

**PLANNING AND ZONING ORDINANCE #10-2**

**MCPHERSON COUNTY**

**SOUTH DAKOTA**

**EFFECTIVE DATE: JANUARY 1, 2011**

**BOARD OF COUNTY COMMISSIONERS:**

Jeffrey Neuharth – Chairman

Delmar Metzger – Commissioner

Dennis Wolf – Commissioner

Michael Rath – Commissioner

Rick Beilke – Commissioner

**COUNTY AUDITOR:**

Steve Serr

**PLANNING AND ZONING BOARD:**

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**ZONING ADMINISTRATOR**

Susan Hoffman

Sharon Guthmiller - Deputy

*This Planning and Zoning Ordinance is dedicated to Michael Rath for serving 28 years on the McPherson County Board of Commissioners and helping implement this Ordinance.*

The Planning and Zoning Ordinance #10-2 was prepared by Richard G. Kolb with the assistance of Susan Hoffman and Sharon Guthmiller under the direction of the Board of County Commissioners and the McPherson County States Attorney, Donald W. Kallenberger

Implement and enforcement of this Ordinance is the responsibility of McPherson County.

Planning and Zoning Ordinance

## RESOLUTION 10-15

RESOLUTION ESTABLISHING PLANNING AND ZONING REGULATIONS FOR MCPHERSON COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, PURSUANT TO SDCL 11-2, 1967, AND AMENDMENTS THEREOF.

WHEREAS the McPherson County, South Dakota Board of County Commissioners, hereinafter referred to as the Board of County Commissioners deems it necessary, for the purpose of promoting the health, safety, morals, and general welfare of the county to enact planning and zoning regulations and to provide for its administration, and

WHEREAS the Board of County Commissioners, has appointed a McPherson County Planning and Zoning Board, hereinafter referred to as the Planning and Zoning Board, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS the Planning and Zoning Board has prepared regulations in accordance with the purpose to protect the tax bases, to guide the physical development of the county, to encourage the distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements, to conserve and develop natural resources, and

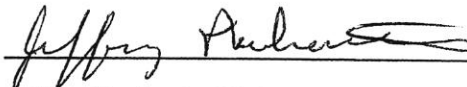
WHEREAS the Planning and Zoning Board has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS the Board of County Commissioners has given due public notice of hearings relating to planning and zoning regulations and restrictions, and has held such public hearings, and

WHEREAS all requirements of SDCL 11-2, 1967, with regard to the preparation of this regulation and subsequent action of the Board of County Commissioners has been met;

THEREFORE BE IT RESOLVED that the Planning and Zoning Ordinance #10-2 for McPherson County, South Dakota is hereby adopted by the Board of County Commissioners, McPherson County, South Dakota.

Adopted the 6 day of Dec., 2010



Jeffrey Neuharth, Chairman

McPherson Board of County Commissioners

ATTEST: 

Steve Serr

McPherson County Auditor

Planning and Zoning Ordinance

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**Article 1**  
**SHORT TITLE**

**Section 101.** This ordinance may be known and may be cited and referred to as “The Revised Zoning Ordinance of McPherson County, South Dakota,” to the same effect as if the full titles were stated.



## Article 2 JURISDICTION

**Section 201. Jurisdiction.** The provisions of this ordinance shall apply within all unincorporated areas of McPherson County, South Dakota, except the area within the city limits of the Cities of Eureka and Leola, as established on the map entitled "The Official Zoning Map of McPherson County, South Dakota". The provisions of this ordinance shall also apply within the incorporated municipalities of Long Lake and Wetonka, except Hillsview. The area within one (1) mile of the city limits of Eureka (as designated on the zoning map) and the area within one (1) mile of the city limits of Leola (as designated on the zoning map) shall have joint-jurisdiction between McPherson County and the Cities of Eureka and Leola, respectively.

**Section 202. Provisions of the Ordinance Declared to be Minimum Requirements.** In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, or general welfare. Whenever the provisions of this ordinance require a greater width or size of yards, courts or other spaces, or require lower height of building or less number of stories or require a greater percentage of lot to be left unoccupied, or impose other higher standards than required, in any other ordinance, the provisions of this ordinance shall govern. Wherever the provisions of any other ordinance or law require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the provisions of this ordinance, the provisions of such ordinance shall govern.

### Article 3

## DEFINITIONS

**Section 301. General.** For the purpose of this ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall is mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company, or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied.

**Section 302.** For the purpose of this ordinance, certain terms or words used herein shall be interpreted as follows:

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

Acre(s), Gross, the Total Acreage of. (1) a subdivision; (2) a contiguous zoning district; or (3) a planned development. Computations shall include all public right-of-ways except: (1) boundary streets of which only one-half of the right-of-way shall be used in any computation; and (2) publicly owned land used for community facilities such as parks, schools, libraries, etc.

Acre(s), Net. Same as Gross Acres but, excluding all public right-of-ways and publicly owned land utilized for community facilities.

Automobile, Abandoned. Any motor vehicle, or portion thereof, which when operated on a public roadway is required to be registered by the State of South Dakota, whose registration has been expired for a period of one (1) month or more. Notwithstanding the foregoing definition, a motor vehicle or portion thereof stored within a permitted building or structure shall not be considered to be abandoned automobile.

Automotive Service Station or Repair Shop. Building and premises where:

1. Gasoline, oil, grease, batteries, tires and automotive accessories may be supplied and dispersed at retail;
2. Tire servicing and repair, including recapping and regrooving, are done;
3. Automotive components are replaced and repaired making vehicles operable;
4. Major mechanical and bodywork including the straightening of body parts, painting and/or welding are undertaken yet excluding the storage of more than three (3) abandoned and/or inoperable vehicles not stored in buildings;

5. Sales occur of cold drinks, package foods, tobacco and similar convenience goods for automobile service customers as necessary and incidental to the principal operation.

Basement. Any floor below the first story of a building unless construed to be a story as defined therein

Billboard. See Sign.

Boarding House. Any dwelling which provides sleeping and/or cooking and /or eating facilities for more than three (3) but less than ten (10) unrelated individuals. A rooming house or furnished rooming house shall be deemed to be a boarding house. Sleeping rooms shall not be used for more than two (2) persons per room. Such dwelling shall not be open to transients.

Building Area. The portion of a lot remaining after required yards have been provided.

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

Commission. The McPherson County Planning and Zoning Board.

Concentrated Animal Feeding Operation. Refer to **Article 23** for a complete set of regulations and definitions of terms pertinent to Concentrated Animal Feeding Operations.

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

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

Density. Pertaining to the number of dwelling units per net acre or gross acre, as indicated for the appropriate zoning district. Residential District density shall not be exceeded for new subdivisions nor exceeded for re-subdivision of existing platted land.

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

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

Dwelling, Mobile Home. See Mobile Home.

Dwelling, Multiple-family. A residential building designed for or occupied by two (2) or more families living independently of each other and doing own cooking in said building. The number of families in residence are not to exceed the number of dwelling units provided.

Dwelling, Single Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family.

Efficiency Unit. A dwelling unit having only one (1) room exclusive of bathroom, water closet compartments, kitchen, laundry, pantry, foyer, closets, or any other dining alcove. An efficiency unit shall be permitted in a multifamily dwelling.

Employee(s). In regard to off-street parking requirements, employees mean all who work in the enterprise including owners.

Family. An individual or two or more persons, related by blood or marriage, living together as a single housekeeping unit in a dwelling unit, in each instance with no more than two non-related people being housed in the same dwelling unit, but provided further that domestic servants employed on the premises may be housed on the premises without being counted as a family or families. The word "family" shall not include groups occupying nursing homes, group houses, fraternity houses, sorority houses, dormitories, barracks; however, a portion of a building in this category may consist of one or more dwelling units occupied by a family or families.

Feedlot. A feedlot is defined as a parcel (gross acreage) of land whereon there is contained an operation of feeding or raising animals in excess of ten (10) animal units per acre or in excess of five hundred (500) animal unit per parcel of land yet excluding the wintering of livestock.

Animal Unit. One animal unit is equivalent to one beef cow, steer, feeder or fat beef animal; one horse, 1.4 dairy cow, 0.47 swine, 0.1 sheep, 0.033 hens, cockerels, capons, broilers, ducks , and 0.01 geese or turkeys.

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

Floor Area. The sum of all gross horizontal area of the several floors of a building and its accessory buildings on the same lot excluding basement floor areas and non-enclosed portions of the structure. All dimensions shall be measured between exterior faces of walls.

Habitable Floor. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or combination thereof. A floor used only for storage purposes is not a "habitable floor".

High Watermark. Point where permanent vegetation begins.

Home Occupation. An occupation conducted on the premises provided that:

1. The use of the dwelling unit for home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and not more than thirty (30) percent of the floor area of the dwelling shall be used in the conduct of the home occupation.
2. Any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
3. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuation in line voltage off the premises.
4. No more than one other person, in addition to members of the family residing on the premises, shall be engaged in such occupation.

Improved Road. Roads with at least a gravel base and utilized regularly by more than one (1) household.

Junkyards. A junkyard is a place where unrecyclable waste having no economic value, or waste which is recyclable but no chance of being recycled is deposited. (Also see Salvage Yards.)

Kennels. Any lot, structure, or premise where four (4) or more dogs and/or ten (10) or more cats four (4) months of age are kept.

Loading Space, Off-Street. Adequate space, logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used as trucks, tractors, trailers, etc. and accessible to such vehicles at all times. Required off-street

loading space is not to be included as off-street parking space in computation of required off-street parking space.

Lot. A parcel of land occupied or intended for occupancy by a use permitted in this ordinance, including one main building together with its accessory building and open spaces and parking spaces required by this ordinance, and having its principal frontage upon a street.

Lot Depth. The mean horizontal distance between the front lot line and rear lot line of a zoning lot. In the case of a corner lot, the lot depth is the greater of the mean horizontal distances between the front lot lines and respective side lot opposite each.

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

Lot of Record. A lot or parcel of land that has access to a street, the deed of which has been recorded in the Office of the County Register of Deeds prior to the adoption of this ordinance and may be used for the uses in the district in which it is located except as hereinafter specified.

Lot Type. Any lot within the jurisdiction of this ordinance shall be one of the following types:

1. Corner Lot. A corner lot is defined as a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees.
2. Interior Lot. An interior lot is defined as a lot other than a corner lot with only one frontage on a street.
3. Through Lot Double Frontage Lot. A through lot is defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Lot Width. The mean horizontal distance between side lot lines measured at right angles to the lot depth.

Mobile Home. Any occupied vehicles used or so considered as to permit it being used as a conveyance on the public streets or highway and duly licensed as such, and shall include self-propelled or nonself-propelled vehicles so designed, constructed, reconstructed or added to by means of an enclosed addition or room in such a manner as will permit the occupancy thereof as a dwelling or sleeping place for one or more persons. Residences constructed on permanent foundations are not considered as mobile homes.



Mobile Home Park. Any premises where two or more mobile homes are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public, parking space for two or more mobile homes for living or sleeping purposes, and which include any buildings, structures, vehicles or enclosures used or intended wholly or in part, for the accommodation of automobile transients.

Nonconforming Use. Any building or land lawfully occupied by use at the time of passage of this ordinance, which does not conform after passage of this ordinance.

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

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

Performance Standards. It is a criterion established for the purpose of:

1. Assigning proposed industrial uses to the proper district; and
2. Making judgments in the control of noise, odor, smoke, toxic matter, vibration, fire and explosive hazards, or glare generated by, or inherent in, uses of land or buildings.

Planned Development. A means of developing or redeveloping existing larger parcels or combinations of smaller parcels of land within the jurisdiction of this Ordinance, by allowing more flexibility in design to produce a more aesthetic and/or efficient environment, and which through safeguards incorporated elsewhere in this Ordinance will assure that any such planned development will be in harmony and compatible with the intent of this Ordinance and the appropriate zoning district of this Ordinance.

More specifically, a planned development is land, which is under:

1. Single ownership; or
2. Unified control, and wherein such land is to be utilized for ultimate use by:
  - a. Single ownership, or
  - b. Unified control, or
  - c. Separate ownership and unified control, or

- d. Separate ownership without unified control, and whereon such land is designed for use as one building or a group of buildings and whereon such land there may or may not be provisions for multiple purpose uses.

Any such planned development shall be compatible to the Comprehensive Plan for McPherson County, South Dakota. Provided further, if the proposed development is only for a portion of the contiguous landholdings of the applicant(s), then a simple, schematic plan showing anticipated uses, densities, shall be submitted with application for any planned development.

Public Utility Substation and Transmission Facilities. An area where facilities are provided for the distribution of telephone, radio, communications, gas, electricity, or any area where the transmission occurs for gas and electricity. These facilities shall be permitted as a conditional use in the various zoning districts subject to conditions which will assure their harmony with the nature of the respective district.

Recreational Vehicles (RV). A vehicular, portable structure built on a chassis, either self-propelled or nonself-propelled, designed to be used as a temporary dwelling for travel and/or recreational purposes having a body width not exceeding eight (8) feet.

Right of Way. Right of way shall be defined as the area that intersects a road that extends into a piece of property, whether residential, commercial, or industrial, either owned by a private resident, city, county, state, business, or corporation, that can be accessed by individuals, businesses, city, county, and state personnel to conduct road or utility work.

The setback on county roads shall be thirty three (33) feet, measured from center of the road extending out directly on one side of the road. The total setback is sixty six (66) feet, when measured on both sides of the road. A building or other structure shall not be placed or constructed within the setback area. A building or other structure may only be placed or constructed after fifty (50) feet, measured from the center of the road extending out directly on one side of the road. The total setback for buildings and other structures is one hundred (100) feet, when measured on both sides of the road.

Salvage Yards. The use of more than seven hundred fifty (750) square feet of open storage on any lot, portion of a lot, or tract of land for the sale of abandoned, dismantled, or wrecked automobiles or other vehicles, machines, or parts thereof. (See also Junk Yards.)

Shelterbelts/Fieldbelts. A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock, residences, recreation areas, and wildlife. Shade and ornamental trees are not considered as shelterbelts.



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

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

Special Exception. A special exception is a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to the number, area, location, or relation to the neighborhood would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning district as special exceptions, if specified provisions for such special exception are made in this ordinance.

Start of Construction. Includes substantial improvements, and means the date the Building Permit was issued, providing the actual start of construction, repair, reconstruction, placement, or other improvement was within 90 days of the permit date. The actual start means the first placement of permanent construction for a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms.

Street Line. The lot line abutting right-of-way line.

Structure. Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground; among other things, structures include buildings, mobile homes, walls, signs, and billboards.

Substantial Improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

1. Before the improvement or repair is started, or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or any other structure part of the building commences,

whether or not that alteration affects the external dimensions of the structure

The term does not, however, include either:

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

Temporary Construction Camp. Area that provides temporary living quarters for more than two (2) trailers or temporary dwellings that are employed or engaged in construction activities.

Truck or Equipment Terminal. Any lot, structure, or premises used for the parking or storage of capital equipment such as trucks, trailers, or other like equipment, over ¾-ton capacity.

Utility Substation. See Public Utility Substation.

Variance. A variance is a relaxation of the terms of the Planning and Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in the ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district. This is NOT to be confused with a special exception use.

Yard. A required open space other than a court, unoccupied and unobstructed by any structure or portion of a structure from thirty (30) inches above the grade of the lot upward, provided, however, that fences, wall, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

Yard Front. A yard extending between side lot lines across the front of a lot adjoining a public street.

In any required front yard, no fence or wall shall be permitted which materially impedes vision across such yard above the height of thirty (30) inches and no hedge or other vegetation shall be permitted which materially impedes vision across such yard between the height of thirty (30) inches and ten (10) feet.

In the case of through lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the

prevailing yard pattern, the administrative official may waive the requirement for the normal front yard and substitute, therefore, a special yard requirement which shall not exceed the average of the yards provided on adjacent lots.

In the case of corner lots which do not have reversed frontage, a front yard of the required depth shall be provided in accordance with the prevailing yard pattern and a second front yard of half the depth required generally for the front yards in the district shall be provided on the other frontage.

In the case of reversed frontage corner lots, a front yard of required depth shall be provided on either frontage, and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of corner lots with more than two (2) frontages, the administrative official shall determine the front yard requirements, subject to the following limitations:

1. At least one front yard shall be provided having the full depth required generally in the district; and
2. No other yard on such lot shall have less than half the full depth required generally.

Depth of required front yards shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding front and rear yard lines shall be parallel.

Yard Side. A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street.

In the case of through lots, side yards shall extend from the rear lines of front yards required. In the case of corner lots, yards remaining after full and half depth front yards have been established shall be considered side yards.

Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by the district regulations with its inner edge parallel with the side lot line.

Yard Rear. A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by the district regulations with its inner edge parallel with the rear lot line.

Yard Special. A yard behind any required yard adjacent to a public street, required to perform the same function as a side yard, but adjacent to a lot line so placed to perform

like functions as a side yard, but next to a lot line so located or oriented that neither the term side yard nor the term rear yard clearly applies. In such cases, the administrative official shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the district, determining which shall apply by the relation of the portion of the lot on which the yard is to be placed to the adjoining lot(s), with due consideration to the orientation and placement of structures and buildable areas thereon.

Zoning Administrator. An administrative official, designated by the Board of County Commissioners, who administers and enforces this ordinance. The Zoning Administrator can be known as the County Zoning Official and Zoning Director.

Zoning Administrator, Deputy. An official, designated by the Board of County Commissioners, who assists the Zoning Administrator by issuing building permits, special exceptions and variances, but does not administer or enforce this ordinance.

Zoning Board/Board of Adjustment.

Planning and Zoning Board. A board, whose members are designated by the Board of County Commissioners, assigned to administer and enforce this ordinance. This board is also known as the McPherson County Planning and Zoning Board and the County Planning and Zoning Board.

Board of Adjustment. A board, whose members are designated by the Board of County Commissioners, assigned to hear appeals and grant variances for the Planning and Zoning Board. This board is also known as the County Board of Adjustment and Board of Zoning Adjustments.

**Article 4**  
**OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION**

**Section 401. General.** The County is hereby divided into zones or districts as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance. The Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners attested by the County Auditor and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 401 of Ordinance No.#10-2 of McPherson County, South Dakota," together with the date of the adoption of the ordinance.

**Section 402. Zoning Map Changes.** If, in accordance with the provisions of this ordinance, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners with an entry on the Official Zoning Map as follows: "On/Date/, by official action of the Board of County Commissioners, the following change/changes were made in the Official Zoning Map: /brief description of nature of change/," which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Auditor. No amendment to this ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in the ordinance.

Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this ordinance and punishable as provided under Section 2102 of Article 21.

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

**Section 403. Zoning Map Replacement.** In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may, by ordinance, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map, or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners attested by the County Auditor and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map



supersedes and replaces the Official Zoning Map adopted August 7<sup>th</sup>, 2001 as part of Ordinance No #01-1 of McPherson County, South Dakota.”

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

**Section 404. Rules for Interpretation of District Boundaries.** Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys, shall be construed to follow such centerlines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines;
6. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distance not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
7. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by subsections 1 through 6 above, the Planning and Zoning Board/Board of Adjustment shall interpret the district boundaries; and
8. Where a district boundary line divides a lot which was in single ownership at the time a passage of this ordinance, the Board of Adjustment may permit as a special exception, the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

**Article 5**  
**APPLICATION OF DISTRICT REGULATIONS**

**Section 501. General.** The regulations set forth by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

**Section 502. Zoning Affects Every Building and Use.** No building, structure, or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

**Section 503. Performance Standards.** No building or other structure shall hereafter be erected or altered.

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

**Section 504. Open Space, Off-Street Parking, and Loading Space.** No part of a yard, other open space, off-street parking, or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

**Section 505. Yard and Lot Reduction Prohibited.** No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

**Section 506. Unclassified or Unspecified Uses.** Unclassified or unspecified uses may be permitted as special exception by the Board of Adjustment after the Planning and Zoning Board has made a review and recommendation provided that such uses are similar in character to the principal uses permitted in the district.

**Article 6**  
**ESTABLISHMENT OF DISTRICTS**

**Section 601. Planning and Zoning Board Recommendations.** It shall be a purpose of the Planning and Zoning Board to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The Planning and Zoning Board shall make a preliminary report and hold public hearings thereon before submitting its final report, and the Board of County Commissioners shall not hold public hearings or take action until it has received the final report of the Planning and Zoning Board of McPherson County.

**Section 602. District Created.** For the purpose of this ordinance, there are hereby created six types of districts by which the jurisdictional area defined in Article 2 shall be divided:

- AG) Agricultural
- (RR) Rural-Residential
- (LF) Lake Front Residential
- (HC) Highway Commercial
- (I) Industrial
- (WR) Wildlife/Recreation



## Article 7 AGRICULTURAL DISTRICT (AG)

**Section 701. Intent.** The intent of the Agricultural District is to establish and preserve agricultural lands and lands consisting of natural growth from incompatible land uses and to maintain the natural environment of agriculture, conservation, and low-intensity outdoor recreation uses which do not significantly change the natural character of the land.

**Section 702. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in the Agricultural District:

1. Any form of agriculture including the raising of crops, horticulture, animal husbandry, and poultry husbandry, yet excluding commercial feedlots;
2. Single-family dwellings and their normal accessory buildings;
3. Farm-related buildings and structures;
4. Horticultural endeavors including greenhouses and nurseries; and
5. Home occupations.

**Section 703. Special Exceptions.** After notice and appropriate safeguards, the Board of Adjustment may permit the following as a special exception in the Agricultural District (AG):

1. Fairgrounds, racetracks, and amusement parks;
2. Utility substations and transmission facilities;
3. Airports;
4. Golf courses, country clubs, and golf driving ranges;
5. Schools, churches, and cemeteries;
6. Recreational area and activities, both private and public;
7. Commercial feedlots;
8. Operational and maintenance terminal for trucks and other equipment;
9. Mineral exploration;
10. Sanitary landfill sites in accordance with South Dakota Environmental Protection Agency regulations;
11. Concentrated Animal Feeding Operations- refer to Article 23 for standards;
12. Farm-owned, farm-related bulk commodities; and
13. Farm-owned agri-business and agri-processing.

**Section 704. Minimum Lot Requirements.** The minimum lot width shall not be less than one hundred fifty (150) feet. The minimum lot area shall be one (1) acre providing the density requirement is met. The maximum residential dwelling density is one (1) residence per quarter- quarter section, except where more than one (1) residence is necessary for persons employed on a farm, then additional dwellings may be allowed.

**Section 705. Minimum Setback Requirements.** All Structures shall be set back not less than one hundred fifty (150) feet from all section line roads measured from the center of the road.

**Section 706. Minimum Shelterbelt Setbacks.** Shelterbelts consisting of one or more rows when parallel to the road shall be set back a minimum of one hundred fifty (150) feet measured from the center of the road. Shelterbelts consisting of one or more rows perpendicular to the road shall be set back a minimum of one hundred fifty (150) feet measured from the center of the road. Replacement trees in existing shelterbelts are exempt from minimum shelterbelt requirements as long as its nonconformance is not increased.

**Article 8**  
**RURAL-RESIDENTIAL DISTRICT (RR)**

**Section 801. Statement of Intent.** The intent of the Rural-Residential (RR) District is to provide an environment and area conducive to large residential lot/hobby farm endeavors while retaining a quasi-rural character.

**Section 802. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in the Rural-Residential District:

1. Any form of agriculture including the raising of crops, horticulture, animal husbandry, and poultry husbandry, excluding commercial feedlots;
2. Single-family/two-family dwellings and their normal accessory buildings, including mobile homes; and
3. Railroad track right-of-way.

**Section 803. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in the Rural-Residential District:

1. Roadside produce stands in conjunction with a bona fide farm operation on the premises; and
2. Home occupations

**Section 804. Special Exceptions.** After notice and appropriate safeguards, the Board of Adjustment may permit the following as special exceptions in the Rural-Residential District:

1. Fairgrounds, racetracks, and amusements parks;
2. Utility substations;
3. Recreational activities, whether public or private;
4. Amphitheaters, stadiums, drive-in-movies, arenas, and field houses;
5. Churches and schools;
6. Operation and maintenance terminal for trucks and other equipment;
7. Mineral extractive operators;
8. Cemeteries;
9. Kennels and veterinary establishments; and
10. Wildlife propagation and game management.

**Section 805. Minimum Requirements.** The minimum lot frontage width shall be two hundred (200) feet. The minimum lot area shall be one (1) acre.

**Section 806. Minimum Setback Requirements.** All structures shall be set back not less than one hundred fifty (150) feet along section line roads and not less than fifty (50) feet along all others, measured from the center of the road.

**Section 807. Minimum Yard Requirements.** For all structures, there shall be a front yard of not less than a depth of twenty-five (25) feet. There shall be a rear yard of not less than a depth of twenty (20) feet. Each side yard shall not be less than seven (7) feet as measured from the outmost edge of structures. All distances are measured from the lot line. Yard requirements for special exceptions shall be determined by the Board of Adjustment.

**Section 808. Minimum Shelterbelt Setback.** Shelterbelts consisting of one or more rows when parallel to the road shall be setback a minimum of one hundred fifty (150) feet measured from the center of the road. Fieldbelts consisting of one or more rows perpendicular to the road shall be set back a minimum of one hundred fifty (150) feet measured from the center of the road. Replacement trees in existing shelterbelts are exempt from minimum shelterbelt requirements as long as the nonconformance is not increased.

**Section 809. Service Roads.** Service roads may be required at the discretion of the Planning and Zoning Board.

**Article 9**  
**LAKE FRONT RESIDENTIAL DISTRICT (LF)**

**Section 901. Intent.** The intent of the Lake Front Residential District (LF) is to provide for residential uses surrounding lake areas without altering natural surroundings of the District.

**Section 902. Permitted Principal Uses and Structures.**

1. Single-family residential usage including mobile homes but excluding mobile home parks.

**Section 903. Permitted Accessory Uses and Structures.**

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

**Section 904. Special Exception.** After the provisions of this ordinance relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in Lake Front Residential District (LF):

1. Clubs and campgrounds;
2. Resorts;
3. Grocery stores;
4. Sporting goods stores; and
5. Public owned and operated facilities.
6. Bed and Breakfast

**Section 905. Minimum Lot Requirements.** Each lot shall have a depth of not less than one hundred fifty (150) feet and shall have a shoreline frontage width of not less than fifty (50) feet. The minimum lot road frontage shall not be less than fifty (50) feet in width. All lots without shoreline frontage shall have a minimum width of fifty (50) feet and a minimum depth of one hundred fifty (150) feet.

**Section 906. Minimum Setback Requirements.** Each building shall be set back not less than fifty (50) feet from the normal high watermark. The road setback shall be one hundred fifty (150) feet along section line roads and fifty (50) feet from other roads measured from the center of the road. Each side yard shall not be less than seven (7) feet as measured from the outermost edge of structures. Boathouses, piers, and docks are exempted from yard requirements.

**Section 907. Service or Access Roads.** Service or access roads may be required at the discretion of the Planning and Zoning Board.

**Section 908. Sewage Disposal Regulations.** It is the responsibility of the landowner to conform with state and federal sewage disposal regulations.

## Article 10 HIGHWAY COMMERCIAL DISTRICT (HC)

**Section 1001. Intent.** The intent of the Highway Commercial District (HC) is to provide commercial areas for those establishments which can function most satisfactorily in an area directly related to a major vehicular circulation route due to the nature of the merchandise handled and the display space required, particularly items requiring expansive display areas such as motor vehicles, trailers, and farm implements; the method of transport required of the purchaser for the merchandise handled, particularly goods customarily traded in bulk such as lumber or feed requiring access for the customer to the sales area; primary dependence upon vehicular, as opposed to pedestrian, access such as drive-in facilities and all types of automotive and farm implement services; or the clientele toward which the establishments are primarily oriented, particularly travelers on the highway.

**Section 1002. Permitted Principal uses and Structures.** The following principal uses and structures shall be permitted in Highway Commercial Districts (HC):

1. Retail sale of: lumber and other building materials, farm equipment, motor vehicles, recreational vehicles, marine craft, aircraft, mobile homes, trailers, farm and garden supplies, fuel, and ice;
2. Wholesale sales of: motor vehicles and automotive equipment; drugs, chemicals, and allied products; dry goods and apparel; groceries and related products; electrical goods; hardware, plumbing, heating equipment, and supplies; machinery, equipment, and supplies; beer, wine, and distilled alcoholic beverages; paper and paper products; furniture and home furnishings; and lumber and construction materials;
3. Funeral and crematory services;
4. Farm products warehousing and storage;
5. Refrigerated warehousing;
6. Food locker, provided that any slaughtering, killing, eviscerating, skinning, or plucking be done indoors;
7. Household goods warehousing and storage;
8. General warehousing and storage;
9. Automobile repair and services;
10. Re-upholstery and furniture repair services;
11. Contract construction services;
12. Bus garaging and equipment maintenance;
13. Motor freight terminals, garaging, and equipment maintenance;
14. Libraries, museums, art galleries, planetaria, aquariums, historic and monument sites, auditoriums, exhibition halls, and penny arcades;
15. Miniature golf, gymnasiums and athletic clubs; swimming pools; tennis courts; ice skating; and roller skating;
16. Parks;

17. Theaters, stadiums, drive-in movies, arenas and field houses, race tracks, fairgrounds, amusement parks, golf driving ranges, go-cart tracts, golf courses and county clubs, riding stables, play fields and athletic fields, bowling and swimming pools;
18. Communication and utility uses;
19. Drive-in eating and drinking places and restaurants;
20. Motels; and
21. Livestock sales establishments and buying stations.

**Section 1003. Permitted Accessory Uses and Structure.** The following uses and structures shall be permitted in Highway Commercial District (HC):

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

**Section 1004. Minimum Lot Requirements.** The minimum lot area shall be ten thousand (10,000) square feet providing EPA regulations can be met. The minimum lot width shall be one hundred (100) feet.

**Section 1005. Minimum Yard Requirements.** All structures shall be set back not less than a depth of one hundred fifty (150) feet measured from the center of the road. Each side yard shall not be less than twenty-five (25) feet as measured from the outermost edge of the structure.

**Section 1006. Service or Access Roads.** Service or access roads may be required at the discretion of the Planning and Zoning Board.

## **Article 11**

### **GENERAL INDUSTRIAL DISTRICT (I)**

**Section 1101. Intent.** The intent of the General Industrial District (I) is to provide space for certain types of industrial and/or manufacturing and/or warehousing or storage operations which are compatible to adjoining districts. Such uses generally require open storage of materials or goods either before, during, or after the manufacturing process but are of a low noise or nuisance level. Land designated for this district should be located in relation to the thoroughfare network of the community as well as rail (if required) and designated so as to not disrupt normal traffic flow. Because of increased technological developments, extensive lists of permitted and prohibited uses are impractical, therefore, to safeguard the public interests, planned Industrial Parks are encouraged in this district.

**Section 1102. Permitted Principal Uses and Structures.** The following permitted uses and structures are permitted in the Industrial District (I).

1. Bulk storage and warehousing;
2. Contractors offices, shops, and yards;
3. Grain elevators and grain and mill products;
4. Wood and lumber fabrication; and
5. Light metal fabrication.

**Section 1103. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in the Industrial District (I):

1. Caretaker and watchman quarters; and
2. Medical facilities accessory to an industrial use.

**Section 1104. Special Exceptions.** After the provisions of this ordinance relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in the Industrial District any use which is consistent with the intent of the district. The Performance Standards found in **Appendix A** may be used as guidelines in determining special exceptions.

**Section 1105. Minimum Lot Requirements.** The minimum lot area shall be forty-three thousand five hundred sixty (43,560) square feet. The minimum lot width shall be one hundred fifty (150) feet.

**Section 1106. Minimum Yard Requirements.** There shall be a front yard of not less than a depth of twenty-five (25) feet. There shall be a rear yard of not less than a depth of twenty (20) feet. Each side yard shall not be less than twenty (20) feet, as measured from the outermost edge of structure, provided that on lots adjacent to a Residential District, all buildings shall be located so as to provide a minimum side and rear yard of twenty-five (25) feet along that portion of the lot adjacent to the Residential District.

**Section 1107. Service or Access Roads.** Service or access roads may be required at the discretion of the Planning and Zoning Board.



**Article 12**  
**WILDLIFE/RECREATION DISTRICT (WR)**

**Section 1201. Intent.** The intent and purpose of Wildlife/Recreation (WR) is to provide for the retaining of mature growth of a particular area; to preserve the natural environment and resources from destructive land uses; to preserve certain locations which have a historic value; and to protect natural spawning grounds, feeding grounds, and wildlife habitats.

**Section 1202. Permitted Principal Uses and Structures.** The Following principal uses and structures shall be permitted in Wildlife/Recreation (WR):

1. Wildlife propagation and game management;
2. Forest preserves and public access areas;
3. Utility lines within right-of-ways and within ten (10) feet of public and road right-of-ways;
4. Caretaker's residence; and
5. Agriculture and agricultural activities (except commercial feedlots).

**Section 1203. Permitted Accessory Uses and Structures.** The following accessory uses and structures shall be permitted in Wildlife/Recreation (WR):

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this district.

**Section 1204. Special Exceptions.** After the provisions of this ordinance relating to special exceptions have been fulfilled, the Board of Adjustment may permit as special exceptions in Wildlife/Recreational (WR):

1. Utility substations and transmission facilities;
2. Public shooting areas;
3. Public parks; and
4. Summer camps.

**Section 1205. Special Conditions.** The use of property or the construction of any building for any purpose permitted in the Wildlife/Recreation (WR) shall be subject to the following conditions and limitations:

1. No land or water area shall be filled, dredged, or drained nor shall any natural stream or floodway be encroached upon or polluted.
2. Provided, however that exceptions to the foregoing conditions may be authorized by the Board of Adjustment for navigations channels, drainage channels, roads, clearings, or other improvements necessary for the protection of existing uses or the proper development of adjacent properties, provided, that such works or improvements shall be so limited that they will not tend to destroy

or materially change the natural conditions of rivers, woodlands, swamps, marshes, shallows or other wetlands.

**Section 1206. Minimum Yard Requirements.** Any building shall have a minimum setback of one hundred fifty (150) feet measured from center of the road and a rear yard of not less than a depth of fifty (50) feet. There shall be two (2) side yards, each of which shall not be less than thirty (30) feet as measured from the outermost edge of structures.

**Section 1207. Minimum Shelterbelt Setback.** Shelterbelts consisting of one or more rows when parallel to the road shall be setback a minimum of one hundred fifty (150) feet measured from the center of the road. Fieldbelts consisting of one or more rows perpendicular to the road shall be setback a minimum of one hundred fifty (150) feet measured from the center of the road. Replacement trees in existing shelterbelts are exempt from minimum shelterbelt requirements as long as the nonconformance is not increased.

**Article 13**  
**SUPPLEMENTARY DISTRICT REGULATIONS**

**Section 1301. Erection of More Than One Principal Structure on a Lot.** In any district, more than one (1) 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 1302. Structures to Have Access.** Every building hereafter erected or moved shall be on a lot adjacent to public access and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.

**Section 1303. Minimum Off-Street Parking and Loading Requirements.** Off-street motor vehicle parking and loading space shall be provided on any lot on which any of the indicated structures and uses are hereafter established. Such space shall be provided with vehicular access to a street or alley. For the purpose of computing the number of parking spaces available in a given area, the formula of two hundred fifty (250) square feet per parking space shall be required. Minimum off-street parking and loading requirements, which shall be applicable in all zoning districts to the structures and uses indicated, shall be set forth in the Schedule of Minimum Off-Street Parking and Loading Requirements, hereby adopted by reference and declared to be a part of this ordinance. If minimum off-street parking and loading space, required in said schedule, cannot be reasonably provided on the same lot on which the principal structure of use is conducted in the opinion of the Planning and Zoning Board, the Planning and Zoning Board may permit such space to be provided on other off-street property, provided that such space lies within four hundred (400) feet of the entrance of such principal structure or use.

**Section 1304. Signs Excepted.** Signs are prohibited in all Rural Residential Districts except in the following:

1. Signs over show windows or doors of a nonconforming business establishment announcing without display or elaboration only the name and occupation of the proprietor and not to exceed two (2) feet in height and ten (10) feet in length.
2. Real estate signs not to exceed eight (8) square feet in areas which advertise the sale, rental, or lease of the premises upon which said signs are temporarily located.
3. Name, occupation and warning signs not to exceed two (2) square feet located on the premises.
4. Bulletin Boards for public, charitable or religious institutions shall not exceed thirty-five (35) square feet in area located on the premises.
5. Memorial signs, tables, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against a structure.
6. Official signs such as traffic control, parking restrictions, information, and notices.

7. Temporary signs or banners when authorized by the Planning and Zoning Board.

**Section 1305. Signs Permitted.** Signs are classified as structures and are permitted in all zones except as listed in Section 1304; additionally, all signs shall conform to state law when along all state and federal primary road system highways.

## Article 14

# NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, NONCONFORMING USES OF STRUCTURES AND PREMISES, AND NONCONFORMING CHARACTERISTICS OF USES

**Section 1401 Intent.** Within the districts established by this ordinance or amendments that may later be adopted, there exists (a) lots, (b) structures, (c) uses of land structures, and (d) characteristics of use which were lawful before this ordinance was passed or amended, by which would be prohibited, regulated, or restricted under the terms of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as ground for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this ordinance 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 ordinance by attachment on a building or premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

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

**Section 1402 Nonconforming Lots of Records.** In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

**Section 1403 Nonconforming Uses of Land (or Land with Minor Structures Only).**

Where at the time of passage of this 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 1404 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, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
2. Should such nonconforming structure or nonconforming portion of structure be totally destroyed, it shall not be reconstructed except in conformity with the provisions of this ordinance; and
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

**Section 1405 Nonconforming Uses of Structures or of Structures and Premises in Combination.** If the nonconforming use involving individual structures with a replacement cost of one thousand (\$1,000) dollars or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance that would not be allowed in the district under the terms of this ordinance, the

nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

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

**Section 1406 Uses Under Special Exception Provisions not Nonconforming Uses.**

Any use which is permitted as a special exception in a district under the terms of this ordinance (other than a change through the Board of Adjustment action from a nonconforming use to another use not generally permitted in the district) shall be deemed a conforming use in such district, but shall without further action be considered



a conforming use. When applying for a special exception the requestor must state what the special exception is and what it is intended for.

**Section 1407 Right of Way.** Right of way shall be defined as the area that intersects a road that extends into a piece of property, whether residential, commercial, or industrial, either owned by a private resident, city, county, state, business, or corporation, that can be accessed by individuals, businesses, city, county, and state personnel to conduct road or utility work.

The setback on county roads shall be thirty three (33') feet, measured from center of the road extending out directly on one side of the road. The total setback is sixty six (66') feet, when measured on both sides of the road. A building or other structure shall not be placed or constructed within the setback area. A building or other structure may only be placed or constructed after fifty (50') feet, measured from the center of the road extending out directly on one side of the road. The total setback for buildings and other structures is one hundred (100') feet, when measured on both sides of the road.

**Other Requirements:**

1. In the case of farming, no farmer shall utilize the area within the right of way without written permission from the county. If farming takes place within the right of way, the county, or other person or group on official business, may, without permission from the farmer in violation, conduct business within the right of way, even if it disturbs the farming that is/has taken place.
2. It shall also be unlawful for any person or group of people, unless written permission is first obtained from the Planning and Zoning Board, to construct or put in place any fences or other obstructions down the middle of a section line.
3. It shall also be unlawful for any person or group of people to remove any existing culverts or to obstruct the culverts natural water flow by plugging the ends of the culvert up. Written permission from the Planning and Zoning Board must first be obtained prior to moving, removing, or constructing any culvert.



**Article 15**  
**ADMINISTRATIVE PROCEDURE AND ENFORCEMENT-**  
**BUILDING PERMITS**

**Section 1501 Administration and Enforcement.** An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Board of County Commissioners, shall administer and enforce this ordinance. He/she may be provided with the assistance of such other persons as the Board of County Commissioners may direct.

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

**Section 1502 Building Permits Required.** Building permits are required in the following instances:

1. For any improvements on or to any structure/building in which the market value (net worth) of the improvements exceeds three thousand (\$3,000) dollars; or
2. For any structure or building, regardless of cost, if additional land or area is required for it to be sited on.

No building or structure, which meets anyone of the above criteria shall be erected, partially erected, moved, added to, or structurally altered without a permit therefore issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this ordinance, unless he/she received a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this ordinance.

**Section 1503 Application for Building Permit.** All applications for building permits shall show the actual dimensions and shape of the lot to be built upon; the sizes and locations on the lot of buildings already existing, if any, and the location and dimensions of the proposed building or alteration.

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

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

**Section 1504 Expiration of Building Permits.** If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, said permit shall expire; it shall be cancelled by the Zoning Administrator, and written notice thereof shall be given to the persons affected.

If the work described in any building permit has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a renewed building permit has been obtained at no additional cost unless substantial changes have been made to the first building permit.

**Section 1505 Construction and Use to be as Provided in Applications and Permits.** Building permits issued on the basis of applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved application and no other use, arrangement, or construction. Use, arrangement, or construction at variance with the authorized shall be deemed a violation of this ordinance, and punishable as provided by Section 2101 hereof.

**Section 1506 Building Permit in Conspicuous Places.** All building permits issued by the Zoning Administrator must be placed in a conspicuous location on the building site for the duration of the construction or work described.

## Article 16

### PLANNING AND ZONING BOARD, BOARD OF ADJUSTMENT.

**Section 1601 Proceedings of the Planning and Zoning Board as Well as That of the Board of Adjustment.** The Planning and Zoning Board shall serve as a Board of Adjustment as provided by SDCL 11-2-49. The Planning and Zoning Board/Board of Adjustment shall adopt rules necessary for the conduct of its affairs and in keeping with the provisions of this ordinance. The Planning and Zoning Board/Board of Adjustment shall keep a record of all proceedings. Meetings shall be held at the call of the chairman and at such other times as the Planning and Zoning Board/Board of Adjustment may determine. The chairman, or in his/her absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

**Section 1602 Hearings, Appeals, and Notice.** Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator. Such appeal shall be taken within fifteen (15) days after permit publication in the newspaper, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

The Board of Adjustment shall within fifteen (15) days after receipt of the petition hold a hearing on the appeal, given public notice prior to, as well as, give due notice to the parties in interest, and decide the same within a reasonable time (within 15 days). Upon the hearing, any party may appear in person or by agent or by attorney.

**Article 17**  
**BOARD OF ADJUSTMENT- POWERS AND DUTIES**

**Section 1701 Administrative Review.** 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 relating to the location or soundness of structures or to interpret any map.

**Section 1702 Special Exceptions, Conditions Governing Applications and Procedures.** The Board of Adjustment shall have power to hear and decide, in accordance with the provisions of this ordinance, requests for special exceptions 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 special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this ordinance. A special exception shall not be granted by the Board of Adjustment unless and until:

1. A written application for a special exception is submitted, indicating the section of this ordinance under which the special exception is sought and stating the grounds on which it is requested.
2. Notice shall be given at least fifteen (15) days in advance of a public hearing. The owner of the property for which special exception is sought or his agent shall be notified by registered mail. Registered letters will be sent to adjacent landowners at least seven (7) days prior to the hearing.
3. The public hearing shall be held. Any party may appear in person or by agent or attorney.
4. The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.
5. Before any special exception shall be issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following, where applicable:
  - a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - b. Off-street parking and loading areas where required, with particular attention to the items in a. above and the economic, noise, glare, or other effects of the special exception on adjoining properties and properties generally in the district.
  - c. Utilities with reference to locations, availability, and compatibility;
  - d. Screening and buffering with reference to type, dimensions, and character;

- e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility, and harmony with properties in the district;
  - f. Required yards and other open spaces; and
  - g. General compatibility with adjacent properties and other property in the district.
6. In granting any special exception, 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 terms under which the special exception is granted, shall be deemed a violation of the ordinance and punishable under Section 2102 of this ordinance.

**Section 1703 Variances, Conditions, Governing Application and Procedures.** The Board of Adjustment shall have the power, where, by reason of exceptional narrowness, shallowness, or shape of a special piece of property at the time of the enactment of this ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardships, as such relief may be granted without substantially impairing the intent and purpose of this ordinance.

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property concerned 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 to this ordinance.
3. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district; that literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the



terms of this ordinance; that the special conditions and circumstances do not result from the action of the applicant; that granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no prohibited or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.
5. Notice of public hearing shall be given as in Section 1702; the public hearing shall be held. Any party may appear in person, or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that 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 general purpose and intent of this ordinance will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of terms under which the variance is granted, shall be deemed a violation of the ordinance and punishable under Section 2101 of this ordinance.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

**Section 1704 Planning and Zoning Board has Power of Zoning Administrator on Appeals; Reversing Decision of Zoning Administrator.** In exercising the above mentioned power, the Board of Adjustments may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination appeal as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

**Section 1705 Vote required to Reverse or to Grant Special Exception or Variance.** The concurring vote of three-fourths (3/4) of the full membership of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any variance in this ordinance.

## Article 18 APPEALS

**Section 1801 Duties of Zoning Administrator, Planning and Zoning Board/Board of Adjustment, Board of County Commissioners, and Courts on Matters of Appeals.** The duties and responsibilities of the Zoning Administrator are to follow the rules as promulgated throughout this Ordinance. This Ordinance maybe changed or modified from time to time by the Planning and Zoning Board and the Board of County Commissioners of McPherson County. The Zoning Administrator shall perform such additional duties as shall be the recorder of the minutes of both the Planning and Zoning Board and the Board of Adjustment.

It is the intent of this ordinance that all questions of interpretation and enforcement shall be presented first to the Zoning Administrator and that such questions shall be presented to the Planning and Zoning Board/Board of Adjustment only in appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Planning and Zoning Board/Board of Adjustment shall be to the Board of County Commissions, then to a court as provided by law.

Any person or persons, board, taxpayer, department, or bureau of the County aggrieved by any decisions of the Zoning Administrator, Planning and Zoning Board/Board of Adjustment or Board of County Commissioners may seek review by a court of record of such decision in the manner provided by the laws of the State of South Dakota.

**Section 1802 Stay of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Planning and Zoning Board/Board of Adjustment after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Planning and Zoning Board/Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.



**Article 19**  
**SCHEDULE OF FEES, CHARGES, AND EXPENSES**

**Section 1901 Schedule of Fees, Charges, and Expenses.** The Board of County Commissioners shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, 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 Board of County Commissioners. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

## Article 20 AMENDMENTS

**Section 2001 Amendments.** The provisions set forth in the ordinance may, from time to time, be amended, supplemented, changed, modified, or repealed by action of the Board of County Commissioners or when such amendment, supplement, change, modification, or repeal is requested through a petition by thirty (30) percent of the landowners in the district requesting change. An individual landowner may also petition the Board of County Commissioners to change the zoning of all or any part of his property. Upon filing or upon separate request by the Board of County Commissioners, the Planning and Zoning Board shall hold a public hearing not less than fifteen (15) days after notice published in newspaper of general circulation in the County and subject to the provision of SDCL 11-2-19. Such petitioning landowner shall also notify all other abutting landowners by registered mail of the petitioned zoning change at least one (1) week prior to any public hearing held by the Planning and Zoning Board.

The Planning and Zoning Board shall within forty-five (45) days of receipt of any such petition, make its recommendation to the Board of County Commissioners.

After proper legal notice, the report of such recommendations shall include approval, disapproval, or other suggestions and the reasons therefore, and a discussion of the effect on such amendment, supplement, change, modification upon adjacent and upon the Comprehensive Plan.

The Board of County Commissioners shall therefore, by duly enacted ordinance, either adopt or reject such amendment, supplement, change, modification, or repeal, and if it is adopted by the Board of County Commissioners, the same shall be published in the official newspaper in the County and take effect on the twentieth (20) day after its publication.

**Article 21**  
**VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES**

**Section 2101 Building Permit Violations.** Any person, firm, or corporation in violation of Section 1502 shall be assessed a late fee of twenty-five (\$25) dollars. The Zoning Administrator may also take enforcement measures as given in Section 1501. Payment of all fees shall be made in the office of the Zoning Administrator for McPherson County within ten (10) days after the person, firm, or corporation in violation of the above ordinance has been notified by registered letter. If payment of the fee is not received at the end of the ten (10) day period, the McPherson County State's Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9, 7-19-1, and 11-2-25.

**Section 2102 Violation of Ordinance.** It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of this Ordinance, except as otherwise specified in Section 2101. Violation thereof shall be a misdemeanor and may be punishable by a fine of up to two hundred (200) dollars for each and every day that any violator fails to comply with the provisions of this Ordinance. All fines for violations shall be paid to the County and shall be credited to the general revenue fund.

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

Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

**Article 22**  
**LEGAL STATUS PROVISIONS**

**Section 2201 Separability.** Should any article, section, or provision 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 2202 Purpose of Catch Heads.** The catch heads 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 2203 Repeals of Conflicting Ordinances.** All ordinances or parts of ordinances in conflict with this ordinance, or inconsistent with the provisions of this ordinance, are hereby repealed to the extent necessary to give this ordinance full force and effect.

**Section 2204 Effective Date.** This ordinance shall take effect and be in force from and after its passage and publication according to law.

## Article 23

### CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

#### **Section 2301. Intent.**

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of construction of such facilities. A Special Exception can be issued, (see Special Exception in the Planning and Zoning Ordinance for McPherson County).

#### **Section 2302. Definitions.**

***Animal Manure:*** Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

***Animal Unit:*** See Section 2303 of Article 23.

***Applicant:*** An individual, a corporation, a group of individuals, a partnership, joint venture, owners, or any other business entity having charge or control of one or more Concentrated Animal Feeding Operations.

***Change in Operation:*** "Change in Operation" means a cumulative expansion of more than 300 animal units, after September 11, 2001, which are confined at an existing unpermitted Concentration Animal Feeding Operation.

***Farm Dwelling:*** Any dwelling owned or occupied by the farm operators, tenants, or seasonal or year-around hired workers.

***Non-Farm Dwelling:*** Any occupied dwelling which is not a farm dwelling.

***Permit:*** A permit required by these regulations unless stated otherwise.

***Potential Pollution Hazard:*** A Concentrated Animal Feeding Operation of 0 to 300 Animal Units may be classified as a Class D Operation by the Zoning Administrator when a

Potential Pollution Hazard exists. Factors to be considered by the Zoning Administrator in determining a Potential Pollution Hazard include, but not limited to the following:

1. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
2. A Potential Water Pollution Hazard exists due to sitting over a shallow aquifer or drainage which contributes to the waters of the State..

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

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

**Shall:** "Shall" means that the condition is an enforceable requirement of this permit.

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

**Shallow Well:** A well which is located in a shallow aquifer.

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

**Significant Contributor of Pollution:** To determine if a concentrated animal feeding operations meets this definition, the following factors are considered:

1. Size of feeding operation and amount of manure reaching waters of the State;
2. Location of the feeding operation in relation to waters of the State;
3. Means of conveyance of manure and process wastewater into waters of the State;

4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the State.

***Water of the State:*** All waters within the jurisdiction of this State, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State.

***Zone A:*** Special Flood Hazard Areas subject to inundation by the 100-year flood.

***Zone B:*** These areas have been identified in the community flood insurance study as areas of moderate or minimal hazard from principal source of flood in the area.



**Section 2303. Animal Units.**

Animal species and number of a species required to equal 300, 1,000 and 2,000 animal units. Note that these figures relate to inventory rather than annual production. Other animal species equivalents which are not listed will be based on species' waste production.

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

<u>ANIMAL SPECIES</u>	<u>300AU</u>	<u>1,000 AU</u>	<u>2,000 AU</u>	<u>ANIMAL UNIT EQUIVALENT SPECIES/AU</u>
Feeder or Slaughter Cattle	300hd	1,000hd	2,000hd	1.0
Mature Dairy Cattle	200hd	700hd	1,400hd	1.4
Finisher Swine (over 55 lbs)	750hd	2,500hd	5,000hd	0.4
Nursery Swine (less than 55lbs)	3,000hd	10,000hd	20,000hd	0.1
Farrow-to-Finish (sows)	80hd	270hd	540hd	3.7
Swine Production Unit (sows breeding, gestating & farrowing)	640hd	2,130hd	4,260	0.47
Horses	150hd	500hd	1,000hd	2.0
Sheep	3,000hd	10,000hd	20,000hd	0.1
Turkeys	16,500hd	55,000hd	110,000hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	30,000hd	100,000hd	200,000hd	0.01
Laying Hens and Broilers (liquid handling system in Confinement facility)	9,000hd	30,000hd	60,000hd	0.033
Ducks	1,500hd	5,000hd	10,000hd	0.2
Buffalo	200hd	400hd	1,400hd	1.4

### **Section 2304 Classes of Concentrated Animal Feeding Operation.**

A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 180 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are single animal operation if they adjoin each other, or if they use a common area, or system for disposal of manure.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

#### **ANIMAL UNITS**

Class A	2,000 or more
Class B	1,000 to 1,999
Class C	300 to 999
Class D	0 to 300 (Potential water pollution hazard)
Class E	0 to 300 (No pollution hazard)

### **Section 2305 Concentrated Animal Feeding Operation Permit Requirements.**

Owners of Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations are required to complete a permit application whenever any of the following occur:

1. A new Concentration Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows.
3. A cumulative expansion by 300 animal units, after September 11, 2001, of existing Concentrated Animal Feeding Operation that does not have a permit.
4. A change in ownership.
5. An existing Concentrated Animal Feeding Operation is to be restocked after being idle for five (5) or more years.
6. A signed complaint has been received by the Zoning Administrator or South Dakota Department of Environment and Natural Resources and

after inspection reveals that the Concentrated Animal Feeding Operation is in violation of County or State regulations.

### **Section 2306 Concentrated Animal Feeding Operation Control Requirements.**

#### **1. No Significant Contribution of Pollution**

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution.

#### **2. State General Permit**

Class A and B Concentrated Animal Feeding Operation shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County permit may be approved conditioned on receiving a State permit.

Class C and D Concentrated Animal Feeding Operations will be required to obtain a State General Permit if either of the following occur

- a. If an earthen storage basin or lagoon is used for manure storage.
- b. The Board of Adjustment decides conditions require a State permit.

#### **3. Nutrient Management Plan**

Classes A, B, C, and D Concentrated Animal Feeding Operations shall submit a Nutrient Management Plan to the State. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The South Dakota Department of Environment & Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.

A generic nutrient management plan that the applicant may use in developing a nutrient management plan is available from the South Dakota Department of Environment & Natural Resources. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of this general permit. Nitrogen, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield.

The South Dakota Department of Environment & Natural Resources recommends and encourages producers to develop nutrient management plans for other nutrients such as phosphorous and potassium. Over application of these nutrients may lead to water quality problems in area lakes and streams and result in potential damage to the producer's land and crop.

The applicant must maintain records to show compliance with the plan.

The plan must comply with County Manure Application Setbacks.

Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure. Animal manure shall be applied within five miles of the Concentrated Animal Feeding Operation.

#### **4. Manure Management and Operation Plan**

All Class A and B Concentrated Animal Feeding Operations shall submit a Manure Management and Operation Plan to the State and County regardless when they became operational.

**A. Plan must include:**

1. The location and specifics of proposed animal manure facilities.
2. The operation procedures and maintenance of manure facilities.
3. Plans and specifications must be prepared or approved by a registered professional engineer, or a South Dakota licensed Natural Resource Conservation Service (NRCS) engineer. Waste treatment facilities will require inspection by an engineer and as-built plans to be submitted to the County Zoning Administrator.
4. Animal manure shall not be stored longer than two years.
5. Manure containment structures shall provide for a minimum design volume of 270 days of storage.
6. Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.
7. Manure transportation plan: manure transportation is limited to five miles from the place of origin.

**B. As a condition of the permit, the Board of Adjustment may require the producer to participate in environmental training programs and become a certified livestock manager.**

**C. The Board of Adjustment may require manure to be injected or incorporated into the soil.**

- D. There will be no spreading manure on weekends, holidays, and evenings during warm seasons when neighbors may be involved in outdoor recreation activities,
- E. For Manure to be transported, stored and or applied beyond the five (5) miles from place of origin, a variance is required for each and every legal land description not encompassed by the boundary of a legally described section to where the manure is to be transported, stored and or applied.

The variance shall include and shall not be limited to:

1. The legal land description to where the manure shall be stored and/ or applied.
2. The date the manure is to be transported, stored and /or applied.
3. The route the manure is to be transported.
4. A description, approximate quantity, and product (per load) to be hauled.
5. In case of inclement weather, alternative dates and routes will have to be disclosed.

The variance will cost two hundred fifty (\$250) dollars per day. Additional time may be purchased after the variance is issued. A bond in the amount of one thousand (\$1000) dollars must be posted to cover possible road damage.

Violation of the ordinance of manure transportation beyond the five (5) miles from place of origin, thereof shall be a class 2 misdemeanor and may be punishable by a fine of up to two hundred (\$200) dollars for each load of manure that fails to comply with the provisions of this ordinance.

In situations deemed as an emergency by the Board of County Commissioners, a conditional use permit may be issued. This conditional use permit and any other request will be considered on a case-by-case basis. The conditional use permit will cost two hundred fifty (\$250) dollars per day, with a two (2) day maximum. A bond in the amount of one thousand (\$1000) dollars must be posted to cover possible road damage. The permit must specify the same information as required under the variance rules in Section 4-E (Manure Management and Operation Plan). A maximum of thirty (30) loads may be hauled under this conditional use permit. In no event will a conditional use permit be granted during the time that load limits are in effect.

## **5. Management Plan for Fly and Odor Control**

Classes A, B, C, and D Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The Board of Adjustment will review the need for control measures on a site-specific basis, taking in consideration prevailing wind direction and topography. The following procedures to control flies and odors should be considered in a management control plan.

- A. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.
- B. Methods to be utilized to dispose of dead animals should be included in the management plan.
- C. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.
- D. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
- E. Store solid manure in containment areas having good drainage to minimize odor production.
- F. Remove manure from open pens as frequently as possible to minimize odor production.
- G. Consider use of covers on open storage systems for liquid manure systems to reduce odor production.
- H. Avoid spreading manure on weekends, holidays, and evenings during warm season when neighbors may be involved in outdoor recreation activities.
- I. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.
- J. Incorporation of manure should occur within 24 hours of open air spreading.

**6. Required Setbacks (defined as radius) and Separation Distance for new Concentrated Animal Feeding Operations and those Expanding by 300 or More Animal Units after September 11, 2001.**

	MINIMUMS			
	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D &amp; E</u>
Established Residences Not including owners/operators	3,960 feet*	2,640 feet	2,640 feet	2,640 feet
Churches, Business and Commercially Zoned Areas	5,280 feet*	5,280 feet	2,640 feet	2,640 feet
Incorporated Municipality	3 miles	2 miles	5,280 feet	2,640 feet
Private Wells & Public Water Supplies other than the Operator	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Lakes and Streams Classified as Fisheries as Identified by the State	500 feet	500 feet	200 feet	200 feet
Federal, State & County Road ROW (Housed)	300 feet	300 feet	200 feet	200 feet
Federal, State & County Road ROW (Open Lot)	300 feet	300 feet	200 feet	200 feet
Township Road ROW(Housed)	150 feet	150 feet	150 feet	150 feet
Township Road ROW (Open Lot)	150 feet	150 feet	150 feet	150 feet
Designated 100 Year Floodplain	Prohibited	Prohibited	Prohibited	Prohibited

\*plus 1,000 feet for 1,000 additional units  
ROW- right of way

Proposals for new Concentrated Animal Feeding Operations, on a site-by-site basis, shall be set back from adjoining property lines as determined by the Board of Adjustment.



## **7. Exemptions from Separation Distance**

1. If a Concentrated Animal Feeding Operation is closer than the separation distances provided in these regulations, the applicant can request a written waiver from separation distance. The residence, business, church, school, municipality, or public use area may waive the distance requirement. The waiver will be recorded with the County Register of Deeds in order that any future owners can be informed.
2. Concentrated Animal Feeding Operation expansion of 300 animal units or more can apply to Board of Adjustment for a variance to the required setback and separation distance regulations.

## **8. New Residences**

Anyone establishing a new residence must comply with the minimum setbacks as stated in Section 6, Established Residences, upon determining the class of Concentrated Animal Feeding Operation where the new residence will be located.

The following uses are prohibited in Zone A: (see definitions)

1. New Concentrated Animal Feeding Operations after adoption of this ordinance.
2. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of 300 animal units.
3. Earthen storage basins and lagoons.
4. Stockpiling of solid waste.

The following uses are prohibited in Zone B: (see definitions)

1. New and expansion of Class A and B Concentrated Animal Feeding Operations.
2. Earthen storage basins and lagoons.

The following uses are allowed in Zone B by Special Exception:

1. New Class D and expansion of existing Class D up to 999 animals units (Class C).

The Board of Adjustment may required soil borings to determine impermeable material between land surface and the aquifer.

Each application for a new or expanded Concentrated Animal Feeding Operation (CAFO) will be reviewed by the Board of Adjustment on a site specific basis. The Board of Adjustment reserves the right to increase the minimum required setbacks

and separation distance on a site specific review, based on one or more of the following considerations.

- A. A concentration of Concentrated Animal Feeding Operations in the area exists or would occur which may pose an air or water quality concern.
- B. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air and water quality.
- C. A Concentrated Animal Feeding Operation is in excess of 5,000 animal units.

## 9. Manure Application Setbacks

- A. The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

### COUNTY MANURE APPLICATION SETBACKS

<u>CATEGORY</u>	<u>SURFACE OR IRRIGATION APPLIED</u>	<u>INCORPORATED OR INJECTED</u>
Lake, Rivers and Streams Classified as Fisheries from High Water Mark.	1,000 feet	100 feet (lake) 500 feet (river&stream)
Streams and Lake classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from Right-of-way 300 feet (irrigation)	10 feet from right-of-way
Area of 10 or more Residences	300 feet (surface) 1,000 feet (irrigation)	300feet
Public Wells	1,000 feet	1,000 feet
Private Shallow Wells	1,000 feet	250 feet
A residence other than the Operator	1,000 feet	300 feet
Natural or Man-made Drainage	500 feet	50 feet

- B. The Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.
- C. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

#### **10. Standards for Special Exceptions**

- A. The Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- B. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- C. Special Exceptions shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.
- D. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.
- E. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the Zoning Administrator and signed by both the applicant and the Zoning Administrator.
- F. A neighboring township that adjoins between two counties will follow the regulations of the county that is most restrictive.
- G. An applicant's record on environment issues, employment, and labor compliance must be submitted with the application. If the Planning and Zoning Board finds the person is a "bad actor" then the applicant will be denied a permit

#### **11. Facility Road Maintenance Agreements**

All facilities within McPherson County that cause excessive maintenance of County or Township roads shall be required to have a written agreement with the Township Board or County Highway Superintendent, stating acceptance responsibility for all additional costs incurred by the facility in maintenance of said road. Excessive maintenance shall be defined as: All work and material costs incurred over and above the average cost of maintaining the specific type of road within the local governmental units jurisdiction. The term of said agreement shall be determined prior to the issuance of a conditional use permit.

**12. Information Required for Class A and B Concentrated Animal Feeding Operational Permit**

- A. Owner's name, address and telephone numbers.
- B. Legal description of site and site plan
- C. Number and type of animals.
- D. Nutrient management plan.
- E. Manure management and operation plan.
- F. Management plan for fly and odor control.
- G. Information on ability to meet designated setback requirements including site plan to scale.
- H. General permit from South Dakota Department of Environment & Natural Resources if available for animal species.
- I. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources.
- J. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- K. Notification of whomever maintains the access road (township, county and state).
- L. Notification of public water supply officials.
- M. Any other information as contained in the application and requested by the County Zoning Administrator.
- N. Written notification to landowners or tenants living within the setback area to the proposed facility, and publication of notice in official County newspaper at least once.
- O. A full written plan must be submitted at least four weeks in advance of the public hearing in the county courthouse or other location, available for public inspection.
- P. A copy of the general permit application must be submitted to the County, at the time it is submitted to State Department of Environment and Natural Resources.

- Q. A list of owner's names contracted to do the manure land spreading and a legal description of the land must be submitted to the County.

**13. Information Required for Class C and D Concentrated Animal Feeding Operational Permit**

- A. Owner's name, address and telephone numbers.
- B. Legal description of site and site plan.
- C. Number and type of animals.
- D. Nutrient management plan.
- E. Manure management and operation plan.
- F. Management plan for fly and odor control.
- G. Information on ability to meet designated setback requirements, including site plan to scale.
- H. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.
- I. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- J. Notification of whomever maintains the access road (township, county and state).
- K. Notification of public water supply officials.
- L. Any other information as contained in the application and requested by the Zoning Administrator.

**Article 24**  
**Communication Towers and Facilities**

**24.01. Communication Towers and Facilities Requirements**

Communication towers/facilities existing and/or approved prior to the date of adoption of these standards may continue to be used, however, proposed modifications must be reviewed by the Zoning Administrator, and depending on the proposed modifications, may be subject to review and approval by the Board of Adjustment. In addition, any proposed modifications to approved and/or existing tower/facilities on towers constructed prior to adoption of this ordinance must be submitted for review.

- A. **Co-Location.** Prior to applying for a Conditional Use Permit for construction of a new tower/facility, the applicant shall exhaust all alternatives for co-location on existing tower/facilities. As such, the applicant shall submit evidence demonstrating the following:
1. The planned equipment would exceed the structural capacity of the existing or approved antenna support structure, as documented by a qualified professional engineer licensed in the State of South Dakota, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
  2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the antenna support structure as documented by a qualified engineer and the interference cannot be prevented at a reasonable cost.
  3. Existing or approved antenna support structures cannot accommodate the planned equipment at the necessary height as documented by a professional engineer licensed in the State of South Dakota.
  4. Fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing unreasonable. Costs exceeding new tower/facility development are presumed to be unreasonable.
  5. No new tower/facility shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Adjustments that no existing tower, structure, or alternative technology can accommodate the applicant's needs.
  6. Furthermore, no new tower/facility shall be approved that is not in compliance with all standards for approval set forth in this ordinance.

## **B. General Approval Standards.**

1. **Separation.** The following separation requirements shall apply to all proposed communication towers and facilities.
  - a) **Separation from planned and/or existing residential properties.**

Proposed towers/facilities shall be separated from neighboring properties either planned or utilized for residential purposes as established herein. The minimum separation distance shall be measured from the center of the foundation of the proposed tower/facility to the nearest portion of a property line of a neighboring tax parcel used or planned for residential purposes. For the purposes of this section, a property shall be considered to be used for residential purposes, regardless of assessment type, if a dwelling or mobile home exists on the property. A property shall be considered to be planned for residential purposes if it is within two miles of a city boundary, and that city has established a residential land use classification for the property.

    - (1) For towers/facilities of self-supporting monopole or lattice-type construction, the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater.
    - (2) For guyed tower/facilities the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater, plus one hundred (100%) percent of the length of the longest supporting guy wire.
2. **Height.** The application must demonstrate the proposed height of the tower/facility is the minimum necessary to accommodate the proposals requirements, as documented by a qualified engineer.
3. **Required Setbacks.** The center foundation of all towers/facilities are required to be setback in accordance with the following:
  - a) From any public right-of-way, the following apply:
    - (1) For towers of monopole and lattice-type construction, a distance equal to one hundred fifty (150%) percent the height of the tower or two hundred (200) feet, whichever is greater; and for towers of guyed-type construction, a distance equal to one hundred fifty (150%) percent the height of the tower plus the length of guyed wire or two hundred (200) feet, whichever is greater.
    - (2) From any adjoining property zoned or planned residential or existing residential use, the distance of three hundred (300) feet or one hundred



fifty (150%) percent of the height of the tower/facility for towers of lattice or monopole construction type; and three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower/facility plus one hundred (100%) percent of the length of the longest supporting guy wire for towers of guyed type construction as measured from the center foundation of the tower/facility to the nearest property line.

(3) From other property lines, a distance equal to at least fifty (50%) percent of the height of the tower/facility.

(4) Guys and accessory buildings must satisfy the minimum zoning district setback requirements for accessory structures within the lease area.

**4. Fencing and Screening.**

a) **Security Fencing.** Towers/facilities shall be enclosed by fencing not less than six (6) feet in height and shall be equipped with appropriate anti-climbing devices.

b) **Screening.** The lowest six (6) feet of the tower/facility shall be visually screened by trees, large shrubs, solid walls, buildings, solid fencing, and/or any combination thereof, from all public right-of-ways and adjoining zoned, planned, and/or existing residential land uses.

**5. Aesthetics.** Towers/facilities shall meet the following general requirements.

a) **Color.** Towers/facilities shall maintain a galvanized steel finish. If required to be painted by the FAA, such required colored schemes must be submitted to the Board of Adjustment. All mandated FAA requirements must be provided in writing to the Board of Adjustments prior to any action on applications.

b) **Lighting.** Towers/facilities, including antennas, shall not be artificially lighted unless required by the FAA or applicable authority. Unless required as the only option by the FAA, strobe lighting is not permitted. If lighting is required, lighting alternatives and design chosen must cause the least disturbance to the surrounding views. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.

c) **Signs.** No signs shall be allowed on any tower/facility, other than safety or warning signs. If any signage is required consistent with this standard, such signage must comply with the requirements of this ordinance, Signs section. "No Trespassing" signs shall be posted around the facility with a telephone number of who to contact in the event of emergency.

C. **Compliance.** The proposed tower/facility must comply with all other applicable local, state or federal regulations.

D. **Interference.** The proposed tower/facility will not unreasonably interfere with the view from any public-owned or managed area or major view corridors.

E. **Removal of Abandoned Tower/Facilities.** The owner of the tower/facility, with written authorization from the property owner, shall file annually a declaration with the Planning and Zoning Board as to the continuing operation of every tower/facility installed subject to these regulations. Failure to do so may construed to mean that the facility is no longer in use and may be considered abandoned subject to the provisions for removal. The owner of the tower/facility and property owner will be notified that the property is considered to be in a state of abandonment, and such person(s) shall remove the tower/facility, foundational supports, and associated appurtenances within ninety (90) days of receipt of notice from McPherson County at the owner's expense. Adequate removal shall include the restoration of the site to a state in keeping with the character of the surrounding landscape and the elimination of all ground-level paving. Failure to remove such an abandoned tower/facility within said ninety (90) days shall be grounds to issue a Notice of Violation in accordance with the requirements of this ordinance and undertake enforcement action upon the tower/facility owner and property owner.

1. Any person, firm or corporation not in compliance with these regulations may be deemed guilty of a County infraction.
2. Documentation must be provided to Planning and Zoning Board with signatures by all property owners with an interest in the tower/facility stating knowledge of the penalties associated with a County infraction, including that all costs for removal of abandoned tower/facilities in accordance with these regulations may be assessed against property under their ownership. Such documentation must be provided on the form supplied by the Planning and Zoning Board, and submitted at time of Application for Zoning Permit.

F. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for tower/facilities must submit the following (as applicable). All plans shall be drawn at a scale of one (1) inch equals fifty (50) feet.

1. A scaled site plan clearly indicating the location, type and height of the proposed tower/facility
2. Legal description of the parent parcel and leased parcel (if applicable).
3. The separation distance between the proposed tower/facility and nearest planned and/or existing residential property.

4. The separation distance from other existing and approved towers. The applicant shall also identify the type of construction of the existing tower(s) and owner/operators of such facilities.
5. A landscape plan showing specific landscape materials, existing and those proposed, identifying type and size of materials.
6. Written statements from other applicable jurisdictions such as the FAA regarding coloring and potential lighting requirements. In addition, a copy of the FAA's response to the submitted "Notice of Proposed Construction or Alteration" must be submitted.
7. A statement by the applicant as to whether construction of the tower/facility will accommodate co-location of additional antenna for future users and documentation regarding the standards for co-located established in this Ordinance.
8. Identification of all other tower/facility sites owned and/or operated by the applicant within McPherson County
9. Elevations showing all facades, indicating exterior materials and color of the tower/facility on the proposed site and width, depth and height shall be presented.
10. Wireless telecommunications towers and antennae shall be designed to withstand sustained winds of at least 80 miles per hour.
11. Commentary on Ice Design Criteria for Communications Structures shall be consulted for ice load specifications.
12. The applicant shall demonstrate that the proposed tower complies with all Federal Communications Commission regulations addressing radio frequency emissions standards.
13. Copy of the signed lease agreement with the property owner.
14. Submittal of search rings established for the proposed communication tower and affidavit that the applicant made diligent, but unsuccessful efforts for permission to install or co-locate the applicant's wireless communications facilities on all existing towers or other antenna support structures located within an area equal to one hundred percent (100%) of the search ring for the proposed site of the wireless communications facility.
15. The applicant shall agree, in writing, to allow for possible co-location of McPherson County Public Safety equipment in the top position to the proposed communications facility and grants a perpetual access agreement to such equipment. McPherson County Board of Commissioners would be responsible for all public safety equipment installed.

## Article 25

### Wind Energy Conservation Systems

**25.01 Purpose.** The purpose of this ordinance is to insure that the placement, construction and modification of a Wind Energy Conservation System (WECS) facility is consistent with the County's land use policies, to minimize the impact of WECS facilities, to establish a fair and efficient process for review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County's citizens.

**25.02 Authority and Jurisdiction.** South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

**25.03 Federal and State Requirements.** All WECS facilities 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 facilities.

**25.04 Large – LWECS.** The requirements of this Ordinance shall apply to all LWECS proposed after the effective date of this Ordinance. LWECS for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing LWECS, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing LWECS shall be allowed without full compliance with this Ordinance.

#### **A. General Requirements for LWECS**

- 1. Site Clearance.** The owner or operator shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWECS.
- 2. Topsoil Protection.** The owner or operator shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- 3. Compaction.** The owner or operator 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.

4. **Livestock Protection.** The owner or operator shall take precautions to protect livestock during all phases of the project's life.
5. **Fences.** The owner or operator 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 fence owner.
6. **Color and Finish.** Wind Turbines shall be painted a non-reflective color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective. At LWECS sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the LWECS to the natural setting and existing environment.
7. **Exception for Meteorological Towers.** Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applications
8. **Tower Configuration.** All wind turbines, which are part of a LWECS, shall be installed with a tubular, monopole type tower. Meteorological towers may be guyed.
9. **Lighting.** LWECS sites shall be marked as required by the Federal Aviation Administration (FAA) and shall not be artificially lighted, except to the extent required by the FAA or other applicable authority. Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators or infrared heating devices used to protect the monitoring equipment.
10. **Signage.** All signage on site shall comply with the signs section of this ordinance. The manufacturer's or owner's company name and/or logo may be placed upon the compartment containing the electrical generator, of the LWECS. Wind turbines shall not be used for displaying any advertising except reasonable identification of the manufacturer or operator of the LWECS sites.
11. **Feeder Lines.** The owner or operator shall place overhead electric lines, known as feeders, on public right-of-ways if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public right-of-way and approval has been obtained from the government unit responsible for the affected right-of-way. If no public right-of-way exists, the owner or operator may place feeders on private property. When placing feeders on private property, the owner or operator shall place the feeder in accordance with the easement(s) negotiated. The owner or operator shall submit the site plan and engineering drawings for the feeder lines to the Board of County Commissioners before commencing construction.



12. **Waste Disposal.** Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site in a time period established by the McPherson County Board of Commissioners and disposed of in accordance with all applicable local, state and federal regulations.
13. **Minimum Ground Clearance.** The blade tip of any Wind Turbine shall, at its lowest point have ground clearance of no less than seventy-five (75) feet for a LWECS system and twenty-five (25) feet for a SWECS system.
14. **Signal Interference.** The applicant shall not operate the LWECS so as to cause any interference with electromagnetic communications, such as radio, telephone or television signals, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the LWECS or its operation, the owner shall take the measures necessary to correct the problem.
15. **Federal Aviation Administration.** All LWECS shall comply with FAA standards and permits.
16. **Electrical Codes and Standards.** All LWECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
17. **Setbacks.**
  - a) The following setbacks and separation requirements shall apply to all wind turbines and meteorological towers; provided that the Board of Adjustment upon recommendation by the Board of County Commissioners may reduce the standard setbacks and separation requirements if the intent of this Ordinance would be better served thereby. All other structures shall comply with the applicable setbacks as defined by the base zone district.
    - (1) **Structures.** Each wind turbine and meteorological tower shall be set back from the nearest off-site residence, school, hospital, church or public library, a distance no less than the greater of (a) one point one (1.1) times its total height or (b) one thousand (1,000) feet. Distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater. For the purposes of this section only, the term "business" does not include agricultural uses.
    - (2) **Property lines.** At no time shall any part of the wind turbine and meteorological tower overhang an adjoining property without securing appropriate easements from adjoining property owners. Distance from property line shall be five hundred (500) feet or one point one (1.1) times the system height depending upon which is greater, measured from ground surface to the tip of the blade when in a fully vertical position.

- (3) **Public Right-of-Ways.** Setbacks from public right-of-way, railroads, power-lines and structures shall be a minimum of one point one (1.1) times the height of the tower and rotor.
  - (4) **Communication and Electrical Lines.** Each wind turbine and meteorological tower shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than one point one (1.1) times its total height, determined from the existing power line or telephone line.
18. **Soil Erosion and Sediment Control Plan.** The owner or operator shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the 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 that uses native plant species to maintain and ensure adequate erosion control 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.
19. **Noise.** Audible noise due to LWECS sites operations shall not exceed fifty-five (55) dBA for any period of time, when measured at any dwelling, school, hospital church, or public library existing on the date of approval of any conditional use permit from the property line.
- (a) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard given above, the applicant standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient measurement location.
  - (b) In the event the noise levels resulting from the LWECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment upon recommendation by the Board of County Commissioners provided that the following has been accomplished:



- (1) Written consent from the affected property owner has been obtained stating that they are aware of the LWECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
  - (2) If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the McPherson County Register of Deeds which describes the burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.
20. **Turbine Spacing.** The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
21. **Footprint Minimization.** The owner or operator shall design and construct the LWECS so as to minimize the amount of land that is impacted by the LWECS. 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 tower unless otherwise mutually agreed upon by the permittee and the landowner on whose property the LWECS is constructed.
22. **Permit Expiration.** The permit shall become void if no substantial construction has been completed within two (2) years of issuance.
23. **Safety.**
  - a) All wiring between wind turbines and the LWECS substation shall be underground. If the developer can demonstrate the need for an overhead line and the acceptance of landowners for this line, such option may be approved conditionally by the Board of Adjustment.
  - b) Wind turbines and meteorological towers shall not be climbable up to 15 feet above ground level.
  - c) All access doors to wind turbines and meteorological towers and electrical equipment shall be locked when not being serviced.
  - d) Appropriate warning signage shall be placed on Wind Turbine towers, electrical equipment, and LWECS entrances.
  - e) For all LWECS, the manufacture's engineer or other qualified engineer shall certify that the turbine, foundation and tower design of the LWECS is within accepted professional standards, given local soil and climate conditions.
  - f) For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of eight (8) feet above the ground. Visible fencing shall be installed around anchor points of guy wires. The property owner must sign a notarized acknowledgement and consent form allowing construction of the turbine and guyed wires without

fencing as required in this Ordinance to be presented to the Board of County Commissioners and the Board of Adjustment.

**B. Discontinuation and De-commissioning.**

1. **Cost Responsibility.** The owner or operator of a LWECS is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.
2. **Useful Life.** A LWECS is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Board of County Commissioners for approval of a plan outlining the steps and schedule for returning the LWECS to service within 12 months of the submission.
3. **Decommissioning Period.** The facility owner or operator shall begin decommissioning a LWECS facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in b.(2). Decommissioning must be completed within eighteen (18) months after the facility or turbine reaches the end of its useful life.
4. **Decommissioning Requirements.** Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWECS. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.
5. **Decommissioning Plan.** Prior to commencement of operation of a LWECS facility, the facility owner or operator shall file with the Board of County Commissioners the estimate decommissioning cost per turbine, in current dollars at the time of the application, for the purposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board of County Commissioners shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The Board of County Commissioners may at any time require the owner or operator of a LWECS to file a report describing how the LWECS owner or operator is fulfilling this obligation.

6. **Financial Assurance.** After the tenth (10<sup>th</sup>) year of operation of a LWECS facility the Board of County Commissioners may require a performance bond, surety bond, letter of credit corporate guarantee or other form of financial assurance that is acceptable to the Board of County Commissioners to cover the anticipated costs of decommissioning the LWECS facility.
7. **Failure to Decommission.** If the LWECS facility owner and operator does not complete decommissioning, the Board of County Commissioners may take such action as may be necessary to complete decommissioning, including requiring forfeiting of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of County Commissioners may take such action as may be necessary to decommission a LWECS facility and seek additional expenditures necessary to do so from the facility owner.

**C. Avoidance and Mitigation of Damage to Public Infrastructure.**

1. **Roads.** Applicants shall identify all roads to be used for the purpose of transporting LWECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the LWECS and obtain applicable weight and size permits from the impacted road authority (ies) prior to construction. Where practical, all-weather roads shall be used for all activities associated with the LWECS. For private roads, the owner or operator 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. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainageways wherever possible. If access roads must be constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portion of the watershed can readily flow to the lower portion of the watershed.
2. **Existing Road Conditions.** Applicant shall conduct a pre-construction survey, in coordination with the impacted local road authority(ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility. The applicant is responsible for on-going road maintenance and dust control measures identified by the McPherson County Highway Superintendant or Township Official during all phases of construction. The owner or operator shall notify the Zoning Administrator of such arrangements.
3. **Drainage System.** The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the LWECS.

4. **Required Financial Security.** The applicant shall be responsible for restoring or paying damage as agreed to by the applicable road authority(ies) sufficient to restore the road(s) and bridges to preconstruction conditions. Financial security in a manner approved by the McPherson County Attorney's Office shall be submitted covering 130% the cost of all required improvements. This requirement may be waived by the Board of Adjustment by recommendation from the McPherson County Highway Superintendant.

D. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for LWECS must submit the following information(as applicable).

1. The names of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including: number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
5. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distance and be drawn to scale and an ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.
6. Engineer's certification(s) as required in these supplemental standards.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other LWECS within 10 rotor diameters of the proposed LWECS.
10. Existing Resources Inventory.
11. An acoustical analysis.
12. FAA Permit Application.
13. Location of all known communication tower/facilities within two (2) miles of the proposed LWECS.
14. Decommissioning Plan.
15. Description of potential impacts on all nearby LWECS and Non LWECS and wind resources on adjacent properties.
16. Identification of significant migratory patterns and nesting area for birds within two (2) miles.

**25.05 Small –SWECS.** The requirements of this Ordinance shall apply to all SWECS proposed after the effective date of this Ordinance. SWECS for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing SWECS, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing SWECS shall be allowed without full compliance with this Ordinance.

**A. General Requirements for SWECS**

1. **Site Clearance.** The owner or operator shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the SWECS.
2. **Color and Finish.** SWECS shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
3. **Lighting.** A SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
4. **Signage.** All signage on site shall comply with the sign section of this ordinance. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWECS visible from any public road shall be prohibited.
5. **Access.** All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.
6. **Setbacks.** The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and dwellings shall be equal to no less than one point one (1.1) times the system height, unless written permission is granted by each affected person.
7. **Noise.** SWECS facilities shall not exceed fifty-five (55) dBA for any period of time when measured at any dwelling, school, hospital, church or public library existing on the date of approval of any conditional use permit from the property line. The level, however, may be exceeded during short-term events such as utility outages or wind storms, in its approval of the turbine array for warranty purposes.
8. **Code Compliance.** A SWECS shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
9. **Utility Notification.** No SWECS 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. Off-grid system shall be exempt from this requirement.



10. **Permit Expiration.** The permit shall become void if no substantial construction has been completed within two (2) years of issuance.
11. **Discontinuation and De-commissioning.**
  - a) **Cost Responsibility.** The owner or operator of a SWECS is responsible for removing the wind generator from the tower at their sole expense within 3 months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Board of County Commissioners may pursue legal action to have the wind generator removed at the owner's expense.
  - b) **Useful Life.** A SWECS that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Board of County Commissioners may issue a Notice of Abandonment to the owner of a SWECS that is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Board of County Commissioners shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind system has not been abandoned.
12. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for SWECS must submit the following information (as applicable).
  - a) The names of project applicant.
  - b) The name of the project owner.
  - c) The legal description and address of the project.
  - d) A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all turbines and means of interconnecting with the electrical grid.
  - e) Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale and an ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.
  - f) Engineer's certification(s) as required in these supplemental standards.
  - g) Documentation of land ownership or legal control of the property.
  - h) Location of all known communications towers/facilities within two (2) miles of the proposed SWECS.
13. **Violations.** It is unlawful for any person to construct, install, or operate a SWECS that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. SWECS facilities installed prior to the adoption of this ordinance are exempt.
14. **Severability.** The provisions of this ordinance are severable, and the invalidity of any section subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.