

ZONING ORDINANCE

PENNINGTON COUNTY, SOUTH DAKOTA

Revised June 26, 2024

PENNINGTON COUNTY PLANNING DEPARTMENT
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NOTE:

1. All provisions of these Zoning Ordinances, relating to lot size, building density, building setback, parking and loading requirements, building height, etc., may be relaxed by the Board of Adjustment under provisions contained in Section 509 - Variances.
2. These Zoning Ordinances shall be on file for inspection at the Offices of the Register of Deeds, County Auditor, and at the County Planning Department. Copies are available at the Planning Department at the cost of printing.

PENNINGTON COUNTY ZONING ORDINANCE PENNINGTON COUNTY, SOUTH DAKOTA

SECTION 100 - STATUTORY AUTHORIZATION (Revised 02-24-21)

SDCL Chapter 11-2 authorizes the adoption and enforcement of land-use regulations to promote the health, safety, and general welfare of Pennington County

SECTION 101 - JURISDICTION

This Zoning Ordinance governs all unincorporated lands that are within the jurisdiction of the Board of County Commissioners for Pennington County, South Dakota.

SECTION 102 – CONSTRUCTION AND EFFECT OF ORDINANCE

The following provisions apply to the construction and interpretation of this Ordinance and its sections:

- A. *Plain and Ordinary Language.*
 - (1.) *General Rule.* The words used in this Ordinance must be given their plain and ordinary meaning.
 - (2.) *Exception.* The words that have been defined in this Ordinance must be given that defined meaning.
- B. *Application of Definitions.* Whenever the meaning of a word or phrase is defined in this Ordinance, then that definition is applicable to the same word or phrase wherever it occurs except where a contrary intention plainly appears.

SECTION 103 – DEFINITIONS (Revised 08-23-23)

- A. *Introduction.* Unless more specifically defined in a different section, the terms used in this Ordinance are defined below.
- B. *Definitions.*
 - 1. *Accessory Use or Structure.* A use or a structure subordinate to the principal use of a lot, or of a principal building on the same lot, and serving a purpose clearly incidental to a permitted principal use of the lot or of the building and which accessory use or structure is compatible with the principal permitted uses or structures authorized under zoning regulations applicable to the lot.
 - 2. *Adult-Oriented Business.* An adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult photo studio or nude model studio.
 - 3. *Airport Height & Hazard Zoning.* The following definitions apply to Section 301.
 - a. *Airport.* A place from which aircraft operate that usually has paved runways and maintenance facilities.
 - b. *Approach Surface.* A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in PCZO § 301. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

- c. *Conical Surface.* A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
 - d. *Hazard to Air Navigation.* An obstruction determined to have a substantial adverse effect on the safe and efficient use of the navigable airspace.
 - e. *Horizontal Surface.* A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
 - f. *Larger than Utility Runway.* A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft.
 - g. *Non-Precision Instrument Runway.* A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.
 - h. *Obstruction.* Any structure, growth, or other object, including a mobile object, that exceeds a limiting height set forth in § 301(D) of this Ordinance.
 - i. *Precision-Instrument Runway.* A runway that has an existing instrument approach procedure, using an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.
 - j. *Primary Surface.* A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; for military runways or when the runway has no specially prepared hard surface or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in PCZO § 301(C). The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
 - k. *Runway.* A defined area on an airport prepared for landing and takeoff of aircraft along its length.
 - l. *Transitional Surfaces.* These surfaces extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of 7 feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90-degree angles to the extended runway centerline.
 - m. *Utility Runway.* A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.
 - n. *Visual Runway.* A runway intended solely for the operation of aircraft using visual approach procedures.
4. *Amusement Structure and Use.* An outdoor facility that may include structures where there are various devices for entertainment, including rides, booths for the conduct of games or sale of items, and buildings for shows and entertainment.

5. *Animal Husbandry.* The raising of domesticated farm animals when, in the case of dairy cows, beef cattle, horse, ponies, mules, llamas, goats, and sheep, their primary source of food, other than during the winter months, is from grazing in the pasture where they are kept. This term does not include a confined animal feeding operation.
6. *Apartment or Condominium.* A structure arranged, intended, and designed to be occupied by five or more families living independently of each other containing five or more independent, individual dwelling units, with each unit containing its own sleeping, kitchen and bathroom accommodations.
7. *ARSD.* Administrative Rules of South Dakota.
8. *Art Gallery.* An establishment engaged in the sale, loan, or display of art books, paintings, sculpture, or other works of art. The term does not include libraries, museums, or non-commercial art galleries.
9. *Assembly.* A gathering together of people at any location, at any single time, for any purpose other than regularly established permanent places of worship, government-sponsored fairs, rodeos, farm sales, auctions, family gatherings, or assemblies licensed under other laws.
10. *Bakery.* A place where breads, confections and pastries are produced and sold.
11. *Barn.* An agriculture building used exclusively for the storage of grain, hay, and other agriculture products, or for the sheltering of livestock or agricultural equipment.
12. *Basement.* A story entirely or partly underground and having at least 1/2 of its height below the average level of the adjoining ground.
13. *Bedroom.* Any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but is not limited to, a den, an all-purpose room, a study/office, or an exercise room. All bedrooms must have at least 81 square feet of floor area and have a window(s) to the outside. Estimates of wastewater generated are based on two persons per bedroom.
14. *Board.* The Pennington County Board of Commissioners.
15. *Board of Adjustment.* The Pennington County Board of Commissioners.
16. *Boat.* A vehicle designed for operation as a watercraft that's propelled by oars, sails, or at least one internal combustion engine.
17. *Buffer.* Open spaces, landscaped areas, fences, walls, berms, or any combination thereof that's used to physically and visually separate one use or property from another in order to mitigate the impacts of noise, light, or other nuisance.
18. *Buildable Area of a Lot.* The portion of a lot bounded by the required rear and side yards and front yard of the building setback line.

19. *Building.* Any structure—either temporary or permanent—that has a roof or other covering designed and used for the shelter or enclosure of any person, animal, or property of any kind.
20. *Caretaker.* Any person who resides on the property and who performs security, or vital care of people, plants, animals, equipment or other conditions of the site on a regular basis.
21. *Caretaker Residence.* An accessory dwelling on a non-residential premise, occupied by the person, and their family, who oversees the non-residential operation 24 hours a day.
22. *Caregiver.* A member of an individual's social network who helps them with activities of daily living; most commonly based on medical necessity.
23. *Caregiver Residence.* A temporary additional dwelling on a residential premise occupied by the person, and their family, who functions as a caregiver.
24. *Central-Sewer System.* A sanitary sewage collection system in which sewage is carried from individual lots by a system of pipes to a central treatment and disposal facility.
25. *Central-Water System.* A public water supply system consisting of facilities and works for supplying, treating, and distributing potable water including but not limited to impoundments, reservoirs, wells, intakes, water filtration plants and other treatment facilities, tanks and other storage facilities, transmission mains, distribution piping, pipes connecting the system to other public water supply systems, pumping equipment, and all other necessary appurtenances, equipment, and structures.
26. *Child Care Center.* A facility, by whatever name, in which care is provided on a regular basis for 7 or more children, under 12 years of age, at one time, including children related to the operator or manager thereof. Such facilities include those commonly known as daycare centers, day nurseries, and play groups, but exclude foster homes and family daycare homes.
27. *Clinic.* A facility where medical or dental care is furnished to persons on an outpatient basis only.
28. *Club.* An association of persons for some common object that has a social, educational, or recreational purpose; membership is required for participation; and it is not primarily operated as a business and thus for profit.
29. *Commercial Automobile Wrecking Yard.* The dismantling, storage, sale, crushing, or dumping of used motor vehicles, trailers, or parts thereof.
30. *Commercial Junk or Salvage Yard.* A structure, lot, or premises where junk is bought, sold, exchanged, stored, placed, packed, baled, disassembled, crushed, handled or prepared for recycling. A commercial automobile wrecking yard is classified as commercial junk or salvage yard.

31. *Commission*. The Pennington County Planning Commission.
32. *Common Wall*. A wall common to but dividing contiguous buildings; such a wall contains no openings and extends from its footing below the finished ground grade to the height of the exterior surface of the roof.
33. *Community Center*. A place, structure, area, or other facility used for and providing religious, fraternal, social, or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community and are not operated for profit and in which neither alcoholic beverages or meals are normally dispensed or consumed. It may also be referred to as a convention center or civic center.
34. *Construction Permits*. The following definitions apply to PCZO § 507.
- a. *Best Management Practices ("BMP")*. Non-structural or structural device, measure, facility, or activity that helps to achieve soil erosion and storm water management control objectives at a site.
 - b. *Clean Water Act ("CWA")*. The Federal Water Pollution Control Act, codified at 33 U.S.C. § 1251 *et seq.*
 - c. *Clearing*. Any activity that removes the vegetative surface cover.
 - d. *Construction Activity*. Ground surface disturbing activities, which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Construction Activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility.
 - e. *Construction Permit*. Permit issued by Pennington County for construction, excavating, clearing, or any land-disturbing activity.
 - f. *Disturbance*. Any type of activity that involves grading, clearing, moving topsoil, rock, or any other natural surface from property. It includes bringing in fill material on to the site.
 - g. *Drainage Way*. A channel that conveys surface runoff throughout the site.
 - h. *Erosion Control*. Measures that prevent erosion.
 - i. *Illicit Discharge*. Any direct or indirect non-storm water discharge to the storm drain system.
 - j. *Illicit Connection*. Either of the following:
 - i. any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the storm drain system, including but not limited to, any conveyance which allows any non-storm water discharge to enter the storm drain system and any connections to the storm drain system from indoor drains, sinks, or toilets, regardless of whether said drain or conveyance had been previously allowed, permitted, or approved; or
 - ii. any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by DANR.
 - k. *Impervious Area*. Impermeable surfaces—such as paved driveways, parking areas, sidewalks, or roads—that prevent infiltration of water into soil.

- l. *Industrial Discharge.* The discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122.
- m. *Municipal Separate Storm Sewer System (“MS4”).* A conveyance or system of conveyances—including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains—that meet the following criteria:
 - i. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the Clean Water Act § 208 that discharges to waters of the United States;
 - ii. Designed or used for collecting or conveying storm water;
 - iii. That is not a combined sewer;
 - iv. That is not part of a Publicly Owned Treatment Works as defined at 40 CFR §122.2; and
 - v. Determined by the EPA from census data identified in Appendix A – Urbanized Areas of the Pennington County Storm Water Management Plan.
- n. *National Pollutant Discharge Elimination System (“NPDES”) Storm Water Permit.* A permit issued by the Environmental Protection Agency (or DANR under authority delegated by 33 USC § 1342(b)) that authorizes the discharge of pollutants to Waters of the State, whether the permit is applicable to an individual, group, or geographic area.
- o. *Non-Storm Water Discharge.* Any discharge to the storm drain system that is not composed entirely of storm water.
- p. *Permittee.* A person who has obtained a construction permit.
- q. *Pollutant.* Any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or other industrial, municipal, or agricultural waste discharged into Waters of the State. This term does not mean sewage from watercraft; or water, gas, or other material that is injected into a well to facilitate production of oil or gas; or water derived in association with oil and gas production and disposed of in a well, if the well is used to facilitate production or for disposal purposes and is approved by the appropriate state authority.
- r. *Site Plan.* Plan showing, in detail, the boundaries of a site and the location of all improvements, utilities, drainage, structures, and specific measures, and their location, used to control sediment and erosion, for a specific parcel of land.
- s. *Stabilization.* The use of practices that limit exposed soils from eroding, including but not limited to grass, trees, sod, mulch, or other materials that prevent erosion and maintain moisture.
- t. *Storm Drain System.* See Municipal Separate Storm Sewer System.

- u. *Storm Water.* Any surface flow, runoff, or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
 - v. *Storm Water Pollution Prevention Plan ("SWPPP").* A plan identifying potential sources of storm water pollution at a construction site and specifying structural and non-structural controls that will be in place to minimize negative impacts caused by storm water discharges associated with construction activity. The purpose of these controls is to minimize erosion and run-off of pollutants and sediment.
 - w. *Watercourse.* A natural or artificial channel through which storm water or flood water can flow, either regularly or intermittently.
 - x. *Water Quality Standards.* A water quality standard defines the water quality goals of a water body, or a portion of the water body. The water quality standards regulations establish the use or uses to be made of a water body, set criteria necessary to protect the uses, and establish policies to maintain and protect water quality. South Dakota has developed surface water quality standards for all Waters of the State, as required by the Clean Water Act.
35. *Contractor's Equipment Storage Yard.* A facility for the storage of equipment, material, and supplies used in conjunction with a contractor's business.
 36. *Corner Lot.* A lot of which at least 2 adjoining sides abut for their full lengths on a street, providing that the interior angle at the intersection of the 2 such sides is less than 135 degrees.
 37. *Coverage.* The lot area covered or occupied by all buildings located therein, including the area covered by all overhanging roofs.
 38. *Dead-End Road System.* A dead-end road system is the total number of roadways (dead-end and connecting) that provide only a single means of vehicular ingress and egress. **(Revised 04-12-23)**
 39. *Deli.* A place where domestic and imported meats, cheeses, wines (with the proper licenses), and prepared foods are sold. Equipment and ingredients for home, garden, or both may also be sold.
 40. *DANR.* The South Dakota Department of Agriculture and Natural Resources.
 41. *Developmental Lot.* This means two (2) or more lots or portions of lots with continuous frontage in single ownership of record before February 1, 1994, where all or part of the lots do not meet the requirements established for lot width and area, which for the purposes of this Ordinances will be considered to be an undivided lot.
 42. *Developed Site.* Property or a lot upon which significant site improvements—such as utility installations, paving, and, in many instances, the construction of one or more structures—has occurred.
 43. *District.* An area of land under the jurisdiction of this Ordinance for which the regulations governing the use of land are unique and uniformly applied.

44. *Double Frontage Lot.* A lot that runs through a block from street to street, excluding the side dimension of a corner lot.
45. *Drive-in.* A business establishment developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles to serve patrons seated in the motor vehicle.
46. *Dwelling.* Any structure, building, or any portion thereof that is used, intended, or designed to be occupied for human living purposes. For example, houses, mobile homes, hotels, motels, apartments, business, and industrial establishments. Those examples are non-exhaustive.
47. *Equipment: Heavy.* High-capacity mechanical devices for moving earth or other materials, including, but not limited to: carryalls, graders, loading and unloading devices, cranes, drag lines, trench diggers, tractors, augers, bulldozers, concrete mixers and conveyers, harvesters, combines, or other major agricultural equipment and similar devices operated by mechanical power as distinguished from manpower.
48. *Equipment Rental and Sales.* Establishments primarily engaged in the sale or rental of tools, trucks, tractors, construction equipment, agricultural implements, and similar industrial equipment, and the rental of mobile homes. Included in this use type is the incidental storage, maintenance, and servicing of such equipment.
49. *Family.* An individual; or a group of 2 or more persons related by blood, marriage, or adoption, including foster children and domestic servants; or a group not to exceed 5 persons not related by blood, marriage, or adoption, living together as a single housekeeping unit and using common cooking facilities.
50. *Family Care Facility.* A home approved under SDCL 28-1-40 or licensed under SDCL 34-12-1 that provides resident service, except nursing care to the sick or injured, to a small number of adults determined by either the State Department of Social Services or Department of Health, not related to the resident household by blood or marriage. These individuals are aged, blind, physically or developmentally disabled and receive care and service according to their individual needs in a family situation.
51. *Family Daycare Home.* A facility providing care and supervision of children from more than one unrelated family, in a family home, on a regular basis for part of a day, as a supplement to regular parental care, for no greater than 12 children at any time, including children under the age of 6 years related to the owners, operators, or managers thereof, without transfer of legal custody or placement for adoption.
52. *Farmers Market.* A place where vendors offer the community fresh products, including, but not limited to, dairy, produce, livestock, meats, and all other agriculture products for the home and garden.

53. *Fence.* A manmade, unroofed structure, barrier, railing, or other upright structure, typically of wood or wire, enclosing an area of ground to mark a boundary, control access, or prevent escape.
54. *Feed Lot: Commercial.* A lot for the confined feeding of livestock, fowl, or fur animals where such feeding is not done as an accessory use to the production of crops on the premises of which the feed lot is a part.
55. *Fire Lane.* Path of egress—whether on public roads and highways or on private property—that is a continuous path of travel from any one point at a building or structure to any other point along that structure, so posted and marked as a fire lane.
56. *Floodway.* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot. It's also known as a *regulatory floodway*.
57. *Floor Area.* The total gross area on all floors as measured to the outside surfaces of exterior walls, excluding crawl spaces, garages, carports, breezeways, attics without floors and open porches, decks, balconies, and terraces.
58. *Forest Preserve.* An area of land meant to restore, restock, protect, and preserve the natural forests and lands, together with their flora and fauna, in their natural state and condition, for the purpose of the education, pleasure, and recreation of the public.
59. *Freight or Truck Yard Terminal.* An area of land, a portion of which is covered by a system of tracks, that provides for the making up of trains by one or more railroads or private industry concerns. Necessary functions of a railyard include but are not limited to the classifying, switching, storing, assembling, distributing, consolidating, moving, repairing, weighing, or transferring of cars, trains, engines, locomotives, and rolling stock.
60. *Front Lot-Line.* The line separating said lot from the street.
61. *Frontage.* All the property on one side of a street between 2 intersecting streets measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street.
62. *Garage.* A building or structure served by a driveway and used for the parking and storage of vehicles. May be designed to be served by heat, electricity, or plumbing and is placed on a permanent foundation.
63. *Government Agency.* Any department, commission, independent agency or instrumentality of the United States, of a state, county, incorporated or unincorporated municipality, township, authority, district, volunteer fire department, or other governmental unit.
64. *Group Home.* A residential structure that is licensed by the State of South Dakota or other government agency to provide room, board, and supervised care to persons. The term does not include continuous nursing care for unrelated adults over the age of 18.

65. *Guest House.* Living quarters within a detached accessory building located on the same premises with the main building for use by guests of the occupants of the premises.
66. *Hall.* A building that holds regular meetings and that maintain dining facilities, serve alcohol, or engage professional entertainment for the enjoyment of guests. There are no sleeping facilities.
67. *Height.* The vertical distance from the highest point on a structure, excepting any chimney or antenna on a building, to the average ground level of the grade where the walls or other structural elements intersect the ground. For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.
68. *Highway.* Every way or place of whatever nature open to the public, as a matter of right, for purposes of vehicular travel, is a highway. This includes private access easements and roadways.
69. *Historical Monuments or Structures.* Any structure or building existing contemporaneously with or commonly associated with the outstanding person, event or period of history, and any structure or building in which the relics or mementos of such person, event, or period are housed and preserved.
70. *Home Occupation.* A use conducted entirely within an enclosed structure (other than a mobile home) that is clearly incidental and secondary to the residential occupancy and does not change the character of the property.
71. *Home Office.* An occupation, profession, or activity conducted by members of the family residing on the premises and no additional employees that is clearly incidental use of a dwelling and does not alter the exterior appearance of the property or affect the residential character of the neighborhood. No home office shall be conducted in any accessory structures. A home office must not have any storage of materials, stock, or equipment, except for product samples stored wholly within the structure and customary office equipment used in the operating of the business; must not have any customer traffic physically visiting the dwelling; and must not have any signage advertising the home office or activity.
72. *Hotel.* A building designed, used, or offered for temporary residential occupancy, including tourist homes and motels, but not including hospitals or nursing homes.
73. *Individual Dwelling Unit.* A portion of a building containing sleeping, kitchen and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.
74. *Interim Use.* A temporary use of property until (a) a particular date; (b) the occurrence of a particular event; or (c) zoning regulations no longer permit it.
75. *Interior Lot.* A lot other than a corner lot.

76. *Isolated Cabins.* Isolated recreation cabins located on National Forest Land on sites not planned or designated for recreational cabin purposes. Use of these cabins originated from situations other than occupancy trespassed of invalid mining claims.
77. *Junk.* Used machinery, scrap, iron, steel, other ferrous and nonferrous metals, tools, implements, appliances or portions thereof, glass, plastic, paper or paper products, building materials, or other waste that has been abandoned from its original use and may be used again in its present or in a new form.
78. *Kennel.* A shelter for the breeding and boarding of 4 or more dogs that are at least 6 months of age.
79. *Kitchen.* A separate area in a residence principally used and equipped for cooking or preparing food for the nutritional needs of a family. The presence of a range or oven is considered in establishing a kitchen.
80. *Kitchenette.* A small area in a residence designated to allow some cooking activities. A kitchenette is part of the living space and fits into the decor and furnishings of a residence.
81. *Living Space.* All floor areas that are heated, thus providing accommodation for living, sleeping, eating, cooking, or any combination thereof.
82. *Loading Space.* A space within the building or on the same lot therewith, providing for the standing, loading, or unloading of a vehicle.
83. *Local Contact.* A local property manager, owner, or agent of the owner who is authorized to respond to questions, concerns, and emergencies.
84. *Lodge.* A membership organization that holds regular meetings and that may, subject to other regulations controlling such uses, maintain dining facilities, serve alcohol, or engage professional entertainment for the enjoyment of dues paying members and their guests. There are no sleeping facilities.
85. *Lot.* A portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and shall not include any part of the right-of-way of a street or road.
86. *Lot Area.* The total horizontal area included within the lot-lines.
87. *Lot Depth.* The average distance from the street line of the lot to its rear line, measured in the general direction of the sidelines of the lot.
88. *Lot-lines.* The lines bounding a lot as defined herein.
89. *Lot Width.* The width of a lot at the building setback line measured at right angles to its depth.

90. *Manufactured Home.* A factory-built, single-family structure that is:
 - a. manufactured under the authority of the National Manufactured Home Construction and Safety Standard Act of 1974 (effective June 15, 1976);
 - b. transportable in at least one section;
 - c. built on a permanent chassis; and,
 - d. used as a place of human habitation.
91. *Mobile Home.* A transportable, factory-built home, designed to be used as a year-round single-family dwelling and not constructed under the authority of the Federal Manufactured Housing Construction and Safety Standard Act of 1974 (effective June 15, 1976).
92. *Mobile Home Park.* Any parcel of land with a minimum of 10 mobile home spaces as herein defined are placed, located or maintained, or intended to be placed, located or maintained, including all accessory buildings used or intended to be used as part of the equipment thereof. In the mobile home park, all land is intended to be held in common ownership, with individual mobile home spaces rented to residents.
93. *Mobile Home Space.* A plot of ground within a mobile home park that is designed as the location for 1 mobile home and any customary accessory use.
94. *Model Home and Sales Office.* A dwelling used initially for display purposes that typifies the type of unit that will be sold and constructed, including accessory office space used for the sale of the dwellings.
95. *Modular Home.* A factory fabricated transportable building consisting of units installed on a permanent foundation construction, as per manufacture's recommendation, and used as a single-family dwelling.
96. *Motel.* A building or group of buildings used for the temporary residence of motorists or travelers.
97. *Motor Vehicle.* Every vehicle that is self-propelled by power other than muscular power.
98. *Motor Vehicle Repair Shop.* An area of land, including structures thereon, that is used for the repair and servicing of automobiles.
99. *Motor Vehicle Wrecking.* The dismantling, storage, sale, crushing or dumping of used motor vehicles, trailers or parts thereof, or the accumulation of 4 or more unlicensed vehicles in a residential area.
100. *Multiple-Family Dwelling.* A structure arranged, intended, and designed to be occupied by two, but not exceeding, four families living independently of each other. Each individual dwelling unit must be independent of each other and contain its own sleeping, kitchen and bathroom accommodations.
101. *Natural Area.* Land and water that has substantially retained its natural character or land and water that, although altered in character, is important as habitats for plant, animal, or marine life, for the study of its natural, historical, scientific, or paleontological features, or for the enjoyment of its natural features.

102. *Natural Feature*. Components and processes present or produced by nature, including soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, floodplains, aquatic life, and wildlife.
103. *Natural Resource*. Materials or substances such as minerals, rock, forests, water, and soil that occur in nature and can be used for economic gain.
104. *Noncommercial Automobile Wrecking Yard*. A lot or premises where used motor vehicles, mobile homes, trailers or parts thereof, are dismantled, stored, or dumped where said vehicles, or parts thereof, are to be used by the owner of the property. The presence on any lot or premises of 4 or more motor vehicles, whether licensed or unlicensed, which, for a period exceeding 30 days, have not been capable of operating under their own power or from which parts have been or are to be removed for reuse shall be classified as a noncommercial automobile wrecking yard. This definition does not apply to property meeting the criteria for classification of land as agricultural as determined by Pennington County's Director of Equalization.
105. *Noncommercial Junk or Salvage Yard*. A structure, lot, or premises where junk is stored, placed, packed, baled, disassembled, crushed, handled, or prepared for recycling. A noncommercial automobile wrecking yard is classified as a noncommercial junk or salvage yard.
106. *Nonconforming Use*. A building, structure, or use of land that:
- existed at the time of enactment of this Zoning Ordinance; and,
 - does not conform to the regulations of the district in which it is situated.
107. *Nursing Home*. A structure designed or used for residential occupancy and providing limited medical or nursing care on the premises for occupants, but not including a hospital or mental health center.
108. *On-site Wastewater Treatment System*. The following definitions apply to PCZO Section 331.
- Absorption Bed*. A subsurface absorption system that consists of excavations wider than 3 feet each, no more than 36 inches deep, containing a minimum depth of 12 inches of clean aggregate, together with a system of absorption lines, through which effluent may seep or leach into surrounding soils.
 - Absorption Field*. The soil through which wastewater from an absorption system percolates.
 - Absorption System*. A system that uses absorption lines (e.g., perforated pipe, gravelless pipe, or chambers) in trenches or beds to distribute wastewater to adjacent soils in an absorption field.
 - Absorption Trench*. A long, narrow excavation made in soil for the placement of an absorption line.
 - Alternative On-site Wastewater Treatment System*. A system for treatment and disposal of domestic wastewater or wastes that consist of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method that is not a conventional system. This does not include a surface discharge to the waters of the state.
 - Bedrock*. The rock, usually solid, that underlies soil or other unconsolidated, superficial material.

- g. *Building Sewer.* A pipe that conveys wastewater from a building to the first on-site wastewater treatment system component or sewer main.
- h. *Certification.* Program to substantiate the capabilities of a service provider by documentation of experience and learning.
- i. *Cesspool.* An underground pit into which raw household wastewater is discharged and from which the liquid seeps into the surrounding soil; it may or may not be partially lined; if septic tank effluent is discharged to such a component, then it is considered a seepage pit.
- j. *Chambered Trench.* A type of absorption system where the media consists of an open bottom, chamber structure of an approved material and design that may be used as a substitute for the gravel media with a perforated distribution pipe.
- k. *Change in Designation.* Any alteration or modification in the specified zoning, change in use (e.g., Conditional Use Permit), or change to platting for a parcel or property.
- l. *Cistern.* A watertight receptacle of nontoxic material designed for the storage of potable water.
- m. *Curtain Drain.* Any groundwater interceptor or drainage system that is gravel backfilled and is intended to interrupt or divert the course of shallow groundwater or surface water away from the on-site wastewater treatment system. It's also known as a *french drain*.
- n. *Dispersal System.* A system for the distribution of effluent into the final receiving environment by such methods as transpiration, evapotranspiration, soil absorption, or other DANR-approved dispersal methods.
- o. *Distribution Box.* A watertight structure that receives septic tank effluent and distributes it concurrently, in essentially equal portions, into 2 or more distribution pipes leading to an absorption system.
- p. *Distribution Pipe.* Approved perforated pipe used in the dispersion of septic tank effluent.
- q. *Domestic Wastewater.* Effluent from a septic tank or other treatment device originating from plumbing fixtures and appliances.
- r. *Drop Box.* A watertight structure that receives septic tank effluent and distributes it into one or more distribution pipes and into an overflow leading to another drop box and absorption system located at a lower elevation.
- s. *Effluent.* The partially or completely treated liquid waste discharge containing fecal and urinary waste from a wastewater treatment system.
- t. *Effluent Lift Pump.* A pump used to lift septic tank effluent to a disposal area at a higher elevation than the septic tank.
- u. *Ejector Pump.* A device to elevate or pump untreated sewage to a septic tank, public sewer, or other means of disposal.
- v. *Evapotranspiration System.* An imperviously lined dispersal system that uses a process of evaporation and plant transpiration to withdraw water from the soil.
- w. *Experimental On-site Wastewater Treatment System.* An on-site wastewater treatment or disposal system that is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptability.
- x. *Graywater.* The wastewater generated by water-using fixtures and appliances that do not discharge garbage or urinary or fecal wastes.

- y. *Graywater System.* A wastewater system designed to recycle or treat wastes from sinks, tubs, showers, washers, or other devices that do not discharge garbage or urinary or fecal wastes.
- z. *Grease Interceptor.* An outdoor unit similar to a septic tank, used to remove, by flotation, excessive amounts of grease and oils that may interfere with subsequent treatment of the waste. It's also known as a grease trap.
- aa. *Groundwater.* The portion of subsurface water that is in the zone of soil or rock saturation.
- bb. *Groundwater Table.* The surface of a body of unconfined groundwater in which the pressure is equal to that of the atmosphere.
- cc. *Groundwater Table: Perched.* Unconfined groundwater separated from an underlying body of groundwater by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground-water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed; or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.
- dd. *Installer.* Service provider who is certified to construct an on-site wastewater treatment system.
- ee. *Invert.* The lowest portion of the internal cross section of a pipe or fitting.
- ff. *Liquid Waste Operation.* Any business activity or solicitation in which liquid wastes are collected, transported, stored, or disposed of by a collection vehicle. This includes, but is not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.
- gg. *Liquid Waste Pumper.* Service provider who removes the contents of septic tanks, pump tanks, holding tanks, or advanced treatment units and disposes of the waste according to 40 C.F.R. part 503.
- hh. *Major Component Repair or Replacement.* Repairs to or replacement of an on-site wastewater treatment system major component include the following:
 - i. septic or holding tank removal or addition;
 - ii. addition, expansion, or replacement of drainfield area;
 - iii. change in type of system (*e.g.*, trench system to mound system);
 - iv. movement of system to a replacement area; or,
 - v. conversion to or from an alternative or experimental system.
- ii. *Malfunctioning or failing system.* An on-site wastewater treatment system that is not functioning in compliance with the requirements of this Ordinance includes the following:
 - i. absorption systems that seep or flow to the surface of the ground or into waters of the state;
 - ii. systems that have overflow from the absorption system;
 - iii. systems that, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building plumbing system;
 - iv. septic tanks or holding tanks that leak;
 - v. absorption systems installed in bedrock or in the groundwater table;
 - vi. steel septic tanks or steel holding tanks; or,

- vii. any other on-site wastewater treatment system not defined as a conventional or alternative system. (e.g., cesspools, seepage pits, or pit privies).
- jj. *Maximum Groundwater Table.* The highest elevation that the top of the *groundwater table* or *groundwater table: perched* is expected to reach for any reason over the full operating life of the on-site wastewater treatment system at that site as determined by the profile hole evaluation.
- kk. *Mound System.* An alternative on-site wastewater treatment system where the bottom of the absorption system is placed above the elevation of the existing site grade, and is contained in a mounded fill body above that grade.
- ll. *Non-domestic wastewater.* Water or liquid-carried waste, including, but not limited to, water or wastes from an industrial process resulting from industry, manufacture, trade, automotive repair, vehicle wash, business, or medical, activity; this wastewater may contain toxic or hazardous constituents.
- mm. *On-site Wastewater Treatment System.* A system designed to contain, distribute, or treat wastewater on or near the location where the wastewater is generated, including sewers, septic tanks, absorption fields, mound systems, evapotranspiration systems, vault privies, holding tanks, subsurface sand filters, graywater systems, pumping stations, dosing chambers, any equipment related to on-site wastewater treatment systems, or any other approved alternative or experimental system.
- nn. *Overlay District.* A district that is superimposed over 1 or more zoning districts or parts of districts and imposes specified requirements that are in addition to those otherwise applicable for the underlying zone.
- oo. *Owner.* A person or persons who are the owner of record of the land on which an on-site wastewater treatment system is to be or has been designed, constructed, installed, altered, extended, or operated
- pp. *Percolation Rate.* The time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.
- qq. *Percolation Test.* A soil test at the depth of a proposed absorption system to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed over an interval of time.
- rr. *Pollution.* Any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety.
- ss. *Potable Water.* The use of water for direct human consumption, human contact, or in the preparation of foods for human consumption.
- tt. *Public Health Hazard.* For the purpose of this Ordinance, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage that are likely to cause human illness, disorders, or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, toxic chemicals, and radioactive isotopes. A malfunctioning or failing on-site wastewater treatment system constitutes a public health hazard.
- uu. *Repair.* Action of fixing or replacing substandard or damaged components; repairs can be categorized as required repairs, recommended repairs, and upgrades.

- vv. *Replacement Area*. Sufficient land with suitable soil—excluding streets, roads, and permanent structures—that complies with the setback requirements of these rules, and is intended for the 100% replacement of absorption systems.
- ww. *Seepage Pit*. An excavation (deeper than it is wide) that receives septic tank effluent and from which the effluent seeps into the surrounding soil through the bottom and openings in the side of the pit; emphasis is on disposal rather than treatment.
- xx. *Septage*. The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.
- yy. *Septic Tank*. Water-tight, covered receptacle for treatment of sewage; receives the discharge of sewage from a building, separates settleable and floating solids from the liquid, digests organic matter by anaerobic bacterial action, stores digested solids through a period of detention, allows clarified liquids to discharge for additional treatment and final dispersal, and attenuates flows.
- zz. *Service Provider*. Any person who performs work in relation to on-site wastewater treatment systems; this includes installers, O&M service providers, and liquid waste pumpers.
- aaa. *Sewage*. Untreated wastes consisting of blackwater and graywater from toilets, baths, sinks, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.
- bbb. *Sewage Holding Tank*. A watertight receptacle that receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal at an approved site or treatment facility.
- ccc. *Sludge*. Accumulated solids and associated entrained water within a pretreatment component, generated during the coagulation, clarification or biological, physical, or chemical treatment of wastewater.
- ddd. *Soil Exploration Pit*. An open pit dug to permit examination of the soil to evaluate its suitability for absorption systems.
- eee. *Soil Scientist*. A person qualified to conduct soil surveys. A person is qualified if:
 - i. certified as a soils scientist or classifier by the ARCPACS (A Federation of Certifying Boards in Agronomy, Biology, Earth and Environmental Sciences); or
 - ii. educated in soil science, obtaining at least a Bachelor's degree in the subject.
- fff. *Static Water Level*. Elevation or level of the water table in a well when the pump is not operating or the level or elevation to which water would rise in a tube connected to an artesian aquifer or basin in a conduit under pressure.
- ggg. *Vault Privy*. An enclosed non-portable toilet into which non-water-carried human wastes are deposited to a subsurface storage chamber that is water tight.
- hhh. *Waste or Pollutant*. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, or agricultural waste discharged into water.

- iii. *Wastewater.* Clear water, storm water, industrial waste, sewage (domestic or nondomestic), or any combination thereof, carried by water.
 - jjj. *Water Supply.* A system of pipes and other structures through which water is obtained and distributed for consumption from springs, wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks, cisterns, or related appurtenances.
109. *Owner.* The person or entity that holds legal title, equitable title, or both to a private property.
110. *Parking Lot.* An off-street facility, including parking spaces, along with adequate provision for drives and aisles for maneuvering and giving access for entrance and exit, all laid out in a way to be usable for the parking of more than 6 automobiles.
111. *Parking Space.* An off-street space available for the parking of 1 motor vehicle and having an area of not less than 162 square feet nor less than 9 feet wide by 18 feet long, exclusive of passageways and driveways appurtenant thereto and giving access thereto and having direct access to a street or right-of-way.
112. *Permanent.* Designed, constructed, and intended for more than temporary or short-term use.
113. *Person.* All natural persons, trusts, partnerships, associations, cooperative corporations, limited liability companies, and corporations.
114. *Planning Director.* The person appointed by the Pennington County Board of Commissioners to supervise the Pennington County Planning & Zoning Department or designee.
115. *Planned Unit Development.* A development planned in accordance with the provisions of the Zoning Ordinance.
116. *Platted-Private Drive.* A tract of land delineated on a subdivision plat approved by the governing board for use as a street or road owned for use as a private way.
117. *Poultry Husbandry.* A lot, structure, or building used for the raising, feeding, breeding, or keeping of chickens, turkeys, or other poultry for marketing, slaughter, or the production of eggs. The term does not include a confined animal feeding operation.
118. *Principal Use.* The specific primary purpose for which land or building is used.
119. *Private-Water System.* A water supply system that provides water for human consumption to fewer than 15 service connections that regularly serves fewer than 25 individuals, or that serves 25 or more individuals for no more than 60 days per year.
120. *Private-Wastewater System.* See On-site Wastewater Treatment System.

121. *Produce*. Agricultural products, such as fresh fruits and vegetables, as distinguished from grain and other staple crops.
122. *Public Right-of-Way*. A strip of land dedicated or required for use as a public way.
123. *Public Utility Service Yard*. A building or structure used or intended to be used by any public utility, including but not limited to any gas treatment plant reservoir, tank, or other storage facility; water treatment plant, well, reservoir, tank, or other storage facility; electric generating plant, distribution, or transmission substation; telephone switching or other communications plant, earth station, or other receiving or transmission facility; any storage yard for public utility equipment or vehicles; and any parking lot for parking vehicles or automobiles to serve a public utility.
124. *Public-Water System*. A water supply system that provides water for human consumption to 15 or more service connections or that serves an average of 25 or more individuals for 60 or more days per year.
125. *Ranch-Hand Residence*. A dwelling, consisting of a modular or mobile home, for persons employed in the agricultural use of the property on which the dwelling is located. The property must taxed by the Pennington County Department of Equalization as agriculture.
126. *Rear Lot-Line*. The lot boundary opposite and most distant from the front lot-line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot-line, not less than 10 feet long and wholly within the lot.
127. *Recreation Residence*. A dwelling for use solely for residential use during the recreational season — May through September.
128. *Recreational Vehicle*. A vehicle that meets the following criteria:
 - a. built on a single chassis;
 - b. designed primarily as temporary living quarters for recreational, camping, travel or seasonal use, not to be used as a permanent dwelling; and,
 - c. that has a minimum of a food preparation area, storage area, bed and table.
129. *Resource-Utilization Uses*. Land uses that either preserve, recycle, reuse, or extract natural resources.
130. *Sanitary Sewer*. A municipal community or individual sewage disposal system of a type approved by the Planning Department.
131. *Screening*. A method of visually shielding or obscuring an abutting or nearby use or structure from another by fencing, walls, berms, or densely planted vegetation.
132. *Seasonal Dwelling*. A dwelling that does not meet DANR's minimum absorption area for a residential individual on-site wastewater treatment system. The dwelling cannot be occupied for more than 180 days in each year.

133. *Setback*. The required distance between every structure and any lot-line on the lot on which it is located.
134. *Shed*. An accessory structure, 12-feet-wide or less and 20-feet-long or less, often purchased pre-built or as a pre-fabricated kit, primarily used for general storage. It is not designed to be served by heat, electricity, or plumbing and does not need to be placed on a permanent foundation.
135. *Short-Term*. Less than 180-consecutive days.
136. *Side Lot-Line*. Any lot-line that meets the end of a front lot-line or any other lot-line.
137. *Signs, Billboards, and Other Advertising Structures*. The following definitions apply to PCZO Section 312.
- a. *Abandoned Sign or Billboard*. A sign or sign structure that is blank, obliterated, or displays obsolete advertising material for a period in excess of 12 continuous months. The 12-month period for determining if a sign is abandoned begins upon notification of violation to the offender.
 - b. *Advertising Sign*. A sign that directs attention to a business, commodity, service or entertainment conducted, sold, or offered elsewhere than on the premises and only incidentally on the premises, if at all.
 - c. *Back-to-Back Sign*. An off- or on-premises sign that consists of 2 sign facings oriented in the opposite direction with only 1 face per side.
 - d. *Business Sign*. A sign that directs attention to the business or profession conducted on the premises. A “For Sale,” “For Rent,” or “Information” sign is a business sign.
 - e. *Community Sign*. A sign not exceeding 32 square feet in area and approved by the County Board that directs attention to community events that are educational, cultural, or recreational in nature. In no event, however, shall such sign or part thereof contain a commercial advertising message.
 - f. *Directional Sign*. A sign erected for the convenience of the public, such as directing traffic movement, parking or identifying restrooms, public telephones, walkways and other similar features or facilities and bearing no advertising in the message.
 - g. *Double-Faced Sign*. An off- or on-premises sign with 2 adjacent faces oriented in the same direction and a maximum of 10-feet apart at the nearest point between the 2 faces.
 - h. *Face*. That portion of a sign structure upon which advertising is affixed or painted and visible only from a single direction.
 - i. *Off-Premises Sign*. A sign or billboard that advertises goods or services not available at the location of the billboard or advertising sign.
 - j. *On-Premises Sign*. A sign identifying an establishment's goods or services provided or available on the property upon which it is located; or signs advertising the sale or lease of the property upon which they are located.

- k. *Signs or Billboards.* Any sign defined in this Ordinance that:
 - i. displays or conveys any identification, description, illustration, or device illuminated or non-illuminated;
 - ii. directs attention to a product, service, business activity, institution, business, or solicitation, including any permanently installed or situated merchandise, or any emblem, painting, banner, pennant, or placard designed to advertise, identify, or convey information, with the exception of window displays.
 - l. *Sign Structure.* The sign face and support members that are permanently affixed to the ground or attached to a structure.
 - m. *Temporary Signs.*
 - i. Signs and sign structures that are:
 - a. temporary in nature;
 - b. used in conjunction with a specific event;
 - c. placed or erected in such a manner to be easily removed from the property; and
 - d. not permanently affixed.
 - ii. *Political Signs.* All political signs are temporary signs.
 - iii. *Size.* Temporary signs must not exceed 32 square feet in size.
- 138. *Single-Family Dwelling.* A building designed to be occupied exclusively by one family.
- 139. *Site- or Stick-Built Home.* A dwelling constructed on-site with a single kitchen that's designed for occupancy by only one family for cooking, living, and sleeping purposes.
- 140. *Street.* A public or private thoroughfare that affords the principal means of access to abutting property. It may be used interchangeably with *road*, *drive*, or *highway*.
- 141. *Street Line.* The legal line between street right-of-way and abutting property.
- 142. *Structure.* Any material or combination of materials, completely or partially constructed, that is erected in or upon the ground. This includes, but is not limited to, buildings; mobile homes; radio towers; sheds; signs; and storage bins. It also includes an object, including a mobile object, constructed or installed by man, including, but without limitation, these examples: buildings; towers; cranes; smokestacks; earth formation; and overhead transmission lines. It does not include sidewalks and paving on streets, driveways, parking areas, fences, earthwork, wind-breaks, and nonbusiness signs related to farming or ranching operations.
- 143. *Telecommunications Facility.* The following definitions apply to PCZO Section 316.
 - a. *Accessory Equipment.* Any equipment servicing or being used in conjunction with a Telecommunication Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, guy wires or other structures.

- b. *Administrator*. The Planning Director or individual designated by the Planning Commission to conduct the Administrative Review referred to in this Ordinance.
- c. *Administrative Approval*. The zoning approval that the Administrator is authorized to grant after Administrative Review.
- d. *Administrative Review*. The procedures established in PCZO § 316.
- e. *Antenna*. Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional and whip antennas.
- f. *Camouflaged Facility*. A Telecommunications Facility that resembles a tree or naturally occurring environmental feature, or, if the facility resembles or is a flagpole, antennas are snug or stealth mounted, or a flag is attached to the pole.
- g. *Carrier-On-Wheels or Cell-On-Wheels ("COW")*. A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna Support Structure.
- h. *Co-location*. The use of a Telecommunications Facility by more than 1 wireless telecommunications provider. Co-location also means locating wireless telecommunications facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new Support Structure.
- i. *Federal Aviation Administration ("FAA")*. A Federal agency that is responsible for the safety of civilian aviation.
- j. *Federal Communications Commission ("FCC")*. A Federal agency that regulates interstate and international communications by radio, television, wire, cable, and satellite.
- k. *Lattice Tower*. A Support Structure constructed of vertical metal struts and cross-braces forming a triangular or square structure that often tapers from the foundation to the top.
- l. *Major Modifications*. An improvement to existing wireless telecommunication facilities or support structures that result in a substantial change to the facility or structure. A telecommunication facility permit. The term includes any of the following:
 - i. extending the height of the support structure by more than 10% of its current height; The support structure does not meet the definition of *replacement* under these definitions.
- m. *Minor Modifications*. An improvement to existing wireless telecommunications facilities and support structures that result in some material change to the facility or support structure but of a level, quality, or intensity that is less than a substantial change. The term includes, but is not limited to, extending the height of the support structure by less than 10% of its current height; the expansion of the compound area for additional accessory equipment; and co-location of new telecommunications facilities to an existing support structure without replacement or extension of the structure.
- n. *Monopole*. A support structure that is constructed of a single, freestanding pole-type structure supporting at least 1 antenna.

- o. *Ordinary Maintenance.* This means ensuring that telecommunications facilities and support structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing, and modifications that maintain functional capacity and aesthetic and structural integrity. For example, the strengthening of a support structure's foundation or the support structure itself. Ordinary maintenance includes replacing antennas and accessory equipment on a like-for-like basis within an existing telecommunications facility and relocating the antennas of approved telecommunications facilities to different height levels on an existing tower upon which they are currently located. Ordinary Maintenance does not include minor and major modifications.
 - p. *Replacement.* This means constructing a new support structure of equal height and proportions to a preexisting support structure in order to accommodate co-location and removing the preexisting support structure.
 - q. *Stealth Telecommunications Facility.* A telecommunications facility that is designed so that the purpose of the facility is not readily apparent to a casual observer.
 - r. *Support Structure.* A structure primarily designed to support telecommunications facilities. For example, it includes, but is not limit to, monopoles, towers and other freestanding self-supporting structures.
 - s. *Telecommunications Facility.* An unmanned facility that is established for the purpose of providing wireless transmission of voice, data, images, or other information. Such a facility can consist of 1 or more antennas and accessory equipment or 1 base station.
 - t. *Telecommunications Facility Permit.* A telecommunications facility permit is required for all proposed facilities that serve as telecommunication sites for the purpose of providing wireless communications.
 - u. *Tower.* A lattice-type, guyed, or freestanding structure that supports at least 1 antenna.
 - v. *Tower Height.* The vertical distance measured from the ground to the upper most point of the telecommunications tower or antenna and all attachments.
144. *Temporary Campground.* An area for outdoor overnight accommodations and occupied by 20 or more people.
145. *Temporary Structure or Use.* Land uses and structures that are (a) needed or are in place for only short periods of time; (b) associated with a holiday or special event; or (c) accessory to a permitted use and transitory in nature. A *temporary structure* cannot be placed for more than 60 consecutive days in a calendar year. A Special Use Permit is required for a *temporary use* operating up to 180 consecutive calendar days. A Conditional Use Permit is required for a *temporary use* operating more than 180 consecutive calendar days.
146. *Townhouse.* Multiple-family or attached single-family dwellings in which the separate dwellings and the ground they occupy are individually owned while the common areas are jointly owned.

147. *Transfer*. As used in PCZO § 319(C)(5), *transfer* means the grant or conveyance of an ownership interest in a Vacation Home Rental property from one person to another person. The term does not include transfers among lawfully married spouses.
148. *Travel Trailer*. A portable or mobile home living unit designed for human occupancy away from the principal place, or residence of the occupants. *See Recreational Vehicle*.
149. *Unattached-Accessory Structure*. A subordinate structure detached from but located on the same lot as a principal building. The use of an accessory structure must be identical and accessory to the use of the principal building.
150. *Vacation Home Rental* ("VHR"). A dwelling that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental. This term does not include a bed and breakfast establishment as defined in SDCL 34-18-9.1(1).
151. *Waters of the State*. All waters within the jurisdiction of this state, including 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 on the state, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA other than cooling ponds as defined in 40 C.F.R. § 423.11(m) (July 1, 1991).
152. *Wedding Venue*. An establishment that primarily provides the facilities and services for weddings on a commercial basis. The term does not include churches and similar congregations where weddings are an ancillary use.
153. *Wholesaling*. The sale of goods or merchandise to retailers; to industrial, commercial, institutional, or other professional business users; or to other wholesalers and related subordinated services. In general, it is the sale of goods to anyone other than a standard consumer.
154. *Yard*. An open space between a building and the adjoining lot-lines, unoccupied and unobstructed by any portion of a structure from the ground upward except where otherwise specifically provided in these Zoning Ordinances that a building or structure may be located in a portion of a yard required for a principal structure. In measuring a yard for the purpose of determining the width of the side yard, the depth of the front yard or the depth of a rear yard, the shortest horizontal distance between the lot-line and the principal structure shall be used.
155. *Yard: Front*. An open unoccupied space on the same lot with a principal structure extending the full width of the lot and situated between the street line and the front line of the building projected to the side line of the lot. The depth of the front yard shall be measured between the front line of the building and the street line.
156. *Yard: Rear*. A space on the same lot with the principal structure, between the rear line of the structure and the rear line of the lot and extending the full width of the lot, that is unoccupied except for permitted accessory structures.

157. *Yard: Side.* An open unoccupied space on the same lot with the building and the sideline of the lot and extending from the front yard to the rear yard. Any lot-line, not a rear line or a front line, is a sideline.
158. *Zero Lot-Line.* A common lot line on which a wall of a structure may be constructed.
159. *Zero-Lot-Line Structure.* A multi-family dwelling located on a single lot-line that is (a) constructed as 1 unit (b) but is intended to be sold as separate home sites and (c) otherwise meets all requirements of the zone in which it is located.
160. *Zoning District.* See *District.*

SECTION 200 - ZONING DISTRICTS, ZONING MAP, AND USE REGULATIONS (REVISED 02-24-21)

This Ordinance provides for the division of land into different zoning districts that, in combination with the regulations pertaining to a district, are written in accordance with the goals of the Comprehensive Plan to promote the health, safety, and general welfare.

SECTION 201 - ESTABLISHMENT OF DISTRICTS

To promote the health, safety, and general welfare, Pennington County creates and divides itself into these zoning districts:

Agriculture	AG
Ranchette	RCH
Rural Residential	RR
Low Density Residential	LDR
Suburban Residential	SR
Urban Residential	UR
Commercial	C
Highway Service	HS
Light Industrial	LI
Heavy Industrial	HI
Planned Unit Development	PUD
Open Space	OS
Native American Lands	NAL

The zoning districts, as well as the general provisions that apply to each district, are described in this Ordinance.

SECTION 202 - OFFICIAL ZONING MAP (Revised 06-23-21)

Zoning districts established by this Ordinance are shown on the official zoning map of Pennington County. That map, which is a digital compilation within the County's geographic information system, is incorporated by this reference and will be used to enforce this Ordinance. A hardcopy of the map is on file at the Planning Department. The areas depicted on the map as Planned Unit Developments may continue (1) on the same terms and conditions of approval if the approval occurred before February 24, 2021, and (2) in accordance with PCZO § 216. The areas within the incorporated limits of a city are not under the County's zoning authority. Those areas are shown and labeled on the map accordingly. The Planning Director is responsible for updating and maintaining the map.

SECTION 203 - INTERPRETATION OF THE OFFICIAL ZONING MAP

If there is any uncertainty, contradiction, or conflict about the intended location of any zoning-district boundary as shown on the official zoning map, then the Planning and Zoning Director, upon request, must interpret the map. In doing so, the Director must apply the standards listed below.

- A. The primary method of interpreting the map consists of these three categories of information:
 - 1. the property boundaries shown on recorded or approved plats, tracts, lots, parcels, or acreages;
 - 2. the records of the Board's action in approving those recorded or approved plats, tracts, lots, parcels, or acreages; and
 - 3. all documents submitted to the Planning Department for those recorded or approved plats, tracts, lots, parcels, or acreages.
- B. Unless fixed by dimensions shown on the official zoning map, boundary lines for all zoning districts follow:
 - 1. lot-lines;
 - 2. the centerlines of alleys, streets, right-of-ways, railroad lines, or water courses; or,
 - 3. the jurisdictional boundaries of political subdivisions.
- C. Whenever a street, alley, section line, or public easement is vacated, then the zoning-district classification of the property that the vacated portions of land accrue will become the classification of the vacated land.

The Planning Director's decision is subject to review under SDCL 11-2-53.

SECTION 204 - GENERAL DISTRICT PROVISIONS

The following provisions apply to all zoning districts and further modify or define provisions within each district.

- A. *Accessory Uses.* To qualify as an accessory use, a use must
 - 1. Be customarily incidental to the principal use established on the same lot;
 - 2. Be subordinate to and serve the principal use;
 - 3. Be subordinate in extent and purpose to the principal use;
 - 4. Contribute to the comfort, convenience, or necessity of users of the principal use; and,
 - 5. Conform with the uses-by-right allowed in a zoning district.
- B. *Home Occupation.* A home occupation is a use incidental and secondary to a property's primary residential use. A home occupation use shall not change the residential character of the property or neighborhood and must be conducted wholly within a principal structure or accessory structure by a member of the family who resides in the primary residence.

- C. *Temporary Uses.* To qualify as a *temporary use*, the use must be (1) seasonal or transient in nature, (2) neither permanent nor alters the intent of the zoning district, (3) and lasts more than 180 consecutive days, but less than 365 consecutive calendar days. A Special Use Permit or Conditional Use Permit may be required before engaging in a *temporary use*. **(Revised 12-07-22)**
- D. *Height.* Each zoning district has a maximum height, but exceptions to that maximum exist. Those exceptions include uses that are normally found within a district, such as a church spire, chimney, utility pole, or communication tower and antenna. Even so, the exceptions do not:
1. allow for structures that are not clearly incidental to the primary use; or,
 2. infer, in any way, exceptions to height requirements within any FAA or military-controlled airfield flight patterns.
- E. *Conditional Uses.* Within each district, all uses that are not allowed-by-right are Conditional Uses. Conditional Uses require a permit issued under PCZO § 510 unless a more specific section regulates the use.
- F. *Dead-End Road System.* In all zoning districts, a dead-end road system must not exceed 40 dwelling units and 2 miles in cumulative length (as measured along the centerline of all roads from intersection to intersection or center of terminus). **(Revised 04-12-23)**
- G. *One Principal Structure Per Lot.* Only one principal structure and its accessory structures may be erected on any lot. This subsection does not apply to the following districts: Commercial, Highway Service, Light Industrial and Heavy Industrial.
- H. *Section Line Setbacks:*
- In all zoning districts, any part of any principal or accessory building or structure shall be set back a minimum of fifty-eight (58) feet from a Section Line. No set back shall be required from any legally vacated section line; however, if the vacated Section Line forms a property line, the applicable side, rear, or front yard setbacks shall be observed.
- I. *Standards for Homes: Mobile, Manufactured, Modular, Site, and Stick-Built.* The following standards apply to mobile, manufactured, modular, site, and stick-built homes: **(Revised 05-26-21)**
1. *Building Materials.* A home must be constructed out of any of the following materials:
 - a. wood;
 - b. metal;
 - c. stone;
 - d. brick;
 - e. stucco;
 - f. masonry;

- g. adobe;
 - h. concrete block;
 - i. precast; or,
 - j. concrete.
2. *Foundation.* The supporting substructure of a building or other structure, including anchoring, blocking, expandable sections, leveling, securing, supporting, or the like.
 3. *Roof.* The roof for a home must:
 - a. have a minimum pitch of 2.5;
 - b. have a maximum pitch of 12; and,
 - c. be nonreflective.
 4. *Siding.*
 - a. *Material.* Siding must be constructed out of any of the following non-reflective materials:
 - i. adobe;
 - ii. brick;
 - iii. masonry;
 - iv. metal;
 - v. simulated wood;
 - vi. stone;
 - vii. stucco;
 - viii. vinyl;
 - ix. wood; or,
 - x. concrete.
 - b. *Reflections.* Siding must be constructed out of any of the following non-reflective materials:
 5. *Minimum Dimensions for Site and Stick-Built.* The minimum dimensions of any site or stick-built single-family residence is 20 feet by 20 feet. That includes area within a larger building (e.g., shop or barn building).
 6. *Water Connection.* The domestic water connection must be identical to the requirements of any dwelling in that zoning district; and in accordance with PCZO §204-L.
 7. *On-site Wastewater.* The on-site wastewater treatment system must comply with PCZO §§ 204-J and 204-M.
 8. *Compliance with PCZO §304.* All mobile, manufactured, and modular homes must comply with PCZO § 304.

J. On-Site Wastewater Treatment (Septic) Systems (**Revised 04-12-23**).

In all zoning districts where public sewer or a community wastewater lagoon is not available for the collection and treatment of domestic wastewater, installation of an on-site wastewater treatment (septic) system (OSWTS) is required. All on-site wastewater treatment systems must meet the requirements set forth in § 331 of the Zoning Ordinance.

K. Adult Oriented Businesses:

It is recognized that there are some uses, which because of their very nature, are recognized as having serious objectionable operational characteristics, and are not compatible with certain uses. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding area.

No more than one adult use may be established, operated, or maintained within 2,500 feet of another adult use as measured from the closest point of the outside wall of the building or tenant space.

None of the following uses may be established, operated, or maintained within one thousand (1,000) feet of a residential dwelling, a residential district, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park, as measured from the closest point of the property lines.

1. Adult bookstore.
2. Adult theater.
3. Adult photo studio.
4. Adult cabaret.
5. Adult motel.
6. Nude model studio.
7. Adult video store.
8. Adult novelty store.

Any Conditional Use approved by the Planning Commission or County Commission shall conform to the standards set forth for such uses below. These standards shall be construed to be the minimum requirements for any of the specified conditional uses, and the Planning Commission or County Commission can require additional stipulations at their discretion. In all cases, the impact of the proposed use on the adjacent properties will be a major consideration.

1. That the proposed use will not be injurious to adjacent properties and that the spirit and intent of this Ordinance will be observed.
2. That the proposed use will not enlarge or encourage the development of a "skid row" area or reduce the property values within 1,000 feet of the subject property.

3. That the establishment of such use will not be contrary to any program of neighborhood conservation nor will it interfere with any program of urban renewal.
 4. That all applicable regulations of this Ordinance will be observed.
 5. That the normal and orderly development and improvement of adjacent vacant properties will not be negatively impacted.
 6. That the proposed use(s) will not produce offensive odors, fumes, dust, noise, vibration, or lighting in any amount that will constitute a nuisance.
- L. *Central-Water System.* To have a central-water system, the requirements listed below must be met.
1. *Approval by Planning Department.* All central-water systems must be approved by the Planning Department.
 2. *Minimum Lot Requirements.*
 - a. *Central-Water System.* If there's a central-water system that's been approved by the Planning Department, then a lot's surface area must be at least 20,000 square feet to have an on-site wastewater system. That minimum does not include dedicated-public roads or private-platted drives.
 - b. *Private Well.* If there's a private well on a lot, then a lot's surface area must be at least 43,560 square feet to have an on-site wastewater system. That minimum does not include dedicated-public roads or private-platted drives.
 - c. *Central-Water System and a Central-Sanitary Sewer.* If there's a central-water system and a central-sanitary sewer, both of which that have been approved by the Planning Department, then a lot's surface area must be at least 6,500 square feet. That minimum does not include dedicated-public roads or private-platted drives.
- M. *Minimum Lot Requirements for Wastewater Treatment.* To have an on-site wastewater treatment system, the minimum lot requirements listed below must be met:
1. *Minimum Surface Area – Generally.* A lot's surface area must be at least 20,000 square feet to have an on-site wastewater system. That minimum does not include dedicated-public streets or platted-private drives.
 2. *Minimum Surface Area – Potable Water.* A lot's surface area must be at least 43,560 square feet to have an on-site wastewater system if potable water is supplied by a private water system that's located on the lot. That minimum does not include dedicated-public streets or platted-private drives.
 3. *Minimum Surface Area – Cistern.* A lot's surface area must be at least 20,000 square feet to have an on-site wastewater system if potable water is supplied by a cistern. That minimum does not include dedicated-public streets or platted-private drives.

- N. *Screening.* Screening is required when land that's zoned Commercial, Light Industrial, Heavy Industrial, Highway Service, or Planned Unit Development abuts a residential district. The screening material—whether manmade or natural—must provide sufficient visual and audial buffer.
- O. *Floodplain.* The Pennington County Flood Damage Prevention Ordinance governs all floodplain issues.

The Table below denotes lot size, height, and setback requires for the zoning districts in Zoning Ordinance §§ 205-217.

Zoning District		Minimum Lot Area		Minimum Lot Width	Minimum Frontage Along ROW	Minimum Setback Requirement (in feet)					Maximum Height of Structures
		Square Feet	Acres	Feet	Feet	Front	Side	Rear	Side on Corner Lot	Section Line ROW	Feet
AG	Agriculture		10	None	None	25	25	25	25	58	None ¹
RCH	Ranchette		5	50	25	25	25	25	25	58	35
RR	Rural Residential		3	75	25	25	25	25	25	58	35
LDR	Low Density Residential		0.5	50	25	25 ²	8	25 ^{3,4}	25	58	35
SRD	Suburban Residential	6,500		50	25	25 ²	8	25 ^{3,4}	25	58	35
UR	Urban Residential	6,000		25	25	20 ²	8	25 ^{3,4}	25	58	35
C	Commercial	7,500		75	25	25	10 ⁵	10 ⁵	25	58	35 ⁶
HS	Highway Service	7,500		75	50	25	10 ⁵	10 ⁵	25	58	35 ⁷
LI	Light Industrial	20,000		100	50	25	15 ⁸	25 ⁸	25	58	45
HI	Heavy Industrial	20,000		100	50	25	25 ⁹	25 ¹⁰	25	58	None
OS	Open Space	None ¹¹	5	None	50	25	25	25	25	58	None ¹

1. If an accessory structure is greater than 5,000 square feet or 35 feet in height, then it cannot be located within 500 feet of any residential-zoning district.
2. Uncovered decks must have, at minimum, a 15-foot setback.
3. Unattached-accessory structures cannot be located within 8 feet of the rear lot-line.
4. Decks that are attached to the principal structure must have, at minimum, a 15-foot rear-yard setback.
5. This setback cannot be less than 30 feet if abutting a residential district or a structure is serviced from the rear.
6. No accessory structure may exceed 25 feet in height.
7. No accessory structure may exceed 20 feet in height.
8. This setback cannot be less than 50 feet if abutting a residential district.
9. This setback cannot be less than 75 feet if abutting a residential district.
10. This setback cannot be less than 50 feet if abutting a street or residential district.
11. This applies only to agricultural and natural areas.

SECTION 205 - AG AGRICULTURE DISTRICT (REVISED 07-20-22)

The Agriculture District provides for large tracts of land that are dedicated to agricultural or resource-utilization uses.

- A. *Allowed Uses.* The following uses are allowed-by-right in the Agriculture District.
1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
 2. Animal and poultry husbandry.
 3. Apiculture (*i.e.*, beekeeping).
 4. Business and Community signs.
 5. Distributed Solar Energy System. The system must comply with PCZO § 317.
 6. Distributed Wind Energy System. The system must comply with PCZO § 317.
 7. Efficiency Dwelling. Such dwelling must comply with PCZO § 330.
 8. Family daycare home.
 9. Farming and harvesting. These terms do not include fur farms.
 10. Forest preserves.
 11. Grain elevators.
 12. Historical monuments and structures.
 13. Home offices.
 14. Meteorological tower that is part of a wind farm. The tower must comply with PCZO § 317.
 15. Nurseries and greenhouses.
 16. Open spaces and trails.
 17. Ranch-hand residence.
 18. Ranching and grazing. Those terms do not include commercial feed lots, fur farms, or rendering plants.
 19. Roadside stands that exclusively sell produce grown on the premises.
 20. Sawmill
 21. Single-family dwelling: detached. Only one (1) dwelling per lot is allowed.
 22. Sod and tree farming.
 23. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
 24. Transportation and utility easements and rights-of-way.
 25. Water treatment, purification, storage, and pumping facilities.
- B. *Conditional Uses.* If a use is not allowed-by-right in the Agriculture District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Minimum Lot Requirements.*
1. *Lot Area.*
 - a. *General Rule.* The minimum lot size is 10 acres. That minimum does not include dedicated-public streets or platted-private drives.

- b. *Exception.* The minimum lot size for a sawmill is 40 acres. That minimum does not include dedicated-public streets or platted-private drives.
 - 2. *Lot Dimensions and Access.*
 - a. *Lot Dimensions.* There are no required lot dimensions.
 - b. *Access.* There must be adequate access to the lot.
- D. *Density.* Only one (1) dwelling per lot is allowed.
 - 1. *Exception.* One (1) additional dwelling per lot is allowed as a ranch hand's residence.
- E. *Minimum Setback Requirements.* The minimum front, side, and rear setback for all structures is 25 feet.
- F. *Structure Placement and Lot Coverage.* If an accessory structure exceeds 5,000 square feet in area or 35 feet in height, then the structure must not be located within 500 feet of any residential-zoning district.
- G. *Maximum Height.* The maximum height is 35 feet.

SECTION 206 – RCH RANCHETTE DISTRICT

The Ranchette District establishes areas that provide a bridge between Rural Residential and Agriculture Districts.

- A. *Allowed Uses.* The following uses are allowed-by-right in the Ranchette District.
 - 1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204(A).
 - 2. Apiculture (*i.e.*, beekeeping).
 - 3. Community Signs.
 - 4. Distributed Solar Energy System. The system must comply with PCZO § 317.
 - 5. Distributed Wind Energy System. The system must comply with PCZO § 317.
 - 6. Family daycare home.
 - 7. Farming and harvesting. These terms do not include fur farms.
 - 8. Historical monuments and structures.
 - 9. Home offices.
 - 10. Nurseries and greenhouses.
 - 11. Ranching and grazing. These terms do not include commercial-feed lots or rendering plants.
 - 12. Roadside stands that exclusively sell produce grown on the premises.
 - 13. Single-family dwelling: detached. Only one (1) dwelling per lot is allowed.
 - 14. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
 - 15. Transportation and utility easements and rights-of-way.
 - 16. Water treatment, purification, storage, and pumping facilities.

- B. *Conditional Uses.* If a use is not allowed-by-right in the Ranchette District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Minimum Lot Requirements.*
1. *Lot Area.* The minimum lot size is 5 acres. That minimum does not include dedicated-public streets or platted-private drives.
 2. *Lot Dimensions and Access.*
 - a. *Lot Width.* The minimum lot width is 50 feet.
 - b. *Access.* Lots must:
 - i. abut a dedicated-public street for a distance of at least 25 feet; or,
 - ii. have access to a public street by way of a platted-private drive or an easement approved under PCZO § 313.
- D. *Density.* Only one (1) dwelling per lot is allowed.
- E. *Minimum Setback Requirements.* The minimum front, side, and rear setback for all structures is 25 feet.
- F. *Maximum Height.* The maximum height for all structures is 35 feet.

SECTION 207 - RR RURAL RESIDENTIAL DISTRICT

Rural Residential establishes large-lot residential development in three areas: natural, agricultural, or surrounding open space.

- A. *Allowed Uses.* The following uses are allowed-by-right in the Rural Residential District.
1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
 2. Community Signs.
 3. Distributed Solar Energy System. The system must comply with PCZO § 317.
 4. Distributed Wind Energy System. The system must comply with PCZO § 317.
 5. Family daycare home.
 6. Home offices.
 7. Single-family dwelling: detached. Only One (1) dwelling per lot is allowed.
 8. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
 9. Temporary structures for uses incidental to construction work. Those structures must
 - a. be located immediately adjacent to the construction work;
 - b. be removed upon completion or abandonment; and,
 - c. comply with PCZO § 506.
 10. Transportation and utility easements and rights-of-way.

- B. *Conditional Uses.* If a use is not allowed-by-right in the Rural Residential District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Minimum Lot Requirements.*
 - 1. *Lot Area.* The minimum lot size is 3 acres. That minimum does not include dedicated-public streets or platted-private drives.
 - 2. *Lot Dimensions and Access.*
 - a. *Lot Width.* The minimum lot width at the front-building line is 75 feet.
 - b. *Access.* Lots must:
 - i. abut a dedicated-public street for a distance of at least 25 feet; or
 - ii. have access to a public street by way of a platted-private drive or an easement under PCZO § 313.
- D. *Density.* Only one (1) dwelling per lot is allowed.
- E. *Minimum Setback Requirements.* The minimum front, side, and rear yard setback for all structures is 25 feet.
- F. *Maximum Height.* The maximum height for all structures is 35 feet.

SECTION 208 – LDR LOW DENSITY RESIDENTIAL DISTRICT

The Low Density Residential District establishes areas of semi-rural residential uses. These are areas where higher density development may not be suitable because topography, geology, or drainage.

- A. *Allowed Uses.* The following uses are allowed-by-right in the Low Density Residential District.
 - 1 Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
 - 2 Community Signs.
 - 3 Distributed Solar Energy System. The system must comply with PCZO § 317.
 - 4 Distributed Wind Energy System. The system must comply with PCZO § 317.
 - 5 Family daycare home.
 - 6 Home offices.
 - 7 Single-family dwelling: detached. Only one (1) dwelling per lot is allowed.
 - 8 Telecommunication Facilities. Those facilities must comply with PCZO § 316.
 - 9 Temporary structures for uses incidental to construction work. Those structures must:
 - a. be located immediately adjacent to the construction work;
 - b. be removed upon completion or abandonment; and
 - c. comply with PCZO § 506.
 - 10 Transportation and utility easements and rights-of-way.

- B. *Conditional Uses.* If a use is not allowed-by-right in the Low Density Residential District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Minimum Lot Requirements.*
1. *Lot Area.* The minimum lot size is 0.5 acres. That minimum does not include dedicated-public streets or platted-private drives.
 2. *Lot Dimensions and Access.*
 - a. *Lot Width.* The minimum lot width at the front-building line is 50 feet.
 - b. *Access.* Lots must:
 - i. abut a dedicated-public street for a distance of at least 25 feet; or,
 - ii. have access to a public street by way of a platted-private drive or an easement under PCZO Section 313.
- D. *Density.* Only one (1) dwelling per lot is allowed.
- E. *Minimum Setback Requirements.*
1. *Front Yard.*
 - a. *General Rule.* The minimum front-yard setback for all structures is 25 feet.
 - b. *Exception.* The minimum front-yard setback for an uncovered deck is 15 feet.
 2. *Side Yard.* The minimum side-yard setback for all structures is 8 feet.
 3. *Rear Yard.*
 - a. *Principal Structure.* The minimum rear-yard setback is 25 feet.
 - b. *Unattached-Accessory Structures.* The minimum rear-yard setback for all unattached-accessory structures is 8 feet from the rear lot-line.
 - c. *Attached Decks to the Principal Structure.* The minimum rear-yard setback for all decks that are attached to the principal structure is 15 feet.
- F. *Maximum Height.* The maximum height for all structures is 35 feet.

SECTION 209 – SR SUBURBAN RESIDENTIAL DISTRICT

The Suburban Residential District establishes areas that provide for a suburban lifestyle with single-family residential communities.

- A. *Allowed Uses.* The following uses are allowed-by-right in the Suburban Residential District.
1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
 2. Community Signs.
 3. Distributed Solar Energy System. The system must comply with PCZO § 317.

4. Distributed Wind Energy System. The system must comply with PCZO § 317.
 5. Family daycare home.
 6. Home offices.
 7. Single-family dwelling: detached. Only one (1) dwelling per lot is allowed.
 8. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
 9. Temporary structures for uses incidental to construction work. Those structures must:
 - a. be located immediately adjacent to the construction work;
 - b. be removed upon completion or abandonment; and,
 - c. comply with PCZO § 506.
 10. Transportation and utility easements and rights-of-way.
- B. *Conditional Uses.* If a use is not allowed-by-right in the Suburban Residential District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Minimum Lot Requirements.*
1. *Lot Area.* The minimum lot size is 6,500 square feet. That minimum does not include dedicated-public streets or platted-private drives.
 2. *Lot Dimensions and Access.*
 - a. *Lot Width.* The minimum lot width at the front-building line is 50 feet.
 - b. *Access.* Lots must:
 - i. abut a dedicated-public street for a distance of at least 25 feet; or,
 - ii. have access to a public street by way of a platted-private drive or an easement under PCZO Section 313.
- D. *Density.*
1. *General Rule.* Only 6 dwellings per 1 acre is allowed.
 2. *Cluster Housing.* If a subdivision is developed for cluster housing, then the developer may obtain a Variance that adds an additional 500 square feet per lot.
 - a. *Example.* Under conventional development, a 10-acre site would yield a maximum of 60 home sites. But if the Variance were granted, 72 home sites would be available.
 - b. *Requirements.* In addition to the requirements for a Variance, the subdivider seeking this Variance must show adequate provision has been made to ensure that:
 - i. common-open space abuts the cluster housing; and,
 - ii. no future subdivision of the common-open space will occur.
 - c. *Approval Needed for Sewer and Water.* The Planning Department must approve sewer and water systems for cluster housing.

- E. *Minimum Setback Requirements.*
1. *Front Yard.*
 - a. *General Rule.* The minimum front-yard setback for all structures is 25 feet.
 - b. *Exception.* The minimum front-yard setback for an uncovered deck is 15 feet.
 2. *Side Yard.* The minimum side-yard setback for a dwelling located on an interior lot is 8 feet.
 3. *Rear Yard.*
 - a. *Principal Structure.* The minimum rear-yard setback for a principal structure is 25 feet.
 - b. *Unattached-Accessory Structures.* The minimum rear-yard setback for all unattached-accessory structures is 8 feet from the rear lot-line.
 - c. *Attached Decks to the Principal Structure.* The minimum rear-yard setback for all decks attached to the principal structure is 15 feet.
- F. *Maximum Height.* The maximum height for all structures is 35 feet.

SECTION 210 – UR URBAN RESIDENTIAL DISTRICT (REVISED 10-27-21)

The Urban Residential District establishes areas that provide residential development in urban locations, focusing on high-density single-family and multiple-family dwellings.

- A. *Allowed Uses.* The following uses are allowed-by-right in the Urban Residential District.
1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
 2. Community Signs.
 3. Distributed Solar Energy System. The system must comply with PCZO §317.
 4. Family daycare home.
 5. Home offices.
 6. Multiple-family dwelling. Such a dwelling must comply with PCZO § 303.
 7. Single-family dwelling; detached. Only one (1) dwelling per lot is allowed.
 8. Temporary structures for uses incidental to construction work. These structures must
 - a. be immediately adjacent to the construction work;
 - b. be removed upon completion or abandonment; and
 - c. comply with PCZO § 506.
 9. Transportation and utility easements and rights-of-way.
 10. Zero-lot-line dwellings (e.g., townhomes, paired homes).
- B. *Conditional Uses.* If a use is not allowed-by-right in the Urban Residential District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.

C. *Minimum Lot Requirements.*

1. *Lot Area.*

- a. *Single-family dwelling.* The minimum lot size is 6,000 square feet. That minimum does not include dedicated-public streets or platted-private drives.
- b. *Multiple-family dwellings.* The minimum lot size is 7,500 square feet for up to two dwelling units and 1,500 square feet for each additional dwelling unit. That minimum does not include dedicated-public streets or platted-private drives

2. *Lot Dimensions and Access.*

- a. *Lot Width.* All lots must have a minimum lot width of 50 feet at the front-building line.
- b. *Access.* Lots must:
 - i. abut a dedicated-public street for a distance of at least 25 feet; or,
 - ii. have access to a public street by way of a platted-private drive or an easement approved under PCZO § 313.

D. *Density.*

1. *Single family.* Only one (1) single-family dwelling that is detached per lot.
2. *Multiple family.* Only a maximum of 16 multiple-family dwellings per 1 acre is allowed.

E. *Minimum Setback Requirements.*

1. *Front Yard.*

- a. *Single-family dwelling.*
 - i. *General Rule.* The minimum front-yard setback for all structures is 20 feet.
 - ii. *Exception.* The minimum front-yard setback for an uncovered deck is 15 feet.
- b. *Multiple-family dwelling.* The minimum front yard setback for all structures is 25 feet.

2. *Side Yard.*

- a. *Dwelling.* The minimum side-yard setback for a dwelling located on an interior lot is 8 feet.
 - i. *Exception.* For multiple-family dwellings of more than 1 story, there shall be a side-yard setback of 12 feet.

3. *Rear Yard.*

- a. *Principal Structure.* The rear-yard setback must be at least 25 feet.
- b. *Unattached-Accessory Structures.* The minimum rear-yard setback for all unattached-accessory structures is 8 feet from the rear lot-line.
- c. *Attached Decks to the Principal Structure.* The minimum rear-yard setback for all decks attached to the principal structure is 15 feet.

F. *Maximum Height.* The maximum height for all structures is 35 feet.

SECTION 211 – C COMMERCIAL DISTRICT

The Commercial District establishes areas of development aimed at fulfilling the day-to-day needs of the year-round population. Development should be scaled to complement the surrounding neighborhoods.

A. *Allowed Uses.* The following uses are allowed-by-right in the Commercial District.

1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
2. Art galleries.
3. Auditoriums.
4. Bakeries.
5. Barber shops.
6. Barber schools.
7. Beauty shops.
8. Beauty schools.
9. Building-material sales.
10. Bus stations.
11. Business schools.
12. Churches or places of worship.
13. Clubs.
14. Commercial recreation facilities.
15. Community centers.
16. Distributed Solar Energy System. The system must comply with PCZO § 317.
17. Distributed Wind Energy System. The system must comply with PCZO § 317.
18. Drinking establishments.
19. Drive-in eating establishments.
20. Eating establishments.
21. Fairgrounds.
22. Financial and credit institutions.
23. Funeral homes.
24. Garment shops.
25. Group homes.
26. Hotels and motels.
27. Laboratories.
28. Lodges or halls.
29. Libraries.
30. Medical or dental office. This includes a medical clinic.
31. Medical-supply shops.
32. Mobile-home sales. That includes the sale of prefabricated and shell homes.
33. Motor-vehicle rentals.
34. Motor-vehicle repairs.
35. New and used farm implement, machinery, and heavy-equipment sales.
36. New and used motor-vehicle sales. That includes trailers.

37. Offices and studios.
 38. Outdoor advertising and community signs. The advertisements and signs must comply with PCZO § 312.
 39. Parking lots and garages.
 40. Pawn shops or second-hand stores.
 41. Public-service structures.
 42. Retail businesses.
 43. Service stations and garages.
 44. Shoe-repair shops.
 45. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
 46. Transportation and utility easements and rights-of-way.
 47. Vacation Home Rental. A Vacation Home Rental must comply with PCZO § 319.
 48. Vocational schools.
- B. *Conditional Uses.* If a use is not allowed-by-right in the Commercial District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Prohibited Uses.* If a use fits more appropriately in Light Industrial, Heavy Industrial, or Highway Service, then it is prohibited in the Commercial District
- D. *Minimum Lot Requirements.*
1. *Lot Area.* The minimum lot size is 20,000 square feet. That minimum does not include dedicated-public streets or platted-private drives.
 2. *Lot Dimensions and Access.*
 - a. *Lot Width.* The minimum lot width at the front-building line is 75 feet.
 - b. *Access.* At least 25 feet of the front-building line must abut a public right-of-way.
- E. *Minimum Setback Requirements.*
1. *Front Yard.* The minimum front-yard setback for all structures is 25 feet.
 2. *Side Yard.*
 - a. *General Rule.* The minimum side-yard setback is 10 feet.
 - b. *Exception.* If the side yard abuts a residential district, then the minimum side-yard setback is 30 feet.
 3. *Rear Yard.*
 - a. *General Rule.* The minimum rear-yard setback for all lots is 10 feet.
 - b. *Exception.* If a commercial structure is serviced from the rear, abuts a residential district, or abuts a street, then the minimum rear-yard setback is 30 feet.

- F. *Maximum Height.*
1. *Principal Structure.* The maximum height is 35 feet.
 2. *Accessory Structure.* The maximum height is 25 feet.
- G. *Off-Street Parking.* It must comply with PCZO § 310.

SECTION 212 – HS HIGHWAY SERVICE DISTRICT

The Highway Service District establishes areas of commercial development oriented towards tourist-related activities—not the year-round population.

- A. *Allowed Uses.* The following uses are allowed-by-right in the Highway Service District.
1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
 2. Amusement structures and uses.
 3. Auction house, except for the sale of livestock.
 4. Bus stations.
 5. Coin-operated laundry and dry-cleaning establishments.
 6. Distributed Solar Energy System. The system must comply with PCZO § 317.
 7. Distributed Wind Energy System. The system must comply with PCZO § 317.
 8. Drinking establishments.
 9. Drive-in eating establishments.
 10. Eating establishments.
 11. Historical monuments and structures.
 12. Hotels and motels.
 13. Medical or dental office. This includes a medical clinic.
 14. Model-home-sales office.
 15. Museums
 16. Outdoor advertising and community signs. The advertisements and signs must comply with PCZO § 312.
 17. Public-service structures.
 18. Retail businesses.
 19. Service stations and garages.
 20. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
 21. Transportation and utility easements and rights-of-way.
 22. Vacation Home Rental. A Vacation Home Rental must comply with PCZO § 319.
- B. *Conditional Uses.* If a use is not allowed-by-right in the Highway Service District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific ordinance that regulates the use.

- C. *Prohibited Uses.* The following uses are prohibited in the Highway Service District.
1. Uses that more appropriately fit the Commercial District.
 2. Uses that more appropriately fit either Industrial District - Light or Heavy.
- D. *Minimum Lot Requirements.*
1. *Lot Area.* The minimum lot size is 20,000 square feet. That minimum does not include dedicated-public streets or platted-private drives.
 2. *Lot Dimension and Access.*
 - a. *Lot Width.* The minimum lot width at the front-building line is 75 feet.
 - b. *Access.* At least 50 feet of the front-building line must abut a public right-of-way.
- E. *Minimum Setback Requirements.*
1. *Front Yard.* The minimum front-yard setback for all structures is 25 feet.
 2. *Side Yard.*
 - a. *General Rule.* The minimum side-yard setback is 10 feet for all structures.
 - b. *Exception.* If the side yard abuts either a residential district or a street, then the minimum side-yard setback is 30 feet.
 3. *Rear Yard.*
 - a. *General Rule.* The minimum rear-yard setback for all structures is 10 feet.
 - b. *Exception.* If a commercial structure is serviced from the rear, abuts a residential district, or abuts a street, then the minimum rear-yard setback is 30 feet.
- F. *Maximum Height.*
1. *Principal Structure.* The maximum height is 35 feet.
 2. *Accessory Structure.* The maximum height is 20 feet.
- G. *Off-Street Parking.* It must comply with PCZO Section 310.

SECTION 213 - LI LIGHT INDUSTRIAL DISTRICT

The Light Industrial District establishes areas of industrial development that do not create compatibility issues with neighboring land uses. Those areas should have adequate transportation and services infrastructure to support development.

A. *Allowed Uses.* The following uses are allowed-by-right in the Light Industrial District.

1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
2. Auction house. That term does not include the sale of animals.
3. Blacksmith and machine shop.
4. Building-material sales and lumber yard.
5. Bulk storage.
6. Distributed Solar Energy System. The system must comply with PCZO § 317.
7. Distributed Wind Energy System. The system must comply with PCZO § 317.
8. Distributing.
9. Equipment rental.
10. Equipment storage.
11. Freight yard and terminal.
12. Manufacturing uses that are conducted within a completely enclosed structure and fit in the categories listed below.
 - a. *Signs, metal products, and HVAC.* The manufacture and maintenance of electric and neon signs, commercial-advertising structures, light-sheet metal products, including heating and ventilating ducts and equipment, cornices, eaves, and the like.
 - b. *Pottery.* The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
 - c. *Repurposing materials.* The manufacture, compounding, assembling, or treatment of articles or merchandise from the following previously prepared materials: aluminum; bone; cellophane; canvas; cloth; cork; feathers; felt; fiber; fur; glass; precious or semi-precious metals or stones; shell; rubber; textiles; tin; iron; steel; and wood.
13. Outdoor advertising and community signs. The advertisements and signs must comply with PCZO § 312.
14. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
15. Tire-recapping or -retreading facilities.
16. Transportation and utility easements and rights-of-way.
17. Trucking yard.
18. Utility substations.
19. Warehousing.
20. Water treatment, purification, storage, and pumping facilities.
21. Wholesaling.

- B. *Conditional Uses.* If a use is not allowed-by-right in the Light Industrial District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Special Provisions.*
1. Any use that emits fumes, vibration, smoke, or noise (except the normal noise associated with vehicles coming and going) that's detectable by human senses is prohibited unless
 - a. all operations are conducted in a fully enclosed structure; or,
 - b. all operations are conducted behind a barrier (wall or fence) that not only hides the operations completely from view off of the lot but also mitigates any fumes, vibration, smoke, or noise.
 2. Merchandise must not be displayed for sale in any required front yard.
- D. *Minimum Lot Requirements.*
1. *Lot Area.* The minimum lot size is 20,000 square feet. That minimum does not include dedicated-public streets or platted-private drives.
 2. *Lot Dimensions and Access.*
 - a. *Lot Width.* The minimum lot width at the front-building line is 100 feet.
 - b. *Access.* At least 50 feet of the front-building line must abut a public right-of-way.
- E. *Minimum Setback Requirements.*
1. *Front Yard.* The minimum front-yard setback for all structures is 25 feet.
 2. *Side Yard.*
 - a. *General Rule.* The minimum side-yard setback for all structures is 15 feet. The side-yard lot-line must be maintained open as a fire lane.
 - b. *Exception.* If a lot's side yard abuts a residential district, then the side-yard setback for a structure is 50 feet.
 3. *Rear Yard.*
 - a. *General Rule.* The minimum rear-yard setback is 25 feet for all structures.
 - b. *Exception.* If a lot's rear yard abuts a residential district, then the rear-yard setback for a structure is 50 feet.
- F. *Maximum Height.* The maximum height for all structures is 45 feet.
- G. *Off-Street Parking.* It must comply with PCZO Section 310.
- H. *Off-Street Loading and Unloading.* It must comply with PCZO § 311.

SECTION 214 - HI HEAVY INDUSTRIAL DISTRICT

The Heavy Industrial District establishes areas of industrial development that require isolation from other types of land uses. The uses in this district are generally of a higher intensity than those in the Light Industrial designation.

A *Allowed Uses.* The following uses are allowed-by-right in the Heavy Industrial District.

1. Accessory uses and structures. Those uses and structures must comply with PCZO § 204.
2. Auction house. That term doesn't include the sale of animals.
3. Blacksmith and machine shop.
4. Building-material sales and lumber yard.
5. Bulk storage.
6. Concrete-batch plant, transit-mix plant, or asphalt plant.
7. Concrete block, precast concrete and prestressed concrete fabrication and storage.
8. Distributed Solar Energy System. The system must comply with PCZO § 317.
9. Distributed Wind Energy System. The system must comply with PCZO § 317.
10. Distributing.
11. Equipment rental.
12. Equipment storage.
13. Foundries.
14. Freight yard and terminal.
15. Grain elevators.
16. Manufacturing.
17. Outdoor advertising and community signs. The advertisements and signs must comply with PCZO § 312.
18. Power plants.
19. Processing of junk, waste, discarded or salvaged materials, machinery or equipment, including automobile wrecking or dismantling.
20. Railroad freight terminal and repair shop.
21. Rendering plant.
22. Repair and service of trucks and construction equipment.
23. Sawmills.
24. Slaughter of animals, including poultry killing or dressing.
25. Stockyards, feeding pens, and auction houses for sale of livestock.
26. Structural and reinforcing steel fabrication, welding, and storage.
27. Tannery or curing or storage of raw hides.
28. Telecommunication Facilities. Those facilities must comply with PCZO § 316.
29. Tire-recapping or -retreading facilities.
30. Transportation and utility easements and rights-of-way.
31. Warehousing.

- 32. Water treatment, purification, storage, and pumping facilities.
- 33. Wholesaling that requires yard storage and assembly.
- B. *Conditional Uses.* If a use is not allowed-by-right in the Heavy Industrial District, then it is a Conditional Use. A Conditional Use requires a permit that is approved under PCZO § 510 or a more specific Ordinance that regulates the use.
- C. *Prohibited Uses.* If a use fits more appropriately in Commercial or Highway Service, then it is prohibited in the Heavy Industrial District.
- D. *Minimum Lot Requirements.*
 - 1. *Lot Area.* The minimum lot area is 20,000 square feet.
 - 2. *Lot Dimensions and Access.*
 - a. *Lot Width.* The minimum lot width at the front-building line is 100 feet.
 - b. *Access.* At 50 feet of the front-building line must abut a public right-of-way.
- E. *Minimum Setback Requirements.*
 - 1. *Front Yard.* The minimum front-yard setback for all structures is 25 feet.
 - 2. *Side Yard.*
 - a. *General Rule.* The minimum side-yard setback for all structures is 25 feet.
 - b. *Exception.* If a side yard abuts a residential district, then the minimum side-yard setback is 75 feet.
 - 3. *Rear Yard.*
 - a. *General Rule.* The minimum rear-yard setback for all structures is 25 feet.
 - b. *Exception.* If a lot's rear yard abuts a residential district, then the rear-yard setback for a structure is 50 feet.
- F. *Off-Street Parking.* It must comply with PCZO § 310.
- G. *Off-Street Loading and Unloading.* It must comply with PCZO § 311.

SECTION 215 – OS OPEN SPACE

The Open Space District establishes areas oriented for low-intensity uses that maintain open vistas, protect natural resources, and provide access to public lands.

A. *Allowed Uses.* The following uses are allowed-by-right in the Open Space District.

1. Animal and poultry husbandry.
2. Apiculture (*i.e.*, beekeeping).
3. Campgrounds, public.
4. Distributed Solar Energy System. The system must comply with PCZO § 317.
5. Distributed Wind Energy System. The system must comply with PCZO § 317.
6. Forest preserves.
7. Golf course and driving range.
8. Historical monuments and structures.
9. Meteorological tower that is part of a wind farm. The tower must comply with PCZO § 317.
10. Open spaces and trails.
11. Parks and playgrounds.
12. Recreational vehicle parks: public.
13. Single-family dwelling: detached. Only one (1) dwelling per lot is allowed.
14. Sod and tree farming.
15. Telecommunication Facilities. Those facilities must comply with PCZO § 316.

B. *Conditional Uses.* If a use is not allowed-by-right in the Open Space District, then it is a Conditional Use. A Conditional Use requires a permit that's approved under PCZO § 510 or a more specific Ordinance that regulates the use.

C. *Minimum Lot Requirements.*

1. *Lot Area.*
 - a. *Animal and Poultry Husbandry.* The minimum lot size to engage in animal husbandry, poultry husbandry, or both is 10 acres. That minimum does not include dedicated-public streets or platted-private drives.
 - b. *Developed Sites.* The minimum area for developed sites is 5 acres.
 - c. *All Other Uses.* There is no minimum lot size.
2. *Lot Dimensions and Access.*
 - a. *Lot Dimensions.* There are no lot dimensions required in the Open Space District.
 - b. *Access.* Developed sites must
 - i. abut a dedicated-public street for a distance of at least 50 feet; or,
 - ii. have access to a public street by way of a platted-private drive or an easement approved under PCZO § 313.

- D. *Density.* Only one (1) dwelling per 5 acres is allowed.
- E. *Minimum Setback Requirements.* The minimum front, side, and rear setback for all structures is 25 feet.
- F. *Structure Placement and Lot Coverage.* If an accessory structure exceeds 5,000 square feet in area or 35 feet in height, it must be located at least 500 feet from any residential district.

SECTION 216 - PUD PLANNED UNIT DEVELOPMENT DISTRICT
(Revised 11-24-21)

Purpose. This Section establishes the regulations and standards for Planned Unit Developments (PUD) as a zoning district and as Conditional Uses (PUD Overlay). A Planned Unit Development allows for variations from the strict application of the standards of the County's conventional zoning districts in order to allow flexibility for landowners and developers to creatively plan for the overall development of their land.

- A. Planned Unit Development Zoning District ("PUD")
 - 1. *Designation.* All Planned Unit Development Zoning Districts shall be so designated on the official zoning map and records of Pennington County. No new Planned Unit Development Zoning Districts have been, or will be created after May 5, 2020.
 - 2. *Amendments to Existing Planned Unit Development Zoning Districts.*
 - a. *Conditions for Amendment.* An approved PUD may be amended, if the applicant demonstrates that the proposed modification:
 - i. Is consistent with the efficient development and preservation of the entire PUD;
 - ii. Does not affect, in a substantially adverse manner, either the enjoyment of land abutting upon, adjoining or across a street from the PUD or the public interest;
 - iii. Does not contain proposed uses that detract from other uses approved in the PUD;
 - iv. Does not contain an open space plan that differs substantially in quantity or quality from that originally approved; and,
 - iv. Contains street and utility plans that are coordinated with planned and/or existing streets and utilities for the remainder of the PUD.

- b. *Types of Amendments.* Amendments to the Planned Unit Development Zoning District shall be classified as either a Major or Minor.
 - i. Major Amendments. Amendments shall be considered Major, if they include any of the following:
 - aa. A change in the PUD boundary;
 - bb. A change in use of the land;
 - cc. Any change in the density, arrangement of lots, or lot coverage development standards;
 - dd. A change in use that involves more than one (1) lot in the PUD;
 - ee. Any relocation or reconfiguration of roads or parking areas;
 - ff. A change in dimensional requirements such as setbacks and building heights for the overall development: and,
 - gg. Any addition to the list of allowed uses in the PUD.
 - ii. Minor Amendments. Amendments shall be considered Minor, if they include any of the following:
 - aa. A change in dimensional requirements such as setbacks and building heights that involves only one (1) lot in the PUD (if the PUD is a one (1) lot PUD, then the change would be a Major Amendment);
 - bb. A change in use that involves only one (1) lot in the PUD and that use is consistent with the list of allowed uses in the PUD (if the PUD is a one (1) lot PUD, then the change would be a Major Amendment);
 - cc. A use that is accessory to the allowed uses in the PUD and only involves one (1) lot in the PUD (if the PUD is a one (1) lot PUD, then the change would be a Major Amendment); and,
 - dd. All other changes not considered Major Amendments and does not result in a material change or change in the character of the PUD.
- c. *Hearings on Amendments.* Public hearing(s) are required for any Amendment to a Planned Unit Development Zoning District.
 - i. Major Amendment
 - aa. *Notice to Property Owners.* The applicant must notify abutting and surrounding property owners

(inclusive of Contract for Deed buyers) of record within 500 feet by registered or certified mail of the requested amendment at least 10 days prior to the public hearing by the Planning Commission.

- bb. *Notice of Planning Commission Hearing.* The Planning Commission shall hold at least one public hearing on the proposed Amendment. Notice of the time and place of the hearings shall be given once at least ten days in advance by publication in the legal newspapers of the County.
- cc. *Notice of Board of Commission Hearing.* The Board of Commissioners shall hold at least one public hearing on the proposed Amendment. Notice of the time and place of the hearings shall be given once at least ten days in advance by publication in the legal newspapers of the County.
- dd. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the Major Amendment request in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be so placed no less than ten (10) days prior to the date of the public hearing before the Planning Commission and shall remain placed until a decision has been made by the Board of Commissioners.
- ee. *Planning Commission Hearing.* A public hearing shall be held before the Planning Commission. The Planning Commission shall accept or reject the amendment request and recommend this action to the Board of Commissioners.
- ff. *Board of Commissioners Hearing.* The Board of Commissioners shall hold a public hearing to consider the recommendation of the Planning Commission. Such hearing shall be held regardless of the type of recommendation made by the Planning Commission.

ii. Minor Amendment

- aa. *Notice to Property Owners.* The applicant must notify abutting and surrounding property owners (inclusive of Contract for Deed buyers) of record within 500 feet by registered or certified mail of the requested amendment at least 10 days prior to the public hearing by the Planning Commission.
- bb. *Notice of Planning Commission Hearing.* The Planning Commission shall hold at least one public hearing on the proposed Amendment. Notice of the time and place of the hearings shall be given once at least ten days in advance by publication in the legal newspapers of the County.
- cc. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the Minor Amendment request in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be so placed no less than ten (10) days prior to the date of the public hearing before the Planning Commission.
- dd. *Planning Commission Hearing.* A public hearing shall be held before the Planning Commission. The Planning Commission shall accept or reject the amendment request.

- 3. *Supplementary Conditions and Safeguards.* The Planning Commission may recommend and the Board may require such conditions and restrictions upon the construction, location and operation of a Planned Unit Development Zoning District as may be deemed necessary to promote the general objectives of this Ordinance.
- 4. *Review of Planned Unit Development District.* Planned Unit Development Districts are subject to review by the Planning Commission and Board for compliance with conditions of approval. A review may occur as a condition of approval, at the request of the Planning Commission or Board of Commissioners, or, upon a substantiated complaint.

B. Planned Unit Development Overlay District (“PUD Overlay”)

1. *Purpose.*

- a. A maximum choice in the types of uses available to the public by allowing a development that would not be possible under the strict application of the other sections of this Ordinance;
- b. A comprehensive development, in which the design of the overall unit permits flexibility in the placement and uses of structures and the location of open spaces, circulation facilities, off-street parking areas and other facilities;
- c. A pattern of development to preserve natural vegetation, topographic and geologic features; and,
- d. A development that would require multiple conditional uses on one (1) lot.

2. *Designation.* All PUD Overlay Districts shall be so designated on the official zoning map and records of Pennington County.

3. *Requirements.* The following standards and requirements shall apply in a PUD Overlay District:

a. *Allowed Uses.*

- i. A PUD Overlay District must conform to the uses by right or conditional uses permitted in the underlying zoning district.
- ii. The uses permitted in a PUD Overlay District must be of a type and located to minimize detrimental influence upon surrounding properties.

b. *Metrics.* Standards governing area, density, off-street parking, or other requirements shall be guided by the standards of the underlying zoning district in which the PUD Overlay District is proposed.

c. *Sizing.* PUD Overlay Districts shall not be less than one (1) acre in area.

d. *Single Ownership.* The site of a PUD Overlay District must be under single ownership and/or unified control.

- e. *Design.* The PUD Overlay District shall not be designed as to be detrimental to or endanger the public health, safety, or general welfare.
 - f. *Compliance with PCZO § 510.* The requirements for a PUD Overlay District set forth in this Section are in addition to the Conditional Use Permit procedures set forth in PCZO § 510.
4. *Application Requirements.*
- a. *Written Application.* The Planning Department shall provide forms that specify the information required for submission of a PUD Overlay District.
 - i. *Site Plan.* The site plan shall include the following information:
 - aa. Proposed land uses, building locations, and housing unit densities;
 - bb. Proposed circulation pattern indicating the status of street ownership and maintenance responsibility;
 - cc. Proposed minimum front, side and rear yard setbacks on the perimeter of the PUD Overlay District shall match the underlying zoning district or districts. Greater minimum yards and/or landscape buffers may be required to foster aesthetically pleasing PUD Overlay Districts and to make PUD Overlay Districts more compatible with adjacent uses, to minimize possible adverse impacts and to provide screening;
 - dd. Proposed open space uses;
 - ee. Proposed grading and drainage pattern;
 - ff. Proposed method of water supply and wastewater treatment; and,
 - gg. Relationship of the proposed development to the surrounding areas and the Comprehensive Plan.

5. *Hearing Requirement.* Public hearings are required for any proposed PUD Overlay District.
- a. *Notice to Property Owners.* The applicant must notify abutting and surrounding property owners (inclusive of Contract for Deed buyers) of record within 500 feet by registered or certified mail of the requested overlay at least 10 days prior to the public hearing by the Planning Commission.
 - b. *Notice of Planning Commission Hearing.* The Planning Commission shall hold at least one public hearing on the proposed overlay. Notice of the time and place of the hearings shall be given once at least ten days in advance by publication in the legal newspapers of the County.
 - c. *Notice of Board of Commission Hearing.* The Board of Commissioners shall hold at least one public hearing on the proposed overlay. Notice of the time and place of the hearings shall be given once at least ten days in advance by publication in the legal newspapers of the County.
 - d. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the overlay request in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be so placed no less than ten (10) days prior to the date of the public hearing before the Planning Commission and shall remain placed until a decision has been made by the Board of Commissioners.
 - e. *Planning Commission Hearing.* A public hearing shall be held before the Planning Commission. The Planning Commission shall accept or reject the overlay request and recommend this action to the Board of Commissioners.
 - f. *Board of Commissioners Hearing.* The Board of Commissioners shall hold a public hearing to consider the recommendation of the Planning Commission. Such hearing shall be held regardless of the type of recommendation made by the Planning Commission.
6. *Supplementary Conditions and Safeguards.* The Planning Commission or Board may require such conditions and restrictions upon the construction, location and operation of a PUD Overlay District as may be deemed necessary to promote the health, safety, and welfare of the public and consistent with the objectives of this Ordinance.

7. *Amendment of PUD Overlay.* Any amendment of a PUD Overlay shall be done in accordance with PCZO § 216(A)(c).
8. *Recreational Resort and Specialty Resort.*
 - a. *PUD Overlay Required.* Recreational and Specialty Resorts, as defined by this Section, require a PUD Overlay under PCZO §216(B).
 - b. *Definitions.* Uses on a single property meeting at least three (3) of the following under each category require a landowner to apply for and obtain a PUD Overlay:
 - i. *Recreational Resort.*
 - aa. Manager's residences and staff lodging;
 - bb. Vacation Home Rental;
 - cc. Rental cabins, park models, or similar nightly rental units;
 - dd. Recreational Vehicle Sites;
 - ee. Uses necessary for operation of the resort's primary recreational activities (swimming, golf, fishing, hiking, equestrian, etc.); or
 - ff. Nonresidential uses that provide for the basic needs of resort lodging guests and day visitors.
 - ii. *Specialty Resort.*
 - aa. Manager's residence;
 - bb. Vacation Home Rental;
 - cc. Bunkhouse;
 - dd. Rental cabins, park models, or similar nightly rental units; or,
 - ee. Special events such as weddings or family reunions.
- C. *Review of an Approved PUD Overlay District.* PUD Overlays are subject to review in accordance with PCZO § 510(F) by the Planning Commission and Board for compliance with conditions of approval at any time under the following events:
 1. A review as a condition of approval;
 2. At the request of the Planning Commission or Board; or,
 3. Upon a substantiated complaint.
- D. *Appeals.*
 1. An appeal of a decision of the Planning Commission must be brought under a petition, duly verified, for a writ of certiorari directed to the Planning Commission and as prescribed in SDCL chapter 11-2.
 2. An appeal from the Board's decision must be brought in accordance with SDCL ch. 7-8.

- E. *Violations and Penalties.* Failure to maintain such conditions or restrictions that have been imposed on a Planned Unit Development (including an Overlay) shall constitute a violation and subject to penalties set forth in Section 514 of this Ordinance.

SECTION 217 – NAL NATIVE AMERICAN LANDS

The Native American Lands designation applies to all land held in trust by the Bureau of Indian Affairs over which the County has no land-use jurisdiction. Even so, the County encourages planned uses on those lands that are compatible with surrounding areas.

SECTION 300 - SUPPLEMENTARY REGULATIONS

In order to accomplish the general purpose of these Zoning Ordinances, it is necessary to give special consideration to certain uses because they are unique in nature, require large land areas, are potentially incompatible with existing development, or because the effects of such uses cannot definitely be foreseen.

SECTION 301 – AIRPORT HEIGHT AND HAZARD ZONING

- A. Intent:

To regulate and restrict the height of structures and objects of natural growth and otherwise regulate the use of property, in the vicinity of the Rapid City Regional Airport, by creating the appropriate zones and establishing the boundaries thereof.

- B Definitions:

See Section 103 – Definitions.

- C. General:

It is hereby found that an obstruction has the potential for endangering the lives and property of users of Rapid City Regional Airport and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of Rapid City Regional Airport; that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus, tending to destroy or impair the utility of Rapid City Regional Airport and the public investment therein. Accordingly, it is declared:

1. That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by Rapid City Airport;
2. That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented; and

3. That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

D. Airport Zones:

In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Rapid City Regional Airport. Such zones are shown on Rapid City Regional Airport Zoning Map consisting of two sheets, dated October 15, 2003, which is attached as an adjunct hereof. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

1. Utility Runway Visual Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

2. Utility Runway Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

3. Runway Larger Than Utility Visual Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

4. Runway Larger Than Utility With A Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

5. Runway Larger Than Utility With A Visibility Minimum As Low As 3/4 Mile Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

6. Precision Instrument Runway Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

7. Transitional Zones

The transitional zones are the areas beneath the transitional surfaces.

8. Horizontal Zone

The horizontal zone is established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

9. Conical Zone

The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

E. Airport Zone Height Limitations:

Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

1. Utility Runway Visual Approach Zone

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

2. Utility Runway Nonprecision Instrument Approach Zone

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
3. Runway Larger Than Utility Visual Approach Zone

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
4. Runway Larger Than Utility With A Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
5. Runway Larger Than Utility With A Visibility Minimum As Low As 3/4 Mile Nonprecision Instrument Approach Zone

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
6. Precision Instrument Runway Approach Zone

Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.
7. Transitional Zones

Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 100 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90-degree angles to the extended runway centerline.

8. Horizontal Zone

Established at 150 feet above the airport elevation or at a height of 250 feet above mean sea level.

9. Conical Zone

Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

10. Excepted Height Limitations

Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to fifty (50) feet above the surface of the land.

F. Use Restriction:

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

G. Nonconforming Uses:

1. Regulations Not Retroactive

The regulations prescribed in this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

2. Marking and Lighting

Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Airport Manager to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Rapid City.

H. Permits:

1. Future Uses

Except as specifically provided in a, b, and c hereunder, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a Variance has been approved in accordance with Section 301.G.4.

- a. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than fifty (50) feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
- b. In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than fifty (50) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
- c. In the areas lying within the limits of the transition zones, beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than fifty (50) feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section 301.D.10.

2. Existing Uses

No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation, than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

3. Nonconforming Uses Abandoned or Destroyed

Whenever the Pennington County Planning Director determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from these zoning regulations.

4. Variances

Any person desiring to erect or increase the height of any structure or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is fully found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance. Additionally, no application for variance, to the requirements of this Ordinance, may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Airport Manager for advice as to the aeronautical effects of the variance. If the Airport Manager does not provide a written response to the application within fifteen (15) days after receipt, the Board of Adjustment may act on its own to grant or deny said application.

5. Obstruction Marking and Lighting

Any permit or variance granted, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, may be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Board of Adjustment, this condition may be modified to require the owner to permit the City of Rapid City, at its own expense, to install, operate, and maintain the necessary markings and lights.

I. Enforcement:

It shall be the duty of the Pennington County Planning Director to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Pennington County Planning Director upon a form published for that purpose. Applications required by this Ordinance to be submitted to the Pennington County Planning Director shall either be granted or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the Pennington County Planning Director.

J. Appeals:

1. Any person aggrieved or any taxpayer affected by any decision of the Pennington County Planning Director, made in the administration of the Ordinance, may appeal to the Board of Adjustment.
2. All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment, by filing with the Pennington County Planning Director a notice of appeal specifying the grounds thereof. The Pennington County Planning Director shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Pennington County Planning Director certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the Pennington County Planning Director cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment or notice to the Pennington County Planning Director and on due cause shown.
4. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.
5. The Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order; requirement; decision; or determination as may be appropriate under the circumstances.

K. Judicial Review:

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the Circuit Court as provided in SDCL 11-2-61.

L. Conflicting Regulations:

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

M. Severability:

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION 302 - NEIGHBORHOOD COMMERCIAL

A. Intent:

To establish areas for those commercial facilities which are especially useful in close proximity to residential areas, while minimizing any undesirable impact of such uses on the neighborhoods which they service.

B. Property and buildings may include, but are not limited to the following purposes:

All uses in Neighborhood Commercial are to be individually considered as to compatibility with the zoning district in which they are located. Primarily, this classification shall be utilized for neighborhood services in the agricultural and residential districts providing direct services to residential occupants and shall not materially increase traffic in that district.

C. Special Regulations:

All requests for a Neighborhood Commercial classification shall be handled as a Conditional Use for the district in which it is to be located.

SECTION 303 - MULTIPLE-FAMILY DWELLINGS, APARTMENTS, AND CONDOMINIUMS (Revised 05-25-22)

A. *Purpose.* This Section establishes the regulations and standards for multiple-family dwellings, apartments, and condominiums.

B. *General Requirements.* These requirements apply to all multiple-family dwelling and apartment/condominium developments. These requirements are in addition to those requirements set forth in Section 200.

1. Water Heaters. Each dwelling unit shall have a separate water heater or may be provided with a centralized circulation water heating system sufficient to serve all dwelling units on the property.
2. Laundry Facilities. All multiple-family, apartment and condominium residential units shall be provided washer and dryer hookups and laundry space with the unit or garage. The laundry area shall not infringe upon garage parking area. In the case of apartments, common laundry facilities may be included in addition to the individual unit hookup.
3. Dwelling Entries. No individual dwelling unit entry will be located with direct, uninterrupted, unimpeded access to a principal or minor arterial street.
4. Refuse Storage Areas. There will be provided standard refuse storage facilities for the containment of standard receptacles.
 - a. All refuse storage areas will be readily accessible to the users they serve as well as for collection operations and will be enclosed by a solid masonry, concrete block or other type wall at least 60 inches in height.
 - b. The site area must have a concrete pad.
 - c. The storage area must be shielded from public view.

5. Outdoor Uses and Activities.

- a. *Under 20,000 square feet.* Each site under 20,000 square feet proposing a multiple-family or apartment/condominium development must provide private recreational and leisure areas that are conveniently located and readily accessible to each individual dwelling unit. The development must include:
 - i. Recreation and leisure area equal at least 300 square feet per individual dwelling unit.
 - ii. Private open space in form of a patio, yard, balcony or combination thereof shall contribute to the required recreational and leisure area.
- b. *Over 20,000 square feet.* Each site over 20,000 square feet proposing a multiple-family or apartment/condominium development must provide an active or passive recreational area, in addition to the above private recreational and leisure areas, defined in PCZO § 303(B)(5)(a), that are conveniently located and readily accessible to each individual dwelling unit. The development must include:
 - i. Active, passive or any combination of recreational areas equal to at least 300 square feet per unit.
 - ii. An active recreational area shall provide one or more of the following elements: spa, pool, tennis, volleyball, basketball, playground, or similar usable recreational area.
 - iii. A passive recreational area shall consist of landscape areas that incorporate pathways, waterscape, hardscape (benches, gazebos, raised planters, etc.), and unique features to enhance the appearance and use of the areas.
 - iv. Active recreation areas shall be located at least 10 feet from any habitable structure.

6. Parking. Minimum off-street parking for multiple-family and apartment/condominium development must meet those requirements set forth in Section 310.

C. *Multiple-Family Dwellings.* In addition to those requirements set forth in Section 200, the following standards are required for all multiple-family dwellings and multiple-family development.

- 1. Conditional Use. Multiple-family dwellings which are not a use by right, are allowed in other zoning districts as Conditional Uses and subject to the requirements of PCZO § 510 and this Section.
- 2. Building Height. Multiple-family dwellings will not exceed two stories.

3. Building Separation.

a. Separation of Main Buildings (habitable portions only):

Building Orientation	1 to 1 story	1 to 2 story	2 to 2 story
Front to Front	25 feet	30 feet	35 feet
Rear to Rear	20 feet	25 feet	30 feet
Side walls parallel with front or rear walls of other buildings	15 feet	20 feet	25 feet
Side to Side	10 feet	15 feet	20 feet

4. Separation of Accessory Buildings, Parking Areas, and Vehicular Accessways.

- a. Distance between two accessory buildings is 10 feet.
- b. Distance between accessory buildings and residential units is 15 feet.
- c. Distance between open parking areas and residential units is 15 feet.
- d. Distance between vehicular accessways and residential units is 10 feet.

5. Setbacks.

- a. Minimum side yard setback is 12 feet for a one-story building.
- b. Minimum side yard setback is 15 feet for a two-story building.
- c. Minimum side yard setback to a non-residential zoning district is 25 feet.

6. Minimum Driveway Access Width. A minimum accessway of 25 feet is required for all access drives serving family developments.

7. Maximum Number of Units. A maximum of 16 multiple-family dwellings per 1 acre is allowed.

D. *Apartments or Condominiums.* In addition to those requirements set forth in Section 200, the following standards are required for all apartment or condominium units and apartment and condominium development.

1. Conditional Use. Apartments and Condominiums are Conditional Uses subject to the requirements of PCZO § 510 and this Section.
2. Building Height. Apartment dwellings cannot exceed three stories

3. Building Separation.

a. Separation of Main Buildings (habitable portions only):

Building Orientation	1 to 1 story	1 to 2 story	2 to 2 story	2 to 3 story	3 to 3 story
Front to Front	25 feet	30 feet	35 feet	40 feet	45 feet
Rear to Rear	20 feet	25 feet	30 feet	35 feet	40 feet
Side walls parallel with front or rear walls of other buildings	15 feet	20 feet	25 feet	30 feet	35 feet
Side to Side	10 feet	15 feet	20 feet	25 feet	30 feet

4. Separation of Accessory Buildings, Parking Areas, and Vehicular Accessways.

- a. Distance between two accessory buildings is 10 feet.
- b. Distance between accessory buildings and residential units is 20 feet.
- c. Distance between open parking areas and residential units is 15 feet.
- d. Distance between vehicular accessways and residential units is 15 feet.

5. Setbacks.

- a. Minimum side yard setback is 12 feet for a one-story building.
- b. Minimum side yard setback is 15 feet for a two-story building.
- c. Minimum side yard setback is 20 feet for a three-story building.
- c. Minimum side yard setback to a non-residential zoning district is 25 feet.

6. Minimum Driveway Access Width. A minimum accessway of 25 feet is required for all access drives serving family developments.

7. Maximum Number of Units. A maximum of 16 apartment or condominium units per 1 acre is allowed.

SECTION 304 - MOBILE HOMES (Revised 06-22-22)

- A. *Definitions.* The following definitions apply to PCZO § 304:
1. *Foundation.* The supporting substructure of a building or other structure, including anchoring, blocking, expandable sections, leveling, securing, supporting, or the like.
 2. *Install.* To not only construct a foundation system but also place or erect a mobile, manufactured, or modular home on that foundation.
 3. *Pre-owned Mobile, Manufactured, or Modular Home.* Any mobile, manufactured, or modular home that has been:
 - a. used for at least 1 year as a residential dwelling or for any other purpose; and,
 - b. titled.
 4. *New Mobile, Manufactured, or Modular Home.* Any mobile, manufactured or modular home that:
 - a. was built as a residential dwelling or for any other purpose,
 - b. has not been titled; and,
 - c. has not been used previously for any purpose.
- B. *Building Permit Required.* A Building Permit is required to place a mobile, manufactured, or modular home in Pennington County.
- C. *Location.* Once a Building Permit has been obtained, a mobile, manufactured, or modular home may be placed on any lot in accordance with the requirements set forth in PCZO § 200.
- D. *Mobile Home Park.* Once a Building Permit has been obtained, a mobile, manufactured, or modular home may be located in an approved mobile home park in accordance with PCZO § 305.
- E. *Construction Standards.* A new or pre-owned mobile, manufactured, and modular home must meet the following minimum standards:
1. *HUD Label.* The home must have a label certifying it was constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401, *et seq.* (as amended by Pub. L. No. 106-569, 114 Stat. 2944 (December 27, 2000)).
 - a. *Exception.* A mobile home that does not meet the above HUD label requirements must:
 - i. Provide proof from a licensed contractor, certified professional engineer or architect that the structure meets the minimum constructions standards of the National Manufactured Housing Construction and Safety Standards Act of 1974.

2. *Width.* The minimum width for a mobile home is 14 feet.
3. *Length.* The minimum length for a mobile home is 56 feet.
 - a. *Exception.* An exception to the length of the mobile home may be allowed if the square footage of the structure exceeds 784 square feet.
4. *Factory-Installed Wood, Hardboard, or Siding.* A home must have factory installed, wood, or hardboard, siding.
5. *Factory-Installed Roof.* A home must have a factory installed peaked non-reflective roof.
6. *Sturdy Foundation.* A home must be supported on a concrete foundation; concrete, masonry, or wood basement; concrete piers; or masonry blocks or jacks.
7. *Adequate Skirting.* A home must have skirting from the bottom of the walls to the ground, made of aluminum, wood, or other durable material comparable to the exterior of the home.
8. *Water and Wastewater Connection.* A home must be connected to water and wastewater utilities.
9. *Vehicle Remnants Removed.* A home must have all towing devices, wheels, axles, and bolt-on hitches removed.
10. *Landing Size.* A home must have a minimum landing size of 4 feet x 6 feet and be installed at the same elevation.
11. *PCZO § 204-I.* A home must meet the requirements of PCZO § 204-I.
12. *Moving.* When moving a mobile, manufactured, or modular home, a person must obtain a Removal Permit from the Pennington County Planning Department.

SECTION 305 - MOBILE HOME PARKS

A. Property Development Standards:

The following property development standards shall apply for all mobile home parks:

1. There shall not be less than 6,500 square feet of lot area for each space provided on the site. This space ratio shall include: Access roads, automobile parking, accessory building space, and recreational area.
2. Utility service connections, including any necessary easements, shall be indicated on the development plan.
3. Water and sewer facilities shall be approved by the County Planning Department.
4. The mobile home park shall conform to all requirements of the South Dakota Fire Codes.

B. Area Regulations:

1. There shall be a front yard setback of ten (10) feet from all access roads within the mobile home park.
2. Minimum distance between units shall be twenty (20) feet.

3. Maximum lot coverage shall be twenty-five (25) percent.
4. There shall be at least two paved or graveled off-street parking spaces for each mobile home space.
5. Where a side or rear yard abuts a street, the yard shall be not less than twenty-five (25) feet.
6. Each mobile home park shall have a rear yard and a side yard on both sides of the parcel of not less than ten (10) feet.

C. General Regulations:

1. Additional accessory structures shall require a Building Permit.
2. There shall be established and maintained within each park an automobile parking area for the use of guests. The number of spaces within this area shall be equal to one for every four mobile home spaces.
3. Mobile home spaces may abut upon a driveway of not less than twenty-five (25) feet in width, which shall have unobstructed access to the access road within the mobile home park. Vehicular access shall be provided from a public street, and all dead-end driveways shall include a minimum forty-two (42) foot turning radius.
4. Each mobile home park shall be provided with a management office and such service buildings as are necessary.

D. Application for Conditional Use Permit:

Application for a mobile home park Conditional Use Permit will be processed in accordance with Section 510 - Conditional Use Permits. The following information shall be shown:

1. Location and legal description of the proposed mobile home park.
2. Plans and specifications as required by the County Planning Department for sewer and water facilities.
3. Layout plan of the proposed mobile home park indicating the location of all mobile home spaces, accessory facilities, and streets or roads to serve the park.
4. A time schedule for development shall be submitted and reviewed by the Commission.
5. The Commission may require additional information or may require conditions deemed necessary to protect the property rights of adjoining landowners.

SECTION 306 - RECREATIONAL VEHICLE PARKS

A. Property Development Standards:

The following property development standards shall apply for all recreational vehicle parks:

1. The density of the recreational vehicle park is subject to review by the Board on recommendation from the Commission on an individual basis with prime consideration given to location within the jurisdiction of these Zoning Ordinances. The burden of justifying the density shall be upon the applicant for the Conditional Use Permit.
2. Accessory buildings, electrical, water, and sewer facilities shall be designed to provide services adequate for the type of recreational vehicles and/or tent camps to be served. The adequacy will be reviewed by the Commission at the hearing for the Conditional Use.

B. Application for a Conditional Use Permit:

The application for a recreational vehicle park Conditional Use Permit shall be processed in accordance with Section 510 - Conditional Use Permits. Such application shall be reviewed and approved by the Planning Department, the Planning and Zoning Director, and the Board on recommendation from the Planning Commission. The following information shall be shown:

1. The location and legal description of the proposed recreational vehicle park.
2. Plans and specifications of all buildings, improvements, and facilities constructed or to be constructed within the recreational vehicle park.
3. The proposed use of buildings shown on the site.
4. The location and size of all recreational vehicle spaces.
5. The location of all points of entry and exit for motor vehicles and internal circulation pattern.
6. The location of all landscaping to be provided.
7. The location of all lighting standards to be provided.
8. The location of all walls and fences and the indication of their height and the materials of their construction.
9. The name and address of the applicant.
10. Such other architectural and engineering data as may be required to permit the Planning and Zoning Director, the Commission, and the Board to determine if the provisions of these Zoning Ordinances are being complied with.
11. A time schedule for development shall be prepared which shall demonstrate the applicant's readiness and ability to provide the proposed services; and all required improvements and facilities shall be installed

within one (1) year, unless the Board, on recommendation from the Commission, approves a plan for staged construction.

12. Utility service connections to be provided.
13. A domestic water system approved by the Pennington County Planning Department.
14. A water carriage wastewater disposal system approved by the Pennington County Planning Department.
15. A typical lot plan for a recreational vehicle space detailing location and method.
16. A complete drainage plan to include topography to at least 5-foot-contour intervals.

SECTION 307 - OTHER USES

A. Cemetery:

1. The site proposed for a cemetery shall not interfere with the development of a system of collector and larger streets in the vicinity of such site. In addition, such site shall have direct access to a thoroughfare.
2. All other structures, including, but not limited to, mausoleums, permanent monuments, or maintenance buildings shall be set back not less than twenty-five (25) feet from any property line or street right-of-way line.
3. All graves or burial lots shall be set back not less than twenty-five (25) feet from any property line or street right-of-way.

B. Public and Private Utilities and Services:

Where permitted, public and private utilities and services shall be subject to the following requirements:

1. Planning Department Report

Application for permission to operate water works and/or sewage treatment plants shall be accompanied by a report and a recommendation from the County Planning Department. Such recommendations as to design and construction, type of treatment, source of water, standards for testing and sampling, and standards for the quality of effluent shall be incorporated into and made a part of the application.

Due to the unique circumstances of a holding tank, it shall be used as a waste disposal system of last resort. The County Planning Department shall approve in writing, on a form, approved by the Board, to be attached to the Building Permit, the circumstances under which a holding tank will be accepted, including an agreement to pay an inspection fee. Included in said form will be a requirement for periodic inspections by the County Planning Department and the off-site location of waste disposal. A Building Permit will be issued only when these requirements are met.

2. Lot Area and Location

The required lot area and location shall be specified as part of the application and shall be determined in relation to the proposed use, the intensity of such use, and the effects of such use upon the environment.

3. Fencing and/or Screening

Where findings indicate that a hazard may result or that interference with the development or use and enjoyment of surrounding residential properties may ensue, fencing or screening with an evergreen hedge or other shielding material may be required in a manner consistent with such findings.

C. Private Day Nurseries and Kindergartens:

The facilities, operation, and maintenance shall meet the requirements of the State Department of Social Services.

D. Automobile Wrecking and Junk Yard:

1. Location

No such operation shall be permitted closer than three hundred (300) feet from any established residential district.

2. Screening

All outdoor storage of salvage and wrecking operations shall be conducted entirely within an enclosed security fence. Screening by fence or natural planting may be required. Storage between the street and such fence or wall is expressly prohibited. Any fence or wall erected shall be within the buildable area of the lot and shall be properly painted or otherwise maintained in good condition.

3. Off-Street Parking

As regulated in Section 310 - Minimum Off-Street Parking Requirements.

E. Gasoline Service Stations:

The following regulations shall apply to all gasoline service stations:

1. There shall be a building setback from all right-of-way lines a distance of not less than forty (40) feet.
2. Service stations shall not be constructed closer than fifty (50) feet to any residential district.
3. The minimum distance between the intersection of right-of-way lines at a corner lot and the driveway to a service station shall be not less than forty (40) feet.

4. To ensure that sufficient room be provided on either side of the pumps without intruding upon sidewalks or on adjoining property, gasoline pumps shall not be located closer than fifty (50) feet from any residential district.
5. Gasoline pumps shall not be located closer than fifteen (15) feet to any street right-of-way line.
6. Screening shall be required when service station property abuts property zoned for residential purposes.
7. Off-street parking as regulated in Section 310 - Minimum Off-Street Parking Requirements.
8. Signs as regulated in Section 312 - Signs, Billboards, and Other Advertising Structures.

F. Swimming Pools:

The following regulations shall apply to swimming pools:

1. A private swimming pool shall be any pool or open tank not located within a completely enclosed building and containing or normally capable of containing, water to a depth at any point greater than one and one-half feet. Private swimming pools are permitted in any residential district provided:
 - a. The pool is intended and is to be used solely for enjoyment of the occupants of the property on which it is located and their guests.
 - b. No swimming pool or part thereof, excluding aprons, walks, and equipment rooms, shall protrude into any required front or side yard.
 - c. The swimming pool area shall be so walled or fenced so as to prevent uncontrolled access by children from the street or from adjacent properties. Said fence or wall shall be not less than five (5) feet in height and maintained in good condition.
2. A community or public swimming pool shall be any pool other than a private swimming pool and shall comply with the following conditions and requirements:
 - a. The pool and accessory structures thereto, including the areas used by the bathers, shall not be closer than twenty-five (25) feet to any property line of the property on which located.
 - b. The swimming pool and all of the area used by the bathers shall be walled or fenced so as to prevent uncontrolled access by children from the street or adjacent properties. Said fence or wall shall be not less than five (5) feet in height and maintained in good condition. The area surrounding the enclosure, except for parking spaces, shall be suitably landscaped and maintained in good condition.

SECTION 308 - MOBILE HOME SUBDIVISIONS

A. Intent:

It is the intent of these Zoning Ordinances that subdivisions may be allowed where the intended use is to be individual mobile homes on individual lots. For mobile home subdivisions approved under these Zoning Ordinances, a blanket Conditional Use Permit will be issued for the subdivision which shall allow mobile homes to be installed or replaced upon issuance of a Building Permit.

B. General:

1. Mobile home subdivisions may be located in any Limited Agriculture, Low Density Residential or Suburban Residential District.
2. The mobile home subdivision shall be subject to the yard, height, density, and parking regulations of the district in which it is located.
3. All mobile homes shall be positioned on the lots to allow for any accessory structures, driveways, or parking areas as required in the district in which it is located.
4. The mobile home subdivision is intended to provide lots owned by the individual residents where the mobile home park provides spaces for rent with the ownership of the entire park held in one ownership. The layout and approval of a mobile home subdivision will be regulated by the Subdivision Regulations.
5. Application for a Conditional Use Permit for a mobile home subdivision shall be made in accordance with Section 510 - Conditional Use Permits.
6. Mobile homes and all accessory structures located in approved mobile home subdivisions shall require a Building Permit prior to location or construction.

SECTION 309 - YARD, BUILDING SETBACK EXCEPTIONS (Revised 09-09-20)

The following requirements are intended to provide exceptions, or qualify and supplement, as the case may be, the specific district regulations set forth in Section 200 - Establishment of Zoning Districts and Map Reference:

A. No yard or lot area required for a building or structure shall, during its life, be occupied by any other building or structure except:

1. Awnings and canopies.
2. Bay windows and chimneys, not to exceed two (2) feet.
3. Driveways, curbs, sidewalks, and steps provided; however, steps or stairs to a dwelling, non-enclosed, shall not extend into the front yard more than six (6) feet.
4. Fences, walls and hedges, subject to the regulations as set forth in this section.
5. Flag poles.
6. Garbage disposal equipment, nonpermanent.

7. Landscape features, planting boxes, and recreational equipment.
 8. Overhanging roof, eave, gutter, cornice or other architectural features, not to exceed four (4) feet six (6) inches. Open fire escapes may extend into any required yard not more than six (6) feet.
 9. Parking space, subject to the regulations set forth in Section 310 - Minimum Off-Street Parking Requirements.
 10. Signs, subject to the regulations set forth in Section 312 - Signs, Billboards and Other Advertising Structures.
 11. Trees, shrubs, flowers, and other plants subject to the vision requirements in this section.
- B. The following regulations provide for the maximum safety of persons using sidewalks and streets and for the maximum enjoyment of the uses of property:
1. Any corner lot, no wall, fence, sign, structure or any plant growth which materially obstructs sight lines at elevations between two and one-half feet and ten feet above the crown of the adjacent roadway shall be placed or maintained within a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of twenty-five (25) feet along the front and side lot lines and connecting the points so established to form a sight triangle on the area of the lot adjacent to the street intersections.
- C. The purpose here is to clarify certain conditions pertaining to the use of lots and access points:
1. In residential districts, if fifty (50) percent or more of the lots on one side of the street, between two intersecting streets, are improved with buildings all of which have observed an average setback line of greater than twenty-five (25) feet, and no building varies more than five (5) feet from this average setback line, then no building shall be erected closer to the street line than a minimum setback so established by the existing buildings; but, this regulation shall not require a front yard of a greater depth than fifty (50) feet.
 2. Lots having frontage on more than one street shall provide the required front yards along those streets.
 3. Division of a lot - no recorded lot shall be divided into two or more lots unless such division results in the creation of lots each of which conforms to all of the applicable regulations of the district in which the property is located. No reduction in the size of a recorded lot below the minimum requirements of these Zoning Ordinances shall be permitted without a variance.
 4. No dwelling shall be erected on a lot which does not abut on at least one dedicated street or platted private drive or an easement approved pursuant to the provisions of Section 313 of the Zoning Ordinance for at least twenty-five (25) feet.
 - a. Such street or drive shall form the direct and primary means of ingress and egress for all dwelling units. Alleys, where they exist, shall form only a secondary means of ingress and egress.

- b. However, the provisions of this Section shall not apply to any dwelling unit located on a parcel which is part of one hundred fifty-five (155) contiguous acres of land held in common ownership and zoned general agriculture.
5. An attached or detached private garage which faces on a street shall not be located closer than twenty-five (25) feet to the street right-of-way.
6. Accessory buildings shall not be located in any required front yard in residential zoning districts less than one (1) acre.
7. No lot or access road shall be placed so as to landlock any adjoining property that is not accessible by a physically passable and available route.

SECTION 310 - MINIMUM OFF-STREET PARKING REQUIREMENTS

A. Off-Street Parking Requirements - General:

In all districts, there shall be provided at any time any building or structure is erected or enlarged or increased in capacity, off-street parking space for automobiles in accordance with the following requirements:

1. Off-street parking, for other than residential use, shall either be on the same lot or within two hundred (200) feet of the building it is intended to serve measured from the nearest point of the building to the nearest point of the off-street parking lot, without crossing any major thoroughfares, provided; however, churches may establish joint parking facilities not to exceed fifty (50) percent of the required spaces, with institutions and agencies that do not have a time conflict in parking demand.
2. Residential off-street parking space shall consist of a parking lot, driveway, garage, or combination thereof and shall be located on the lot they are intended to serve.
3. For uses not specifically mentioned, off-street parking requirements shall be interpreted by the Planning Director with such interpretation subject to appeal to the Commission.
4. Off-street parking existing at effective date of these regulations, in connection with the operation of an existing building or use, shall not be reduced to an amount less than thereafter required for a similar new building or use.
5. Two or more buildings or uses may collectively provide the required off-street parking, in which case the required number of parking spaces shall be not less than the sum of the requirements for the several individual uses computed separately.
6. The required off-street parking shall be for occupants, employees, visitors, and patrons. The storage of merchandise, motor vehicles for sale, or the repair of vehicles on such parking area is prohibited.

7. Every company car, truck, tractor, and trailer normally stored at the plant site shall be provided with off-street parking spaces in addition to other required spaces.
8. In cases of dual functioning of off-street parking where operating hours do not overlap, the governing body may grant an exception.
9. The minimum number of off-street parking spaces shall be determined in accordance with the following:

Table of Parking Spaces Required:

- a. Automobile wrecking, junk, or salvage yard which offers for sale to the public any new or used merchandise: Six spaces, plus one for each five acres.
- b. Banks, business or professional offices: One per 300 square feet of usable floor area, plus two per each three employees.
- c. Barber shop or beauty parlor: Two per barber or beauty shop chair.
- d. Boarding or rooming house: One space for each three boarders, and one each for two guests provided overnight accommodations.
- e. Bowling alleys: Five per alley.
- f. Churches: One per four seats; or one per 30 square feet of usable floor area of auditorium, whichever is greater.
- g. Commercial recreation uses: One per five customers computed on the basis of maximum servicing capacity at any one time, plus one additional space for every two people regularly employed on the premises.
- h. Commercial or trade schools: One per three students, plus two per three employees.
- i. Country clubs: One per five members.
- j. Dormitories, fraternity or sorority: One per each three permanent residents.
- k. Dwellings (single- and two-family): Two per dwelling unit.
- l. Dwellings (multiple-family): Two spaces per dwelling unit for the first twenty units, plus one and one-half spaces for each dwelling unit exceeding twenty units.
- m. Establishments for sale and consumption, in the premises, of beverages, food or refreshment: One per three employees, plus one per one hundred square feet of usable floor space, or one per three fixed seats, whichever is greater.

- n. Gasoline service station: One parking space for each employee, plus two spaces for each service bay, plus one parking space for each company vehicle (tow truck or service vehicle).
- o. Governmental office buildings: One per three hundred square feet of usable floor area, plus one per each two employees. Every governmental vehicle shall be provided with a reserve off-street parking space.
- p. Homes for the aged, sanitariums, convalescent or nursing homes: One space for each four patient beds, plus one space for each staff doctor, plus one space for each two employees, including nurses.
- q. Hospitals: One per three patient beds, exclusive of bassinets, plus one space for each two employees, including nurses on the maximum working shift, plus adequate area for parking emergency vehicles.
- r. Hotel: One per two rooms or suite, plus two per three employees.
- s. Hotel (apartment): One parking space for each apartment.
- t. Industrial establishments: Parking or storage for all vehicles used directly in the conduct of such industrial use, plus one parking space for every three employees on the premises at maximum employment on a single shift.
- u. Library: One for each 400 square feet of floor space.
- v. Medical clinics: Three patient parking spaces per staff doctor, plus two per three other employees.
- w. Mortuaries or funeral parlors: Five spaces per parlor or chapel unit, or one per four seats, whichever is greater; plus one for every two persons regularly employed on the premises.
- x. Motels and tourist courts: One per guest bedroom.
- y. Private clubs, lodge or union headquarters: One per three members based on the design capacity of the facility.
- z. Retail stores, supermarkets, department service establishments, except as otherwise specified: One per 200 square feet of retail floor space.
- aa. Schools shall be provided with parking spaces per the following schedule:
 - 1. Elementary, junior high, and the equivalent private or parochial schools: Two spaces per three teachers and employees normally engaged in or about the building or grounds, plus one space for each 150 square feet of seating area, including aisles, in any auditorium.

2. Senior high schools and the equivalent private or parochial schools: Two spaces per three teachers and employees normally engaged in or about the building or grounds, plus one space per five students or one space for each one 150 square feet of seating area, including aisles, in any auditorium, whichever is greater.
 3. Kindergartens, day schools, and the equivalent private or parochial schools: Two parking spaces per three teachers and employees normally engaged in or about the building or grounds, plus one off-street loading space per eight pupils.
- bb. Shopping centers: There shall be a ratio of 6.5 parking spaces for each 1,000 square feet of gross leaseable floor area.
 - cc. Stadiums and sports: One per four seats or twelve feet of benches.
 - dd. Swimming pools: Twenty spaces, plus one space for each 500 square feet of floor area in the principal structure.
 - ee. Theaters, auditoriums, and places of assembly with fixed seats: One per three seats.
 - ff. Theaters, auditoriums, and places of assembly without fixed seats: One per three people based on the design capacity of the structure.
 - gg. Vacation Home Rental: One per bedroom.
 - hh. Wholesale establishments and business services: One for every 50 square feet of customer service area, plus two per three employees based on the design capacity of the largest shift.

B. Off-Street Parking Lot Layout, Construction and Maintenance:

Wherever the required off-street parking requires the building of a parking lot and wherever a parking lot is built, such parking lots shall be laid out, constructed, and maintained in accordance with the following regulations:

1. Except for parcels of land devoted to one and two family uses, all area devoted to off-street parking shall be so designed and be of such size that no vehicle is required to back into a public street to obtain egress.
2. Each parking space shall not be less than 162 square feet, or nine (9) by eighteen (18) feet, and each space shall be clearly designated as one parking stall.
3. Clearly defined driveways used for ingress and egress shall be confined to and shall not exceed twenty-five (25) feet in width, exclusive of curb returns.

4. All areas devoted to permanent off-street parking as required under this section shall be surfaced and maintained in such a manner that no dust will result from continuous use.
5. The parking lot shall be drained to eliminate surface water.
6. Where the parking lot abuts side lot lines of a residential district, there shall be established a setback line ten (10) feet from such side lot line.
7. Where the parking lot is contiguous to a residential district which has common frontage in the same block with the parking lot, there shall be established a setback line twenty-five (25) feet from the street lot line.
8. Where the parking lot lies across the street and opposite a residential district, wherein the lots front on such street, there shall be established a setback line twenty-five (25) feet from the street lot line.
9. Where the parking lot abuts rear property lines of a residential district, there shall be established a setback line five (5) feet from the rear lot line.
10. Where parking is to be provided in the front yard of a multiple-family dwelling, there shall be established a setback line ten (10) feet from the street lot line. The land between the setback line and the lot line of a parking lot is, for the purpose of these Zoning Ordinances, called a buffer strip.
11. Plans for the layout of parking lots shall be submitted with the Building Permit application and shall be reviewed by the Planning Director for compliance with these Zoning Ordinances. Decisions made by the Planning Director may be appealed to the Commission.
12. Lighting: Any lighting used to illuminate any off-street parking area shall be so arranged as to deflect the light from all adjoining premises.
13. Whenever a parking lot abuts a residential district, screening may be required by the Commission, at the request of the Planning Director, to protect the integrity of the built-up residential district.

SECTION 311 - OFF-STREET LOADING AND UNLOADING REQUIREMENTS

In all districts and on the same premises with every building, structure or part thereof, erected and occupied for manufacturing; storing warehousing goods; display; a department store; a wholesale store; a market; a hotel; a hospital; or other uses similarly involving the receipt of distributions of vehicles of materials or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading, and unloading services adjacent to the opening used for loading and unloading in order to avoid undue interference with public use of the streets or alleys.

The following minimum off-street loading and unloading spaces shall be provided:

- A. One off-street loading and unloading space shall be provided for buildings up to and including 20,000 square feet of floor area, plus one additional off-street loading and unloading space for each additional 20,000 square feet of floor area up to and including 100,000 square feet.

- B. There shall be provided an additional off-street loading and unloading space for each additional 40,000 square feet of floor area in excess of 100,000 square feet.
- C. Where trailer trucks are involved, such loading and unloading space shall be an area twelve (12) feet by fifty (50) feet with a fourteen (14) foot height clearance and shall be designed with appropriate means of truck access to a street or alley as well as adequate maneuvering area.

SECTION 312 - SIGNS, BILLBOARDS, AND OTHER ADVERTISING STRUCTURES (Revised 06-26-24)

- A. *Purpose.* It is the purpose of this section to promote the public health, safety and general welfare through reasonable, consistent and non-discriminatory sign standards.
- B. *Exempt Signs.* The following signs are exempt from regulation under this section:
 - 1. Government Signs, including signs erected by the County for government purposes.
 - 2. Signs located entirely inside the premises of a building or enclosed space, other than Window Signs.
 - 3. Traffic Control Device Signs.
 - 4. Signs protected by state statute.
 - 5. Signs protected by federal law.
 - 6. Directional signs: Directional signs shall not exceed 20 square feet.
 - 7. "For Sale" or "For Rent" signs: Not more than one non-illuminated "For Sale" or "For Rent" sign, not exceeding 32 square feet in area is allowed for the purpose of advertising the sale, rental or lease of the premises on which the sign is located.
 - 8. Political Signs: As defined in Section 103.
 - 9. Temporary Signs: As defined in Section 103.
- C. *Prohibited Signs.* The following signs are prohibited in Pennington County unless protected by state statute, federal law, or otherwise allowed in this section.
 - 1. Abandoned Signs.
 - 2. Balloon Signs.
 - 3. Inflatable Signs.
 - 4. Rotating Signs.
 - 5. Signs emitting any sound that is intended to attract attention.
 - 6. Signs attached or painted on trees, rocks or natural features.
 - 7. Signs in the public right-of-way or a public easement.
 - 8. Signs installed, attached or painted on fences.
 - 9. Cars, vehicles or trailers used as signs or sign structures.
 - 10. Signs resembling Traffic Control Device Signs.

- D. *Consent of Legal Owner of Property.* Except as required by state law, no sign may be displayed without the consent of the legal owner of the property on which the sign is mounted or displayed.
- E. *General Provisions.* The following general provisions for signs apply to this section, unless otherwise indicated in this section.
1. *Sign Permit.* A Sign Permit is required prior to the installation or placement of a new sign, unless exempted by Section 312(B).
 2. *Application.* On a form provided by the Planning Department that includes the following:
 - a. Name and address of the sign owner and the contractor.
 - b. Name and address of the property owner where the sign is to be located.
 - c. The legal property description of the proposed sign location.
 - d. Clear and legible drawing of the proposed sign to scale with description of the sign showing construction type and lighting.
 - e. Site plan showing the location and setbacks on the property where the sign is to be located.
 - f. The property owner's notarized signature.
 - g. Global Positioning Systems (GPS) coordinates of proposed sign.
 - h. Other such data and information deemed necessary by the Planning Department.
 3. *Fees.* In accordance with Section 511.
- E. *Administrative Interpretation and Discretionary Approval.* Interpretations of this section may be made by the Planning Director. All interpretations of this section are to be exercised in light of the policies, purposes and intent set forth herein.
1. Whenever a Sign Permit or other approval is subject to discretion, such discretion shall not be exercised as to message content, but instead shall be directed to structural and location factors, including, as applicable:
 - a. Whether the location and placement of the sign will endanger motorists.
 - b. Whether the sign will cover, blanket or interfere with any prominent view of a structure or façade of architectural significance.
 - c. Whether the sign will obstruct views of users or abutting buildings to landscaped areas or open space.
 - d. Whether the sign will negatively impact the visual quality of a public open space, such as a public recreation facility, square, plaza, park, courtyard and the like.

- e. Whether the sign is compatible with nearby building heights.
 - f. Whether the sign's lighting or illumination system will cause hazardous or unsafe driving conditions for motorists.
- F. *On-premise and off-premise.* Within this section, any distinction between on-premise signs and off-premise signs applies only to commercial messages.
 - 1. *Setbacks.*
 - a. *Front Yard.* The minimum front-yard setback requirement for on-premise or off-premise signs shall be five (5) feet.
 - b. *Rear and Side Yard.* The minimum side and rear-yard setback for on-premise and off-premise signs shall be in conformity with all applicable side and rear-yard setback requirements for structures in the applicable zoning district.
 - 2. *Display Face.* A single sign structure for an on-premise or off-premise sign cannot exceed one display face per side.
 - 3. *Number of Sides.* A single sign structure can have no more than two sides.
 - 4. *Height.* The maximum height for an on-premise or off-premise sign cannot exceed 30 feet.
 - 5. *Illumination.* No illuminated sign shall be permitted within 1,500 feet of any dwelling unit or residential district without an approved Conditional Use Permit. All illuminated signs shall be installed and maintained so as to minimize spillage of light outside of the sign face.
 - 6. *Sign Structures.* All on-premise and off-premise sign structures shall be painted and maintained in muted colors as to blend into the natural surroundings. Colors shall include, but not be limited to, brown, black, or tan. Wood sign structure may remain unpainted and allowed to have a natural patina. At no time shall bright or neon colors be used for either wood or metal sign structures.
 - 7. *Viewpoint Neutrality.* Notwithstanding anything in this section to the contrary, no sign or sign structure shall be subject to any limitation based upon the viewpoint of the message contained on such sign or displayed on such sign structure.
- F. *On-premise Signs.*
 - 1. The maximum display area of any on-premise sign shall not exceed 250-square feet on each side.

2. On-premise signs, which advertise or direct attention to a home occupation shall not exceed six (6) square feet in area, and shall be limited to one such sign per approved home occupation. A home occupation shall be allowed to have one wall sign or one freestanding sign. The freestanding sign shall not be located closer than 17 feet to the nearest street right-of-way line. A Conditional Use Permit may allow for a larger size sign, if appropriate to the area.

G. *Off-Premise Signs.*

1. All off-premise signs require a Conditional Use Permit in accordance with § 510 of the Pennington County Zoning Ordinance.
2. No off-premise sign can be located or placed closer than 1,500 feet from any residential zoning district or dwelling unit.
3. No off-premise sign can be located closer than 1,500 feet from another off-premise sign.
4. No off-premise sign can be located closer than 50 feet from an on-premise sign.
5. The maximum display area of any on-premise sign shall not exceed 250-square feet on each side.
 - a. *Exception:* If an off-premise sign is located along an Interstate, the maximum display area is 400 square feet.

H. *Placement of Signs.*

1. Except for appropriately placed Traffic Control Device Signs, no sign shall be placed in the sight visibility triangle.
2. No sign, including temporary signs, is allowed to be located in any public right-of-way, public or private access easement.
3. Signs must maintain clearance from utilities and not interfere with surface and underground water or with drainage.

I. *Measurement of Sign Height*

1. The height of a freestanding sign shall be measured as the vertical distance from the average finished grade of the ground below the sign excluding any filling, berming, mounding or excavating solely for the purposes of increasing the height of the sign, to the top edge of the highest portion of the sign.

2. The average finished grade shall be considered the lowest of the following:
 - a. The lowest elevation where the base of the sign meets ground level.
 - b. The top of the curb of the nearest public street adjoining the property upon which the sign is erected.
 - c. The grade of the land at the primary entrance to the lot on which the sign is located.

J. *Sign Illumination.* Illumination of a sign is optional.

1. Except for changing message displays and marquee signs, any flashing, blinking, reflective, animated, or rotating lights, or signs with an intermittent or varying intensity of artificial illumination, whether deliberate or as a consequence of a defect in the sign or the illumination source, shall be prohibited for any and all signs.
2. All light sources shall be shielded to prevent illumination trespass onto properties other than where the light source is located or permitted under a sign plan.
3. *Residential Permanent Signs.* Permanent Sign located on a parcel in a residential district may not be separately or specially illuminated.
4. *Non-residential Permanent Sign.* A Permanent Sign on a parcel in a non-residential zoning district may be illuminated by internal illumination, internal indirect (halo) illumination, or lit by external indirect illumination, unless otherwise specified in this section; however, a Permanent Sign may not be illuminated in a manner that leaves the illumination device and/or components exposed to public view except with the use of neon, decorative bulbs or tubing as provided in this section.
6. *Internal Illumination.* Any outdoor internally illuminated sign permitted under this section shall be constructed with an opaque background and translucent letters or other graphical elements, or with a solid colored background and contrasting letters or graphics.
7. *External indirect illumination.* Externally lit signs are permitted to be illuminated only with steady, stationary, and shielded light sources directed solely onto the sign. Light bulbs or tubes (excluding neon, decorative bulbs or tubing) used for illuminating a sign shall not be visible from the abutting public rights-of-way and residential properties.
8. *Illumination of signs abutting single family residential uses.* No sign located within 1,500 feet of a residential zoning district or dwelling unit shall be illuminated.

K. *Electronic Changing Message Displays*

1. Wall mounted signs, marquee signs, freestanding monument signs, tower and freeway signs may be Electronic Changing Message Displays except in residential zoning districts.
2. Half of the sign face may be an electronic changing message display, which may be in full color, subject to the following operation limitations:
 - a. An electronic changing message display shall not change more than once every eight (8) seconds except in Commercial Districts where unlimited motion is permitted.
 - b. An electronic changing message display shall change by an instant change method.
 - c. An electronic changing message display shall incorporate photocell/ light sensors, with automatic dimming technology that appropriately adjusts to ambient light conditions at all times of the day and night.
 - d. An electronic changing message display that malfunctions, fails or ceases to operate in its usual programmed manner shall be repaired or disconnected within 48 hours by the owner or operator.

L. *Manual Changing Message Displays.* One half of the area of the face of a sign may be a manual changing message display, subject to the criteria and limitations of this section.

M. *Signs Declared a Nuisance, Repair, or Removal; Signs Presenting Immediate Peril to Public Health or Safety.* The Planning Director may require the repair of signs declared a nuisance, and with notice may cause any structurally unsafe or structurally insecure sign to be immediately removed if the sign presents an immediate danger to the public health or safety.

N. *Enforcement of Sign Ordinance.* In addition to any and all remedies allowed under the laws of the State of South Dakota and this Zoning Ordinance, a violation of any requirement of this Ordinance shall also be subject to the penalties as outlined in Section 513 of the Zoning Ordinance.

O. *Unlawful Signs.* The following provisions shall govern unlawful signs:

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

P. *Nonconforming Signs.* The following provisions shall govern nonconforming signs:

1. Nonconforming signs may receive reasonable repairs or alterations to the face, letters, and frame.
2. If a nonconforming sign is structurally changed or is damaged by fire, lack of maintenance, or other causes by more than 50 percent of its reproduction value, or is temporarily or permanently removed by any means, including “acts of God,” then such sign shall be rebuilt, repaired, or replaced only in conformance with the provisions of this section.
3. If a non-conforming sign becomes an abandoned sign, it shall be removed after notice to the property owner, unless in the case of an abandoned sign the property owner establishes facts sufficient to rebut the presumption of abandonment.
4. If a property or development is expanded or modified to add new signage, all nonconforming signs shall be removed or rebuilt to comply with the provisions of this section.
5. Sign Faces may be replaced on non-conforming signs.
6. Any change to a property that adds to or changes existing signage shall be prohibited until all non-conforming signs are removed or rebuilt in conformance with this section.

SECTION 313 - ACCESS EASEMENTS (Revised 12-13-23)

- A. Easements shall be provided and dedicated where necessary for:
1. Private roadways at widths determined by the County.
 2. Utilities, such as: water, electricity, communication, and any pipes, wires, cables, conduits, fixtures, and associated equipment for distribution.
 3. Drainage.
 4. Wastewater system(s), where applicable.
- B. In any dedication of easement, the County may prohibit or restrict building, fences, driveways, and other improvements.
- C. All easements for utilities shall be shown on a plat or filed as a separate document with the Register of Deeds and must include an Exhibit to identify the easement location.

- D. Lots and easements shall be arranged in such a manner as to eliminate unnecessary jogs or offsets and to facilitate the use of easements for utilities or drainage.
- E. The property owner whose property is subject to such easements shall be responsible for its maintenance.
- F. The property owner whose property is subject to such easements shall keep the easement clear of any structure, debris, trees, shrubs, or landscaping whatsoever, except for lawn grass, which shall be regularly mowed.

SECTION 314 - TEMPORARY CAMPGROUNDS AND ASSEMBLIES OF PEOPLE

A. Purpose:

To regulate the use of land for temporary campgrounds of 20 or more occupants; and to regulate assemblies of people of large numbers in excess of those meeting the health; sanitary; fire; police; transportation; and utility service normally provided, in order that the health, safety, and welfare of all persons in the County, residents, and visitors alike, may be protected.

This section shall not apply to regularly established, permanent places of worship, government-sponsored fairs, rodeos, farm sales, auctions, family gatherings, or assemblies licensed under other laws.

B. Permit Required:

1. No person shall permit, maintain, conduct, undertake, manage, sell, or give tickets for any actual or reasonably anticipated assembly or temporary campground area which continues, or can be reasonably be expected to continue for more than three (3) days, either consecutively or cumulatively in any calendar year, whether on public or private property, unless a Conditional Use Permit has been approved by the Pennington County Planning Commission.
2. A Conditional Use Permit shall be required for each location of a temporary campground and/or assembly. In addition to the Conditional Use Permit filing charge, the permit fee listed below shall be tendered to the County Planning Department upon filing of the Conditional Use Permit application. The permit fee listed below will be held by the County Planning Department while the Conditional Use Permit application is pending. If the Conditional Use Permit is not approved, the permit fee shall be returned. The purpose of this fee is to pay for inspections by law enforcement agencies, Planning Department personnel, the Pennington County Fire Coordinator, and the Pennington County Environmental Planner, among others. Inspections may be conducted before, during, and after the event.
3. In addition to the filing charge and permit fee, a bond shall also be required in the amounts listed below. Such a bond shall be in the form of a cash bond, surety bond, or certified check. A cash bond or certified check shall be required for campgrounds/assemblies of people of up to 1,000 occupants. A cash campground/assemblies of people of 1,001 occupants and over.
4. The bond shall be submitted to the County Planning Department prior to any Planning Commission or County Board action on the Conditional Use Permit. Upon supplying the bond to the Department, a receipt shall be issued to the applicant. The Department shall forward the bond to the County Treasurer's Office. In the event a permit is revoked, bond funds shall be used to pay inspection and administration costs.
5. The purpose of the bond is to ensure that the conditions placed on the Conditional Use Permit are followed and that the requirements of these Zoning Ordinances are complied with.

6. Upon the expiration date of the Conditional Use Permit, the County Planning Department shall inspect the site and determine if the Conditional Use Permit conditions and Zoning Ordinance requirements have been met. If they have not, the County shall then use the bond to correct the non-complying situations. All funds unused shall be returned to the bond owner. If all Conditional Use Permit conditions and Zoning Ordinance requirements have been met, the bond shall be returned to the owner. Should a situation arise whereby the cost of correct the non-complying situations exceeds the amount of the bond, the County shall pursue other remedies to recover their costs.
7. The amounts of the permit fee and bond are:

OCCUPANTS	PERMIT FEE (\$)	AMOUNT OF BOND (\$)
20 to 100 occupants	75	0
101 to 500 occupants	350	600
501 to 1,000 occupants	500	1,150
1,001 to 3,000 occupants	1,000	3,500
3,001 and over occupants	1,500	8,250

8. The person holding the Conditional Use Permit shall allow no more than the maximum number of people in the temporary campground or assemblage of people as approved by the County.
- C. Requirements for Permit:

In addition to the requirements of Section 510, a Conditional Use Permit application shall contain the following information. The Planning Commission and County Board may require additional information. This information is to be provided to the County in the form of a narrative.

1. The maximum number of people to be accommodated.
2. Proof that the applicant will furnish, at his own expense, before the assembly commences or the temporary campground is open to the public:
 - a. Potable water is not required to be furnished. If it is, it must meet all federal and state requirements for purity and method of dispensing; sufficient to provide drinking water for the maximum number of people allowed at the rate of one (1) gallon per person per day, and water for washing at the rate of two (2) gallons per person per day. A water quality sample test shall be performed checking for nitrates and coliforms as part of the CUP application process; the results of which must be submitted to the Planning Department a minimum of one week prior to the Planning Commission hearing. The results of a second water quality sample test shall be submitted to the Planning Department approximately one week prior to the opening of the campground/assembly, checking for coliforms only. In addition, proof shall be submitted stating that the applicant will pay for the testing. The water quality sample shall be taken by either the County's Water Protection Coordinator or a State official.

- b. Water storage reservoirs shall be covered, watertight, and constructed of impervious material. Overflows and vents of such reservoirs shall be effectively screened. All water piping, fixtures, and other equipment shall be constructed and maintained in accordance with state and local regulations. The system shall be sanitized by chlorination before and during each fill.
- c. Water storage tanks must be constructed of an impervious material that is watertight and can be easily sanitized. Each tank load of water shall be chlorinated at the filling location to provide at least 3 ppm available chlorine.
- d. Separate enclosed toilets; one unit for every 50 occupants, meeting all state or local specifications and requirements, conveniently located throughout the grounds, together with an efficient sanitary means of disposing of the waste matter, which is in compliance with all state or local rules and regulations. The applicant shall provide a receipt or some other written proof stating that the source of the toilets and the number required can be provided. This proof shall be submitted to the Planning department no later than 10 days after the County Board has approved the Conditional Use Permit. This requirement shall be a condition placed on the Conditional Use Permit. Proof shall also be provided stating who will be collecting the sanitary waste and that it will be done on a daily basis.
- e. A sanitary method of disposing of solid waste; in compliance with state or local rules and regulations, together with a plan for holding and a plan for collecting all such waste at least once each day the assembly or temporary campground is in operation. A minimum of one 30-gallon capacity container per 25 people, with plastic liners and tight fitting lids shall be provided. The plan shall include a statement as to who will be collecting the trash and how it will be transported from the site.
- f. For assemblies of people, not temporary campgrounds, a parking area for assembly, sufficient to provide parking space for the maximum number of people at the rate of at least one (1) parking space for every four (4) persons; this area to be located inside the grounds.
- g. The density of the campground or assembly of people shall not exceed one person per 400 square feet.
- h. Security guards sufficient to provide adequate security for the maximum number of people at the rate of at least one (1) security guard for every two hundred (200) people. The names, addresses, and ages of all security personnel shall be provided. All security personnel must be at least 18 years old. Campgrounds shall have a responsible person on duty at all times.
- i. A statement specifying the amenities to be provided at each site and the target group in each area, such as families, recreational vehicles, tents, motorcyclists, etc; along with curfew and no curfew areas.

- j. Fire protection:
 - 1. No open fire shall be permitted, except in applicant provided facilities and first approved by the Fire Coordinator.
 - 2. No fires shall be left unattended.
 - 3. No fuel shall be used and no material burned which emits dense smoke or objectionable odors.
 - 4. If fires are permitted, the owner must make available fuel suitable for the facilities.
 - 5. A minimum of one fire extinguished, with a minimum rating of 4A;60BC (#10), accessible to the public at all times.
 - 6. Where feasible, there shall be a minimum of two entrances/exits.
- k. Barbecue pits, fireplaces, and incinerators shall be located, constructed, maintained and used so as to minimize fire hazard and smoke nuisance, both on and off the property. The Fire Coordinator shall approve these facilities before use is permitted.
- l. 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.
- m. Condition of grounds:
 - 1. The condition of the soil, ground water, drainage, and topography shall not create hazards for adjoining property or endanger the health or safety of the occupants.
 - 2. The grounds shall be kept cleaned of rubbish, trash and debris daily.
- n. Soil and ground cover requirements:
 - 1. The growth of brush, weeds, and grass shall be controlled.
 - 2. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac, and other noxious weeds considered detrimental health.
- o. A minimum of one 36-unit first aid kit, accessible to the public at all times.
- p. A minimum of one, public or private, telephone provided either at the registration office or within 1/8 mile of the campground, accessible during normal waking hours. At each phone location, a card shall be provided identifying the location and campground name.
- q. All food concessionaires or concessions that will be operating on the property must be registered, including their names and addresses and State license or permit numbers. All food service operations shall be inspected and approved by the local health authority or State Health Department before opening for business. All operations must have a temporary food license from the State Health Department.

- r. If alcoholic beverages are to be sold, proof that the appropriate permit or license has been obtained and is current.
 - s. All accesses onto State highways or County roads must meet the appropriate entity's specifications.
 - t. Each campground location shall be permitted one (1) on-premise business sign. Such a sign shall not exceed forty-five (45) feet in height. The maximum display area shall not exceed 1,200 square feet, or thirty (30) feet in height or sixty (60) feet in length. The sign shall be placed or erected in conformity with the side and rear yard setbacks required for structures in the appropriate zoning district. There is no front yard setback. All other signage requirements of these Zoning Ordinances shall apply, as pertains to advertising signs.
3. The narrative shall contain a statement, made upon oath or affirmation, that the statements contained therein are true and correct to the best knowledge of the applicant, and shall be signed and sworn to or affirmed by the individual making application in the case of an individual, by all officers in the case of a corporation, by all partners in the case of a partnership or by all officers of an unincorporated association, society or group or, if there be no officers, by all members of such association, society or group.

D. Application for a Conditional Use Permit:

The application and accompanying site plan shall contain and disclose:

- 1. The name, age, residence, and mailing address of all persons required to sign the application as above-provided, and, in the case of a corporation, a certified copy of the Articles of Incorporation, together with the name, age, residence, and mailing address of each person holding ten (10) percent or more of the stock of said corporation.
- 2. The address and legal description of all property upon which the assembly and/or temporary campground is to be held, together with the name, residence, and mailing address of the record owner(s) of all such property.
- 3. Proof of ownership of all property upon which the assembly and/or temporary campground is to be held or a statement made upon oath or affirmation by the record owner(s) of all such property that the applicant has permission to use such property for the purpose so stated in the application.
- 4. The nature or purpose of the assembly and/or temporary campground.
- 5. The total number of days and/or hours during which the assembly and/or temporary campground is to last, including the starting and ending dates.

6. The maximum number of persons which the applicant shall permit, not to exceed the maximum number which can assemble and/or camp within the boundaries of the property, as stated in the application.
7. The plans for supplying potable water, including the source, amount available, and location of outlets.
8. The plans for providing toilet and lavatory facilities, including the source, number and location, type, and the means of disposing of waste deposited.
9. The plans for holding, collecting, and disposing of solid waste material.
10. The plans, if any, to illuminate the location of the assembly, including the source and amount of power and the location of lamps.
11. The plans for points of highway access.
12. The plans for security, including the number of guards and their deployment.
13. The plans for fire protection, including the number, type, and location of all protective devices; including extinguishers and the number of emergency fire personnel available to operate the equipment.
14. The plans for sound control and sound amplification, if any; including number, location, and power of amplifiers and speakers.
15. The location of all food concessions.
16. Acknowledgment by applicant of permission to enter the subject property by those individuals identified in Section 314-H for the purposes set forth in this Zoning Ordinance.

E. Revocation of Permit:

The permit may be revoked by the Sheriff of Pennington County or the Pennington County Planning Director at any time if any of the conditions necessary for the issuing of or contained in the permit are not complied with, or if any condition previously met ceases to be complied with. Any such revocation may be made by the Sheriff of Pennington County or the Pennington County Planning Director without notice or hearing if he/she determines that an emergency exists and that it is not practical, in relationship to its obligation to protect the public health; safety; and welfare to allow the permit to proceed. In any such case, however, the owners of the permit may, within a period of 3 days from and after revocation, apply or petition the Commissioners for an administrative hearing to show why the revocation should be set aside and the permit reinstated.

F. Injunction Proceedings to Prevent or Abate Violations:

The Pennington County State's Attorney, in addition to other remedies, may institute an appropriate action or proceedings to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or remedy a violation, or threatened violation, of this section.

G. Penalty:

It is declared unlawful for any person to violate any of the terms and provisions of this Section. Violation thereof shall be a misdemeanor and shall be punishable by a fine not exceeding \$100 dollars, or by imprisonment for a period not exceeding thirty (30) days, or by both such fine and imprisonment. Each and every calendar day that any violator fails to comply with the provisions of this Section shall constitute a separate violation.

H. Any duly authorized officer, employee, or representative of any City; County; State; or Federal agency responsible for enforcing these Zoning Ordinances, or in enforcing the Conditional Use Permit, may enter and inspect any property upon which he has reasonable grounds to believe non-complying situations may exist. Said entry and inspection may be conducted at any reasonable time, without prior notice, for the purpose of ascertaining compliance with these Zoning Ordinances and the Conditional Use Permit. No person shall refuse entry or access to any City, County, State, or Federal agency representative who requests entry for the purpose of such investigation and who presents appropriate credentials. Nor shall any person obstruct, hamper, or interfere with any such investigation.

SECTION 315 - DEVELOPMENT STANDARDS FOR THE ELLSWORTH AIR FORCE INSTALLATION COMPATIBLE USE AREA

A. Purpose:

The purpose of this Section is to provide standards for development in Ellsworth Air Force Installation Compatible Use Area for the protection of the public health, safety, and welfare. In order to carry out the provisions of this Section, there are hereby created and established the following overlay zones: Clear Zone, Accident Potential Zone I (APZI), Accident Potential Zone II (APZ II), 65-70 Noise Zone, 70-75 Noise Zone, 75-80 Noise Zone and 80+ Noise Zone.

B. Development Standards:

In addition to the requirements of the underlying zoning district, all building, structures and land uses located within these overlay zones and initiated after July 18, 1995, shall comply with the development standards identified on the following chart:

C. Variances:

Variances to these development standards may be approved by the Zoning Board of Adjustment in accordance with all provisions of Section 509.

LAND USE COMPATIBILITY

LEGEND

SLUCM - Standard Land Use Coding Manual, U.S. Department of Transportation.

Y - (Yes) - Land use and related structures are compatible without restriction.

N - (No) - Land use and related structures are not compatible and should be prohibited.

Y' - (yes with restrictions) - Land use and related structures generally compatible; see notes 1 through 21.

N' - (no with exceptions) - See notes 1 through 21.

NLR - (Noise Level Reduction) - NLR (outdoor to indoor) to be achieved through incorporation of noise attenuation measures into the design and construction of the structures. See Appendix E, Vol. II.

A, B, or C - Land use and related structures generally compatible; measures to achieve NLR for A(DNL 66-70), B(DNL 71-75), C(DNL 76-80), need to be incorporated into the design and construction of structures. See Appendix E, Vol. II.

A*, B*, and C* - Land use generally compatible with NLR. However, measures to achieve an overall noise level reduction do not necessarily solve noise difficulties and additional evaluation is warranted. See appropriate footnotes.

***** - The designation of these uses as “compatible” in this zone reflects individual federal agencies and program considerations of general cost and feasibility factors, as well as past community experiences and program objectives. Localities, when evaluating the application of these guidelines to specific situations, may have different concerns or goals to consider.

SLUC M NO.	NAME	ACCIDENT POTENTIAL ZONES			NOISE ZONES DNL			
		CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+

10 Residential

11	Household units							
11.11	Single units; detached	N	N	Y ¹	A ¹¹	B ¹¹	N	N
11.12	Single units; semidetached	N	N	N	A ¹¹	B ¹¹	N	N
11.13	Single units; attached row	N	N	N	A ¹¹	B ¹¹	N	N
11.21	Two units; side-by-side	N	N	N	A ¹¹	B ¹¹	N	N
11.22	Two units; one above the other	N	N	N	A ¹¹	B ¹¹	N	N
11.31	Apartments; walk up	N	N	N	A ¹¹	B ¹¹	N	N
11.32	Apartments; elevator	N	N	N	A ¹¹	B ¹¹	N	N
12	Group quarters	N	N	N	A ¹¹	B ¹¹	N	N
13	Residential hotels	N	N	N	A ¹¹	B ¹¹	N	N
14	Mobile home parks or courts	N	N	N	N	N	N	N
15	Transient lodgings	N	N	N	A ¹¹	B ¹¹	C ¹¹	N
16	Other residential	N	N	N ¹	A ¹¹	B ¹¹	N	N

20 Manufacturing

21	Food & kindred products; manufacturing	N	N ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
22	Textile mill products-manufacturing	N	N ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
23	Apparel and other finished products made from fabrics, leather and similar materials – manufacturing	N	N	N ²	Y	Y ¹²	Y ¹³	Y ¹⁴
24	Lumber and wood products (except furniture) – manufacturing	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
25	Furniture and fixtures – manufacturing	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
26	Paper & allied products – manufacturing	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
27	Printing, publishing, and allied industries	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
28	Chemicals and allied	N	N	N ²	Y	Y ¹²	Y ¹³	Y ¹⁴

	products	—						
	manufacturing							
29	Petroleum refining and related industries	N	N	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
30	Manufacturing							
31	Rubber and misc. Plastic products	N	N ²	N ²	Y	Y ¹²	Y ¹³	Y ¹⁴
	manufacturing							
32	Stone, clay and glass products	N	N ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
	manufacturing							
33	Primary metal industries	N	N ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
	Fabricated metal products	N	N ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
	manufacturing							
34								
35	Professional, scientific, and controlling instruments, photographic and optical goods, watches and clocks - manufacturing	N	N	N ²	Y	A	B	N
39	Miscellaneous manufacturing	N	Y ²	Y ²	Y	Y ¹²	Y ¹³	Y ¹⁴
40	Transportation, communications and utilities							
41	Railroad, rapid rail transit and street railroad transportation	N ³	Y ⁴	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
42	Motor vehicle transportation	N ³	Y	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
43	Aircraft transportation	N ³	Y ⁴	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
44	Marine craft transportation	N ³	Y ⁴	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
45	Highway & street right-of-way	N ³	Y	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
46	Automobile parking	N ³	Y ⁴	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
47	Communications	N ³	Y ⁴	Y	Y	A ¹⁵	B ¹⁵	N
48	Utilities	N ³	Y ⁴	Y	Y	Y	Y ¹²	Y ¹³

SLUC M NO.	NAME	ACCIDENT POTENTIAL ZONES			NOISE ZONES DNL			
		CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+
50	Trade							
51	Wholesale trade	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
52	Retail trade-building materials, hardware and farm equipment	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
53	Retail trade-general merchandise	N	N ²	Y ²	Y	A	B	N
54	Retail trade-food	N	N ²	Y ²	Y	A	B	N
55	Retail trade-automotive, marine craft, aircraft and accessories	N	Y ²	Y ²	Y	A	B	N
56	Retail trade-apparel and accessories	N	N ²	Y ²	Y	A	B	N
57	Retail trade-furniture, home furnishings and equipment	N	N ²	Y ²	Y	A	B	N
58	Retail trade-eating and drinking establishments	N	N	N ²	Y	A	B	N
59	Other retail trade	N	N ²	Y ²	Y	A	B	N
60	Services							
61	Finance, insurance and real estate services	N	N	Y ⁶	Y	A	B	N
62	Personal services	N	N	Y ⁶	Y	A	B	N
62.4	Cemeteries	N	Y ⁷	Y ⁷	Y	Y ¹²	Y ¹³	Y ^{14,2} ₁
63	Business services	N	Y ⁸	Y ⁸	Y	A	B	N
64	Repair services	N	Y ²	Y	Y	Y ¹²	Y ¹³	Y ¹⁴
65	Professional services	N	N	Y ⁶	Y	A	B	N
65.1	Hospitals, nursing homes	N	N	N	A*	B*	N	N
65.1	Other medical facilities	N	N	Y	A	B	N	
66	Contract construction services	N	Y ⁶	Y	Y	A	B	N
67	Governmental services	N	N	Y ⁶	Y*	A*	B*	N
68	Educational services	N	N	N	A*	B*	N	N
69	Miscellaneous services	N	N ²	Y ²	Y	A	B	N
70	Cultural, entertainment and recreational							
71	Cultural activities	N	N	N ²	A*	B*	N	N

	(including churches)							
71.2	Nature exhibits	N	Y ²	Y	Y*	N	N	N
72	Public assembly	N	N	N	y	N	N	N
72.1	Auditoriums, concert halls	N	N	N	A	B	N	N
72.11	Outdoor music shell, amphitheaters	N	N	N	N	N	N	N
72.2	Outdoor sports arenas, spectator sports	N	N	N	Y ¹⁷	Y ¹⁷	N	N
73	Amusements	N	N	Y ⁸	Y	Y	N	N
74	Recreational activities (including golf courses, riding stables, water recreation)	N	Y ^{8,9,10}	Y	Y*	A*	B*	N
75	Resorts and group camps	N	N	N	Y*	Y*	N	N
76	Parks	N	Y ⁸	Y ⁸	Y*	Y*	N	N
79	Other cultural, entertainment and recreation	N	Y ⁹	Y ⁹	Y*	Y*	N	N

80 Resources production and extraction

81	Agriculture (except livestock)	Y ¹⁶	Y	Y	Y ¹⁸	Y ¹⁹	Y ²⁰	Y ^{20,21}
81.5 to 81.7	Livestock farming and animal breeding	N	Y	Y	Y ¹⁸	Y ¹⁹	Y ²⁰	Y ^{20,21}
82	Agricultural related activities	N	Y ⁵	Y	Y ¹⁹	Y ¹⁹	N	N
83	Forestry activities and related services	N ⁵	Y	Y	Y ¹⁸	Y ¹⁹	Y ²⁰	Y ^{20,21}
84	Fishing activities and related services	N ⁵	Y ⁵	Y	Y	Y	Y	Y
85	Mining activities and related services	N	Y ⁵	Y	Y	Y	Y	Y
89	Other resources production and extraction	N	Y ⁵	Y	Y	Y	Y	Y

1. Suggested maximum density of 1-2 dwelling units per acre, possibly increased under a Planned Unit Development (PUD) where maximum lot coverage is less than 20 percent.
2. Within each land use category, uses exist where further definition may be needed due to the variation of densities in people and structures (See Vol. 2, Appendix F).
3. The placing of structures, buildings, or aboveground utility lines in the clear zone is subject to severe restrictions. In a majority of the clear zones, these items are prohibited. See AFR 19-9 and AFR 86-14 for specific guidance.

4. No passenger terminals and no major aboveground transmission lines in APZ 1.
5. Factors to be considered: labor intensity, structural coverage, explosive characteristics, and air pollution.
6. Low-intensity office uses only. Meeting places, auditoriums, etc., are not recommended.
7. Excludes chapels.
8. Facilities must be low intensity.
9. Clubhouse not recommended.
10. Areas for gatherings of people are not recommended.
11.
 - a. Although local conditions may require residential use, it is discouraged in DNL 66-70 dB and strongly discouraged in DNL 71-75 dB. An evaluation should be conducted prior to approvals, indicating that a demonstrated community need for residential use would not be met if development were prohibited in these zones, and that there are no viable alternative locations.
 - b. Where the community determines the residential uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) for DNL 66-70 dB and DNL 71-75 dB should be incorporated into building codes and considered in individual approvals. See Appendix E for a reference to updated NLR procedures.
 - c. NLR criteria will not eliminate outdoor noise problems. However, building location and site planning, and design and use of berms and barriers can help mitigate outdoor exposure, particularly from near ground level sources. Measures that reduce outdoor noise should be used whenever practical in preference to measures which only protect interior spaces.
12. Measures to achieve the same NLR as required for facilities in DNL 66-70 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
13. Measures to achieve the same NLR as required for facilities in DNL 71-75 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
14. Measures to achieve the same NLR as required for facilities in DNL 76-80 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
15. If noise sensitive, use indicated NLR; if not, the use is compatible.
16. No buildings.
17. Land use is compatible provided special sound reinforcement systems are installed.
18. Residential buildings require the same NLR as required for facilities in DNL 66-70 dB range.
19. Residential buildings require the same NLR as required for facilities in DNL 71-75 dB range.
20. Residential buildings are not permitted.
21. Land use is not recommended. If the community decides the use is necessary, hearing protection devices should be worn by personnel.

SECTION 316 – TELECOMMUNICATIONS FACILITY (Revised 06-22-22)

This Section establishes guidelines for the placing of all telecommunication support structures, such as: wireless towers (including internet), microwave towers, common carrier towers, cellular, television and radio towers, telecommunications towers and towers in general (telecommunications facility).

- A. See Section 103 – Definitions.
- B. *General Requirements.* All telecommunications facilities in Pennington County shall be subject to these regulations and all other applicable local, state, and federal regulations.
 - 1. *Telecommunication Facility Permit.* Telecommunications facilities and support structures may be permitted in any district with the approval of a Telecommunications Facility Permit in accordance with Pennington County Zoning Ordinance (PCZO) § 510 and § 316(H).
 - 2. *Location of Equipment on Existing Structures.* Antennas and accessory equipment are permitted in all zoning districts when located on existing support structures in accordance with PCZO § 316(E).
 - 3. *Building Permit Requirements.* Construction of telecommunications facilities, accessory structures (equipment shelters), and any minor or major modifications to telecommunications facilities require an approved Commercial Building Permit prior to placement or replacement, as required in PCZO §§ 316(K) and 506.
- C. *Setback Requirements.* The following are setback requirements for telecommunication facilities (distance is measured from the base of the support structure to the property line):
 - 1. The minimum distance from the property which a telecommunications facility is to be located on must be at least 500 feet from any residential zoning district, dwelling unit, or agriculture district containing less than 40 acres.
 - 2. In all other instances, the minimum distance from the property which a telecommunications facility is to be located on must be at least 1.1 times the support structure's height from property lines.
 - 3. Accessory structures (equipment shelters) must meet the setback requirements of the applicable zoning district, as required in PCZO § 200.

D. *Standards.* The following are standards by which telecommunications facilities will be considered:

1. *Priority.* Applicants for a Telecommunications Facility Permit shall locate, site, and erect said telecommunications facility in accordance with the following priorities:
 - a. on existing facilities or other support structures without increasing the height of the support structure.
 - b. on properties zoned industrial.
 - c. on properties zoned commercial.
 - d. on properties containing 40 acres or more and zoned agriculture.
 - e. on properties zoned residential.
2. *Height.* The following are maximum heights allowed:
 - a. Support structures shall not exceed 300 feet above ground level to the top of the highest point.
 - b. Accessory structures (equipment shelters) shall not exceed 12 feet in height, unless otherwise stated in this Section.
3. *Aesthetics.* Facilities shall be designed to minimize the visual impact on the surrounding environment. The following may be considered in relation to aesthetics:
 - a. Based on potential aesthetic impacts, the order of preference for support structure type is: façade-mounted, roof-mounted, stealth, monopole, lattice tower and guyed tower.
 - b. All support structures shall be designed and located to minimize their visibility to the greatest extent feasible, considering technological requirements, by means of placement, screening, and camouflage.
 - c. When feasible, a telecommunications facility shall be sited so that at least 80 percent of the height of the support structure and accessory structure is screened from view by vegetation.
 - d. All telecommunications facilities proposed for locations where they would be readily visible shall incorporate appropriate techniques to camouflage or disguise the facility, and/or blend it into the surrounding environment to the extent feasible.
 - e. Colors and materials for facilities shall be chosen to minimize visibility. All visible exterior surfaces shall be constructed of non-reflective materials. Facilities shall be painted or textured using colors to match or blend with the background.

- f. Façade-mounted equipment shall not project more than 18 inches from the face of the building or support structure unless specifically authorized by the County.
 - g. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized.
 - h. Support structure heights and locations which necessitate FAA coloring and lighting should be avoided.
 - i. Support structures of any height should not be lighted unless specifically required by FAA.
 - j. At the time of modification or upgrade of facilities, existing equipment shall, to the extent feasible, be replaced with equipment of equal or greater technical capacity and reduced size so as to reduce visual impacts.
4. *Accessory structures.* Each carrier is allowed one equipment shelter not to exceed 400 square feet.
5. *Other Specifications.* In addition to all other requirements set forth in this Section, telecommunications facilities must meet the following:
- a. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing and vandalism.
 - b. The base of the support structure shall be surrounded by a fence or wall at least 7 feet in height, unless the support structure is constructed entirely on a building over 7 feet in height.
 - c. Support structures shall be sited to contain all ice-fall or debris, from support structure failure, on-site.
 - d. Any support structure extending over 100 feet in height shall be engineered and constructed to accommodate a minimum of three providers.
 - e. Commercial advertising on facilities, support structures, or accessory structures is strictly prohibited.
 - f. Signs located at the telecommunications facility shall be limited to ownership, contact information, FCC antenna registration number (if required), and any other information, as required by government regulations, and not greater than 6 square feet in area.
 - g. The permit holder must maintain compliance with current FCC Rules and Regulations for electronic emissions and electromagnetic radiation.

6. *Prohibition.*

- a. A telecommunications facility is prohibited:
 - i. in a FEMA designated floodway; and,
 - ii. within a public right-of-way.
- b. No telecommunications facility shall be constructed within one mile of other towers unless substantive documentation is provided showing that co-location on towers within one mile is not technically feasible.

E. *Antennas on Existing Structures.* Antennas on existing structures are permitted in accordance with the following:

1. Omnidirectional or Whip Antennas shall not exceed 20 feet in length/height and not exceed 7 inches in diameter and shall be of a color that is identical or similar in color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.
2. Directional or panel antennas shall not exceed 10 feet in length and 2 feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.
3. Cylinder-type antennas shall not exceed 10 feet in length and not exceed 12 inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.
4. Satellite and microwave dishes shall not exceed 6 feet in diameter. Dish antennas greater than 3 feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon towers or monopoles.
6. Other antenna types not specifically mentioned shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the antennas listed above.

F. *Stealth Telecommunications Facilities.* Stealth Telecommunications Facilities are subject to the following requirements:

1. Permitted in all zoning districts.
2. Limited to 75 feet in height
3. Meets the requirements of PCZO §§ 316(C) through 316(E).
4. Have antennas that are enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
5. The support structure for the antennas must be allowed within the underlying zoning district (i.e. flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, steeples and “naturally occurring features” such as boulders and trees).

G. *Monopoles or Replacement Poles that Support Utility Lines.* Monopoles or replacement poles that will support utility lines, as well as a telecommunications facility, shall be permitted within utility easements, in accordance with the following:

1. The utility easement shall be a minimum of 100 feet in width.
2. The easement shall contain overhead utility transmissions and/or distribution structures that are 80 feet or greater in height.
3. The height of the Monopole or replacement pole may not exceed by more than 20 feet the height of existing utility support structures.
4. Monopoles and associated accessory equipment shall be setback a minimum of 15 feet from all boundaries of the easement.
5. Single carrier monopoles within utility easements shall meet the height restrictions imposed by items 1 through 4 above.
6. Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to 10 feet above the height of the utility tower.

H. *Telecommunication Facility Permit Application Requirements.* All applications for telecommunication facilities shall be filed with the Planning Department on the official form supplied by the Planning Department and shall be accompanied by an application fee pursuant to PCZO § 511 and include the following:

1. The application form shall be completed and signed by the applicant and landowner(s).
2. A signed Right-of-Entry Form from the Wireless Communications carrier.
3. A written report describing the proposed facility, existing land uses, the capacity of the structure, and the tree line elevation of vegetation within 100 feet of the facility.
4. A report explaining how the proposed support structure fits into the applicant's telecommunications network. *This does not require disclosure of confidential information.*
5. A site plan prepared by a Professional Engineer showing the location and legal description of the site, height of existing structures on the property, means of access, setbacks from property lines, elevation drawings of the proposed facility, and any related improvements and/or equipment.
6. A vicinity map showing adjacent properties, general land uses, zoning, and roadways within 1,000 feet of the property line.
7. Documentation demonstrating legal access to the telecommunications facility site.
8. In the case of locating on an existing structure, a structural analysis of the existing structure.
9. Visual impact demonstrations using photo simulations or line-of-sight diagrams of the proposed facility as it would be seen from residential areas, public rights-of-way and other sites deemed appropriate by the Planning Department. Each photo shall be labeled with the line-of-sight, elevation and the date taken.

10. Copies of permits from Federal and State agencies establishing compliance with applicable Federal and State Regulations.
11. A map outlining the boundaries of the coverage area.
12. Evidence of written contact with owners of existing support structures who supply service within one mile of the proposed facility. The applicant shall inquire about potential co-location opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as response(s) shall be included as a part of the submittal material as a means of demonstrating the need for a new telecommunications facility.
13. In the case of a new facility, greater than 100 feet in height, a statement from the carrier shall be provided which documents how many additional carriers can co-locate. If co-location is not possible, the statement must include such technical information and other justifications, as are necessary, to document the reasons why co-location is not a viable option.
14. A list of all existing support structures and sites considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing support structure is listed among the alternatives, the applicant must specifically address why the modifications of such structure is not a viable option.
15. When locating within a residential area, a written technical and operational analysis of why a façade-mounted, roof-mounted and/or stealth tower cannot be used.
16. The FAA response to the notice of proposed construction or alteration (FAA Form 7460-1 or equivalent).
17. Letter of Intent to remove the facility at the expense of the facility and/or property owner if it is abandoned (may require surety or bond).

An incomplete Telecommunications Facility Permit application will NOT be accepted for review. Failure to meet application requirements or provide information or documents requested by the Planning Department prior to the scheduled hearing date will result in denial of the Telecommunications Facility Permit.

I. *Telecommunications Facility Permit Public Hearing and Review:*

1. *Notice to Property Owners.* The applicant must notify abutting and surrounding property owners (inclusive of Contract for Deed buyers) of record within 500 feet by registered or certified mail of the requested Permit at least 10 days prior to the public hearing by the Planning Commission.
2. *Notice of Planning Commission Hearing.* The Planning Commission shall hold at least one public hearing on the proposed Permit. Notice of the time and place of the hearings shall be given once and at least 10 days in advance, by publication in the legal newspapers of the County.

3. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the Permit request, in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be placed no less than 10 days prior to the date of the public hearing before the Planning Commission.
4. *Public Hearing – Planning Commission.* The Planning Commission reviews the application and may continue and request further information, approve, continue, or deny the Permit.
5. *Review of Permit.* The Permit is subject to review by the Planning Commission for compliance with conditions of approval on an annual basis.
 - a. *Verification.* The Planning Department shall have the right to enter property from time-to-time for the purpose of making reasonable observations to verify compliance with the conditions of approval.
 - b. *Determination.* At the conclusion of the review, the Planning Commission may: 1.) approve the Permit under the conditions already imposed; 2.) approve the Permit with additional conditions; 3.) schedule another review; or 4.) request a revocation hearing in accordance with PCZO § 316(I)(6).
6. *Revocation of Permit.* Permits approved under this Section must be established and conducted in conformity with the conditions of approval of the Permit. Failure to comply with conditions of approval is cause for revocation of the Permit.
 - a. *Grounds.* The Planning Director may schedule a revocation hearing before the Planning Commission, if:
 - i. The owner or applicant has failed repeatedly to comply with the conditions of approval of the Permit;
 - ii. The continued use is a threat to public health, safety, or general welfare;
 - iii. The use of the granted telecommunication facility has ceased for a period of 1 year; or,
 - iv. The use of the granted telecommunication facility was not established, according to the terms and conditions of the Permit, within 2 years from date of approval.

- b. *Notice.* Notice of time and place of hearing shall be given, in writing, to the permit holder at least 30 days in advance of hearing. Surrounding property owners must also be given written notice of the hearing as provided under PCZO § 316(I)(1). Notice of time and place of the hearing shall be published at least 30 days in advance of hearing in the legal newspapers of the County.
 - c. *Hearing.* Upon hearing, the Planning Commission may revoke the Permit pursuant to the standards set forth in PCZO § 510 or order remedial action to be taken by the owner or operator.
- 7. *Appeals.* Any appeal of a decision taken under this section must be done in accordance with SDCL Chapter 11-2.
- J. *Denial of a Telecommunications Facility.* A Telecommunications Facility Application may be denied for any of the following reasons:
 - 1. The use or construction of Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation.
 - 2. Conflict with the character of the surrounding land uses.
 - 3. The owner(s) of the property do not agree to allow future co-location of other antenna(s).
 - 4. Conflicts with the provisions of this Section.
 - 5. Failure to meet application requirements or provide information or documents requested by the Planning Department prior to the scheduled hearing date.
- K. *Modification.* All applications for a modification or co-location of an existing permitted facility outside of routine maintenance and not increasing the facility height shall require a Commercial Building Permit in accordance with § 506 and the following:
 - 1. The application form must be signed by the applicant and the tower's owner.
 - 2. A structural analysis of the existing structure – stamped by a South Dakota Registered Professional Engineer.
 - 3. A site plan prepared by a South Dakota Registered Professional Engineer showing the location and legal description of the site, height of existing structures on the property, means of access, setbacks from property lines, and elevation drawings of the proposed facility and any related improvements and equipment.
- L. *Exemptions.* The following are not subject to the provisions of this Section:
 - 1. Ordinary and routine maintenance of existing facilities and structures.
 - 2. Antennas used by residential households solely for broadcast radio and television reception.

3. Satellite antennas used solely for residential or household purposes.
 4. A Carrier on Wheels (COW) placed for a period of not more than 120 days at any location within Pennington County, after a declaration of an emergency or a disaster by the Governor or by the responsible official of Emergency Management, the Sheriff of Pennington County, and/or the Pennington County Board of Commissioners. If within the allotted timeframe of 120 days it is determined that the COW will be needed for a longer period of time, the carrier provider may submit a letter to the Director of the Planning Department requesting an extension.
 5. A COW placed for a period of not more than 2 weeks at any location within Pennington County in order to serve a community event authorized by the Pennington County Board of Commissioners.
 6. Ham radio and amateur radio facilities.
- M. *Abandonment of Facility.* Any facility or support structure that is not operated for a period of one year shall be considered abandoned and the owner of the facility or support structure shall remove the facility within 90 days of its abandonment or be declared a nuisance and subject to remedies set forth in SDCL 21-10.
- N. *Decommissioning.* The applicant or the owner provides a decommission plan at the time of a Telecommunication Facility Permit submittal.
1. *Cost Responsibility.* The applicant or the facility's owner is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and any associated facilities. The decommissioning plan must clearly identify the responsible party.
 2. *Financial Assurance.* Before construction begins on the project, the facility owner shall provide to the Planning Department a certificate of insurance, including either a performance or surety bond which covers the total cost of decommissioning of the facility. The certificate of insurance shall be renewed yearly and a copy submitted to the Planning Department.
 3. *Failure to Decommission.* If the facility owner or operator does not complete decommissioning, the Planning Commission may take such action, as may be necessary, to complete decommissioning, including requiring forfeiture of the bond. The Planning Commission will decide the above at a hearing scheduled and noticed in accordance with § 316(I).
 4. *Entry.* The entry into a participating landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Planning Commission may take such action as may be necessary to decommission a project facility and seek additional expenditures necessary to do so from the facility owner.

- O. *Legal Non-Conforming Facilities.* Facilities that were legally permitted on or before the date that this Section was adopted shall be considered a permitted and lawful use as a non-conforming Antenna and Accessory Equipment.
 - 1. Routine maintenance may be performed on a non-conforming support structure. However, if the proposed maintenance/modification exceeds the definition of this Section, the following apply:
 - a. Minor modifications to non-conforming facilities may be permitted upon the granting of a Commercial Building Permit by the Planning Director.
 - b. Major modifications to non-conforming facilities may be permitted only upon the granting of a Telecommunications Facility Permit by the Planning Commission.
- P. *Conflict with Other Laws.* Whenever the provisions or regulations of this Section conflict with the requirements of another State or Federal Law, or County Ordinance, the more restrictive standard shall apply.
- Q. *Enforcement.* Failure to comply with the Section is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO § 514.

SECTION 317 – ALTERNATIVE ENERGY SYSTEMS (Effective 04-26-17)

PURPOSE: The purpose of Alternative Energy is to encourage the development of alternative sources of energy, while protecting the health, safety, and welfare of the public.

A. SOLAR ENERGY SYSTEMS

- 1. Purpose
 - a. The purpose of this section is to ensure that the placement, construction and modification of any Solar Energy System (SES) and a SES facility is consistent with Pennington County's land use policies, to minimize the impact of SES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of such facilities, and to protect the health, safety and welfare of Pennington County's citizens.
- 2. Federal, State, and Local Requirements
 - a. All Solar Energy System (SES) and SES facilities must meet or exceed standards and regulations of the U.S. Department of Energy, the International Energy Conservation Code (IECC), the Federal Aviation Administration (FAA), National Electrical Code (NEC), International Building Code (IBC), South Dakota State Statutes, and any other agency of federal, or local government with the authority to regulate SES and SES facilities in Pennington County.

3. Definitions

AIRFIELD ELEVATIONS/LENGTH: Ellsworth Air Force Base (AFB) has a Class B Runway with established airfield elevation of approximately 3,280 feet above Mean Sea Level (MSL). Ellsworth AFB runway length is 13,497 feet. Rapid City Regional Airport runway is 3,204 feet above MSL with max length of 8,701 feet.

AIRSPACE IMAGINARY SURFACES: A structure of imaginary control surfaces that exist primarily to enhance the safety and efficiency of aircraft operations by preventing existing or proposed manmade objects, objects of natural growth or terrain from extending upward into navigable airspace. These imaginary surfaces either slope out and up from all sides and ends of runways or are a horizontal plane or a sloping plain above airports. (Imaginary surfaces are shown on Exhibits at the end of this Ordinance.)

AIRSTRIP: A strip of ground set aside for the takeoff and landing of aircraft.

AMERICAN LAND TITLE ASSOCIATION (ALTA): American Land Title Association is the national trade association and voice of the abstract, the person who prepares a summary (or abstract) of public records relating to title to a specific parcel of land, and title insurance industry. ALTA members search, review, and insure land titles to protect home buyers and mortgage lenders who invest in real estate.

ALTERNATING CURRENT (AC): A type of electrical current, the direction of which is reversed at regular intervals or cycles. In the United States, the standard is 120 reversals or 60 cycles per second.

ANGLE OF INCIDENCE: The angle that a ray of sun makes with a line perpendicular to the surface. For example, a surface that directly faces the sun has a solar angle of incidence of zero, but if the surface is parallel to the sun (for example, sunrise striking a horizontal rooftop), the angle of incidence is 90°.

BALANCE OF SYSTEM: A Solar (PV) Balance-of-System (BOS) refers to the components and equipment that move DC energy produced by solar panels through the conversion system which in turn produces AC electricity.

CLASS DELTA AIRSPACE: Class D airspace can generally be described as a controlled airspace that extends from the surface or a given altitude to a specific higher altitude. Ellsworth Air Force Base and Rapid City Class D Airspaces overlap. Ellsworth Air Force Base and Rapid City Air Traffic Control facilities mutually agree that the ridge of hills southeast of Ellsworth Air Force Base constitute the geographical boundary between the Class D Airspaces (Imaginary surfaces are shown on Exhibits at the end of this Ordinance). Ellsworth Air Force Base's Class D Airspace extends from the surface up to and including 5,800 feet Mean Sea Level (MSL) and a 5.9 nautical mile (6.8 mile) radius of the airport center. Rapid City's Class D airspace extends from the surface up to and including 5,700 feet mean seas level (MSL) and a 4.4 nautical (5 mile) mile radius from the airport center.

CONCENTRATING PHOTOVOLTAIC (CPV): A solar technology that uses lenses or mirrors to concentrate sunlight onto high-efficiency solar cells.

CONCENTRATING SOLAR POWER (CSP): A dispatchable, renewable energy option that uses mirrors to focus and concentrate sunlight onto a receiver, from which a heat transfers fluid carries the intense thermal energy to a power block to generate electricity.

CONVERTER: A unit that converts a direct current (DC) voltage to another DC voltage.

dB(A): A frequency weighting that relates to the response of the human ear to sound.

DECIBEL (dB): A unit for expressing the relative intensity of sounds on a scale from zero to greater than 130, with 85 possibly being harmful to humans.

DIRECT CURRENT (DC): A type of electricity transmission and distribution by which electricity flows in one direction through the conductor, usually relatively low voltage and high current.

DISTRIBUTED SOLAR ENERGY SYSTEM (DSES): A SES to directly power a home, farm, or small business as its primary use.

EASEMENT (WIND OR SOLAR): A right whether or not stated in the form of a restriction, option to obtain an easement, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or air space for the purpose of ensuring adequate exposure of a photovoltaic solar power system to the sun, or an agreement to refrain from developing a photovoltaic solar power system.

FACILITY: A place, especially including buildings, where a particular activity happens.

FEDERAL AVIATION ADMINISTRATION (FAA): The Federal Aviation Administration is the national aviation authority of the United States, with powers to regulate all aspects of American Civil Aviation.

FENCE: A manmade, unroofed structure, barrier, railing, or other upright structure, typically of wood or wire, enclosing an area of ground to mark a boundary, control access, or prevent escape.

GLARE: A continuous source of brightness, relative to diffused lighting. Not a direct reflection of the sun, but a reflection of the bright sky around the sun. Glare is significantly less intense than glint.

GLINT: Also known as a specular reflection, produced as a direct reflection of the sun in the surface of the PV solar panel. Also a momentary flash of light.

GLINT AND GLARE STUDY: An assessment to determine the impact of solar reflections upon surrounding roads, dwellings and aircraft locations.

GRID: An interconnected network for delivering electricity from suppliers to consumers.

INTERCONNECTION AGREEMENT: To set forth the terms and conditions to allow consumers to install an independent power generation system and connect to a local utility.

INVERTER: A device that converts direct current electricity to alternating current either for stand-alone systems or to supply power to an electricity grid.

KILOWATT (kW): A standard unit of electrical power equal to 1000 watts.

KILOWATT-HOUR (kWh): 1,000 watts acting over a period of 1 hour. The kWh is a unit of energy.

MEGAWATT (MW): 1,000 kilowatts, or 1 million watts; standard measure of electric power plant generating capacity.

MEGAWATT-HOUR: 1,000 kilowatt-hours or 1 million watt-hours.

NATIONAL ELECTRICAL CODE (NEC): National Electrical Code sets standards and best practices for wiring and electrical system, which contains guidelines for all types of electrical installations. The current version of the NEC shall be followed.

OBSTRUCTION EVALUATION / AIRPORT AIRSPACE ANALYSIS (OE/AAA): An Obstruction Evaluation is required for all systems 200 feet or above in total height from ground level. An object typically is considered an obstruction when it exceeds (penetrates) Airspace Imaginary Surfaces and/or Class D Airspace, whichever is lowest, but the FAA may have additional restrictions in any airspace. The OE/AAA is a process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities or equipment; and the process to petition the Federal Aviation Administration (FAA) for discretionary review of determinations, revisions, and extensions of determinations. View Title 14 Chapter 1 Subchapter E Part 77 Subpart 9 (14 CFR Part 77.9) for the most current information.

PHOTOVOLTAIC (PV): A method for generating electric power by using solar cells to convert energy from the sun into a flow of electrons.

PHOTOVOLTAIC (PV) DEVICE: A solid-state electrical device that converts energy from the sun directly into direct current (DC) electricity

PHOTOVOLTAIC (PV) SOLAR ARRAY: An interconnected system of PV modules that function as a single electricity-producing unit. The modules are assembled with common support or mounting.

PHOTOVOLTAIC (PV) SOLAR CELL: The smallest semiconductor element within a PV module to perform the immediate conversion of energy from the sun into electrical energy (direct current voltage and current). Also called a solar cell.

PHOTOVOLTAIC (PV) SOLAR MODULE: A packaged, connected assembly of solar cells.

PHOTOVOLTAIC (PV) SOLAR PANEL: Refers to a physically connected collection of modules (i.e., a laminate string of modules used to achieve a required voltage and current).

PHOTOVOLTAIC (PV) SYSTEM: A complete set of components for converting energy from the sun into electricity by the photovoltaic process, including the array and balance of system components.

SOLAR ENERGY: Electromagnetic energy transmitted from the sun (solar radiation).

SOLAR ENERGY SYSTEM: A device or structural design feature intended to provide for collection, storage, and distribution of solar energy for heating or cooling, electricity generating, or water heating.

SOLAR-THERMAL SYSTEM: A system that uses reflective materials that concentrate the energy from the sun to an absorber where it is converted to heat.

STAND-ALONE SYSTEM: An autonomous alternative energy system not connected to a grid. May or may not have storage, but most stand-alone systems require batteries or some other form of storage.

STRUCTURE: Any material or combination of materials, completely or partially constructed, or erected in or upon the ground, including, but not by way of limitation, buildings; mobile homes; radio towers; sheds; signs; and storage bins, but excluding sidewalks and paving on streets, driveways, parking areas, fences, earthwork, wind-breaks, and nonbusiness signs related to farming or ranching operations. An object, including a mobile object, constructed or installed by man, including but without limitation; buildings; towers; cranes; smokestacks; earth formation; and overhead transmission lines.

SUBSTATIONS: Any electrical facility designed to convert electricity to a voltage for interconnection with transmission lines.

SYSTEM: A set of connected things or devices that operate together.

SYSTEM HEIGHT: The height of the total system measured from grade to the max vertical height of the extended blade tip.

TELECOMMUNICATIONS: Any communication transmission that affects Federal, State, and local two-way communication within this state.

UTILITY-SCALE SOLAR ENERGY SYSTEM (USES): Any SES with the primary purpose of delivering electricity to the power grid and distributed to the end user by electric utilities or power system operators. USES can also be referred to as Solar Farm.

WATT: The rate of energy transfer equivalent to one ampere under an electrical pressure of one volt.

4. Two Types of Solar Energy Technologies

- a. **Solar Electric System:** Solar electric systems convert sunlight into electricity.
 - 1. **Photovoltaic (PV) System** is utilized in panels. When the sun shines onto a solar panel, photons from the sunlight are absorbed by the cells in the panel, which creates an electric field across the layers and causes electricity to flow.
 - 2. **Concentrating Solar Power (CSP) System** uses lenses or mirrors to focus a large area of sunlight onto a small area to collect solar energy.

- b. Solar-Thermal System. Solar-thermal systems convert solar energy to heat.

5 District Regulations

- a. A Distributed Solar Energy System (DSES) shall require a Building Permit in all zoning districts. A Building Permit is also required in a Planned Unit Development District (PUD), if the existing conditions allow a DSES. If the existing conditions of a PUD do not allow a DSES, a Planned Unit Development Amendment is required.
 - 1. If it is determined by the Planning Director that a Conditional Use Permit is required for a DSES, the application will be placed on a scheduled Planning Commission meeting in order for the Planning Commission to review and approve, if issuance of the application may be in conflict with the public interest; adversely affects property owners in the area; or is not consistent with the general requirements of this Ordinance.
 - 2. No application shall be issued by the Planning Director, except in conformity with the provisions of these Zoning Ordinances, unless he/she receives a written order from the Board of Adjustment or the Board in the form of an Administrative Review, Conditional Use Permit, or Variance as provided in this Zoning Ordinance. This meeting is a public meeting and standard fees apply.
 - 3. Distributed Solar Energy Systems (DSES) and DSES structures shall be a permitted use in all Zoning Districts, except within Special Flood Hazard Areas (SFHA), provided the system complies with minimum lot size requirements and setbacks. Within SFHAs, the Pennington County Flood Damage Prevention Ordinance shall be followed.
- b. A Utility-Scale Solar Energy System (USES) shall require an approved Conditional Use Permit in General Agriculture, Limited Agriculture, General Commercial, Highway Service, Light Industrial, Heavy Industrial, and Planned Unit Development Zoning Districts. A Planned Unit Development Amendment may be required if USESs are not an allowed use in the existing Planned Unit Development. An USES is prohibited in Suburban Residential and Low Density Residential Zoning Districts.
 - 1. Within SFHAs, the Pennington County Flood Damage Prevention Ordinance shall be followed.

6 Distributed Solar Energy System (DSES)

- a. Zoning District: DSES and DSES structure(s) shall be a permitted use in all districts, provided the system complies with setbacks and easements. Within SFHAs, the Pennington County Flood Damage Prevention Ordinance shall be followed.

- b. Setback Requirements: The underlying zoning district minimum setback requirements for these systems shall be complied with. DSES and DSES structure(s) may be exempt from setback and lot coverage restrictions in each zoning district by the appropriate Variance(s).
- c. Height Restriction: The underlying zoning district maximum height requirements for these systems shall be complied with. DSES and DSES structure(s) may be exempt from height restriction in each zoning district by the appropriate Variance(s) and shall in no way infer exceptions to height requirements within any FAA, Ellsworth AFB, and/or Rapid City Regional Airport controlled airfield flight patterns (Imaginary surfaces are shown on Exhibits at the end of this Ordinance).
- d. Fire Safety: The design of the DSES and DSES structure(s) shall conform to applicable Local, State, Federal, and National Solar Codes and Standards.
 - 1. An approved Building Permit, reviewed by the Planning Director, shall be obtained for a solar energy system.
 - 2. All design and installation work shall comply with all applicable provisions in the National Electric Code (NEC), the International Building Code (IBC), the International Residential Code (IRC), International Commercial Building Code, State Fire Code, and any additional requirements set forth by the local utility (for any grid-connected DSES).
 - 3. The Distributed Solar Energy System (DSES) and DSES structure(s) shall comply with all applicable Pennington County Ordinances to ensure the structural integrity of such DSES and DSES structures. Please note that the existing roof structure and the weight of the DSES shall be taken into consideration when applying for a Building Permit.
 - 4. Prior to operation, electrical connections must be inspected by South Dakota State Electrical Inspector. Any connection to the public utility grid must be approved by the appropriate public utility.
 - 5. Unless otherwise specified through a contract or agreement, the property owner of record will be presumed to be the responsible party for owning and maintaining the solar energy system.
- e. Signage: A DSES and DSES structure(s) shall not be used to display permanent or temporary advertising, including signage, streamers, pennants, spinners, reflectors, banners, or similar materials. The manufacturers and equipment information, warning, or indication of ownership shall be allowed on any equipment of the DSES, provided they comply with Section 312.
- f. Noise: Any DSES and DSES structure(s) shall not exceed fifty-five (55) dB(A), as measured at the closest property line at the time the Building Permit application is filed. The level, however, may be exceeded during short-term events, such as utility outages or wind storms.
- g. Appearance, Color, Finish: Non-reflective unobtrusive color.

- h. Lighting: A DSES may not be artificially lighted unless such lighting is required by the FAA.
- i. Utility Notification: No DSES may be installed until documentation has been provided that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid DSESs are exempt from this requirement.
- j. Building Permit Requirements: A Building Permit application must be filed with the Planning Department and the application must include:
 - 1. A letter from the property owner(s), if other than the applicant, authorizing the Building Permit application.
 - 2. Identify and describe the work to be covered by the permit for which the application is made.
 - 3. Describe the land on which the proposed work is to be done by legal description, street address or similar description that enables the Planning Department to readily identify and definitively locate the proposed work.
 - 4. Provide a detailed site plan which shall include the following information:
 - i. Property lines and physical dimensions of the property;
 - ii. Location, dimensions, and types of existing structures on the property and their distances from property lines;
 - iii. Location of the proposed DSES and setback distances from property lines;
 - iv. Dimensions, size, design, and height of the proposed DSES;
 - v. The right-of-way of any public road that is contiguous with the property;
 - vi. Location of flood hazard area, if applicable; and,
 - vii. Any overhead utility lines.
 - 5. DSES specifications, including manufacturer and model.
 - 6. DSES foundation and structural drawings, stamped by a South Dakota Registered Professional Engineer.
 - 7. Proof of notification from the local utility company in the service territory in which the DSES is to be located.
 - 8. If connected to a grid, signed and executed interconnection agreements shall be provided to the County.
 - 9. State the valuation of the proposed work.
 - 10. Be signed by the applicant, or the applicant's authorized representative.
- k. Installation:
 - a. The installation and construction of a roof-mount solar energy system shall be subject to the following development and design standards:
 - 1. A roof- or building-mounted solar energy system may be mounted on a principal and/or accessory building.

- i. Pitched-roof mounted solar systems. For all roof-mounted systems other than a flat roof, the elevation must show the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.
 - ii. For pitched, hipped, or gambrel roofs, the panels must be mounted no more than twelve (12) inches from the surface of the roof they are on, at any point, and will not be extend beyond the roof ridge line and shall meet Pennington County height restrictions.
2. Flat-roof mounted solar systems. For flat roof applications, a drawing shall be submitted showing the distance to the roof edge and any parapets on the building.
 - i. For flat roofs or the horizontal portion of mansard roofs, the panels may extend up to five (5) feet above the highest point of the roof, and shall meet Pennington County height restrictions.
3. Height restrictions of the Pennington Zoning Ordinance, FAA, and/or militarily controlled airfield flight patterns, shall be adhered.
4. Placement of solar collectors on flat roofs shall be allowed by right, if panels do not extend horizontally past the roofline.
5. Installation must meet NEC, IBC, State Fire Code, and any additional requirements set forth by the local utility company (for any grid-connected solar systems).
- b. The installation and construction of a ground-mount or pole-mount solar energy system shall be subject to the following development and design standards:
 1. The height of the solar collector and any mounts shall not exceed 20 feet when oriented at maximum tilt.
 2. The minimum solar energy system setback distance from the property lines shall be equivalent to the building setback or accessory building setback requirement of the underlying zoning district.
 3. All power transmission lines from a ground mounted solar energy system to any building or other structure shall be located underground and/or in accordance with the NEC, as appropriate.
 4. Installation must meet NEC, IBC, State Fire Code, and any additional requirements set forth by the local utility company (for any grid-connected solar systems).

7. Utility-Scale Solar Energy System (USES)

- a. Zoning District: A USES and USES facilities are prohibited in Suburban Residential and Low Density Residential Zoning Districts. A Conditional Use Permit is required in General Agriculture, Limited Agriculture, General Commercial, Highway Service (on 20 acres or more), Light Industrial, and Heavy Industrial Zoning Districts; and, a Planned Unit Development Amendment in a Planned Unit Development Zoning District.
 - 1. Within SFHAs, the Pennington County Flood Damage Prevention Ordinance shall be followed.
- b. Lot Size: No CSP plant shall be erected on any lot less than forty (40) acres in size. No PV plant shall be erected on any lot less than five (5) acres in size.
- c. Setback Requirements: USES structures shall be set back from all property lines and public road rights-of-way at least twenty-five (25) feet, or one and one-half (1.5) times the height of the structure, whichever is greater.
 - 1. In addition, USES structures must be located at least one (100) hundred feet from all residentially zoned lots and existing residences.
 - 2. Additional setbacks may be required to mitigate noise and glare impacts, or to provide for designated road or utility corridors, as identified through the review process.
 - 3. Solar energy systems and solar structures may be exempted from setback, height, and lot coverage restrictions in each zoning district by the appropriate Variance(s).
- d. Safety/Access: An appropriate security/livestock fence (height and material to be established through the Conditional Use Permit process) shall be placed around the perimeter of the solar power plant, if appropriate or deemed necessary. Knox boxes and keys shall be provided at locked entrances for emergency personnel access. Appropriate warning signage shall also be placed at the entrance and perimeter of the USES plant project.
- e. Height Restriction: The underlying zoning district maximum height requirements for these systems shall be complied with. USES and USES structure(s) may be exempt from height restriction in each zoning district by the appropriate Variance(s) and shall in no way infer exceptions to height requirements within any FAA, Ellsworth AFB, and/or Rapid City Regional Airport controlled airfield flight patterns (Imaginary surfaces are shown on Exhibits at the end of this Ordinance).
 - 1. The maximum height for all structures shall be established through the Conditional Use Permit, PUD Amendment or Variance process.

- f. Fire safety:
1. The design of the solar energy system shall conform to applicable Local, State, and National Solar Codes and Standards. A Building Permit, reviewed by the Planning Department, shall be obtained for a solar energy system. All design and installation work shall comply with all applicable provisions in the National Electric Code (NEC), the International Building Code (IBC), the International Residential Code (IRC), International Commercial Building Code, State Fire Code, and any additional requirements set forth by the local utility company (for any grid-connected solar systems).
 2. The solar energy system shall comply with all applicable Pennington County Ordinances to ensure the structural integrity of such solar energy system. Please note that the existing roof structure and the weight of the solar energy system shall be taken into consideration when applying for a Solar Energy System Permit.
 3. Prior to operation, electrical connections must be inspected by the South Dakota State Electrical Inspector. Any connection to the public utility grid must be approved by the appropriate public utility company.
 4. If solar storage batteries are included as part of the solar collector system, they must be installed according to all requirements set forth in the NEC and State Fire Code when in operation. When no longer in operation, the batteries shall be disposed of in accordance with the laws and regulations of Federal, State, Local, and any other applicable laws and regulations relating to hazardous waste disposal.
 5. Unless otherwise specified through a contract or agreement, the property owner of record will be presumed to be the responsible party for owning and maintaining the solar energy system.
- g. Signage: USES and USES facilities shall not be used to display permanent or temporary advertising, including signage, streamers, pennants, spinners, reflectors, banners, or similar materials. The manufacturers and equipment information, warning, or indication of ownership shall be allowed on any equipment of the USES, provided they comply with Section 312.
- h. Noise: USES and USES facilities may not exceed fifty-five (55) dB(A), as measured at the closest property line at the time the Building Permit application is filed. The level, however, may be exceeded during short-term events, such as utility outages or wind storms.
- i. Appearance, Color, Finish: Be coated with a non-reflective surface, be non-reflective and of an unobtrusive color.
- j. Lighting: A USES may not be artificially lighted unless such lighting is required by the FAA, are located at entry gates, or during maintenance work during hours of darkness.

1. All lighting is to be installed and maintained so as to minimize spillage of light so as not to create a nuisance and must not be of such intensity or brilliance to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with any driver's operation of a motor vehicle.
- k. Utility Notification: No USES may be installed until documentation has been provided showing that the local utility company has been informed of the customer's intent to install an interconnected customer-owned generator.
- i. Mitigation Measurement:
 1. 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 USES.
 2. Topsoil Protection: The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
 3. Compaction: The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and confine compaction to as small an area as practicable.
 4. Livestock Protection: The permittees shall take precautions to protect livestock from project operations during all phases of the project's life.
 5. Fences: All USES facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, and vandalism. The facilities shall be surrounded by a fence or wall at least seven (7) feet in height. The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner. Screening may be required around some or all of the perimeter and any related equipment buildings.
 6. Roads:
 1. Public Roads: As part of the Conditional Use Permit process, the permittees shall identify all state, county or township "haul roads" that will be used for the USES 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 and haul road agreements must be in place before the Conditional Use Permit is granted. Where practicable, existing roadways shall be used for all activities associated with the project. The permittees must notify the Planning Department of such arrangements.
 2. Access Road: Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must

be 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.

3. 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.
4. Control of Dust: The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.
5. Soil Erosion and Sediment Control Plan. The permittees will comply with all applicable requirements from applicable ordinances. Note: A project may also require a South Dakota Department of Environment and Natural Resources (SD DANR) Storm Water Permit.

8. Conditional Use Permit Submittal Requirements

The Conditional Use Permit application must be accompanied by the following:

- a. The applicant(s) is to schedule a meeting with the Planning Department prior to applying for a Conditional Use Permit to discuss the application process and necessary submittal items.
- b. Boundaries of the site proposed for the project and associated facilities on United States Geological Survey Map or other map as appropriate.
- c. Map and copies of easements for the project.
- d. Map of occupied residential, business, and public structures within one-half mile of the proposed project site boundaries.
- e. Preliminary map of sites for each USES, access roads, and all utility lines, including collector and feeder. Location of other USES within five (5) miles of the proposed project site.
- f. All necessary haul road agreements.
- g. Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information should be obtained by consulting with the following agencies; which includes, but are not limited to:
 - i. South Dakota Department of Game, Fish and Parks;
 - ii. U.S. Fish and Wildlife Service;
 - iii. South Dakota State Historical Society; and,
 - iv. United States Forest Service.Evidence of such consultation must be included in the application.
- h. Project schedule.
- i. Mitigation measures.
- j. Decommissioning Plan.
- k. Conditional Use Permit fee.

9. That prior to a Building Permit being issued after an approved Conditional Use Permit, a FAA determination of “Does Not Exceed” or “Determination of No Hazard” in response to submission of Form 7460-1 through the OE/AAA Process be obtained; and, Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.
10. Conditional Use Permit fee shall be \$1,000.00.
11. The Planning Department shall inspect the project annually for compliance with this Section of the Ordinance, unless the Conditions of Approval within the Conditional Use Permit note otherwise.
12. For each Conditional Use Permit Review, there will be a permit review fee of \$200.00 payable, prior to said review.
13. Building Permit Requirements

A Building Permit application must be filed with the Planning Department and the application must include:

- a. A letter from the property owner(s), if other than the applicant, authorizing the Building Permit application.
- b. Identify and describe the work to be covered by the permit for which application is made.
- c. Describe the land on which the proposed work is to be done by legal description, street address or similar description that enables the Planning Department to readily identify and definitively locate the proposed work.
- d. Provide a detailed site plan with the minimum following information:
 1. Property lines and physical dimensions of the property;
 2. Location, dimensions, and types of existing structures on the property and their distances from property lines;
 3. Location of the proposed USES and setback distances from property lines;
 4. Dimensions, size, design, and height of the proposed USES;
 5. The right-of-way of any public road that is contiguous with the property;
 6. Location of flood hazard area, if applicable; and,
 7. Any overhead utility lines.
- e. USES specifications, including manufacturer and model.
- f. USES foundation and structural drawings, stamped by a South Dakota Registered Professional Engineer.
- g. Proof of notification, from the utility company in the service territory in which the USES is to be located.
- h. If connected to a grid signed and executed interconnection agreements shall be provided to the County.

- i. Certificate of Insurance for the denomination approved with the Decommissioning Plan.
 - j. FAA determination of “Does Not Exceed” or “Determination of No Hazard” in response to submission of Form 7460-1 through the OE/AAA Process; and, Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.
 - k. Provide the glint and glare study as provided to the FAA with a determination of no hazard.
 - l. Provide Compliance with any applicable airport overlay zoning requirements and the ability to comply with FAA and Ellsworth Air Force Base regulations pertaining to hazards to air navigation must be demonstrated.
 - m. Submit written documentation from Ellsworth Air Force Base and Rapid City Regional Airport, acknowledging the location and size of the proposed USES.
 - n. State the valuation of the proposed work.
 - o. Be signed by the applicant, or the applicant’s authorized representative.
14. Post-Construction
- Upon completion of construction of the project, the applicant shall supply an “as-built” ALTA survey indicating that the proposed facility comply with the setbacks in the permit within ninety (90) days.
15. Decommissioning:
- To be provided at the time of Conditional Use Permit submittal.
- a. Cost Responsibility: The owner or operator of a project is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan must clearly identify the responsible party.
 - b. Useful Life: A project is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Planning Commission for approval of a plan outlining the steps and schedule for returning the project to service within twelve (12) months of the submission.
 - c. Decommissioning Period: The facility owner or operator must begin decommissioning a project facility within eight (8) months after the time the SES and SES facilities reaches the end of its useful life, as determined in 12(b). Decommissioning must be completed within eighteen (18) months after the facility or solar energy system reaches the end of its useful life.
 - d. Decommissioning Plan: Prior to approval of a Conditional Use Permit for an USES facility, the facility owner or operator must file the following documents with the Planning Director: the estimated decommissioning

cost; USES and for restoring each haul road, in current dollars at the time of the application, for the proposed facility; a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Planning Commission will review a plan filed under this section and shall approve or disapprove the plan in conjunction with the Conditional Use Permit application. The Planning Commission or Planning Director may at any time require the owner or operator of a project to file a report describing how the project owner or operator is fulfilling this obligation.

- e. Decommissioning Requirements: To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the project. The landowner may request in writing that the access roads be retained. Decommissioning and site restoration, includes signing appropriate haul road agreements for the decommissioning process. Dismantling and removal of all USES-related equipment, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches. Removal of surface road material and restoration of the roads and USES sites to substantially the same physical condition that existed immediately before construction of the project.
- f. Financial Assurance: Before construction begins on the project, the facility owner shall provide to the Planning Department a certificate of insurance, including either a performance or surety bond, which covers the total cost to decommission the facility. The certificate of insurance shall be renewed and a copy submitted to the Planning Department each year the facility is in operation.
- g. Failure to Decommission: If the project facility owner or operator does not complete decommissioning, the Planning Commission may take such action, as may be necessary, to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Planning Commission may take such action as may be necessary to decommission a project facility and seek additional expenditures necessary to do so from the facility owner.

16. Violation

It is unlawful for any person to construct, install, or operate a Solar Energy System that is not in compliance with this section or with any condition contained in a Building Permit issued pursuant to this section. Solar Energy System facilities installed prior to the adoption of this section are exempt.

B. WIND ENERGY SYSTEMS

1. Purpose

- a. The purpose of this section is to ensure that the placement, construction and modification of a Wind Energy System (WES) facility is consistent with the County's land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of such facilities, and to protect the health, safety, and welfare of Pennington County's citizens.

2. Federal, State, and Local Requirements

- a. All Wind Energy System (WES) facilities must meet or exceed standards and regulations of the Federal Aviation Administration (FAA) and South Dakota Statutes and any other agency of federal or state government with the authority to regulate WES facilities.

3. Definitions

AIRFIELD ELEVATIONS/LENGTH: Ellsworth Air Force Base (AFB) has a Class B Runway with established airfield elevation of approximately 3,280 feet above Mean Sea Level (MSL). Ellsworth AFB runway length is 13,497 feet. Rapid City Regional Airport runway is 3,204 feet above MSL with max length of 8,701 feet.

AIRSPACE IMAGINARY SURFACES: A structure of imaginary control surfaces that exist primarily to enhance the safety and efficiency of aircraft operations by preventing existing or proposed manmade objects, objects of natural growth or terrain from extending upward into navigable airspace. These imaginary surfaces either slope out and up from all sides and ends of runways or are a horizontal plane or a sloping plain above airports. (Imaginary surfaces are shown on Exhibits at the end of this Ordinance.)

AIRSTRIP: A strip of ground set aside for the takeoff and landing of aircraft.

AMERICAN WIND ENERGY ASSOCIATION (AWEA): The national trade association that represents the interests of America's wind energy industry.

CLASS DELTA AIRSPACE: Class D airspace can generally be described as a controlled airspace that extends from the surface or a given altitude to a specific higher altitude. Ellsworth Air Force Base and Rapid City Class D Airspaces overlap. Ellsworth Air Force Base and Rapid City Air Traffic Control facilities mutually agree that the ridge of hills southeast of Ellsworth Air Force Base constitute the geographical boundary between the Class D Airspaces (Imaginary surfaces are shown on Exhibits at the end of this Ordinance). Ellsworth Air Force Base's Class D Airspace extends from the surface up to and including 5,800 feet Mean Sea Level (MSL) and a 5.9 nautical mile (6.8 mile) radius of the airport center. Rapid City's Class D airspace extends from the surface up to and including 5,700 feet mean seas level (MSL) and a 4.4 nautical (5 mile) mile radius from the airport center.

COLLECTOR LINE: A single or group of transmission lines that links one generator or a group of generators to the bulk power grid.

DECIBEL (dB): A unit for expressing the relative intensity of sounds on a scale from zero to greater than 130, with 85 possibly being harmful to humans.

DISTRIBUTED WIND ENERGY SYSTEM (DWES): Turbines to directly power a home, farm, or small business as its primary use.

EASEMENT (WIND OR SOLAR): A right whether or not stated in the form of a restriction, option to obtain an easement, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or air space for the purpose of ensuring adequate exposure of a photovoltaic solar power system to the sun, or an agreement to refrain from developing a photovoltaic solar power system.

FEDERAL AVIATION ADMINISTRATION (FAA): The Federal Aviation Administration is the national aviation authority of the United States, with powers to regulate all aspects of American Civil Aviation.

FEEDER LINE: A primary or main distribution power line that distributes or “feeds” power from a substation to the surrounding area. Feeder lines typically have many smaller “taps” or “pull-off” lines that lead to transformers and service lines serving homes and businesses.

FENCE: A manmade, unroofed structure, barrier, railing, or other upright structure, typically of wood or wire, enclosing an area of ground to mark a boundary, control access, or prevent escape.

INTERCONNECTION AGREEMENT: To set forth the terms and conditions to allow consumers to install an independent power generation system and connect to a local utility.

METEOROLOGICAL TOWER: A tower which is erected primarily to measure wind speed and direction, plus other data relevant to siting of a WES. Other meteorological towers, such as those used by airports, municipalities, weather services or research facilities, are not affected by this definition or this section of the Ordinance.

NOAA: National Oceanic and Atmospheric Administration.

OBSTRUCTION EVALUATION / AIRPORT AIRSPACE ANALYSIS (OE/AAA): An Obstruction Evaluation is required for all systems 200 feet or above in total height from ground level. An object typically is considered an obstruction when it exceeds (penetrates) Airspace Imaginary Surfaces and/or Class D Airspace, whichever is lowest, but the FAA may have additional restrictions in any airspace. The OE/AAA is a process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities or equipment; and the process to petition the Federal Aviation Administration (FAA) for discretionary review of determinations, revisions, and extensions of determinations. View Title 14 Chapter 1 Subchapter E Part 77 Subpart 9 (14 CFR Part 77.9) for the most current information.

PARKS: National parks, national monuments, national grasslands, wilderness areas, state, and local parks.

RECREATION AREAS: Formally designated recreation areas, picnic areas, common lots, hiking trails, public beaches and lakeshores.

SUBSTATIONS: Any electrical facility designed to convert electricity to a voltage for interconnection with transmission lines.

SYSTEM HEIGHT: The height of the total system measured from grade to the max vertical height of the extended blade tip.

TELECOMMUNICATIONS: Any communication transmission that affects Federal, State, and local two-way communication within this state.

TURBINE: All the parts of the WES, including the blades, generator, and tail.

UTILITY: Any person or entity engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to: a private investor owned utility, a cooperatively owned utility, a consumer's power district and a public or municipal utility.

UTILITY-SCALE WIND ENERGY SYSTEM (UWES): Turbines delivering electricity to the power grid and distributed to the end user by electric utilities or power system operators. Utility-Scale Wind Energy Systems can also referred to as Wind Farms.

WATT: The rate of energy transfer equivalent to one ampere under an electrical pressure of one volt.

WIND ENERGY SYSTEM (WES): A system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

- a. Tower or multiple towers, including foundations;
- b. Generator(s);
- c. Blades;
- d. Power collection systems, including pad-mount transformers;
- e. Access roads, meteorological towers, on-site electric substations, control building, and other ancillary equipment and facilities; and,
- f. Electric interconnection systems or portion thereof dedicated to the WES.

WIND ENERGY SYSTEM (WES) / WIND FARM (WF): A commercial facility whose main purpose is to generate and sell electricity.

WIND GENERATOR: A mechanical device designed and operated so as to generate electricity.

NOTE: For a more complete description of airspace and control surfaces, see Federal Aviation Regulations Part 77, Subpart C, or U.S. Airforce (USAF) Instruction 32-106. See 14 CFR Part 77.9 for notification requirements to the FAA for construction or alterations of structures or systems that exceed 200 feet or above in total height from ground level or penetrate Airspace Imaginary Surfaces and/or Class D Airspace, whichever is lowest. Imaginary surfaces, including heights and elevations are shown on Exhibits at the end of this Ordinance.

4. District Regulations

A Distributed Wind Energy System (DWES) shall require a Conditional Use Permit on parcels of one-half (1.5) acre or larger in all zoning districts or a Minor PUD Amendment in a Planned Unit Development Zoning District. A Building Permit is also required, and may be issued only after the Conditional Use Permit is approved by the Planning Commission. On 20 acres or more, a DWES can be authorized by the Planning Department with the issuance of a Building Permit, provided the DWES meets the requirements of Section 317-B-5.

A Large Utility-Scale Wind Energy System (UWES) or Meteorological Tower (MT) shall require a Conditional Use Permit in General Agriculture, Limited Agriculture, General Commercial, Highway Service, Light Industrial, and Heavy Industrial Zoning Districts and a Minor PUD Amendment in a Planned Unit Development Zoning District. A Building Permit is also required, and may be issued only after the Conditional Use Permit is approved by the Planning Commission. A UWES is prohibited in Suburban Residential and Low Density Residential Zoning Districts.

5. Requirements For Siting Distributed Wind Energy Systems

1. Standards:

Distributed Wind Energy Systems are subject to the following requirements:

- a. Setbacks and Minimum Lot Size. See Table 1.

Table 1: Setbacks and Lot Size Requirements for Distributed Wind Energy Systems.

MINIMUM REQUIRED	DISTRIBUTED WIND ENERGY SYSTEM
Minimum Lot Size	One-Half (.5) acre
Setback from Property Lines ¹	1.1 times system height
Setback from Overhead Electrical Lines	1.1 times system height
Setback from Electrical Substations	1.1 times system height
Setback from Public Roads	1.1 times system height
Setback from Off-Site Occupied Dwellings ¹	1.1 times system height
Setback from Other Wind Turbine Towers	1.1 times system height
Setback from Communication Facilities	1.1 times system height

- b. Access. All ground mounted electrical and control equipment will

¹Setback requirements for a DWES may be waived For Property Lines and Dwellings Only, with written permission from all adjacent property owners and an approved Variance from the Board of Adjustment. If approved, minutes from the public hearing for the Variance shall be recorded with the Register of Deeds.

be labeled and secured to prevent unauthorized access, and the tower must be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of twelve (12) feet above the ground.

- c. Lighting. A DWES may not be artificially lighted unless such lighting is required by the FAA.
- d. Noise. DWES facilities may not exceed fifty-five (55) dB(A), as measured at the closest neighboring inhabited dwelling at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner of the inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.
- e. Appearance, Color, Finish. The DWES will be painted in a neutral or natural color with a non-reflective finish, unless otherwise approved with the Conditional Use Permit.
- f. Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a DWES visible from any public road, are prohibited.
- g. Code Compliance. A DWES must comply with all applicable state construction and electrical codes, and the National Electrical Code.
- h. Utility Notification. No DWES may be installed until documentation has been provided that the appropriate utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

2. Building Permit Requirements:

The Building Permit application must be accompanied by a site plan which includes the following:

- a. Property lines and physical dimensions of the property;
- b. Location, dimensions, and types of existing structures on the property and their distances from property lines;
- c. Location of the proposed DWES and setback distances from property lines;
- d. The right-of-way of any public road that is contiguous with the property;
- e. Any overhead utility lines;
- f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (e.g. monopole, lattice, guyed);
- g. Tower foundation and structural drawings, stamped by a South Dakota Registered Professional Engineer;
- h. Proof of notification from the utility company in the service territory in which the DWES is to be erected; and,

- i. If connected to a grid, signed and executed interconnection agreements shall be provided to the County.

3. Abandonment:

A DWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Planning Director may issue a Notice of Abandonment by Certified mail to the owner of a DWES that is deemed to have been abandoned. The owner has the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Planning Director may withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the DWES has not been abandoned.

- a. If the DWES is determined to be abandoned, the owner of the DWES must remove the wind generator and tower at the owner's sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator and tower, the Planning Director may pursue legal action to have the wind generator and tower removed at the owner's expense.

6. Requirements For Siting Utility-Scale Wind Energy System (UWES) and Meteorological Towers (MT).

1. Standards

Wind Farms are subject to the following requirements:

- a. Setbacks and Minimum Acreage. See Table 2.
- b. Access. All ground mounted electrical and control equipment will be labeled and secured to prevent unauthorized access. All towers must be unclimbable by design or protected by anti-climbing devices such as:
 - i. Site appropriate security enclosures with locking portals at least seven (7) feet high, or
 - ii. Anti-climbing devices twelve (12) feet vertically from the base of the tower.
- c. Lighting. Each UWES must be marked as required by the FAA. There may be no lights on the towers other than lighting required by the FAA and infrared heating devices used to protect monitoring equipment.
- d. Noise. UWES facilities may not exceed fifty-five (55) dB(A), as measured at the closest property line at the time of permit application is filed. The level, however, may be exceeded during short-term events such as utility outages or wind storms.
- e. Appearance, Color, Finish. Non-reflective unobtrusive color. Black blades are acceptable for mitigation of icing.

Table 2: Setbacks and Lot Size Requirements for Utility-Scale Wind Energy Systems and Meteorological Towers.

MINIMUM REQUIRED	UTILITY-SCALE WIND ENERGY SYSTEM	METEOROLOGICAL TOWERS
Lot Size	40 acres	NA
Setback from Property Lines ²	1.5 times system height or 1,000 feet, whichever is greater	1.1 times tower height
Setback from Overhead Electrical Lines	1.5 times system height or 1,000 feet, whichever is greater	1.1 times tower height
Setback from Electrical Substations	1.5 times system height or 1,000 feet, whichever is greater	1.1 times tower height
Setback from Public Roads	1.5 times system height or 1,000 feet, whichever is greater	1.1 times tower height
Setback from Occupied Dwellings ²	1.5 times system height or 1,000 feet, whichever is greater	1.1 times tower height
Setback from Communication Facilities	1.5 times system height or 1,000 feet, whichever is greater	1.1 times tower height
Setback from Border of Incorporated Municipality	1 mile	1 mile
Setback from Parks	1 mile	1 mile
Setback from Airports/Airstrips/ Helipads other than those EAFB and RCRA ³	3 miles	3 miles
Setback from Ellsworth Air Force Base and Rapid City Regional Airport ²	Prohibited within Imaginary Airspace	Prohibited within Imaginary Airspace
Setback from Recreation Areas	300 yards	300 yards

- f. Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with each UWES visible from any public road, are prohibited.

² Setback requirements for both UWES and MT may be waived For Property Lines and Dwellings Only, with written permission from all adjacent property owners and an approved Variance from the Board of Adjustment. If approved, minutes from the public hearing for the Variance shall be recorded with the Register of Deeds.

³ Must abide by FAA regulations at a minimum and by all other applicable Ordinances.

- g. Code Compliance. Each UWES must comply with all applicable state construction and electrical codes, and the National Electrical Code.
- h. Utility Notification. No UWES may be installed until documentation has been provided that the appropriate utility company has been informed of the customer's intent to install an interconnected customer-owned generator.
- i. Electromagnetic Interference. The permittee may not operate any UWES so as to cause microwave, television, telecommunication, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or any other law. If the Planning Department receives a complaint about electromagnetic interference from existing telecommunication or navigation facilities in the area and, if the FCC or the Federal Aviation Administration (FAA) or any other state or federal regulatory agency determines such interference is caused by the UWES or its operation, the permittee must take measures necessary to correct the problem.
- j. Height from Ground Surface. The minimum height of blade tips at their lowest possible point must be twenty-five (25) feet above grade.
- k. Turbine Spacing. The turbines may be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
- l. The developer must submit written documentation from Ellsworth Air Force Base and Rapid City Regional Airport acknowledging the location and size of the proposed UWES.

2. 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 UWES.
- 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 confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock from project operations during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.
- f. Roads:
 - i. Public Roads. As part of the Conditional Use Permit process, the permittees shall identify all state, county or township "haul roads" that will be used for the 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 and

haul road agreements must be in place before the Conditional Use Permit is granted. Where practicable, existing roadways shall be used for all activities associated with the project. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the project for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and Wind Farm components. The permittees must notify the Planning Department of such arrangements.

- ii. 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. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be 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.
- iii. 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.
- iv. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.

3. Soil Erosion and Sediment Control Plan.

The permittees will comply with all requirements of Pennington County Ordinances. NOTE: The project may also require a South Dakota Department of Environment and Natural Resources (SD DANR) Storm Water Permit.

4. Footprint Minimization.

The permittees shall design and construct the project so as to minimize the amount of land that is impacted.

5. Electrical Cables.

This paragraph does not apply to feeder lines. The permittees must place collector lines and communication cables located on private property underground, except where the distance to the substation necessitates an overhead installation because of line loss.

6. Feeder Lines.

The permittees will place feeder lines in public rights-of-way, if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees must place the feeder in accordance with the easement(s) negotiated. The permittees must submit the site plan and engineering drawings for the feeder lines to the Planning Director before commencing construction.

7. Conditional Use Permit Submittal Requirements

The Conditional Use Permit application must be accompanied by the following:

- a. The applicant(s) is to schedule a meeting with the Planning Department prior to applying for a Conditional Use Permit to discuss the application process and necessary submittal items.
 - b. Boundaries of the site proposed for the project and associated facilities on United States Geological Survey Map or other map as appropriate.
 - c. Map and copies of easements for the project.
 - d. Map of occupied residential, business, and public structures within one-half mile of the proposed project site boundaries.
 - e. Preliminary map of sites for each UWES, access roads, and all utility lines, including collector and feeder. Location of other UWES within five (5) miles of the proposed project site.
 - f. All necessary haul road agreements.
 - g. Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information should be obtained by consulting with the following agencies; which includes, but are not limited to:
 - i. South Dakota Department of Game, Fish and Parks;
 - ii. U.S. Fish and Wildlife Service;
 - iii. South Dakota State Historical Society; and,
 - iv. United States Forest Service.Evidence of such consultation must be included in the application.
 - h. Project schedule.
 - i. Mitigation measures.
 - j. Decommissioning Plan.
 - k. Conditional Use Permit fee.
8. That prior to a Building Permit being issued after an approved Conditional Use Permit, a FAA determination of “Does Not Exceed” or “Determination of No Hazard” in response to submission of Form 7460-1 through the OE/AAA Process be obtained; and, Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.

9. Conditional Use Permit fee, see Section 511 “Fees.”
10. The Planning Department shall inspect the project annually for compliance with this Section of the Ordinance and shall charge an annual permit review fee – see Section 511 “Fees.”

11. Building Permit Requirements

A Building Permit application must be filed with the Planning Department and the application must include:

- a. Property lines and physical dimensions of the property.
- b. Location, dimension, and types of existing structures on the property and their distances from property line.
- c. Location of the proposed UWES and setback distances from property lines.
- d. The right-of-way of any public road that is contiguous with the property.
- e. Any overhead utility lines.
- f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed).
- g. Tower foundation blueprints or drawings, stamped by a South Dakota Registered Professional Engineer.
- h. Tower blueprint or drawing, stamped by a South Dakota Registered Professional Engineer.
- i. Proof of notification from the utility company in the service territory in which the UWES is to be erected.
- j. All signed and executed interconnection agreements shall be provided to Pennington County.
- k. Certificate of Insurance for the denomination approved with the Decommissioning Plan.
- l. FAA determination of “Does Not Exceed” or “Determination of No Hazard” in response to submission of Form 7460-1 through the OE/AAA; and, Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.

12. Post-Construction

Upon completion of construction of the project, the applicant shall supply an “as-built” ALTA survey indicating that the proposed facility comply with the setbacks in the permit within ninety (90) days.

13. Decommissioning:

To be provided at the time of Conditional Use Permit submittal.

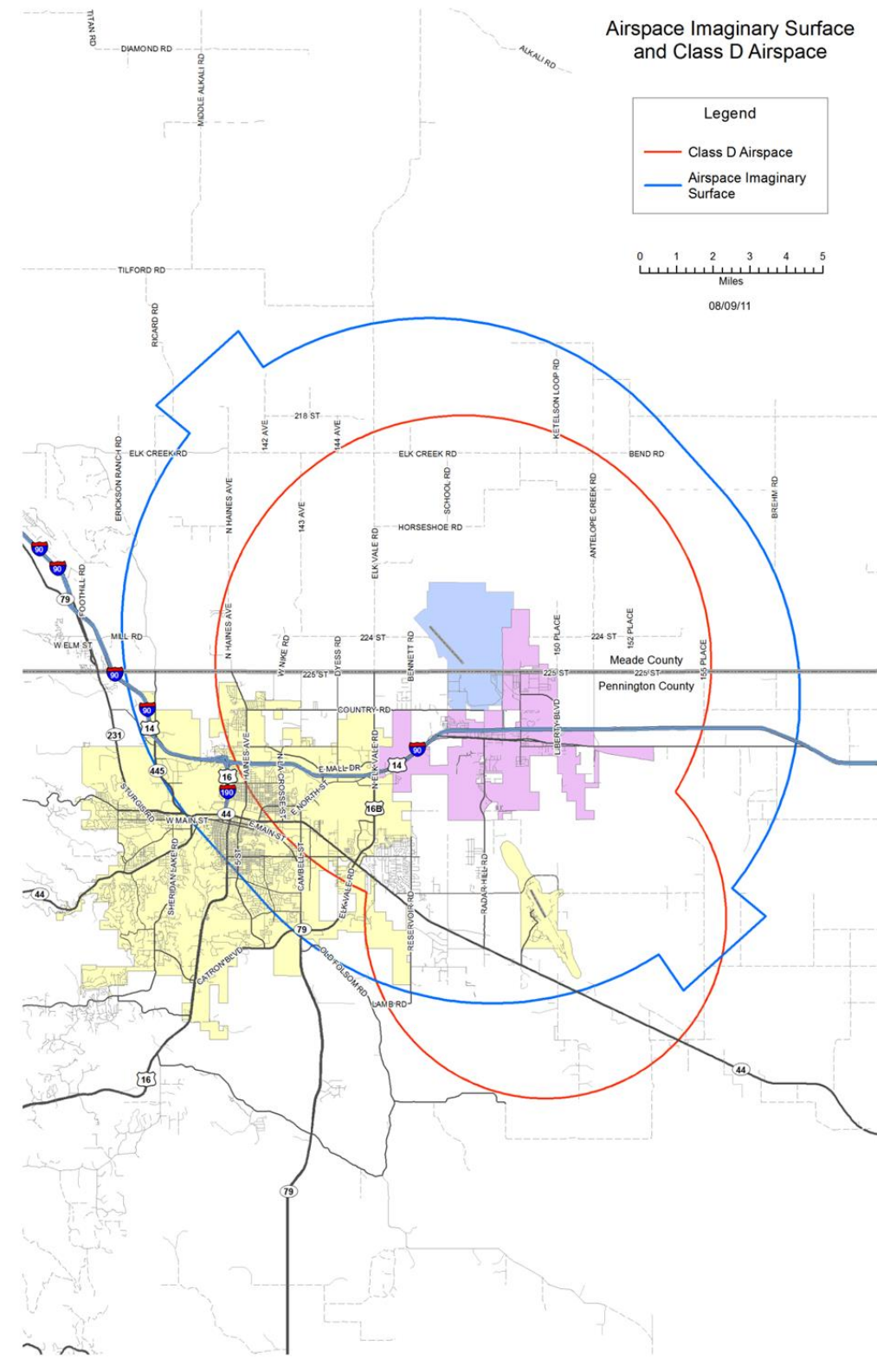
- a. Cost Responsibility: The owner or operator of a project is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan must clearly identify the responsible party.
- b. Useful Life: A project is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Planning Commission for approval of a plan outlining the steps and schedule for returning the project to service within twelve (12) months of the submission.
- c. Decommissioning Period: The facility owner or operator must begin decommissioning a project facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in 12(b). Decommissioning must be completed within eighteen (18) months after the facility or solar energy system reaches the end of its useful life.
- d. Decommissioning Plan: Prior to approval of a Conditional Use Permit for an Wind Farm facility, the facility owner or operator must file the following documents with the Planning Director: the estimated decommissioning cost; UWES and for restoring each haul road, in current dollars at the time of the application, for the proposed facility; a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Planning Commission will review a plan filed under this section and shall approve or disapprove the plan in conjunction with the Conditional Use Permit application. The Planning Commission or Planning Director may, at any time, require the owner or operator of a project to file a report describing how the project owner or operator is fulfilling this obligation.
- e. Decommissioning Requirements: Decommissioning and site restoration includes signing appropriate haul road agreements for the decommissioning process; dis-mantling and removal of all towers, turbine generators, transformers, forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the project. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the project. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.
- f. Financial Assurance: Before construction begins on the project, the facility owner shall provide to the Planning Department a certificate of insurance, including either a performance or surety bond, which covers the total cost to decommission the facility. The certificate of insurance shall be renewed and a copy submitted to the Planning Department each year the facility is in operation.

- g. Failure to Decommission: If the project facility owner or operator does not complete decommissioning, the Planning Director may take such action, as may be necessary, to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Planning Commission may take such action as may be necessary to decommission a project facility and seek additional expenditures necessary to do so from the facility owner.

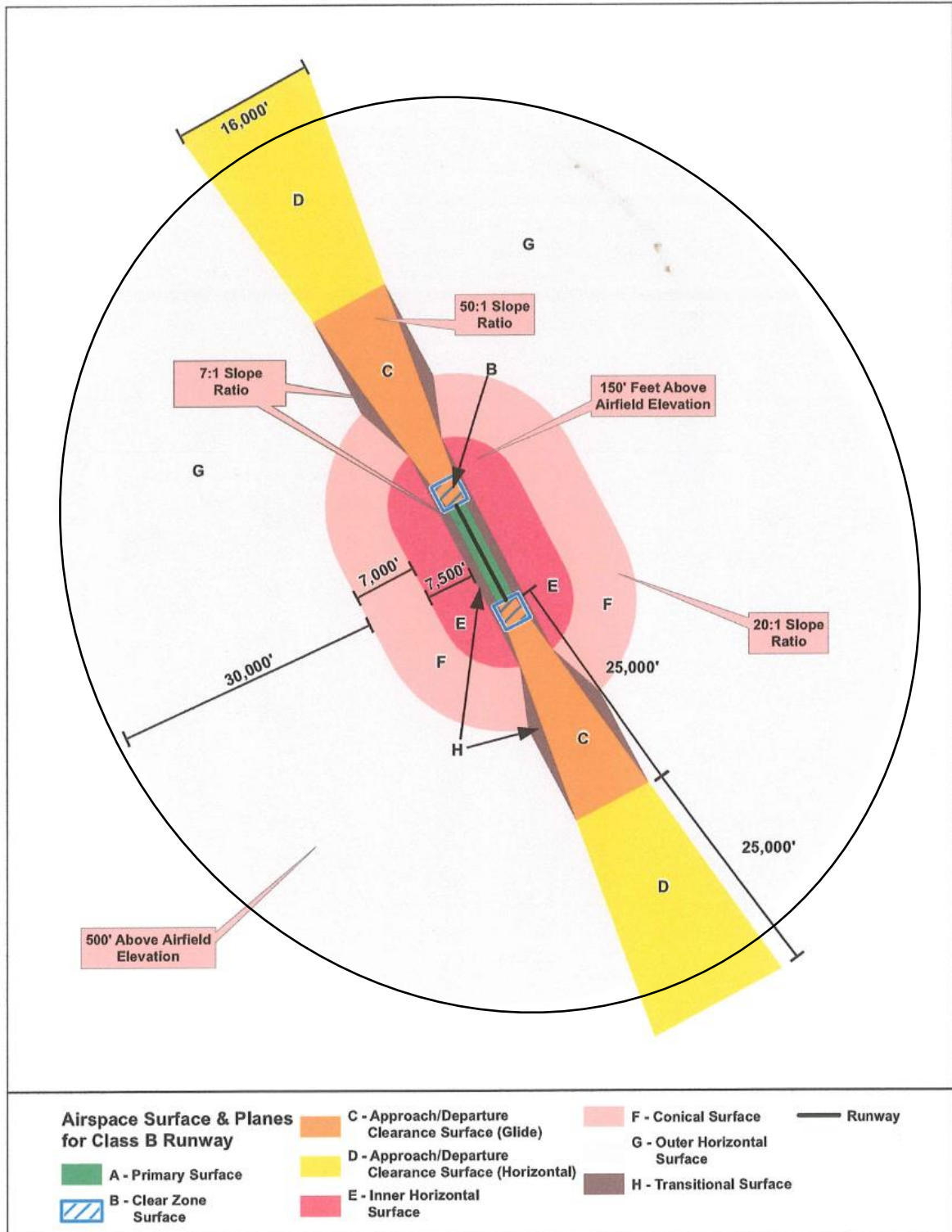
14. Violation

It is unlawful for any person to construct, install, or operate a Wind Energy System that is not in compliance with this section or with any condition contained in a Building Permit issued, pursuant to this section. Wind Energy System facilities installed prior to the adoption of this section are exempt.

EXHIBIT



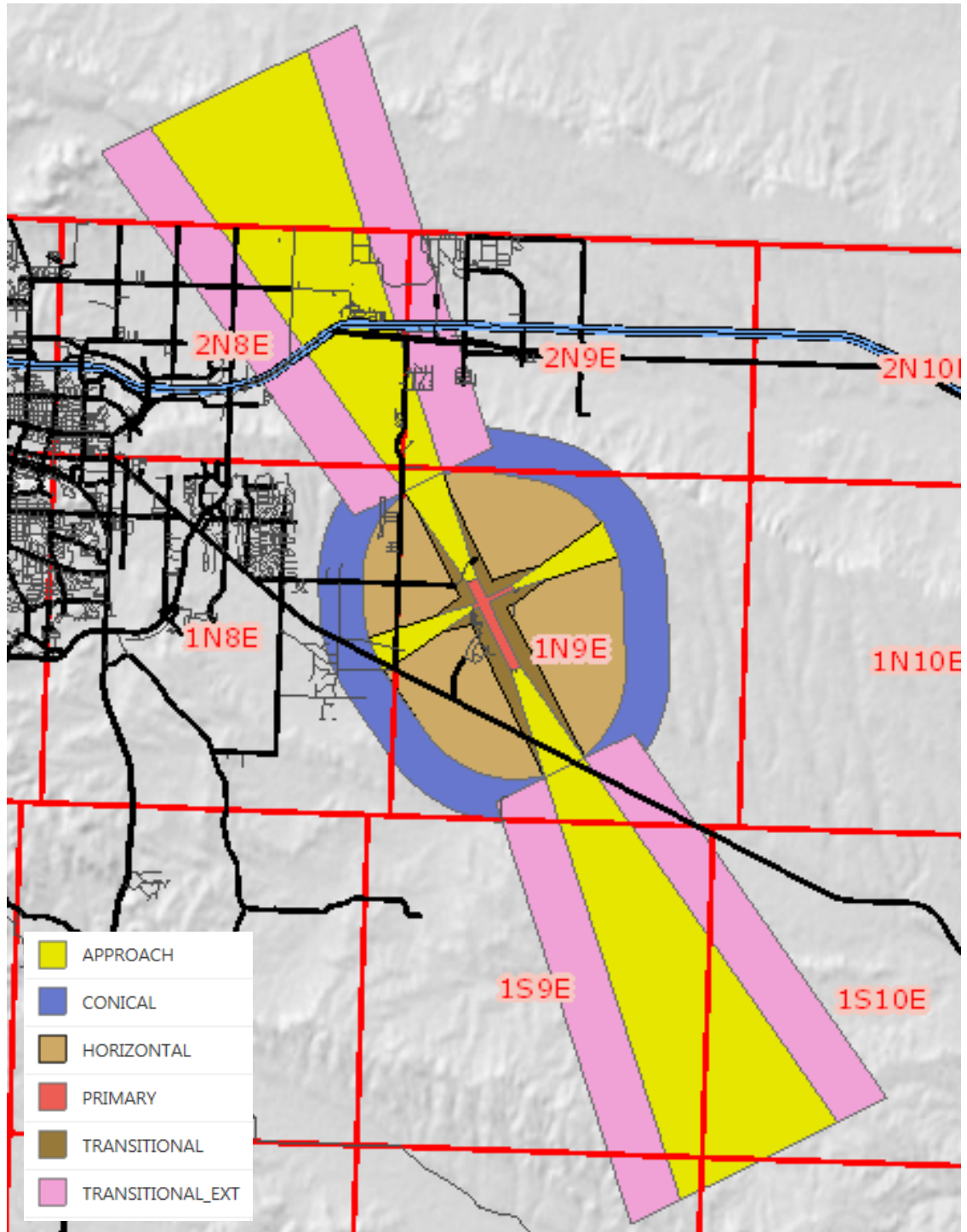
EXHIBIT



Source of Airspace & Planes: Federal Aviation Administration Regulation Part 77, Subpart C.

EXHIBIT

Part 77 – Obstructions to Navigation Rapid City Regional Airport



SECTION 318 – GUEST HOUSE (Repealed)

SECTION 319 – VACATION HOME RENTAL (Revised 06-26-24)

- A. *Purpose.* To establish regulations and standards for owners of Vacation Home Rental (VHR) properties in Pennington County for the protection of the public health, safety, and welfare.
- B. *Applicability.* This Section applies to all VHRs within Pennington County outside the jurisdiction of an incorporated municipality.
- C. *Definitions.*
 - 1. *Long-term Rental.* Any dwelling that is rented for more than 28 consecutive days.
 - 2. *Operator.* Any person or organization designated to be in charge of the day-to-day operations of a VHR.
 - 3. *Vacation Home Rental (VHR).* Any home, cabin, or similar unit that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental.
- D. *General Requirements.*
 - 1. *License.* If all of the general requirements set forth in this Section and all performance standards set forth in PCZO § 319(E) are met, a VHR is issued a License.
 - 2. *Zoning.* VHRs are allowed in agriculture, commercial, and residential zoning districts.
 - a. VHRs are prohibited in industrial zoning districts.
 - 3. *Dwelling requirements.*
 - a. *One VHR per lot.* Only one VHR is allowed per lot.
 - i. Exceptions:
 - (1) Multiple VHRs per lot may be allowed in commercial zoning districts.
 - (2) Multiple-family, condominiums and apartments. VHRs are allowed in units located in apartments, condominiums or other multiple-family dwellings.

- b. *Accessory Dwelling Units (ADUs)*. VHRs are allowed in ADUs under the *following* conditions:
 - i. The property must be owner-occupied as determined by the Pennington County Department of Equalization or the main dwelling is occupied as a long-term rental.
 - ii. Only one rental ADU is allowed per lot. The main dwelling cannot be used as a VHR.
 - iii. The ADU must have an approved Conditional Use Permit in accordance with PCZO § 324.
 - c. *Recreational Vehicles*. VHRs are prohibited in Recreational Vehicles.
- 4. *Special Flood Hazard Area*. VHRs are prohibited in a floodway and no portion of the dwelling can be within the floodway boundaries.
- 5. *Local Contact*. An owner must have a Local Contact and the Local Contact must live within 50 miles of the licensed VHR.
- 6. *Application*. The following information must be submitted to the Planning Department with the License Application:
 - a. *Application Form*. On a *form* provided by the Planning Department.
 - b. *Fees*. In accordance with PCZO § 319(F).
 - c. *Site Plan*. The site plan showing the layout of the property, including all existing and proposed structures with setbacks, wells and/or water lines, on-site wastewater treatment system and/or sanitary sewer lines, and on-site parking spaces.
 - d. *Floorplan*. An interior diagram/floorplan of the dwelling to be used as a VHR.
 - e. *Utility Plan*. The location and type of all utilities serving the dwelling. This must include:
 - i. On-site wastewater treatment system information and location.
 - ii. Water supply information and location.
 - iii. Propane tank(s) locations, if applicable.
 - f. *Performance Standard Information*. All information supporting compliance with the required performance standards set forth in PCZO § 319(E).
 - g. *Local Contact*. The name, address, phone number, and email address.

E. *Performance Standards*.

- 1. *Bedrooms*. The maximum number of bedrooms in the dwelling cannot exceed 5.

2. *Maximum Occupancy.* The maximum occupancy is 14 people (guests) or the maximum allowed based on the size of the existing onsite wastewater treatment system (see South Dakota Administrative Rules 74:53:01:20, 74:53:01:25 and 74:53:01:31) serving the VHR, whichever is smaller.
 - a. All ages count towards the number of people.
3. *Parking.*
 - a. *Minimum parking requirement.* Parking is required in accordance with PCZO § 310.
 - b. *Designated parking.* All guests and guest's visitors must park in a designated parking spot.
4. *Wastewater Treatment.* The owner must provide a letter from South Dakota Department of Agriculture and Natural Resources for the wastewater system, unless the system is public.
5. *Operating License.* A valid Operating License is required if the VHR is served by an on-site wastewater treatment system.
 - a. An Operating License is required every three years (at the time of License renewal).
6. *South Dakota Department of Health Inspection Report (SD DOH).* The owner must submit a current VHR Inspection Report performed by the SD DOH at the time of application for a VHR License.
7. *South Dakota Department of Revenue (SD DOR).* All owners, or their designee, must have a SD DOR current Sales Tax License.
8. *South Dakota Department of Health Lodging License.* All owners must have a current SD DOH Lodging License for a VHR.
9. *Fire Protection District.* Any VHR located within the Black Hills Area Fire Protection District must obtain all permits as required by South Dakota Law and regulation prior to the use of fire on the property.
10. *Pennington County License Information.* On any listing for the vacation home rental, the following must be added to the listing: "Approved by Pennington County License Number (insert number here)."

F. *Fees.*

1. License Fee: \$150.00 every three years.
2. A fine of \$200.00 per day (from the date of notice) will be assessed for advertising a VHR without a License.
3. A fine of \$250.00 per day (from the date of notice) will be assessed for violating any other requirements of PCZO § 319.

- G. *Sale or Transfer of a Dwelling with a License for a VHR.* Licenses for VHRs are not transferable.
- H. *Revocation or suspension of VHR License.* Any License issued under this Section must be established and conducted in conformity with all applicable rules and regulations. Failure to comply is cause for revocation or suspension of the License.
1. *Grounds.* The Planning Director may schedule a revocation or suspension hearing before the Board of Commissioners if:
 - a. The owner has received three or more separate notices from the Planning Department for violating PCZO § 319 in any 24-month period; or,
 - b. The continued use of the dwelling as a VHR determined by the Planning Director to be a threat to public health, safety, or general welfare.
 2. *Notice.* Notice of time and place of hearing shall be given, in writing, to the Licensee at least 30 days in advance of hearing. Notice of time and place of the hearing shall be published at least 30 days in advance of hearing in the legal newspapers of the County.
 3. *Hearing.* Upon hearing, the Board of Commissioners may revoke or suspend the License. In determining whether a License should be revoked or suspended, the Board must consider:
 - a. The nature and seriousness of the violation;
 - b. Corrective action, if any, taken by the licensee;
 - c. Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any;
 - d. The length of time the License has been held by the licensee; and,
 - e. The number of violations by the licensee within the applicable twenty-four (24) month period.
- I. *Building Permit.* Building Permits will be issued in accordance with PCZO § 506.
- J. *Expiration.* Licenses issued in accordance with PCZO § 319 will expire on December 31st of the third year from the year of issuance.
- K. *Appeals.* Appeals from PCZO § 319 are done in accordance with SDCL 11-2.
- L. *Enforcement.* Failure to comply with PCZO § 319 is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO § 514. County enforcement actions, including revocation or termination, may be taken based on guests and invitee's acts or failure to conform to the provisions of this Ordinance.

SECTION 320 – MINING OPERATION (Effective 02-12-20)

An operator shall obtain a Mining Permit from Pennington County to extract:

- Sand, gravel, or rock to be crushed and used in construction.
- Pegmatite minerals.
- Limestone, iron ore, sand, gypsum, shale, pozzolan, or other materials used in the process of making cement or lime.

A. Applicability.

Section 320 applies to the extraction of aggregate in excess or equal to 100 cubic yards of material. Section 320 does not apply to the extraction of aggregate by an individual for personal use. In addition, a Mining Operation as defined under Section 320 does not include extraction and removal of material from construction sites or following floods, landslides, or natural disasters where the land is being restored to its prior condition. However, a Storm Water Permit may be required under Section 507. All mining operations must comply with all local, state, and federal law, rules or regulations.

The mining of aggregate is a conditional use subject to the requirements of Section 320 and allowed **only** in the following Zoning Districts with an approved Pennington County Mining Permit:

- A-1 General Agriculture District (required minimum lot size of 40 acres).
- HI Heavy Industrial.
- Future Land Use Designations of Forest Service Lands / Public Lands (prior approval of mining activity from appropriate authority or agency required).

B. Purpose.

The purpose of Section 320 is to promote the health, safety, and general welfare of the County; permit the development and utilization of natural resources in a manner compatible with neighboring land uses; prevent the degradation of private and public water supplies; minimize adverse environmental effects through use of Best Management Practices; and guide the development of Pennington County consistent with the Comprehensive Plan.

C. Authority.

For the purpose of promoting the health, safety, or general welfare of the County the Board may adopt a Zoning Ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes. SDCL 11-2-13.

D. Definitions.

ABANDONED PROPERTY: As defined in Pennington County Ordinance 106 and amendments thereto.

ABANDONMENT: An intentional and absolute relinquishment and cessation of a use for any period of time without intention to resume said use or the voluntary discontinuance of a use for a continuous period of one year without reference to intent.

AFFECTED PERSON: A person owning property, residing, or operating a business within one-half (0.5) mile of the proposed Permit limit.

AGGREGATE: Particulate material used in construction, including sand, gravel, or rock to be crushed and used in construction; or pegmatite minerals; or limestone, iron ore, sand, gypsum, shale, pozzolan, or other materials used in the process of making cement or lime.

AGGRIEVED PERSON: An aggrieved person is a person who is suffering or likely will suffer a personal or pecuniary loss not suffered by taxpayers in general, falling upon the person in his or her individual capacity.

AIR BLAST: A jet of air produced mechanically.

“AND,” use of: As used in Section 320, a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken with the first. Added to; together with; as well as; including.

BASELINE TESTING: Initial testing that measures data that serves as a basis for comparison with subsequently acquired data.

BERM: An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise, or fulfill other similar purposes.

COMMERCIAL: A land use or other activity involving the sale of goods or services for financial gain.

DELAY (blasting): Interval of time between blasts or explosive charges.

EXCAVATION: The process of moving earth, rock or other materials with tools, machinery or explosives. Excavation activities include earthwork performed for purpose of removal of aggregate deposits, but excludes exploratory activities.

FLYROCK: Rocks propelled from the blast area by the force of an explosion.

HABITABLE: Suitable and fit for a person to live in; free of defects that endanger the health or safety of occupants.

HABITABLE STRUCTURE: Any building or structure used, or intended for use, on a day-to-day basis by people for residential purposes, for conducting a commercial or industrial business, or for purposes of a similar nature.

JUNK MATERIAL: Any scrap, waste, worn out, discarded material or debris collected or stored for destruction, disposal or some other use.

MINING OPERATION: The extraction of a natural resource from its natural occurrences.

NEIGHBORHOOD: An area of a community with characteristics that distinguish it from other community areas and that may include schools, social clubs, or boundaries defined by physical barriers, such as major highways and railroads, or natural features such as rivers.

OPERATIONAL MEASURES: Measures of operation to prevent, limit or reduce impact of mining activities.

“OR,” use of: As used in Section 320, a conjunction creating a multiple or an alternative obligation.

OVERBURDEN: All of the earth and other materials which are disturbed or removed, in their original state, or as they exist after removal from their natural state.

PARCEL: Any legally described piece of land designated by the owner or developer as land to be used or developed as a unit, or that has been developed as a unit.

PERMIT LIMIT: The area of an operation as legally described in a mining application or approved Mining Permit.

PERSON: Includes natural persons, partnerships, associations, cooperative corporations, limited liability companies, and corporations.

PERSONAL USE: Extraction and use by property owner for non-commercial purpose.

PUBLIC NUISANCE: As defined in Pennington County Ordinance 106 and amendments thereto.

START WORK ORDER: An administrative order that allows the resumption of work and commercial activities.

STOP WORK ORDER: An administrative order that requires immediate suspension of work and commercial activities.

SUBSTANTIAL STEP: Action which demonstrates reasonable effort to commence mining operation, including, but not limited to, state licensing, surveying, geological studies, drilling or excavation.

SUBSTANTIVE COMPLAINT: Relating to matters of major or practical importance to the health, safety, or general welfare of the County.

E. Mining Permit Process and Public Notice Requirements.

1. Application and Notice of Hearings

Upon submittal of a complete application and payment of application fee, the Planning Department shall provide the applicant a sign to inform the public of the Mining Permit application. The applicant shall place the sign on the property that is the subject of the application and in a location with the greatest visibility to the public. The applicant shall post the sign on the property at least 30 days prior to public hearing on the application before the Planning Commission.

The applicant shall notify all property owners (including recorded Contract for Deed buyers) of land located within one-half (0.5) mile, inclusive of any right-of-way, of the outer boundaries of the subject property of the pending Mining Permit application. Based upon Department of Equalization records, the Planning Department will determine and provide a list of property owners within one-half (0.5) mile. Notice shall be by registered or certified mail at least 30 days prior to the public hearing on the application before the Planning Commission. The applicant shall use "Application and Notice of Hearing" letters provided by the Planning Department. The applicant shall also notify by registered or certified mail the Tribal Historical Preservation Officer (THPO) for each tribe listed on the Black Hills National Forest Tribal/THPO current mailing list.

2. Public Hearings

The Planning Commission shall hold a public hearing on the application and the application must be complete prior to consideration. Notice of time and place of hearing shall be given at least 10 days in advance by publication in the legal newspapers of the County. The decision of the Planning Commission shall be a recommendation to the Board. The Planning Commission may recommend approval, approval with conditions or denial of the application.

After receiving the recommendation of the Planning Commission, the Board shall hold a public hearing on the application. Notice of time and place of hearing shall be given at least 10 days in advance by publication in the legal newspapers of the County. The Board may approve, approve with conditions or deny the application.

3. Mining Permit Application Review

The Planning Commission and Board may consider all relevant information in deciding on a Mining Permit application, including, but not limited to:

- a. The effect of the proposed operation on existing neighboring land uses.
- b. The effect of the proposed operation on water quality or availability of private or public water supply.
- c. The effect of the proposed operation on the health, safety, or general welfare of the County.
- d. The effect and location of the proposed operation in Special Flood Hazard Areas or drainage paths.
- e. Staff recommendations regarding permit conditions to prevent, limit or reduce adverse impact of the proposed operation.

F. Appeal of Conditional Use.

Aggregate mining is a conditional use subject to the requirements of Section 320. The Board is the approving authority. The Board's decision on a Mining Permit application is subject to review pursuant to SDCL 11-2-61.1 and amendments thereto.

G. Mining Permit Application.

1. All applications for a proposed mining operation shall include the following contact information:
 - a. The name, mailing address, e-mail address, and telephone number of the applicant.
 - b. The name, mailing address, e-mail address, and telephone number of the property owner and operator.

- c. If the applicant is a corporation, partnership, limited liability company, or limited liability partnership: 1) the exact name of the business entity; 2) the date of incorporation, registration, or organization; 3) the states or nations in which the entity is incorporated, registered or organized; and 4) the name, mailing address, email address, and telephone number of a designated contact person for the applicant.
 - d. The name, mailing address, e-mail address, and telephone number of an individual who will be responsible for the daily operation and maintenance of the site and who will serve as the primary contact person for the County.
- 2. The applicant shall also submit the following documents with the Mining Permit application:
 - a. Signed Statement. A signed statement by the applicant or operator, if different from the applicant, acknowledging review of and compliance with the provisions of Section 320, including responsibility to pay required fees and penalties for any violation.
 - b. Agency Comments. All comments received from any federal (i.e., NEPA), state (*see* SDCL chapter 45-6) and tribal agency in response to an application for a South Dakota Mining License concerning the property that is the subject of the application.
 - c. Site Plan. A site plan, drawn at a scale that is clearly legible and includes all of the following:
 - i. North point, scale, and date.
 - ii. Property boundaries of land that is the subject of the application.
 - iii. Location and boundaries of the permit limit, including area to be excavated, related storage, stockpiling and processing areas, paving, and areas where mining by-products will be deposited.
 - iv. Location of all access points, roads, rights-of-way, and utility easements on or abutting the property.
 - v. Location of all structures within 300 feet of the permit limit.
 - vi. Location and direction of flow of surface water on or within 300 feet of the permit limit.
 - vii. Location of registered wells on site and within 1,500 feet of the property boundaries.
 - viii. Benchmarks, if needed, for contour maps.

- ix. A topographic map, with a contour interval of not more than 10 feet, of the proposed permit limit and area within 300 feet of the permit limit. The site plan shall specify the reference elevation, such as mean sea level, an on-site benchmark or other commonly accepted reference.
- x. Areas to be used for drainage and erosion control management or sedimentation ponds, if any.
- xi. Location of proposed parking areas, signs and fencing, and a description of proposed fencing.
- xii. Proposed berm locations.
- xiii. Special Flood Hazard Area.

The Planning Director may require submission of additional information as part of the site plan.

- d. Operation Plan. An operation plan that includes a description of the methods and procedures to be used in the proposed mining operation. The operation plan shall include all of the following:
 - i. The approximate date of the commencement of the operation.
 - ii. Type of mining, processing, and transportation equipment to be used.
 - iii. Estimated type and amount of materials to be extracted.
 - iv. Estimated number of trucks per day and approximate weight of material per truckload.
 - v. Operational measures to manage noise, dust, air contaminants, and vibrations (must comply with all local, state, and federal law, rules or regulations).
 - vi. Operational measures to prevent groundwater and surface water degradation (must comply with all local, state, and federal law, rules or regulations).
 - vii. Measured or estimated depth to groundwater within the Permit Limit. If excavations below the water table will occur, operational measures to prevent entry of contaminants into the groundwater.
 - viii. Operational measures to stabilize topsoil and other material stockpiles.
 - ix. Operational measures to ensure no wetland is disturbed without written approval from the U.S. Army Corps of Engineers and the South Dakota Department of Environment and Natural Resources (SD DANR).
 - x. Reclamation Plan. The reclamation plan shall demonstrate that the site will be reclaimed to restore natural features, or for agricultural use with soils that are comparable to pre-mining soils or neighboring fields with adequate drainage

to support plant and animal life. Any exception to the reclamation plan must be approved by the Board and be consistent with future land use as identified in the Comprehensive Plan. The mining operation shall comply with all local, state, and federal law, rules or regulations regarding reclamation activities.

3. Drainage and Erosion Control Permits

- a. All mining operations shall comply with the South Dakota Water Pollution Control Act and Administrative Rules of South Dakota (ARSD) chapters 74:52:01 through 74:52:11 regulating erosion control measures, water drainage, and discharge. Prior to the start of mining operations, the applicant must obtain and provide a copy of a Storm Water Permit issued by SD DANR.
- b. The applicant must submit copies of all other required local, state and federal erosion control and runoff management permits.
- c. All mining operations must meet the requirements set forth in Section 507 of the Zoning Ordinance, which may require a Pennington County Storm Water Permit.

4. The Board may require, as a condition of approval of the Mining Permit, the applicant post a surety or cash bond in the form of a cashier's check for control measures, stabilization, reclamation or other work identified in the applicant's Operation Plan or Storm Water Pollution Prevention Plan. The applicant shall submit an itemized cost estimate for purpose of determining surety or bond amount. The Board shall determine the amount of the surety or bond based upon industry standards.

5. Additional Information

Submission of additional information may be required to determine the scope of the proposed mining operation or reclamation and effect on the surrounding area. This information may include, but is not limited to, proof of surety or cash bond and applicable access easements or agreements.

H. General Requirements for Mining Operations.

1. Hours of Operation

The hours of mining operation may be restricted to address special circumstances or demonstrated problems. Change of allowed hours of operation must be noticed in writing prior to effective date.

2. Dust Control

The operator shall comply with the provisions of SDCL chapter 34A-1. The operator shall use industry Best Management Practices in an effort to control and minimize fugitive dust, including at least one of the following: vegetated earthen berms, paved entrance roadways, standard methods of water spray, dust covers on transfer points, or sweeping.

3. Noise Control

The operator shall comply with all applicable noise regulations and industry recommendations (provided such recommendations are allowed by the Mine Safety and Health Administration).

4. Lighting

All lights shall use hoods and lens that cast light downward.

5. Vibration and Blasting

The mining operation and activities shall comply with all local, state, and federal law, rules or regulations regarding blasting activities. Upon request by the Planning Director, the operator shall provide access to the blasting logs.

Blasting may occur Monday through Friday from 7:00 a.m. to 5:00 p.m. Blasting is not allowed on Saturdays, Sundays, or Holidays listed in SDCL 1-5-1.

a. Log Details. An accurate blasting log shall be prepared and maintained for each blast fired. Each blasting log shall include the following information:

- i. Name of the blaster in charge of the blast.
- ii. Blast location references (latitude/longitude).
- iii. Date and time of blast.
- iv. Weather conditions at time of blast.
- v. Diagram of blast hole layout.
- vi. Number of blast holes.
- vii. Blast hole depth and diameter.
- viii. Spacing and burden of blast holes.
- ix. Maximum holes per delay.
- x. Maximum pounds of explosives per delay.
- xi. Depth and type of stemming used.

- xii. Total pounds of explosives used, including primers and initiating cord.
 - xiii. Distance to nearest habitable structure not belonging to the mine owner or operator.
- b. Control of Adverse Effects. Blasting shall be conducted in a manner designed to prevent injury to persons or damage to property outside the permit limit.

- i. Flyrock. Flyrock shall be contained within the permit limit.
- ii. Air Blast. Air Blast shall not exceed a maximum limit of 133 peak dB at the location of any dwelling or habitable structure outside the permit limit. The blaster shall conduct monitoring of every blast to ensure compliance with the air blast limit.

In lieu of monitoring, the calculated Scaled Distance must be 1,000 feet or greater. The Scaled Distance (for air blast) shall be calculated using the following equation:

$$SDA = D / CW^{1/3}.$$

SDA = Scale Distance (Air Blast).

D = Distance from blast to nearest dwelling or habitable structure outside the permit limit.

CW = Charge Weight per delay.

- iii. Ground Vibration.
 - aa. Peak Velocity. The maximum ground vibration at the location of any dwelling or habitable structure outside the controlled blasting site area shall not exceed the limits set forth in Table 1 below.

Table 1. Maximum Allowable Peak Velocity for Ground Vibration.

Distance (D) From The Blasting Site (feet)	Maximum Allowable Peak Particle Velocity (Vmax) For Ground Vibration (in/sec)	Scaled-Distance (Ds)_a Factor To Be Applied Without Seismic Monitoring (feet)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and Beyond	0.75	65

(a) $D_s = D / (\text{square root of } W)$; W = max weight in lbs. of explosives per delay.

bb. How Measured. The blaster shall use the ground vibration limits specified in Table 1 above to determine the maximum allowable ground vibration. Ground vibration shall be measured as the peak particle velocity. Particle velocity shall be recorded in three mutual perpendicular directions.

cc. Record. The blaster shall maintain a seismograph record, including both particle velocity and vibration frequency levels for each blast.

dd. Monitoring. Seismic monitoring shall be completed at the nearest dwelling or habitable structure located outside of the permit area. If unable to obtain permission to conduct monitoring from the property owner, the blaster may monitor at another location approximately the same distance or closer from the blast site.

In lieu of performing seismographic monitoring, the maximum pounds of explosive per eight millisecond delay shall be calculated using Table 1 above and the equation provided. The distance used for the calculation shall be measured from the blast to the nearest dwelling or habitable structure located outside of the permit limit.

ee. Exceptions.

The maximum ground vibrations and air blast standards shall not apply to property belonging to the mine owner or operator.

6. Spill Prevention

The applicant shall comply with all local, state, and federal law, rules or regulations regarding chemical storage, handling, and spill response. This includes, but is not limited to, regulations promulgated by the Mine Safety and Health Administration (MSHA), the Environmental Protection Agency (EPA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

7. Junk Material

The owner or operator of a mining operation shall store junk material so as not to create a public nuisance.

8. Screening and Berms

A screening plan appropriate to the site shall be developed by the applicant. Berms shall meet all of the following requirements:

- a. Berms shall be constructed within 14 days of stripped overburden and topsoil becoming available from the quarry site or from suitable outside sources. Berms may be constructed in phases as material becomes available.
- b. Only clean overburden shall be used.
- c. Safety berms shall be half the height of the largest wheel of equipment used in the mining operation, but in no case less than the height required by the Mine Safety and Health Administration. However, where a berm is adjacent to a public road, the berm shall be at least 10 feet above the surface of the center of the road.
- d. The outward-facing slopes of safety berms shall not be steeper than two horizontal units to one vertical unit. The inner-facing slopes may be steeper, but must be stabilized and maintained to ensure continued stability.
- e. Berms shall be constructed to prevent flooding, concentrated runoff, inadequate drainage, and excessive erosion or sedimentation.
- f. Berms shall be kept free of noxious weeds, trash, and debris.

9. Roads and Approaches

Roads to be used off site, including all points of ingress and egress (approaches) and all primary routes for transportation of material to state or federal highways, must be approved by the governing street authority.

I. Additional Requirements for Mining Operation.

1. Setbacks

Setback requirements shall apply to all mining operations including, but not limited to, stockpiling and the storage of waste materials, inventory, and equipment. These are minimum setback requirements and greater setbacks may be required by the Board. These setback requirements are not applicable to roads, berms, and other landscaping.

- a. No mining operation shall be conducted within 50 feet of exterior lot lines, unless written permission is obtained from the abutting property owner.
- b. No mining operation shall be conducted within 100 feet of a public road centerline or 25 feet of a public road right-of-way, whichever is greater.
- c. No mining operation shall be conducted within 300 feet of any existing dwelling, other than a dwelling belonging to the mine owner or operator, unless written permission has been obtained from the homeowner.

2. Groundwater Monitoring

- a. Based on site conditions, the Board may, as a condition of approval of the Mining Permit, require the applicant to perform baseline testing of up to three wells located within 1,500 feet of the proposed perimeter of the mining extraction area. If there are no existing wells within 1,500 feet, baseline testing may be required of the nearest located wells. Priority will be given to wells located on abutting land where the property owners have requested testing, in writing, and granted permission for access to their property. Baseline testing shall establish, at a minimum, bacteria and turbidity levels, and potential groundwater drawdown due to pumping within the Permit Limit.
- b. Testing must be completed and results obtained prior to commencing any mining activity.

- c. Drawdown tests of the original baseline wells shall be conducted when requested in writing by a well owner who demonstrates quantity of water in the well has been impacted by mining activities.
- d. All tests shall be performed by a qualified third-party professional.
- e. Test results shall be provided to the Planning Director upon completion.

J. Review, Transfer and Expansion.

1. Review of Mining Permit

Mining Permits may be reviewed by the Board to verify that conditions of approval are met. Mining Permits may be reviewed:

- a. As a condition of the Mining Permit.
- b. As directed by the Board.
- c. Upon receipt of a substantive complaint.

2. Transfer of Permit

Upon transfer of interest in a mining operation, the prior owner or operator shall be released of responsibilities under the Mining Permit, **only** if all of the following conditions are met:

- a. Written notice of the transfer is given to the Planning Department.
- b. The operation is in compliance with the requirements of Section 320 and the conditions of operation under its existing Mining Permit.
- c. The new owner or operator assumes responsibility for the reclamation of the entire Permit Limit by written, signed, and notarized document and provides financial assurance for such reclamation in the form of a surety or cash bond.

3. Permit Limit Expansion

Any proposed expansion of a Permit Limit shall be considered as a new application under Section 320. All provisions of Section 320 shall apply to the proposed expansion.

K. Complaints.

The Planning Department may inspect a mining operation based on a Substantive Complaint or as directed by the Board. Record of complaints received and inspections shall be maintained by the Planning Department. Complaints will be handled and considered as follows:

1. On receipt of a complaint, the Planning Department shall investigate the complaint and substantiate the facts and circumstances alleged.
2. Any necessary corrective action as determined by the Planning Department shall be submitted to the owner and operator in writing.
3. The Planning Department will set a reasonable time for the mining operation to comply with and complete the required corrective action.
4. If the mining operator fails to perform required corrective action or fails to comply with the requirements of Section 320, the Planning Director may schedule a public hearing before the Board regarding revocation of the Mining Permit pursuant to Section 320(L).

L. Revocation of Mining Permit.

The Planning Director may schedule a revocation hearing before the Board upon the occurrence of any of the following:

1. The owner or operator has failed repeatedly to comply with the conditions of the current Mining Permit.
2. The owner or operator has failed repeatedly to comply with the Operation Plan as detailed in the Mining Permit application.
3. The mining operation is not in compliance with Section 320.
4. The owner or operator failed to perform and complete requested corrective action.
5. The continued operation of the mine is a threat to the public health, safety, or general welfare.

Notice of time and place of the hearing shall be given, in writing, to the permit holder at least 30 days in advance of hearing. Surrounding property owners and THPOs shall also be given written notice of the hearing as provided under Section 320(E)(1). In addition, notice of time and place of the hearing shall be published at least 10 days in advance of hearing in the legal newspapers of the County.

Upon hearing, the Board may revoke the Mining Permit or order remedial action to be taken by the owner or operator. The Board's decision revoking a Mining Permit is subject to review pursuant to SDCL 11-2-61.1 and amendments thereto.

M. Failure to Commence Mining Operation.

Failure of an owner or operator to take Substantial Steps to commence mining operation within five years of issuance of the initial Mining Permit, shall terminate the Mining Permit. A new Mining Permit application shall be required for any future mining operation.

N. Abandonment of Mining Operations.

If mining operations are abandoned, resumed mining activity shall require a new application and Mining Permit. Temporary cessation of mining activity approved by the SD DANR does not constitute abandonment of mining operations.

O. Limits of Operation.

All mining operations shall be limited to, and conducted within, the Permit Limit as approved by the Board.

P. Legal Nonconforming Use.

Excavation activities that are a legal nonconforming use do not require a permit under Section 320. However, legal nonconforming use may not be expanded beyond the boundaries of the parcel on which the use was initiated at the time of enactment of Section 320 without a Mining Permit.

Legal nonconforming uses must be registered with the Pennington County Planning Department within 180 days of the effective date of Section 320. Excavation activities with a previously issued Pennington County Mining Permit are excluded from this registration requirement.

1. Conditions

Excavation activities ongoing prior to the enactment of Section 320 are allowed as a legal nonconforming use when all of the following conditions are met:

- a. Excavation activities were actively pursued under a state mining license at the time Section 320 became effective.
- b. Area to be excavated was clearly intended to be excavated, as measured by objective manifestations and not by subjective intent (objective manifestations include, but are not limited to, previously issued County Construction or Mining Permit or State Mining License, or geological or engineering studies, fencing or signage of current and future areas to be excavated).

- c. Continued operations do not, or will not, have a substantially different and adverse impact on the neighborhood. A claim that continued operations will have a substantially different and adverse impact on the neighborhood must be proven by clear and convincing evidence.

2. Registration

Registration shall be through a standardized form created by the Planning Department and require all of the following information:

- a. Name and contact information of the property owner and operator.
- b. Description of the operations, including site plan with disturbance boundary.
- c. Legal description of the property subject to the nonconforming use.
- d. Date nonconforming use was first established on the property and supporting documentation.

Further information and supporting documentation may be required by the Planning Director.

3. Review Process

- a. Registration of legal nonconforming use shall be submitted to the Planning Department within 180 days of the effective date of Section 320.
- b. A registration fee of \$300.00 (non-refundable) is required.
- c. A registration will not be complete or considered for approval until all information or supporting documentation requested by the Planning Director is submitted.
- d. The Planning Commission shall hold a public hearing to determine the legal nonconforming use of the property. Written notice of time and place of hearing shall be given to surrounding property owners and THPOs as provided under Section 320(E)(1). In addition, notice of time and place of the hearing shall be published at least 10 days in advance of hearing in the legal newspapers of the County.

4. Appeal of Legal Nonconforming Use

The owner or operator or any person aggrieved or affected as defined in Section 320 by a determination of the Planning Commission on a legal nonconforming use may appeal the decision to the Board.

5. Regulation of Legal Nonconforming Use

Excavation activities ongoing prior to the enactment of Section 320 must comply with the General Requirements for Mining Operations set forth in Section 320(H) and permit requirements set forth in Section 507 of the Zoning Ordinance, submit a Reclamation Plan, and post a surety or cash bond if required by the Planning Commission in its discretion.

Q. Enforcement.

1. Stop Work Order

The Planning Director may issue a Stop Work Order under the following circumstances:

- a. A site is being operated or maintained in a manner which violates Section 320.
- b. A site is being operated or maintained in a manner contrary to the conditions of the Mining Permit.
- c. Mining operations are occurring without a required permit under Section 320 or in violation of other local, state, or federal law, rules or regulations.
- d. A site is being operated or maintained in a manner that endangers public health, safety, or general welfare.

The Planning Director may consult with outside Public Safety Officials and Mining Professionals for information and recommendation.

A Stop Work Order shall be issued in writing and delivered, via certified mail or hand-delivered, to the person responsible for daily operation and maintenance of the site, or his or her employee or agent. All mining operations and site development shall cease upon delivery of a Stop Work Order, except work necessary to stabilize or secure the site as allowed or required by the Planning Director. Mining operations and site development may resume only when the Stop Work Order is lifted by the Planning Director via a Start Work Order.

2. Ordinance Violation

An owner or operator who fails to comply with the requirements of Section 320 or conditions of an approved Mining Permit is in violation of the Pennington County Zoning Ordinance and subject to the fees and penalties set forth in Sections 511 and 514 of the Zoning Ordinance.

3. Injunction

In addition to all other legal remedies, the County may seek injunctive relief pursuant to SDCL 21-8 against a property owner or operator conducting mining activity in violation of Section 320 or conditions of an approved Mining Permit. The injunctive relief may include reparative action to abate a nuisance.

4. Nuisance

Violations of Section 320 that constitute a public nuisance as defined under SDCL chapter 21-10 or Pennington County Ordinance 106 may be abated without civil action by the County.

5. Reclamation Work

If an owner or operator cannot or will not complete requested reclamation work, the Board may authorize the Planning Director to complete reclamation work specified in the Operation Plan or Pennington County Storm Water Pollution Prevention Plan. The Planning Director will give written notice to the owner or operator and any Surety of intent to complete reclamation work. The owner or operator and any Surety will be liable for costs incurred by the County in completing reclamation work. The County may apply any posted bond to costs incurred by the County.

6. Inspection Warrant

Pursuant to SDCL chapter 34-43, the Planning Director or a Pennington County certified law enforcement officer may obtain an inspection warrant to conduct an inspection of the Mining Operation.

7. Conflicting Ordinances

In the event provisions of Section 320 are in conflict with local, state, or federal law, rules or regulations in effect within the jurisdictional boundaries of the County, the higher standard or more stringent requirement shall control.

8. Severability

If any section, subsection, paragraph, sentence, clause or phrase of Section 320 is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

9. Effective Date

This Ordinance shall become effective on the twentieth day after its completed publication.

SECTION 321 – HARD ROCK MINING

(In Progress)

SECTION 322 – SPECIAL ANIMAL KEEPING REGULATIONS (DOES NOT INCLUDE DOMESTIC ANIMALS) (Effective 02-24-21)

This section establishes the regulations and standards for the keeping of animals in Ranchette and Residential Districts to minimize effects, such as noise, smell, waste, and human-health issues, on neighboring properties (no matter how those neighboring properties are zoned).

A. *Definitions.*

1. *Barn* means a structure, with a roof and sides, of adequate size that is designed to provide shelter and protection for small livestock or large livestock.
2. *Cage* means a structure with a roof and sides that is designed to provide shelter and protection for fowl.
3. *Coop* means a structure with a roof and sides that is designed to provide shelter and protection for fowl.
4. *Enclosure* means a set of walls or fences designed to confine fowl, small livestock, or large livestock to a space that is large enough to allow the confined animal to roam relatively free in a yard.
5. *Fowl* means chickens, geese, ducks, turkeys, peafowls, and like birds.
6. *Immature animal* means any fowl, large livestock, or small livestock that is six months of age or less.
7. *Large livestock* means farm animals—such as cattle, goats, horses, llamas, sheep, swine, and the like—that are (1) larger than 24 inches at the shoulder, and (2) more than 150 pounds in weight.
8. *Rooster* means a male chicken.
9. *Small livestock* means farm animals—such as goats, horses, llamas, sheep, swine, and the like—that are (1) smaller than 24 inches at the shoulder, and (2) less than 150 pounds in weight.
10. *Stable* means a structure, with a roof and sides, of adequate size that is designed to provide shelter and protection for small livestock or large livestock.

- B. *Jurisdiction.* This section applies only to Ranchette and Residential Districts.
- C. *Appeals.* All decisions made by the Planning Director may be appealed in accordance with SDCL 11-2-53.
- D. *General Provisions.*
1. *Immature Animals Excluded.* All immature fowl, small livestock, and large livestock are excluded from the total count under each subsection.
 2. *Nuisance.* In addition to the provisions of Pennington County Ordinance 106, the following provisions apply:
 - a. *General.* All fowl, small livestock, and large livestock must be kept in a manner that does not create any objectionable noise, odor, annoyance, or any other public nuisance.
 - b. *Housing.* All coops, cages, barns, stables, and enclosures must be reasonably maintained, clean, and dry.
 - c. *Food Storage.* All food must be stored properly in containers to avoid attracting rodents, insects, predators, or other animals.
 3. *Waste.*
 - a. *General.* Waste from fowl, small livestock, and large livestock must create neither public nuisances nor human-health issues for neighboring properties.
 - b. *Waste Removal.* The removal and disposal of waste from fowl, small livestock, and large livestock kept on the property must be done (1) properly, and (2) in accordance with all local, state, and federal regulations.
- E. *Fowl.*
1. *Count.* The following regulations determine how to count the maximum number of fowl allowed.
 - a. *Formula for a Lot Size Less Than 1/4 Acre.*
 - i. *Chickens.* If a parcel of land is less than 1/4 acre of actual lot size, then the maximum number of chickens that may be kept is five (5).
 - ii. *Other Fowl Prohibited.* Other than chickens, all other fowl are prohibited from being kept on a parcel of land that is less than 1/4 acre of actual lot size.
 - b. *Formula for a Lot Size Greater Than 1/4 Acre.*
 - i. *All Fowl.* A maximum of 5 fowl per 1/4 acre of actual lot size may be kept.
 - ii. *Example.* If there is 3 acres of actual lot size, then a maximum of 60 fowl may be kept.
 - c. *Maturity Presumed.* All fowl are presumed to be mature unless the Planning Director decides otherwise.

2. *Housing.*
 - a. *Where Fowl May Roam.* All fowl must:
 - i. be kept in a predator-resistant coop, cage, or other enclosure at all times; and,
 - ii. not be permitted to run at large.
 - b. *Requirements for the Structure.* Any coop, cage, or enclosure for fowls must:
 - i. be located in the rear yard;
 - ii. be located at least 10 feet from the property line;
 - iii. comply with existing setback or easement requirements on the property; and,
 - iv. comply with PCZO § 506.
 3. *Roosters Prohibited.* No rooster may be kept.
- F. *Small Livestock.*
1. *Count.*
 - a. *Formula.* Only one (1) small livestock may be kept for every ½ acre of actual lot size.
 - b. *Maturity Presumed.* All small livestock are presumed to be mature unless the Planning Director decides otherwise.
 2. *Housing.*
 - a. *Where Small Livestock May Roam.* Small livestock must:
 - i. be kept in a barn, stable, or other enclosure at all times; and,
 - ii. must not be permitted to run at large.
 - b. *Requirements for the Structure.* Any barn, stable, or enclosure for small livestock must:
 - i. be located in the rear yard;
 - ii. be located at least 20 feet from any dwelling and property line; and,
 - iii. comply with PCZO § 506.
- G. *Large Livestock.*
1. *Count.*
 - a. *Formula.* Only one (1) large livestock may be kept for every one (1) acre of actual lot size.
 - b. *Maturity Presumed.* All large livestock are presumed to be mature unless the Planning Director decides otherwise.
 2. *Housing.*
 - a. *Where Large Livestock May Roam.* Large livestock must:
 - i. be kept in a barn, stable, or other enclosure at all times; and,
 - ii. not be permitted to run at large.
 - b. *Requirements for the Structure.* Any barn, stable, or enclosure for large livestock animals must:
 - i. be built and located in the rear yard;
 - ii. be located at least 50 feet from any dwelling and property line; and,
 - iii. comply with PCZO § 506.

SECTION 323 – BED AND BREAKFAST (Effective 05-26-21)

These provisions are intended to support alternative lodging options, with reasonable limitations to minimize the impact on neighboring properties, while also promoting the health, safety, and general welfare of Pennington County.

A. *Definitions.* As used in this Section, the following definitions apply:

1. *Bed and Breakfast.* Any building or establishment run by an operator that is used to provide overnight accommodations for a charge to the public which breakfast is provided. It is also known as a “B&B.”
2. *Breakfast.* A family style meal that is prepared by the operator in the main kitchen of a Bed and Breakfast before noon each day.
3. *Common-Food-Service Containers.* A container that is used to either store or hold food for human consumption in a safe manner.
4. *Family-style meal.* A meal ordered by persons staying at a Bed and Breakfast that is served from common-food-service containers from which guests serve themselves, as long as any unconsumed food is not reused.
5. *Guest.* An occupant of a room in a Bed and Breakfast establishment.
6. *Guest Room.* A room that is used or intended to be used by a guest for sleeping purposes.
7. *Operator.* Any person designated in charge of the day-to-day operations of the Bed and Breakfast establishment and permanently resides in the dwelling.
8. *Owner.* The person who owns the Bed and Breakfast.
9. *Resident.* A person or persons other than the owner who lives at the Bed and Breakfast.

B. *Requirements.*

1. *Conditional Use.* A Bed and Breakfast is a Conditional Use in all zoning districts except Industrial.
2. *Compliance.* A Bed and Breakfast must comply with the following requirements:
 - a. PCZO § 204;
 - b. The zoning district regulations for the district in which the dwelling is located;
 - c. PCZO § 323;

- d. PCZO § 510;
 - e. ARSD 44:02:06; and,
 - f. All relevant state laws, including the following:
 - i. Registration with the SD Department of Health (SD DOH). A Bed and Breakfast must:
 - aa. Register with the SD DOH in accordance with SDCL ch. 34-18; and,
 - bb. Provide proof of that registration to the Planning Director.
 - ii. Approval by SD Department of Agriculture and Natural Resources (SD DANR). The owner must:
 - aa. Obtain approval from the SD DANR that states the current on-site wastewater treatment system is adequate for the proposed use as a Bed and Breakfast; and,
 - bb. Provide proof of that approval, in writing, to the Planning Director.
3. *Design and Layout.*
- a. *Building Material.* A Bed and Breakfast must be stick-built.
 - b. *Exterior Design.*
 - i. General Rule. The exterior of a Bed and Breakfast must have a residential character.
 - ii. Exception. A Bed and Breakfast may have a sign, located on the building or next to the road that identifies itself as a Bed and Breakfast.
 - c. *Guest Rooms.* The maximum number of guest rooms is 5.
 - d. *Interior Sign.* A sign must be placed next to the front door, on the interior, that lists:
 - i. The maximum number of guests permitted to stay overnight;
 - ii. The maximum number of vehicles allowed to be parked on site; and,
 - iii. The name and contact information of an employee of the Bed and Breakfast who is available 24/7 to help the guest immediately, if requested.
 - e. *Kitchen.* The kitchen cannot be located in a guest room:
4. *Lot Requirements.*
- a. *Lot Area:* A Bed and Breakfast must meet the following minimum lot area.
 - i. Minimum. The minimum lot size for a Bed and Breakfast is one (1) acre.
 - ii. Underlying Zoning District. A Bed and Breakfast must meet the minimum lot size of the zoning district in which it is located.
 - iii. Location. An unattached Bed and Breakfast cannot be placed in the front yard.

5. *Occupancy.* The maximum number of guests is 2 per guest room.
6. *Off-Street Parking.* There must be:
 - a. at least 2 off-street parking spaces; and,
 - b. an additional off-street parking space for each guest room.
7. *Owner-Occupation and Management.*
 - a. *Owner Occupation.* The owner or operator must:
 - i. Live at the Bed and Breakfast or on contiguous property at all times; and,
 - ii. Register the building in which the Bed and Breakfast is housed as owner occupied with the Pennington County Department of Equalization.
 - b. *Management.*
 - i. *Meals.* A Bed and Breakfast may neither serve nor sell food, beverages, or both to the general public—that is, any person other than a guest.
 - ii. *Quiet Hours.*
 - aa. *General Rule.* A Bed and Breakfast’s quiet hours are from 10:00 p.m. to 7:00 a.m.; and,
 - bb. *Exception.* The Planning Commission may establish alternative quiet hours.
8. *Rentals.* The maximum number of days that a guest may stay at a Bed and Breakfast is 7 consecutive days in a 30-day period.
9. *Prohibitions.* A Bed and Breakfast is prohibited in a floodway.
10. *Safety Plan.* The owner must submit a safety plan, in writing, to the Planning Director as a part of the application process that includes, at a minimum, the following:
 - a. A floor plan of the structure;
 - b. A posted list of guest rules and regulations, including for litter control, quiet hours, parking, and proposed methods to enforce occupancy limitations and other requirements;
 - c. A site plan of the property;
 - d. An emergency exit route and evacuation plan;
 - e. An emergency Contact (employee) who available 24/7 to help a guest immediately if requested;
 - f. Proof that smoke alarms in each sleeping room;
 - g. Proof that fire extinguishers are on each floor of the building and at least 1 is in the kitchen;
 - h. Proof that the contact information for the Pennington County Sheriff and closest fire department are available to guests in an easily accessible manner; and,
 - i. The address of the Bed and Breakfast.

- C. *Review.*
 - 1. *Power-to-Review.* The Planning Commission has the authority to review a Conditional Use Permit for a Bed and Breakfast to ensure compliance with the PCZO, any conditions imposed, and state law.
 - 2. *Procedure.* The procedure for the review will be done in accordance with PCZO § 510(F).
- D. *Revocation.* The procedure for the revocation will be done in accordance with PCZO § 510(I).
- E. *Appeals.* An appeal from the Planning Commission's decision to grant or deny a Conditional Use Permit for an accessory dwelling must be brought under SDCL 11-2-61.1.

SECTION 324 – ACCESSORY DWELLINGS (Revised 11-10-21)

- A. *Definitions.*
 - 1. *Accessory Dwelling.* An accessory dwelling is a:
 - a. Permanent yet subordinate dwelling that has its own cooking, sleeping, and sanitation facilities; and,
 - b. Detached accessory structure associated with a single-family dwelling that is:
 - i. smaller than the primary structure;
 - ii. on a permanent foundation; and,
 - iii. not a Recreational Vehicle.
 - 2. *Long-Term Rental.* A single-family dwelling that is leased for a period of 28 consecutive days or more.
 - 3. *Owner Occupied.* Under this section, owner occupied means a single-family dwelling that is inhabited by the *bona fide* owner as listed in Pennington County Department of Equalization records.
- B. *Requirements.*
 - 1. *Conditional Use.* An accessory dwelling is a Conditional Use in agriculture and residential zoning districts.
 - 2. *Compliance.* An accessory dwelling must comply with the following requirements:
 - a. PCZO § 204;
 - b. The zoning district regulations for the district in which the dwelling is located;
 - c. PCZO § 324;
 - d. PCZO § 510; and,
 - e. All relevant state laws.

3. *Design Requirements.*
 - a. *Address, Appearance, Materials, and Utilities.* An accessory dwelling must:
 - i. Have a residential appearance;
 - ii. Have its own address;
 - iii. Have all utilities extended from the primary residence;
 - iv. Have all utilities on 1 meter, unless the utility provider requires otherwise and proof of that requirement is provided to the Planning Director; and,
 - b. *Design Maximums and Other Restrictions.* An accessory dwelling must not:
 - i. Exceed 2 stories;
 - ii. Exceed 2 bedrooms; and,
 - iii. Exceed 700 square feet.
 4. *Density.* Only one (1) accessory dwelling per lot is allowed
 5. *Lot Requirements.* The maximum number of guests is 2 per guest room.
 - a. *Location.* An accessory dwelling cannot be placed in the front yard of a lot consisting of less than one acre.
 - b. *Lot Area.*
 - i. An accessory dwelling cannot be placed on a lot that is less than 6,500 square feet.
 - ii. An accessory dwelling's footprint must be smaller than the principal dwelling.
 6. *Primary Dwelling.* The principal dwelling on the property must be owner occupied or utilized as a long-term rental.
 7. *Occupancy.* The maximum occupancy for an accessory dwelling is limited to either 4 persons or a family.
 8. *Parking.* The minimum number of off-street parking spaces is 1.
 9. *Rental.* An accessory dwelling may be rented out if the term is at least 28 consecutive days.
 10. *Prohibitions.* Home occupations, Vacation Home Rentals, and nightly rentals are prohibited in an accessory dwelling.
- C. *Review.*
1. *Power-to-Review.* The Planning Commission has the authority to review a Conditional Use Permit for an accessory dwelling to ensure compliance with the PCZO, any conditions imposed, and state law.
 2. *Procedure.* The procedure for the review will be done in accordance with PCZO § 510(F).

- D. *Revocation.* The procedure for the revocation will be done in accordance with PCZO § 510(I).
- E. *Appeals.* An appeal from the Planning Commission's decision to grant or deny a Conditional Use Permit for an accessory dwelling must be brought under SDCL 11-2-61.1.

SECTION 325 – MARIJUANA ORDINANCE DEFINITION OF TERMS
(Effective 11-10-21)

This Section defines the terms used in §§ 326, 327, and 328.

The following terms mean:

1. *Cultivation Facility.* A legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells marijuana and related supplies to a Marijuana Business.
2. *Department.* The Department of Health.
3. *Dispensary.* A legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, marijuana, marijuana products, paraphernalia, or related supplies and educational materials.
4. *Disqualifying Felony Offense.* A violent crime that was classified as a felony in the jurisdiction where the person was convicted.
5. *Fire Code.* South Dakota fire safety standards pursuant to ARSD 61:15.
6. *Licensee.* A person licensed by the State of South Dakota and Pennington County, who obtains a license as a condition of engaging in a Marijuana Business.
7. *Manufacturer.* A legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells marijuana products to a marijuana dispensary.
8. *Marijuana or Cannabis.* As defined in SDCL 22-42-1(7).
9. *Marijuana Business.* A Marijuana Dispensary, Marijuana Cultivation Facility, Marijuana Manufacturer or Marijuana Testing Facility.
10. *Testing Facility.* A legally licensed entity legally authorized to analyze the safety and potency of marijuana.
11. *Marijuana Waste.* Cannabis flower or trim, cannabis seeds, cannabis products, by-products containing cannabis, or cannabis plants, excluding stalks without trichomes and root balls, that are unfit for retail transfer to another cannabis establishment including any expired products sold at dispensaries.

SECTION 326 – MARIJUANA BUSINESSES (Effective 11-10-21)

This Section establishes Conditional Use Permit (CUP) requirements for Marijuana Businesses operating in Pennington County.

A. *Requirements.* A Marijuana Business, as defined in this Section, is subject to all rules of South Dakota Codified Law, South Dakota Administrative Rules and to the following conditions:

1. *Prerequisites.* Prior to the operation of any Marijuana Business, each business must comply with the following:
 - a. Compliance with the preliminary screening procedure as required in PCZO § 329;
 - b. A CUP must be obtained from Pennington County;
 - c. A license must be obtained from Pennington County; and,
 - d. A license must be obtained from the State of South Dakota.
2. Compliance with PCZO § 204.
3. Compliance with PCZO § 510.
4. *Allowable Zoning Districts.*
 - a. Marijuana Dispensaries are allowed with a Conditional Use Permit in General Commercial and Highway Service Zoning Districts
 - b. Marijuana Cultivation Facilities are allowed with a Conditional Use Permit in General Commercial and Industrial Zoning Districts.
 - c. Marijuana Manufacturers are allowed with a Conditional Use Permit in Industrial Zoning Districts.
 - d. Marijuana Testing Facilities are allowed with a Conditional Use Permit in General Commercial and Industrial Zoning Districts.
5. *Zoning Restrictions.*
 - a. A Marijuana Dispensary shall not be located within 1,000 feet of any other Marijuana Dispensary.
 - b. Marijuana Businesses shall not be located within 1,000 feet of a:
 - i. Church; or,
 - ii. Public or private elementary or secondary school; or,
 - iii. Public or private day care center, preschool, nursery, kindergarten, or similar use; or,
 - iv. Public park or playground.
 - c. A Marijuana Business shall not be located within 100 feet of:
 - i. Residentially zoned property; or
 - ii. Residential dwelling unit; or
 - iii. Youth center; or
 - iv. Public swimming pool; or
 - v. Video arcade; or
 - vi. Alcohol or drug rehabilitation facility; or
 - vii. Halfway house or group home; or

- viii. Correctional facility; or
 - ix. Adult oriented business.
 - d. Prohibited Conduct.
 - i. No Marijuana Business shall be allowed as a home occupation use.
 - ii. No Marijuana Business shall be located in a residentially zoned or residentially used building.
 - iii. No Marijuana Business shall be located in a movable or mobile structure.
 - e. Development Standards. All Marijuana Businesses shall develop properties in harmony with the surrounding area and shall enhance design elements of buildings and properties accordingly.
- B. *Measuring of Distances.* All distances referred to in this Section shall be measured from property line to property line unless the distance is to a residential dwelling unit. Distances to a residential dwelling unit shall be from lot line to the closest portion of the residential structure.
- C. *Conditional Use Permit.* A CUP is required for all Marijuana Businesses.
 - 1. *Application Requirements.*
 - a. All applications for a CUP shall be filed with the Planning Department on the official form supplied by the Planning Department and shall be accompanied by a CUP application fee pursuant to this section.
 - b. *Requirements.* A CUP application shall include the following information:
 - i. All Marijuana Businesses must submit:
 - aa. *Screening.* Proof the applicant has satisfied Pennington County's preliminary screening procedure, as directed by Ordinance, for the proposed premises.
 - bb. *Identifier.* The address or legal description of the property on which the proposed Marijuana Business will be located.
 - cc. *Neighborhood Context Map.* An accurate straight-line drawing depicting the boundaries of the premises, the boundaries of all other properties within 1,000 feet of the premises, and the uses of those properties, specifically including, but not limited to, any use identified in Section 326(A)(5)(b) and 326(A)(5)(c). The map must be professionally prepared by a licensed civil engineer, architect or registered land surveyor.
 - dd. *Design and Plans.*
 - aaa. A site plan and floor plan of the

Marijuana Business denoting all the use of areas of the Marijuana Business, including storage, employee areas, exterior lighting, restrooms, security cameras, areas of ingress and egress, signage, limited access areas, and restricted access areas.

- bbb. Plans and specifications for the interior of the proposed premises if the building to be occupied is in existence at the time of the application. If the building is not in existence or alteration to the building is required at the time of the application, the applicant shall file a plot plan and a detailed sketch for the interior and shall further submit an architect's or engineer's drawing of the building to be constructed.
- ccc. A description of the design of the proposed premises evidencing that the design conforms to applicable County, State laws, and applicable regulations.
- ddd. A plan for the management of marijuana waste generated from the facility as required by South Dakota law and regulation.
- ee. *Ownership.* The name and address of the person who owns the real property upon which the Marijuana Business is to be operated. In the event the applicant does not legally own the property, the application must be accompanied by a notarized acknowledgement from the person who owns the property that a Marijuana Business will be operated on the subject property.
- ff. *Hours.* Proposed hours of operation. Such hours must conform to §§ 326, 327, and 328 of these Ordinances and any State statute or regulations.
- gg. *Certification.* A statement in writing by the applicant that certifies under penalty of perjury that all the information contained in the application is true and correct.
- hh. Any additional information as deemed necessary by the Planning Department to administer this Section.

- ii. Cultivation and Manufacturing Facilities must also submit the following:
 - aa. An environmental plan indicating how cultivation or manufacturing will be conducted in accordance with State and local laws related to hazardous material disposal, land conversion, grading, electricity usage, water usage, and agricultural discharges.
 - bb. An emergency response plan that sets out standard operating procedures to be followed by all individuals in case of a fire, chemical release, chemical spill, or other emergency.
 - cc. A description of the source of power (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site.
- iii. *Cultivation.* In addition to the above requirements a Cultivation Facility must additionally submit verification of all water sources used by the proposed premises and verification that the proposed premises do not utilize water that has been or is illegally diverted from any stream, creek, or river.
- iv. *Manufacturing.* In addition to the above requirements a Manufacturing Facility must additionally submit:
 - aa. A report from a professional engineer that details the type of equipment that will be used to extract cannabinoids from marijuana. If flammable gas, flammable liquefied gas, flammable and combustible liquids, or compressed carbon dioxide (CO₂) are used for extraction; the report must certify that only closed-loop extraction system(s) that are UL or ETL listed, are capable of recovering the solvent utilized.
 - bb. *Extraction Room Diagram.*
 - aaa. A separate diagram showing any room where extraction occurs that details the location of the extraction equipment,
 - bbb. areas of ingress and egress,
 - ccc. emergency eye-wash stations, and,
 - ddd. any other fire suppression or emergency equipment required by the International Building Code, Fire Code, Electrical Code and any other applicable laws.

2. *Application Review.* The Planning Department shall review, verify, and investigate all information on the application. Staff will prepare a report for the Planning Commission incorporating the findings of such investigation and verification, including, but not limited to, the suitability of the proposed location and the applicant's compliance with the requirements of this Section.
3. *Conditions of CUP Approval.*
 - a. Every CUP for a Marijuana Business shall be subject to the following Conditions of Approval:
 - i. *Odor.* A Marijuana Business must be equipped with an odor absorbing ventilation and exhaust system so that odor generated inside the premises that is distinctive to its operation is not detected outside the Marijuana Business.
 - aa. Such mitigation is for the peaceful enjoyment of any adjacent property, public rights-of-way, any exterior or interior common area walkways, hallways, breeze-ways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the Marijuana Business.
 - bb. As such, Marijuana Businesses must install and maintain the following equipment or any other equipment which local licensing authority determines has the same or better effectiveness:
 - aaa. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or
 - bbb. An air system that creates negative air pressure between the Marijuana Businesses' interior and exterior so that the odors generated inside the Marijuana Business are not detectable outside the Marijuana Business.
 - ii. *Security.*
 - aa. All windows on the premises of the Marijuana Business shall be appropriately secured.
 - bb. All Marijuana and Marijuana Products must be securely stored.
 - iii. *Signage.* From a public right-of-way, there should be no exterior evidence of the Marijuana Business except for one permitted on-premise sign, in accordance with § PCZO 312, for a Marijuana Dispensary.

- iv. *Compliance.* All Marijuana Businesses and all equipment used in the operation of the business, must be operated in compliance with all applicable State and local laws and regulations, including all building, electrical, and fire codes, and in compliance with the businesses' State and County Licenses.
- v. *Additional Conditions.* Any additional conditions as required by the Planning Department, the Planning Commission, or the Board of Commissioners consistent with State law and this Section for the health, safety, and welfare of the public.
- b. *Manufacturing Facility.* Every CUP for a Manufacturing Facility shall also include the following Conditions of Approval:
 - i. All manufacturing of Marijuana and Marijuana Products shall occur in an enclosed locked structure.
 - ii. Manufacturing activities shall only occur in the areas depicted on the floor plan submitted by the applicant and shall not exceed the square footage authorized pursuant to the Conditional Use Permit.
 - iii. *Fire and Hazard Mitigation.*
 - aa. The use of hazardous materials, flammable gas, flammable liquefied gas, flammable and combustible liquids, or other flammable material to process marijuana must be located on the premises where required by the Fire Administrator or his or her designee.
 - bb. Storage, use, and handling of compressed gases in compressed gas containers, cylinders, tanks and systems shall be in accordance with the Fire Code.
 - cc. Prevention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable and combustible liquids shall be in accordance with the Fire Code.
 - dd. *New Structure.* Manufacturing sites are a Group F-1 (Factory Industrial Moderate-Hazard) Occupancy under the Fire Code. All new construction is required to have a fire sprinkler system per the Fire Code.
 - ee. *Existing Structure.* For manufacturing sites that will be sited in an existing structure, a sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:
 - aaa. A Group F-1 fire area exceeds 12,000

- square feet; or
 - bbb. A Group F-1 fire area is located more than three stories above grade plane; or
 - ccc. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.
 - c. *Cultivation Facility.* Every CUP for a Cultivation Facility shall also include the following Conditions of Approval:
 - i. All cultivation of marijuana shall occur in an enclosed locked structure. Outdoor cultivation is prohibited.
 - ii. Cultivation activities shall occur only in the areas shown on the floor plan submitted by the applicant and shall not exceed the square footage authorized pursuant to the CUP.
 - iii. *Fire and Hazard Mitigation.*
 - aa. *Electrical.* Areas where marijuana is cultivated are wet locations. As such, the electrical system in cultivation areas must comply with Article 300.6(D) of the National Electric Code, International Building Codes, Fire Code, and all other applicable laws.
 - bb. *New Structure.* Cultivation facilities are a Group F-1 (Factory Industrial Moderate-Hazard) Occupancy under the Fire Code. All new construction is required to have a fire sprinkler system per the Fire Code.
 - cc. *Existing Structure.* For cultivation facilities that will be sited in an existing structure, a sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:
 - aaa. A Group F-1 fire area exceeds 12,000 square feet; or,
 - bbb. A Group F-1 fire area is located more than three stories above grade plane; or,
 - ccc. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.
 - d. *Dispensary.* Every CUP for a Dispensary shall also include the following Conditions of Approval:
 - i. Dispensary facilities shall store all Marijuana and Marijuana Products in a locked safe room, safe, or vault and in a manner to prevent diversion, theft, and loss when not on display for sale.

- ii. The storage of marijuana and marijuana products shall occur only in the areas shown on the floor plan submitted by the applicant and shall not exceed the square footage authorized pursuant to the CUP.

D. *Required Notices.*

1. *Notice to Property Owners.* The applicant must notify abutting and surrounding property owners (inclusive of Contract for Deed buyers) of record within 1,000 feet by registered or certified mail of the requested CUP at least 10 days prior to the public hearing by the Planning Commission.
2. *Notice of Planning Commission Hearing.* The Planning Commission shall hold at least one public hearing on the proposed CUP. Notice of the time and place of the hearings shall be given once at least 10 days in advance by publication in the legal newspapers of the County.
3. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the CUP request in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be placed no less than 10 days prior to the date of the public hearing before the Planning Commission.

E. *Public Hearings.*

1. Planning Commission.
 - a. *Prerequisites.* Before a hearing may be held, the applicant must do the following:
 - i. fill out the application form completely;
 - ii. submit the application form and all supporting documentation to the Planning Department; and,
 - iii. pay the CUP Application Fee.
 - b. *Scheduling a Hearing.*
 - i. *Compliance with Prerequisites.* If the applicant has complied with PCZO § 326(D)(1), then the Planning Director must schedule a hearing before the Planning Commission.
 - aa. *Role.* The Planning Commission reviews the CUP application.
 - bb. *Decision.* In making its decision, the Planning Commission may:
 - aaa. continue and request further information;
 - or,
 - bbb. approve, continue, or deny.

F. *Review of Conditional Use Permit.*

1. *Annual Review.* The CUP is subject to review by the Planning Commission for compliance with Conditions of Approval on an annual basis.
2. *Renewal Fee.* A fee is required for each annual review and is due 30 days prior to the annual review date.
3. *Determination.* At the conclusion of the review, the Planning Commission may:
 - a. approve the CUP under the conditions already imposed;
 - b. approve the CUP with additional conditions, subject to another review;
 - c. schedule another review; or
 - d. request a revocation hearing in accordance with subsection (G) of this Section.

G. *Revocation of Conditional Use Permit.*

1. Any CUP approved under this Section must be established and conducted in conformity with the Conditions of Approval of the Permit. Failure to comply with Conditions of Approval is cause for revocation of the Permit.
2. *Grounds.* The Planning Director may schedule a revocation hearing before the Planning Commission if:
 - a. The owner or applicant has failed repeatedly to comply with the conditions of the approved Permit; or,
 - b. The continued conditional use is a threat to public health, safety, or general welfare.
3. *Notice.* Notice of time and place of hearing shall be given, in writing, to the permit holder at least 30 days in advance of hearing. Surrounding property owners must also be given written notice of the hearing as provided under PCZO § 326(D)(1). Notice of time and place of the hearing shall be published at least 30 days in advance of hearing in the legal newspapers of the County.
4. *Hearing.* Upon hearing, the Planning Commission may revoke the Permit pursuant to the standards set forth in PCZO § 510 or order remedial action to be taken by the owner or operator.
5. *Revocation.* Any revocation of a CUP by the Planning Commission shall be reported to the applicable State enforcement division.

H. *Verification of Conditions of Approval.*

1. The Planning Department shall have the right to enter all Marijuana Businesses from time to time unannounced for the purpose of making reasonable verifications and observations to enforce compliance with the Marijuana Business' CUP. Such verification and observation shall be limited to observing the premises for purposes of determining whether the Marijuana Business is being operated or maintained in compliance with this Section.
2. Applicants and permittees must cooperate with employees of the Planning Department who are conducting verification and observations relevant to the enforcement of this Section. No applicant or permittee shall by any means interfere with, obstruct or impede any Planning Department Staff from exercising their duties under the provisions of this Section.

I. *Fees.*

1. Marijuana Business CUP Application - \$3,000.
2. Marijuana Business CUP Annual Review Fee - \$500.
3. Marijuana Business CUP Transfer Fee - \$1,000.

J. *Enforcement.*

1. Failure to comply with conditions of approval of a CUP is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO § 514.
2. This Ordinance shall in no way limit application and enforcement of any statutes or administrative rules of the state of South Dakota.

K. *Appeals.* Any appeal of a decision taken under this section must be done in accordance with SDCL Chapter 11-2.

SECTION 327 – MARIJUANA BUSINESS DEVELOPMENT PLAN STANDARDS
(Effective 11-10-21)

This Section establishes development plan standards for Dispensaries, Cultivation Facilities, Manufacturers and Testing Facilities.

A. *General Requirements.* Development standards are subject to all rules of South Dakota Codified Law, South Dakota Administrative Rules and to the following:

1. *Security.* The following requirements are for ALL Marijuana Businesses:
 - a. *Security System.* The following requirements shall be imposed:
 - i. Each premises must have a security alarm system on all exterior doors, windows, and gates.

- ii. Each Licensee must ensure that all of its licensed premises are continually monitored by a security company capable of contacting the Licensee and, if necessary, law enforcement.
 - iii. The system must include an audible alarm, which must be capable of being disabled remotely by the security company.
 - iv. Surveillance systems must alert the security company during a power failure and must operate for a minimum of four hours on backup power.
 - b. *Locks.* At all points of ingress and egress, the Licensee must ensure the use of a commercial-grade, nonresidential door locks in accordance with Department regulations.
 - c. *Video Recording System.*
 - i. Installation of a fully operational video surveillance and camera recording system.
 - ii. The recording system must be placed and record in digital format pursuant to all Department regulations.
- 2. *Waste Disposal.* The following requirements are for ALL Marijuana Businesses:
 - a. All Marijuana Waste must be made unusable and unrecognizable prior to leaving any licensed premises.
 - b. Marijuana waste must be ground and incorporated with non-consumable, solid wastes listed below such that the resulting mixture is at least 50 percent non-marijuana waste:
 - i. soil;
 - ii. sawdust;
 - iii. grease;
 - iv. food waste;
 - v. yard waste;
 - vi. shredded paper; and,
 - vii. other solid wastes approved by the Department that will render marijuana waste unstable and unrecognizable.
 - c. Marijuana Waste must be disposed of in compliance with the Marijuana Business' Department approved operating procedure.
- 3. *Egress.* All egress doors from Marijuana Businesses must be readily openable from the egress side without the use of a key, special knowledge or effort, except as provided in Department regulation of co-located Marijuana Businesses.
- 4. *Ventilation.* A Marijuana Business must be properly ventilated to filter odor from marijuana so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the Marijuana Business or at any adjoining use or property.

- a. Mechanical Ventilation must be in accordance with the International Mechanical Code (IMC) Section 403.3.
 - b. A licensed building official, architect or registered engineer must verify and stamp plans for the ventilation system.
5. *Exhaust Systems.*
- a. *Contaminant Sources.* Stationary local sources producing airborne particulates, heat, odors, fumes, spray, vapors, smoke or gases in such quantities as to be irritating or injurious to health shall be provided with an exhaust system in accordance with Chapter 5 of the IMC.
 - b. Exhaust shall discharge directly to an approved location at the exterior of the building.
 - c. Single or mechanical exhaust system shall be independent of all other exhaust systems and be in accordance with IMC 501.2.1.
 - d. A licensed building official, architect or registered engineer must verify and stamp plans for the exhaust system.
6. *Fire Sprinklers.* The following is required for Marijuana Manufacturing and Cultivation Businesses:
- a. *New construction.* All new construction is required to have a sprinkler system pursuant to all requirement of the Fire Code and the Department.
 - b. *Existing construction.* A sprinkler system shall be provided throughout all buildings where one of the following conditions exists:
 - i. A Group F-1 fire area exceeds 12,000 square feet; or,
 - ii. A Group F-1 fire area is located more than three stories above grade plane; or,
 - iii. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.
7. *Electrical.* The following requirements apply to all Marijuana Businesses:
- a. An Electrical Permit is required from the State of South Dakota.
 - b. All wiring and electrical work must be performed by a Licensed Electrician in accordance with International Building Code, 2021.
 - c. Proof of a successful inspection by the State Inspector required prior to operation of any Marijuana Business.
8. *Plumbing.* The following requirements apply to all Marijuana Businesses:
- a. A Plumbing Permit is required from the State of South Dakota.
 - b. All plumbing work must be performed by a Licensed Plumber in accordance with International Building Code, 2021.
 - c. Proof of a successful inspection by the State Inspector required prior to operation of any Marijuana Business.

B *Development Plan.* An approved Development Plan is required prior to issuance of a Pennington County Marijuana Business License as provided for in PCZO § 328.

1. *Application.* All applications for a Development Plan shall be filed with the Planning Department on the official form supplied by the Planning Department and shall be accompanied by the Development Plan Fee as specified in this Section.
2. *Requirements.* An application for a Development Plan shall include, but shall not be limited to, the following information:
 - a. Proof the applicant has received an approved Conditional Use Permit (CUP) in accordance with PCZO § 326.
 - b. All CUP submittal information.
 - c. Stamped architect or engineer building plans which conform to the requirements of PCZO §327(A).
 - d. All other proof as required to demonstrate the business will conform with PCZO § 327(A).
3. *Plan Review.* The Planning Department and appropriate County staff shall review and verify all information on the application.
 - a. *Meeting.* Staff from all impacted County Departments will be informed of the application and shall have the opportunity to attend formal meeting(s) to review the Development Plan.
 - b. *Comments.* Any comments or concerns raised by a County Department will be compiled and communicated to the applicant.
 - c. *Required Plan Revisions.* Plan revisions and staff reviews will be necessary until all County Department comments have been addressed.
4. *Plan Approval.* When all necessary corrections have been made and the plans are approved by Pennington County, the applicant may apply for a Marijuana Business License in accordance with PCZO § 328.
5. *Deadline.* The Planning Department must render a decision on the development plan within ten (10) days of its submission unless the delay is due to a failure by the applicant to meet the requirements of this Section, a request by the applicant for additional time, or for good cause.
6. *Changes to Development Plan.* Any change to the Development Plan after approval will require additional reviews by Pennington County staff. A Development Plan Review Fee, as specified by this Section, is required at the time of the requested change.

C. *Fees.*

1. Development Plan Fee - \$1,000.00
2. Development Plan Review Fee (changes) - \$250.00

D. *Enforcement.*

1. Failure to comply with approved Development Plan is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO § 514.

SECTION 328 – MARIJUANA BUSINESS LICENSE (Effective 11-10-21)

This Section establishes the requirement for all Dispensaries, Cultivation Facilities, Manufacturers and Testing Facilities to obtain a License in Pennington County.

A *Licenses.* All Marijuana Businesses operating in the unincorporated areas of Pennington County must have a County Marijuana Business License. Pennington County may issue a County Marijuana Business License subject to the provisions and restrictions provided in Pennington County Zoning Ordinance (PCZO) §§ 326, 327, and this Section.

1. *Types of Licenses.* The following Marijuana Business Licenses can be issued:
 - a. Marijuana Dispensary.
 - b. Marijuana Cultivation Facility.
 - c. Marijuana Manufacturer.
 - d. Marijuana Testing Facility.
2. *Number of Licenses.* Pennington County will issue the following number of County licenses for the purpose of regulating Marijuana Businesses subject to the provisions and restrictions provided in the PCZO §§ 326, 327, and this Section:
 - a. Three (3) Marijuana Dispensary Licenses;
 - b. Three (3) Marijuana Cultivation Facility Licenses;
 - c. Two (2) Marijuana Manufacturing Facility Licenses; and,
 - d. One (1) Marijuana Testing Facility License.

B. *Application.* An applicant for a Marijuana Business License shall file with the Planning Department the following:

1. *Conditional Use Permit.* A copy of the approved Conditional Use Permit (CUP) granted pursuant to PCZO § 326 and all supporting documentation.
2. *Development Plan.* A copy of the approved Development Plan approved pursuant to PCZO § 327 and all supporting documentation.
3. *Products and Services.* A description of the products and services to be provided by the Marijuana Business.
4. A description of the design of the establishment.

5 *Certifications.*

- a. *Background Checks.* A certification that the Marijuana Business will or has conducted criminal background checks of all of its principal officers, board members, agents, volunteers, or employees before each individual begins working at the Marijuana Business.
- b. *Employment Restrictions.* A certification that the Marijuana Business shall not employ individuals convicted of a Disqualifying Felony Offense.
- c. *Previous Marijuana Business Revocation.* A certification that no principal officers or board members of the proposed Marijuana Business has served as a principal officer or board member for a Marijuana Business or its equivalent in any other jurisdiction that has had its registration certificate revoked.

6. *Statements.*

- a. *Fraud or False Statements.* A statement whether any of the principal officers or board members of the proposed Marijuana Business has been convicted of a criminal offense involving fraud or false statements to a unit of government in the previous ten (10) years.
- b. *Previous Recreational Business Revocation.* A statement whether any principal officers or board members of the proposed Marijuana Business has served as a principal officer or board member of any business that has had a license or permit suspended or revoked for violations of laws or regulations relating to alcohol, tobacco, or gaming.

7. Any additional document(s) or information reasonably requested by Pennington County or as required by the Department for State licensing.

C *Application Submittal.* Applications will be deemed submitted only when all requirements of PCZO § 328(B) have been met and the application is accompanied by the applicable fee(s) set forth in PCZO §328(O).

D. *Notice.*

1. *Notice of Board of Commission Hearing.* The Board of Commissioners shall hold at least one public hearing on a Marijuana Business License. Notice of the time and place of the hearing shall be given once at least 10 days in advance by publication in the legal newspapers of the County.
2. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the License request in a location with the greatest public visibility. If the property is not adjacent

to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be so placed no less than 10 days prior to the date of the public hearing before the Board.

E. *Hearing.* The Board will hold at least one public hearing on a Marijuana Business License.

1. *Review.* The Board may consider the facts and evidence obtained as part of the CUP and Development Plan process as well as any other facts pertinent to the type of License for which an application has been made. Such information may include:

- a. The number, type and availability of Marijuana Businesses located in or near the premises under consideration;
- b. Any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed; and
- c. Whether the evidence presented to the Board indicates the applicant will comply with this Section, South Dakota Codified Law, and South Dakota Administrative Rules.

2. *Decision.* In making its decision, the Board must make one of the following findings:

- a. *Conditional approval.* Applicable only to new Marijuana Business Licenses.
- b. *Approval.* Applicable only to license renewals and transfers pursuant to PZCO §§ 328(K) and (M).
Continuance; or,
- d. *Denial.* The Board may deny any application pursuant to the reasons set forth in PCZO §§ 328(H)(1) and 328(H)(2).

F. *Conditional Approval.* Upon an affirmative vote from the Board, the Licensee will receive Conditional Approval of a County License. Conditional Approval is valid for one year. If, after one year, the licensee has not obtained a State License and received final approval of the County License, the Conditional Approval will end.

G. *Final Approval.* The Licensee will not receive final approval until:

1. A State License is issued;
2. The building or structure in which the Marijuana Business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the applicable provisions of this Section, South Dakota Codified Law, South Dakota Administrative Rules or any other applicable state, local law or regulation; and
3. After the Planning Department has verified the applicant has complied with all requirements of PCZO §§ 326, 327, and this Section.

H. *County Licensing Requirements.*

1. *Required Denial.* A County License provided by this Section shall not be issued to or held by any person or entity under the following conditions:
 - a. The person or entity is prohibited as a licensee under any State or local law, rule or regulations.
 - b. The applicant is not, or will not be, entitled to possession of the premises for which application is made under a lease, rental agreement or other arrangement for possession of the premises, or by virtue of ownership of the premises;
 - c. The location of the proposed Marijuana Business is not expressly permitted and approved under the provisions of a CUP in accordance with PCZO § 326.
 - d. The location does not meet the distance, isolation or separation distances required for the specified Marijuana Business as required in PCZO §§ 326.
 - e. The Marijuana Business will not or is not in compliance with PCZO §§ 326, 327, and 328, South Dakota Codified Law, South Dakota Administrative Rules or any other applicable state, local law or regulation.
2. *Permissible Denial.* The Board may deny a Marijuana Business license provided by this Section to any person or entity under the following conditions:
 - a. The applicant has prior to, or on the date of the application, made misrepresentations concerning the business for which the license is being sought or on any of the submittals made with an application.
 - b. Evidence presented demonstrates that the premises upon which the County License is to be located is unable to be operated by the Licensee in a manner which will not adversely affect the public health, safety or welfare of the immediate neighborhood in which the establishment is to be located or for good cause.
3. *Waiting Period Upon Denial.* If an applicant has been denied any County license or County renewal license pursuant to this Section, the applicant must wait twelve (12) months prior to re-applying for any license issued pursuant to this Section, unless the waiting period is waived by the Board at the time of denial by the Board.
4. *Conditions of Approval.* The Board may place conditions upon the approval of any County License which are reasonably related to the protection of the health, safety or welfare of the general public or the neighborhood in which the establishment is to be located.

5. *Inactive License.* The Board may revoke or elect not to renew any license issued pursuant to this Section if it determines that the licensed premises have been inactive, without good cause, for a period of at least one year. Such revocation shall be conducted pursuant to PCZO § 328(Q).
6. *Standards.* A license issued pursuant to this Section shall specify:
 - a. The date of issuance;
 - b. The period of licensure (1 year from the date of issuance); and,
 - c. The name of the licensee and the premises licensed.
7. *License Display.* The licensee shall conspicuously place the license at all times on the licensed premises.
8. *License Operation Standards.*
 - a. *Maintain Possession.* At all times subsequent to the issuance of a license pursuant to this Section, a licensee shall possess and maintain possession of the premises for which the License is issued by ownership, lease, rental or other arrangement for possession and use of the premises.
 - b. *Operation Hours.* No Dispensary approved pursuant to this Section may sell marijuana at any time except between the hours of 9:00 a.m. to 9:00 p.m., unless a more restrictive time is set by the State of South Dakota.
 - c. *Compliance with Ordinance.* A Marijuana Business shall comply with all requirements and in accordance with all submissions and conditions made pursuant to PCZO §§ 326, 327, and this Section.
- J. *License Expiration.* A Marijuana Business license shall expire one (1) year after issuance of final approval pursuant to Section G of this Ordinance. A current licensee may apply for license renewal pursuant to Section K of this Ordinance.
- K. *License Renewals.*
 1. *Timing.* A licensee choosing to renew shall apply for the renewal of an existing license to the Board not less than 45 days prior to the date of the expiration of the License.
 2. *CUP.* The licensee must meet the conditions of approval of the CUP issued pursuant to PCZO § 326 for the Marijuana Business.

3. *Hearing.* The Planning Department may schedule a hearing on the application for renewal, if:
 - a. The licensee has had formal complaints filed against it;
 - b. Any ordinance violation(s) in the preceding year;
 - c. The licensee has committed any unlawful acts; or,
 - d. Allegations have arisen that constitute good cause to deny renewal of an application.
4. *Hearing Notice and Procedure.* In the event that a hearing is scheduled, notice and procedure of the same must be in accordance with PCZO § 328(D) and (E).
5. *Determination without Hearing.* Where no hearing is scheduled, all renewal applications shall be approved by the Planning Director. A hearing pursuant to PCZO § 328(D) and (E) is required for any recommended denial of license renewal.
6. *Late Application.*
 - a. *Up to 90 Calendar Days.* A licensee whose license has expired for no more than 90 calendar days may file a late renewal application upon the payment of a nonrefundable late license fee pursuant to PCZO § 328(O). A licensee who files a late renewal application and pays the requisite fee may continue to operate until the County has taken final action to approve or deny the licensee's late renewal application.
 - b. *Past 90 Calendar Days.* The County will not accept a late renewal application more than 90 calendar days after the expiration of the licensee's annual license. A licensee whose license has been expired for more than 90 calendar days shall not, under any circumstances, operate a Marijuana Business until a new County License has been obtained pursuant to PCZO §§ 326, 327, and this Section.

L. *Change in Financial Interest of a Marijuana Business.*

1. *Reporting Required.* A licensee of a license issued, pursuant to this Section, must report each transfer or change of financial interest in the license and the licensee to the Planning Department.
2. *Report.* A report to the Planning Department shall be required for the following transfers:
 - a. Any capital stock of any corporation regardless of size;
 - b. Any member interests of any limited liability company regardless of size; and
 - c. Any interest in a partnership or other entity or association regardless of size.

3. Nothing in PCZO § 328(L) shall be construed as limiting in any way the authority of Pennington County to determine the allowable transfer of a Marijuana Business license issued pursuant to this Section.

M. *Transfer of Ownership of License.*

1. *Non-Transferrable.* A Marijuana Business license granted under the provisions of this Section shall not be transferrable to any other person or entity except as provided in this Section.
2. *Exception.* A transfer of a license issued, pursuant to this Section, is authorized pursuant to the below requirements:
 - a. Same Property.
 - i. The transferee, with the transferor's consent, shall apply to Pennington County pursuant to PCZO §§ 327 and this Section, and in accordance with South Dakota law.
 - ii. The application shall include the required transfer fee pursuant to PCZO § 328(O).
 - iii. *Hearing, Notice, and Procedure.* A hearing shall be held on the license transfer in accordance with the requirements in PCZO § 328(D)-(E).
 - b. New Property
 - i. The transferee, with the transferor's consent, shall apply to Pennington County pursuant to PCZO §§ 326, 327, and this Section, and in accordance with South Dakota law.
 - ii. The application shall include the required transfer fee pursuant to PCZO § 328(O).
 - iii. *Hearing, Notice, and Procedure.* A hearing shall be held on the license transfer in accordance with the requirements in PCZO § 328(D) and (E).
3. *Prohibition.* No application for a transfer of ownership will be considered by the Board if, at the time of such application, the current licensee is under a notice of violation of Ordinance or charged/noticed of any other unlawful acts.
4. Nothing in PCZO § 328(M) shall be construed as limiting in any way the authority of Pennington County to regulate a change in location of a license issued pursuant to this Section.

N. *Change in License Location.*

1. *Application Required.* A licensee may apply to the Planning Department to change the location attached to an approved license issued pursuant to this Section.

2. *Allowed Locations.* A licensee shall only transfer to approved locations as specified by this Section, PCZO §§ 326 and 327 in unincorporated Pennington County.
 3. *Outer Jurisdiction Transfer.* A Marijuana Business licensee in any South Dakota jurisdiction may transfer its license to Pennington County, so long as:
 - a. The transfer would not exceed the allowable number of Pennington County licenses specified in PCZO §328(A)(2);
 - b. The State approves the transfer; and,
 - c. The applicant is approved under the application process set forth in PCZO §§ 326, 327, and this Section.
 - d. It shall be unlawful to cultivate, manufacture, distribute, test, store or sell medical or retail marijuana at any such place or location until express permission to do so is granted by the State and the Board.
 4. *Property Transfer Without Approval Unlawful.*
 - a. It shall be unlawful to operate any Marijuana Business at any unapproved location.
 - b. Express permission must be granted by Pennington County and the State of South Dakota prior to operation at a new location.
 - c. Failure to comply with this requirement may be grounds for revocation or suspension of a Marijuana Business license.
 5. All changes in location shall be subject to all of the application requirements for new Marijuana Businesses under PCZO §§ 326, 327, and this Section.
- O. *Fees.* Operating fees and all other fees necessary for the administration, regulation, and implementation of this Section are as follows:
1. Initial Operating Fees
 - a. Marijuana Dispensary: \$5,000
 - b. Marijuana Cultivation Facility: \$5,000
 - c. Marijuana Manufacturing Facility: \$5,000
 - d. Marijuana Testing Facility: \$5,000
 2. Administrative Operating Fees
 - a. Change of Location Fee: \$5,000
 - b. Modification of Premises Fee: \$1,000
 3. Annual Renewal Fees
 - a. Marijuana Dispensary: \$5,000
 - b. Marijuana Cultivation Facility: \$5,000
 - c. Marijuana Manufacturing Facility: \$5,000
 - d. Marijuana Testing Facility: \$5,000

4. Late Renewal Fees
 - a. Late Renewal fees for all allowed establishments: \$2,500
5. Transfer Fees
 - a. Marijuana Dispensary: \$5,000
 - b. Marijuana Cultivation Facility: \$5,000
 - c. Marijuana Manufacturing Facility: \$5,000
 - d. Marijuana Testing Facility: \$5,000
6. *Revision by Resolution.* The Board may revise any application, license operating fee or application due date by resolution.

P. *License Violations.*

1. *Failure to Comply.* It is a violation of the terms and conditions of every license issued under this Section to commit unlawful acts under South Dakota law or operate a Marijuana Business not in compliance with South Dakota Law, South Dakota Administrative Rules, Pennington County Ordinances, or any conditions imposed on the license.
2. *Penalties.* In addition to any civil penalties or criminal charges that may be imposed by law enforcement, the Department, or Pennington County, any licensee who fails to comply with State and local law may be subject to suspension and revocation of its County License.
3. Nothing in this subsection shall be construed as limiting in any way the authority of Pennington County to seek criminal, civil, or injunctive relief as allowed at law.

Q. *Enforcement.*

1. *Board Powers.* In addition to any other civil or criminal sanction prescribed by South Dakota law or rules, the Board has the following powers:
 - a. *Suspension and Revocation.* On its own motion or on complaint the Board may restrict, suspend or revoke a Marijuana Business license for a violation by the licensee or any of its agents or employees.
 - b. *Hearing.* The Board shall review and provide an opportunity for a hearing at which the licensee shall be afforded an opportunity to be heard.
2. *Criteria for Suspension or Revocation.* In determining whether a Marijuana Business license should be suspended or revoked in accordance with this Section, and in deciding any conditions to impose in the event of a suspension, the Board must consider:

- a. The nature and seriousness of the violation;
 - b. Corrective action, if any, taken by the licensee;
 - c. Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any;
 - d. The likelihood of recurrence;
 - e. All circumstances surrounding the violation;
 - f. Whether the violation was willful;
 - g. The length of time the License has been held by the licensee; and,
 - h. The number of violations by the licensee within the applicable twelve (12) month period.
- 3. *Conditions.* Any conditions may be presented to the Board for consideration by an interested party. The Board may accept or reject any proposed condition in its discretion.
 - 4. *Notice.* Notice of suspension or revocation must be given by mail in writing to the licensee at the licensee's last address of record with the County.
 - 5. *Remedies.* The remedies provided in this Section are in addition to any other remedy provided by law.

R. *Compliance with State Law Required.*

- 1. *State Law Amendments.* To the extent the State has adopted or adopts in the future any additional or stricter laws or regulations governing the sale or distribution of marijuana, the additional or stricter regulations shall control the establishment or operation of any Marijuana Business in Pennington County.
- 2. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance of any County License under these Sections.
- 3. *Appeals.* An appeal from the Board's decision to grant or deny a County License must be brought in accordance with SDCL ch. 7-8.

SECTION 329 – MARIJUANA BUSINESS PRESCREENING (Effective 11-03-21)

This Section establishes the initial screening requirements for Marijuana Business applications in Pennington County.

- A. *Procedure.* Prior to the operation of any Marijuana Business, each potential licensee must submit its application for preliminary screening to the Pennington County Planning Department. The application must include payment of the required fee and all supporting documentation.

- B. *Application Deadlines.* The following deadlines shall apply to all initial applications, any application for an open license, and any new licenses added by ordinance amendment:
1. *Initial Applications.* Upon the adoption and publication of PCZO §§ 325, 326, 327, and 328, prescreening applications must be submitted electronically or in person within ten (10) calendar days to the Pennington County Planning Department.
 2. *Existing Open License.* The Planning Department shall notify the public of any available Pennington County Marijuana Business license and date of prescreening application acceptance at least ten (10) days in advance of the application open date in a legal newspaper of the county. Prescreening applications must be submitted electronically or in person within ten (10) calendar days date of prescreening application acceptance to the Planning Department.
 3. *Addition of New License.* Upon the adoption and publication of a revision to PCZO § 328(A)(2) increasing the number of available county licenses, a potential applicant must submit a prescreening application electronically or in person within ten (10) calendar days of publication to the Pennington County Planning Department.
- C. *County Response Time.* The Planning Department shall provide, in writing, acceptance or denial of the potential applicant's prescreening application at the close of business hours within three (3) business days of receiving the application. This may be delayed at applicant's request or for good cause.
- D. *Prescreening Criteria.* The Pennington County Planning Director or his/her designee shall utilize the following criteria for approval of the pre-screening application:
1. No applicant may have a *Disqualifying Felony Offense*, and,
 2. The applicant must be entitled to possession of the premises for which application is made under a lease, rental agreement or other arrangement for possession of the premises, or by virtue of ownership of the premises at the time of application, and,
 3. The location of the proposed Marijuana Business must meet the requirements of Pennington County Zoning Ordinance (PCZO) § 326(A)(4), and,
 4. The location must meet the distance, isolation or separation distances in PCZO § 326(A)(5).
- E. *Fees.* Nonrefundable pre-screening application fee - \$500.

SECTION 330 – EFFICIENCY DWELLINGS (Effective 07-20-22)

- A. *Purpose.* These provisions are intended to support alternative housing options, with reasonable limitations to minimize the impact on neighboring properties, while also promoting the health, safety, and general welfare of Pennington County.
- B. *Definitions.*
1. *Efficiency Dwelling (Tiny Home)* is defined as:
 - a. a permanent dwelling that has its own living, cooking, sleeping, and sanitation facilities;
 - b. consists of no more than 400 square feet, excluding loft areas;
 - c. on a permanent foundation; and,
 - d. not a Recreational Vehicle as defined in PCZO § 103.
 2. *Efficiency Dwelling (Tiny Home) Community* is defined as:
 - a. A contiguous parcel of land which has been developed for the placement of efficiency dwellings and is owned by an individual, firm, trust, partnership, public or private association or corporation consisting of four or more efficiency dwelling lots.
- C. *Requirements.*
1. *Conditional Use.* An Efficiency Dwelling is a Conditional Use.
 - a. *Exceptions.* Efficiency Dwellings, with a Building Permit, are a use by right in Agriculture Zoning containing a minimum 40 acres with the same property being taxed agriculture.
 - b. Tiny Home Communities required a Planned Unit Development (PUD) Overlay, pursuant to PCZO § 216.
 2. *Compliance.* An Efficiency Dwelling must comply with the following requirements:
 - a. PCZO § 204;
 - b. the zoning-district regulations for the district in which the Efficiency Dwelling is located;
 - c. PCZO § 330;
 - d. PCZO § 510 (unless an exception applies); and,
 - e. all relevant state or federal laws.
 3. *Design Requirements.*
 - a. *Address, Appearance, Materials, and Utilities.* An Efficiency Dwelling must:
 - i. have a residential appearance;
 - ii. have its own address; and,
 - iii. be connected to utilities (including wastewater treatment and water source) in accordance with PCZO § 204(L) and (M).

b. *Criteria and Other Restrictions.* An Efficiency Dwelling, as required by International Residential Code Appendix Q, must:

- i. have a living room of not less than 220 square feet of floor area, if the living room and bedroom are joined;
- ii. have a living room of not less than 120 square feet of floor area, if the living room and bedroom are separate;
- iii. have an additional 100 square feet of floor area for each occupant in excess of two;
- iv. have no room with a floor area less than 70 square feet;
- v. have a kitchen sink, cooking and refrigeration appliances, each having a clear working space of not less than 30 inches in the front;
- vi. have light and ventilation conforming to International Residential Code § 303;
- vii. have a separate bathroom containing a sink, toilet, and bathtub or shower;
- viii. be on a permanent foundation; and,
- ix. have a width of no less than 7.5 feet.

c. *Lofts.* Lofts must:

- i. have a minimum floor area of not less than 35 square feet;
- ii. have a horizontal dimension of not less than 5 feet; and,
- iii. meet all other requirements of International Residential Code AQ104.

4. *Density.* Only one efficiency dwelling per lot is allowed.
5. *Parking.* The minimum number of off-street parking spaces is two.
6. *Rental.* An Efficiency Dwelling may be rented as a Vacation Home Rental with an approved Conditional Use Permit in accordance with PCZO §319.
7. *Efficiency Dwelling Parks.* Must meet the requirements of PCZO §§ 305 and 510.
8. *International Residential Code.* All Efficiency Dwellings must meet the most recent requirements of the International Residential Code.
9. *Park Models.* Park Models on a permanent foundation are allowed as an Efficiency Dwelling, if the structure meets the criteria in Section 330(C)(3).

D. *Review.*

1. *Power-to-Review.* The Planning Commission has the authority to review a Conditional Use Permit for an Efficiency Dwelling to ensure compliance with the PCZO, any conditions imposed, and state law.

- 2. *Procedure.* The procedure for the review will be done in accordance with PCZO § 510(F).
- E. *Revocation.* The procedure for the revocation will be done in accordance with PCZO § 510(I).
- F. *Appeals.* An appeal from the Planning Commission's decision to grant or deny a Conditional Use Permit for an Efficiency Dwelling must be brought under SDCL 11-2-61.1.

SECTION 331 – ON-SITE WASTEWATER TREATMENT (SEPTIC) SYSTEMS
(Effective 04-12-23)

- A. *Authority.* This Section is established under the authority granted in SDCL Ch. 7 and ARSD 74:53:01 for the protection of public health and safety and welfare of the citizens of Pennington County.
- B. *Purpose.* This Section establishes the regulations and standards for on-site wastewater treatment systems (OSWTS).
- C. *Rules Adopted.* In addition to the requirements set forth in this Section, all on-site wastewater treatment systems shall comply with the provisions of Chapter 74:53:01 (and any amendments thereto) of the Administrative Rules of South Dakota. Pennington County adopts and incorporates herein by this reference, the Administrative Rules of South Dakota, Chapter 74:53:01, as minimum standards relating to public health and environmental quality and said Administrative Rules shall supersede all local minimum standards previously enacted that are inconsistent with this Section.
- D. *Public Nuisance.* Any OSWTS that is found by the Planning Department to be malfunctioning or failing, as defined in South Dakota Codified Law, this Section and Section 103, is presumed to create an imminent danger to the public health, safety and welfare and is hereby declared to be a nuisance subject to abatement and special assessment as allowed by law.
- E. *Administration.* This Section shall apply to all OSWTS in Pennington County outside the jurisdiction of a municipality. This Section shall be enforceable within the extraterritorial jurisdiction of a municipality to the extent the municipality does not currently regulate such systems or ceases to regulate such systems within its extraterritorial jurisdiction. This Section shall also be enforceable within the boundaries of a sanitary district or township located within Pennington County, if the district or township does not regulate such systems or fails to regulate such systems in conformity with State of South Dakota or Pennington County rules and regulations.

- F. *On-site Wastewater Treatment System Required.* The drainage system of each dwelling, building, structure, or premises covered herein shall receive all wastewater (including, but not limited to, bathroom, kitchen, and laundry wastes) and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made to an OSWTS found to be adequate and constructed, installed and maintained in accordance with the requirements of the PCZO.
- G. *Legal, Nonconforming On-site Wastewater Treatment System.* Any OSWTS existing at the time of adoption of PCZO § 331, which is not in violation of any Federal, State, or Local Law, rule or regulation, may be continued in use until such time the system is found by Pennington County to be malfunctioning or failing or there is a change or alteration of (or in) the structure served by the on-site wastewater treatment system, at which point the system must be brought into compliance with the provisions of the PCZO.
- H. *Malfunctioning or Failing System.* An OSWTS that is not functioning in compliance with the requirements of the PCZO include the following:
- absorption systems that seep or flow to the surface of the ground or into waters of the state;
 - systems that have overflow from the absorption system;
 - systems that, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building plumbing system;
 - septic tanks or holding tanks that leak;
 - absorption systems installed in bedrock or in the groundwater table;
 - steel septic tanks or steel holding tanks; or,
 - any other on-site wastewater treatment system not defined as a conventional or alternative system. (e.g., cesspools, seepage pits, or pit privies).
- I. *Repair of a Malfunctioning or Failing System.* When an OSWTS is found by Pennington County to be malfunctioning or failing, or to cause a nuisance, the owner shall take the necessary action to cause the condition to be corrected or eliminated or otherwise to come into compliance. Corrective action shall be completed by the owner of a malfunctioning or failing system within 30 days of the notice by Pennington County.
- J. *Change in Structure Served by an On-site Wastewater Treatment System.* When a structure on a property is constructed, altered or replaced and is currently served by an on-site wastewater treatment system, Pennington County will require the owner of the property to:
1. Obtain an On-site Wastewater Treatment Systems Operating License in accordance with PCZO § 331(M)(1)(b)(ii).

2. Verify that the size of the on-site wastewater treatment system serving the newly constructed, altered or added structure is in compliance with this Section.
 - a. If the system is not sized correctly for the newly constructed, altered or added structure, then the system must be upgraded to meet the sizing requirements of this Section.
 - b. If the system must be upgraded to meet the new sizing requirements, then an On-site Wastewater Construction Permit is required.
- K. *Water or Soil Sampling.* Pennington County may take samples including, but not limited to, soils, surface water and wells on or near the on-site wastewater treatment system to ensure proper function of a system. The results of such testing will be available to the property owner.
- L. Definitions. See PCZO § 103.
- M. *On-site Wastewater Operating License.* Inspection, pumping and observation of existing OSWTS are required by Pennington County. All OSWTS within the jurisdiction of Pennington County must obtain an Operating License (“License”).
 1. *General Requirements.* These requirements apply to all OSWTS within Pennington County’s jurisdiction. These requirements are in addition to those requirements set forth in Section 200.
 - a. *Notification.* All owners of OSWTS must obtain a License when notified by Pennington County. This can include verbal or written (includes email) notice.
 - b. *Frequency.* An Operating License is required.
 - i. Prior to the sale or transfer of the property of a lot that contains an OSWTS.
 - ii. At the time of Building Permit application submittal for a structure on a lot that contains an OSWTS. This includes any alteration or replacement of a structure served by an OSWTS.
 - *Exemption.* An Operating License is not required if a License has been issued within the previous six (6) years and the number of bedrooms is not increased.
 - iii. At the time of any change of designation request submittal (see § 103 – Definitions).
 - *Exemption.* An Operating License is not required if a License has been issued within the previous six (6) years and the number of bedrooms is not increased.

- iv. For any Commercial or Industrial OSWTS, every three (3) years.
- v. Pennington County may require different frequencies for which an OSWTS License is required:
 - aa. For non-residential structures.
 - bb. For unique, unusual or alternative OSWTS
 - cc. When the OSWTS is inadequate for the current use or size of the structure it serves, as determined by Pennington County.
 - dd. When the property is located in close proximity to surface water or within the aquifer recharge area or overlay district.
 - ee. For any other reason that Pennington County considers necessary to protect public health, the environment or prevent a nuisance.

2 *Procedure.* Upon notification from Pennington County, the owner of the OSWTS must:

- a. *Contact a Certified Liquid Waste Pumper.* The owner of the OSWTS will be responsible for the scheduling of the inspection, pumping and observation with a certified liquid waste pumper of their choice. The OSWTS must be pumped no later than 30 days after receipt of the notification by Pennington County or, in extenuating circumstances, as agreed upon by Pennington County.
- b. *Observation Form.* An Observation Form must be filled out by a certified liquid waste pumper and submitted to Pennington County for review. The Observation Form must include:
 - i. The name of the owner of the OSWTS.
 - ii. The physical address of the property on which the OSWTS is located.
 - iii. The property identification number (tax ID) and legal description of the property.
 - iv. Date and time of inspection and person(s) who performed inspection.
 - v. Basic site evaluation.
 - vi. Size and type of septic or holding tank.
 - vii. A description of the current OSWTS operation status.
 - viii. Any other pertinent observations made by the septic liquid waste pumper.

- c. *Review of Observation Form.* The Pennington County Planning Department will review the Observation Form to determine compliance with the PCZO.
 - i. If Pennington County determines that the OSWTS is compliant with the PCZO, the License Fee will be collected and an Operating License issued to the property owner.
 - ii. A License will not be issued until the fee is collected.
 - iii. If Pennington County determines that the OSWTS is not in compliance with the PCZO, notification will be sent to the property owner. Requirements for repair, alteration or replacement will be included in the notification.
 - iv. If repair, replacement, or alteration of any major component(s) is required, an OSWTS Construction Permit Application must be submitted including any permit fees.
 - v. Pennington County shall determine if the system is compliant with the PCZO after repair, replacement, or alteration of any major component(s) of the system.
 - vi. Fees may be required for inspections, if the system is found to violate the PCZO.

- N. *Types of On-site Wastewater Treatment Systems.* Pennington County allows the following types of on-site wastewater treatment systems:
 - 1. *Conventional System.* Components required in a conventional OSWTS include:
 - a. A building sewer.
 - b. A septic tank.
 - c. An absorption system. This may be a standard trench, a chambered trench, or an absorption bed.

 - 2. *Alternative or Experimental System.* Components that may be required in an alternative or experimental system:
 - a. A building sewer.
 - b. A septic tank.
 - c. Advanced Treatment Unit (ATU)
 - d. An absorption system. This may be a standard trench, a chambered trench, an absorption bed.

 - 3. *Holding Tank.* Only if a conventional, alternative, or experimental system cannot be used. Holding tanks are a wastewater system of last resort. They are only permitted once all other options for wastewater treatment have been exhausted or by installing a conventional, alternative or experimental system would cause a nuisance or endanger the public health, safety or general welfare.

4. *Greywater System.* Greywater is wastewater without any contributions from toilet water or water with food particles (such as a kitchen sink or dishwasher). Components of a greywater system include:
 - a. A septic or holding tank.
 - b. An absorption system. If a greywater holding tank is utilized, an absorption system may not be required.
- O. *Installation, Alteration or Repair of OSWTS.* An OSWTS Construction Permit Application is required for all new OSWTS and major alterations or repairs to an existing OSWTS.
 1. *Initial Siting and Design Requirements of OSWTS.*
 - a. *Site Location.* In determining a suitable location for the system, due consideration shall be given to such factors as: size and shape of the lot; slope of natural and finished grade; location of existing and future water supplies; depth to groundwater and bedrock; soil characteristics and depth; potential flooding or stormwater catchments; possible expansion of the system, and future connection to a public sewer system.
 - b. *Replacement Area.* Properties with severe soils (as defined by the United States Department of Agriculture Soil Survey), over an aquifer recharge area, contain floodplain identified as Flood Zone A, or any other constraint that would restrict the location and installation of an on-site wastewater treatment system, will require a replacement area for the absorption system. The replacement area must be designated on the proposed site plan. A soil exploration pit and percolation information is also required for the replacement area.
 - c. *Soil Requirements.* A suitable soil for absorption systems must meet the following criteria:
 - i. Have the capacity to adequately disperse the designed effluent loading as determined by field percolation rates and/or visual inspection of soil exploration: and,
 - ii. Does not exhibit inhibiting swelling or collapsing characteristics; and,
 - iii. Does not exhibit areas of mottling; and,
 - iv. Does not visually exhibit a jointed or fractured pattern of underlying bedrock or any other restrictive layer; and,
 - v. Meets the requirements of ARSD § 74:53:01:15.

- d. *Groundwater Requirements.* The seasonal high groundwater table shall be determined by direct visual observation of the maximum groundwater table in a soil exploration pit.
 - i. The observation of soil in a soil exploration pit may show evidence of crystals of salt left by the seasonal high groundwater table, or chemically reduced iron in the soil, reflected by a mottled coloring if water is not visible in the soil exploration pit.
 - ii. A curtain drain or other effective groundwater interceptor may be required to be installed for an absorption system as a condition for its approval. Pennington County may require that the effectiveness of such devices in lowering the groundwater table be demonstrated, for a period of at least one year, during the season of maximum groundwater table elevation.
- e. *Preliminary Evaluation Requirements.* Pennington County will perform a preliminary evaluation of each site. A Preliminary Evaluation form is required for each new soil exploration pit. The Preliminary Evaluation Form must be filled out by Pennington County Staff. The form will include:
 - i. The soil exploration log, including a statement of soil explorations to a depth of eight feet or to a depth of at least four feet below the bottom of the proposed absorption system;
 - ii. A statement of the present and anticipated seasonal high groundwater table, and,
 - iii. A field/site evaluation.
 - iv. Suitable soil exploration pits, of sufficient size to permit visual inspection by Pennington County (at least a two foot by five-foot hole), and to a minimum depth of 8 feet, or at least 48 inches below the bottom of proposed on-site wastewater treatment systems.
 - v. Soil exploration pits shall be dug within 15 feet of each absorption system site, but *not* within the proposed absorption area, to determine the groundwater table and subsurface soil and bedrock conditions.
 - vi. A log of the soil and bedrock formations encountered must be recorded describing the texture, structure, and depth of each soil type, the depth of the groundwater table encountered, and indications of the seasonal high elevation of the groundwater table. Soil logs should be prepared in accordance with the United States Department of Agriculture Soil Classification System.

- vii. The preliminary evaluation is valid for two years from the evaluation date.
 - viii. Pennington County may impose stricter requirements as to the depth of absorption system excavation in order to meet the four-foot separation requirements set forth in ARSD § 74:53:01:15.
 - ix. The Pennington County Planning Department may require that soil evaluations be performed by a licensed or certified soil scientist or a representative from Department of Agriculture and Natural Resources (DANR).
 - x. Additional soil exploration pits may be required where severe soils or limiting layers exist.
- f. *Percolation Requirements.* At least three stabilized percolation tests for the design flow less than 2,000 gallons per day, or six tests, if the design flow is more than 2,000 gallons per day but less than 5,000 gallons per day, must be performed on the site of each absorption system to determine minimum required absorption area. More tests may be required where soil structure varies, where limiting geologic conditions are encountered, or where the proposed property improvements will require large treatment systems.
- i. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located.
 - ii. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed.
 - iii. After the suitability of any area to be used for on-site wastewater treatment systems has been evaluated and approved for construction, no grade changes shall be made to this area unless Pennington County is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.
 - vi. Percolation test results must be submitted on the On-site Wastewater Treatment System Construction Permit Application and must contain the following:
 - aa. The name and signature of the individual conducting the tests;
 - bb. The date of the tests;
 - cc. The location of the property;
 - dd. The depth and rate of each test in minutes per inch;
 - ee. All other factors affecting percolation test results; and,

- ff. Calculated average percolation rate.
 - v. The percolation test results are valid for two years from the date the tests were performed.
 - vi. Percolation test results that contradict the types of soils present on a property, as determined by the United States Department of Agriculture Soil Survey, may require that they be re-evaluated.
 - vii. Depth of percolation test holes shall be no greater than or the depth of the proposed system or whichever is less than:
 - aa. 24” for a mound system;
 - bb. 24” for an at-grade systems;
 - cc. 36” for a conventional system;
 - viii. Percolation tests cannot be performed in disturbed soil or frozen ground.
2. *Building Sewer and Distribution Pipe.* Building sewer and distribution pipe materials shall be composed of PVC and shall conform to the applicable standards as outlined in Tables in the section, and shall comply with the following:
- a. Pipe, pipe fittings, and similar materials comprising building sewers are listed by material and applicable standard (See Table 1).

Table 1. Standards for Distribution and Building Sewer Pipe(a)(b).

MATERIALS	MINIMUM STANDARDS
Polyvinyl Chloride (PVC)	
PVC - Schedule 40 (foam or cell core is prohibited)	ASTM D 1785-06(c)
SDR-35 PVC (Gravity)	ASTM D 3034-08 (c)
PVC (Pressure)	ASTM D 2241-05 (c)

- b. The following is a list of solid-wall perforated pipe, approved as distribution pipe in absorption systems. Solid-wall pipe must be perforated in accordance with this Ordinance, and all burrs must be removed from the inside of the pipe. The pipe is listed by material and applicable standard (See Table 2).

Table 2. Standards for Perforated Pipe(a).

MATERIALS	MINIMUM STANDARDS
SDR-35 PVC	ASTM D 3034-08 (c)

- (a) Each length of building sewer and absorption system pipe shall be stamped or marked as required by the International Plumbing Code.
- (b) Building sewers include (1) the pipe installed between the building and the septic tank and (2) between the septic tank and the distribution box (or absorption system). The installation of building sewers shall comply with the International Plumbing Code.
- (c) American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

- c. *Fittings.* Where two different sizes or types of sewer pipes are connected, a PVC fitting or conversion adapter shall be used. Fernco® type fittings are only used when metal to PVC conversions are required. Metal pipe must be existing.

3. *Septic Tanks:*

a. *Design and Construction Requirements.*

- i. *Pipe.* The pipe entering and exiting the septic tank shall be at least six feet in length of Schedule 40 (see Table 1) and unperforated until the first tee, distribution box, or drop box before the absorption field is encountered.
- ii. *Access Hole.* The septic tank must be installed with one 24-inch (or greater) access hole and a septic tank shall have one inspection port. If the access hole is above grade or less than 6 inches below grade, it shall have a locked lid. The access hole shall be no greater than 12 inches below grade.
- ii. *Effluent Filter.* An effluent filter may be installed at the outlet of the tank and be easily removed for routine servicing through watertight access from the ground surface. The filter must prevent the passage of solid particles larger than a nominal 1/8-inch diameter sphere.

- b. *Sizing (Minimum Capacities).* The minimum liquid capacity of septic tanks serving single-family or multi-family dwellings, accessory dwelling units, or any other structures containing bedrooms must be based on the total number of bedrooms in all structures utilizing an on-site wastewater treatment system (see Tables 3 and 4):

Table 3. Minimum Capacities for Septic Tanks Without a Garbage Disposal.

Number of Bedrooms(a)	Minimum Liquid Capacity(Gallons)(b)(c)
1, 2, 3, 4, or 5	1,500
For each additional bedroom, add:	250

Table 4. Minimum Capacities for Two-Compartment Septic Tanks With a Garbage Disposal (e)(f).

Number of Bedrooms(a)	Minimum Liquid Capacity(Gallons)(b)(c)
1, 2, 3, or 4	1,500
For each additional bedroom, add:	250

- (a) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling or structure(s) served, including the unfinished space available for conversion as additional bedrooms.
- (b) The liquid capacity is calculated on the depth from the invert of the outlet pipe to the inside bottom of the tank.
- (c) Tables 3 and 4 provide for the normal household appliances, including automatic sequence washers and dishwashers.
- (d) Minimum liquid capacity does not include dosing chamber, pump tank, or lift station capacity. Minimum capacity of dosing chambers, pump tanks, and lift stations is 500 gallons.
- (e) Add 20 percent to the total capacity for use of a garbage disposal for a dwelling or structure(s) having five or more bedrooms.
- (f) Two-compartment tanks are required for use of a garbage disposal.

- c. *Installation Requirements.*
 - i. *Location.* All tanks must be located in an area which is accessible by a liquid waste pumper truck for the pumping of their contents. There shall be no structure(s) of any kind covering any of the tanks or impeding access to the tank(s) or require the truck to drive over the absorption system.
 - ii. *High Groundwater.* Flotation collars, one-piece tanks, or shallow belly tanks shall be used in areas with high groundwater potential.
 - iii. *Sensitive Areas.* Septic tanks installed in sensitive areas, such as an aquifer recharge area, may be required to be double-sealed if constructed of two separate pieces.
 - iv. *Baffles.* The tank inlet and outlet baffles must consist of PVC sanitary tees at least four inches in diameter.
 - d. *Discharge of Septic Tank Effluent to Absorption System (drainfield).*
 - i. *General Requirements.* Septic tank effluent must be connected to the absorption system through watertight pipe and fittings. Tees, wyes, ells, or other distributing devices may be used as needed.
 - ii. *Tees and Wyes.* Tees and wyes shall be installed level and not in line with any distribution pipe to permit equal flow to all branches of the fitting.
4. *Absorption Systems (drainfield).* Absorption systems shall be designed and installed at the shallowest practicable depth to maximize elements critical to effective treatment of effluent in the soil.
- a. *Maximum Depth.* The depth of an absorption system must not exceed 36 inches.
 - b. *Location.* Absorption systems must be placed in undisturbed soil. Excavation, grading and/or removal of topsoil are not permitted to meet absorption system depth requirements as it may compromise the integrity of the absorption system.
 - c. *Absorption System Sizing.* Minimum absorption area is equal to the total number of bedrooms plus the unfinished space bedroom conversion (see Table 5) times the required absorption area within the applicable percolation rate category.
 - i. Every absorption system must be sized for a minimum of three (3) bedrooms or 600 square feet, whichever is greater.
 - ii. Any unfinished space available for conversion as additional bedrooms must be determined by Table 5.

Table 5. Determination of Additional Absorption System Area Based Upon Unfinished Space.

Square Footage of Unfinished Space	Bedrooms
144 – 1,000	Add 1 additional
1,001 – 2,000	Add 2 additional
2,001+	Add 3 additional

- d. *Types of Absorption Systems.* Results of the initial siting, soil evaluation and percolation test will determine the type of system to be installed.
 - i. *In-ground Systems.* Consists of pipe and gravel trench, chamber, gravelless pipe and bed systems.
 - a. All gravelless pipe and chambers must be approved by SD DANR.
 - ii. *Above-ground Systems.* Consists of at-grade, mound and evapotranspiration systems.
 - a. All above-ground systems must be approved by SD DANR.
- e. *Tracer Wire Required.* All new or replacement absorption systems shall have tracer wire installed.
 - i. All tracer wire shall be No. 12 solid single strand type TW or THHN, or equivalent.
 - ii. The tracer wire shall be accessible at the tank cleanout and shall extend along the building sewer from the house to the tank, around the septic tank access hole, and from the tank through all system trenches or around the perimeter of any
 - iii. All buried ends of the tracer wire and all wire splices shall be sealed with an approved direct bury splice kit or gel-type connector.
 - iv. All tracer wire installation shall be inspected during the final inspection by Pennington County and prior to back filling.
 - v. The installer is responsible for ensuring that the tracer wire has conductivity.

5. *Holding Tanks.*

- a. *Administrative Requirements.* Sewage holding tanks are a means of last resort and are permitted only under the following conditions:

- i. Where an on-site wastewater treatment system, for an existing dwelling, has failed and installation of a replacement on-site wastewater treatment system does not meet the requirements of this Section; or,
 - ii. For other extenuating situations where Pennington County agrees that a conventional, alternative or experimental system will not meet the criteria set forth in this Section.
- b. *General Requirements.* The following are general requirements for holding tanks after the request to use them as a means of waste disposal is approved by Pennington County:
 - i. An owner's statement indicating that, in the event a sewage holding tank is approved, the tank must be pumped periodically, at regular intervals or as needed.
 - ii. Pumping records, maintenance records and manifests must be kept by the owner for a period of six years for review by Pennington County to ensure pumping of the holding tanks.
 - iii. Pennington County may require that sewage holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired.
 - iv. Holding tanks that receive both black and gray water (combined) the capacity of the tank must hold a minimum of seven days sewage flow or 1,500 gallons, whichever is greater.
 - v. Holding tanks which receive only gray water, the capacity of the tank must hold a minimum 1,500 gallons.
 - vi. Holding tanks which receive only black water, the capacity of the tank must hold a minimum seven days sewage flow or 1,500 gallons, whichever is greater.
 - vii. All tanks shall be located in an area which is accessible by a pumper truck for the pumping of their contents. There shall be no structure of any kind covering any of the tanks or impeding access to the tank(s).
 - viii. Tanks should be located in an area where they will not float out of the ground due to a high groundwater table or a saturated soil condition. In areas where the groundwater table may be high enough to float the tank out of the ground, adequate ground anchoring procedures shall be provided.
 - ix. There shall be no discharge of effluent from a holding tank that receives black water or combined black and gray water.
 - x. Septic tanks and cisterns shall not be allowed to be used as a holding tank.

6. *Alternative Systems.* Alternative systems consist of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method that is not a conventional system.
 - a. *General Requirements.* The certified installer of any alternative on-site wastewater treatment system must submit the following to DANR prior to submission to Pennington County:
 - i. Detailed basis of design of all components; and,
 - ii. Site plan; and,
 - iii. Operation and maintenance instructions for the system which describe the activities necessary to properly operate, maintain, and troubleshoot the system.
 - b. Pennington County must review and approve sufficient design, installation and operating information prior to installation following approval of the system by SD DANR.
7. *Experimental Systems.* Experimental systems are wastewater treatment or disposal systems that require further testing and information to determine their acceptability.
 - a. *Administrative Requirements.* Experimental systems are permitted only under the following conditions:
 - i. Where a conventional or alternative on-site wastewater treatment system, for an existing dwelling, has failed and installation of a replacement conventional or alternative on-site wastewater treatment system does not meet the requirements of this Section;
 - ii. Is an attempt to resolve an existing pollution or public health hazard;
 - iii. Where a lot size does not meet the minimum requirements and is considered legal nonconforming and installation of a conventional or alternative system does not meet the requirements (i.e. setbacks) of this Section; or,
 - iv. For other extenuating situations where Pennington County agrees that a conventional or alternative system will not meet the criteria set forth in this Section.
 - b. *General Requirements.* All experimental systems shall be designed, installed and operated under the following conditions:
 - i. Approved through SD DANR prior to submission to Pennington County;

- ii. All failures, repairs or alterations shall be reported to Pennington County;
 - iii. All repairs or alterations must be approved by DANR and Pennington County prior to the work being done;
 - iv. If applicable, Pennington County requires a signed maintenance agreement between the homeowner and a licensed or certified O&M service provider prior to approval of the experimental on-site wastewater treatment system. The agreement shall be maintained for the duration the on-site wastewater treatment system is utilized. The contract must be filed with the Pennington County Planning Department and updated if any changes are made or a new contract is established.
 - v. Pennington County may impose more stringent design, installation, operating and monitoring conditions than those required by SD DANR.
 - vi. Installers of any experimental system must be certified (or approved) by the manufacturer (of the experimental system) to install the system.
8. *On-site Wastewater Treatment System Construction Permit.* The process for obtaining an On-site Wastewater Treatment System Construction Permit will include the following:
- a. *Application.* The property owner or certified installer must provide the following information on a form provided by the Planning Department:
 - i. Type of system.
 - ii. Components of the system.
 - iii. Size of septic tank or holding tank.
 - iv. Size of drainfield.
 - v. Distance of system to pertinent areas (i.e. setbacks).
 - vi. Site plan.
 - vii. Floor plan of dwelling, including all finished and unfinished areas.
 - viii. Percolation test information.
 - ix. Source and location of domestic water supply.
 - x. Replacement area for absorption system, if applicable.
 - xi. Printed name and signature of certified installer.
 - xii. Printed name and signature of property owner(s).
 - xiii. DANR approval letter, if applicable.
 - b. *Preliminary Evaluation Form.* Field evaluation and soil profile log. This form is completed by Pennington County Staff.
 - c. *Fees.* See § 511.

- d. *Expiration of Permit.* An On-site Wastewater Treatment System Construction Permit will remain valid for 24 months from the date of issuance.
 - i. *Exemption.* Under extenuating circumstances, the Planning Director may allow the term of the On-site Wastewater Treatment System Construction Permit to be extended for a 12-month period.
 - ii. *Termination of Permit.* If the on-site wastewater treatment system is not installed within the time limits as listed above, the Permit, including any variances or decisions issued through the exception process, will expire.
 - e. *Evaluation(s) of System.* Following construction of the system and before backfill of the system, Pennington County will conduct an on-site wastewater treatment system final evaluation.
 - i. Pennington County will complete a Final Evaluation Form, which includes:
 - aa. System Sizing.
 - bb. Trench or bed configuration, if applicable.
 - cc. Engineered design and DANR approval, if applicable.
 - dd. Setbacks.
 - ee. Final “as-built” drawing of system – must be provided and signed by an installer certified in Pennington County.
- P. *Service Providers.* All pumpers and installers that pump, install, alter or repair on-site wastewater treatment systems in Pennington County.
- 1. *Exemptions.* This section does not apply to a person who is employed by, or performs labor and services for:
 - a. An installer in connection with the construction, installation, repair, or alteration of an on-site wastewater treatment system performed under the direct and personal supervision of the certified installer; or
 - b. A pumper in connection with the pumping of septic tanks, pump tanks, media filters, and ATU’s performed under the direct supervision of the pumper; or
 - c. An O&M service provider in connection with the installation, operation and maintenance of alternative, experimental or unconventional, on-site wastewater treatment systems performed under the direct supervision of the certified O&M service provider.

2. *Requirements for All Service Providers.* All service providers operating, working or doing business in Pennington County must:
 - a. Have a Sales and/or Excise Tax License Number; and,
 - b. Have general liability insurance; and,
 - c. Be at least 18 years of age; and,
 - d. Be certified by South Dakota Plumbing Commission for installation of on-site wastewater treatment systems; and,
 - e. Complete an application for certification.
 - f. *Exemption.* Property owners and/or homeowners installing an on-site wastewater treatment system on his or her own property are exempt from the sales and/or excise tax license and liability insurance requirements of all service providers.
3. *Installers.* No person shall construct, install, alter, repair or offer to construct, install, alter or repair an on-site wastewater treatment system in Pennington County without certification from Pennington County.
 - a. *Requirements.* Pennington County shall issue certification to an applicant who satisfies all of the following requirements:
 - i. Meet the requirements of PCZO § 331(P)(2); and,
 - ii. Successfully pass the Pennington County On-site Wastewater Treatment System Examination (Score must be $\geq 75\%$).
4. *Liquid Waste Pumpers.* No person or entity shall pump septic tanks, pump tanks, holding tanks, and ATU's in Pennington County without certification from Pennington County.
 - a. *Requirements.* A pumper who fills out an Observation Form for the purposes of the issuance of an Operating License, must, at a minimum:
 - i. Meet the requirements of PCZO § 331(P)(2); and,
 - ii. Indicate the location of the liquid waste disposal sites on the Pumper Certification Form. Pumper Certification Forms must be submitted yearly.
5. *Service Providers, O&M.* No person shall perform operation and maintenance on alternative, experimental, or unconventional on-site wastewater treatment systems in Pennington County without certification from Pennington County.

- a. *Requirements.* An O&M service provider must meet the following criteria:
 - i. Meet the requirements of PCZO § 331(P)(3); and,
 - ii. Be a certified service provider by the manufacturer of the equipment to be serviced or maintained.
- 6. *Certification Terms.* Service Provider Certification is valid for a period of 5 years. The period begins upon the date of receipt of a complete application, which includes passing the Pennington County On-site Wastewater Treatment System Examination with a score of $\geq 75\%$ for installers and O&M service providers.
- 7. *Certification Fees.* See § 511.
- Q. *Appeals.* A decision by the Planning Director or designee granting or denying an On-site Wastewater Treatment System Construction Permit or On-site Wastewater Operating License may be appealed to the Board of Adjustment as prescribed under SDCL 11-2-55.
- R. *Enforcement.*
 - 1. *Notice of Non-Compliance.* Upon receiving notice from Pennington County of a malfunctioning or failing OSWTS or a notice to a repair to an OSWTS, the owner of the property containing OSWTS must submit proposed corrective action within 30 days.
 - a. Pennington County will review the proposed corrective action and verify it conforms to this Section.
 - i. The owner shall complete all necessary corrective actions within a maximum of 180 days following approval from Pennington County.
 - ii. Once final approval of the completed corrective action is granted, the system shall be deemed in compliance with this Section.
 - b. In lieu of submitting correction action, the owner may repair the system as long as the completed repair(s) is in compliance with this Section.
 - 2. *Failure to Comply with this Section.* See § 514.

SECTION 400 - NONCONFORMING BUILDINGS, STRUCTURES AND USES OF LAND (Revised 08-11-21)

A. *Purpose and Intent.*

This section establishes standards and regulations for nonconforming uses, lots, and occupancies, and specifies the circumstances under which the same shall be permitted to continue.

B. *Permitted Nonconforming Uses, Lots, or Occupancies.*

1. *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 the relevant Zoning Ordinance may be continued although such use does not conform to the provisions thereto.
2. *Use Becoming Nonconforming by Change in Law or Boundaries.* Whenever the use of a premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereto.
3. *Construction in Progress.* Nothing in this Zoning Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of the relevant Zoning Ordinance and upon which actual construction has been carried on diligently.

C. *Change of Use or Alteration of Structure.*

1. *Change of Use.* The use of a nonconforming building or structure may be changed to a use of the same or more restricted district classification. For the purposes of this Section each of the following classifications shall be listed from least restrictive to most restrictive:
 - a. Residential:
 - i. Agriculture AG
 - ii. Open Space OS
 - iii. Ranchette RCH
 - iv. Rural Residential RR
 - v. Low Density Residential LDR
 - vi. Suburban Residential SR
 - vii. Urban Residential UR
 - b. Industrial:
 - i. Heavy Industrial HI
 - ii. Light Industrial LI

2. *Alteration of structure.* Unless otherwise authorized by this Section, no structural alterations or additions may be made to nonconforming uses, lots, or occupancies.
 - a. Exceptions.
 - i. Health, Safety, and Welfare.
 - aa. Alterations to a nonconforming structure may be made pursuant to this Section for the general health, safety, and welfare of the community.
 - bb. Alterations must not expand the use beyond that which existed at the time of the relevant Zoning Ordinance adoption.
 - ii. Legally nonconforming as to setbacks or height.
 - aa. Alterations may be made to a nonconforming structure, if the building or structure is legally conforming as to use, but legally nonconforming as to setbacks or height.
 - bb. A building or structure may be enlarged or added to, provided that the enlargement or addition complies with the requirements of the district in which the building or structure is located.
- D. *Restoration After Damage.* No building which has been damaged by fire, explosion, or an Act of God to the extent of more than fifty (50) percent of its fair market value, shall be restored, except in conformity with the Relevant Zoning Ordinance unless special circumstances warrant a variance by the Board of Adjustment.
- E. *Discontinuance of Nonconforming Use.* If a nonconforming building, structure, or portion thereof becomes vacant and remains unoccupied for a continuous period of one (1) year, any subsequent use or occupancy of the land and premises shall be in conformance with the official controls pursuant to the provisions of SDCL 11-2-26 and 11-2-27.
- F. *Increase of nonconformity.* Any nonconforming use of land shall not be expanded in such a manner so as to increase its nonconformity except as provided by this Section.
- G. *Developmental lots.*
 1. Where an individual lot was held in separate ownership from adjoining properties or was platted prior to February 1, 1994, in a recorded subdivision, approved by the County Board of Commissioners, and has less area or less width than required in other sections of this Zoning Ordinance, such lot may be occupied according to the permitted uses and conditional uses as provided for in the district in which the lot is located.

2. If two or more lots or portion of lots with continuous frontage in single ownership were of record prior to February 1, 1994, 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 a developmental lot for the purposes of this title. Where developmental lots are larger than required by this Zoning Ordinance, said lots may be subdivided into smaller lots except no parcel may be divided so as to create a lot smaller in lot width or lot area than required by this Zoning Ordinance.
- H. *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 premise in violation of zoning regulations in effect immediately prior to the effective date of this Ordinance.

SECTION 402 - USES UNDER CONDITIONAL USE PERMITS NOT CONFORMING USES

Any use, which is permitted as a Conditional Use in a district under the terms of these Zoning Ordinances (other than a change through Board action for a nonconforming use to another use not generally permitted in the district), shall not be deemed a nonconforming use in such district.

SECTION 500 - ADMINISTRATION AND ENFORCEMENT (Effective 08-11-21)

SECTION 501 - ADMINISTRATIVE STANDARDS

Whenever, in the course of administration and enforcement of these Zoning Ordinances, it is necessary or desirable to make any administrative decision, then, unless other standards are provided in these Zoning Ordinances, the decision shall be made so that the result will not be contrary to the purpose of these Zoning Ordinances or injurious to the surrounding neighborhood.

SECTION 502 – PLANNING AND ZONING DIRECTOR (Repealed)

SECTION 503 – PENNINGTON COUNTY PLANNING AND ZONING COMMISSION (Repealed)

SECTION 504 – PENNINGTON COUNTY ZONING BOARD OF ADJUSTMENT (Repealed)

SECTION 505 – PENNINGTON COUNTY BOARD OF COMMISSIONERS (Repealed)

SECTION 506 - BUILDING PERMITS (Effective 08-12-20)

A. Purpose

A Building Permit is required to ensure proposed building or structure is in compliance with Pennington County Ordinances.

B. Applicability

Section 506 applies to ALL residential and commercial buildings or structures.

1. Required Permit. A Building Permit is required *prior* to erecting, constructing, enlarging, moving, or demolishing any building or structure. To “enlarge” means to increase finished square feet, number of bedrooms, or building/structure footprint.
2. Land Disturbance. Excavation, clearing, or land disturbance of an area less than 10,000 square feet may be commenced prior to approval of a Building Permit. No other construction activities are allowed to commence until a Building Permit has been signed and stamped approved by the Planning Director or designee.
3. Exceptions. A Building Permit is NOT required for the following buildings or structures:
 - a. Accessory structures 144 square feet or less *and* not permanently anchored to the ground;
 - b. Fences or border walls *eight feet or less* in height;
 - c. Snow fences on real property zoned *and* taxed agriculture;
 - d. Portable buildings, such as those used in calving/lambing operations, grain storage, etc., on real property zoned *and* taxed agriculture which are moved as part of the agricultural operation at least once every five years.

C. Application Requirements

Building Permit applications *must* include all of the following:

1. Use. Use or change of use of building or structure;
2. Description. Description of work to be performed under the Building Permit, including dimensions and square footage of proposed building or structure;

3. Location. Legal description, street address, or other description of real property that clearly identifies real property where building or structure is/will be located;
4. Site Plan. Site plan showing location and yard setback distance for proposed and all existing buildings or structures. The site plan must also include location of wells, drainfields, septic tanks, recorded easements, driveways, and Special Flood Hazard Areas;
5. Floor Plan. Floor plan, with rooms labeled;
6. Signature. Signature of applicant, landowner, or authorized agent and a notarized Owner's Statement, when applicable;
7. Payment of application fee(s); and,
8. Other information and documentation as required by the Planning Department.

Commercial Building Permit applications must also include an estimated cost of construction (minus labor) for proposed work and stamped professional plans. Commercial structures must be designed by a South Dakota licensed professional (i.e. engineer or architect) unless designed by persons exempt under SDCL 36-18A-9.

An incomplete Building Permit application will NOT be accepted for review. Failure to meet application requirements or provide information or documents requested by the Planning Department within 90 days of receipt of application will result in denial of the Building Permit.

D. Application Review

1. Payment of Building Permit fee(s) does not constitute approval of a Building Permit.
2. The application, plans and specifications, and other supporting documents will be reviewed to verify compliance with applicable local, state, and federal law, rules or regulations.
3. If the building or structure complies with applicable local, state, and federal law, rules or regulations, and application requirements are met, the Planning Director or designee will approve the Building Permit.
4. A Building Permit will not be approved or valid until all applicable fees have been paid.

5. No Building Permit will be approved for a building or structure affixed to a permanent foundation and encroaching on a recorded easement unless easement is vacated.
6. The Planning Director or designee may require, at any time, the correction of errors in an application and supporting document(s).
7. The Planning Director or designee may enter upon the real property to determine veracity of the application or verify compliance with applicable local, state, federal law, rules or regulations.
8. A Building Permit is not approved until the application has been signed and stamped approved by the Planning Director or designee.

E. Legal Nonconforming

A Building Permit may be issued by the Planning Director or designee for an existing legal nonconforming building or structure, not meeting minimum setback requirements, provided there is not an increase in nonconformity of the building or structure. *See* PCZO Section 401.

F. Appeal

A decision by the Planning Director or designee granting or denying a Building Permit may be appealed to the Board of Adjustment as prescribed under SDCL 11-2-55.

G. Design Standards for New Construction

1. International Building Code. Where design standards for new construction have not been adopted, new construction must comply with the International Building Code as prescribed in SDCL 11-10-6.
2. Electrical and Plumbing Inspection. All electrical and plumbing work must comply with State codes and administrative regulations. Inspections by State plumbing and electrical inspectors are required and it is the responsibility of the landowner or authorized agent to ensure that inspections are completed.
3. International Fire Code. All new construction must comply with the most recent edition of the International Fire Code.

H. Expiration of Building Permits

1. Work authorized under a Building Permit must be commenced within 90 days and substantially completed within 2 years from date of Building Permit approval. Substantial completion means that state in the progress of work when the building or structure is sufficiently complete so that the owner may occupy or utilize for its intended use.

- a. The Planning Director or designee may grant an extension of time for a period not exceeding one year for each Permit issued.
- b. An extension of time must be requested in writing *prior* to expiration of the Building Permit and reasonable cause for extension must be demonstrated. An extension requires payment of an additional fee. *See* PCZO Section 511 – Fees.

I. Stop Work Order

The Planning Director or designee may issue a Stop Work Order under any of the following circumstances:

1. Work performed is contrary to the approved Building Permit or local, state, or federal law, rules or regulations.
2. Building activity is occurring without a required permit.
3. Continued construction is likely to endanger public health, welfare, or safety.
4. Continued construction constitutes a public nuisance as defined under SDCL Chapter 21-10.

A Stop Work Order must be issued in writing and delivered to the person responsible for the construction activity or his or her employee/agent. All construction activity and other site development must cease, except work to stabilize or secure the site as allowed or required by the Planning Director or designee. Construction activity and site development may resume *only* when the Stop Work Order is rescinded in writing by the Planning Director or designee.

J. Enforcement

Any person, firm, corporation, or association violating any provision of Section 506 will be subject to ALL applicable civil and criminal remedies allowed under the laws of the State of South Dakota. In addition to the penalties expressly provided in Section 506, the county may pursue other remedies including, but not limited to, injunctive relief or revocation of permits.

1. Ordinance Violation

Any person, firm, corporation, or association violating any provision of Section 506 is in violation of Pennington County Zoning Ordinance and subject to the penalties set forth in Sections 511 and 514.

2. Injunction

In addition to all other remedies available to Pennington County to prevent, correct, or abate violations of Section 506, the Planning Director may seek injunctive relief pursuant to SDCL Chapter 21-8 against any property owner, applicant, or other person in violation of Section 506. The injunctive relief authorized may include a reparative injunction requiring any party who commits a violation of Section 506 to bring or return any affected property to a condition which does not constitute a nuisance, as that term is defined under SDCL Chapter 21-10.

3. Abatement

A violation of Section 506 constituting a public nuisance as defined under SDCL Chapter 21-10 is subject to abatement. The Planning Director has authority to declare and summarily abate a public nuisance pursuant to SDCL 21-10-6.

SECTION 507 - CONSTRUCTION PERMITS (Revised 07-15-20)

A. SCOPE.

Pennington County Zoning Ordinance (PCZO) Section 507 establishes minimum requirements for construction activities involving land disturbance.

B. PURPOSE.

The purpose of Section 507 is to mitigate soil erosion and deposition of sediment and prevent illicit discharge into drain systems by regulating land disturbing activities.

C. APPLICABILITY.

Section 507 applies to all land in Pennington County outside the jurisdictional boundaries of a municipality.

D. COMPATIBILITY.

The requirements of Section 507 are minimum requirements. In any case where a provision of Section 507 is in conflict with local, state or federal law, rules or regulations in effect within the jurisdictional boundaries of the county, the higher standard or more stringent requirement will control.

E. AUTHORITY.

Pursuant to SDCL 11-2-13, for purpose of promoting the health, safety, and general welfare of its citizens, the Pennington County Board of Commissioners has adopted a Zoning Ordinance.

Under the federal Clean Air Act, the United States Environmental Protection Agency (EPA) established National Ambient Air Quality Standards (NAAQS) to protect public health and welfare and to regulate emissions of hazardous air pollutants. The NAAQS are enforced by Pennington County Ordinance No. 12 (Fugitive Emissions and Abatement of Smoke).

Under the federal Clean Water Act, the EPA implemented municipal storm water programs to control the discharge of pollutants into the waters of the United States and set water quality standards. The Pennington County Storm Water Management Plan and PCZO Section 507 implement federal regulations controlling storm water runoff.

F. STORM WATER QUALITY MANUAL.

The Pennington County Storm Water Quality Manual provides guidelines and standards for the implementation of storm water and erosion control measures. The manual lists acceptable storm water treatment practices, including specific design criteria, operation requirements, and maintenance requirements. The manual may be updated, revised or expanded from time to time, based on state and federal law, rules and regulations, or advances and improvements in engineering, science, and monitoring.

All construction activity must meet erosion and control best management practices (BMPs) as stated in the Storm Water Quality Manual and incorporated by reference herein. It will be presumed that minimum water quality standards are met when storm water treatment practices are designed and constructed in accordance with the manual.

All storm water management practices will be designed to meet storm frequency storage volumes (e.g., recharge, water quality, channel protection, 10- and 100-year storm events, etc.) as identified in the Storm Water Quality Manual, unless the activity is exempt under the provisions of Section 507-R.

If the minimum control requirements are inadequate or if hydrologic or topographic conditions warrant greater control than provided by the minimum control requirements, the Planning Director may require additional measures as identified in the Storm Water Quality Manual.

G. CONSTRUCTION CATEGORIES.

Construction activities are divided into four classifications determined by the size and type of land disturbance.

1. Construction activity with less than 10,000 square feet of land disturbance
2. Small Scale Project: Construction activity where land disturbance is greater than or equal to 10,000 square feet, but less than one acre

3. Large Scale Project: Construction activity where land disturbance is greater than or equal to one acre
4. Industrial Project: Construction activity associated with industry areas as classified in the Standard Industrial Classifications (SIC) group code 10 through 14, and 20 through 39.

H. APPLICABLE PERMITS.

Permit requirements for construction activity are determined by classification and nature and location of the activity. Table 1 lists applicable permits by project scale.

Table 1. Type of Applicable Permits by Project.

Projects	Building or Floodplain Permit(s) (if applicable)	Permit or Approval of Waterway or Wetland Disturbance (if applicable)	County Storm Water Permit	Air Quality Permit	SD DANR Water Permit
< 10,000 SF	X	X			
Small Scale	X	X	X		
Large Scale	X	X	X	X	X
Industrial	X	X	X	X	X

I. PERMIT REQUIREMENTS.

1. Building Permit

A Building Permit is required for any structure exceeding 144 square feet or permanently anchored to the ground. An application for a Building Permit must meet the requirements of Section 506. The Planning Director reviews and approves all Building Permits.

2. Air Quality Permit

Under Pennington County Ordinance No. 12, an Air Quality Permit is required from the City of Rapid City for land disturbance activities greater than or equal to one acre and located within the regulated Air Quality Zone.

3. Floodplain Development Permit

A Floodplain Development Permit is required prior to performance of work in a Special Flood Hazard Area. See Pennington County Flood Damage Prevention Ordinance.

4. Approval of Waterway or Wetland Disturbance

Approval or permit is required from the South Dakota Department of Environment and Natural Resources (SD DANR), United States Army Corps of Engineers, or Federal Emergency Management Agency prior to:

- a. Erecting a waterway crossing if watercourse will be crossed regularly during construction activity, or
- b. Disturbing any waterway or wetland.

5. Pennington County Storm Water Permit

A Pennington County Storm Water Permit is required prior to land disturbance greater than or equal to 10,000 square feet, unless exempt under Section 507-Q.

a. Application Requirements

All applications for a County Storm Water Permit must include all of the following:

- i. Site Plan. The site plan must include a legible map identifying area to be disturbed, slopes, drainage, structures, utilities, waterways, floodplain, storm water inlets, designated entry point, concrete washout area (if required), and property lines. The Site Plan must state measures to be used to control sediment and erosion, and to protect the nearest downstream storm water inlets (if applicable). The Site Plan must also identify practices to prevent mud tracking from vehicles and equipment onto streets. The minimum allowed map size is 8½" x 11".
- ii. Responsible Party. The name, address and phone number of the person(s) responsible for erosion and sediment control.
- iii. Controls. Type and location of all BMPs necessary to achieve soil stabilization on the site, including stockpiles of any soil, rock, or additional landscaping materials.
- iv. Stabilization Practices. Description and schedule of interim and permanent stabilization practices, schedule of dates when major grading activities will occur, date construction activities will temporarily or permanently cease on any portion of the site, and date stabilization measures will be initiated. The applicant must also specify the date final stabilization will be completed.

Incomplete applications will be returned to the applicant. The Planning Director may require submission of additional information.

b. Notice Requirements (**Revised 06-23-21**)

Applicants of Storm Water Permits must notify all abutting property owners of the subject property of the pending application and construction activity, if the disturbance is greater than or equal to 5 acres. Based upon Department of Equalization records, the Planning Department will determine and provide a list of adjoining property owners. Notice must be sent by first class mail. The applicant must use “Application and Notice of Construction Activity” letters provided by the Planning Department.

c. Development Considerations

- i. All new development or redevelopment on lots greater than or equal to one (1) acre or lots with commercial or industrial uses, which cause an increase in (exceeds) impervious area greater than 15%, shall be required to provide storm water treatment of the runoff generated by the first 0.5” of rainfall.
- ii. Single lot residential development, which causes an increase in impervious area greater than 30%, shall be required to provide storm water treatment of the runoff generated by the first 0.5” of rainfall.

d. Review/Approval

The Planning Director reviews and approves all County Storm Water Permits.

- i. Small Scale Projects. Storm Water Permits for Small Scale Projects may be issued for one year and extended for one year upon written request and site inspection by the Planning Department.
- ii. Large Scale and Industrial Projects. Storm Water Permits for Large Scale and Industrial Projects may be issued for two years and extended for one year upon written request and site inspection by the Planning Department.
- iii. Continuous Operations. When commercial operations involve continuing land disturbance requiring ongoing erosion and sediment controls a Storm Water Permit for Continuous Operations may be issued. County Storm Water Permits for Continuous Operations are subject to periodic review as a condition of the Permit or on a complaint basis.

e. Inspection Reports

A copy of the approved Storm Water Permit and Site Plan or Storm Water Pollution Prevention Plan (SWPPP) must be kept on site during construction activity. The designated responsible party must perform all required inspections. Record of inspections must be kept with the Site Plan (or SWPPP) and Storm Water Permit, and the Site Plan (or SWPPP) must be updated as site conditions change.

The Planning Director may enter the subject property to conduct on-site inspections and review inspection records.

Frequency of required inspections:

- Once every 7 calendar days; or,
- Once every 14 calendar days and within 24 hours of precipitation exceeding 0.25 inches or snowmelt that generates runoff. Must maintain functioning rain gauge on site.

Upon inspection, if existing site conditions are found to be non-compliant with the conditions of the approved Storm Water Permit, a Stop Work Order may be issued by the Planning Director as provided in Section 507-P.

If major revisions are needed to comply with the requirements of Section 507, a revised Storm Water Permit Application and Site Plan (or SWPPP) must be submitted for review and approval. No additional fees will be charged for revisions prior to expiration of a current Storm Water Permit.

f. Transfer of Permits

Upon sale or transfer of property subject to a County Storm Water Permit, the prior owner is not released of responsibilities under the Permit unless all of the following conditions are met:

- i. Written notice is given to the Planning Department;
- ii. Construction activity is in compliance with the conditions of the Storm Water Permit; and,
- iii. New owner assumes responsibility in writing for erosion and sediment controls, including final stabilization.

g. Revocation of Permits

The Planning Director may schedule a hearing on a County Storm Water Permit before the Planning Commission upon the occurrence of any of the following:

- i. The owner or operator has failed repeatedly to comply with the conditions of the Storm Water Permit.
- ii. The owner or operator failed to perform and complete requested corrective action.
- iii. The continued construction activity constitutes a nuisance as defined under Section 507.
- iv. The continued construction activity is a threat to the public health, safety, or general welfare.

Notice of time and place of the hearing will be given, in writing, to the permit holder and surrounding property owners at least 30 days in advance of hearing. Upon hearing, the Commission may revoke the Permit or order remedial action to be taken by the owner or operator.

6. General Permit for Storm Water Discharge

SD DANR may require a General Permit for Storm Water Discharge for Large Scale or Industrial Projects.

J. Discharge Prohibitions

- 1. Municipal Separate Storm Sewer Systems (MS4) or Watercourses. No person shall discharge or cause to be discharged into a MS4 or watercourse any materials other than storm water, including but not limited to, pollutants or other materials that cause or contribute to a violation of applicable water quality standards.
- 2. Exemptions. Discharge into MS4s is prohibited except in the following circumstances:
 - a. Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, sump pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, de-chlorinated swimming pools, firefighting activities, and any other water source not containing pollutants.
 - b. Discharges authorized in writing by the Planning Director as being necessary to protect public health and safety.
 - c. Dye testing if authorized in writing by the Planning Director.

- d. Any non-storm water discharge permitted under a NPDES Storm Water Permit, waiver, or waste discharge order and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.
3. Illicit Connections. The construction, use, maintenance, or continued existence of illicit connections to a MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable at the time of connection.
4. In the event of an illicit discharge, the Planning Director may suspend MS4 access. The Planning Director will provide written notice to allow the responsible party reasonable opportunity to prevent illicit discharge prior to suspension.

K. Suspension of MS4 Access.

The Planning Director may suspend, without prior notice, MS4 discharge access when necessary to stop actual or threatened discharge that presents an imminent and substantial danger to water quality, or to the health or welfare of persons. If a person fails to comply with a suspension order issued by the Planning Director, the Planning Director may take steps as deemed necessary to minimize danger to water quality and the health and welfare of persons.

L. Monitoring of Storm Water Discharges.

All erosion and sediment control facilities must be maintained in accordance with the Storm Water Quality Manual and any conditions of a Permit.

1. The Planning Director may enter and inspect facilities to determine compliance with Section 507 and any conditions of a Permit.
2. The Planning Director may require installation of sampling and monitoring equipment as necessary. Equipment must be installed and maintained in a safe and operable condition at the property owner's expense. All devices used to measure storm water flow and water quality must be calibrated according to manufacturer recommendations.
3. At the request of the Planning Director any obstruction to access of the site must be promptly removed. The cost of clearing the obstruction will be borne by the property owner.

4. Every person owning, occupying, or leasing property through which a watercourse passes must maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, or other obstacles that would pollute, contaminate, or significantly impede the flow of water. In addition, the owner, occupant, or lessee must maintain structures within or adjacent to a watercourse, to prevent hazard to the use, function, or flow of the watercourse.
- M. Notification of Spills.

Any person responsible for construction activity or emergency response must report any known or suspected illicit discharge or discharge of pollutants into a waterway or MS4. All necessary steps must be taken to ensure the containment and cleanup of pollutants discharged. In the event of release of hazardous materials, emergency response agencies must be immediately notified of the occurrence via emergency dispatch services. In the event of release of non-hazardous materials, the Planning Director and SD DANR must be notified no later than the next business day. Verbal notice shall be confirmed by written notice, addressed and mailed to the Pennington County Planning Department at 130 Kansas City Street, Suite 200, Rapid City, SD, 57701, and postmarked within three business days of the event. If the discharge of prohibited materials is from commercial or industrial activity, the property owner must retain an on-site written record of the discharge and action taken to prevent recurrence. Such record must be retained for at least seven years.

N. Final Stabilization

1. Final Stabilization occurs when all soil disturbing activities at the construction site have been completed, and:
 - a. Uniform perennial vegetative cover of at least 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures; or,
 - b. Equivalent permanent stabilization measures (such as riprap, retaining walls, or geotextiles) have been utilized.
2. When background native vegetation will cover less than 100% of the ground (e.g., arid areas), the 70% coverage criteria set forth above is adjusted to require 70% of the naturally occurring coverage. For example, if native vegetation covers 50% of the ground, 70% of 50% ($.70 \times .50 = .35$) would require 35% total cover for final stabilization. On sites with no natural vegetation, no vegetative stabilization is required.
3. For individual lots in residential construction final stabilization requires:
 - a. The developer/contractor or property owner complete Final Stabilization as specified in Section 507; or

- b. The developer/contractor establish temporary stabilization (as defined in the Storm Water Quality Manual) for the lot prior to the owner assuming control of the property, and the developer/contractor inform the property owner of the need for and requirements of Final Stabilization.
- 4. The County Storm Water Permit may be released upon Final Stabilization.
- 5. Special Conditions for Final Stabilization.
 - a. Vacant lots and new building sites must be maintained and stabilized to the extent necessary to prevent debris transport from wind or water erosion, washout of debris onto adjacent lots or sites, and tracking of debris onto streets. The Planning Director may require the developer/contractor or owner to provide periodic street sweeping if other measures are insufficient and debris is tracked or washed onto streets.
 - b. Effective and permanent erosion control measures, such as seeding and mulching, must be implemented immediately upon completion of construction, but in no case later than 14 days after the construction activity has stopped.

O. APPEALS:

A decision of the Planning Director is subject to review under SDCL 11-2-53 and any amendments thereto.

P. STOP WORK ORDER:

The Planning Director may issue a Stop Work Order under any the following circumstances:

- 1. A site is maintained in violation of Section 507;
- 2. Construction activity is contrary to the conditions of required permits;
- 3. Construction activity is occurring without a required permit;
- 4. Construction activity is likely to endanger public health, welfare, or safety;
- 5. Construction activity constitutes a public nuisance as defined under SDCL Chapter 21-10.

A Stop Work Order must be issued in writing and delivered to the person responsible for the construction activity or his or her employee/agent. All construction activity and other site development must cease, except work to stabilize or secure the site as allowed or required by the Planning Director. Construction activity and site development may resume only when the Stop Work Order is rescinded in writing by the Planning Director.

Q. ENFORCEMENT

Any person, firm, corporation, or association violating any provision of Section 507 will be subject to ALL applicable civil and criminal remedies under the laws of the State of South Dakota. In addition to the penalties expressly provided in Section 507, the county may pursue other remedies including, but not limited to, revocation of permits.

1. Ordinance Violation

Any person, firm, corporation, or association violating any provision of Section 507, or conditions of a required Permit issued under Section 507, is in violation of the Pennington County Zoning Ordinance and subject to the penalties set forth in PCZO Sections 511 and 514.

2. Injunction

In addition to all other remedies available to Pennington County to prevent, correct, or abate violations of Section 507, the Planning Director may seek injunctive relief pursuant to SDCL Chapter 21-8 against any property owner, Permittee, or other person in violation of Section 507 or in violation of the conditions of a Permit issued under Section 507. The injunctive relief authorized may include a reparative injunction requiring any affected property be brought or returned to a condition which does not constitute a public nuisance as that term is defined under SDCL Chapter 21-10.

3. Abatement

A violation of Section 507 constituting a public nuisance as defined under SDCL Chapter 21-10 is subject to abatement. The Planning Director has authority to declare and summarily abate a public nuisance pursuant to this Ordinance and SDCL 21-10-6.

4. Performance Bond

The Planning Director may, as a condition of a County Storm Water Permit, require the posting of a performance bond for control measures, stabilization, or other work proposed in the applicant's Site Plan or SWPPP. The Pennington County Board of Commissioners may authorize the Planning Director to use the performance bond to complete any work proposed in the Permittee's Site Plan or SWPPP if the Permittee cannot or will not complete such work.

R. EXEMPTIONS.

1. Construction activity associated with an approved Fire Mitigation Plan.

2. Agricultural Activities including: cultivation of soil, dairying, forestry, or raising or harvesting of agricultural or horticultural commodity, including livestock.

SECTION 508 – REZONING AND COMPREHENSIVE PLAN AMENDMENTS
(Effective 07-07-21)

A. *Application.*

1. *Rezone Amendment.*
 - a. Definition. A Rezone Amendment changes a parcel's zoning district on the Official Zoning Map in PCZO § 202.
 - b. Eligible Persons. A Rezone Amendment may be filed by:
 - i. an individual landowner; or,
 - ii. at least 20% of the landowners, as defined in SDCL 11-2-28, in the zoning district or districts requesting the change.
 - c. Submission. A Rezone Amendment must be:
 - i. completed on an application form provided by the Planning Department; and,
 - ii. filed with the Planning Department.
2. *Comprehensive Plan Amendment.*
 - a. Definition. A Comprehensive Plan Amendment changes a parcel's zoning district on the future land use map contained in the Comprehensive Plan.
 - b. Eligible Persons. A Comprehensive Plan Amendment may be filed by
 - i. an individual landowner; or,
 - ii. at least 20% of the landowners, as defined in SDCL 11-2-28, in the zoning district or districts requesting the change.
 - c. Harmony with PCZO § 202.
 - i. General Rule. A Comprehensive Plan Amendment is required if:
 - a. a Rezone Amendment is filed; and,
 - b. the requested change isn't in harmony with the Comprehensive Plan.
 - ii. Exception. A Comprehensive Plan Amendment is not required, if:
 - a. a Rezone Amendment is filed; and,
 - b. the Rezone Amendment requests a zoning district that's less restrictive in density.
 - d. Submission. A Comprehensive Plan Amendment must be:
 - i. completed on an application form provided by the Planning Department; and,
 - ii. filed with the Planning Department.

B. *Notice.*

1. *Legal Notice.* At least 10 days before the hearing before the Planning Commission and Board, the Planning Director will advertise the time and place of each hearing in a legal newspaper of the County.
2. *Notification by Landowner.* At least 10 days before the Planning Commission hearing, a landowner who has filed an application for an amendment, must, by registered or certified mail, notify all landowners, including recorded contract-for-deed buyers, who:
 - a. abut and adjoin the parcel identified in the amendment; and,
 - b. live within 500 feet, including any right-of-way, of the parcel identified in the amendment.
3. *Notification by County Auditor if Abutting Other County.* At least 10 days before the Planning Commission hearing, the County Auditor—on behalf of the landowner—must notify, by registered or certified mail, the County Auditor in the adjoining county if a parcel identified in the amendment:
 - a. abuts another county;
 - b. adjoins another county; or,
 - c. is within 1 mile of the County’s border.
4. *Signage.*
 - a. *Sign Provided by Planning Department.* The Planning Department will provide a sign that complies with SDCL 11-2-28.3.
 - b. *Placement.* The sign must be placed on or near the parcel identified in the application in such a manner that gives the public reasonable notice an amendment has been requested.
 - c. *Timing.* The sign must be in place at least 10 days before the Planning Commission hearing and remain there until after the Board has made its decision.

C. *Public Hearings.*

1. *Rezone Amendment.*
 - a. *Planning Commission.*
 - i. *Prerequisites.* Before a hearing may be held, a landowner must do the following:
 - a. fill out the application form completely;
 - b. submit the application form to the Planning Department; and,
 - c. pay the fee required by PCZO § 511.
 - ii. *Scheduling a Hearing.*
 - a. *Compliance with Prerequisites.* If a landowner has complied with PCZO § 508(C)(1)(a), then the Planning Director must schedule a hearing before the Planning Commission.

- b. Timing. The hearing must occur within 45 days of compliance with PCZO § 508(C)(1)(a).
 - iii. Role. The Planning Commission reviews a Rezone amendment application and then makes a recommendation to the Board.
 - iv. Recommendation. In making its recommendation, the Planning Commission may:
 - a. continue; or,
 - b. approve, continue, or deny.
 - b. *Board of Commissioners.*
 - i. Scheduling a Hearing.
 - a. Recommendation from Planning Commission. Upon a recommendation from the Planning Commission, the Planning Director must schedule at least 1 hearing before the Board.
 - b. Timing. The Planning Director will work with the landowner to schedule the meetings.
 - ii. Role. The Board reviews the amendment application and then makes a decision on how to proceed.
 - iii. Review and Decision. In making its decision, the Board must:
 - a. give the Planning Commission's recommendation due regard; and,
 - b. approve, continue, or deny.
2. *Comprehensive Plan Amendment.*
- a. *Planning Commission.*
 - i. Prerequisites. Before a hearing may be held, a landowner must do the following:
 - a. fill out the application form completely;
 - b. submit the application form to the Planning Department; and,
 - c. pay the fee required by PCZO § 511.
 - ii. Scheduling a Hearing.
 - a. Compliance with Prerequisites. If a landowner has complied with PCZO § 508(C)(2)(a), then the Planning Director must schedule a hearing before the Planning Commission.
 - b. Timing. The hearing must occur within 45 days of compliance with PCZO § 508(C)(2)(a).
 - iii. Role. The Planning Commission reviews an application for a Comprehensive Plan Amendment and then makes a recommendation to the Board.

- iv. Recommendation. In making its recommendation, the Planning Commission may:
 - a. continue; or,
 - b. approve, continue, or deny.

b. *Board of Commissioners.*

- i. Scheduling a Hearing.
 - a. Recommendation from Planning Commission. Upon a recommendation from the Planning Commission, the Planning Director must schedule at least 1 hearing before the Board.
 - b. Timing. The Planning Director will work with the landowner to schedule the meetings.
- ii. Role. The Board reviews the amendment application and then makes a decision on how to proceed.
- iii. Review and Decision. In making its decision, the Board must:
 - a. give the Planning Commission's recommendation due regard; and,
 - b. approve, continue, or deny.

D. *Effective Date.*

1. *Rezone Amendment.*

- a. General Rule. A Rezone doesn't take effect until 20 days after a Notice of Fact of Adoption has been published once in a legal newspaper of the County.
- b. Exception. A Rezone amendment may be referred to a vote of the qualified voters of the County under SDCL 7-18A-15 through -24. If that occurs, then the effective date is suspended until referendum process is completed.

2. *Comprehensive Plan Amendment.*

- a. General Rule. A Comprehensive Plan Amendment does not take effect until 20 days after a Notice of Fact of Adoption has been published once in a legal newspaper of the County.
- b. Exception. A Comprehensive Plan Amendment may be referred to a vote of the qualified voters of the County in accordance with SDCL 7-18A-15 through -24. If that occurs, then the effective date is suspended until referendum process is completed.

E. *Appeals.* An appeal from the Board's decision to grant or deny a Rezone or Comprehensive Plan Amendment must be brought in accordance with SDCL ch. 7-8.

SECTION 509 - VARIANCE

The purpose of the Variance is to modify the strict application of the specific requirements of these Zoning Ordinances in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions; whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land.

A. Application:

Application for a Variance may be made when the literal interpretation of these Zoning Ordinances caused undue hardship or the Planning Director has denied a Building Permit in writing.

B. Public Hearing:

Upon receipt of an application and fee, the Board of Adjustment shall hold a public hearing having first given ten (10) days' notice. Such notice of the time and place of such hearing shall be published in an official paper of general circulation. The Board of Adjustment shall consider and decide all applications for variances within thirty (30) days of such public hearing and in accordance with the standards provided below. Approval of a Variance request shall require a two-thirds vote of the full Board of Adjustment.

C. Standards and Variances:

In granting a Variance, the Board of Adjustment shall ascertain that the following criteria are met:

1. Variances shall be granted only where specific circumstances or conditions (such as exceptional narrowness, topography, or siting) fully described in the finding of the Board of Adjustment, do not apply generally in the district.
2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.
3. For the reasons fully set forth in the finding of the Board of Adjustment, the aforesaid circumstances or conditions are such that the strict application of the provisions of these Zoning Ordinances would be an unwarranted hardship, constituting an unreasonable deprivation of use as distinguished from the mere grant of a privilege.
4. The granting of any Variance is in harmony with the general purposes and intent of these Zoning Ordinances and shall not be injurious to the neighborhood or detrimental to the public welfare.

D. Requirements for the Granting of a Variance:

Before the Board of Adjustment shall have the authority to grant a Variance, the person claiming the Variance has the burden of showing:

1. That the granting of the permit shall not be contrary to the public interest.
2. That the literal enforcement of this Zoning Ordinance shall result in unnecessary hardship.
3. Notice of a request for a Variance, consisting of a sign one (1) foot by two (2) feet shall be posted on the frontage of the property for which a variance is requested. A good faith effort must be made by the applicant to notify all property owners (inclusive of Contract for Deed buyers) holding property within five hundred (500) feet of the property or district for which the request is filed. Said notice shall state the change requested and the legal description of the property and shall be sent by certified mail with return receipt requested to all property owners (inclusive of Contract for Deed buyers) within five hundred (500) feet inclusive of right-of-way as determined by the records of the Director of Equalization.

SECTION 510 - CONDITIONAL USE PERMITS (Revised 10-07-20)

Within each zoning district there are uses that are allowed by right. However, due to special characteristics attendant to their operation, other uses may be permitted in a zoning district subject to evaluation and approval by the approving authority. A Permit is required for any use identified in the Zoning Ordinance as a Conditional Use.

A. Applicability

Due to public health, safety, and welfare concerns, some Conditional Uses may be regulated by specific ordinance. For example, aggregate mining is permitted subject to approval by the Board of Commissioners under the procedures prescribed in PCZO Section 320. Conditional Uses not regulated by specific ordinance are considered and decided under PCZO Section 510.

B. Permit Process and Notice Requirements

1. Application.

Conditional Use Permit applications may be obtained from the Planning Department. Applications must be complete prior to consideration by the Planning Commission and include all of the following:

- a. Application fee.

- b. Name, mailing address, e-mail address, and telephone number of the applicant and property owner, and any authorized agent (if applicable).
- c. Legal description, street address, or other description of real property that clearly identifies the real property which is the subject of the application.
- d. Current zoning district and surrounding zoning.
- e. Size and physical description of the subject property.
- f. Site plan showing location and yard setback distance for proposed and all existing buildings or structures. The site plan must also include location of wells, drain fields, septic tanks, recorded easements, driveways, and Special Flood Hazard areas.
- g. Utilities, size of any on-site wastewater treatment system, and water source.
- h. Current use and requested conditional use.
- i. Information relevant to specified criteria set forth in subsection D “Criteria for Evaluating Conditional Use Application.” *See* Application guidelines.
- j. Signature of applicant or authorized agent (if applicable) and property owner.
- k. Other information and documentation as required by the Planning Department.

FURTHER INFORMATION MAY BE REQUESTED AND REQUIRED BY THE PLANNING COMMISSION.

2. Notice.

Upon receipt of a complete application and payment of application fee, the Planning Department must provide the applicant a sign to be posted on the property that is the subject of the application. The purpose of the sign is to inform the public of the Conditional Use Permit application and must be posted in a location with the greatest visibility to the public. The sign must be posted no less than ten days prior to the public hearing on the application.

The applicant must also notify all property owners (including recorded Contract for Deed buyers) of land located within 500 feet, inclusive of any right-of-way, of the outer boundaries of the subject property of the pending CUP application. Based upon Department of Equalization records, the Planning Department will determine and provide a list of property owners within 500 feet. Notice must be by registered or certified mail at least 10 days prior to the public hearing on the application. The applicant must use “Notice of Hearing” letters provided by the Planning Department.

3. Public Hearing

Upon receipt of a complete application (including application fee) and proper notice to adjoining landowners, The Planning Commission must hold a public hearing on the application. Notice of time and place of hearing must be given at least 10 days in advance by publication in the legal newspapers of the County.

C. Approving Authority

The Planning Commission is the approving authority of a Conditional Use regulated under PCZO Section 510. The Planning Commission may approve, approve with conditions, or deny the Conditional Use application. Approval of a Conditional Use requires the affirmative majority vote of the Commission.

D. Criteria for Evaluating Conditional Use Application

Conditional Uses decided under PCZO Section 510 must meet the following criteria:

Criteria 1: The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.

Application guideline: Explain how the proposed land use will fit into the neighborhood. If there is going to be lighting, noise, outdoor storage, traffic, or other outside activities, explain how the activities will be limited to a reasonable level.

Criteria 2: The uses, values and enjoyment of other property in the neighborhood for purposes already permitted may not be in any foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.

Application guideline: Explain how the proposed land use will fit into the neighborhood and what will be done to avoid potential nuisances, such as limiting the hours of operation, noise control measures, adequate parking, paving the parking area, or the screening of outdoor storage.

Criteria 3: That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Application guideline: Explain how the proposed land use will not interfere with the development of the surrounding property.

Criteria 4: That adequate utilities, access roads, drainage and other necessary site improvements will be provided.

Application guideline: Explain what impact the proposed use has on such things as water, septic, storm water, electricity, and traffic. Provide information on improvements that may be needed or if additional buildings are needed.

Criteria 5: Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Application guideline: Provide information on vehicle traffic that the proposed use will generate include frequency and types of vehicles.

Criteria 6: That the Conditional Use will conform to all applicable regulations of the district in which it is located.

Application guideline: Review the current zoning districts to ensure your project is compliant and in harmony with current land use guidelines.

Criteria 7: That the Conditional Use is consistent with the adopted County Comprehensive Plan.

Application guideline: Review the current Pennington County Comprehensive Plan to ensure your project is compliant and in harmony with future land use guidelines.

E. Appeal

An appeal of a decision granting or denying a Conditional Use Permit must be brought under a petition, duly verified, for a writ of certiorari directed to the Planning Commission and as prescribed in SDCL Chapter 11-2.

F. Review of Conditional Use

Conditional Uses are subject to review by the Planning Commission for compliance with conditions of approval. A review may occur as a condition of approval, at the request of the Planning Commission, or upon a substantiated complaint. At the conclusion of the review, the Planning Commission may (1) approve the Conditional Use under the conditions already imposed; (2) approve the Conditional Use with additional conditions, subject to another review; (3) schedule another review; or (4) schedule a revocation hearing in accordance with subsection (I) of this Ordinance.

G. Expiration (**Effective 01-20-10**)

A Conditional Use Permit expires if:

1. The Conditional Use for which the Permit was granted ceased for a period of one year; or,
2. The Conditional Use for which the Permit was granted was not established, according to the terms and conditions of the Permit, within two years from date of approval.

H. Building Permit

If a Building Permit application is submitted for purpose of a Conditional Use, the Building Permit may be issued only upon approval of the Conditional Use application. A decision approving a Conditional Use is subject to appeal by filing a petition for writ of certiorari. Applicants are advised any and all construction must cease upon the filing of a petition.

I. Revocation of Conditional Use Permit

Any Conditional Use approved under the provisions of PCZO Section 510 must be established and conducted in conformity with the conditions of approval of the Permit. Failure to comply with conditions of approval is cause for revocation of the Permit.

The Planning Director may schedule a revocation hearing before the Planning Commission if:

- the owner or applicant has failed repeatedly to comply with the conditions of the approved Permit; or,
- the continued Conditional Use is a threat to public health, safety, or general welfare.

Notice of time and place of hearing shall be given, in writing, to the permit holder at least 10 days in advance of hearing. Surrounding property owners must also be given written notice of the hearing as provided under Section 510.B.2. In addition, notice of time and place of the hearing shall be published at least 10 days in advance of hearing in the legal newspapers of the County.

J. Enforcement:

Failure to comply with conditions of approval of a Conditional Use Permit is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO Section 514.

K. Amendments:

Amendments to a Conditional Use Permit will be considered and approved in the same manner as required for a separate Conditional Use application.

L. Ratification of Conditional Uses:

The South Dakota Supreme Court decision of *Pennington County v. Moore*, 525 N.W.2d 257 (SD 1994) invalidated the then in effect Pennington County Zoning Laws. All Conditional Uses established at the time of the *Moore* decision are ratified and approved pursuant to the conditions of the Permit.

SECTION 511 – FEES (Revised 06-26-24)

All fees pertaining to these Ordinances are payable to Pennington County and shall be levied and collected by the Planning Department as provided below. All fees shall be rounded to the nearest whole dollar. Any request that requires a property owners' list will incur an additional \$20.00 fee.

A. Building Permit:

1. Commercial/Industrial building or structure – Based on construction cost (including cost of building or structure, parking areas, and roads). See Table 1 below:
 - a. Construction cost will be determined by bid, bill of sale, or materials list.

Table 1. Construction Cost by Bid, Bill of Sale, or Materials List.

Total Valuation	Fees
\$0.00 - \$10,000	\$100.00
\$10,001 - \$500,000	0.01 of Construction Cost
\$500,001 - \$1,000,000	\$5,000 for the first \$500,000, plus \$9.00 for each additional \$1,000 or fraction thereof.
\$1,000,001 - \$5,000,000	\$9,500 for the first \$1,000,000, plus \$7.00 for each additional \$1,000 or fraction thereof.
\$5,000,001 - \$10,000,000	\$37,500 for the first \$5,000,000, plus \$5.00 for each additional \$1,000 or fraction thereof.
\$10,000,001 and up	\$62,500 for the first 10,000,000, plus \$3.00 for each additional \$1,000 or fraction thereof.

2. Demolition or removal of building or structure. Building Permit required (no charge).
3. Mobile Home. A Building Permit is required for the placement of any mobile, manufactured, or modular home.
 - a. Mobile Home Park. Fee for mobile, manufactured, or modular home placed within an approved mobile home park. \$50.00.
 - b. Other. Fee for mobile, manufactured, or modular home placed outside an approved mobile home park will be calculated at \$45.00 per square foot x .004 or \$25, whichever is greater.
4. Recreational Park Trailer (also referred to as "Park Model Home"). A Building Permit is required for the placement of any recreational park trailer deemed an improvement to the land and taxable as real property under SDCL 10-4-2.
 - a. Recreational Vehicle Park. Fee for recreational park trailer placed within an approved recreational vehicle park. \$50.00.
 - b. Other. Fee for recreational park trailer placed outside an approved recreational vehicle park will be calculated at \$45.00 per square foot x .004 or \$25.00, whichever is greater.
5. Renewal of Building Permit. \$25.00 or 25% of original Building Permit fee, whichever is greater.
6. Residential/Non-Commercial building or structure. \$30.00 or .004 of construction cost, whichever is greater.
 - a. Calculation of Construction Cost.
 - i. Dwelling or residential accessory building or structure. Construction cost will be determined by square feet using the most current International Code Council Building Valuation Data.
 - (1.) Exception. New or existing construction basement finish will be calculated at \$45.00 per square foot x 0.004 or \$30, whichever is greater.
 - ii. Agricultural building or structure (not including dwellings). Real property must be zoned *and* taxed Agriculture. Construction cost will be calculated at \$20.00 per square foot.
 - iii. Fence over eight feet in height. Construction cost will be calculated at \$15.00 per square foot.

- iv. Retaining wall over four feet in height. Construction cost will be calculated at \$15.00 per square foot.

- 7. Temporary Building Permit. \$60.00
- B. Conditional Use Permit under Section 510: \$500.00
- C. Energy System:
 - 1. Solar Energy System (utility-scale).
 - a. Application. \$1,000.00
 - b. Annual Review Fee. \$200.00
 - 2. Wind Energy System (utility-scale).
 - a. Application. \$1,000.00
 - b. Annual Review Fee. \$200.00
- D. Floodplain Development Permit: \$125.00
- E. Highway/Section Line/Right-of-Way:
 - 1. Road Construction within a Section Line. \$250.00
 - 2. Road Naming. \$100.00
 - a. Road Sign(s): \$500 per sign
 - 3. Relocation of Right-of-Way or Section Line: \$500.00
 - 4. Vacation of Public Right-of-Way or Section Line. \$500.00
- F. Mining Permit:
 - 1. Application.
 - a. Permit Limit exceeding 10 acres. \$2,500.00
 - b. Permit Limit equal to or less than 10 acres. \$500.00
 - 2. Transfer of Mining Permit. \$1,000.00
 - 3. Review Fee. \$500.00
 - 4. Legal Non-Conforming Registration. \$300.00

* If applicant is a unit of state or local government, no fee is required.

G. On-site Wastewater Treatment System:

1. Operating License. \$20.00
2. Construction Permit.
 - a. Initial application (including two on-site inspections). \$300.00
 - b. Additional on-site inspections (if necessary). \$100.00 (per inspection).
 - c. Inspections outside of normal office hours. \$250.00 (in addition to application fee).
3. Installer Certification Application Fee: \$50.00

H. Planned Unit Development:

1. Application (Overlay). \$930.00
2. Major Amendment. \$400.00
3. Minor Amendment. \$300.00
4. Special Consideration (Trailwood Village only). \$300.00

I. Plat:

1. Layout Plan. \$100.00
2. Minor. \$350.00, plus \$25.00 per lot
3. Preliminary. \$350.00, plus \$25.00 per lot
4. Final. \$100.00
 - a. Road Sign(s): \$500 per sign
5. Vacation of Plat. \$350.00
6. Lot Line Adjustment Plat. \$350.00, plus \$25.00 per lot.

J. Sign Deposit:

1. A \$25.00 fee is required for signs provided by the Planning Department, pursuant to the requirements of SDCL Chapter 11-2.

K. Sign Permit:

1. On-premise or Business Sign. \$100.00
2. Off-premise. \$260.00
3. Community Sign. \$60.00

L. South Dakota Housing acreage letter. \$25.00

- M. Special Permitted Use Application: \$300.00
- N. Storm Water Permit:
 - 1. Small Scale Project.
 - a. Associated with a Building Permit. \$25.00
 - b. Stand-alone. \$50.00
 - c. Renewal. \$50.00
 - 2. Large Scale and Industrial Project.
 - a. Associated with a Building Permit. \$100.00
 - b. Stand-alone. \$250.00
 - c. Renewal. \$250.00
 - 3. Continuous Operation.
 - a. Applicable small or large-scale Storm Water Permit fee. See above.
 - b. Annual Review Fee. \$100.00
- O. Tax Increment Finance District Application: \$1,000.00
- P. Telecommunications:
 - 1. Facility Permit. \$1,000.00
- Q. Vacation Home Rental License Fee: \$150.00
- R. Variance: \$500.00
- S. Zoning
 - 1. Rezone. \$500.00
 - 2. Comprehensive Plan Amendment. \$500.00
- T. Penalties

Fee is doubled for any use or work commenced *prior* to approval of a required permit. A Penalty Fee will not be assessed if work performed without a permit arises out of an emergency and the Planning Director or designee concludes work necessary to protect public health, welfare, or safety. The Board of Commissioners may waive penalty fees if mitigating factors are present.

SECTION 512 - AMENDMENTS

The regulations, restrictions, areas, and boundaries set forth in these Zoning Ordinances may, from time to time, be amended, supplemented, revised, or repealed as conditions warrant, subject to the following conditions:

A. Application:

An application for a proposed amendment shall be filed with the Planning Department. Amendments may be initiated by a property owner or his designated representative, by a governmental agency, or by the Commission.

B. Public Hearing:

Upon application, the Commission shall hold a public hearing on the proposed amendment. Notice of the public hearing shall be given at least ten (10) days prior in advance by publication in a newspaper having general circulation in the County. The Commission shall then submit its report to the Board. The proposed amendments shall be acted upon by the Board as other ordinances except that a public hearing shall be held prior to the adoption of such Zoning Ordinance. Notice of the time and place when and where such hearing shall occur shall be given at least ten (10) days in advance of the hearing date in a newspaper having general circulation in the County.

C. Restrictions on Applications:

No more than one application for an amendment may be submitted by an individual, or his representative, or agent, in any twelve (12) month period concerning the same or similar amendment to a regulation, restriction, area, or boundary except upon a showing by the applicant of a material change of circumstances sufficient to justify reconsideration of the proposed amendment. This section shall not apply to a governmental agency or the Commission.

SECTION 513 – RESTRICTIONS ON APPLICATIONS UPON A DECISION OF THE RULING OF THE PLANNING COMMISSION OR COUNTY BOARD

A. Restrictions on Applications:

No more than one application for an Ordinance Amendment, Rezoning, Planned Unit Development, Conditional Use Permit, or Variance, may be submitted by an individual, or his representative, or agent, in any twelve (12) month period concerning the same or similar request except upon a showing by the applicant of a material change of circumstances sufficient to justify reconsideration of the proposed request. This section shall not apply to a governmental agency or the Commission.

If the request is denied without prejudice, the applicant may apply for the same request within a years' time without having to pay the application fees. However, the advertising fee will need to be paid by the applicant and the notice of hearing letters for neighboring property owners must also be completed by the applicant.

SECTION 514 – VIOLATIONS AND PENALTIES (Revised 09-23-20)

A. Penalty Fee

Permit fees under PCZO Section 511 are doubled for any use or work commenced *prior* to approval of a required permit. A Penalty Fee will not be assessed if work performed without a permit arises out of an emergency and Planning Director or designee concludes the work was necessary to protect public health, welfare, or safety. The Board of Commissioners may waive penalty fees if mitigating factors are present.

B. Fine and Imprisonment

Any person, firm, corporation, or association violating any provision of the Pennington County Zoning Ordinance, or failing to comply with the conditions of an approved Permit, is punishable by a fine not to exceed \$500.00 for each violation or imprisonment for a period not to exceed 30 days for each violation, or both.

Notice of violation is not required prior to the filing of a complaint. However, upon notice of a violation, each day the violation continues constitutes and may be charged as a separate violation.

C. Injunction

In addition to all other remedies available to Pennington County to prevent, restrain, correct or abate violations (or threatened violations) of the Pennington County Zoning Ordinance, the Planning Director may seek injunctive relief pursuant to SDCL Chapter 21-8 against any property owner, Permittee, or other person in violation of the Ordinance or in violation of the conditions of an approved Permit. The injunctive relief authorized may include a reparative injunction requiring any affected property be brought or returned to a condition which does not constitute a public nuisance as that term is defined under SDCL Chapter 21-10.

D. Abatement

A violation of the Pennington County Zoning Ordinance constituting a public nuisance as defined under SDCL Chapter 21-10 is subject to abatement. The Planning Director has authority to declare and summarily abate a public nuisance pursuant to this Ordinance and SDCL 21-10-6 and the maximum cost is not to exceed \$1,000.00.

SECTION 515 - SEVERABILITY

These Zoning Ordinances and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, it is hereby provided that the remainder of these Zoning Ordinances shall not be affected thereby.

SECTION 516 - REPEAL

Any ordinance or regulation or portion thereof in conflict with the provisions contained herein is hereby repealed.

SECTION 517 – SPECIAL PERMITTED USES (Effective 12-07-22)

Any ordinance or regulation or portion thereof in conflict with the provisions contained herein is hereby repealed.

A. *Authority.*

Pursuant to SDCL chapter 11-2, SDCL chapter 7-18A, SDCL § 11-2-17.5, SDCL § 11-2-17.6, and SDCL § 11-2-65.1, Pennington County may establish a process for certification of certain uses upon an applicant meeting specified criteria for that use.

B. *Applicability.*

All uses designated as a ‘Special Permitted Use’ are required to obtain a permit pursuant to this Section, if the applicant demonstrates that all specified criteria are met. Uses that are not a use by right and cannot meet the specified criteria are required to obtain a Conditional Use Permit pursuant to the Pennington County Zoning Ordinance (PCZO) § 510.

C. *Permit Process and Notice Requirements.*

1. *Application.* Special Permitted Use Applications may be obtained from the Planning Department. Applications must be complete prior to consideration and include all of the following:
 - a. Application fee;
 - b. Name, mailing address, e-mail address, and telephone number of the applicant and property owner, and any authorized agent (if applicable);
 - c. Legal description, street address, or other description of real property that clearly identifies the real property which is the subject of the application;
 - d. Current zoning district and surrounding zoning;
 - e. Size and physical description of the subject property;

- f. Site plan showing location and yard setback distance for proposed and all existing buildings or structures. The site plan must also include location of wells, drain fields, septic tanks, recorded easements, driveways, and Special Flood Hazard areas;
- g. Utilities, size of any on-site wastewater treatment system, and water source;
- h. Current use and requested Special Permitted Use;
- i. Proof that the request for the use meets specified criteria set forth in subsection D “Special Permitted Uses”;
- j. Proof of the Notice, including the mailing date, as required by PCZO § 517(C)(2);
- k. Signature of applicant or authorized agent (if applicable) and property owner; and,
- l. Any other information and documentation as required by the Planning Department in making its determination.

2. *Notice.*

- a. Applicants of a Special Permitted Use must notify all adjacent (touching or sharing a common boundary) property owners to the subject property of the pending application. The Planning Department will determine and provide a list of adjacent property owners, based upon Department of Equalization records.
- b. Notice must be sent by first class mail.
- c. The applicant must use the “Application and Notice of Special Permitted Use” letters provided by the Planning Department.
- d. Notice must be sent 10 or more days before the date of decision by the Planning Director.

D. *Special Permitted Uses Defined.* The following are Special Permitted Uses:

1. *Short-term uses.* All uses, except those herein designated, that exist or operate for less than 180-consecutive calendar days out of a year in any zoning district. Contractor’s Storage, Staging, and Laydown Yards are not Special Permitted Uses and may be required to comply with PCZO § 510.
2. *Temporary Residence in an RV.* Residing in a Recreational Vehicle for no more than two (2) years, while constructing a single-family residence.
3. *Certain accessory structures.* Accessory structures as a principal use in residential districts or in an agriculture district on lots not taxed by the Department of Equalization as agriculture.
4. *Churches.* Churches in all zoning districts.

5. *Public service structures.* Public Service Structures in all zoning districts.
 - a. Police and Fire Stations.
 - b. Well houses and Pump Stations (for community or public potable water).
 - c. Lift Stations (for community or public wastewater systems).
- E. *General Criteria for all Special Permitted Uses.* The following are criteria that every Special Permitted Use is required to demonstrate conformity with:
 1. *Conformity.* The applicant must demonstrate that the requested use conforms to one or more of the use(s) described in PCZO § 517(D). Depending on the request, an applicant may be required to apply for more than one Special Use Permit.
 2. *Underlying zoning regulations applicable.* The property must be in compliance with all applicable regulations of the district in which it is located.
 3. *Necessary Improvements.* That adequate utilities, access roads, drainage and other necessary site improvements are provided.
 4. *Parking.* All parking requirements set forth in PCZO § 310 are met.
 5. *Ordinance violations.* The property has no active or pending Ordinance violations.
- F. *Specific Criteria for certain Special Permitted Uses.*
 1. *Temporary Residence in an RV:*
 - a. The single-family residence must be constructed within two (2) years of approval of the Special Permitted Use.
 - b. This Special Permitted Use automatically expires two (2) years following completion of any final appeal of the decision.
 - c. That the wastewater from the RV be properly disposed of at all times by utilizing the existing On-Site Wastewater Treatment System on the property.
 - d. That only one (1) Recreational Vehicle (RV) allowed to be utilized as temporary living quarters.
 - e. That the RV not be utilized as a nightly or weekly vacation rental and only be used by the property owner for personal use.
 2. *Accessory Structure:*
 - a. That the accessory structure is not to be used for living quarters.
 - b. That the accessory structure is not for commercial use.

3. *Churches or Public Service Structures:*

- a. That all outdoor lighting shall continually be reflected within the property boundaries so as to not shine onto adjoining properties and rights-of-way and to not be a hazard to the passing motorist or constitute a nuisance of any kind.
- b. That the physical design and compatibility with surrounding structures in mass, scale and style, design and architectural detailing.
- c. That all signage meets the requirements of § 312.

G. *Determination on a Special Permitted Use.*

1. *Time.* An initial application for a Special Permitted Use will be reviewed and determined by the Planning Department for conformity with the criteria within 30 days unless withdrawn by the applicant or good cause exists for the delay.
2. *Standard of Review.* A use certified as a Special Permitted Use, under the Zoning Ordinance, shall be approved by the Planning Director or his/her designee, if the applicant demonstrates that all specified criteria are met.

H. *Appeal.*

1. *Time.* An appeal of a decision granting or denying a Special Permitted Use must be brought as an appeal to the Board of Adjustment within 21 days of the date of determination and in accordance with SDCL Chapter 11-2.
2. *Stay of Proceedings.* Any and all construction and work for the purpose of a Special Permitted Use must cease upon the filing of an appeal, pursuant to SDCL § 11-2-56.

I. *Review of Special Permitted Use.*

1. *Circumstances of review.* Special Permitted Uses are subject to review by the Planning Department for compliance with the designated criteria. A review will occur upon the following circumstances:
 - a. It is designated as criteria of approval; or,
 - b. The Planning Department receives a substantiated complaint that the property is in violation of any Zoning Ordinance or designated criteria.
2. *Determination.* In issuing a determination, the Planning Director or his/her designee may:
 - a. Approve the Special Permitted Use subject to the designated criteria;
 - b. Continue the review for no more than 90 days for the applicant to come into compliance with the designated criteria; or,
 - c. Terminate the Special Permitted Use in accordance PCZO § 517(L).

J. *Expiration.* A Special Permitted Use Permit expires if:

1. *Ceasing for one (1) year or more.* The Special Permitted Use for which the Permit was granted ceases for a period of one (1) year or more;
2. *Never established use.* The Special Permitted Use for which the Permit was granted was not established within two (2) years from date of approval; or,
3. *Expiration as criteria.* The criteria designate an automatic expiration period.

K. *Building Permit.*

If a Building Permit application is submitted for the purpose of a Special Permitted Use, the Building Permit may be issued only upon approval of the Special Permitted Use application.

L. *Termination of Special Permitted Use Permit.*

Any Special Permitted Use approved under the provisions of PCZO § 517 must be established and conducted in conformity with the designated criteria outlined in this PCZO § 517. Failure to comply with the criteria is cause for termination of the Permit.

1. *Causes for Termination.* The Planning Director will provide a Notice of Termination to the Permit holder, if:
 - a. The owner or applicant has failed repeatedly to comply with the stated criteria of the approved Permit; or,
 - b. The continued Special Permitted Use is a threat to public health, safety, or general welfare.
2. *Notice.* The Notice of Termination shall be given, in writing, to the Permit holder.
3. *Response.* The Permit holder will have 14 days to respond from the date of mailing of the Notice of Termination with proposed corrective actions. If the corrective action is not completed within 60 days of the Notice of Termination, the Permit will be terminated.
4. *Appeal of Termination.* The Permit holder may appeal the decision to terminate the Permit in accordance with § 517(H).

M. *Enforcement.*

Failure to comply with the stated criteria of a Special Permitted Use Permit is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO § 514 and may be declared a nuisance pursuant to Pennington County Ordinance No. 106.