer than 1,500 feet from any residential district and/or dwelling unit.
3. Off-site signs shall be located no closer than 1,500 feet from all other off-site signs.
4. No illuminated sign shall be permitted within 1,500 feet of any dwelling unit or residential district without an approved Conditional Use Permit. All illuminated signs shall be installed and maintained so as to minimize spillage of light outside of the sign face.
5. Off-site signs shall not exceed a height of 30 feet. The maximum display area of any off-premise sign located adjacent to a two or more lane highway shall not exceed 250 square feet on each face. The height of the off-site sign shall be measured from the road surface.
6. All off-site and on-site signs shall be placed or erected in conformity with all applicable side and rear yard setback requirements for structures. The minimum front yard setback requirement for on-site or off-site signs shall be five (5) feet from the property line.
7. No signs, including political signs, are allowed to be located in any public right-of-way, public or private access easement. All signs issued by the Yankton County Planning Department for public notice of proposed land use changes are exempt from this requirement.
8. There shall be a 50 foot separation between an off-site sign and an on-site sign, unless agreed to by the sign owner and property owner.
9. All on-site and off-site sign structures may be painted and maintained in muted colors as to blend into the natural surroundings. Colors may include, but not be limited to, brown, black, or tan. Wood sign structure may remain unpainted and allowed to have a natural patina. At no time shall bright or neon colors be used for either wood or metal sign structures.
10. No debris, including, but not necessarily limited to, wood material, posts, metal, paper, plastic, cardboard or other materials from the construction or maintenance of a sign shall be left at the location or vicinity of a sign. Any violation of this section is hereby declared a nuisance and subject to abatement.
11. On-site signs shall not exceed a height of 30 feet. The maximum display area of any on-premise sign shall not exceed 250-square feet on each side. The height of the on-site sign shall be measured from the road surface.

12. On-site signs, which advertise or direct attention to a home occupation shall not exceed six (6) square feet in area, and shall be limited to one such sign per approved home occupation. A home occupation shall be allowed to have one wall sign or one freestanding sign. The freestanding sign shall not be located closer than 17 feet to the nearest street right-of-way line. A Conditional Use Permit may allow for a larger size sign, if appropriate to the area.
13. Each real estate subdivision that has been approved in accordance with the regulations of the Zoning Ordinance shall be allowed one on-site sign per entrance, not exceeding 100 square feet in area, advertising the sale of property in such subdivision and/or the name of such subdivision. The subdivision sign shall not encroach into a road right-of-way or road easement. The signs should be aesthetically pleasing and blend into the surroundings.
14. In any zoning district, the following signs shall be allowed with no permit:
  - A. Parking Area Permits: For each permitted or required parking area that has a capacity of more than four cars, one sign, not exceeding four (4) square feet in area, may be allowed at each entrance to or exit from such parking area. In addition, one sign, not exceeding nine (9) square feet in area, is allowed for identifying or designating the conditions of use of such parking area.
  - B. “For Sale” or “For Rent” signs: Not more than one non-illuminated “For Sale” or “For Rent” sign, not exceeding 32 square feet in area is allowed for the purpose of advertising the sale, rental or lease of the premises on which the sign is located.
  - C. “Under Construction” signs: For construction on or development of lots, not more than three signs with a combined total area of 70 square feet, stating the names of contractors, engineers or architects, is allowed during the time that construction or development is actively underway.
  - D. “Emergency 911” signs: Residential locator or E-911 signs.
  - E. “Political Campaign” signs: Political campaign signs that are temporarily placed on the ground, pending an election, shall not exceed 32 square feet and shall be removed within three days after the election.
  - F. “Directional” signs: Directional signs shall not exceed 20 square feet.
  - G. “Temporary” signs: As defined in this Zoning Ordinance.

15. Applications and Permitting

Applications for a Sign Permit shall be made in writing upon forms furnished by the Yankton County Planning Department. No permit shall be issued until each sign application is approved by the Planning Official or the Yankton

County Planning Board and Yankton Board of Adjustments in the case of a Conditional Use Permit. At a minimum, the following complete information shall be provided before an application is considered:

- A. Name and address of the sign owner and the contractor.
  - B. Name and address of the property owner where the sign is to be located.
  - C. The legal description of the proposed sign location.
  - D. Clear and legible drawing of the proposed sign to scale with description of the sign showing construction type and lighting.
  - E. Site plan showing the location and setbacks on the property where the sign is to be located.
  - F. The property owner's notarized signature.
  - G. Global Positioning Systems (GPS) coordinates of proposed sign.
  - H. Other such data and information deemed necessary by the Yankton County Planning Department.
16. No off-site or on-site sign shall be constructed which resembles any official marker erected by a governmental entity or which by reason of position, shape or color would conflict with the proper functioning of any official traffic control device, sign or marker.
17. Owners of on-site and off-site signs are encouraged to allow public service announcements to be located on signs that will display no advertisement for more than thirty calendar days.
18. A vehicle or trailer of any form or type, whether licensed or not or in working condition or not, intended to be used as or in conjunction with an on-site or off-site sign, shall not be located adjacent to any public right-of-way or on private or public property so as to be visible from the public right-of-way.
19. Outdoor Lighting For Outdoor Advertising:

Lighting: Signs may be illuminated subject to the following restrictions:

Signs that contain, include, or are illuminated by any flashing, intermittent (less than six seconds) moving light(s) are prohibited.

- A. Electronic variable message signs giving public information such as, but not limited to, time, date, temperature, weather, or other similar information, and commercial electric variable-message signs which function in the same manner as multiple-face signs are permitted, provided such signs do not interfere with traffic safety, do not change messages less than every six seconds and do not resemble or simulate traffic control or safety devices or signs. Given the

commercial and intrusive nature of these signs, their placement shall be limited to Commercial Districts (C).

- B. Signs must be effectively shielded to prevent beams or rays from being directed toward any portion of the traveled ways, and must not be of such intensity or brilliance to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with any driver's operation of a motor vehicle.
  - C. No off-site sign shall be lighted after 12:00 midnight, unless otherwise permitted through a Conditional Use Permit.
20. A nonconforming sign or sign structure existing at the time of the adoption of Article 14 of the Zoning Ordinance as amended, may be continued, maintained, and repaired as follows: Any sign or sign structure not required to be removed or until the time of actual removal, may be used and may be repaired if the expense of ordinary and customary maintenance does not exceed fifty percent of the depreciated value of the sign or if the same has not been damaged beyond fifty percent of its depreciated value by an act of God unless special circumstances warrant a variance by the Board of Adjustment, such as, but not necessarily limited to acts of vandalism or an accident.
21. No sign shall exceed two (2) sides. Signs shall have no more than one frontal face (front) and one back face (back) as viewed from one static position.
22. The changing of advertising messages or face on an existing sign shall be allowed without fee or permit. The changing of advertising messages on an existing sign shall be allowed without fee or permit.

#### Section 1405 Enforcement of Sign Ordinance

1. In addition to any and all remedies allowed under the laws of the State of South Dakota and this Zoning Ordinance, a violation of any requirement of this ordinance shall also be subject to the penalties as outlined in Article 23, Section 2303 of the Zoning Ordinance.

2. Unlawful Signs

Whenever it shall be determined by the Zoning Administrator that any sign or sign structure has been constructed or erected or is being maintained in violation of the terms of this Zoning Ordinance or has been abandoned, said sign or sign structure is hereby declared to be unlawful. Any sign or sign structure found to be unlawful shall be made to conform to all applicable laws and regulations or shall be removed at the expense of the sign owner or landowner (if the sign owner is unknown and reasonable efforts have been made to locate the sign owner with no success).

3. Removal of Signs

- A. The Yankton County Board of Commissioners or the Zoning Administrator may cause to be removed any unlawful sign or sign structure. The Yankton County Planning Department shall prepare a written notice which shall describe the sign and specify the violation involved and shall state that if the sign is not removed or the violation or condition is not corrected within 30 calendar days from the date of the notice, the sign shall be removed in accordance with the provision of this Zoning Ordinance at the expense to the sign owner or landowner (if the sign owner is unknown and reasonable efforts have been made to locate the sign owner with no success).
- B. Service of the notice shall be made upon the sign owner or landowner (as applicable) by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested. If service is made upon the landowner, service shall be to the landowner at their address as it appears on the last equalized assessment role of the County.
- C. Any person receiving notice may appeal the determination of the Zoning Administrator by filing a written notice of appeal to the Yankton County Commissioners within seven (7) days of receipt of the notice. Failure by any person to appeal the notice within that time period shall constitute a waiver of right to an administrative hearing.
- D. The sign owner or landowner, if the sign owner is unknown, shall have One (1) year to remove advertisements for establishments that are no longer in business.

Section 1407    The following types of signs shall be allowed in the following Districts

- 1. Agriculture District (AG) and Rural Transitional District (RT):
  - A. Business signs, excluding all variable electronic lighting as in Section 1403, paragraph 19.
  - B. Advertising signs for agricultural products only. Signs four (4) square feet or less are exempted.
  - C. Off-site signs, upon issuance of a Conditional Use Permit, as regulated in Article 18, Section 1805 - Conditional Use Permits.
  - D. Community signs.
- 2. Rural Residential District (R1, R-2, R-3):
  - A. Business signs, excluding all variable electronic lighting as in Section 1403, paragraph 19.
  - B. Community signs.



3. Planned Unit Development District (PUD)
  - A. Business signs, excluding all variable electronic lighting as in Section 1403, paragraph 19.
  - B. Off-site signs provided they are permitted in the conditions of PUD approval or upon issuance of a Conditional Use Permit, as regulated in Article 18, Section 1805 - Conditional Use Permits.
  - C. Community signs.
4. Lakeside Commercial Districts (LC)
  - A. Business signs, excluding all variable electronic lighting as in Section 1403, paragraph 19.
  - B. Off-site signs, upon issuance of a Conditional Use Permit, as regulated in Article 18, Section 1805 - Conditional Use Permits.
  - C. Community signs.
5. Commercial (C):
  - A. Business signs.
  - B. Off-site signs, upon issuance of a Conditional Use Permit, as regulated in Article 18, Section 1805 - Conditional Use Permits.
  - C. Community signs.

Section 1409 Permits and Fees

Permits and fees for signs shall be as determined by the Yankton County Commission pursuant to Article 17 – Sections 1721 - 1735.

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# ARTICLE 15

## SUPPLEMENTARY DISTRICT REGULATIONS

### AN AMENDMENT AMENDING ORDINANCE 16 REGARDING ARTICLE 9 AND ARTICLE 15 **ORDINANCE NO 2009 2PZ**

First Reading: 9-15-09  
Second Reading: 10-6-09  
Adoption Date: 11-2-09

#### Section 1501 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. It shall be unlawful for any person, firm, or corporation in the following Yankton County Zoning Districts: Low Density Rural Residential (R1), Moderate Density Rural Residential (R2), High Density Rural Residential (R3), Manufactured Home Park (MHP), Lakeside Commercial (LC), Rural Transitional (RT), Planned Unit Development (PUD) to use any van body, truck body, semi-trailer, rail car, “shipping crate”, and/or any vehicle no longer used for its manufactured purpose as a storage shed, storage building, warehouse, or as residential living quarters. It shall be unlawful to use manufactured homes for any use other than residential living quarters. However, this shall not prevent the lawful parking of vehicles properly licensed, insured, and in regular use for their intended purpose to include ‘RVs’ and camping trailers.

#### Section 1503 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 1505 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 1507    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 1509    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 1511 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 1723.

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. It shall be unlawful to use manufactured homes for any use other than residential living quarters. It will also be unlawful for any person, firm, or corporation to use any van body, truck body, semi-trailer, rail car, “shipping crate”, and/or any vehicle no longer used for its manufactured purpose as a storage shed, storage building, warehouse, or as living quarters.

#### Section 1513 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 1515 Quarries and/or Mining

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

#### Section 1519 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 ( $\frac{1}{4}$ ) line and each one sixteenth ( $\frac{1}{16}$ ) 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 1521 Campgrounds

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

#### Section 1525 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 1505 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.

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## ARTICLE 16

### NONCONFORMANCE

#### Section 1601    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. It is further the intent that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

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

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently.

#### Section 1603    Nonconforming Lots of Record

In any district in which, single family dwellings, manufactured; or modular homes 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 and not of continuous frontage with other



lots in the same ownership. Variance of other yard requirements shall be obtained only through action of the Planning Commission and Board of Adjustment, pursuant to Sections 1807 and 1907.

Section 1605    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 1607    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 1609 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 1611    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.

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

## ARTICLE 17

### ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

AN AMENDMENT AMENDING ORDINANCE 16  
REGARDING ARTICLE 12 AND ARTICLE 17, ARTICLE 18,  
ARTICLE 19, ARTICLE 21 & ARTICLE 25  
**ORDINANCE NO 2009 1PZ**

First Reading: 4-7-09  
Second Reading: 4-6-10  
Adoption Date: 5-8-10

Section 1701     Yankton County Zoning Administrator

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Yankton 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 1703     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 an 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 1705     Planning Commission Appointment and Terms

The Yankton 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 1707 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 County Auditor. 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 1705.

#### Section 1709 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 1711 Planning Commission Variance and Conditional Use Duties

The Planning Commission shall review all applications for 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 1803 (3-5). Any person may appear and support or protest the pending action. 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 1713     Board of Adjustment Appointment and Terms

The Yankton 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.

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 1715     Board of Adjustment Voting Requirements

The Board of Adjustment shall, upon a vote of two-thirds (2/3) (4 of 5) of the full membership of the Board of Adjustment, overrule the Zoning Administrator or grant conditional uses or variances to the terms of this ordinance.

Section 1717     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 1903. 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 18, Article 19 and Article 20. Appeals of a Board decision shall be done pursuant to Section 2101.

Section 1719     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 1809. Upon receipt of the comments from the Planning Commission the County Commission shall provide a notice of public hearing pursuant to Section 2003. 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 1721 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 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;
4. Semi-portable agricultural structures; and
5. A (one) one hundred twenty (120) square foot accessory building without a sub-grade foundation.

#### Section 1723 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 1725    Expiration of Building Permits, Conditional Uses and Variances

The building permit shall expire if the work described in any building permit, conditional use, or variance has not begun within one hundred eighty (180) days from the date of issuance. The building permit shall also expire if the work described in any building permit, conditional use, or variance has not been completed within two (2) years from the date of issuance.

Section 1727      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 2303 of this ordinance.

Section 1729      Schedule of Fees, Charges, and Expenses

The Yankton 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 Yankton 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 1731      Building Permit in a Conspicuous Place

All building permits issued by the Zoning Administrator must be placed along the property's frontage to be visible from the nearest public access point. If a property does not have a road frontage, then such permits shall be placed upon the available right-of-way and upon the property in a conspicuous location within 5 working days of receipt of the building permit and must remain for the duration of the construction of work described.

Section 1733      Reserved for future use

Section 1735      Bad Actor Legislation

The Yankton 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.

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## ARTICLE 18

### PLANNING COMMISSION

AN AMENDMENT AMENDING ORDINANCE 16  
REGARDING ARTICLE 12 AND ARTICLE 17, ARTICLE 18,  
ARTICLE 19, ARTICLE 21 & ARTICLE 25  
**ORDINANCE NO 2009 1PZ**

First Reading: 4-7-09  
Second Reading: 4-6-10  
Adoption Date: 5-8-10

AN AMENDMENT AMENDING ORDINANCE 16  
REGARDING ARTICLE 18 AND ARTICLE 19 & ARTICLE 22  
**ORDINANCE NO 2010 2PZ**

First Reading: 9-8-10  
Second Reading: 10-5-10  
Adoption Date: 10-30-10

#### Section 1801 Powers and Duties

The Planning Commission shall have the power to hear requests for conditional uses, variances, amendments, change in zone, and other official actions as authorized.

#### Section 1803 Notification

1. The applicant will meet with the Zoning Administrator to discuss requirements of Sections 1723 and Section 1729;
2. Applicant, along with Zoning Administrator, will prepare First and Second Notification letters and accompanying affidavit;
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. A good faith effort must be made by the applicant to notify all property owners of land 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.
  - 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.

The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant

with “Notice of Hearing” forms for this purpose, and the notices 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 and supported by affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least seven (7) days prior to the Planning Commission meeting.

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;

#### Section 1805    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 1803 (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 1807    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 1803 (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 1809    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 1803 (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.

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## ARTICLE 19

### BOARD OF ADJUSTMENT

AN AMENDMENT AMENDING ORDINANCE 16  
REGARDING ARTICLE 12 AND ARTICLE 17, ARTICLE 18,  
ARTICLE 19, ARTICLE 21 & ARTICLE 25

#### **ORDINANCE NO 2009 1PZ**

First Reading: 4-7-09

Second Reading: 4-6-10

Adoption Date: 5-8-10

AN AMENDMENT AMENDING ORDINANCE 16  
REGARDING ARTICLE 18 AND ARTICLE 19 & ARTICLE 22

#### **ORDINANCE NO 2010 2PZ**

First Reading: 9-8-10

Second Reading: 10-5-10

Adoption Date: 10-30-10

#### Section 1901      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.

#### Section 1903      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 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 Board of Adjustment and appellant shall act upon appeals pursuant to Section 2101.
2. Any person aggrieved by a decision of the Zoning Administrator shall file a written intent to appeal with the Zoning Administrator within ten (10) working days after the building permit has been issued in accordance with Section 1731. A full written appeal must be filed with the Zoning Administrator within five (5) additional working days.
3. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken;

4. Notice of the hearing date shall be given at least ten (10) days in advance by publication in a legal newspaper of the county;
5. A good faith effort must be made by the appellant to notify the applicant, and all property owners 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.
  - 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.

The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with “Notice of Hearing” forms for this purpose, and the notices 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 and supported by affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least seven (7) days prior to the Planning Commission meeting.

6. 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;
7. The Zoning Administrator shall present the decision to the Board of Adjustment for review; and
8. The Board of Adjustment shall uphold, overrule, or amend the decision pending before the Board.
9. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction pursuant to Section 2101.

#### Section 1905    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 1805 of this Ordinance;
3. Notice of public hearing shall be given, as in Section 1803 (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 1907    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 1807 of this Ordinance.
6. Notice of public hearing shall be given, as in Section 1803 (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 2303 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 20

### COUNTY COMMISSION

#### Section 2001    Powers and Duties

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

#### Section 2003    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 1809 of this Ordinance.
  1. Notice of public hearing shall be given, as in Section 1803 (3-5).
  2. The public hearing shall be held. Any party may appear in person or by agent or attorney.
  3. 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.

4. 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.
5. 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:
6. 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;
7. 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;
8. 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;
9. Refuse and service areas, with particular reference to the items in (1) and (2) above;
10. Utilities, with reference to locations, availability, and compatibility;
11. Screening and buffering with reference to type, dimensions, and character;
12. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
13. Required yards and other open spaces; and
14. General compatibility with adjacent properties and other property in the district.
15. 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 2303 of this ordinance.

#### Section 2005

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 Yankton 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 2005 (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 21**

### **DUTIES ON MATTERS OF APPEAL**

AN AMENDMENT AMENDING ORDINANCE 16  
REGARDING ARTICLE 12 AND ARTICLE 17, ARTICLE 18,  
ARTICLE 19, ARTICLE 21 & ARTICLE 25  
**ORDINANCE NO 2009 1PZ**

First Reading: 4-7-09

Second Reading: 4-6-10

Adoption Date: 5-8-10

Section 2101 Duties of Zoning Administrator, 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, and that such questions shall be presented to the Board of Adjustment. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction.

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## ARTICLE 22

### AMENDMENTS OR REZONING

#### AN AMENDMENT AMENDING ORDINANCE 16 REGARDING ARTICLE 18 AND ARTICLE 19 & ARTICLE 22 **ORDINANCE NO 2010 2PZ**

First Reading: 9-8-10  
Second Reading: 10-5-10  
Adoption Date: 10-30-10

#### Section 2201    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 1709, 1719, 1809, and 2003.

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. A good faith effort must be made to send written notice to the appellant, applicant, and all property owners of land 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.
  - 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.

The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with “Notice of Hearing” forms for this purpose, and the notices 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 and supported by affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least seven (7) days prior to the Planning Commission meeting;



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 1809 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 1803 (3-5);
6. The County Commission shall hold the Public Hearing, review the proposed amendment(s) with regards to Section 2003 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.

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## **ARTICLE 23**

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

#### Section 2301    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 2303.

#### Section 2303    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 24**

### **LEGAL STATUS PROVISIONS**

Section 2401    Separability

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

Section 2403    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 2405    Effective Date

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

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## ARTICLE 25

# SITING OF WIRELESS TELECOMMUNICATION FACILITIES

### AN AMENDMENT AMENDING ORDINANCE 16 REGARDING ARTICLE 12 AND ARTICLE 17, ARTICLE 18, ARTICLE 19, ARTICLE 21 & ARTICLE 25 **ORDINANCE NO 2009 1PZ**

First Reading: 4-7-09

Second Reading: 4-6-10

Adoption Date: 5-8-10

#### Section 2501    Intent

The intent of this Section is to insure that the placement, construction or modification of Wireless Telecommunication Facilities is consistent with the County's land use policies and to minimize the impact of Wireless Telecommunication Facilities, establish a fair and efficient process to review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County of Yankton.

#### Section 2502    Definitions

For the purposes of this Section, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **"Applicant"** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
3. **"Application"** means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.



4. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
5. **“Board of Adjustment”** means the Yankton County Commission shall serve as the Board of Adjustment.
6. **“Co-location”** means the use of an existing Tower or structure to support Antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonable short timeframe after the new tower is constructed.
7. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercial impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
8. **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
9. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
10. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
11. **“Height”** means, when referring to a Tower or structure, the distance measured from the preexisting grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightning protection device.
12. **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility

without adding, removing or changing anything.

13. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
14. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
15. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.
16. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
17. **“Planning Commission”** means The Planning Commission of Yankton 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.
18. **“Repairs and Maintenance”** means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
19. **“Conditional Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the County.
20. **“Stealth”** or **“Stealth Technology”** means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
21. **“State”** means the State of South Dakota.
22. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
23. **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities.
24. **“Telecommunications Structure”** means a structure used in the provision of

services described in the definition of ‘Wireless Telecommunications Facilities’.

25. **“Temporary”** means, temporary in relation to all aspects and components of this Section, something intended to, or that does not exist for more than ninety (90) days.
26. **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
27. **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

Section 2503      Wireless Telecommunication Facilities established as Conditional Uses in Yankton County

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the County’s health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Section, the County hereby adopts an overall policy with respect to a Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. Requiring a Conditional Use Permit for any new, co-location or modification of a Wireless Telecommunications Facility.
2. Implementing an Application process for person(s) seeking a Conditional Use Permit for Wireless Telecommunications Facilities.
3. Establishing a policy for examining an application for and issuing a Conditional Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
4. Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers.

5. Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
6. That in granting a Conditional Use Permit, the County has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the County.

Section 2504      Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities

1. No Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this Ordinance without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in Section 2505.
2. All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this Section shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Section.
3. Any Repair and Maintenance of a Wireless Facility does not require an Application for a Conditional Use Permit.

Section 2505   Exclusions   The following shall be exempt from this Article:

1. Fire, police and highway departments or other public service facilities owned and operated by the local government and located in Yankton County.
2. Any facilities expressly exempt from the County's siting, building and permitting authority.
3. Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.

4. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.
5. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

Section 2506    Conditional Use Permit Application and Other Requirements

1. All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Section. The Planning Commission, pursuant to Section 1805 of the Yankton County Zoning Ordinance, is the officially designated agency or body of the County to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to recommending the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities to the Yankton County Board of Adjustment. The Board of Adjustment shall have the power to hear and decide, pursuant to Section 1905 of the Yankton County Zoning Ordinance, the granting of Conditional Use Permits. The County may at its discretion delegate or designate other official agencies or officials of the County to accept, review, analyze, evaluate and make recommendations to the Planning Commission with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities.
2. The County may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
3. No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the County, and the Conditional Use Permit has been issued.
4. Any and all representations made by the Applicant to the County on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the County.
5. An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
6. The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If

the applicant owns the site, a copy of the ownership record is required.

7. The Applicant shall include a statement in writing:
  - A. That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations; and
  - B. That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
8. Where a certification is called for in this Section, such certification shall bear the signature and seal of a Registered Professional Engineer licensed in the State.
9. In addition to all other required information as stated in this ordinance, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.
  - A. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
  - B. Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
  - C. The name, address and phone number of the person preparing the report;
  - D. The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different that the applicant, provide name and address of the tower owner;
  - E. The postal address and tax map parcel number of the property;
  - F. The Zoning District or designation in which the property is situated;
  - G. Size of the property stated both in square feet and lot line dimensions, and

- a survey showing the location of all lot lines;
- H. The location of the nearest residential structure;
  - I. The location, size and height of all existing and proposed structures on the property which is the subject of the Application;
  - J. The type, locations and dimensions of all proposed and existing landscaping, and fencing;
  - K. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;
  - L. The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;
  - M. The make, model, type and manufacturer of the Tower and design plan stating the Tower’s capacity to accommodate multiple users;
  - N. A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
  - O. The frequency, modulation and class of service of radio or other transmitting equipment;
  - P. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
  - Q. Signed documentation such as the “Checklist to Determine Whether a Facility is Categorically Excluded” to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;
  - R. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
  - S. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities; and
  - T. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design.
10. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower

or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

#### 11. Application for New Tower

- A. In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the County. Copies of written requests and responses for shared use shall be provided to the County in the Application, along with any letters of rejection stating the reason for rejection;
- B. In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a “balloon test”. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the County. The Applicant shall inform the County, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application;
- C. The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant’s Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:



1. The foreseeable number of FCC licenses available for the area;
  2. The kind of Wireless Telecommunications Facilities site and structure proposed;
  3. The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites; and
  4. Available space on existing and approved Towers.
- D. The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
1. Respond within 60 days to a request for information from a potential shared-use Applicant;
  2. Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
  3. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference; and
  4. Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit.
12. The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, County, State, and Federal structural requirements for loads, including wind and ice loads.
13. If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.
14. All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be the least visually intrusive

reasonably possible, given the facts and circumstances involved and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the Wireless Telecommunications Facility.

15. If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:
  - A. If a new Tower or increasing the height of an existing structure is proposed, a computer generated “Zone of Visibility Map” at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen;
  - B. Pictorial representations of “before and after” (photo simulations) views from key viewpoints both inside and outside of the County as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure; and
  - C. A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
16. The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility.
17. The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the County.
18. All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, Ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

19. At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
20. All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
21. A holder of a Conditional Use Permit granted under this Section shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.
22. There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.
23. An Applicant shall submit to the County the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.
24. The holder of a Conditional Use Permit shall notify the County of any intended Modification of a Wireless Telecommunication Facility and shall apply to the County to modify, relocate or rebuild a Wireless Telecommunications Facility.

Section 2507    Location of Wireless Telecommunications Facilities

1. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and six (6) being the lowest priority.

1. On existing Towers or other structures on County owned properties;
  2. On existing Towers or other structures on other property in the County;
  3. A new Tower on County-owned properties;
  4. A new Tower on properties in areas zoned for Commercial use;
  5. A new Tower on properties in areas zoned for Agricultural use; and
  6. A new Tower on properties in areas zoned for Residential use.
2. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
  3. An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the County why colocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
  4. Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
  5. The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
  6. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an Application for any of the following reasons.
    - A. Conflict with safety and safety-related codes and requirements;
    - B. Conflict with the historic nature or character of a neighborhood or historical district;

- C. The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- D. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers; and
- E. Conflicts with the provisions of this Ordinance.

Section 2508     Shared Use of Wireless Telecommunications Facilities and Other Structures

1. The County, as opposed to the construction of a new Tower, shall prefer locating on existing Towers or others structures without increasing the height. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.
2. An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
3. Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.

Section 2509     Height of Telecommunications Tower(s)

1. The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.
2. No Tower constructed after the effective date of this amended Section, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with County, State, and/or any Federal statute, law, local law, County Ordinance, code, rule or regulation.

Section 2510     Visibility of Wireless Telecommunications Facilities

1. Wireless Telecommunications Facilities shall not be artificially lighted or

marked, except as required by Law.

2. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
3. If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

#### Section 2511 Security of Wireless Telecommunications Facilities

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

1. All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
2. Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

#### Section 2512 Signage

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

#### Section 2513 Lot Size and Setbacks

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

#### Section 2514 Retention of Expert Assistance and Reimbursement by Applicant

1. The County may hire any consultant and/or expert necessary to assist the

County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.

2. An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the County shall precede the pre-application meeting. The County will maintain a separate escrow account for all such funds. The County's consultants/experts shall invoice the County for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the County, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.
3. The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

#### Section 2515 Public Hearing and Notification Requirements

Notice of public hearing shall be given pursuant to Section 1803 (3-5)

1. Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the County, notice of which shall be published in the newspaper general circulation in the County no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the nearby landowners are notified, the Applicant shall notify all landowners whose property is located within two thousand six hundred forty feet(2,640) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located. A list of property owners that lie within the notification area shall be furnished to the applicant by Yankton County.
2. There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure,

including attachments thereto.

3. The County shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, the County, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

Section 2516      Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities

1. The County will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
2. The County may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.
3. After the Public Hearing and after formally considering the Application, the County may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
4. If the County approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the County's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the County, such as site plan or zoning approvals, shall be required by the County for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.
5. If the County denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the County's action.

Section 2517      Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

1. Such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the County.



2. Such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Conditional Use Permit.

Section 2518      Application Fee

At the time that a Person submits an Application for a Conditional Use Permit for a new Tower, such Person shall pay a non-refundable application fee of \$5,000.00 to the County. If the Application is for a Conditional Use Permit for co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be \$2,500.00.

Section 2519      Performance Security

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit.

Section 2520      Reservation of Authority to Inspect Wireless Telecommunications Facilities

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

Section 2521      Liability Insurance

1. A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below.

- A. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
  - B. Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate; and
  - C. Workers Compensation and Disability: Statutory amounts.
2. For a Wireless Telecommunications Facility on County property, the Commercial General Liability insurance policy shall specifically include the County and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.
  3. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with an A.M. Best's rating of at least A.
  4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty-(30) day's prior written notice in advance of the cancellation of the insurance.
  5. Renewal or replacement policies or certificates shall be delivered to the Zoning Administrator at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
  6. Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

Section 2522    Indemnification

1. Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or

intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County.

2. Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities.

#### Section 2523    Fines

1. In the event of a violation of this Ordinance or any Conditional Use Permit issued pursuant to this Ordinance, the County may impose and collect, and the holder of the Conditional Use Permit for Wireless Telecommunications Facilities shall pay to the County, fines or penalties as set forth below.
2. The holder of a Conditional Use Permits failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Applicant to the code enforcement provisions and procedures as provided in Article 23, Section 2303 of the Yankton County Zoning Ordinance and an action for civil injunctive relief, pursuant to SDCL 21-8.
3. Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The County may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the County.

#### Section 2524    Default and/or Revocation

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit, then the County shall notify the holder of the Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 24 and if a violation is not corrected to the satisfaction of the County in a reasonable period of time the Conditional Use Permit is subject to revocation.

#### Section 2525    Removal of Wireless Telecommunications Facilities

1. Under the following circumstances, but not limited to the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.

- A. Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
  - B. Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard; and
  - C. Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization and the Conditional Permit may be revoked.
2. If the County makes such a determination as noted in subsection (A) of this section, then the County shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
  3. The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the County. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the County.
  4. If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the County may order officials or representatives of the County to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
  5. If, the County removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the COUNTY may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

Section 2526    Relief

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of

this Ordinance may request such at the pre-application meeting, provided that the relief or exemption is contained in the submitted Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the County, its residents and other service providers.

#### Section 2527 Adherence to State and/or Federal Rules and Regulations

1. To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
2. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

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## ARTICLE 26

### WIND ENERGY CONVERSION SYSTEMS (WECS)

AN AMENDMENT AMENDING ORDINANCE 16

REGARDING ARTICLE 26

#### ORDINANCE NO 2012 1PZ

First Reading: 2-7-2012

Second Reading: 3-6-2012

Adoption Date: 4-16-2012

#### Section 2601 Definitions

For the purposed of this ordinance, certain terms and words are hereby defined.

Aggregate Project shall mean projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregate project.

Commercial WECS shall mean a wind energy conversion system of equal to or greater than 100kWh in total nameplate generating capacity.

Construction means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

Fall Zone shall mean the area, defined as the furthest distance from the tower base, in which a tower will collapse in the event of a structural failure.

Feeder Line shall mean any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the project distribution system, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the wind energy conversion system.

High voltage transmission line means a conductor of electric energy and associated facilities.

Large electric power facilities mean high voltage transmission lines.

Meteorological Tower shall mean, for purposes of this regulation, a tower which is erected primarily to measure wind speed and directions plus other data relevant to siting a Wind Energy Conversion System. Meteorological towers do not include towers and equipment used by airports, the South Dakota Department of Transportation, or other applications to monitor weather conditions.

Person shall mean an individual, partnership, joint venture, private, or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Route means the location of a high voltage transmission line between two end-points. The route may have a variable width of up to 1.25 miles.

Rotor Diameter shall mean the diameter of the circle described by the moving rotor blades.

Rotor Radius shall mean one-half (1/2) the diameter of the moving rotor blade.

Substations shall mean any electrical facility to convert electricity produced by wind turbines to a voltage greater than 35,000 KV for interconnection with high voltage transmission lines.

WECS Total Height shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

WECS Tower shall mean the vertical structures that support the electrical, rotor blades, or meteorological equipment.

Transmission Line shall mean the electrical power lines that carry voltages of at least 69,000 volts (69 KV), and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

Utility shall mean any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipally utility.

Small Wind Energy Conversion System shall mean a wind energy conversion system consisting of a Horizontal-Axis Wind Turbine (HAWT), a Vertical-Axis Wind Turbine (VAWT), which may include a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kWh and, which is primarily intended to reduce on-site consumption of utility power.



Large Wind Energy Conversion System (WECS) shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

Wind Turbines shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

### **Small Wind Energy Conversion Systems (WECS)**

#### **Section 2602 Intent**

It is the intent of this Section to promote the safe, effective, and efficient use of small wind energy conversion systems installed to reduce the on-site consumption of utility supplied electricity.

#### **Section 2603 Requirements**

Small wind energy conversion systems shall be considered as a Conditional Use Permit with an exemption provided in 1. i. in this ordinance.

1. Requirements as set forth below shall be met:
  - a. The maximum height of a rooftop mounted WECS, including the turbine blades, is ten (10) feet in height above the roof line of the structure.
  - b. High Density Rural Residential District (R3) shall allow rooftop mounted WECS only.
  - c. Moderate Density Rural Residential District (R2) shall allow rooftop mounted WECS only.
  - d. Low Density Rural Residential District (R1), meeting (or exceeding) district requirement of five (5) acre lots, shall have total WECS height limit of thirty (30) feet.
  - e. Rural Transitional District (RT) shall allow rooftop mounted WECS only.
  - f. Planned Unit Development (PUD), meeting (or exceeding) requirement of five (5) acre lots, shall have total WECS height limit of thirty (30) feet.
  - g. Lakeside Commercial Districts (LC) shall allow rooftop mounted WECS only.
  - h. Commercial District meeting (or exceeding) district requirements of one (1) acre shall have total WECS height limit of thirty (30) feet with exception provided in Section 2605.
  - i. The Agriculture District (AG) may qualify for an administrative building permit meeting (or exceeding) district requirement of twenty (20) acre lots and shall have total WECS

height limit less than eighty (80) feet. All other WECS in Agriculture District are provided in Section 2605.

2. Setbacks
  - a. No part of the wind system structure may be sited closer to structures, property lines and/or right(s)-of-way than 1.1 times the height of the wind turbine measured from the ground surface to the tip of the blade when in a fully vertical position.
3. Access
  - a. Tower climbing apparatus located no closer than eight (8) feet from the ground
  - b. A locking anti-climb device installed on the tower
  - c. Enclosure of the tower by a fence at least six (6) feet high with locking portals, when climbing apparatus is less than eight (8) feet from the ground.
4. Noise
  - a. Small wind energy systems shall not exceed 55 dBA, measured at the closest point on the closest property line from the base of the system.
  - b. The noise level may be exceeded during short-term events such as utility outages and/or severe windstorms.
5. Approved Wind Turbines
  - a. Small wind turbines, horizontal-axis wind turbine (HAWT) or a vertical-axis wind turbine (VAWT), must have been approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.
6. Compliance with Building and Zoning Codes
  - a. Applications for small wind energy conversion systems shall be accompanied by standard drawings of the wind turbine structure, including the tower base, footings and required setbacks.
  - b. An engineering analysis of the tower showing compliance with all electrical codes of the State of South Dakota certified by a professional engineer licensed and certified in South Dakota shall also be submitted.
  - c. The manufacturer frequently supplies this analysis.
7. Compliance with FAA Regulations
  - a. Small wind energy conversion systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
8. Compliance with National Electrical Code

- a. Permit applications for small wind energy conversion systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  - b. The manufacturer frequently supplies this analysis.
9. Utility Notification
- a. No small wind energy conversion system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator,
  - b. Off-grid systems shall be exempt from this requirement.
10. Warning information
- a. Information related to the maximum power output, nominal voltage and maximum current and emergency shut-down procedures for the WECS shall be posted near the base of the tower in a visible location.
11. Site Reclamation
- a. When a small WECS has been condemned or has fallen into obvious disrepair, or has become a violation of some other local, state, or federal law and/or is no longer able to operate or upon earlier termination of operation of the small WECS, the permittee shall have the obligation, at the permittee's sole expense, to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment within 120 days upon notification from the County.
  - b. If deemed appropriate, the County may stipulate through the conditional use that the small WECS shall be removed at the owner's expense, upon the rezoning of the subject property to a zoning classification in which wind energy systems are not allowed as either a permitted use or a conditional use.
12. Federal and State Requirements
- a. All WECS shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WECS.

### **Large or Commercial Wind Energy Conversion Systems (WECS)**

#### **Section 2604 Intent**

It is the intent of this Section to promote the safe, effective, and efficient use of commercial/utility grade wind energy systems within Yankton County.

#### **Section 2605 Requirements**

Large or Commercial wind energy conversion systems shall be permitted as a Conditional Use Permit in the Agricultural District (AG) and in the Commercial District (C) only. Certain requirements as set forth below shall be met:

1. Applicability

The requirements of these regulations shall apply to all WECS facilities, including private facilities, with a single tower height of greater than eighty (80) feet, rated capacity of more than 100 kWh and used primarily for off-site consumption of power.

2. Federal and State Requirements

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

3. Mitigation Measures

- a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the WECS.
- b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. Roads: Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WECS project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WECS. Where practical, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites. The permittees shall, prior to the use of approved haul roads, make satisfactory written agreements with the appropriate state, county or township governmental body having jurisdiction over approved

haul roads for construction of the WECS for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WECS components. The permittees shall provide the County Zoning Administrator with such written agreements.

Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with material that meets or exceeds South Dakota D.O.T. specifications for aggregate base course. When access roads are constructed across streams and drainage-ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.

4. Soil Erosion and Sediment Control Plan

The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Zoning Administrator. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material, and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material. A storm water runoff permit, if required, shall be obtained from the South Dakota D.E.N.R.

5. Setbacks

- a. Wind turbines shall meet the following minimum spacing requirements.
  - i. Distance from existing off-site residences, business and public buildings shall be one thousand three hundred and twenty feet (1,320) feet. Distance from on-site or lessor's residence shall be one thousand (1,000) feet.
  - ii. Distance from right-of-way (ROW) of public roads shall be 500 feet or one point one (1.1) times the height of the wind

turbines depending upon which is greater, measured from the ground surface to the tip of the blade when in a fully vertical position.

- iii. Distance from any property line shall be 500 feet or one point one (1.1) times the height of the wind turbines depending upon which is greater, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.

#### 6. Electromagnetic Interference

The permittees shall not operate the WECS so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WECS or its operation, the permittees shall take the measures necessary to correct the problem.

#### 7. Lighting

Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

#### 8. Access

- a. Tower climbing apparatus shall be located no closer than twelve (12) feet from the ground unless locking anti-climb device is installed on the tower.

#### 9. Turbine Spacing

The turbines shall be spaced no closer than three (3)-rotor diameters (RD) measurement of blades tip to tip. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.

#### 10. Footprint Minimization

The permittees shall design and construct the WECS to minimize the amount of land that is impacted by the WECS. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers, and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

#### 11. Electrical Cables

The permittees shall place electrical lines, known as collectors and communication cables underground when located on private property. Collectors and cables shall also be placed within or immediately

adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

12. Feeder Lines

The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-ways. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.

13. Decommissioning/Restoration/Abandonment/Removal Bond

a. Decommissioning Plan

Within 120 days of completion of construction, the permittees shall submit to the County Zoning Administrator a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County Zoning Administrator may at any time request the permittees to file a report with the County Zoning Administrator describing how the permittees are fulfilling this obligation.

b. Site Restoration

Upon expiration of this permit, or upon earlier termination of operation of the WECS, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of four feet. To the extent possible, the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County Zoning Administrator which shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County

Zoning Administrator prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.

c. Abandoned Turbines

The permittees shall advise the County Zoning Administrator of any turbines that are abandoned prior to termination of operation of the WECS. The County Zoning Administrator may require the permittees to decommission any abandoned turbine.

d. Performance Security

The Applicant and the owner of record of any proposed large or commercial Wind Energy Conversion System property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least two (2) percent of the cost of the aggregate project for a WECS and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site pursuant to 9(a) (above.)

14. Height from Ground Surface

The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.

15. Towers

- a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-gloss.
- b. All towers shall be singular tubular design.

16. Noise

Noise level shall not exceed 60 dB, including constructive interference effects, measured at the closest point on the closest property line from the base of the system.

17. Permit Expiration

All permits shall become void if no substantial construction has been completed within three (3) years of issuance.

18. Required Information for Permit



- a. Boundaries of the site proposed for WECS and associated facilities on United States Geological Survey Map or other map as appropriate.
- b. Map of easements for WECS.
- c. Map of occupied residential structures, businesses, and public buildings within a 2-mile radius.
- d. Map of sites for WECS, access roads and utility lines.
- e. Location of other WECS in general area.
- f. Project schedule.
- g. Mitigation measures.

19. Technical Issues and Expert Review

WECS and equipment facilities may involve complex technical issues that require review and input that is beyond the expertise of County staff. The Zoning Administrator, Planning Commission, Board of Adjustment, and/or the County Commission may require the applicant to pay reasonable costs for a third party technical study of a proposed facility. Selection of expert(s) to review will be at the sole discretion of the County.

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## **ARTICLE 27**

### **HIGHWAY 52 CORRIDOR OVERLAY DISTRICT**

First Reading: 9-1-2015  
Second Reading: 10-6-2015  
Adoption: 11-7-2015  
Amended 7-19-2018

#### **Section 2701 - PURPOSE**

Yankton County offers one of the most scenic drives in South Dakota. The view from Chalkstone Hill is spectacular and the corridor ends at beautiful Lewis and Clark Lake. This rich natural environment should be complemented by a vibrant built environment. The Highway 52 Corridor Overlay District (HC) provides basic guidelines that promote quality design along the most visible and heavily traveled road corridor in the Yankton County zoning jurisdiction: Highway 52 from the City of Yankton to Lewis and Clark Lake. The Highway 52 Corridor Overlay District is intended to: Encourage development design that strengthens the physical character and image of Yankton County; Support the value of property and quality of development in the major highway corridor; set basic requirements for good site design and development, building design, landscaping, and signage without discouraging creativity and flexibility in design; permit safe and convenient transportation access and circulation for motorized and non-motorized vehicles, and for pedestrians; manage the impact of commercial and industrial development on adjacent residential neighborhoods.

#### **Section 2703 – PROHIBITED USES**

The uses permitted in the Highway 52 Corridor Overlay District (HC) shall be the same as those permitted by the underlying base zoning district except as provided by this section. The following uses shall be prohibited within the Highway 52 Corridor Overlay District:

- Hazardous waste storage;
- Manufacturing as stated in the Definitions section of the Yankton County Zoning Ordinance, except by a conditional use permit;
- Mobile home, modular home, and manufactured home sales;
- Mobile home parks;
- Pawn shops, as stated in the Definitions section of the Yankton County Zoning Ordinance;
- Residential houses (exclude all rural residential districts);
- Salvage or junk yard operations and transfer stations, as a primary use;
- Tow lots, as a primary use.

## **Section 2705 - HIGHWAY CORRIDOR OVERLAY DISTRICT BOUNDARIES (HC)**

The Highway Corridor Overlay District (HC) applies to the following areas:

- Land within 650 feet south and north side of the centerline of Highway 52 within the planning jurisdiction of Yankton County.
- The eastern terminus of the Corridor Overlay District is the intersection of Highway 52 and lower Chalkstone Road.
- The western terminus of the Corridor Overlay District is the intersection of Highway 52 and Welkom Avenue. This area shall include all property zoned Lakeside Commercial on the north side of Highway 52.

## **Section 2707 - PROJECT APPLICATION AND EXCEPTIONS**

The Highway 52 Corridor Overlay District (HC), its development guidelines, and other provisions, apply to the following:

Any new development requiring a building permit built on land within the boundaries of the Highway 52 Corridor Overlay District after the effective date of this Regulation, except any land that was platted prior to the adoption of this Overlay District. Replats, lot line adjustments, and lot consolidations of such platted properties shall remain excepted. Phased Developments, such as Planned Unit Developments, shall mean property that was, at a minimum, preliminary platted and at least a part of the property within the preliminary plat was final platted. This Overlay District shall include phased developments, such as Planned Unit Developments, if new development occurs within the boundaries of the District as outlined in Section 105.

The requirements of the Highway 52 Corridor Overlay District apply to any rehabilitation, repair, addition(s) or enlargement(s) of a building in place or under construction on a site as of the effective date of this Regulation. The requirements of the HC Overlay District do not apply to any building under construction on a site as of the effective date of this regulation necessitated by casualty loss.

## **Section 2709 - DESIGN GUIDELINES FOR COMMERCIAL AND OFFICE USES**

Site Design Guidelines

### **(A) BUILDING LOCATION AND ORIENTATION**

1. Facades with principal entrances shall be oriented to the project's primary street or to an active pedestrian or public zone within the site. The primary street for a development is Highway 52, Timberland Drive, Deer Boulevard, or a collector

(frontage) street that fronts the development. The site plan shall determine orientation of the principal entrance.

2. Developments at intersections shall identify or emphasize their corners with significant landscaping or similar public feature. In a corner situation, a public feature may include a sign as referred to in Part E of this Section.
3. A clearly delineated pathway or route should connect all principal building or business entrances to any sidewalks or trails on streets adjacent to the project.



#### (B) PEDESTRIAN ACCESS

1. Developments shall provide a continuous walkway connection at least 5 feet in width from the public sidewalk to the customer entrances of all principal buildings on the site. Developments adjacent to multi-use trails shall provide a direct connection from the trail to the development's internal pedestrian circulation system. For trails that are proposed in the county's comprehensive plan, trail master plan, or other adopted county document but are not yet constructed, the development plan shall make provisions for a connection to the trail, and shall be responsible for constructing the connection when the trail becomes available.
2. Multi-building developments shall provide clear and safe walkways at least 5 feet in width that connect all buildings on the site. Buildings not intended for routine customer access or intended solely for drive-up services are excluded from this requirement.
3. Where the required walkways specified in this section cross drives, parking aisles, or other vehicular ways, the crosswalks shall be distinguished from driving surfaces by the use of durable, low-maintenance surface materials such as concrete or brick pavers; scored, colored concrete; or painted concrete.
4. Pedestrian connections to adjacent developments shall be provided.

#### (C) VEHICULAR ACCESS

1. Developments shall make maximum use of internal cross-easements and shared access points when possible.
2. Main driveways and drive aisles shall provide a continuous system that connects to the main site entrance.

#### (D) PARKING

1. Parking shall be grouped into parking blocks that are divided by pedestrian paths, landscaping, or buildings.
2. A maximum of 400 parking stalls may be located in any one parking block.



#### (E) SIGNS

All permanent signs shall be designed, constructed and maintained in accordance with the following standards:

1. Attached signs shall be located above the building entrance, storefront opening, or at other locations that are compatible with the architectural features of the building. All signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame or structure. All signs shall be maintained in a safe and legible condition at all times, including the replacement of defective or damaged parts, painting, repainting, cleaning and other services required for maintenance of the signs. All signs with an electronic message display capability shall have internal ambient light monitors installed which automatically adjust brightness to the level defined in this chapter. If a sign is not so maintained, then the owner shall be notified in writing and required to remove the sign or to immediately bring the sign into compliance.
2. All lots abutting Highway 52 shall use monument or ground signs, shall not exceed fifteen feet (15) in height and shall not exceed 120 square feet on each side. Each pole sign shall not exceed thirty (30) feet in height and one hundred twenty (120) square feet on each side for electronic signs and / or one hundred twenty (120) square feet for traditional text / graphics signs. Multi-tenant business sign shall not exceed two (2) square feet / one (1) linear foot of street frontage with maximum of four hundred (400) square feet on each side.
3. All lots abutting Highway 52 exterior building on-site signs shall not exceed two (2) square feet / one (1) linear foot of structure frontage with maximum total of two hundred (200) square feet of signage for each structure.
4. Illuminated signs shall be so shielded, shaded or directed so that the light intensity shall not adversely affect the surrounding or facing premises nor adversely affect the safe vision of operators of vehicles on private or public

roads. No illumination, including traditionally illuminated signs, shall exceed a brightness level of 0.3 foot candles above ambient light at the nearest property line of abutting property.

5. A landscaped base area shall be provided for all signs appropriate to the mass and height of the sign. All areas within 5 feet of the base of any sign shall be landscaped. The landscaped area may include trees, shrubs, flowering perennials, ornamental tall grass, fountains, water features, decorative stonework, planters, sculpture, decorative paving, turf grass, loose stone, and mulch.
6. All banner signs will require a special permit for a period not exceeding sixty (60) days in a calendar year for a fee of \$50.00 for each sign permit. A banner sign permit for a period not exceeding three (3) days in a calendar year for a fee of \$25.00 for each sign permit.
7. All property in the Hwy 52 Corridor Overlay District in existence as of the date of this amended Overlay Ordinance which is not in compliance with the requirements of Article 27, Section E: Signs, #6, shall be made to comply with all such regulations within twelve (12) months of the date of this amendment to the Corridor Overlay District.
8. Lots not abutting the designated highway are allowed signs as regulated by Article 14 of the Yankton County Zoning Ordinance.

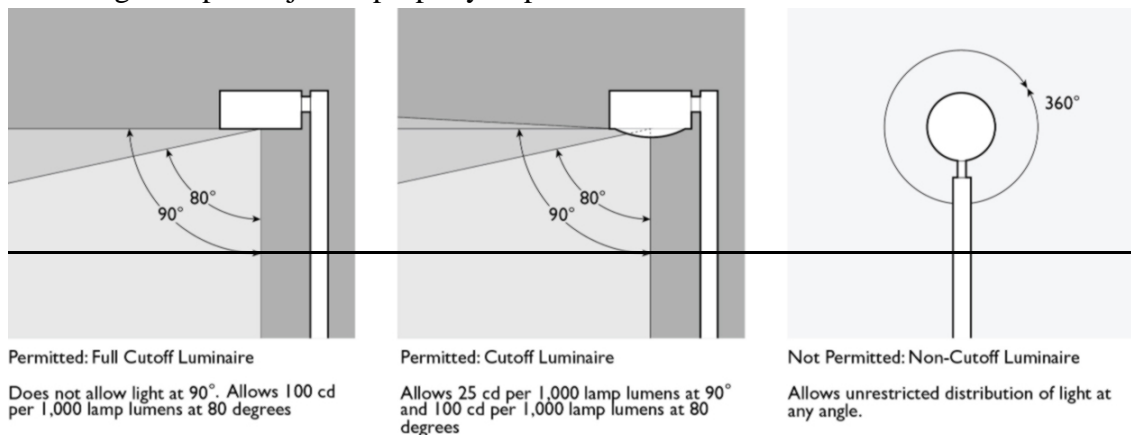


#### (F) SCREENING

Developments shall provide year-round screening of outdoor storage, utility meters, HVAC equipment, trash collection and processing. Utility meters, HVAC, and trash collection, outdoor storage and processing shall be screened to its full vertical height. Trash enclosure gates shall furnish a steel frame with decorative steel or wood covering, or another design acceptable to the Zoning Administrator. Screening shall be integrated into the overall design of buildings and landscaping and fully contain the visual impact of these service functions from adjacent public streets and neighboring properties.

## (G) LIGHTING

1. All lighting used to illuminate an off-street parking area, sign or other structure shall be arranged so as to deflect light away from any adjoining property through fixture type and location. When lighting is mounted to the underside of canopies, these lights shall be recessed so that the visible light source is no lower than the plane of the underside of the canopy.
2. The maximum height of lighting standards shall be 30 feet, unless the County grants a specific exception as part of the application approval process.
3. Exterior lighting of buildings shall be limited to illuminating devices hooded (bulb type/non-glare) in such a manner that the direct beam of any light sources will not glare upon adjacent property or public streets.



Source: IESNA

## **Section 2711 - ARCHITECTURAL GUIDELINES**

### (A) MASS AND SCALE FOR BUILDINGS

1. Variations in the vertical plane of the building shall be incorporated into the mass of the building at significant entrances or along walls that front plazas or other significant pedestrian features. Methods of variation may include towers, pediments, or façade articulations or variations; changes in the horizontal plane; or enhancements in color and materials, consistent with the overall design of the building.
2. Primary building facades shall meet one of the following guidelines:
  - a. Facades shall incorporate projections or recesses in the wall plane.
  - b. Facades shall display a pattern of color change, texture change, material change, or expression of structural bays with an offset of at least 12 inches from the ruling plane of the facade.
3. The Yankton County Board of Commissioners may waive these guidelines if the applicant demonstrates an alternative building design that in the Board's opinion provides visual interest and scale to the building.



## (B) ARCHITECTURAL ELEMENTS

1. Front facades facing a primary street shall have visible, clearly defined customer entrances that include at least three of the following elements: canopies or porticos, overhangs, recesses or projections, arcades, raised cornice parapets over the entrance door, distinctive roof forms, arches, outdoor patios or plazas, display windows, or integral planters.
2. Front facades shall utilize variations in color, horizontal planes, materials, patterns, height, or other techniques to provide visual interest and scale to buildings.
3. All rear and side facades abutting an arterial or collector shall use a simplified expression of the materials and design used on the front facade.

## (C) BUILDING MATERIALS

1. Permitted exterior building materials shall be high quality, durable materials that include, but are not limited to, brick, native or manufactured stone, wood, concrete, cement and/or architectural metals.
2. Materials on all sides of the building shall complement the front facade.
3. These guidelines are not intended to inhibit creativity and innovation in building design.

## (D) ROOF FORMS

1. Buildings with slightly sloped roofs to drain shall incorporate parapets on all facades that face a public street or residential district. Variations in parapet height and articulation of cornice lines may be used to add interest.
2. Roof forms shall be designed to express various building functions or features, such as entrances.
3. Visible roof materials shall include clay or concrete tile, split shakes, tern metal, architectural grade asphalt shingles, asphalt shingles, fiberglass shingles, architectural metals, copper, natural or synthetic slate, or similar durable materials.



## **Section 2713 - LANDSCAPE STANDARDS FOR ALL USES**

1. Building Perimeter Walls

Shrubs, or other landscape materials, shall be planted / placed within 15 feet of the foundation of the primary structure along each building facade at the rate of at least 20 shrubs per 50 lineal feet of building facade except for sides or rear of building used for loading or service areas. Foundation plantings may be clustered to provide visual interest.



2. Roadway Frontage

Along highway frontage there shall be a minimum 10-ft. wide landscape strip, continuous along the frontage except for perpendicular crossings for driveways and utilities. The landscape strip shall be planted with shade trees (6 ft. tall, 2" caliper, dbh, at time of planting, and not less than 20 ft. tall at maturity) planted not more than 50 ft. on center, and shrubbery forming an intermittent hedge not less than 3 ft. in height designed to provide an adequate screen. Landscape berms, earthen mounds designed to provide visual interest, screen undesirable views, and/or decrease noise, may be incorporated into the landscape design.



3. Outdoor Sales Display Areas

Along highway frontage there shall be a minimum 10-ft. wide landscape strip, continuous along the frontage except for perpendicular crossings for driveways and utilities. The landscape strip shall be planted in a bed of ground cover, sod, landscape mulch and/or low shrubbery.

4. Outdoor Storage Areas

Along highway frontage there shall be a minimum 10-ft. wide landscape strip, continuous along the frontage except for perpendicular crossings for driveways and utilities. The landscape strip shall be planted in a bed of ground cover, sod, landscape mulch and/or low shrubbery.

5. Customer Parking Lot Landscaping
  - a. Each parking area of over 25 spaces shall include landscaped islands within the parking area equivalent to not less than 5 - 10 percent with Planning Director discretion of the total paved area of the parking lot, not including pervious paving surfaces.
  - b. Landscaping in parking lots shall contain at least 1 shade tree (minimum of 6 ft. tall and 2" caliper dbh at time of planting and 20 ft. tall at maturity) for each 100 square feet of landscaping. Shade trees shall be planted in a bed of ground cover, sod, landscape mulch and/or low shrubbery.



6. Perimeter Landscaping
  - a. Where parking lots abut adjacent residentially zoned or residentially used property, a transitional buffer is required.
  - a. Where parking lots abut public streets other than the Highway, a landscape strip is required.
  - b. Appropriate shade tree species for landscaping parking lots include the following:
    1. White Swamp Oak
    2. Various ornamental crab apple cultivars
    3. Ginkgo (Variety: President, Autumn Gold, male gender)
    4. Accolade Elm
    5. Amur Maple
    6. Autumn Blaze Maple
    7. Various Linden cultivars
    8. Various Spruce cultivars
    9. Various Birch cultivars
    10. Other indigenous species approved by the Zoning Administrator.