

ORDINANCE #2024-1

AN ORDINANCE AMENDING MCPHERSON COUNTY ORDINANCE #10-2, AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR MCPHERSON COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH

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, and the general welfare of the County, to enact zoning regulations and to provide for its administration, and

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

WHEREAS, the Planning Commission has divided McPherson County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this Ordinance; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulations in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, 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 Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Planning Commission and Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, with regard to the preparation of these regulations and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning regulations have been filed with the McPherson County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances, or parts of regulations in conflict herewith are hereby expressly repealed;

THEREFORE, BE IT ORDAINED that Ordinance 2024-1 is hereby adopted by the Board of County Commissioners, McPherson County, South Dakota.

Adopted this ____ day of _____, 2024.

ATTEST:

Chairperson
McPherson County Board of County Commissioners

McPherson County Auditor

**ARTICLE I
GENERAL PROVISIONS**

CHAPTER 1.01. TITLE AND APPLICATION.

Section 1.01.01. Title.

This Ordinance may be known and may be cited and referred to as the “McPherson County Zoning Ordinance” to the same effect as if the full title were stated.

Section 1.01.02. Jurisdiction.

Pursuant to SDCL 11-2, 1967, as amended, the provisions of this Ordinance shall apply within the unincorporated areas of McPherson County, South Dakota, as established on the map entitled “The Official Zoning Map of McPherson County, South Dakota.” The area within generally one (1) mile of the city limits of the City of Eureka, as designated on the zoning map, shall be under the jurisdiction of the City of Eureka.

Section 1.01.03. Purpose.

The Zoning Ordinance is adopted to protect and to promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

1. To assist in the implementation of McPherson County’s Comprehensive Land Use Plan which in its entirety represents the foundation upon which this Ordinance is based.
2. To foster a harmonious, convenient, workable relationship among land uses.
3. To promote the stability of existing land uses that conform with the Comprehensive Land Use Plan and to protect them from inharmonious influences and harmful intrusions.
4. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the “county community” as a whole.
5. To prevent excessive population densities and overcrowding of the land with structures.
6. To protect and enhance real estate values.
7. To facilitate the adequate provision of transportation, water and sewerage, schools, parks, and other public requirements;
8. To regulate and restrict the height, number of stories, and bulk of building and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; and the location and use of other purposes;
9. To regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of building, structures, and land.

10. To place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the Comprehensive Land Use Plan.

CHAPTER 1.02. ORDINANCE PROVISIONS.

Section 1.02.01. Provisions of 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, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rule, ordinance, or Board of Adjustment decision, the most restrictive or that imposing the higher standards, shall govern.

Section 1.02.02. Purpose of Catch Heads.

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of an 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 1.02.03. Violation and Penalty.

1. Violations of the ordinance shall be treated in the manner specified below.
 - a. Any person who starts work for which a permit (building, conditional use, variance, rezoning, etc.) is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All administrative fees assessed there under shall be rounded to the nearest whole dollar.
 - i. Upon finding such violation, the McPherson County Zoning Officer shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. The McPherson County Sheriffs Office may personally serve the owner of the property involved a written notification of the requirement that a permit be obtained to the owner of the property involved. If the owner of the property involved is not a resident of McPherson County, the sheriff's office in which the owner of the property is a resident may also make such service.
 - ii. If application for said permit is filed within seven (7) business days from the verbal notification, date of receipt of the letter, or personal service, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
 - iii. If application for said permit is filed after the deadline of seven (7) business days following the verbal notice, receipt of the notification, or personal service of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the

aforementioned notice. The payment of the administrative fee shall not relieve such person from any other provisions of Section 1.02.03 herein.

- iv. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.
2. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil and/or criminal penalty. The penalty for a violation of this Zoning Ordinance shall be Five Hundred Dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all legally allowed costs and expenses involved. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the County Auditor and shall be credited to the General Fund of the County.
3. The owner or tenant of any building, structure, premises, or part thereof, any architect, 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.
4. In the event that any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of McPherson County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation
5. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.
6. McPherson County reserves the right to take all legal actions afforded by law to uphold this ordinance.

Section 1.02.04. Separability Clause.

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

Section 1.02.05. Repeal of Conflicting Ordinances.

All ordinances or resolutions or part of ordinances or resolutions in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are repealed entirely.

Section 1.02.06. Effective Date.

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

CHAPTER 1.03. OFFICIAL ZONING MAP.

Section 1.03.01. Official Zoning Map.

1. The unincorporated area of 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 Chairperson 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 Chapter 1.03 of Ordinance Number 2024-1 of McPherson County, State of South Dakota," together with the date of the adoption of this Ordinance.
2. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the Zoning Officer, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

Section 1.03.02. Amendment of the Official Zoning Map.

1. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matters 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 of adoption) by official action of the Board of County Commissioners, the following change(s) were made on 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.
2. No amendment of this Ordinance which involves matters portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on the Official Zoning Map.

No changes of any nature shall be made on the Official Zoning Map or matters shown thereon except with conformity with the procedure set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

Section 1.03.03. 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. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.
2. Boundaries indicated as approximately following the center lines of streets, highways, or alleys, shall be construed to follow such center lines;
3. Boundaries indicated as approximately following platted lot lines shall be construed as

following such lot lines;

4. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
5. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
6. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
7. Boundaries indicated as parallel to or extensions of features indicated in Subsections 1 through 6 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map; and
8. 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 7 above, the Board of Adjustment shall interpret the district boundaries.

Section 1.03.04. Changes and/or Replacement of Official Zoning Map.

1. In the event that the Official Zoning Map becomes damaged, destroyed, or lost, the Board of County Commissioners may by ordinance adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map.
2. In the event that the Official Zoning Map becomes difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may by resolution adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall contain previous changes and additions to the previous Official Zoning Map and may correct drafting or other errors or omissions in the prior Official Zoning Map.
3. The new Official Zoning Map shall be identified by the signature of the Chairperson 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 (date of adoption of map being replaced) as part of the Zoning Ordinance of McPherson County, State of South Dakota."
4. 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.
5. Amendments to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 6.05, Section 6.05.03 of these regulations.

Section 1.03.05. Disincorporation.

All territory which hereafter becomes a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason shall fall within the zoning jurisdiction of the County, shall automatically be classified in the "TD" Town District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

ARTICLE II DEFINITIONS

For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", the word "shall" is mandatory and 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. The definitions found hereinbelow shall also apply to Article I of this Ordinance. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

Accessory Buildings and Uses. A subordinate building or portion of the principal building, the use of which is incidental to and customary in connection with the principal building or the main use of the premises and which is located on the same lot with such principal building or use. An accessory use is a use which is incidental to the main use of the premises.

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

Aggrieved Person. An aggrieved person is any person directly interested in the outcome of and aggrieved by a decision, action, or failure to act regarding a zoning decision in accordance with the following criteria:

1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;
2. Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;
3. Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;
4. Shows that the injury is unique or different from those injuries suffered by the public in general.

Agriculture/Agriculture Use. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition includes intensive agricultural activities such as concentrated animal feeding operations but not commercially based agribusiness activities.

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

Alley. A narrow service way providing a secondary means of access to abutting property.

Alter or Alteration. Any change, addition or modification in construction.

Animal Husbandry. The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

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

Animal Unit. (See Section 5.08).

Antenna Support Structure. Means any building or structure other than a tower which can be used for location of Telecommunications Facilities.

Applicant. An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity who requests or seeks application approval under the terms of this ordinance.

Application. The process by which the applicant submits a request to use, develop, construct, build, modify upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to McPherson County concerning such a request.

Automotive Tow Business. A business engaged in removing or delivering to public or private property a motor vehicle by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site. Automotive Tow Business shall comply with Chapter 5.29.

Bar/Tavern. An establishment that is licensed to sell alcoholic beverages by the drink.

Basement. A basement has more than one-half (½) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes.

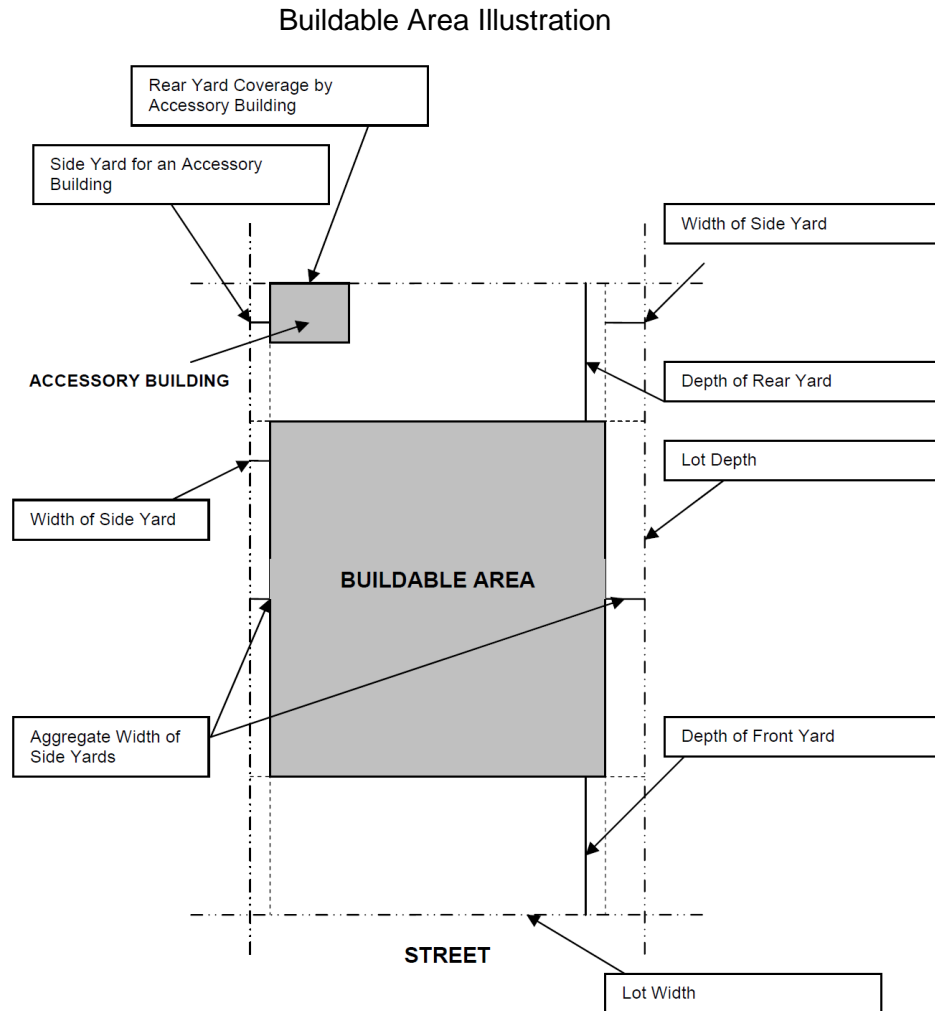
Bed and Breakfast (B & B's). A private single-family dwelling, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties. Bed and Breakfast (B & B's) shall comply with Chapter 5.20.

Board of County Commissioners. The governing body of McPherson County.

Board of Adjustment. The McPherson County Planning Commission when acting in the capacity of the Board of Adjustment.

Buildable Area. The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the

buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (See illustration below).



Building. The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection of persons, animals, or property.

Campground. A commercial recreation facility open to the public, with or without a fee, upon which two (2) or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters.

Cannabis (or Marijuana). All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The

term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

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

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

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

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

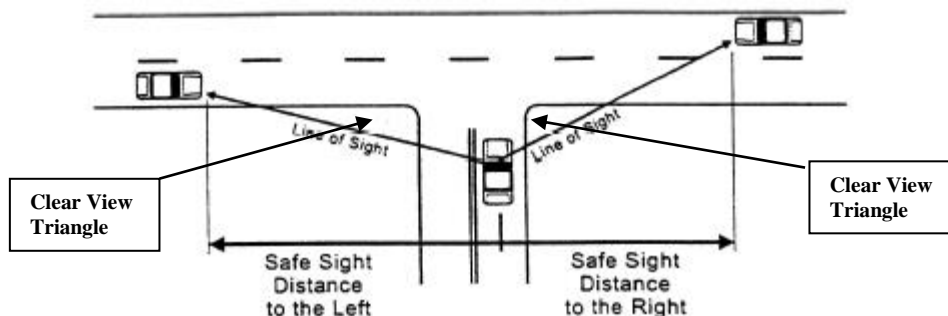
Cannabis Product Manufacturing Facility. In addition to the definition in SDCL 34-20G-1, this term is defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

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

Church. A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

Clear View Triangle. A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below). A clear view triangle is formed by measuring the area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line at a prescribed distance.

Clear View Triangle Illustration



Club, Private. Building and facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. The structure is not available for public use or participation.

Commercial Vehicles. Any motor vehicle licensed by the state as a commercial vehicle.

Common Ownership. A single, corporate, cooperative, joint tenancy, tenancy in common or other joint operation venture.

Comprehensive Plan. The adopted long-range plan intended to guide the growth and development of McPherson County.

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 one-hundred and eighty (180) days or more during any twelve (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 (2) or more animal feeding operations under common ownership are considered a single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for land application of manure.

Conditional Use. A conditional use is any use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district. Conditional uses are subject to the evaluation and approval by the Board of Adjustment and are administrative in nature

Contamination. The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.

Contractor Shops and Yards. Those facilities to include structures and land areas where the indoor or outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Convenience Store. Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

Decommissioning. To return the property to its pre-installation state or better as approved in the decommissioning plan.

Density. The number of families, individuals, dwelling units, or housing structures per unit of land.

Development. The carrying out of any surface, subsurface, or structure construction, reconstruction or alteration of land use or intensity of use.

District, Zoning. A section of the county and/or municipalities for which the regulations governing the construction and location of buildings and occupancy of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Domestic Sanitary Sewage Treatment Facility. The structures, equipment, and processes required to collect, carry away, treat and dispose of wastewater, industrial wastes, or sludge.

Dredging. Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, waterways or used in underwater mining.

Drivable Surface. See “Highway”

Dwelling. Any building, including seasonal housing structures, or a portion thereof, which contains one (1) or more rooms, with sleeping quarters and is further designed and used mainly for residential purposes.

Dwelling, Occupied. A dwelling that has been inhabited any time within the previous twelve (12) month period. Proof of occupancy may be required.

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

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

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

Dwelling, Single-Family. A building occupied exclusively by one (1) family.

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

Easement. An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.

Electrical Substation. A premises which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

Eligible Building Site (Building Eligibility). A site which fulfills the requirements for the construction or placement of a building.

Engineer. Means any engineer licensed by the State of South Dakota.

Erosion. The process of the gradual wearing away of land masses.

Essential Public Services. Overhead or underground electrical, gas, petroleum products (i.e. gas, natural gas, oil), steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith.

Established Residence (in reference to Chapter 5.08.) A non-seasonal dwelling established before the siting of a new concentrated animal feeding operation or the expansion of an existing animal feeding operation of which requires a conditional use permit.

Excavation. Any operation in which earth, rock or other material, in or on the ground, is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, pulverizing, rubblizing, well-drilling, auguring, boring, tunneling, scraping, cable or pipe plowing, plowing in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and other materials, and the tilling of soil for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation.

Existing Farmstead. An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operations. In addition, The Board of Adjustment may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation within the last fifty (50) years. This may be determined by existence of buildings/foundations or tax records.
2. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to the passage of this ordinance.
3. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Board of Adjustment in determining the suitability of the parcel for development.

Exploration. The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and

other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface or make magnetic, radioactive, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

Facility. Something built, installed or established for a particular purpose.

Family. One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

Farm. An area with or without a dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine all of the foregoing farm products and animals are raised for income. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

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

Fence. A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar materials and is used as a barrier of some sort.

Filling. Filling in low-lying ground with soil.

Flood or Flooding. Means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

Frontage. All the property on one (1) side of a street or road.

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

Garage, Private. An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, trailers, and boats.

General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In McPherson County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

Government Grain Storage Sites. A grain storage facility owned and operated by a State or Federal governmental entity.

Grade. The finished grade of a premises improved by a building or structure is the average natural elevation or slope of the surface of the ground within fifty (50) feet of the building or structure.

Grading. The act or method of moving soil to reshape the surface of land or a road to a desired level or grade.

Grandfather/Grandfathered Clause. A clause in a law that allows for the continuation of an activity that was legal prior to passage of a law, ordinance, or requirement but would otherwise be illegal under the new law, ordinance, or requirement.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material, which the temperature and humidity may be regulated, for the cultivation of plants for subsequent sale or for personal enjoyment.

Grey Water. All domestic wastewater except toilet discharge water.

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

Group Home. A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

Hazardous Material(s). Any substance regulated or as to which liability might arise under any applicable Environmental Law including, but not limited to: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of "hazardous substance," hazardous material," "hazardous waste," "solid waste," "toxic waste," "extremely hazardous substance," "toxic substance," "contaminant," "pollutant," or words of similar meaning or import found in any applicable Environmental Law; (b) Hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infection or medical wastes. Hazardous Material(s) shall include any substance or material identified now or in the future as hazardous under any South Dakota, federal, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulator requirements governing its transportation, handling, disposal, or clean-up. Hazardous Material(s) shall further include petroleum, petroleum products, anhydrous

ammonia, ethanol or other non-petroleum fuel, including biofuel, and carbon dioxide, material which is flammable, toxic, or would be harmful to the environment if released in significant quantities as well as any other material defined by and/or under 49 CFR 195 and any amendments thereto.

Hazardous Material Distribution Pipeline. A hazardous material pipeline other than a gathering or transmission line. A hazardous material distribution pipeline is generally used to supply goods to the consumer and is found in a network of piping located downstream of a transmission pipeline. A Hazardous Material Pipeline Permit shall also be required for a Hazardous Material Distribution Pipeline.

Hazardous Material Pipeline. “Hazardous Material Pipeline,” which may also be referred to as a “pipeline” or “HMP,” is a pipeline, below or above ground, intended to transport hazardous material with any portion proposed to be located within McPherson County. The pipeline, (1) transports hazardous material from a storage facility or a producer of such hazardous material, to a distribution center, storage facility, or large-volume customer or transports hazardous material within or to a storage field. A Hazardous Material Pipelines includes all parts of those physical facilities through which hazardous material moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

Hazardous Material Pipeline Permit. The permit required to be obtained by any Pipeline Owner before beginning construction on any Hazardous Material Pipeline in McPherson County.

Height of Building. The vertical distance from the established average sidewalk grade or street grade, or finished grade at the building line, whichever is the highest, to the highest point of the building.

High Water Mark. The elevation established by the South Dakota Water Management Board pursuant to SDCL Chapter 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high-water mark (elevation) solely for the purpose of the administration of this ordinance. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

Highway. Every way or place of whatever nature open to the public, as a matter of right, for the purposes of vehicular travel.

Home Occupation. An occupation engaged in by the occupants of a dwelling subject to Chapter 5.06.

Horticultural Services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Impound Lot. A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, Junkyard/Salvage Yard or dismantling facility. Impound lot shall comply with Chapter 5.29.

Incorporation. A soil tillage operation following the surface application of fertilizer, manure, or other similar substances, which mixes the substance into the upper four inches or more of soil.

In-service date. “In-service date” is the date any hazardous material is first transported through any portion of a pipeline located in McPherson County.

Institutional Farm. A farm owned and operated by a county, municipal, State or Federal governmental entity and used to grow an agricultural commodity.

Junk Yard. The use of more than one thousand (1,000) square feet of any land, building, or structure, whether for private or commercial purposes, or both, where waste, discarded or salvaged materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, machinery, etc., or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same. (See Chapter 5.28).

Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are bred, raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Lagooning. The process of creating a shallow body of water, separated from a larger body of water.

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

Levee. A man-made structure usually an earthen embankment designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Light Manufacturing. Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat, or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

Lodging House. A building or place where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, that is designed for three (3) or more persons. Lodging House does not include hotels, hospitals, long-term care homes/facilities, homes for the young or institution if it is licensed, approved, or supervised under any other local, state, or federal regulations.

Lot. A parcel or tract of land owned by one or more people or by a legal entity such as a company, corporation, organization, government, or trust.

Lot Area. The lot area is the land in square feet, within the lot line.

Lot, Corner. A lot abutting upon two (2) or more streets at their intersection.

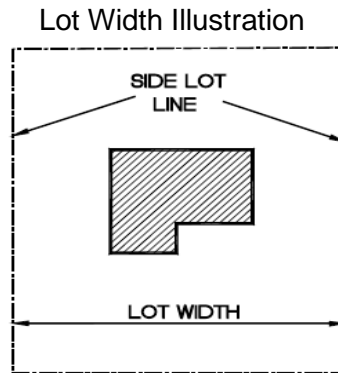
Lot, Depth of. The average horizontal distance between the front and rear lot lines.

Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot.

Lot Line. The exterior boundary of a lot that separates a specific lot from any congruent lot.

Lot of Record. A subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of the Register of Deeds.

Lot Width. The width of a lot is the mean distance between straight side lot lines measured at a point fifty (50) feet back from the front line thereof. (see below).



Manufactured Home. A structure, transportable in one or more section, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities and designed to be used for continuous year-round occupancy as a single dwelling.

Manufactured Home Park. Any manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the manufactured home park and its facilities or not. "Manufactured Home Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

Manure. Manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

Manure, Liquid. A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free-flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding, and waste feed in water. Liquid manure and slurry is typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

Maximum Allowable Operating Pressure (MAOP). The maximum pressure at which a pipeline or segment of a gas transmission pipeline may be operated under Title 49, Code of Federal Regulations, Part 192.

Maximum Operating Pressure (MOP). The maximum pressure at which a hazardous liquid pipeline or segment of a pipeline may be normally operated under 49 CFR Part 195.

Milling. The processing or enhancing of a mineral.

Meteorological Tower. A structure used to collect meteorological data, including wind data and/or weather conditions.

Mineral. An inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel, and quarry rock.

Mineral Extraction. The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

Modular Home. An off-site constructed home which is built in separate pieces or an entire unit and then transported on-site and placed on a permanent foundation and designed to be used of continuous year-round use as a single dwelling. A modular home does not include a manufactured home.

Motel/Hotel. A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

Nonconforming Building or Structure or Use. Any building or use of land, land lawfully occupied by a use at the time of passage of this regulation or amendment thereto, which does not conform after the passage of this regulation or amendments hereto.

Nonstandard Use. The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.

Nursery. A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

Object. Anything constructed, erected, or placed, the use of which does not require permanent location on the ground or attached to something having a permanent location on the ground.

Open Lot. Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Synonymous with pasture lot, dirt lot, dry lot.

Operator. An individual or group of individuals, corporation, partnership, joint venture, or any other business entity who is in charge of the day to day operations and/or management of anything subject to McPherson County Zoning regulations.

Outdoor Storage. The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours.

Owner. 1) Any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the County; 2) An individual or group of individuals, corporation, partnership, joint venture, or any other business entity who is financially responsible for anything subject to McPherson County Zoning regulations.

Parking Space. An area, enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Parks and Recreation Areas. Public, non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

Pasture. A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.

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

Permitted Use. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

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

PIPA Report. A document available through the U. S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) that provides recommended practices for land use and planning in the vicinity of transmission pipelines.

Pipeline Operator. A person or entity that engages in operating or managing a pipeline.

Pipeline Owner. A person or entity that engages in owning a pipeline.

Pipeline Permit Application. The process and related documents any Applicant of a Hazardous Material Pipeline Permit shall abide by and furnish to McPherson County as stated within this ordinance to ensure the health, convenience, order, and welfare of the community is upheld.

Planning Commission. The Planning Commission is appointed by the County Commission. They objectively review and recommend sound and efficient planning regulations for the County. The Planning Commission is the primary entity responsible for long-term, comprehensive planning.

Plat. The map, drawing or chart on which the subdivider's plan of subdivision is legally recorded.

Potential impact radius (PIR). is defined as the radius of a circle within which the worst-case failure of a gas transmission pipeline could have significant instantaneous impact on people or property not protected by structures or other obstructions. The PIR is calculated by the formula:

$$r = 0.69 * (\text{square root of } (p * d^2))$$

'r' is the radius of a circular area in feet surrounding the point on the pipeline of a potential failure

'p' is the pipeline's maximum allowable operating pressure (MAOP) in the pipeline segment in pounds per square inch

'd' is the nominal diameter of the pipeline in inches

The 0.69 factor is appropriate for natural gas pipelines. Different factors apply for other gases, depending upon their heat of combustion (see ASME B31.8-2004, Managing System Integrity of Gas Pipelines, 2005).

Principal Building. The structure in which the principal use of the lot is conducted. For Example, a dwelling on a residential lot.

Principal Use. The primary use to which the premises are devoted.

Private Shooting Preserves. An acreage of at least one hundred and sixty (160) acres and not exceeding two thousand five hundred sixty (2,560) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Private Wind Energy Conversion System (PWECS or PWES). Any mechanism or device, not owned by a public or private utility company, designed for the purpose of converting wind energy into electrical or mechanical power to be used on the site where said power is generated.

Private Club. A social and recreational facility that is usually private or semi-private.

Property Owner. The "Property Owner" is/are the person(s) or legal entity(ies) holding interests of record to the real property or any portion of the real property.

Quarter-Quarter Section. The Northeast, Northwest, Southwest, or Southeast quarter (1/4) of a quarter section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of thirty-five (35) acres.

Range (Target/Shooting). An area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. Animate clay pigeons may also be incorporated into a range. A Range Officer shall be present on site at any Range when the range is in use. The term range includes archery ranges.

Range Officer. Means the person designated to be responsible at a Range at any given time during any activity.

Reclamation. Restoration of the areas through which something is constructed, or from where it is removed, as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction or prior to removal whichever is applicable.

Reclamation Costs. The costs to restore and repair any roads, bridges, or county property and the restoration of real and personal property, including, but not limited to, the costs of restoration of natural resources, the costs of rehabilitation of habitat or wildlife, and the costs of vegetation.

Recreational Vehicle. A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include boats, ice shacks or manufactured homes.

Religious Farming Community. A corporation formed primarily for religious purposes whose principal income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

Repair. Reconstruction or renewal of any part of an existing building for the purpose of maintenance. The word “repair” or “repairs” shall not apply to any change of construction.

Resort. This category provides commercial hospitality lodgings in spacious settings that are principally intended for vacationing, relaxation and conference activities for visitors to the community.

Retail Sales and Trade. Establishments engaged in selling products, goods, or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.

Right-of-way. (1) A piece of property, usually consisting of a narrow, unobstructed strip or corridor of land of a specific width, which the public as well as the fee simple landowners both have legal rights to use and occupy; (2) A defined strip of land on which an easement holder has the right to construct, operate and maintain a specified use.

Rubble Site. A site for the disposition of refuse as defined by the South Dakota Department of Agriculture and Natural Resources.

Sale or Auction Yard or Barn. A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

Sanitary Landfill. A government-owned site for the disposal of garbage and other refuse material.

Screening Fence. A wall, fence, or barrier used to block unsightly and/or hazardous materials, equipment, and noise from the public.

Seasonal Camp Trailers or Recreational Vehicles. A vehicle designed for temporary seasonal living quarters.

Section Line. A dividing line between two (2) sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

Service Station, Automobile. Any building or premise which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted. Gasoline pumps and gasoline pump islands shall be located more than twelve (12) feet from the nearest property line.

Setback. The setback of a building is the minimum horizontal distance between street or property line and the front line of the building or any projection thereof, except cornices and unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 ½) feet from the building and not more than fifty (50) square feet in area, and which do not extend above the first story of the building.

Setback Between Uses. Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/use.

Shall. Shall means that the condition is an enforceable requirement of this regulation.

Shelterbelt. Ten (10) or more trees planted in a line, with each tree separated by a distance of forty (40) feet or less. Ornamental and/or shade trees, generally used in front yards and spaced further than fifteen (15) feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Shelterbelts shall comply with Chapter 5.05.

Should. Means that the condition is a recommendation. If violations of this regulation occur, the County will evaluate whether the party implemented the recommendations contained in this regulation that may have helped the party to avoid the violation.

Sign. Any device or structure, permanent or temporary, which directs attention to business, commodity, service, or entertainment but excluding any flag, badge or insignia of any government agency, or any civic, charitable, religious, patriotic or similar organizations.

Sign, Abandoned. A sign or sign structure which contains no sign copy, contains obliterated or obsolete sign copy, or is maintained in an unsafe or unsightly condition for a period of three (3) months shall be considered an abandoned sign.

Sign, Off-premises. Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

Sign, On-premises. Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

Sign Structure. Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

Sleeping Quarters. A room or an area contained within a dwelling unit utilized for the purpose of sleep.

Solar Array. A collection of two or more connected solar modules or panels.

Solar Collector. A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

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

Solar Energy System (SES). A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A SES is the principal land use for the parcel on which it is located. A SES site may include an array of devices, or structural design features, the purpose of which is to provide for generation of electricity, the collection, storage and distribution of solar energy.

South Dakota One Call. The South Dakota One Call system provides for communication between excavators and underground facility operators so buried utilities can be marked in advance of any digging. Following the One Call procedure works to reduce damages to underground infrastructure, helps to ensure public and worker safety, and protects the integrity of utility services. South Dakota Codified Law (SDCL) Chapter 49-7A authorizes the use of South Dakota One Call in South Dakota.

Special Permitted Use. A use which meets performance standards or criteria specific to such use. A use identified as a special permitted use shall be approved if the applicant demonstrates all performance standards or criteria have been met. A Special Permitted Use is to be approved by the Zoning Administrator and not subject to the hearing process of a conditional use.

Stable. A building for the shelter and feeding of domestic animals, especially horses and cattle.

Stable, Commercial. A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Stealth. Means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

Street, Highway or Road. All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway, or road purposes.

Street, Arterial. A street designated as such on the Major Street Plan of the Comprehensive Plan of McPherson County, South Dakota.

Street, Collector. A street designated as such upon the Major Street Plan of the Comprehensive Plan of McPherson County, South Dakota.

Street, Minor Collector. Provides for traffic movement between major arterials and major streets, and direct access to abutting property.

Street, Local. Any street which is not an arterial street or collector street; provides for direct access to abutting land, and for local traffic movements.

Street, Highway or Road Right-of-Way (ROW) Line. A dividing line between a lot or parcel of land and a contiguous street, highway, or road.

Structurally Altered. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of a roof or the exterior walls.

Structure. Anything constructed or erected the use of which requires permanent location on the ground or attached to something having a permanent location on or below the ground. Among other things, structures include, but are not limited to, buildings, manufactured homes, walls, fences, billboards, and poster panels.

Structure, Temporary. Anything constructed or erected, or placed, the use of which requires temporary location on the ground or attached to something having a temporary location on or below the ground.

Substantial improvement. Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent 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 designation, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. 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
- b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Telecommunications Facilities. Means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:

1. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or

2. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

Temporary Fireworks Sales Stand. A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

Ten Year Time of Travel Distance. The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.

Tower. Means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC, or meteorological towers.

Townhouse. A townhouse is an attached single-family dwelling unit which is a part of and adjacent to other similarly owned single-family dwelling units that are connected to but separated from one another by a common party wall having no doors, windows, or other provisions for human passage or visibility. Differing from condominiums, townhouse ownership does include individual ownership of the land. There can also be common elements, such as a central courtyard, that would have shared use.

Tree, Ornamental. A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less.

Tree, Shade. For the purposes of this Ordinance, a shade tree is a deciduous tree which is has a mature crown spread of fifteen (15) feet or greater, and having a trunk with at least five (5) feet of clear stem at maturity.

Truck Garden. A farm where vegetables are grown for market.

Turbine. The parts of the Wind Energy System including the blades, generator, and tail.

Twin Homes. A two-family dwelling which has a common wall and is platted into two (2) separate lots.

Utility (in reference to Wind Energy Systems). Any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipal utility.

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

Veterinary Clinic. Any premises to which animals are brought, or where they are temporarily kept, solely for the purpose of diagnosis or treatment of any illness or injury, which may or may not have outdoor runs.

Violation. The failure of a structure/use or other development to be fully compliant with this ordinance.

Water Well. An excavated hole that is dug or drilled in the ground that reaches an underground aquifer or stream to access water for use by humans, livestock, or agricultural purposes.

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

Wetlands. Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wind Energy System (WES). A set of devices whose primary purpose is to produce electricity by means of any combination of collecting, transferring, or converting wind-generated energy. A wind energy system generally includes one or more wind turbine(s), blades and generator(s) and other associated facilities, including but not limited to electrical collection line, communication lines, access roads, meteorological towers, aircraft detection lighting systems and related equipment, operations and maintenance facility, substation, facilities to enable interconnection to the electric grid, including but not limited to a transmission line, and other associated facilities. A WES does not include a Private Wind Energy Conversion System as listed in Chapter 5.22.

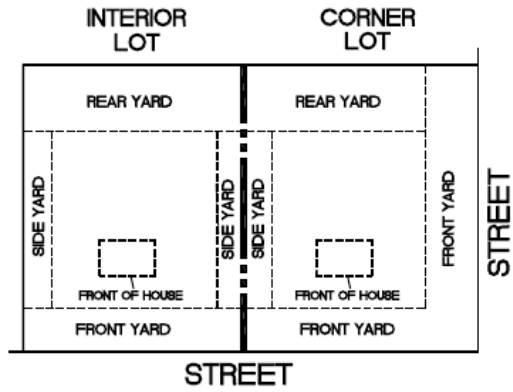
Yard. An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used. (See Front, Side, and Rear Yard Illustration Below)

Yard, Front. A yard extending across the front of a lot between the sideyard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. (See Front, Side, and Rear Yard Illustration Below)

Yard, Rear. A yard across the whole width of a lot, extending from the rear line of the building to the rear line of the lot. (See Front, Side, and Rear Yard Illustration Below)

Yard, Side. A yard between the building and the adjacent side line of the lot which separates it from another lot, extending from the front lot line to the rear yard. (See Front, Side, and Rear Yard Illustration Below)

Front, Rear and Side Yard Illustration



Zoning Officer. The individual(s) appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

**ARTICLE III
DISTRICT REGULATIONS**

CHAPTER 3.01. APPLICATION OF DISTRICT REGULATIONS.

Section 3.01.01. Application of District Regulations.

The regulations set by this Ordinance within each District shall be minimum regulations and shall apply uniformly to each class or kind of structure of land, and particularly, except as hereinafter provided:

1. No structure, permanent or temporary, or any part thereof shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall any building or use of land be used, except for a purpose listed as a permitted use or conditional use in the district in which the building or land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.
4. The minimum yards and other open spaces, including lot area, required by this Ordinance for each and every building at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this Ordinance.
5. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

CHAPTER 3.02. NONCONFORMING USES.

Section 3.02.01. Purpose and Intent. The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue. Further, it is intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival.

Section 3.02.02. Continuation of Nonconforming Uses. Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

Section 3.02.03. Use Becoming Nonconforming by Change in Law or Boundaries. Whenever the use of premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued until it is removed, although the use does not conform to the provisions thereof.

Section 3.02.04. Extension or Enlargement. A nonconforming use shall not be enlarged, extended, converted, reconstructed, or structurally altered unless such use is changed to a use permitted in the district in which the premise is located.

Section 3.02.05. Restoration After Damage. When the use of a building is nonconforming as defined by this ordinance and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than sixty (60) percent of its fair market cash value, it shall not be restored except in conformity with the provisions of the district in which the building is located. Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.

Section 3.02.06. Repairs and Maintenance. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

Section 3.02.07. Unsafe Nonconforming Use. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe, or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Section 3.02.08. Discontinuance of Nonconforming Use. No nonconforming use, building, structure, or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued for more than one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.

Section 3.02.09. Effect on Use Which is Illegal Under Prior Law. Nothing in this ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a premises in violation of zoning regulations in effect immediately prior to the effective date of this ordinance.

Section 3.02.10. Powers of the Planning Commission/Board of Adjustment. Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

Section 3.02.11. Continuation of Nonstandard Uses. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

1. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.
2. Structural alteration of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.

3. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.

Section 3.02.12. Nonconforming Lots of Record.

1. 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 lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails 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 those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.
2. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

CHAPTER 3.03. ZONING DISTRICTS.

Section 3.03.01. Districts.

1. For the purpose of this Ordinance, the unincorporated areas of the County may be divided into any of the following zoning districts: A-Agricultural; CI-Commercial/Industrial; LP-Lake Park; and TD-Town District.
2. The requirements as set forth below for each of the use districts listed as part of this Ordinance shall govern the development within the said districts as outlined on the map entitled "Official Zoning Map, McPherson County, South Dakota."
3. "A" AGRICULTURAL LAND DISTRICT – The Agricultural Land District is established to preserve open space and maintain and promote farming and related activities within an environment which is generally free of other land use activities. The Agricultural Land District is further characterized, as land areas not yet ready for further development, residential development, other than single-family farming units, will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.
4. "CI" COMMERCIAL/INDUSTRIAL DISTRICT - The Commercial District is intended to provide areas for commercial and industrial activities, which require highway access, and further are oriented primarily to, and supportive of, farming and other activities which are determined to be appropriate in the rural area. Industrial uses which produce smoke, noise,

dust, odor, and/or heavy traffic and large outdoor storage areas shall require special review and consideration.

5. "LP" LAKE-PARK DISTRICT - Lake Park District is to provide for orderly residential and recreational development, together with certain public facilities, customary home occupations, and certain commercial establishments, normally associated with lake shore development.
6. "TD" TOWN DISTRICT - The Town District is established to provide for orderly low density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental in the unincorporated towns of McPherson County.

Section 3.03.02. Prohibited Uses.

All uses and structures not specifically listed as a permitted use or as a conditional use in a particular zoning district or overlay district shall be prohibited in said district.

**ARTICLE IV
DISTRICT REQUIREMENTS**

The requirements as set forth below for each of the use districts listed as part of this ordinance in Article III shall govern the development within the said districts as outlined on the Official Zoning Map for the unincorporated areas of McPherson County.

CHAPTER 4.01. “A” AGRICULTURAL LAND DISTRICT

Section 4.01.01. Permitted Uses:

1. Field crops and grasslands (exempt from building permit).
2. Fisheries services.
3. Game propagation areas.
4. Government grain storage sites.
5. Orchards and tree farms.
6. Public parks and recreation areas.
7. Truck gardening.
8. Botanical gardens (nurseries and greenhouses); without on-site retail sales.
9. Farm and Non-farm dwelling, to include modular home or for a manufactured home connected to an existing farmstead, but not within one (1) mile of a concentrated animal feeding operation unless a waiver of such setback is registered with the McPherson County Register of Deeds specifying the legal description of the farm dwelling or non-farm dwelling property.
10. Stables.
11. Grain bins.
12. Home occupations.
13. Bed and Breakfast provided they meet requirements of 5.20.
14. Agricultural activities and farm related buildings, including concentrated animal feeding operations that do not meet the minimum requirements of Chapter 5.08.
15. On-premise signs.
16. Accessory uses and buildings.
17. Temporary roadside stands for sales of agricultural products grown or produced on the premises.

18. Private Wind Energy Conversion System (PWECS). Provided they meet the requirements of Chapter 5.21.

Section 4.01.02. Special Permitted Uses:

1. None.

Section 4.01.03. Conditional Uses:

1. Airports and airstrips.
2. Cannabis Cultivation Facility, provided the requirements of 5.32 are met.
3. Cannabis Dispensary, provided the requirements of 5.31 are met.
4. Cannabis Manufacturing Facility, provided the requirements of 5.32 are met.
5. Cannabis Testing Facility, provided the requirements of 5.32 are met.
6. Churches and Cemeteries.
7. Commercial public entertainment enterprises not normally accommodated in commercial areas including, but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races.
8. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet requirements of Chapter 5.07.
9. Private clubs.
10. Sanitary landfills, rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Agriculture and Natural Resources permits for solid waste provided they meet the requirements of Chapter 5.26.
11. Domestic sanitary sewer treatment plant/facility; provided they meet the requirements of Chapter 5.27.
12. Class A, B and C concentrated animal feeding operations; (See Chapter 5.08).
13. Commercial Stables.
14. Junkyards/salvage yards, provided that they meet the requirements of Chapter 5.28.
15. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs.
16. Hazardous Material Pipelines; See Chapter 5.23.
17. Land application of petroleum-contaminated soils.

18. Institutional farms, including religious farming communities.
19. Wireless Telecommunication Towers and Facilities provided they meet requirements of Chapter 5.18.
20. Manufactured home not connected to an existing farmstead.
21. Game Lodge.
22. Group Homes.
23. Meteorological Towers.
24. Wind Energy System (WES) provided they meet the requirements of Chapter 5.22.
25. Solar Energy System (SES) provided they meet the requirements of Chapter 5.30
26. Public or private motorcycle recreation facilities.
27. Target/Shooting Range provided they meet requirements of Chapter 5.19.
28. Veterinarian's offices and animal hospitals.
29. Golf course, golf driving range, clubhouse.
30. Seasonal retail stands – including produce and fireworks – utilizing a temporary or permanent structure.
31. Livestock sales barn.
32. Rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Agriculture and Natural Resources permits for solid waste.
33. Orchards and tree farms with retail sales.
34. Botanical gardens (nurseries and greenhouses with retail sales.
35. Schools.
36. Animal husbandry service.
37. Horticulture Services.
38. Automotive Tow Business/Impound Lot – provided they meet requirements of Chapter 5.29.
39. Agricultural product processing facilities, including but not limited to ethanol plants and corn/soybean processing.

Section 4.01.04. Area Regulations.

All buildings shall be set back from public road right-of-way lines and lot lines to comply with the following yard requirements:

1. Minimum Lot Size: All eligible building lots for permitted uses shall be a minimum of two (2) acres, except as provided in 7.a of this Section.
2. Minimum Lot Width: The minimum lot width for eligible building lots for permitted uses shall be one hundred fifty (150) feet.
3. Front Yard: The minimum depth of the front yard setback shall be one hundred fifty (150) feet and in no case shall an accessory building be located or extend into the front yard. In the case of a corner lot, front yards shall be provided on both streets.
4. Side Yard: The minimum depth of a side yard setback shall be twenty-five (25) feet.
5. Rear Yard: The minimum depth of a rear yard shall be twenty-five (25) feet.
6. Uses allowed by a Conditional Use Permit shall have minimum lot area and yard setback regulations determined by the Board of Adjustment.
7. The Board of Adjustment may allow a smaller minimum lot requirement for the "A" Agricultural District under the following conditions:
 - a. Where a permit for an additional single-family farm dwelling is requested on an existing farmstead, provided:
 - i. The dwelling is located on the same legal description as the existing farmstead.
 - ii. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
 - iii. The dwelling is to be occupied by employees or relatives of the farm owner (existing farming operation).
 - iv. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.
8. Height Regulations: All buildings must meet FAA standards within one (1) mile of airports. Further, no principal building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following structures:
 - a. Agricultural buildings.
 - b. Chimneys, smokestacks, cooling towers.
 - c. Radio and TV towers.
 - d. Water tanks.

- e. Meteorological Towers.
- f. Wind Energy System (WES).
- g. Private Wind Energy Conversion Systems (PWECS).
- h. Wireless Telecommunications Towers and Facilities.
- i. Others, as determined by the Board of Adjustment, providing that they are not used for human occupancy.

9. Agriculture Covenant/Concentrated Animal Feeding Operation Waiver:

- a. All new residential development (farm and non-farm) within one (1) mile of a Concentrated Animal Feeding Operation shall be required to sign and file a Setback Waiver and a Right to Farm Notice with the Register of Deeds before a building permit will be issued. The Setback Waiver and Right to Farm Notice shall be binding upon heirs, successors, and assigns of the title holder and shall pass with the land. The Setback Waiver and Right to Farm Notice shall be adopted annually, or as needed, by the McPherson County Planning Commission and can be found at the McPherson County Director of Equalization Office. (Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

10. Access:

- a. The location of driveways accessing County roads for individual parcels shall require written approval from the County Highway Superintendent or Board of Adjustment and shall be recorded with the McPherson County Register of Deeds.
- b. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit.

CHAPTER 4.02. "CI" COMMERCIAL / INDUSTRIAL DISTRICT

Section 4.02.01. Permitted Uses:

1. Field crops and grasslands (exempt from building permit).
2. On-premise signs.
3. Orchards and tree farms.
4. Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use contained in Chapter 4.02.
5. Temporary structures used for sales of agricultural products provided that there have been no past violations regarding previous sales.
6. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past violations regarding previous sales.

Section 4.02.02. Special Permitted Uses:

1. None.

Section 4.02.03. Conditional Uses:

1. Implement sales and service.
2. Truck terminals and freight warehouses.
3. Seed sales and grain storage, fertilizer and chemical storage and sales.
4. Highway and street maintenance shops, operated by a government institution.
5. Welding and machine shops.
6. Gas, oil, liquid propane, and liquid hydrogen stations, including bulk stations.
7. Public and private utilities.
8. Livestock sales.
9. Contractors' shops and yards including offices when in conjunction with a shop or yard.
10. Wholesale distributing companies.
11. Restaurants.
12. Motel/hotels;
13. Recreation vehicle sales and park.

14. Bar/Tavern.
15. Commercial stables.
16. Kennel with or without animal grooming.
17. Veterinary clinics.
18. Wireless telecommunication towers and facilities provided they meet requirements of Chapter 5.18.
19. Convenience store/service station.
20. Seasonal retail stands utilizing a permanent structure.
21. Commercial orchards, tree farms, truck gardening, and greenhouses – with retail sales.
22. Off-premise signs.
23. Light manufacturing.
24. Commercial animal husbandry service.
25. Agricultural product processing facilities including but not be limited to ethanol plants and corn/soybean processing.
26. Private wind energy system (PWECS) provided they meet requirements of Chapter 5.21.
27. Retail sales and trade
28. Automotive tow business/Impound lot provided they meet requirements of 5.29.
29. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 where there have been past violations regarding previous sales.
30. Temporary structures used for sales of agricultural products where there have been past violations regarding previous sales.

Section 4.02.04. Area Regulations

1. Lot Area. Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres, not to include the public road right-of-way. An applicant for conditional use permit shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses, buildings shall occupy no more than seventy-five percent (75%) of the lot.
2. Front Yard. There shall be a front yard on each street which a lot abuts, and which yard shall be not less than one hundred fifty (150) feet in depth.

3. Side Yards. On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.
4. Rear Yards. No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred fifty (150) feet if the lot abuts a State or County asphalt paved/concrete highway.
5. Height Regulations. No building shall exceed four (4) stories or fifty (50) feet in height. Exceptions include the following structures:
 - a. Chimneys, smokestacks, cooling towers;
 - b. Radio and TV towers;
 - c. Water tanks;
 - d. Wireless Telecommunications Towers and Facilities;
 - e. Wind Energy Systems (WES)
 - f. Private Wind Energy Systems (PWECS)
 - g. Others, providing that they are not used for human occupancy.
6. Access. It is recommended that all property in the "CI" District have access to an asphalt paved or concrete State or County Highway.
7. Storage. All outdoor storage within five hundred (500) feet of an occupied dwelling must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stock pile which fence shall be maintained in safe and good repair. The County may require asphalt or concrete surfacing of parking lots.

Section 4.02.05. Performance Standards.

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance, or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.

5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Commissioners
8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

CHAPTER 4.03. "LP" LAKE PARK DISTRICT

Purpose: To provide for orderly development with certain public facilities and customary parks and commercial uses normally associated with lakeshore development.

Section 4.03.01. Permitted Uses:

1. Site-built Single-family dwelling.
2. Public parks.
3. Horticulture uses.
4. Agricultural or horticulture uses excluding concentrated animal feeding operations.
5. Modular home.
6. Manufactured home.
7. Attached garages and unattached private garages with sidewalls less than ten (10) feet and conform to the design of the house.
8. Essential public services.
9. Accessory structures such as piers and docks and uses to include but not limited to boathouses and sheds further than fifty (50') feet from the high-water mark.

Section 4.03.02. Special Permitted Uses:

1. None.

Section 4.03.03. Conditional Uses:

1. Private parks and campgrounds provided they meet the requirements of Chapter 5.25.
2. Twin homes.
3. Boathouses within fifty (50) feet of the high-water mark or from a point as determined by the Board of Adjustment.
4. Multiple family dwellings, including condominiums.
5. Unattached garages with sidewalls greater than ten (10) feet or do not conform to the design of the house.
6. Commercial storage garages.
7. Home occupation.
8. Bait shop;

9. Grocery store;
10. Bar, tavern, or lounge;
11. Convenience store;
12. Recreational sales;
13. Rental services;
14. Outdoor music event.
15. Golf course, driving range, clubhouse, and related accessory uses

Section 4.03.04. Area Regulations

Table 4.03.04

	Minimum Lot Area (Sq. Ft)	Minimum Lot Width (1)	Minimum Lot Depth	Minimum Side Yard	Minimum Front Yard (2)	Minimum Rear Yard (Lake Front) (3)	Maximum Height
Single Family Dwelling	20,000	50'	150'	10'	50'	75'	30'
Multiple Family Dwelling	40,000	100'	200'	10'	50'	75'	45'

- (1) Each lot in the LP District shall have a road frontage of not less than fifty (50) feet in width (100' for multiple family dwellings). Each lot in the LP District shall have a shoreline frontage width of not less than seventy-five (75) feet.
- (2) Side of lot facing road right-of-way or access easement.
- (3) Measured from the high-water mark or from a point as determined by the Board of Adjustment.
- (4) For lakes or ponds: No structure except boathouses, piers and docks shall be placed at an elevation such that the lowest floor, including basement, is less than five (5) feet above the highest known water level.
- (5) Lots must meet minimum State requirements for private sewage disposal systems. At a minimum, requirements include water-tight septic tanks connected to a drain field, drain field to be not closer than eighty (80) feet to the shoreline of lake or streams and no drain area deeper than five (5) feet.
- (6) Moved in buildings shall meet the requirements of Chapter 5.04.
- (7) Sealed holding tanks for dwellings are required for all lots of record containing less than twenty thousand (20,000) square feet and not connected to a central sewer system. Existing septic tanks and drainfields on lots with an area of less than twenty thousand

(20,000) square feet are considered nonconforming uses and shall not be allowed to be replaced after the adoption of this ordinance.

- (8) There shall be no more than one (1) principal residential building on any parcel of land.
- (9) Where two (2) parcels of land are purchased and joined together by one (1) common boundary, the setbacks established above shall pertain to the perimeter of the combined lots.

Section 4.03.05. Sewage Systems.

1. The developer of any plat shall provide for a South Dakota Department of Agriculture and Natural Resources approved sewage systems and provide provisions that are binding on the developer before such plat is approved. At a minimum, the installation and utilization of individual on-site wastewater systems shall meet state regulations, Chapter 74:53:01.
2. The developer of any plat shall be liable for the execution of the provisions required above to protect waters of the state from pollution and shall be liable for any pollution that occurs for failure to execute such provisions.

Section 4.03.06. Easement.

1. Easements per 4.01.04.9 of this ordinance shall be required to be placed on any lot in a Lake Park District in order to protect agricultural operations or practices in the adjoining areas. Exception: This requirement does not apply to future residential development (farm and non-farm) on lots of record with dwellings existing on (June 22, 2020). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

CHAPTER 4.04. "TD" TOWN DISTRICT.

Section 4.04.01. Permitted Uses.

1. Single-family residential usage, including dwellings, manufactured homes, modular homes, provided that provisions of Section 5.10 are met.
2. Public parks.
3. Agriculture and horticulture use, excluding feedlots.

Section 4.04.02. Special Permitted Uses.

1. None.

Section 4.04.03. Conditional Uses.

1. Retail and service business.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Home occupation.
7. Manufactured home park.
8. The Board of Adjustment may permit other uses which in its opinion are not detrimental to other uses. These may include manufacturing and processing uses.

Section 4.04.04. Area Regulations

1. Residential Uses/Lots - Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be as follows.
 - a. Minimum Yard Requirements:

Front -- Twenty-five (25) feet
Side -- Fifteen (15) feet
Rear -- Twenty-five (25) feet
 - b. Minimum Lot Size:

Public Water Supply/Septic Tank -- 20,000 Sq. Ft.
Well/Septic Tank ----- 43,560 Sq. Ft.
Public Water Supply/Public Sewer -- 9,600 Sq. Ft.

2. Commercial Uses/Lots - Lot size shall be determined by off-street parking needs; availability of water and sewage disposal facilities; adjacent land uses; need for screening; and type of business. Front, side, and rear yards shall be determined by the Board of Adjustment.
3. Industrial Uses/Lots - Lot size shall be determined by off-street parking needs; impact of adjoining land use and need for screening or buffering from residential areas; availability of water and sewage disposal facilities; type of manufacturing or storage facilities. Front, side, and rear yards shall be determined by the Board of Adjustment.

**ARTICLE V
GENERAL REQUIREMENTS**

Pursuant to the purpose of this ordinance are certain general requirements that are not provided for under Article IV District Requirements. These requirements are set forth under this article.

CHAPTER 5.01. SCREENING. Where any Commercial/Industrial Zoning District use is adjacent to any residential development, that use (building, parking or storage) shall be appropriately screened from the residential development by a fence or planting, approved by the Board of Adjustment, except where such fence or planting may be in conflict with Vision Clearance - Section 5.02 below.

CHAPTER 5.02. VISION CLEARANCE ON CORNER LOTS. On any corner lot in any zoning district, no planting, structure or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight-line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Lake Park District and Town District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight-line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

CHAPTER 5.03. FENCES.

Section 5.03.01. Purpose.

The regulation of fences is intended to protect the public safety and welfare, provide privacy, buffer noise, and allow adequate air, light and vision.

Section 5.03.02. Permit required.

1. Except for customary farm and animal fencing in the Agricultural District, all fences, and walls shall require a building permit. Customary farm and animal fencing is exempt from the requirements of this Chapter.

Section 5.03.03. Location/Construction Requirements.

1. Notwithstanding other provisions of this Ordinance, fences, walls, and hedges may be permitted in any required yard. Except fences, walls, and hedges which are more than thirty (30) percent solid shall meet the requirements of Chapter 5.02. Further, the aforementioned fence, wall, or hedge shall not be constructed within twenty-five (25) feet of a public right-of-way or edge of a private road. Fences, walls and hedges shall be set back a minimum of twenty (20) feet from high water mark or from a point as determined by the Board of Adjustment.
2. Fences, with a maximum height of not more than eighty inches (80) inches, may be erected on any part of a lot other than in the required front yard which shall be limited to a height of forty-eight (48) inches.
3. The County does not provide surveying services. The property owner shall be responsible

for locating property lines.

4. Fences may be built no closer than one (1) foot up to the property line, not to include the public right-of-way. Fences constructed within an identified easement face the potential of removal in the event of necessary work to be conducted within the easement. Replacement of the removed fence is the responsibility of the owner of said fence.
5. Fences can be built on the property line when the fence is shared between property owners.
6. The “finished side” of the fence shall face neighboring properties or the road.
7. Approved fencing materials include stone, brick, wood, vinyl, and chain link. No barbed wire fences shall be allowed in conjunction with residential uses in the Town and Lake Park Districts.
8. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.

CHAPTER 5.04. MOVED IN BUILDINGS.

1. **Any building to be moved requires a building permit.** The Zoning Officer may attach conditions to the issuance of the moved in building permit. No permit shall be issued until the following requirements are met.
 - a. The fee for said permit as prescribed in Section 6.01.05, shall have been paid.
 - b. That the work is to be completed within twelve (12) months after the permit has been issued by the Zoning Officer.
 - c. Must have signatures, by petition, of sixty-six percent (66%) of landowners within two hundred (200) feet, excluding streets and public right-of-ways). **EXCEPTION:** A new dwelling to be used for first occupancy, constructed off the property and moved to location, shall not require adjoining landowners' approval.
 - d. The applicant will also be required to indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from sunrise to sunset. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property on which the building/structure will be located have been paid. If a building or structure is to be moved onto any lot within the County, the Zoning Officer shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.

CHAPTER 5.05. SHELTERBELT SETBACK REQUIREMENTS.

1. Shelterbelts consisting of one or more rows when parallel to a 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.

2. Shelterbelts shall not be established within one hundred fifty (150) feet of adjoining property lines without written permission of adjoining property owners. Trees used for landscaping the area immediately adjacent to farmsteads and dwellings are exempt from this regulation but must be spaced 15 feet apart. The distance between trees shall be determined by measuring distance between tree trunks.
3. The shelterbelts setback requirements (5.05(1)) also apply to volunteer trees that the landowner allows to grow.
4. A recommendation from the County Highway Superintendent, Township and/or State Department of Transportation is required prior to the issuance of any variance of the shelterbelt setback from any respective County, Township or State/Federal public right-of-way.

CHAPTER 5.06. HOME OCCUPATIONS. Home occupations shall be subject to the following requirements:

1. Performance Standards
 - a. Home occupations are permitted in accessory buildings.
 - b. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: (1) non-lighted and non-reflecting name plate not more than sixteen (16) square feet in area, which name plate may designate the home occupation carried on within.
 - c. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.
 - d. Off premise signage for home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.

CHAPTER 5.07. SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; MINERAL EXPLORATION AND DEVELOPMENT AND CONCRETE AND ASPHALT MIXING PLANT REQUIREMENTS.

Section 5.07.01 Application

1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:
 - a. A description of the mineral or minerals which are the subject of the mining or milling.

- b. A detailed site Map(s) showing
 - i. The general area within which the mining or milling operation will be conducted.
 - ii. Present topography, soil types, and depth to groundwater.
 - iii. Location of existing water drainage, existing buildings, existing shelterbelts.
 - iv. Identification of roads leading to the site.
 - v. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - vi. Proposed monitoring wells.

Section 5.07.02 State and Federal Requirements.

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

Section 5.07.03 Setbacks

1. Sand, gravel, or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one (1) mile of an occupied dwelling. The setback will be measured from the mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest occupied dwelling. The exceptions to this standard would apply to dwellings owned and lived in by the operator of the mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants. A variance may also be granted by the Board of Adjustment that may allow setback/separation distances to be less than the established distance identified, if the applicant obtains waivers from all dwellings within the setback distance. If approved, such agreement is to be recorded and filed with the McPherson County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at one hundred and fifty (150) feet from any public right-of-way.
3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of minerals, sand, or gravel provided the following conditions are met:

- a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.
- b. No excavation is allowed within five (5) feet of any rear or side property line.
- c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

Section 5.07.04 General Provisions:

1. Haul Roads.

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

2. Noise Pollution.

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

3. Hours of Operation

The applicant may be subject to specific operational hours.

4. The applicant shall further provide:

- a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
- b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.

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

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

f. Method of revegetation.

6. The applicant may be required to post a surety performance bond in an amount to be determined by the Board of County Commissioners to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of affected ground and surface waters. The amount shall be set by the Board of County Commission based on an estimate of the cost of reclamation and decontamination. The bond shall be released five (5) years after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.
7. Utilities/Easements - No excavation shall occur within recorded easements. The Board of Adjustment may specify a maximum slope at which excavation may occur in relation to any utility pole or recorded easement
8. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.
9. Solution mining, in situ mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

CHAPTER 5.08. CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) REGULATIONS

Section 5.08.01. 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's environment. Concentrated Animal Feeding Operations (CAFOs) and the manure generated from those facilities 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 concentrated animal feeding operations shall comply with the regulations as outlined herein.

Section 5.08.02. Animal Units Equivalent to Animal Species:

The County uses an animal unit equivalency ratio to determine the head count of a specific animal species for the purpose of defining the specific class of concentrated animal feeding operation by animal unit. The animal species equivalents are based upon a species' manure production. The standards for determining an animal unit to animal head count equivalency are derived from the Environmental Protection Agency and the State of South Dakota General Permit. Table 5.08.1 details the classes of concentrated animal feeding operations and the specific animal unit equivalency ratio. Note that the figures in Table 5.08.1 relate to inventory rather than annual product

Number of Animals to Define Classes of Concentrated Animal Feeding Operations
Table 5.08.1

TYPE OF ANIMAL:	Class A # of Animals Over 2,000 AU	Class B # of Animals 1,000-1,999 AU	Class C # of Animals 300-999 AU	Animal Unit Equivalency Ratio
Mature Dairy cows (milked or dry) ¹	1,400 or more	700 to 1,399	210 to 699	1.43
Veal calves	2,000 or more	1,000 to 1,999	300 to 999	1.0
Cattle other than mature dairy cows ^{1 and 2}	2,000 or more	1,000 to 1,999	300 to 999	1.0
Buffalo	1,400 or more	700 to 1,399	210 to 699	1.43
Swine over 55 pounds	5,000 or more	2,500 to 4,999	750 to 2,499	0.4
Swine under 55 pounds	20,000 or more	10,000 to 19,999	3,000 to 9,999	0.1
Farrow-to-Finish (sows)	540 or more	270 to 539	80 to 269	3.7
Swine Production Unit (Sows Breeding, Gestating & Farrowing)	4,260 or more	2,130 to 4,159	640 to 2,129	.47
Horses	1,000 or more	500 to 999	150 to 499	2.0
Sheep, Lambs or Goats	20,000 or more	10,000 to 19,999	3,000 to 9,999	0.1
Turkeys	110,000 or more	55,000 to 109,999	16,500 to 54,999	0.018
Laying Hens or Broilers & Pheasants ³	60,000 or more	30,000 to 59,999	9,000 to 29,999	0.0333
Chickens, other than laying hens ⁴	250,000 or more	125,000 to 249,999	37,500 to 124,999	0.008
Laying Hens ⁴	164,000 or more	82,000 to 163,999	24,600 to 81,999	.0122
Ducks ³	10,000 or more	5,000 to 9,999	1,500 to 4,999	0.2
Ducks ⁴	60,000 or more	30,000 to 59,999	9,000 to 29,999	0.0333
Geese	60,000 or more	30,000 to 59,999	9,000 to 29,999	0.0333

1. **Animals are counted individually once separated from the mother.**
2. **Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs.**
3. **Animal Feeding operation uses a liquid manure handling system.**
4. **Animal Feeding operation uses other than a liquid manure handling system.**

NOTE: Other animal types not listed in the above may be considered on a case-by-case basis.

Section 5.08.03. Classes of Concentrated Animal Feeding Operations:

For the purpose of these regulations, concentrated animal feeding operations are divided into the following classes:

<u>CLASS OF CAFO</u>	<u>NUMBER OF ANIMAL UNITS</u>
Class A	2,000 or more
Class B	1,000 to 1,999
Class C	300 to 999

A CAFO may be required to submit proof of inventory, ongoing, as requested by the County.

Section 5.08.04. Concentrated Animal Feeding Operation Permit Requirements

Two (2) or more concentrated animal feeding operations under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more concentrated animal feeding operations treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.

Owners of Class A, Class B, and Class C, concentrated animal feeding operations are required to complete a conditional use permit application under the following circumstances:

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion of a concentrated animal feeding operation is proposed that exceeds the number of animal units allowed by an existing county-issued permit.
3. An expansion in the number of animal units of a concentrated animal feeding operation, without a county-issued permit, that existed prior to September 11, 2001, which would result in the creation of either a Class A, B, or C concentrated animal feeding operation.
4. If a Class A or B concentrated animal feeding operation, which has a previously issued county permit, changes ownership, the new owner has sixty (60) days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.
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 and/or documented by the County Zoning Officer or South Dakota Department of Agriculture and Natural Resources and after inspection reveals that the concentrated animal feeding operation is in violation of County or State regulations.

7. Notwithstanding 5.08.04.8 (below) a change in ownership of a Class A or Class B concentrated animal feeding operation which does not have a previously issued county-permit.
8. A change in ownership of any concentrated animal feeding operation with a history of pollution documented by the County Zoning Office or State of South Dakota.

Section 5.08.05. 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 shall obtain a State General Permit. A County permit for a concentrated animal feeding operation may be approved conditioned on receiving a State General permit.

It shall be at the discretion of the Board of Adjustment to require a State General Permit for Class C Concentrated Animal Feeding Operations. Class C concentrated animal feeding operations may be required to obtain a State General Permit if the following occur:

- a. If an earthen storage basin or lagoon is used for manure storage, excluding existing operations that are improving waste handling facilities according to South Dakota Department of Agriculture and Natural Resources General Permit or Natural Resource Conservation Service standards.
- b. The Board of Adjustment decides that conditions require a State General Permit.

3. Nutrient Management Plan

- a. New and expansion of Classes A, B, and C concentrated animal feeding operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe land application of manure and protection of surface and ground water. The South Dakota Department of Agriculture and Natural Resources must approve the plan prior to the issuance of the County Conditional Use Permit and land application of any manure. Due to crop rotation, site changes, and other operational changes, the producer shall 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 agriculture 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.
- b. The Nutrient Management Plan is a conservation system for concentrated animal feeding operation. It describes practices and management activities on how to best utilize animal manure as a fertilizer resource while protecting surface and groundwater. The plan deals specifically with managing the amount, source, placement, and timing of the application of manure nutrients to the land. The use of other nutrient sources (i.e.

commercial fertilizer) also must be taken into account when planning manure applications. All nutrient management plans developed for concentrated animal feeding operations developed must meet all applicable SDDANR General Permit and County Zoning Standards.

- c. The applicant shall submit the Nutrient Management Plan approved by the South Dakota Department of Agriculture and Natural Resources to the Zoning Administrator upon request. The Zoning Administrator reserves the right to inspect the applicants Nutrient Management Plan at any time.
- d. The plan must comply with County Manure Application Setbacks, Section 5.08.05.10.
- e. Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure. All lease agreements for manure application must be kept up-to-date and if agreements are not renewed new land must be found to replace acres. Animal manure shall be applied within five (5) mile radius of the concentrated animal feeding operation. There are no restrictions on the distance liquid manure may be pumped. Applicants intending to pump liquid manure are required to obtain permission to cross public rights-of-way. All liquid manure in storage facilities shall be injected or incorporated within forty-eight (48) hours unless approved by the County Board of Adjustment. Emergency cases will be reviewed on a case-by-case basis.

4. Manure Management and Operation Plan

New and expansions of Classes A and B concentrated animal feeding Operations shall submit a Manure Management and Operation Plan.

- a. Plan must include:
 - i. The location and specifics of proposed animal manure management facilities.
 - ii. The operation procedures and maintenance of manure facilities.
 - iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Animal manure management facilities will require inspection by an engineer and as-built plans to be submitted to the County Zoning Officer.
 - iv. Unless otherwise determined by the Board of Adjustment, animal manure shall not be stored longer than two (2) years.
 - v. Animal manure management containment structures: Any new enclosed structure or new enclosed structure used in combination with an existing manure containment structure shall have at least 270 days of storage. Any new open lot design shall provide at least 365 days of storage.
 - vi. The Applicant shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed per South Dakota Department of Agriculture and Natural Resources standards.

- vii. Manure transportation plan: that complies with the requirements of this ordinance.
- b. As a condition of the permit, the Board of Adjustment may require the producer to participate in environmental training programs.
- c. The Board of Adjustment shall require manure to be injected or incorporated into the soil within forty-eight (48) hours of open-air application of the manure. Failure to comply with the time requirement shall constitute a violation of this ordinance.

In situations deemed because of weather and soil conditions, that manure cannot be injected or incorporated into the soil within the 48-hour time period, the Animal Feeding Operations may appeal to the Board of Adjustment for a permission to extend the 48 hour deadline and any other request will be considered on a case-by-case basis. Unless permission is applied for and granted, it shall be a violation this ordinance.

- d. Plans should be made to avoid 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 five (5) miles from its place of origin, and any manure originating outside of McPherson County, a variance is required for every legal land description, including section, range, and township, to where the manure is to be transported, stored, and/or applied.

The variance shall include and shall not be limited to:

- i. The legal land description(s) to where the manure shall be transported, stored, and/or applied;
- ii. The date the manure is to be transported, stored, and/or applied;
- iii. The route the manure is to be transported on;
- iv. A description, approximate quantity, and product (per load) to be hauled that meets legal load limit requirements;
- v. In case of inclement weather, alternative dates and routes will have to be disclosed.

5. Management Plan for Fly and Odor Control:

New and expansions of Classes A, B, and C concentrated animal feeding operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors and/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 into consideration prevailing wind direction and topography. The following procedures to control flies and/or odors shall 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. Remove manure from open pens as frequently as possible to minimize odor production.
 - f. The County may require use of covers on open storage systems for liquid manure systems to reduce odor production.
 - g. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.
 - h. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.
 - i. Incorporation of manure should occur with forty-eight (48) hours of open-air spreading.
 - j. The County may require the storage of solid manure in containment areas to minimize odor production.
 - k. The County may require the use of bio-filters on enclosed concentrated animal feeding operation barns/structures to reduce odor production.
- 6. Required Minimum Setbacks and Separation Distance for New Classes A, B, and C Concentrated Animal Feeding Operations and those Existing Concentrated Animal Feeding Operations without a County-issued permit expanding into a Class A, B, or C Concentrated Animal Feeding Operations. See Table 5.08.2.**

Table 5.08.2
Minimum Setbacks

MINIMUM SETBACK TABLE	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>
Occupied Dwellings (other than owner's or operator's)	5,280 feet (1 Mile)	5,280 feet (1 Mile)	5,280 feet (1 Mile)
Incorporated Municipality Limits	3 Miles	2 Miles	1 Mile
Churches, Schools, Businesses, Designated County or State Parks, Lake Park, and Town Zoning Districts	5,280 feet (1 Mile)	5,280 feet (1 Mile)	5,280 feet (1 Mile)
Federal, State, County Road Right of Way	300 feet	300 feet	200 feet
Township Road Right of Way	150 feet	150 feet	150 feet

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. Additional Setback and Separation Distance Requirements for Classes A, B, and C Concentrated Animal Feeding Operations.

Each application for a new or expanded concentrated animal feeding operation will be reviewed by the Board of Adjustment on a site-specific basis. The Board of Adjustment reserves the right to increase or decrease the minimum required setbacks and separation distance on a site-specific review based on one (1) or more of the following considerations:

a. Considerations to Decrease Required Setbacks and/or Separation Distances

- i. An existing Concentrated Animal Feeding Operation proposes to expand but does not meet required setback or separation distances, the Board of Adjustment may reduce required setbacks and separation distances after review of past management practices and proposed improvements to waste handling facilities.
- ii. A new Concentrated Animal Feeding Operation is proposed which, because of the waste handling facilities, would not require conformance with required setback and separation distances as outlined herein.

b. Considerations to Increase Required Setbacks and/or Separation Distances

- i. A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- ii. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.
- iii. A Concentrated Animal Feeding Operation is in excess of 3,000 animal units.

8. Exemptions to Setback and/or Separation Distance Requirements

- a. All Concentrated Animal Feeding Operations (CAFO) in operation prior to September 11, 2001, which do not comply with the minimum setback requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from setback/setback distance requirements:
 - i. Example 1: A Class C CAFO expands to a Class A or B CAFO.
 - ii. Example 2: A Class B CAFO expands to a Class A CAFO.
 - iii. Example 3: A Class A CAFO expands by 15% of the number of animal units
- b. A concentrated animal feeding operation which is expanded or constructed, if the title holder of the land benefiting from the distance setback requirement executes a written waiver with the title holder of the land where the CAFO is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The title holder of the land benefiting from the distance setback requirement land is the individual or individuals, business entity, governmental entity, bona-fide religious institution, or educational institution from which a setback is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
- c. A concentrated animal feeding operation which is constructed or expanded closer than the required setback/separation distance from the corporate limits of a city, if the incorporated community approves a written waiver. The written waiver becomes effective only after it's recorded with the Register of Deeds.
- d. A concentrated animal feeding operation which existed prior to the creation of a dwelling, educational institution, commercial enterprise, bona-fide religious institution, incorporated community, if the dwelling, educational institution, commercial enterprise or bona-fide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the concentrated animal feeding operation was established is the date on which concentrated animal feeding operation commenced operating. A change in ownership or expansion shall not change the date of operation.
- e. 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 the construction of such facilities.

9. Flood Zones

The following flood zones must be in accordance with the Federal Emergency Management Agency's National Flood Hazard Layer map.

The following uses are prohibited in Zone A:

- a. New Concentrated Animal Feeding Operations after adoption of this ordinance.

- b. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of 300 animal units.
- c. Earthen storage basins and lagoons.
- d. Stockpiling of solid waste.

The following uses are prohibited in Zone B:

- a. New and expansion of Class A and B Concentrated Animal Feeding Operations.
- b. Earthen storage basins and lagoons.

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

- a. New Class C and expansion of existing Class C up to 999 animal units.

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

10. Manure Application Setbacks

The following manure application setbacks apply to all classes of concentrated animal feeding operations.

- a. The Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.
- b. 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.

**TABLE 5.08.3
COUNTY MANURE APPLICATION SETBACKS**

CATEGORY	SURFACE APPLIED	INCORPORATED OR INJECTED
Lakes, Rivers and Streams	2,640 feet	2,640 feet
Streams and Lakes Classified as Drinking Water Supplies	2,640 feet	2,640 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation)	25 feet from right-of-way
Area of 10 or More Dwellings	2,640 feet (surface) 2,640 feet (irrigation)	2,640 feet
Public Wells	2,640 feet	2,640 feet
Established Private Shallow Wells Other Than the Operators	2,640 feet	2,640 feet
A Dwelling Other Than the Operator	2,640 feet (surface) 2,640 feet (irrigation)	2,640 feet
Natural or Manmade Surface Drainage	500 feet	500 feet

11. Standards for Conditional Use Permits

- a. The Board of Adjustment may request information relating to concentrated animal feeding operations 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. Conditional Use Permits for Concentrated Animal Feeding Operations 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 or had 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 Officer and signed by both the applicant and the Zoning Officer. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning

status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.

- f. An applicant's record on environmental issues, employment, and labor compliance must be submitted with the application. If the Board of Adjustment finds the person is a "bad actor" then the applicant will be denied a permit.

12. Haul Road 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 of 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 unit's jurisdiction. The term of said agreement shall be determined prior to the issuance of a conditional use permit. Documentation of a current South Dakota Department of Agriculture and Natural Resources approved Nutrient Management Plan shall also be submitted to the County Zoning Officer before a haul road agreement is put in place.

13. Information Required for Class A or B Concentrated Animal Feeding Operation

- a. Owner's name, address and telephone number.
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. Documentation of a South Dakota Department of Agriculture and Natural Resources approved Nutrient management plan, if required.
- e. Documentation of a South Dakota Department of Agriculture and Natural Resources approved Manure management and operation plan, if required.
- f. Management plan for fly and odor control.
- g. Information on ability to meet designated setback requirements including site plan to scale.
- h. Documentation of approved General permit from South Dakota Department of Agriculture and Natural Resources if available for animal species, if required.
- i. Review of plans and specifications by the South Dakota Department of Agriculture & 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. A full written plan must be submitted County Zoning Officer at least four weeks in advance of the public hearing in the county courthouse or other location, available for public inspection.
- n. A copy of the state general permit application must be submitted to the County Zoning Officer, at the time it is submitted to the State Department of Agriculture and Natural Resources.
- o. A list of owner's names contacted to do the manure land spreading and a legal description of the land must be submitted to the County Zoning Officer.
- p. Any other information as contained in the application and requested by the County Zoning Officer.

14. Information Required for Class C Concentrated Animal Feeding Operation

- a. Owner's name, address and telephone number.
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. Documentation of a South Dakota Department of Agriculture and Natural Resources approved Nutrient management plan, if required.
- e. Management plan for fly and odor control.
- f. Information on ability to meet designated setback requirements including site plan to scale.
- g. Review of plans and specifications by the South Dakota Department of Agriculture and Natural Resources if using lagoon or earthen storage basin.
- h. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- i. Notification of whomever maintains the access road (township, county and state).
- j. Notification of public water supply officials.
- k. Any other information as contained in the application and requested by the County Zoning Officer.

CHAPTER 5.09. MANUFACTURED HOME PARKS.

It shall be unlawful for any person to place or maintain a manufactured home park in the unincorporated area of McPherson County unless said park is located on property zoned Lake Park and connected to an approved public water and sewer system.

CHAPTER 5.10. MANUFACTURED HOME REGULATIONS.

Section 5.10.01 Manufactured Homes

1. A manufactured home shall:
 - a. Have more than 700 square feet of occupied space in a single, double, expanded or multi-section unit.
 - b. Have a minimum width of fourteen (14) feet.
 - c. Be anchored to the ground or permanent foundation in accordance with the manufacturer's specifications.
 - d. Utilize a perimeter enclosure of metal, vinyl, wood or Styrofoam in accordance with the manufactures specifications that enclosed the entire perimeter of the home.
 - e. Shall not be older than twenty (20) years from the date of manufacture.
2. Replacement of Nonconforming Homes.

Thereafter, upon application to the Zoning Officer and subsequent approval thereof, a manufactured home, located upon any lot or lots of record at the time of the adoption of this ordinance, deemed a legal nonconforming use, may be replaced by a-manufactured home, provided the replacement meets the requirements of this section.

a. Variance from Maximum Age Requirement

Manufactured homes may receive a variance from the maximum age requirement. The Board of Adjustment may grant a variance if the manufactured home meets the following requirements:

- i. The applicant shall provide a photographs of the entirety of the manufactured home's exterior and interior.
- ii. That it shall have been shown to the satisfaction of the Zoning Officer that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of McPherson County.
- iii. That the applicant shall obtain the written consent of sixty-six (66) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and the consent of fifty (50) percent of the property owners within two hundred (200) feet (excluding streets and alleys) of said proposed location has been received.

Section 5.10.02 Modular Homes

1. Modular homes shall meet the following regulations.
 - a. Modular homes shall meet or exceed Uniform Building Codes.
 - b. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.
 - c. Modular homes shall not have attached running gear and a trailer hitch.
 - d. Modular homes shall have a minimum of a 4/12-roof pitch.
 - e. Have siding material of a type customarily used on site-constructed dwellings.
 - f. Have roofing material of a type customarily used on site-constructed dwellings.

CHAPTER 5.11. ACCESSORY BUILDINGS.

1. Only specifically authorized accessory uses allowed; accessory uses must be subordinate to principal use.
2. No accessory use shall be permitted in any district unless such principal use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
3. No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building.
4. No accessory building may be used as a dwelling at any time.
5. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
6. Commercial and Industrial Districts. In any Commercial or Industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
7. Town and Lake Park Districts. Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Town and Lake Park Districts only in accordance with the provisions of the Table 5.11-1.

Table 5.11-1

Permitted Accessory Uses: Town District and Lake Park Districts

<u>Principal Use</u>	<u>Permitted Accessory Uses</u>
Single-family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers	<ol style="list-style-type: none">1. Private garages.<ol style="list-style-type: none">a. Attached and unattached garages shall be limited to maximum dimensions per applicable zoning district and conform to the design of the house.b. Attached garages shall be limited to maximum sidewalls of ten (10) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house.c. Unattached garages shall be limited to maximum sidewalls of twelve and one-half (12 ½) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house.2. Buildings or structures for customary residential storage purposes not over ten (10) feet in height and not exceeding one hundred fifty (150) square feet in gross floor area.3. Readily moveable sports, recreation, or outdoor cooking equipment.4. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved.5. Home occupations but only as defined herein.6. Non-commercial greenhouses provided that greenhouses over one hundred (100) square feet in floor area must have an approved site plan.7. Off-street parking and storage of vehicles.8. Private Solar Energy System (PSES)
Churches, Convents and Monasteries All conditional uses	<ol style="list-style-type: none">1. All customarily incidental uses reasonably necessary to allow the free exercise of religion, but not to include commercial use.2. All customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use.
All other items	<ol style="list-style-type: none">3. No accessory uses permitted.

CHAPTER 5.12 SIGNS.

Section 5.12.01 On-premise and Off-premise Signs

1. Prohibited signs:
 - a. No sign shall be erected or maintained which creates a hazard due to collapse, fire, collision, decay, or abandonment; or creates traffic hazards, by either:
 - i. Confusing or distracting motorists; or
 - ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles; or
 - iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or

- iv. Creates a nuisance to persons using a public right-of-way; or
 - v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement.
 - b. Any vehicle or trailer parking on public right-of-way, public property or private property so as to be visible from the public right-of-way and which displays an advertising message, unless said vehicle is used in the regular course of a business.
 - c. No sign shall be erected in a county or state public right-of-way.
2. Signs shall be permitted in zoning districts per Article III, subject to the following provisions:
- a. Wall signs may be located anywhere on the wall of a building.
 - b. Signs shall not project over public property.
 - c. Signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Chapter 5.12.
 - d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
 - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the Zoning Officer and the said Official grants a permit therefore.
3. On-premise Signs: Each sign erected as an on-premise sign in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:
- a. Unless otherwise specified herein, each sign erected as an on-site sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. Each sign shall meet clear view triangle standards identified in Chapter 5.12. The maximum cumulative amount of all on-site signage allowed shall not exceed eighty (80) square feet.
 - b. No on-premise sign may be converted to an off-premise sign.
4. Off-premise Signs: Off-premise signs erected in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:
- a. Each sign shall have a maximum surface area of three hundred (300) square feet.
 - b. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.

- c. Stacked signs (two or more signs stacked vertically on a single sign structure) are prohibited.
- d. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted Off-premise sign on the same side of the street or road.
- e. Each sign shall not be closer than ten (10) feet from any street right-of-way.
- f. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.

CHAPTER 5.13. STRUCTURES TO HAVE ACCESS.

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to private streets approved by the Board of Adjustment, and all structures shall be so located on lots as to provide safe and convenient access for services, fire protection and required off-street parking.

CHAPTER 5.14. YARDS.

No part of a yard or other open space, or 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 5.14.01. Yards, Reduction in Size.

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 and lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

Section 5.14.02. Additional Yard Requirements.

The following yard requirements must be observed in addition to the yard requirements of the various districts:

1. A corner lot must have a front yard on both streets.
2. On developed property, in the LP-Lake Park District, fronting on one side of the street between two streets where one or more dwellings already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.

3. In the LP Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.
4. In the LP Districts, required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

Section 5.14.03. Exceptions to Yard Requirements.

The following exceptions may be made to the yard requirements in the LP Districts:

1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.
2. In commercial and industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.
3. An accessory building may be located in a rear yard but not occupy more than 30 percent of a rear yard.
4. Any accessory buildings closer than ten (10) feet to a main building shall be considered as part of the main building and shall be provided with the same side and rear yard requirements as the main building.

CHAPTER 5.15. PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS.

No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exempted from this requirement are manufactured homes as defined herein.

CHAPTER 5.16. UTILITY EASEMENTS.

No building or addition thereto shall be erected over or across any existing public utility or upon any platted easement.

CHAPTER 5.17. ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT.

In any district, only one (1) structure housing a permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met. Exception: Secondary dwellings in the Agricultural Zone, per 4.01.04.7, and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met.

CHAPTER 5.18. WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES.

Section 5.18.01. Purposes.

1. The general purpose of this Section is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the County. Specifically, the purposes of this Ordinance are:
 - a. To regulate the location of Towers and Telecommunications Facilities in the County;
 - b. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
 - c. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
 - d. To promote and encourage shared use/collocation of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
 - e. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
 - f. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
 - g. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

Section 5.18.02. Development of Towers.

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

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

Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.

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

Section 5.18.03. Setbacks.

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

Section 5.18.04. Structural Requirements.

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

Section 5.18.05. Setback of Buffer Requirements.

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

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

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. The setback requirements contained in 5.18.05 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

Section 5.18.06. Method Of Determining Tower Height.

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

Section 5.18.07. Illumination.

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

Section 5.18.08. Exterior Finish.

1. Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

Section 5.18.09. Modification Of Towers.

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such nonconforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Setback or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
 - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.

- b. An Application for a permit is made to the Board of Adjustment which shall have the authority to issue a permit without further approval. The grant of a permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
 - c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.
2. Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

Section 5.18.10. Certifications And Inspections.

1. The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.
2. The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

Section 5.18.11. Maintenance.

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

Section 5.18.12. Criteria For Site Plan Development Modifications.

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

be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.

- b. In the case of a request for modification of the setback and buffer requirements from residential use of land if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.
- c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
 - i. facilitate collocation of Telecommunications Facilities in order to avoid construction of a new Tower; or
 - ii. meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

Section 5.18.13. Abandonment.

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

Section 5.18.14. Action of the Board of Adjustment.

- 1. McPherson County shall approve or deny an application for co-location within ninety (90) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.
- 2. McPherson County shall approve or deny an application for a new wireless telecommunications facility within one hundred fifty (150) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time

frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.

3. The Board of Adjustment may not deny the application on the basis that a competing provider already provides coverage.

CHAPTER 5.19. TARGET RANGE REQUIREMENTS.

Section 5.19.01. General Area Regulations.

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

CHAPTER 5.20. BED AND BREAKFAST ESTABLISHMENTS.

The regulations regarding Bed and Breakfast Establishments (hereafter referred to as B & B's) shall be as follows:

1. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health.
2. A license must be approved by the state prior to granting a building/use permit and license must remain current while operating a bed and breakfast.

CHAPTER 5.21. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS).

The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
2. Setback Requirements. The minimum distance between the property line, overhead utility lines or another wind turbine, and any turbine support base of a PWECS shall be equal to the proposed turbine hub height (plus the radius of the rotor for the horizontal access machines).
3. Common Use. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.
4. Turbine Access. Climbing access to the PWECS turbine shall be limited either by means of a fence six (6) feet high around the turbine base with a locking portal, or by limiting turbine climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.
5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

CHAPTER 5.22. WIND ENERGY SYSTEM (WES) REQUIREMENTS

Section 5.22.01. Applicability

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

Section 5.22.02. Federal and State Requirements

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

Section 5.22.03. General Provisions

1. Mitigation Measures

- a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
- b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. Roads
 - i. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, meteorological towers, assembled nacelles and all other heavy components to and from the site.
 - ii. Agreements. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.
 - iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed. Before the start of construction, the permittees shall notify McPherson County of any access roads that will be constructed across streams and drainage ways as well as the size, type, and design of planned construction in order to ensure runoff and water flow will not be affected and/or affected as minimally as possible.

- iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- v. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.
- g. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Zoning Officer. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.
- h. Drainage System. The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WES.

2. Setbacks

Wind turbines and Meteorological towers shall meet the following minimum spacing requirements.

- a. Distance from an incorporated municipality shall be at least five thousand two hundred and eighty (5,280) feet or 1 mile from the incorporated municipalities jurisdictional boundary. Distance to be measured from the incorporated municipalities boundary to the base of the WES turbine.
- b. Distance from existing off-site occupied dwelling, business, and churches shall be at least five thousand two hundred eighty feet (5,280'). Distance to be measured from the wall line of the neighboring occupied dwelling, business, or church to the base of the WES turbine.
- c. Distance from on-site or lessor's occupied dwelling and other structures shall be at least six hundred (600) feet. Distance to be measured from the wall line of the neighboring occupied dwelling or structure to the base of the WES turbine.
- d. Distance from centerline of public roads, not including unimproved section lines, shall be one thousand (1000) feet or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the turbine to the centerline of the public road.

- e. Distance from any property line shall be one thousand (1000) feet or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the turbine to the adjoining property line unless wind easement has been obtained from adjoining property owner.
 - f. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above, if the applicant obtains waivers from all dwellings and owners of property within the setback distance. If approved, such agreement is to be recorded and filed with the McPherson County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.
 4. Lighting. Turbines shall be marked as required by the Federal Aviation Administration (FAA). With the exception of lighting to illuminate doorway to turbine hub, there shall be no lights on the turbines other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a turbine, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the turbine from the turbine and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
 5. Turbine Spacing. The turbines shall be spaced no closer than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the turbines may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.
 6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. 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 turbine hubs unless otherwise negotiated with the affected landowner.
 7. Collector Lines. Collector lines are the conductors of electric energy from the WES to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the WES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

8. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.
9. Meteorological Towers. Permanent meteorological towers associated with a WES facility shall be permitted as part of the facility. A temporary meteorological tower shall require a separate conditional use permit, and shall be constructed in accordance with all applicable federal, state, and local requirements.
10. Decommissioning, Restoration, or Abandonment of WES
 - a. The Owner and/or Operator of a WES shall be responsible for decommissioning a WES, including all related facilities, and for all costs associated with decommissioning a WES and for all related facilities including, but not limited to:
 - i. All turbines, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment shall be dismantled and removed to a below surface depth of four (4) feet.
 - ii. To the extent possible, all topsoil quality and topography shall be restored and reclaimed to a pre-project condition.
 - iii. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained.
 - iv. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County Zoning Officer and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County Zoning Officer prior to completion of restoration activities.
 - b. At least thirty (30) days prior to construction, the WES Applicant shall provide a plan to the McPherson County Board of Adjustment regarding the action to be taken upon the decommissioning and removal of the WES and all related facilities. Estimates of monetary costs and the site condition, including any land irretrievably committed, after decommissioning shall be included in the plan.
 - c. The McPherson County Board of Adjustment may require a bond, guarantee, insurance, or other requirement to provide funding for the decommissioning and removal of the WES and related facilities. The McPherson County Board of Adjustment shall consider the size, location, and any other relevant information regarding the WES, and the financial condition of the Applicant when determining whether to require some type of funding. The same criteria shall be used to determine the amount of any required funding.

- d. All right and title in any bond, guarantee, insurance, or other requirement for the decommissioning of the WES shall be controlled by McPherson County in accordance with the terms of the financial security agreement or instrument, until the commission by order releases the security. The financial security of the person required to provide it may not be cancelled, assigned, revoked, disbursed, replaced, or allowed to terminate without approval from the McPherson County Board of Adjustment.
- e. Any bond, guarantee, insurance, or other requirement may not be pledged or used as security for any other obligation of the WES Applicant, Owner, and/or Operator, and is exempt from attachment or mesne process, from levy or sale on execution, and from any other final process issued from any court on behalf of third-party creditors of the WES Applicant, Owner, and/or Operator.
- f. Any bond, guarantee, insurance, or other requirement required under Section 5.22.03(10)(c) shall be issued with McPherson County as the payee and payable to McPherson County in the event the WES Owner and/or Operator abandons the WES or fails to meet any and all local, state, or federal decommissioning requirements.
- g. If the WES Owner and/or Operator abandons the WES or fails to meet local, state, or federal decommissioning requirements:
 - i. The bond, guarantee, insurance, or other requirement required under Section 5.22.03(10)(c) shall be paid to McPherson County and shall be non-refundable;
 - ii. McPherson County shall use this payment or payments for all costs McPherson County incurs for decommissioning on County property, rights-of-way, County highways, and any other costs incurred by McPherson County for decommissioning;
 - iii. The remaining funds, if any, shall be used at the discretion of the McPherson County Board of County Commissioners.
- h. If the bond, guarantee, insurance, or other requirement required under Section 5.22.03(10)(c) is not sufficient for its intended purpose, McPherson County reserves the right to take any legal action to hold the WES Owner and/or Operator responsible for any remaining decommissioning costs.
- i. At least six (6) months prior to the commencement of decommissioning, the WES Owner and/or Operator shall give notice, in writing, to the McPherson County Board of Adjustment of the date decommissioning is to begin.
- j. The WES Owner and/or Operator shall physically dismantle all below and above ground components of the WES within three-hundred and sixty-five (365) days from the date decommissioning is to begin.
 - i. Such removal and dismantling period can be extended upon written agreement between WES Owner/Operator and Property Owner. However, in no event can this period extend beyond two (2) years from the date decommissioning is to begin. Any agreement to extend removal and dismantling shall be filed at the McPherson County Registrar of Deeds office and a copy thereof shall be delivered by the WES Owner and/or Operator to the McPherson County Board of County Commissioners or its designee.

- k. A WES shall be deemed abandoned if it is out of service or no longer in use for twenty-four (24) consecutive months.
- l. If a WES is deemed abandoned:
 - i. The McPherson County Board of Adjustment, or its designee, shall issue a written Notice of Abandonment by certified mail to the WES Owner or Operator. The Owner and/or Operator shall have the right to respond to the Notice of Abandonment within thirty (30) days from the date of receipt of such notice to present evidence that the WES has not been abandoned.
 - ii. The McPherson County Board of Adjustment shall review any such response to determine if the WES has or has not been.
 - iii. If it is determined the WES has not been abandoned, the Notice of Abandonment shall be withdrawn and notice of same shall be provided to the WES Owner or Operator.
 - iv. If, after review of WES's Owner and/or Operator's response, it is determined that WES has been abandoned, notice of such finding shall be provided by certified mail to the WES Owner or Operator.
 - v. If the WES is deemed to have been abandoned, the WES Owner and/or Operator shall have one hundred twenty (120) days from the date of receipt of such notice to dismantle all above and below ground components of the WES. If WES Owner and/or Operator fails to dismantle the WES within the prescribed time period, such shall be considered a violation of this ordinance and shall be subject to any and all legal remedies.
- 11. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
- 12. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
- 13. Turbine Hubs.
 - a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
 - b. All turbine hubs shall be singular tubular design.
- 14. Noise. Noise level shall not exceed 50 dBA, average A-weighted Sound pressure including constructive interference effects at existing off-site occupied dwellings and businesses.
- 15. Required Information for Permit.
 - a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.

- b. Map of easements for WES.
- c. Affidavit attesting that necessary easement agreements with landowners have been obtained.
- d. Map of occupied dwellings, businesses and buildings.
- e. Preliminary map of sites for WES, access roads and collector and feeder lines. Final map of sites for WES, access roads and utility lines to be submitted sixty (60) days prior to construction.
- f. Proof of right-of-way easement for access to transmission lines and/or utility interconnection.
- g. Location of other WES in general area.
- h. Project schedule.
- i. Mitigation measures.
- j. Project-specific environmental concerns (e.g., native habitat, rare species, and migratory routes). This information shall be obtained by consulting with state and federal wildlife agencies. Evidence of such consultation shall be included in the application.
- k. Final haul road agreements to be submitted sixty (60) days prior to construction.

CHAPTER 5.23. HAZARDOUS MATERIAL PIPELINES.

Section 5.23.01. Title.

1. This Ordinance may be known and may be cited and referred to as the “McPherson County Hazardous Material Pipeline Ordinance,” or the “Hazardous Material Pipeline Ordinance” to the same effect as if the full title were stated.

Section 5.23.02. Intent.

1. The intent of these regulations is to strike an appropriate balance between our Nations, States, and local needs to develop energy recourses and the county’s commitment to protect the public health, safety, and welfare within the zoning jurisdiction of McPherson County, South Dakota pursuant to South Dakota Codified Law Chapters 7-8 and 11-2, as well as any other relevant South Dakota Codified Law(s).

The McPherson County Board of Adjustment and McPherson County Board of County Commissioners recognize: (1) that oil and gas transmission pipelines are federally regulated, including 49 Code of Federal Regulations (CFR) 190 through 195, and that oil and gas transmission pipelines and pipelines which transport gas from methane digesters are state regulated, through South Dakota Codified Laws (SDCL) Chapter 49-34B and SDCL Chapter 49-41B.

It is further recognized that, unless preempted by federal law, state and local governmental agencies have the right to set aesthetic and other standards for oil and gas transmission pipelines to both protect citizens and ensure property values are not harmed.

Section 5.23.03. Application of Standards.

1. The definitions, processes, fees, requirements, timelines, and any other language found herein the Hazardous Material Pipeline Ordinance shall only be applicable to Chapter 25, herein referred to as the Hazardous Material Pipeline Ordinance, and no other part, section, subsection, or article of the McPherson County Planning and Zoning Ordinances. If any language in the Hazardous Material Pipeline Ordinance conflicts with any other language in the McPherson County Planning and Zoning Ordinances, the language in the Hazardous Material Pipeline Ordinance shall be controlling to the Hazardous Material Pipeline Ordinance but not the remainder of the McPherson County Planning and Zoning Ordinances.

Section 5.23.04. Violation and Penalty.

1. Violations of Chapter 5.23, herein referred to as the Hazardous Material Pipeline Ordinance, shall be subject to Section 1.02.03 of the McPherson County Planning and Zoning Ordinances and, if applicable, the following:
 - a. If a required application and/or inspection fee for a permit, variance, authorization, and/or approval is not timely filed in accordance with the requirements herein, there shall be imposed an administrative fee in the amount of ten (10) times the normal fee for the associated application and/or inspection plus the cost of postage for mailing the aforementioned notice and/or any personal service fees charged by the applicable sheriff's office.
 - b. In the event that any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of McPherson County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation
 - c. McPherson County reserves the right to take all legal actions afforded by law to uphold this ordinance.

Section 5.23.05. Exemptions.

1. Only Hazardous Material Pipelines, as defined above, are bound by this Ordinance. Any Hazardous Material Pipeline within the County that is completely constructed and operational prior to the effective date of this Ordinance shall be exempt from this Ordinance but shall be bound by the Ordinance in effect at the time of construction.

Section 5.23.06. Hazardous Material Pipeline Permit Application.

1. Pre-Construction Filing Requirements.
 - a. An Applicant desiring to construct a Hazardous Material Pipeline, as defined by this

Ordinance and the related definitions, shall file with the McPherson County Board of Adjustment, or its designee, a Hazardous Material Pipeline Permit Application, all associated plans of the proposed Pipeline, State and Federal approval documentation, if any; all copies of the most recent Material Safety Data Sheets related to the product(s) contemplated to be transported through the Hazardous Material Pipeline; proposed County Road and/or County right-of-way crossings; the current Facility Response Plan filed with PHMSA and a County specific spill and/or leak response plan; a County-wide economic risk analysis; a County-wide economic benefit analysis; a County-wide water risk analysis; a County carbon pollution estimate; a County-wide water testing schedule; proposed County haul routes; any voluntary submittal of other information that would assist the McPherson County Board of Adjustment or its designee in evaluation of the proposed Pipeline project as Pre-Construction Requirements; a list of permit applications that Applicant must acquire prior to construction of the Hazardous Material Pipeline required by the State of South Dakota, the US government, McPherson County, and should they be required, any applications submitted to counties immediately adjacent to McPherson County shall be included. This list shall be updated throughout the planning and construction process.

- b. Applicant shall also file with the McPherson County Board of Adjustment, or its designee, the location of the Pipeline right-of-way or easement area by recording a "Notice of Location" referring to the right-of-way or easement and setting forth the legal description of the right-of-way or easement and the location of the pipeline contained therein, which description shall be set forth by GIS/GPS mapping attached to the Notice of Location. A copy of the Notice of Location shall promptly be delivered to each Property Owner whose property the proposed route crosses as well as any adjoining landowners of the proposed route. No construction or installation of the Pipeline shall occur until the GIS/GPS mapping Notice of Location has been filed with the Planning and Zoning Committee, or its designee, and delivered to the Property Owner. Prior to construction, Property Owner shall be contacted by Applicant's project manager or designated agent to review the timing of construction and discuss site-specific issues and implementation of mitigation and reclamation measures.
- c. Each Hazardous Material Pipeline Permit Application shall be accompanied by at least two (2) sets of plans showing the following:
 - i. Dimension and locations of the Pipeline;
 - ii. Related items or facilities within the subject right-of-way or easement;
 - iii. All proposed above ground and below ground lift stations, pumps or other service structures related to such Pipeline;
 - iv. The location, type and size of all existing utilities, drainage, right-of-way, and roadway improvements;
 - v. Cross-section drawings for all public street/road right-of-way and easement crossings; and
 - vi. The proposed maximum operating pressure (MOP), expressed in pounds per square inch gauge.

- d. The McPherson County Board of County Commissioners shall, by resolution, establish a Hazardous Material Pipeline Permit Application fee. This fee shall be reviewed and may be adjusted on an annual basis. This fee shall be payable to the McPherson County Treasurer and paid at the time the Hazardous Material Pipeline Permit Application is submitted. This fee shall be sufficient to offset county review of the application, organization, third-party consulting, holding of public hearings and other additional costs incurred related to Pipeline project. Such payments are necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.
- e. The Pipeline Owner shall reimburse McPherson County for any and all reasonable expenses in excess of the Permit Review Fee for review of the Pipeline Permit Application, organization, third-party consulting, holding of public hearings and other additional costs incurred by the county related to the Pipeline Permit Application.

Section 5.23.07. Hearings.

1. McPherson County Board of Adjustment Review

- a. The McPherson County Board of Adjustment will review the Hazardous Material Pipeline Permit Application and the documents, materials, and reports in a timely manner.

2. McPherson County Board of Adjustment Review Hearing

- a. As soon as practicably possible, the Hazardous Material Pipeline Permit Application shall be brought forth in front of the McPherson County Board of Adjustment for a review hearing.
- b. Appearance by the Applicant, or the Applicant's designee, before the McPherson County Board of Adjustment's Review Hearing is required for any Hazardous Material Pipeline Permit Application.
- c. The McPherson County Board of Adjustment Review Hearing shall be an informational hearing meant for the McPherson County Board of Adjustment to ask questions to the Applicant, or the Applicants designee, and vice versa. Approval or denial of the Hazardous Material Pipeline Permit Application shall not be required at or during the Review Hearing.

3. Public Hearing

- a. After the McPherson County Board of Adjustment's Review Hearing, a Public Hearing date will be set by the McPherson County Board of Adjustment and notice thereof shall be given and published in accordance with South Dakota state law and the McPherson County Hazardous Material Pipeline Ordinance. The Applicant shall be responsible for the cost of notice and cost of publication.
- b. At least two (2) weeks prior to the Public Hearing, the Applicant shall mail written notification of the Public Hearing to all property owners whose land the hazardous

material pipeline is planned to be constructed on or under as well as all adjacent landowners via certified mail, return receipt requested. The Applicant shall be responsible for the cost of written notification to the affected Property Owners and adjacent landowners.

- c. Applicant shall provide copies of all certified mail, return receipt requested, mailed to affected Property Owners and adjacent property owners as proof of mailing. Said copies shall be delivered to the McPherson County Board of Adjustment, or its designee, at least forty-eight (48) hours before the Public Hearing.
- d. An affected Property Owners and/or adjacent landowners' refusal to accept and/or sign for the written notice shall not be viewed as a violation of the written notice requirement.
- e. The written notice shall specify the Hazardous Material Pipeline Permit Application number, a general description of the pipeline, the type of material the pipeline will be transporting, the name and contact information for Applicant, as well as the time, date, and location of the Public Hearing.
- f. The Applicant has the burden of proof to establish that the proposed Pipeline complies with all applicable ordinances along with applicable local, state, and federal laws and regulations and that the proposed route is the least disruptive to the property owners of McPherson County when taking into consideration all economic, environmental, and social impacts.
- g. The McPherson County Board of Adjustments ability to approve, deny, and/or direct any modifications pursuant to Hazardous Material Pipeline Permit Application shall be limited to county zoning powers, powers related to county roads and/or right-of-ways, and any/all other powers vested within the county not preempted by State or Federal law.

Section 5.23.08. Confidential Information.

1. At the time of filing of the Pipeline Permit Application, the Applicant shall identify any information within its application that it considers confidential business information, provide an explanation that describes the confidentiality of the information, and request that such information be treated as confidential by the County. The Applicant has the burden to prove that information is confidential under South Dakota and/or Federal law. The McPherson County Board of County Commissioners, or its designee, shall determine if such information is public information or confidential information.

Section 5.23.09. Public Road Impacts.

1. McPherson County's general supervision and control of county roads shall ensure the appropriate and timely maintenance of all county roads pursuant to SDCL Chapter 31.
2. A County Road and Right of Way Haul Road agreement shall be a condition of approval for a Hazardous Material Pipeline Permit.
3. The Applicant shall complete a County Road and Right of Way Application Form including each county, township, or municipal road or street to be crossed under, over, or across for the purposes of transporting Gas, Pipelines, substation parts, or equipment for

transportation, construction, and/or maintenance.

4. The Applicant shall, in coordination with a representative from McPherson County and other appropriate jurisdictions, conduct a pre-construction survey of roadways and related improvements, drainage pipes and similar structures, and bridge(s) that may be used during construction, including haul roads, and any roads used for alternative routes. Such survey shall include photographs and written agreement(s) documenting the condition of the public roads, to determine all county, township, or municipal roads or streets to be used for the purposes of transporting pipelines, substation parts, equipment for construction and/or maintenance, and to determine all applicable weight and size permits from the impacted jurisdictions prior to construction.
5. All proposed haul roads within McPherson County shall be inspected by a third-party highway engineer selected by the County prior to Pipeline construction. The inspection shall be completed again by the third-party highway engineer upon completion of Pipeline construction to ensure the haul road locations are brought back to their original condition after use. The Pipeline Owner shall reimburse the County for all expenses related to the third-party inspections. The Pipeline Owner shall also be responsible for any expenses necessary to restore the condition of the haul road terrain.
6. The Pipeline Owner shall be responsible, at its sole expense, for restoring all other roads, streets and bridges to pre-construction conditions. A County representative shall determine the need for and extent of repair and direct Pipeline Owner to make such repairs.
7. The McPherson County Board of County Commissioners shall, by resolution, establish a one-time, nonrefundable, County Road and Right of Way Application fee Hazardous Material Pipeline Permit Application fee. This fee shall be reviewed and may be adjusted on an annual basis. This fee shall be payable to the McPherson County Treasurer and paid at the time the County Road and Right of Way Application Form is submitted.
8. The McPherson County Board of County Commissioners shall, by resolution, establish a County Road and Right of Way renewal fee per drivable surface crossed that shall be paid annually by the Pipeline Owner on the anniversary of the In-Service date of the Hazardous Material Pipeline. This fee shall be paid every year that any portion of the pipeline or related facilities are located in the County. This fee shall be reviewed and may be adjusted on an annual basis by the McPherson County Board of County Commissioners. This fee shall be payable to the McPherson County Treasurer.
9. Such payments are necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 5.23.10. Pipeline Location.

1. The Pipeline shall not pass within one (1) mile of any occupied dwelling;
2. The Pipeline shall not pass within five hundred (500) feet from any adjoining property line of a non-participating landowner.
3. The owner of any occupied dwelling, mobile home, manufactured home, and an adjoining

non-participating landowner shall have the right to sign a Pipeline Setback Waiver waiving the one (1) mile and/or five hundred (500) foot setback. Said Setback Waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land. Any waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the Pipeline Owners expense.

4. If the Pipeline passes within two hundred and fifty (250) feet of any occupied dwelling, mobile home, or manufactured home, Applicant shall implement the following:
 - a. To the extent feasible, Pipeline Owner shall coordinate construction work schedules with affected owner of the dwelling, mobile home, or manufactured home prior to the start of construction in the area of the dwellings so as to minimally affect said owner.
 - b. Pipeline Owner shall maintain access to all dwellings at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Pipeline Owner and owner of the dwelling, mobile home, or manufactured home. Such periods shall be restricted to the minimum duration possible and shall be coordinated with the affected owner of the occupied dwelling, mobile home, or manufactured home to the extent possible.
 - c. Pipeline Owner shall install temporary safety fencing to control access and minimize hazards associated with an open trench and heavy equipment.
 - d. Pipeline Owner shall notify affected residents no less than twenty-four (24) hours in advance of any scheduled disruption of utilities and limit the duration of such disruption.
 - e. Except where practicably infeasible, final grading, topsoil replacement, installation of permanent erosion control structures, repair of fencing and other structures shall be completed in residential areas within ten (10) days after backfilling the trench or after any subsequent repair work. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Pipeline Owner's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigating measures shall be maintained until conditions allow completion of cleanup and reclamation.
 - f. Should a water well, or water supply, be damaged, diminishing the quality and/or quantity of water, by Pipeline installation or operations, a comparable water supply will be immediately provided to the owner of the water well and the water well shall be restored or replaced at Pipeline Owner's expense.
5. A Hazardous Material Pipeline shall not pass within one thousand (1,000) feet of a water well that is documented and/or mapped with the South Dakota Department of Natural Resources Water Well Completion Reports.
6. The owner of any water well shall have the right to sign a Water Well Setback Waiver waiving the one thousand (1,000) foot setback. Said Setback Waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land. Any waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the Pipeline Owners expense.
7. In no event can a Hazardous Material Pipeline pass thru any water source designated as

“sole source aquifer” by the Environmental Protection Agency.

8. Baseline water testing for water wells within one thousand (1,000) feet of the proposed Hazardous Material Pipeline Route shall be conducted at the expense of Applicant prior to construction of the Pipeline with the results delivered to the McPherson County Board of Adjustment, or its designee, and made available to the public upon request. This initial baseline water testing shall test the water well for the quality and quantity of water produced. In subsequent years, the Pipeline Owner or Pipeline Operator shall reimburse the County for any water testing done by the County or a third party selected by the County for purposes of measuring against the baseline water test originally performed. If, due to the Hazardous Material Pipeline, the tested water well diminishes in quality or quantity, the Pipeline Owner shall provide an alternative water supply and/or take any necessary steps to bring the water well back to its original condition at the expense of the Pipeline Owner.
9. In the event any water well of any kind is to be found compromised by a spill and/or leak attributable to a Hazardous Material Pipeline in any way, the Pipeline Owner shall provide an alternative water supply and take any necessary steps to bring the contaminated water supply back to its original condition.

Section 5.23.11. Pipeline Depth of Cover.

1. The depth of cover of any Hazardous Material Pipeline shall meet all local, state, and federal requirements.
2. The depth of cover of a Hazardous Material Pipeline shall be measured from the top of the pipeline, or other appurtenances, to the surface on a vertical line directly above the Hazardous Material Pipeline.
3. The depth of cover for a Hazardous Material Pipeline in Right of Ways shall be:
 - a. Bottom of a Ditch: Depth of the Pipeline shall be at least six (6) feet from the ground surface to the top of the Pipeline.
 - b. Maintained Drivable Surfaces: Depth of the Pipeline shall be at least eight (8) feet from the ground surface to the top of the Pipeline. It is required that the Pipeline be bored under any maintained drivable surface, and not cut or trenched in.
 - c. Non-maintained Drivable Surfaces: Depth of the Pipeline shall be at least eight (8) feet from the ground surface to the top of the Pipeline.

Section 5.23.12. Related Structures and Facilities.

1. The Pipeline Owner shall provide a description of pump or compressor stations or other facilities associated with the proposed Hazardous Material Pipeline, including both a physical description of such facilities, an estimate of the volume of noise or other light or pollution emissions of any kind produced by such facilities, the distance of such facilities to homes, businesses, and other structures, and means to limit the volume of noise or other light or pollution emissions from such facilities.
2. Pump stations and any related facilities must be located at least one thousand (1,000) feet from any public right of way and at least five hundred (500) feet from any property line.

3. A property owner shall have the right to sign a Hazardous Material Pipeline Facility Setback Waiver waiving the five hundred (500) foot setback. Said Setback Waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land. Any waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the Pipeline Owners expense.
4. Screening of substations, other control equipment, and any related facilities from public roads and occupied buildings on abutting properties shall be provided by means of Screening Fence and/or landscaping, or a combination thereof, in accordance with the definitions in this Ordinance. The wall, fence, or barrier shall be a maximum of fifty (50) percent open material, such as chain-link. If greater than thirty (30) percent open, landscaping or trees for additional blockage is required. Any plants used for a landscaping screen shall not be considered an invasive species.
5. The pipeline facility systems shall not exceed sixty (60) decibels using the "A" scale (dBA), as measured at the nearest property lines or right of way, except during short-term events such as emergency repairs.
6. A sound level analysis for all substations and related pipeline facilities within McPherson County shall be conducted by a third-party engineer selected by the County to ensure noise compliance. Pipeline Owner shall reimburse the County for any and all expenses related to the third-party engineer.
7. The McPherson County Board of County Commissioners shall, by resolution, establish a Screening Fence Inspection fee to be paid by the Pipeline Owner per substation or related above-ground pipeline structure or facility. This fee shall be reviewed and may be adjusted on an annual basis by the McPherson County Board of County Commissioners. This fee shall be payable to the McPherson County Treasurer at the commencement of construction on any substation or related pipeline structure or facility.
8. The McPherson County Board of County Commissioners shall, by resolution, establish an Annual Facility Inspection Fee per substation or related above-ground pipeline structure or facility that shall be paid annually by the Pipeline Owner on the anniversary of the In-Service date of the Hazardous Material Pipeline. This fee shall be payable to the McPherson County Treasurer and shall be paid every year that any portion of the pipeline or related facilities are located in the County. This fee shall be reviewed and may be adjusted on an annual basis by the McPherson County Board of County Commissioners.
9. Such inspections are necessary and reasonable to permit the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 5.23.13. Emergency Response Plan.

1. The Applicant shall provide a copy of the project description, site plan, and any other pertinent documentation and/or information to the McPherson County Emergency Manger, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s). The Applicant shall coordinate with such local entities in the development of an Emergency Response Plan.

2. The Emergency Response Plan shall include a description of the numbers, locations, and training of personnel necessary to respond to a worst-case discharge in McPherson County. The plan shall also include all Material Safety Data Sheets for all substances that are approved for shipment in the pipeline.
3. All necessary training and equipment for a worst-case discharge in McPherson County for local fire departments, sheriff's office, first responder organizations, and the McPherson County Emergency Manager shall be paid for by the Pipeline Owner.
4. The Emergency Response Plan shall comply with all state and federal standards for spill response for a worst-case discharge in McPherson County.
5. The Emergency Response Plan shall be submitted to the McPherson County Board of County Commissioners or its designee not less than sixty (60) days before construction is to begin.
6. The Emergency Response Plan shall include a list of all spill response equipment; showing the type and capability of said equipment, as well as the equipment's location.
7. All spill response equipment shall be accessible by the McPherson County Emergency Manger, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s).

Section 5.23.14. Public Inquires and Complaints.

1. The Pipeline Owner and/or Pipeline Operator shall maintain a publicly available telephone number and identify a responsible person or position for the public to contact with inquiries or complaints throughout the life of the project. Pipeline Owner and/or Pipeline Operator shall make a reasonable effort to respond to the public's inquiries and complaints and shall maintain a database of such inquiries and complaints, together with actions taken and dates thereof and shall make such database available to the McPherson County Board of Adjustment or its designee.

Section 5.23.15. Decommissioning, Restoration, or Abandonment of a Hazardous Material Pipeline.

11. The Owner and/or Operator of a Hazardous Material Pipeline shall be responsible for decommissioning a Hazardous Material Pipeline, including all related facilities, and for all costs associated with decommissioning a Hazardous Material Pipeline and for all related facilities.
12. At least thirty (30) days prior to construction, the Applicant shall provide a plan to the McPherson County Board of Adjustment regarding the action to be taken upon the decommissioning and removal of the Hazardous Material Pipeline and all related facilities. Estimates of monetary costs and the site condition, including any land irretrievably committed, after decommissioning shall be included in the plan.
13. The McPherson County Board of Adjustment may require a bond, guarantee, insurance, or other requirement to provide funding for the decommissioning, restoration, and removal of the Hazardous Material Pipeline and related facilities. The McPherson County Board of

Adjustment shall consider the size, location, and any other relevant information regarding the Hazardous Material Pipeline, and the financial condition of the Applicant when determining whether to require some type of funding. The same criteria shall be used to determine the amount of any required funding.

14. All right and title in any bond, guarantee, insurance, or other requirement for the decommissioning of the Hazardous Material Pipeline shall be controlled by McPherson County in accordance with the terms of the financial security agreement or instrument, until the commission by order releases the security. The financial security of the person required to provide it may not be cancelled, assigned, revoked, disbursed, replaced, or allowed to terminate without approval from the McPherson County Board of Adjustment.
15. Any bond, guarantee, insurance, or other requirement may not be pledged or used as security for any other obligation of the Applicant, Pipeline Owner, and/or the Pipeline Operator, and is exempt from attachment or mesne process, from levy or sale on execution, and from any other final process issued from any court on behalf of third-party creditors of the Applicant, Pipeline Owner, and/or Pipeline Operator.
16. Any bond, guarantee, insurance, or other requirement required under Section 5.23.15(3) shall be issued with McPherson County as the payee and payable to McPherson County in the event the Pipeline Owner abandons the Hazardous Material Pipeline or fails to meet any and all local, state, or federal decommissioning requirements.
17. If the Pipeline Owner abandons the Hazardous Material Pipeline, fails to meet local, state, or federal decommissioning requirements, or fails to meet the Reclamation Obligations hereinunder Section 5.23.18:
 - a. The bond, guarantee, insurance, or other requirement required under Section 5.23.15(3) shall be paid to McPherson County and shall be non-refundable;
 - b. McPherson County shall use this payment or payments for all costs McPherson County incurs for decommissioning on County property, rights-of-way, County highways, and any other costs incurred by McPherson County for decommissioning;
 - c. The remaining funds, if any, shall be used at the discretion of the McPherson County Board of County Commissioners.
18. If the bond, guarantee, insurance, or other requirement required under Section 5.23.15(3) is not sufficient for its intended purpose, McPherson County reserves the right to take any legal action to hold the Pipeline Owner responsible for any remaining decommissioning costs.
19. At least six (6) months prior to the commencement of decommissioning, Pipeline Owner shall give notice, in writing, to the McPherson County Board of Adjustment of the date decommissioning is to begin.
20. Pipeline Owner shall physically dismantle all below and above ground components of the Hazardous Material Pipeline within three-hundred and sixty-five (365) days from the date decommissioning is to begin.
 - a. Such removal and dismantling period can be extended upon written agreement

between Pipeline Owner and Property Owner. However, in no event can this period extend beyond two (2) years from the date decommissioning is to begin. Any agreement to extend removal and dismantling shall be filed at the McPherson County Registrar of Deeds office and a copy thereof shall be delivered by the Pipeline Owner to the McPherson County Board of County Commissioners or its designee.

21. Hazardous Material Pipeline shall be deemed abandoned if it is out of service or no longer in use for twenty-four (24) consecutive months.

22. If a Hazardous Material Pipeline is deemed abandoned:

- a. The McPherson County Board of Adjustment, or its designee, shall issue a written Notice of Abandonment by certified mail to the Pipeline Owner. The Pipeline Owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from the date of receipt of such notice to present evidence that the Pipeline has not been abandoned.
- b. The McPherson County Board of Adjustment shall review any such response to determine if the Pipeline has or has not been.
- c. If it is determined the Pipeline has not been abandoned, the Notice of Abandonment shall be withdrawn and notice of same shall be provided to the Pipeline Owner.
- d. If, after review of Pipeline Owner's response, it is determined that Hazardous Material Pipeline has been abandoned, notice of such finding shall be provided by certified mail to the Pipeline Owner.
- e. If the Hazardous Material Pipeline is deemed to have been abandoned, the Pipeline Owner shall have one hundred twenty (120) days from the date of receipt of such notice to dismantle all above and below ground components of the Pipeline. If Pipeline Owner fails to dismantle the Pipeline within the prescribed time period, such shall be considered a violation of this ordinance and shall be subject to any and all legal remedies.

Section 5.23.16. Construction Related Debris.

1. Construction related debris and material which is not an integral part of the Pipeline will be promptly removed from the Property Owner's property at Pipeline Owner's expense. Such material to be removed includes all litter generated by the Pipeline Owners employees, agents, contractors, or invitees, including construction crews. Following the completion of Pipeline Owner's construction activities on the Property Owner's property, Pipeline Owner shall keep the Property Owner's property clean and free of all trash and litter which may have been produced or caused by Pipeline Owner or its employees, agents, contractors, invitees, or its operations on the property. Under no circumstances shall Pipeline Owner, or its employees, agents, contractors, or invitees bury or burn any trash, debris or foreign material of any nature on the Property Owner's property.

Section 5.23.17. Post-Construction Filing Requirements.

1. Once installation of the Pipeline is complete, Pipeline Owner shall deliver to the McPherson County Board of County Commissioners, or its designee, within six (6) months of completion,

an “as-built” map that will show the exact location of the Pipeline using GIS/GPS mapping. The “as built” map shall also depict other improvements or facilities, whether located above-ground or below-ground, and any modifications, improvements or facilities owned by Property Owner, such as waterlines or fences.

Section 5.23.18. Reclamation Obligations.

1. Following the completion of the Pipeline construction, or upon removal of the Pipeline at the expiration, termination, abandonment, or surrender of the Pipeline, Pipeline Owner shall restore the area disturbed by construction as best as practicable to its original preconstruction topsoil, vegetation, elevation, and contour.
2. Pipeline Owner, at its own expense shall, unless otherwise requested by Property Owner, abide by all guidelines and recommendations of the local or regional field office of the United States Natural Resources Conservation Service or the Construction, Mitigation and Reclamation Plan, whichever is more stringent, regarding the removal, storage, and replacement of top soil.
 - a. At a minimum, Pipeline Owner shall strip the topsoil from the ditch line in the Pipeline right-of-way or easement area and segregate all topsoil from the other excavated soil material, prior to construction and installation of any section of the Pipeline placed in the Pipeline right-of- way or easement area. Following the construction and installation of each section of the Pipeline, the top soil shall be replaced, to the extent feasible, as near as practicable to its original location and condition. Topsoil deficiency shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the Property. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement in accordance with recommendations of the United States Natural Resources Conservation Service.
3. A Pipeline Owner owning, operating, or managing a pipeline or part of a Pipeline for the transportation of hazardous material in McPherson County shall be responsible for all reclamation costs necessary as a result of constructing the Pipeline as well as reclamation costs resulting from maintaining, operating, and removing the Pipeline and, except if the proximate cause necessitating the reclamation efforts is unrelated party's intentional bad acts.
4. The Pipeline Owner shall commence reclamation of the area through which a Pipeline is constructed, either post construction or post removal as applicable, as soon as reasonably practicable, as provided:
 - a. Pipeline Owner shall complete final grading, topsoil replacement, installation of erosion control structures, seeding, and mulching within thirty days after backfill except when weather conditions, extenuating circumstances including landowner preference of delay due to personal or agricultural land use, or unforeseen developments do not permit the work to be done within such thirty-day period.
 - b. Pipeline Owner shall ensure that all reclamation, including, but not limited to, choice of seed mixes, method of reseeding, and weed and erosion control measures and monitoring, is conducted in accordance with the Federal Seed Act, 7 USC 1551 et seq., SDCL Chapter 38, and any other applicable state and federal law.

- c. Pipeline Owner shall ensure that genetically appropriate and locally adapted native plant materials and seeds are used based on site characteristics surrounding vegetation as determined by a pre-reclamation site inventory.
 - d. Pipeline Owner shall ensure that mulch is installed as required by site contours, seeding methods, or weather conditions or when requested by a landowner.
5. A Pipeline Owner's obligation for reclamation and maintenance of the Pipeline right-of- way shall continue until the pipeline is permanently decommissioned or until all post- removal duties are complete.

Section 5.23.19. Variances.

- 1. Hardship.
 - a. If extraordinary hardships, due to unusual topographic or other conditions, beyond the control of the Applicant, may result from strict compliance with these regulations, Applicant may request a variance of the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent or purpose of the Hazardous Material Pipeline Permit Application and the Hazardous Material Pipeline Ordinance, and will not be detrimental to the public health, safety or welfare or injurious to other property in the county in which Pipeline is situated.
- 2. Application Required.
 - a. A Hazardous Material Pipeline Variance Application shall be submitted in writing by the Applicant at the time the Hazardous Material Pipeline Permit Application is filed with the McPherson County Board of Adjustment, or its designee, and shall state fully and clearly all facts relied upon by the Applicant and shall be supplemented with maps, plans or other additional data which may aid the McPherson County Board of Adjustment in the analysis of the proposed project.
 - b. The McPherson County Board of Adjustment will review the Hazardous Material Pipeline Variance Application and any accompanying documents, materials, and reports in a timely manner.
- 3. McPherson County Board of Adjustment Review Hearing.
 - a. As soon as practicably possible, the Hazardous Material Pipeline Variance Application shall be brought forth in front of the McPherson County Board of Adjustment for a review hearing.
 - b. Appearance by the Applicant, or the Applicant's designee, before the McPherson County Board of Adjustment's Review Hearing is required for any Hazardous Material Pipeline Variance Application.
 - c. The McPherson County Board of Adjustment Review Hearing shall be an informational hearing meant for the McPherson County Board of Adjustment to ask questions to the Applicant, or the Applicants designee, and vice versa. Approval or denial of the Hazardous Material Pipeline Variance Application shall not be required at or during the

Review Hearing.

4. Public Hearing.

- a. After the McPherson County Board of Adjustment's Review Hearing, a Public Hearing date will be set by the McPherson County Board of Adjustment and notice thereof shall be given and published in accordance with South Dakota state law and the McPherson County Hazardous Material Pipeline Ordinance. Notice of the Hazardous Material Pipeline Variance Application Public Hearing may be included with notice of the Hazardous Material Pipeline Permit Application Public Hearing. The Applicant shall be responsible for the cost of notice and cost of publication.
- b. At least two (2) weeks prior to the Public Hearing, the Applicant shall mail written notification of the Public Hearing to all property owners whose land the hazardous material pipeline variance would affect as well as all adjacent landowners via certified mail, return receipt requested. The written notification for the Hazardous Material Pipeline Variance Application Public Hearing may be included with any required notice for the Hazardous Material Pipeline Permit Public Hearing notice. The Applicant shall be responsible for the cost of written notification to the affected Property Owners and adjacent landowners.
- c. Applicant shall provide copies of all certified mail, return receipt requested, mailed to affected Property Owners and adjacent property owners as proof of mailing. Said copies shall be delivered to the McPherson County Board of Adjustment, or its designee, at least forty-eight (48) hours before the Public Hearing.
- d. An affected Property Owners and/or adjacent landowners' refusal to accept and/or sign for the written notice shall not be viewed as a violation of the written notice requirement.
- e. The written notice shall specify the Hazardous Material Pipeline Permit Application number, a general description of the pipeline, the type of material the pipeline will be transporting, a brief description of the applied for variance, the name and contact information for Applicant, as well as the time, date, and location of the Public Hearing.
- f. The McPherson County Board of Adjustment shall have the right to attach such conditions to variances as they deem necessary to further the purposes and objectives of this Ordinance.
- g. A Hazardous Material Pipeline Variance Application shall be considered with, and under the same process as, the Hazardous Material Pipeline Permit Application.
- h. The McPherson County Board of County Commissioners shall, by resolution, establish a Hazardous Material Pipeline Variance Application fee. This fee shall be reviewed and may be adjusted on an annual basis. Such fee is necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation. The Hazardous Material Pipeline Variance Application fee shall be payable to the McPherson County Treasurer.

5. Conditions.

- a. In granting a variance, the McPherson County Board of Adjustment may require such conditions as will, in their judgment, secure substantially the objectives or the standards and requirements so varied, modified, or approved. In granting any variance, the McPherson County Board of Adjustment shall prescribe only conditions that are deemed necessary to, or desirable for, the public interest. These conditions may include, without being limited to, personal, surety, performance, or maintenance bonds, or other legal instruments.
- b. In making their findings, as required herein, McPherson County Board of Adjustment shall take into account the nature of the existing use of the land in the vicinity of the proposed Hazardous Material Pipeline and any probable effects of the proposed Pipeline on the health, safety and welfare of the surrounding residents and environment.
- c. The McPherson County Board of Adjustment, or its designee, must ensure the preservation and enjoyment of the property rights of the Property Owner. The County is responsible for promoting the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 5.23.20. Indemnification.

1. The Pipeline Owner and/or Pipeline Operator, and their heirs and assigns and successor owner and/or operator shall indemnify, defend and hold harmless McPherson County and any Property Owners from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by McPherson County and/or the Property Owner in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of the pipeline and/or related facilities, and the products contained and transferred through, released or escaped from said pipeline and appurtenant facilities, including the reasonable costs of assessing such damages, and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any law, including all applicable environmental laws. This shall be true in all instances except for those individuals or companies who damage the Pipeline or related facility through their intentional bad acts. No Property Owner or tenant thereof shall be held responsible for a Pipeline leak that occurs as a result of his/her/its related Agricultural Use over the top of or near the Pipeline or related facilities, provided no tillage or other agricultural method is used which intentionally penetrates the soil by more than two (2) feet from the undisturbed surface and they do not physically strike or impact the surface structures such as valves, etc. with machinery, equipment, or other objects. This shall in no way relieve any Property Owner or tenant, agent, or contractor of such Property Owner from their obligation to comply with the South Dakota One Call system and any amendments thereto (*SDCL Chapter 49-7A*), or relieve them of liability for their failure to do so.

Section 5.23.21. Compliance with Applicable Laws.

1. Pipeline Owners, operators and/or contractors, and their employees, agents, contractors, and invitees, must comply with all applicable local, state and federal laws and regulations in construction and operation of the Pipeline.

Section 5.23.22. Severability and Separability.

1. Should any portion of this act be deemed unlawful for any reason or conflict with any existing state or federal law, that fact shall not affect any other portion or section of this act and any unaffected sections or portions of this act shall stand in effect.

Section 5.23.23. Posting of Fees.

1. All fees set by resolution by the McPherson County Board of County Commissioners herein shall be posted in the office of the County Zoning Officer and may be altered or amended only by the McPherson County Board of County Commissioners.

CHAPTER 5.24. LEVEL OF CULTIVATION.

Section 5.24.01. Title.

1. This Ordinance may be known and may be cited and referred to as the “McPherson County Level of Cultivation Ordinance” to the same effect as if the full title were stated.

Section 5.24.02. Intent.

1. The intent of the McPherson County Level of Cultivation Ordinance shall be to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County, including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 5.24.03. Level of Cultivation.

1. For the purpose of 49 C.F.R 198.248(a), the “level of cultivation” in McPherson County, unless waived in the manner provided in Section 4 and Section 5 herein shall be the greater of:
 - a. Not less than two (2) feet below all tile lines and drainage pipes and equipment on any cultivated agricultural land;
 - b. Not less than six (6) feet below the surface of all cultivated and non-cultivated agricultural land and the lowest point of any ditch in a public right of way;
 - c. Not less than six (8) feet below the surface of any right of way of any public drainage facility and any maintained or non-maintained drivable surface of any county, town or municipal street/highway and/or right of way.

Section 5.24.04. Waiver of Depth Requirement.

1. In any easement granting right-of-way over cultivated agricultural land, the grantor of the easement may waive the minimum level of cultivation requirement of Section 5.24.03 with respect to all or part of cultivated agricultural land. A waiver of the level of cultivation requirement of Section 5.24.03 shall be effective only if the waiver:
 - a. Is separately and expressly stated in the easement agreement and included an express

statement by the grantor acknowledging that the grantor has read and understood the waiver;

- b. Is printed in capital letter and in language understandable to an average person not learned in law; and
- c. Is separately signed or initialed by the grantor.

Section 5.24.05. Waiver and Rules of Political Subdivisions.

1. Any political subdivision authorized by law to approve the use of the right-of-way of any public drainage facility or any public street or highway for a pipeline may:
 - a. Waive the minimum level of cultivation requirement of Section 5.24.03 if the level of cultivation or other means approved for the use of the right-of-way adequately protects the health and safety of the public; or
 - b. Adopt and enforce by ordinance or resolution reasonable rules or regulations establishing a greater level of cultivation than the minimum required in Section 5.24.03 and other measures for protection of public roads and drainage facilities under their jurisdiction.

Section 5.24.06. Interstate Gas Pipelines Exception.

1. Section 5.24.03, 5.24.04, and 5.24.05 shall not apply to interstate natural gas pipelines subject to safety regulations under the federal Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended.

Section 5.24.07. Violation and Penalty.

1. A violation of Chapter 5.24, the McPherson County Level of Cultivation Ordinance, shall be subject to Section 1.02.03, of the McPherson County Planning and Zoning Ordinances.
2. McPherson County reserves the right to take all legal actions afforded by law to uphold this ordinance.

CHAPTER 5.25. PRIVATE CAMPGROUND.

Section 5.25.01. Purpose.

The purpose of this chapter is to provide for areas in the county for recreational vehicles to be located and occupied as temporary living quarters in a campground setting.

Section 5.25.02. Minimum Requirements.

1. A private campground shall comply with the following conditions:
 - a. The minimum lot area for a private campground facility shall be five (5) acres.
 - b. Each campsite shall contain at least two thousand (2,000) square feet.

- c. Private campgrounds shall be setback one (1) mile from any existing occupied dwelling and a quarter mile (1,320 feet) from a property line. A variance may also be granted by the Board of Adjustment that may allow setback/separation distances to be less than the established distance identified, if the applicant obtains waivers from all occupied dwellings or property owners within the setback distance. If approved, such agreement is to be recorded and filed with the County Register of Deeds at the expense of the campground owner. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
- d. Access roads shall be provided to each campsite and all access roads shall have a minimum unobstructed width of fourteen (14) feet for all one-way roads, and twenty (20) feet for all two-way roads.
- e. No manufactured homes shall be located in the campground with the exception of one (1) manufactured home to be used as an office.
- f. The campground(s) shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets and bathing facilities, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.
- g. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The campground shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations. It is recommended that one (1) refuse collection station shall be provided, with a minimum of one (1) two-yard dumpster situated on a concrete pad, screened on four sides, for each twelve (12) tenants or fractions thereof, conveniently located to serve tenants not more than one hundred fifty (150) feet from any camper served, and to be conveniently located for collection.
- h. The grounds shall be kept free of rubbish, trash, or debris, which could become a safety hazard.
- i. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
- j. A private campground shall have a responsible person on duty at all times.
- k. The owner of the private campground shall keep accurate record of guests. Such a record shall be available for inspection and copying by the Secretary of Health or Zoning Officer for the purpose of protecting the health or life of persons or for an emergency which may affect the public health. The registry shall contain the name of the guest, the number in the party, the place of permanent dwelling of the guest, the date of registration, the date of departure, and the motor vehicle license number of the registrant. The record shall also include each rate, price, or fee charged to the guest for the guest's stay at the campground. These records shall be kept for a minimum of one (1) year.
- l. Public Safety Access – The owner of the private campground shall allow Law Enforcement and McPherson County personnel immediate access to determine if the terms and conditions within the conditional use permit are complied with.
- m. In the event the private campground does not comply with the terms of the conditional use permit and said permit is revoked, the owner of the private campground shall

provide for, at their expense, the restoration of the site to its original condition, including the removal of all campers or RV's, dumpsters, and other related vehicles, or to a use permitted by the zoning ordinance in a time frame to be determined by the Board of Adjustment.

- n. All applicable requirements of the South Dakota Department of Health shall be met.
- o. The Board of Adjustment may impose other conditions to ensure that the use of property related to the private campground is conducted in a manner to be compatible with the surrounding neighborhood.

Section 5.25.03 Application Requirements. An application for a private campground shall be filed with the Zoning Officer. The application shall contain the following:

1. The address and legal description of all property upon which the campground is to be located, together with the name, dwelling and mailing address of the recorded owners of all such property.
2. Plans for supplying potable water including the source, amount available and location of outlets.
3. The plans for providing toilet and bathing facilities including the source, number and location, type and the means of disposing of waste deposited.
4. The plans for holding, collecting and disposing of solid waste material.
5. The plans, if any, to illuminate the campground, including the source and amount of power and the location of lamps.
6. Proof of accident and liability insurance coverage.
7. A sketch plan of the property showing:
 - a. Location of Camping Pads/sites.
 - b. All amenities (bathrooms, showers, drinking water, outlets, light poles, roads)
 - c. All existing and proposed buildings or additions.
 - d. Dimensions of all buildings.
 - e. Distance from all campsites/buildings to the property lines at the closest points.
 - f. Dimensions of all property lines.
 - g. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.
 - h. Name and location of all adjacent streets, alleys, waterways and other public places.
 - i. Proposed grading and drainage pattern.

- j. Proposed interior circulation pattern indicating the status of street ownership and maintenance agreement.
- k. Proposed open space uses.
- l. Utility (water, sewer, electricity) plans.
- m. Relation of the proposed development to the surrounding area and comprehensive plan.

CHAPTER 5.26. Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites, and Restricted Use Sites Requirements.

- 1. The site meets the requirements of the State Department of Agriculture and Natural Resources.
- 2. A site plan is provided indicating the following information:
 - a. Present topography, soil types, depth to groundwater.
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Proposed monitoring wells.
 - f. A minimum of two thousand six hundred forty (2,640) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest occupied dwelling or commercial use; excluding: the dwelling of the landfill operator.
 - g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.27. Domestic Sanitary Sewer Treatment Plant/Facility Requirements.

- 1. The site meets the requirements of the State Department of Agriculture and Natural Resources.
- 2. A site plan is provided indicating the following information:
 - a. Present topography, soil types, and depth to groundwater.
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.

- d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Proposed monitoring wells.
 - f. The Board of Adjustment may impose other conditions to ensure that the use of property related to the domestic sanitary sewer treatment plant/facility is conducted in a manner to be compatible with the surrounding neighborhood.
3. No sewage treatment plant/facility shall be allowed within one thousand three hundred twenty (1,320) feet from the property line of the sewage treatment plant/facility to the nearest occupied dwelling. The owner of any occupied within the 1,320-foot setback shall have the right to sign a Setback Waiver. Said Setback Waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land. Any Setback Waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the expense of the Domestic Sanitary Sewer Treatment Plant/Facility. An occupied dwelling of the sewage treatment plant/facility operator is exempt from this setback.

CHAPTER 5.28. JUNKYARDS/SALVAGE YARDS REQUIREMENTS.

- 1. Storage for junkyards/salvage yards shall be set back a minimum of three hundred thirty (330) feet from any adjoining property line or road right-of-way.
- 2. Junkyards/salvage yards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
- 3. No junkyards/salvage yards will be allowed within one (1) mile from the property line of the junkyard/salvage yard to the nearest occupied dwelling; excluding: the dwelling of the junkyard/salvage yard operator.
- 4. All junkyards/salvage yards must have a minimum lot of ten (10) acres.
- 5. The Board of Adjustment may impose other conditions to ensure that the use of property related to the junkyard/salvage yard is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.29. Automotive Tow Business/Impound Lot Requirements.

- 1. Impound lots, incident to the operation of an automotive tow business, may be established within districts pursuant to the zoning laws of the County for the storage of vehicles under the following conditions and requirements:
 - a. The area used for an impound lot must be free of debris and regularly maintained.
 - b. The area used for an impound lot must be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet or a fence which is two (2) feet higher

than the tallest vehicle being stored, whichever height is greater; and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from adjoining properties.

- c. An impound lot may be used for the temporary storage of vehicles from which major parts have not been removed, and which are capable of being made fully operable.
- d. An impound lot may be used for the storage of not more than twenty (20) vehicles at any one time.
- e. Vehicle parts shall not be stored within an impound lot.
- f. Vehicle parts shall not be taken or sold from vehicles stored within an impound lot.
- g. Vehicles stored in an impound lot must be parked neatly in rows and meet or exceed all County, State and Federal laws governing the same.
- h. The Board of Adjustment may impose other conditions to ensure that the use of property related to the automotive tow business/impound lot is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.32 SOLAR ENERGY SYSTEMS (SES).

Section 5.30.01. Purpose.

The purpose of this Section is to facilitate the construction, installation, operation and decommission of Solar Energy Systems in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands and other sensitive lands. This ordinance will not impede personal or business solar collector development for the primary use of self-sustaining energy. This ordinance is not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not nullify any provisions of local, state or federal law.

Section 5.30.02. Private Solar Energy System (PSES).

PSES shall be permitted as an accessory use and shall meet the requirements of the zoning district. A PSES shall be for a single use commercial or dwelling and used primarily for on-site consumption of power. Agricultural solar panels for pasture wells are exempt from the requirements of this Chapter and do not require a building permit.

Section 5.30.03. Permitting.

- 1. No SES shall be erected, built, or constructed without a conditional use permit having been approved by the Board of Adjustment.
- 2. Application(s) for SES Conditional Use Permits shall be accompanied by:
 - a. Site plan as required by 5.30.05 (4)

- b. Boundaries of the site proposed for SES and associated facilities on United States Geological Survey Map or other map as appropriate.
 - c. Map of easements for SES, if applicable.
 - d. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable.
 - e. Aviation/Airport protection if required. 5.30.05 (6)
 - f. The fencing and gates required to be around the exterior perimeter. 5.30.05 (8)
 - g. The storm water pollution and prevention plan. 5.30.04 (1)
 - h. The decommissioning plan. 5.30.06
 - i. Weed/Grass control plan 5.30.05 (12)
 - j. Haul roads identified. 5.30.05 (13)
 - k. Project schedule
 - l. Any other factors relevant to the proposed system.
3. All copies of the plan must be submitted, signed and sealed by a professional engineer, licensed in the State of South Dakota.
 4. The Board of Adjustment may require an independent engineer, chosen by the County, to review plans at the petitioner's expense. Findings by the independent engineering firm are to be submitted to the Board of Adjustment.
 5. The Board of Adjustment may require a visual barrier for the project site.

Section 5.30.04. Compliance.

1. All SES are subject to the State of South Dakota Storm Water Management regulations, erosion and sediment control provisions if adopted and National Pollutant Discharge Elimination System (NPDES) permit requirements, if applicable.
2. The Board of Adjustment may provide for a final site inspection before the facility is authorized to become operational.
3. An emergency contact name and phone number must be posted at the point of access on all SES sites.
4. The permit holder will allow the County, or its Authorized Agent (appointed by the County), access to the property within one (1) day of an inspection request by the County. In the event of an emergency, the County, or its Authorized Agent, has the right to access the premises.
5. All SES shall meet or exceed applicable standards and regulations of any state or federal

agency.

Section 5.30.05. General Provisions for Solar Energy Systems.

Ground-mount solar energy, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. **Ground Cover and Buffer Areas.** Ground-mount systems shall be maintained. Topsoils shall not be removed during development, unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil. It is required that any crops planted follow all federal and state laws protecting endangered species. This will also include pollinators such as bees. Foundations, gravel or compacted soils are considered impervious. Ground-mount systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation, including any access or service roads. A minimum thirty (30) foot managed vegetative buffer shall always be present and maintained around the perimeter of the site.
2. **Foundations.** A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.
3. **Power and Communication Lines.** Power and communication lines running between banks of solar panels are allowed. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings may be required to be buried underground. Exemptions may be granted in instances where the natural landscape interferes with the ability to bury lines, or distance makes undergrounding infeasible.
4. **Site Plan Required.** A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by the Board of Adjustment.
5. **Setbacks.** Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties. Solar panels shall be kept at least five thousand two hundred eighty feet (5,280) from an occupied dwelling and one thousand three hundred twenty feet (1,320) feet from property lines of non SES project parcels and rights-of-way. The owner of any occupied dwelling and/or adjoining landowner shall have the right to sign a Setback Waiver waiving the five thousand two hundred eighty feet (5,280) and/or one thousand three hundred twenty feet (1,320) setback. Any Setback Waiver signed hereinunder shall be filed with the McPherson County Register of Deeds at the SES Owner's expense. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
6. **Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream or river.**
7. **Aviation/Airport Protection:** If required by state or federal agencies the applicant must

complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.

8. Glare: All solar energy systems shall minimize glare from affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
9. Safety Fencing/Gates and Locks.
 - a. All SES shall be fenced around the exterior of the SES with a fence at least six (6) feet in height.
 - b. All fencing and gates shall be constructed to substantially lessen the likelihood of entry into a SES by unauthorized individuals.
 - c. All gates to the fences of all SES shall be equipped with locks and shall always remained locked except for those times when the owner and/or operator, or their respective agents is/are using the gate for ingress and/or egress or is/are otherwise present and monitoring the SES.
 - d. The fencing and gates shall be maintained in serviceable condition. Failure to maintain the fencing or gates required hereunder shall constitute a violation of this ordinance.
 - e. The fencing and gate requirements specified hereunder shall continue notwithstanding the fact that a SES is no longer operational and/or falls into disuse unless and until the SES is properly decommissioned.
 - f. Fences are exempt from Chapter 5.03 and may further be constructed on property and right of way lines.
10. Maximum height: Solar panel arrays shall be no more than fifteen (15) feet in height, not including power lines.
11. Lighting: If lighting is provided at the project site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
12. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar farm shall be allowed.
13. Weed/Grass Control Plan: The applicant shall submit an acceptable weed/grass control plan for property inside and outside the fenced area for the entire property. The operating company or successor during the operation of the SES shall adhere to the approved weed/grass control plan.
14. Roads.

- a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township haul roads that will be used during the construction of the SES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the SES. Where practical, all-weather roads shall be used to deliver cement, solar collectors and components, and all other heavy components to and from the site.
- b. Haul Road Inspection. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the SES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and SES components. The permittees shall notify the County of such arrangements upon request of the County.
- c. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- d. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.

Section 5.30.06. Decommissioning, Restoration, or Abandonment of a Solar Energy System.

1. The SES Owner and/or Operator shall be responsible for decommissioning a SES, including all related facilities, and for all costs associated with decommissioning a SES and for all related facilities including, but not limited to:
 - a. Solar collector and/or solar panels and the components thereof;
 - b. Transformers;
 - c. Overhead and underground cables to a minimum below surface depth of four (4) feet;
 - d. Foundations, buildings, and ancillary equipment to a minimum below surface depth of four (4) feet. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County Zoning Officer and shall show the locations of all such foundations, buildings, and/or ancillary equipment.
 - e. To the extent possible, all topsoil quality and topography shall be restored and reclaimed to a pre-project condition.
 - f. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained.
 - g. Any agreements between the SES Owner and the landowner regarding a variance from these requirements shall be submitted to the McPherson County Board of Adjustment prior to the completion of decommission and/or restoration activities.

2. At least thirty (30) days prior to construction, the Applicant for a SES shall provide a plan to the McPherson County Board of Adjustment regarding the action to be taken upon the decommissioning and removal of the SES and all related facilities. Estimates of monetary costs and the site condition, including any land irretrievably committed, after decommissioning shall be included in the plan.
3. The McPherson County Board of Adjustment may require a bond, guarantee, insurance, or other requirement to provide funding for the decommissioning and removal of the SES and related facilities. The McPherson County Board of Adjustment shall consider the size, location, and any other relevant information regarding the SES, and the financial condition of the Applicant when determining whether to require some type of funding. The same criteria shall be used to determine the amount of any required funding.
4. All right and title in any bond, guarantee, insurance, or other requirement for the decommissioning of the SES shall be controlled by McPherson County in accordance with the terms of the financial security agreement or instrument, until the commission by order releases the security. The financial security of the person required to provide it may not be cancelled, assigned, revoked, disbursed, replaced, or allowed to terminate without approval from the McPherson County Board of Adjustment.
5. Any bond, guarantee, insurance, or other requirement may not be pledged or used as security for any other obligation of the Applicant, SES Owner, and/or Operator, and is exempt from attachment or mesne process, from levy or sale on execution, and from any other final process issued from any court on behalf of third-party creditors of the Applicant, SES Owner, and/or SES Operator.
6. Any bond, guarantee, insurance, or other requirement required under Section 5.30.06(3) shall be issued with McPherson County as the payee and payable to McPherson County in the event the SES Owner and/or Operator abandons the SES or fails to meet any and all local, state, or federal decommissioning requirements.
7. If the SES Owner and/or Operator abandons the SES or fails to meet local, state, or federal decommissioning requirements:
 - a. The bond, guarantee, insurance, or other requirement required under Section 5.30.06(3) shall be paid to McPherson County and shall be non-refundable;
 - b. McPherson County shall use this payment or payments for all costs McPherson County incurs for decommissioning on County property, rights-of-way, County highways, and any other costs incurred by McPherson County for decommissioning;
 - c. The remaining funds, if any, shall be used at the discretion of the McPherson County Board of County Commissioners.
8. If the bond, guarantee, insurance, or other requirement required under Section 5.30.06(3) is not sufficient for its intended purpose, McPherson County reserves the right to take any legal action to hold the Pipeline Owner responsible for any remaining decommissioning costs.
9. At least six (6) months prior to the commencement of decommissioning, SES Owner and/or

Operator shall give notice, in writing, to the McPherson County Board of Adjustment of the date decommissioning is to begin.

10. The SES Owner and/or Operator shall physically dismantle all below and above ground components of the SES within three-hundred and sixty-five (365) days from the date decommissioning is to begin.
 - a. Such removal and dismantling period can be extended upon written agreement between SES Owner and Property Owner. However, in no event can this period extend beyond two (2) years from the date decommissioning is to begin. Any agreement to extend removal and dismantling shall be filed at the McPherson County Registrar of Deeds office and a copy thereof shall be delivered by the SES Owner to the McPherson County Board of County Commissioners or its designee.
11. A SES shall be deemed abandoned if it is out of service or no longer in use for twenty-four (24) consecutive months.
12. If a SES is deemed abandoned:
 - a. The McPherson County Board of Adjustment, or its designee, shall issue a written Notice of Abandonment by certified mail to the SES Owner. The SES Owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from the date of receipt of such notice to present evidence that the Pipeline has not been abandoned.
 - b. The McPherson County Board of Adjustment shall review any such response to determine if the SES has or has not been.
 - c. If it is determined the SES has not been abandoned, the Notice of Abandonment shall be withdrawn and notice of same shall be provided to the SES Owner.
 - d. If, after review of SES Owner's response, it is determined that SES has been abandoned, notice of such finding shall be provided by certified mail to the SES Owner.
 - e. If the SES is deemed to have been abandoned, the SES Owner shall have one hundred twenty (120) days from the date of receipt of such notice to dismantle all above and below ground components of the SES. If SES Owner fails to dismantle the SES within the prescribed time period, such shall be considered a violation of this ordinance and shall be subject to any and all legal remedies.

CHAPTER 5.31 CANNABIS DISPENSARIES.

1. Maximum Number of Cannabis Dispensaries.
 - a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

- b. The County may allow up to two (2) cannabis dispensary provided the time, place, and manner of said dispensary comply with this ordinance and the County licensing ordinance.

2. Required Setback Distances.

- a. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;
- b. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a nonresidential daycare facility, religious institution, occupied dwelling, public park, public pool, and/or public recreational facility area existing before the date of the cannabis dispensary application;
- c. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a non-applicant occupied dwelling.
- d. Exemption from setback requirements. Any setback distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
 - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the setback.
- e. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed.

3. Other Locational Requirements.

- a. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- b. No cannabis dispensary shall share premises with or permit access directly from another cannabis establishment or a business that sells alcohol or tobacco.
- c. It shall be unlawful to operate a dispensary in a building which contains an occupied dwelling or a mixed-use building with commercial and residential uses.

4. Controlled Access - No cannabis establishment shall share premises with or permit access directly from another cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.

5. Documentation of State Licensure.

- a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.

6. The zoning official is authorized to issue permits (building/use) for cannabis dispensaries subject to following:

- a. Submission of a site plan containing the following:
 - i. Any information required for applicable building permit,
 - ii. Ingress and egress plan
 - iii. Parking plan
 - iv. Lighting plan (including security lighting)
 - v. Screening/security fencing plan,
 - vi. Refuse and Utilities plan;
 - vii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
 - b. Documentation of ability to meet setback/separation requirements.
 - c. Documentation of State Licensure.
7. All Cannabis Establishments are required to be constructed in conformance with the International Building Code as provided in SDCL 11-10.

CHAPTER 5.32 CANNABIS CULTIVATION FACILITY, PRODUCT MANUFACTURING FACILITY OR TESTING FACILITY.

1. Maximum Number of Cultivation, Product Manufacturing and Testing Facilities.
 - a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
 - b. The County may allow up two (2) Cannabis Cultivation Facilities provided the time, place, and manner of said cultivation facility complies with this ordinance and the County licensing ordinance.
 - c. The County may allow up two (2) Cannabis Product Manufacturing Facilities provided the time, place, and manner of said product manufacturing facility complies with this ordinance and the County licensing ordinance.
 - d. The County may allow up two (2) Cannabis Testing Facilities provided the time, place, and manner of said testing facility complies with this ordinance and the County licensing ordinance.
2. Required Setback Distances

- a. Shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;
 - b. Shall be located not less than one thousand (1,000) feet from a nonresidential daycare facility, religious institution, occupied dwelling, public park, public pool, and/or public recreational facility area existing before the date of the cannabis dispensary application;
 - c. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a non-applicant occupied dwelling.
 - d. Exemption from setback requirements. Any setback distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
 - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the setback.
 - e. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed
3. General Provisions and Performance Standards
- a. Shall be within a completely enclosed permanent building.
 - b. All South Dakota Administrative Rules, Codified Laws and the County License agreement shall be followed.
4. Provide additional Information to address items listed in 6.05.01(7), as applicable.
5. Documentation of ability to meet setback/separation requirements.
6. Documentation of State Licensure.
- a. No cannabis establishment shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.
7. All Cannabis Establishments are required to be constructed in conformance with the International Building Code as provided in SDCL 11-10.

**ARTICLE VI
ADMINISTRATION**

CHAPTER 6.01. BUILDING/USE PERMITS.

Section 6.01.01. Permits Required.

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a permit issued by the Zoning Officer. The Zoning Officer except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit. A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction.

Section 6.01.02. Applications.

1. Application for building and use permits shall be made to the Zoning Officer upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Zoning Officer, including legal description, existing or proposed buildings or alterations; 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; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 1.02.03 and shall require a new building and use permit.

Section 6.01.03. Building/Use Permit Issuance and Termination.

1. Issuance of a Building/Use Permit. If the proposed excavation, alteration, construction, or change of use, as set forth in the application for a Building/Use Permit are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Zoning Officer shall issue a building/use permit for such excavation, construction, alteration or change in use. If a building/use permit is refused, the Zoning Officer shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application with the cause for denial. The Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.

2. A Building/Use Permit shall be deemed to authorize, and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such building and the use thereof or the use of such land is in full conformity with the requirements of this ordinance and any requirements pursuant thereto. However, on the serving of a written notice by the Zoning Officer of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the Building/Use Permit for such use shall without further action, be null and void, and a new Building/Use Permit shall be required for any further use of such building or land.
3. The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. A Building Permit unencumbered by a conditional use or variance application shall become null and void twenty-four (24) months from the date of issuance thereof unless substantial progress has been made by that date on the project described therein. If the work described in any building permit has not begun within twelve (12) months or has not been substantially completed within twenty-four (24) months of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within twenty-four (24) months from the date of issuance of the permit but has not been completed, the Zoning Officer may extend the building/use permit an additional twelve (12) months.
4. Building Permits encumbered by a special permitted use, conditional use or variance shall not expire for a period of two years following issuance, disposition of final appeals or court proceedings; provided, actual construction as described in the building permit is completed within two (2) years. Permits in violation shall be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit or application shall not proceed unless and until a new building/use permit has been issued.

Section 6.01.04. Permits Displayed.

1. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place. The permit shall be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use.

Section 6.01.05. Fees.

1. The Board of County Commissioners shall, by resolution, 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 County Zoning Officer and may be altered or amended only by the Board of County Commissioners.
2. Until all applicable fees, charges, and expenses have been paid in full, no decision shall be made on any application or appeal.

CHAPTER 6.02. ZONING OFFICER.

Section 6.02.01. Zoning Officer.

1. The provisions of this Ordinance shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners, who shall have the power to make inspection of buildings or premises necessary to carry out his duties in the enforcement of this Ordinance.

Section 6.02.02. Duties.

The powers and duties of the Zoning Officer shall be as follows:

1. Issue all building/use permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the McPherson County Planning Commission and/or the McPherson County Board of Adjustment and/or McPherson County Commissioners.
8. Provide public information relative to all matters arising out of this Ordinance.
9. Forward to the Planning Commission all plats and/or applications for amendments to this Ordinance.
10. Forward to the Board of Adjustment, applications for appeals, conditional uses, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.
11. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission.
12. The Zoning Officer shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.

- a. For building/use permits, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
- b. For Special Permitted Uses, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
- c. For Conditional Uses and Variances, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.
- d. For Zoning Amendments, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Planning Commission and Board of County Commissioners.

Section 6.02.03. Procedures for Approval of Special Permitted Use Permit

- 1. The Special Permitted Use procedure is an administrative review process, where the Zoning Officer shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a Special Permitted Use permit. Requests for special permitted uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. A Special Permitted Use Permit shall not be granted unless and until:
 - a. A written application for a permitted special use is submitted, indicating the section of this Ordinance under which the permitted special use is sought and stating the grounds on which it is requested.
 - b. The Zoning Officer shall review the application for conformance with this ordinance.
 - c. If the application does not meet all of the performance standards for the Special Permitted Use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Zoning Officer shall determine that the application is not in conformance with Section 6.02.03 and appropriate Special Permitted Use Standards. The applicant may then appeal the decision of the Zoning Officer as described in Section 6.04.06
 - d. If the Zoning Officer determines that the application is in conformance with the prescribed performance standards, the Zoning Officer shall make written findings certifying compliance with the specific standards governing the specific Special Permitted Use Permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the specific Special Permitted Use Permit.
 - e. The Zoning Officer shall then issue the Special Permitted Use permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the Zoning Officer for the specific Special Permitted Use permit.
 - f. The Zoning Officer shall then issue any other associated building/use permits.
 - g. A Special Permitted Use permit shall expire one (1) year from the date upon which it becomes effective if no construction has commenced.

- h. A special permitted use permit that is granted does not expire for a period of two years following completion of any final appeal of the decision.

Section 6.02.04. Right of Entry.

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

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

Section 6.02.05. Stop Order.

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Officer may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Zoning Officer to proceed with the work.

Section 6.02.06. Occupancy Violation.

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Officer may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such persons shall discontinue the use within the time prescribed after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this ordinance.

CHAPTER 6.03. PLANNING COMMISSION.

Section 6.03.01. Establishment.

The Planning Commission shall consist of five (5) members, at least one member of which shall be a member of the Board of County Commissioners.

Section 6.03.02. Term of Office.

The term of each of the appointed members shall be for five years; the length of the terms shall be varied so that no more than 1/3 of the terms expire in the same year. Members of the

Planning Commission may be removed for cause by the appointing authority. Vacancies shall be filled by the Board of County Commissioners and shall be for the unexpired term.

Section 6.03.03. Meetings of the Planning Commission

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.
2. All Meetings of the Planning Commission shall be open to the public. The Planning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.
3. A simple majority vote of a quorum of members of the Planning Commission in attendance is required to forward a recommendation, pertaining to its duties described in 6.03.05, on to the Board of County Commissioners.

Section 6.03.04. Per Diem and Expenses of Commission

1. Per Diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.

Section 6.03.05. Powers and Duties of the Board.

1. Comprehensive Land Use Plan. The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.
2. Zoning Ordinance. To develop and recommend a zoning ordinance, in accordance with the Plan, for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by SDCL 11-2-13 and 11-2-14. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL11-2-18.
3. Subdivision.
 - a. If determined appropriate, to develop and recommend regulations governing the subdivision of land within McPherson County.
 - b. If a subdivision ordinance has been adopted, to review proposals for subdivision to determine whether such subdivisions comply with the subdivision ordinance of the County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.

4. Amendments. The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning ordinance, and subdivision regulations subject to SDCL 11-2-18.
5. The Planning Commission shall have all other responsibilities designated to it by this Ordinance and South Dakota Law.

CHAPTER 6.04. BOARD OF ADJUSTMENT.

Section 6.04.01. Establishment.

Within McPherson County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The Planning Commission, shall act as the Board of Adjustment.
2. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. If a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent Board of Adjustment member's place. The term of the Alternates shall be for three (3) years.

Section 6.04.02. Procedures for Meetings.

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
2. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.
3. A quorum of the Board of Adjustment consists of four (4) members physically present or participating remotely.
4. The Board of Adjustment shall take no action on any item at a meeting where a quorum of the Board is not physically present or participating remotely.

Section 6.04.03. Powers and Duties of the Board.

1. The Board of Adjustment shall have the following powers and duties:
 - a. Administrative Review. To hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map.

- b. Conditional Uses. To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.
- c. Variance. To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

Section 6.04.04. Power and Jurisdiction Relating to 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 Officer or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map.

Section 6.04.05. Board of Adjustment has Powers of Administrative Officer on Appeals: Reversing Decision of Zoning Officer.

1. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Officer from whom the appeal is taken.
2. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (four (4) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to affect any variation in the application of this ordinance.

Section 6.04.06. Appeals, Record of Appeal, Hearing and Stays

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. An appeal to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County adversely affected by any decision of the Zoning Officer to grant or deny the permit. No other appeal such as any relating to a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision is authorized by this section. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The appeal shall be filed within twenty-one (21) days of the decision in question. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30)

days. All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal.

3. An appeal stays all proceedings in furtherance of the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, unless the Zoning Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall hear and decide the appeal within sixty (60) days of receiving said appeal, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney.

Section 6.04.07. Appeals to a Court of Record.

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board, or bureau of the county, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the County Zoning Officer.

CHAPTER 6.05. PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS.

Section 6.05.01. Powers and Jurisdiction Relating to Conditional Uses.

The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted, indicating the section of this Ordinance under which the conditional use permit is sought and stating the grounds on which it is requested.
2. Property owners adjacent to the proposed site shall be notified of the conditional use request by certified or registered mail, at the cost of the applicant. In lieu of this requirement, at the discretion of the Zoning Officer, the applicant may obtain written consent from

adjacent landowners, to be submitted with the conditional use application.

3. All work to include alteration, actual construction, excavation, dirt work or other similar activity subject to a permitting process or as an allowed land use conducted upon neighboring lands which began after the date on which a complete conditional use application is accepted shall consider the following. If such action causes the application to fail to meet one or more of the performance standards or criteria for the proposed conditional use, said action shall not cause the requested conditional use to be considered nonconforming until a final disposition of the conditional use request and any appeal is determined pursuant to § 11-2-61 or 11-2-65. If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year following approval or determination of any appeal as set forth above, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.
4. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
5. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
6. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
7. The granting any conditional use, by the Board of Adjustment shall be based upon written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
 - a. Access:
 - i. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for conditional use requested prior to issuance of a Conditional Use Permit.
 - ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.
 - b. Parking and internal traffic:
 - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
 - ii. The number of parking spaces is appropriate for the proposed use of the property.
 - c. Utilities and refuse:
 - i. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.
 - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.

- d. Screening, buffering, and open space:
 - i. The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
 - e. Lighting:
 - i. Lights associated with the use will not create a nuisance nor distract traffic.
 - ii. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.
 - f. General compatibility with adjacent properties and other property in the district.
 - i. Any use listed as a Conditional Use is generally compatible in the district it is listed in.
 - ii. General compatibility is used when prescribing conditions for approval of a permit.
8. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
9. The affirmative majority vote of the present and voting members of the Board of Adjustment is required to pass any application for a Conditional Use Permit.
10. Expiration of a Conditional Use Permit
- a. Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire two (2) years from the date upon which it becomes effective if no actual construction as described in the building permit has commenced. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.
 - b. A conditional use permit that is granted does not expire for a period of two years following completion of any final appeal of the decision.
11. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance.
12. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.

Section 6.05.02. Powers and Jurisdiction Relating to Variances.

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific 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 owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such

difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. The Zoning Officer may require the applicant for a variance to notify adjacent property owners by certified or registered mail at their last known address, at the applicant's expense, of the variance request; in lieu of the foregoing, if required, the applicant may obtain written consent from adjacent landowners, to be submitted with the Variance application.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this ordinance shall not be granted unless the following criteria are met:
 - a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
 - b. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 - c. The special conditions and circumstances do not result from the actions of the applicant;
 - d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
 - e. Granting the variance request would not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
 - f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under the terms of this regulation.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or

by implication prohibited by the terms of this regulation in said district.

8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a variance.
9. Expiration of a Variance
 - a. Unless otherwise specified by the Board of Adjustment, a variance shall expire two (2) years from the date upon which it becomes effective if no actual construction as described in the building permit has commenced. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment. If the variance request is granted in connection with activities for which a conditional use permit has been granted within the past six (6) months, the variance may be extended in the same manner and shall expire at the same time and under the same conditions as the conditional use permit.
 - b. A variance that is granted does not expire for a period of two years following completion of any final appeal of the decision.

Section 6.05.03. Zoning Amendments.

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one (1) or more of the owners of property within the area requested to be rezoned. Initiated petitions which create amendments to this ordinance are required to submit signatures of twenty (20) percent of the landowners in the zoning district or districts requesting change. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.
2. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change shall be followed:

The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Officer. Completed applications shall be returned to the Zoning Officer for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:

- a. Any required attachments and fees, including Registered or Certified Mail.

- b. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.
- c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.
- d. A proposed time schedule for beginning and completion of development.
- e. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
- f. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.
- g. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- h. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.
- i. The Planning Commission shall recommend approval or disapproval of a requested change, either in whole or in part. Recommendations for changes shall be presented to the Board of County Commissioners.
- j. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in an official newspaper of the County.

Section 6.05.04. Reapplication.

No application requesting a variance, conditional use, or zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment (variances, conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or Board of County Commissioners before the expiration of six (6) months from the date of the final action of the Planning Commission, Board of Adjustment, or Board of County Commissioners.

APPENDIX A

MCPHERSON COUNTY SUBDIVISION REGULATIONS

An Ordinance establishing rules, regulations, and standards governing the subdivision of the land within McPherson County, South Dakota, and providing harmonious development of the county and its environs for the coordination of streets within subdivisions with other existing or planned streets or with other features of the comprehensive plan of the county for adequate open spaces for traffic, recreation, light and air, and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity.

Now, therefore, be it enacted by McPherson County, South Dakota.

ARTICLE I GENERAL PROVISIONS

SECTION 101 - Purpose

These regulations shall be for the purpose of promoting harmonious development through the implementation of the McPherson County Comprehensive Plan.

SECTION 102 - Extent of Regulation

The provisions of these regulations shall apply to every addition to, or subdivision within McPherson County, South Dakota, and their prescribed area of extra-territorial jurisdiction. No plat of a subdivision of land shall be filed or recorded until it has been submitted to the Planning Commission for their review and then approved by the McPherson County Commissioners.

SECTION 103 - Definitions

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

The word *person* includes a firm, association, organization, partnership, trust, company, or corporation, as well as, an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word *shall* is mandatory, the word *may* is permissive.

The words used or occupied included the words *intended*, *designed*, or *arranged* to be used or occupied.

The word *lot* includes the words *plot* or *parcel*.

The word *building* includes the word *structure*.

Alley: A public right-of-way which is used primarily as a secondary means of access to the abutting property.

Block: A track or parcel of land bounded by public streets or land, streams, railroads, unplatted lands or a combination thereof.

Comprehensive Plan: A long-range plan for the improvement and development of McPherson County, South Dakota, as adopted by the Planning Commission and the County Commissioners.

Cul-de-sac: A street having one end connecting with a public street and being terminated as its other end by a vehicular turn-around.

Improvements: Pavements, curbs, gutters, sidewalks, water mains, sanitary sewers, storm sewers, grading street signs, plantings, and other items for the welfare of the property owners and the public.

Lot: A portion of a subdivision or other parcel of platted land, intended as a unit for transfer of ownership or for development.

Lot of record: A tract of land described as an integral portion of a subdivision plat which is properly recorded in the Register of Deeds Office of McPherson County, South Dakota.

Plat: A map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which he submits for approval and which will be recorded in final form.

Right-of-way: A strip of land separating private property from the existing road, street or alley or dedicated in public ownership.

Street: A right-of-way, dedicated to public use, which affords a primary means of access to the abutting property.

Street - major: Provides for the through traffic movement between areas and across the county, and direct access to abutting property; subject to necessary control of entrances, exits and curb use.

Street – minor collector: Provides for traffic movement between major arterials and major streets, and direct access to abutting property.

Street - local: Provides for direct access to abutting land, and for local traffic movements.

Subdivider: A natural person, firm, co-partnership, association or corporation who submits a proposed subdivision to the Planning Commission.

Subdivision: The division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership or building development.

Water course, drainage way, channel or stream: A natural or man-made depression in which a current of surface run-off water flows following precipitation.

ARTICLE II PROCEDURES

SECTION 201 – Pre-Application

Prior to the subdivision of any land, the subdivider or his/her agent shall discuss informally with the Board of County Commissioners the proposed subdivision with reference to these Subdivision Regulations, the Zoning Ordinance, and the Comprehensive Plan.

SECTION 202 – Preliminary Application Fee

The subdivider shall pay to the Zoning Officer a preliminary application fee as stated in the approved fee schedule before application.

SECTION 203 – Preliminary Application

The subdivider shall prepare and submit to the Board of County Commissioners the following:

1. Seven (7) copies of the preliminary plat at a uniform size of fifteen (15) inches by twenty-six (26) inches, eleven (11) by seventeen (17) inches, or eight and one-half (8-1/2) inches by fourteen (14) inches. All preliminary submittals shall be in conformance with the design standards set forth in Article III of this Ordinance and shall include or be accompanied by the following information:
 - a. Receipt for preliminary platting fee.
 - b. Proposed name of the subdivision, which shall not duplicate previously filed plat names.
 - c. A date, scale, north point, and key map showing the general location of the proposed subdivision in relation to surrounding development.
 - d. Names and addresses of the developer, engineer, surveyor, or landscape architect responsible for the survey or design.
 - e. Location of boundary lines in relation to section or quarter section lines, including a legal description of the property.
 - f. Existing contours wherever five (5) feet of deviation occurs.
 - g. Location, width, and name of existing or platted streets and alleys, railroads, utilities, rights-of-way or easements, parks, and existing structures within the proposed subdivision and their relationship to the same of adjacent subdivisions.
 - h. Zoning classifications and existing and proposed land use.
 - i. Written and signed statements explaining how and when the subdivider proposes to provide and install all required sewers or other suitable sanitary disposal systems, water supply, pavement, sidewalks, drainage ways, and other required improvements, or in lieu of the completion of such work and installations previous to the final approval of a plat, the County Commissioners may accept a bond, in an amount and with surety and conditions satisfactory to it, providing for and securing to the municipality the actual

construction and installation of such improvements and utilities within a period specified by the County Commissioners and expressed in the bond, or in lieu of completion of such work and installations previous to the final approval of a plat for an assessment or other method whereby the municipality is put in an assured position to do said work and make said installations at the cost of the owners of the property within the subdivision.

- j. Written and signed statements by the appropriate officials, obtained by the developer, ascertaining the availability of gas, electricity, and water for the proposed subdivision.
 - k. Layout, numbers, and approximate dimensions of lots and the number of each block.
2. After receipt of the preliminary plat applications, the Planning Commission shall distribute said applications to the appropriate officials, who shall examine the proposed plat in terms of compliance with all laws, regulations, and codes of the County. The findings of the examinations shall be returned to the Planning Commission within fifteen (15) days.
 3. The Planning Commission, upon receipt of the examination findings, shall approve or disapprove the preliminary plat application at the time of their next regularly scheduled meeting. Approval of the preliminary plat by the Planning Commission shall be void at the end of six (6) months unless a final plat has been submitted.
 4. Upon approval of the preliminary plat by the Planning Commission, the subdivider may proceed with the preparation of the final plat.

SECTION 204 – Final Application Fees

The subdivider shall pay to the Zoning Officer a final application fee after preliminary approval and before final application. The fee shall be as stated in the approved fee schedule.

SECTION 205 - Final Plat Application

The subdivider shall prepare and submit to the Planning Commission the following, prepared by an engineer or land surveyor registered in the State of South Dakota:

1. Seven (7) copies of the final plat at a uniform size of fifteen (15) inches by twenty-six (26) inches, eleven (11) by seventeen (17) inches, or eight and one-half (8-1/2) inches by fourteen (14) inches. All final plat submittals shall be in conformance with the design standards set forth in Article V of this Ordinance and shall include or be accompanied by the following information, in addition to that already submitted on the preliminary application:
 - a. The exact location and layout of lots, streets, alleys, easements, and other public ground with accurate dimensions in feet and decimals of feet, interior angles, length of radii and/or arcs of all curves, together with the names of all streets.
 - b. Location and description of all monuments.
 - c. Location by section, township, range, county, and state, including descriptive boundaries of the subdivision, based on an accurate traverse giving angular and linear dimensions that must be mathematically close.

- d. Notarized certificate signed and acknowledged by all parties having any titled interest in or lien upon the land subdivided consenting to the plat, including dedication of all streets, alleys and public ways, parks or other public grounds, or lands for charitable, religious, or educational purposes, if any, and granting easements.
 - e. Certificate signed by the County Treasurer stating that there are no regular or special taxes due or delinquent against the property described in the plat.
 - f. Certificate signed by the Director of Equalization approving the plat.
 - g. One copy of any private restriction or covenants affecting the subdivision or any part thereof.
2. Any subdivision of land containing two or more lots, no matter how described, must be submitted to the Planning Commission for approval. Any plat submitted for approval shall contain the name and address of a person to whom notice of hearing may be sent; and no plat shall be acted upon by the County Commissioners without affording a hearing thereon, notice of the time and place of which shall be sent by mail to said address not less than five days before the date fixed therefore. Also, any plat submitted for approval shall require the signature of the McPherson County Auditor and the Chair of the McPherson County Commissioners
 3. The plat shall be approved or disapproved within sixty (60) days after submission thereof; otherwise, such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the County Commissioners on demand; provided, however, that the applicant for the approval may waive this requirement and consent to the extension of such period. The ground of disapproval of any plat shall be stated upon the records of the County Commissioners.
 4. The approval of a plat by the County Commissioners shall not be deemed to constitute or effect any acceptance by the municipality or public of the dedication of any street or other ground shown on the plat.
 5. When any map, plan, plat or replat is tendered for filing in the office of the Register of Deeds, it shall be the duty of any such officer to determine whether such proposed map, plan, plat or replat is or is not subject to the provisions of the Ordinance and whether the endorsements required by this Ordinance appear thereon, and no register of deeds or deputy shall accept for record, or record, any such map, plan, plat or replat unless and until the same shall have been approved by the County Commissioners.

**ARTICLE III
DESIGN STANDARDS**

SECTION 301 - General Standards

Land within the proposed subdivision which the Planning Commission finds to be unsuitable for subdividing due to flooding or bad drainage shall not be subdivided until the objectionable features have been eliminated or until adequate safeguards against such objectionable features are provided.

SECTION 302 - Streets and Alleys

1. Streets in the subdivision normally shall connect with streets already dedicated in adjoining or adjacent subdivisions.
2. Minor residential streets should be planned as to discourage through traffic. Permitted cul-de-sacs shall not be longer than four hundred (400) feet and shall terminate with a turn-around having a curb line diameter of not less than eighty (80) feet.
3. Centerline off-sets of intersecting streets shall be avoided, but where necessary shall be not less than one hundred fifty (150) feet.
4. Blocks in residential subdivisions shall be not less than three hundred (300) feet long and not more than one thousand two hundred (1,200) feet long.
5. Half streets shall be prohibited except where essential to the reasonable development of the subdivision or where it is found to be practical to require the dedication of the other half when adjoining property is subdivided.
6. Under normal conditions streets shall be laid out so as to intersect as nearly as possible at right angles, except where topography or other conditions justify variations. More than four (4) approaches to any intersection shall be prohibited.
7. Alleys shall be provided in Commercial and Industrial districts except where other definite and assured provision is made for service access.
8. The right-of-way widths and pavements widths (back-to-back of curb) for interior streets and alleys included in any subdivision shall not be less than the minimum dimensions for each classification as follows:

<u>TYPE</u>	<u>PAVEMENT WIDTH</u>	<u>R.O.W</u>
Major Arterial Streets	66'	80'
Local Streets	46'	66'
Alleys	16'	20'

SECTION 303 - Lots

1. Side lot lines shall be approximately at right angles to straight street lines or radial to curved street lines.

2. Every lot shall abut and have access to a public street.
3. Double frontage lots shall be avoided except where they back upon a major street.

SECTION 304 – Easements

1. Easements on rear or side lot lines shall be provided for sanitary sewers where necessary and shall be a total of at least ten (10) feet wide on each side.
2. Where a subdivision is traversed by a water course, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way of such width as will be adequate for both water flow and maintenance operations.

ARTICLE IV IMPROVEMENTS

SECTION 401 - IMPROVEMENTS

It shall be the responsibility of the developer to install in accordance with plans, specifications, and data approved by the Director of Equalization certain required improvements as follows:

1. Staking - the external boundaries and corners of each block and lot shall be monumented by iron rods, pipes, or pins not less than one (1) inch in diameter and extending at least twenty-four (24) inches below grade.
2. Street Grading - all full width streets located entirely within the boundary of the subdivision, except major and minor collector streets, shall be graded to a minimum width of nine (9) feet back of both curb lines to within six (6) inches of the grade established by the Director of Equalization.
3. Street Surfacing - the streets shall be paved in accordance with street improvement and paving standards and regulations approved by the County Commissioners of McPherson County, South Dakota.
4. Sanitary Sewer - where a municipal sanitary sewer is accessible by gravity flow within 500 feet of the final plat, the subdivider shall submit to the County Commissioners the plans for connection with a trunk line to the existing system. The County Commissioners shall then inform the subdivider of the trunk size requirements as per anticipated development in the general area. Where a municipal sanitary sewer is not accessible by gravity flow within 500 feet of the final plat, the subdivider shall make provision for the disposal of sewerage as required by law. Where a municipal sanitary sewer accessible by gravity connection is not within 500 feet of the final plat, but where plans for the installation of city sanitary sewers within such proximity to the plat have been prepared and construction will commence within twelve (12) months from the date of the approval of the plat, the subdivider shall be required to install sewers in conformity with such plans.
5. Water Mains - where a public water supply is within five hundred (500) feet of a proposed subdivision, the subdivider shall install, or have installed, a connection to each lot prior to the paving of the street, as according to the County Code(s) requirement(s). Where a public water supply is not available, each lot in a subdivision shall be furnished with a water supply system and proper provisions for the maintenance thereof. Any lot so serviced shall have a minimum area of one-half (1/2) acre. The design of any such system shall be subject to the approval of the State Department of Health.

**ARTICLE V
ENFORCEMENT**

SECTION 501 - Enforcement

1. No plat of any subdivision within the application of this Ordinance shall be entitled to be filed or recorded in the office of the Register of Deeds or have any validity until such plat has been prepared, approved, and acknowledged in the manner prescribed by this Ordinance.
2. It shall be unlawful to sell, trade, or otherwise convey any lot or parcel of land for building purposes as a part of or in conformity with any plat, plan, or replat of any subdivision within the area subject to application of this Ordinance unless said plan, plat, or replat shall have been approved as prescribed by this Ordinance and filed and recorded in the office of the Register of Deeds.

**ARTICLE VI
PENALTY**

SECTION 601 - Penalty

It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of this Ordinance. Violation thereof shall be a misdemeanor and may be punishable by a fine established by the County Commissioners for each and every day that any violator fails to comply with the provisions of this Ordinance.

Any architect, 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 McPherson County from taking such other lawful action as is necessary to prevent any violation.

**ARTICLE VII
SEVERABILITY CLAUSE**

SECTION 701 - Severability Clause

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the regulations as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**ARTICLE VIII
LEGAL STATUS PROVISIONS**

SECTION 801 - Conflict with Other Regulations

No final plat of land within the force and effect of the Zoning Ordinance shall be approved unless it conforms to these Regulations. Whenever there is a discrepancy between standards or dimensions noted herein and those contained in the Zoning Ordinance, building code, or other official regulations or ordinances, the most restrictive shall apply.