BROOKINGS COUNTY ORDINANCE NO. 2018-02

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF ORDINANCE 2015-03

WHEREAS, BROOKINGS COUNTY previously adopted Ordinance 2015-03, which re-adopted the 1997 Revised Zoning Ordinance in accordance with Chapter 11-2;

WHEREAS, the Brookings County, South Dakota, Board of County Commissioners deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to amend Ordinance 2015-03 by repealing the following Articles: Article 5.00 - County Zoning Commission, Appeals, Variance and Conditional Uses.; Article 6.00 – Duties of County Zoning Officer, Board of County Commissioners and Courts on Matters of Appeal.; Article 7.00 – Enforcement.; Article 8.00 – Schedule of Fees, Charges and Expenses.; Article 10.00 – Amendments.; and replacing said Articles with Article VI, a copy of which is attached hereto, Administration-Chapter 6:01. General.; Chapter 6.02. Zoning Official.; Chapter 6.03. Planning and Zoning Commission.; Chapter 6.04. Board of Adjustment.; Chapter 6.05. Procedures for Conditional Uses, Variances, and Zoning Amendments., and Chapter 6.06. Repeal of Conflicting Ordinances.

THEREFORE, BE IT ORDAINED BY BROOKINGS COUNTY, SOUTH DAKOTA, that Ordinance 2015-03 is hereby amended by repealing the following Articles: Article 5.00 - County Zoning Commission, Appeals, Variance and Conditional Uses.; Article 6.00 – Duties of County Zoning Officer, Board of County Commissioners and Courts on Matters of Appeal.; Article 7.00 – Enforcement.; Article 8.00 – Schedule of Fees, Charges and Expenses.; Article 10.00 – Amendments.; and replacing said Articles with Article VI, a copy which is attached hereto, Administration-Chapter 6:01. General.; Chapter 6.02. Zoning Official.; Chapter 6.03. Planning and Zoning Commission.; Chapter 6.04. Board of Adjustment.; Chapter 6.05. Procedures for Conditional Uses, Variances, and Zoning Amendments., and Chapter 6.06. Repeal of Conflicting Ordinances.

Adopted this 13th day of March, 2018.

BROOKINGS COUNTY:

Lee Ann Pierce,
Chairperson, Brookings County
Board of County Commissioners

ATTEST:

Vickie Buseth
Brookings County Finance Officer

First Reading: February 20, 2018

Second Reading: March 13, 2018

Adopted: March 13, 2017

Publications: March 22, 2018 and March 29, 2018

Effective Date: April 19 2018

ARTICLE VI
ADMINISTRATION

CHAPTER 6.01. GENERAL.

Section 6.01.01. Permits Required.

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a building permit issued by the Brookings County Zoning Official. The Zoning Official, except in conformity with the provisions of this ordinance, shall issue no permit unless said Official received a written order from the Brookings County Board of Adjustment in the form of an administrative review, a conditional use permit, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit, unless the building meets the requirements of 6.01.03(a) or 6.01.03(b). A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

Section 6.01.02. Applications.

All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Zoning Official, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05 and shall require an updated building permit and/or a conditional use a permit.

Section 6.01.03. Building Permits.

1. Building Permits Required. It shall be unlawful to commence the excavation for, or the construction of, any building, structure, or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the County Zoning Official has issued a building permit for such work. Furthermore, it shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

a. No building permit is necessary for a structure under one-hundred twenty (120) square feet or less.

b. No building permit is necessary for the following: shingling, replacement siding, window replacement, painting of exterior, and any interior improvements that do not involve the moving of load-bearing walls.

2. Issuance of a Building Permit. In applying to the County Zoning Official for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, and height and location of all buildings, to be erected, altered, or moved and of any building already on the lot. The County Zoning Official shall also state the existing and intended use of all such buildings, the location of existing or proposed water and sewer facilities, and supply such other information as may be required by the County Zoning Official for determining whether the provisions of this regulation are being observed. If the proposed excavation or construction, as set forth in the application, are in conformity with the provisions of this regulation, and other regulations of the County then in force, including the International Building Code (IBC) and International Residence Code (IRC), as adopted by the Brookings County Commission, the County Zoning Official shall issue a building permit for such excavation or construction. If a building permit is refused, the County Zoning Official shall state such refusal in writing, with the cause, and shall thereupon mail notice of such refusal to the applicant at the address indicated upon the application, and a copy retained by the County Development Department. The County Zoning Official shall grant or deny the permit within a reasonable time from the date the application is submitted.

3. The issuance of a building permit shall, in no case, be construed as waiving any provisions of this regulation. All building permits shall be valid for eighteen (18) months after the date of issuance; however, a building permit shall become void six (6) months from the date of issuance unless substantial progress has been made by that date on the project described therein. A six (6) month extension may be granted if requested in writing at least one (1) month prior to the expiration date. Maximum extension authorized is six (6) months.

Section 6.01.04. Building Permits Displayed.

1. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way. The permit shall be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

Section 6.01.05. Fees.

1. The Board of County Commissioners shall establish, by resolution, a schedule of fees, charges, and expenses and a collection procedure for building permits, appeals, and other matters pertaining to this regulation. The schedule of fees shall be posted in the County Development Department and may be altered or amended only by the Board of County Commissioners. Changes in the zoning regulations or maps which are initiated by incorporated communities or the County shall not require a fee.

2. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

CHAPTER 6.02. ZONING OFFICIAL.

Section 6.02.01. Enforcing Officer.

The provisions of this Ordinance shall be administered and enforced by the Zoning Official appointed by the Board of County Commissioners, who shall have the power to make inspection of buildings or premises necessary to enforce this Ordinance.

Section 6.02.02. Duties.

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

1. Issue all building permits and make and maintain records thereof.

2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.

3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.

4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

5. Revoke any building permit, which was unlawfully issued, or any building permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.

6. Maintain permanent and current records, in accordance with the State of South Dakota Record Retention, as adopted by resolution by the Brookings County Commission, of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.

7. Prepare all necessary documents as required by this Ordinance, or at the direction of the Brookings County Planning Commission and/or the Brookings County Board of Adjustment and/or the Brookings County Commission. The Zoning Official shall consult with the States Attorney's Office as needed for assistance with drafting said documents.

8. Provide public information relative to all matters arising out of this Ordinance.

9. Forward to the Brookings County Planning Commission all plats and/or applications for amendments to this Ordinance.

10. Forward to the Brookings County Board of Adjustment, applications for appeals, conditional use permits, variances, or other matters on which the Board of Adjustment is required to pass under this Ordinance.

11. Initiate, direct, and review, from time to time, a study of the provisions of this Ordinance, and to make such reports available to the Brookings County Planning Commission.

12. The Zoning Official shall receive applications required under this Ordinance, specifically but not limited to Building Permits, Conditional Use Permits, Variances, and Zoning Amendments.

    a. For building permits, the Zoning Official shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.

    b. For Conditional Uses and Variances, the Zoning Official shall review the application, and shall make recommendations regarding said application to the Brookings County Board of Adjustment.

    c. For Zoning Amendments, the Zoning Official shall review the application, and shall make recommendations regarding said application to the Brookings County Planning Commission and Board of County Commissioners.

Section 6.02.03. Right of Entry.

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

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

Section 6.02.04. Stop Order.

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

Section 6.02.05. Occupancy Violation.

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

In the event of a violation or a threatened violation of these regulations or restrictions, the Board of County Commissioners or any member thereof, in addition to other remedies, may institute an appropriate action or proceeding to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation, and it is the duty of the State's Attorney to institute such action.

CHAPTER 6.03. PLANNING AND ZONING COMMISSION.

Section 6.03.01. Establishment.

Within Brookings County, outside of incorporated municipalities and joint jurisdictional areas, the power and jurisdiction related to this article shall be executed by the County Planning and Zoning Commission.

Section 6.03.02. Membership and Terms of Members.

1. The Planning and Zoning Commission shall consist of nine (9) members. One (1) County Commissioner shall serve as a member of the Planning Commission. Two (2) members shall reside in the unincorporated areas of District 1 which consists of Bangor, Volga, Brookings, Lake Sinai, Oslo, and Medary Townships. Two (2) members shall reside in the unincorporated areas of District 2 which consists of Laketon, Preston, Eureka, Winsor, Oakwood, and Sterling Townships. Two (2) members shall reside in the unincorporated areas of District 3 which consists of Argo, Oak Lake, Lake Hendricks, Afton, and Sherman Townships, and the northern portion of Richland (Sections 3-34) Townships. Two (2) members shall reside in the unincorporated areas of District 4 which consists of Alton, Aurora, Trenton, Parnell, and Elkton Townships, and the southern portion of Richland (Sections 3-34) Township. All Members of the Planning and Zoning Commission shall be appointed by the County Commission. District members shall reside in the district they represent. If no person from a district is willing to serve on the Planning and Zoning Commission, the County Commission shall appoint a resident from the unincorporated area of Brookings County to serve that district. (SDCL 11-2-2 and 11-2-14)

2. The Board of County Commissioners shall also appoint two (2) alternates, who reside in the unincorporated area of Brookings County, to the Planning and Zoning Commission. If a Planning and Zoning Commission member is unable to attend a

meeting, or participate in a proceeding, the alternates shall serve on the Planning and Zoning Commission on a rotating basis. Alternates shall be appointed for a three (3) year term.

3. Planning and Zoning Commission Members are appointed to four (4) year terms. These terms shall be staggered with the terms of two (2) members expiring in any given year. (SDCL 11-2-3)

Section 6.03.03. Per Diem and Expenses of Commission.

Per Diem and expenses of the County Planning and Zoning Commission shall be established by the Board of County Commissioners and paid by the County. (SDCL 11-2-3.2)

Section 6.03.04. Duties of Planning and Zoning Commission.

The Planning and Zoning Commission shall have the following duties:

1. Comprehensive Land Use Plan:

   a. The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. (SDCL 11-2-11) Upon preparation the Planning and Zoning Commission shall make recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18.

   b. The comprehensive plan shall be for the purpose of protecting and guiding the physical, social, economic, and environmental development of the county; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources. (SDCL 11-2-12)

2. Zoning Ordinance:

   a. For the purpose of promoting health, safety, or the general welfare of the county, the County Commission, upon recommendation from the Planning and Zoning Commission, 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)

   b. For any of the purposes specified in SDCL 11-2-13, the County Commission may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each

class or kind of buildings throughout each district, but the regulations in one (1) district may differ from those in other districts. (SDCL 11-2-14).

c. The regulations shall be made in accordance with the Comprehensive Plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks; and other public requirements. (SDCL 11-2-14)

d. The regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. (SDCL 11-2-14)

e. Upon preparation of a zoning Ordinance, or any amendment thereto, the Planning and Zoning Commission shall make a recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18.

3. Subdivision:

a. The Planning and Zoning Commission may make recommendations to the County Commission for the adoption of a subdivision Ordinance which shall be made in accordance with the Comprehensive Plan. The regulations may establish standards and procedures to be employed in land development including subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring future dedication or acquisition and general design of physical improvements. (SDCL 11-2-17)

b. To review proposals for subdivision Ordinance adoption, or amendments thereto, to determine whether such subdivisions comply with the subdivision Ordinance of Brookings County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.

c. Upon preparation of a subdivision Ordinance, or any amendment thereto, the Planning and Zoning Commission shall make a recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18.

4. Amendments:

The Planning and Zoning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning Ordinance, and subdivision regulations to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18 and SDCL 11-2-28.

Section 6.03.05. Procedures for Meetings.

1. The members of the Planning and Zoning Commission shall select one (1) of their members as Chair and another as Vice-Chair, who shall act as Chair in the Chair's absence. Both shall serve one (1) year and until their successors have been selected. Meetings of the Planning and Zoning Commission shall be held monthly or at the call of the Chair and at such other times as the Planning and Zoning Commission shall determine. (SDCL 11-2-3.1)

2. The Chair, or in his or her absence the acting Chair, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article. All meetings of the Planning and Zoning Commission shall be open to the public. The Planning and Zoning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Brookings County Development Department and shall be public record. The Planning and Zoning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

   A simple majority vote of a quorum of members of the Planning and Zoning Board in attendance is required to forward a recommendation, pertaining to its duties described in 6.03.04, on to the Board of County Commissioners.

CHAPTER 6.04. BOARD OF ADJUSTMENT.

Section 6.04.01. Establishment.

1. That pursuant to SDCL 11-2-49 the Brookings County Planning and Zoning Commission shall act as the Board of Adjustment.

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

3. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. If a Planning Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent Planning Commissioner's place. The term of the Alternates shall be for three (3) years. (SDCL 11-2-50)

Section 6.04.02. Procedures for Meetings.

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chair and at such other times as the Board of Adjustment may determine. The Chair, or in the Chair's absence the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. (SDCL 11-2-51)

2. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact,

and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Brookings County Development Department and are public records. (SDCL 11-2-52)

Section 6.04.03. Powers and Duties of the Board.

The Board of Adjustment shall have the following powers and duties:

Administrative Review. Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by a Zoning Official in the enforcement of this chapter or of any Ordinance adopted pursuant to this chapter. (SDCL 11-2-53)

1. Variance. Authorize upon appeal in specific cases such variance from terms of the Ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and so that the spirit of the Ordinance is observed and substantial justice done. (SDCL 11-2-53)

2. Conditional Uses. Hear and determine conditional uses as authorized by the zoning Ordinance. The uses shall be determined by an affirmative vote of the present and voting members of the board of adjustment at a percentage specifically set forth in this zoning Ordinance at 6.05.01(8) (SDCL 11-2-53)

Section 6.04.04. Appeals, Record of Appeal, Hearing and Stays.

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Official and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.

2. An appeal to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the Zoning Official that is not a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision. The applicant shall file with the Zoning Official a notice of appeal specifying the grounds thereof. The Zoning Official shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days after the filing of the decision in the Brookings County Development Department. All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal. (SDCL 11-2-55)

3. An appeal to the Board of Adjustment stays all proceedings in the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, unless the Zoning Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record, on application, on notice to the officer from whom the appeal is taken and on due cause shown. (SDCL 11-2-56).

4. The Board of Adjustment shall hold at least one (1) public hearing of the appeal. Notice of the time and place shall be given at least fourteen (14) days in advance by publication in a legal newspaper of the county, and notice shall be given to the parties in interest. The Board of Adjustment shall decide the appeal within a reasonable time. Any party may appear at the hearing in person or by agent or by attorney.

5. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Official from whom the appeal is taken. (SDCL 11-2-58)

6. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance. (SDCL 11-2-59)

7. The decision is considered filed with the Brookings County Development Department at the time it is signed by the Chair of the Board of Adjustment.

Section 6.04.05. Appeals to a Court of Record.

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board, or bureau of the county, aggrieved by any decision of the board of adjustment, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the Brookings County Development Department. (SDCL 11-2-61)

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

Section 6.05.01. Powers and Jurisdiction Relating to Conditional Uses.

The Board of Adjustment shall have the power to hear and decide, in accordance with 6.04.03 and any other provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether

special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted which indicates the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.

2. The Zoning Official shall notify adjacent property owners by First Class mail at their last known address of the public hearing time and date at least fourteen (14) days prior to the hearing of the application for the conditional use permit.

3. Notice of time and place of the hearing on an application for conditional use permit shall be published once at least, fourteen (14) days prior to the Board of Adjustment public hearing, in a legal newspaper of the county.

4. The public hearing shall be held. Any party may appear in person, by agent or attorney.

5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.

6. Before granting any conditional use, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:

   a. Entrance and exit to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

   b. Off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, glare or other effects of the conditional use on adjoining properties and properties generally in the district.

   c. Utilities, refuse, and service areas, with reference to locations, availability, and compatibility.

   d. Screening and buffering with reference to type, dimensions and character.

   e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, compatibility and harmony with properties in the district.

   f. Required yards and other open space.

   g. General compatibility with adjacent properties and other property in the district.

   h. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any

roads used for the conditional use requested prior to issuance of a Conditional Use Permit.

i. Any required notifications to law enforcement or fire department.

j. Any safety inspections required.

7. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.

8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to pass any application for a Conditional Use Permit.

9. A conditional use permit shall expire three (3) years from the date upon which it becomes effective if no work has commenced.

10. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance/Findings of Facts.

11. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.

Section 6.05.02. Powers and Jurisdiction Relating to Variances.

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.

2. The Zoning Official may require the notification of adjacent property owners by First Class mail, at their last known address, of the public hearing at least fourteen (14) days prior to the hearing of the variance request.

3. Notice of time and place of the hearing on an application for a variance shall be published once at least, fourteen (14) days prior to the Board of Adjustment public

hearing, in a legal newspaper of the county.

4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this Ordinance shall not be granted if the following occur:

   a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;

   b. The literal interpretation of the provisions of this Ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;

   c. The special conditions and circumstances do result from the actions of the applicant;

   d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.

   e. The granting the variance request would confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

   f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under the terms of this regulation in accordance with 6.05.05.

7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.

8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to approve an application for a variance.

9. A variance shall expire three (3) years from the date upon which it becomes effective if no work has commenced.

Section 6.05.03. Zoning Amendments (rezoning requests).

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this Ordinance. A proposed change of zoning district boundaries (rezoning) or regulations may be initiated in the following manners:

   a. The Board of County Commissioners may direct the Planning Commission to consider a change of zoning district boundaries (rezoning) or regulations;

   b. The Planning Commission may initiate a change of zoning district boundaries (rezoning) or regulations;

   c. One (1) or more of the owners of property within the area proposed to be rezoned may present a request to change the zoning district boundaries;

   d. Initiated petitions specifying and requesting amendments to the regulations of this Ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Zoning Official.

2. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an Ordinance describing said changes. The Board of County Commissioners may not consider said Ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said Ordinance amendment.

3. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change (rezoning) shall be followed:

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

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

   b. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.

   c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.

   d. A proposed time schedule for beginning and completion of development.

e. Any additional information, as requested by the Zoning Official, as lawfully may be required to determine conformance with and provide for enforcement of this Ordinance.

f. The Zoning Official shall review the application, and shall forward a summary of the application, and their comments regarding said application, to the Planning Commission for review.

g. The Zoning Official shall set the date, time, and place for public hearings to be held by the Planning Commission. An individual landowner may petition the board to change the zoning of all or any part of the landowner's property. The petitioning landowner shall notify abutting and adjoining landowners by registered or certified mail of the petitioned zoning change at least fourteen (14) days before the public hearing is held on the matter by the planning commission. The landowner shall use information provided by the county director of equalization to determine the abutting and adjoining land owners. Property is considered as abutting and adjoining even though it may be separated from the property of the petitioner by a public road or highway. If the affected property abuts, adjoins, or is within one (1) mile of a county border, the county auditor on behalf of the individual landowner shall also notify, by registered or certified mail, the county auditor in the adjoining county of the petitioned zoning change at least fourteen (14) days before the public hearing is held on the matter by the planning commission. Certified or registered mailing receipts shall be filed with the Zoning Official fourteen (14) days prior to the hearing. The Zoning Official shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than fourteen (14) days prior to the Planning and Zoning board's public hearing.

h. Within forty-five (45) days of receipt of a petition for rezoning, the planning commission shall hold a public hearing on any proposed change or modification to the plan or ordinances. Notice of the time and place of the hearing shall be given once at least fourteen (14) days in advance by publication in a legal newspaper of the county. At the public hearing, any person may appear and request or protest the requested change. The county planning and zoning board shall consider the requested action and make a recommendation thereon to the board of County Commissioners. The Planning Commission shall recommend approval or disapproval of a requested change either in whole or in part. SDCL 11-2-28.2

i. The Brookings County Board of County Commissioners shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than fourteen (14) days prior to the County Commissioner's public hearing.

j. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of each respective board.

k. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment with or without changes. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in a legal newspaper of the County.

Section 6.05.04. Reapplication.

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

Section 6.05.05 Violations and Penalties.

1. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The maximum penalty for violation of this Zoning Ordinance shall be five hundred dollars ($500.00) or thirty (30) days in the County Jail or both. In addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification shall constitute a separate offense. All fines for violation shall be paid to the Finance Office and shall be credited to the General Fund of the County.

   The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

2. In the event any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Brookings County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation of these regulations, and it is the duty of the State's Attorney to institute such action.

CHAPTER 6.06. REPEAL OF CONFLICTING ORDINANCES.

Ordinance 2017-02 is intended to replace and repeal the following Articles of Ordinance 2015-03 an Ordinance re-adopting 1997 Revised Zoning Ordinance and all amendments. Adopted on December 29th, 2015: Article 5.00, County Zoning Commission, Appeals, Variance and Conditional Uses; Article 6.00, Duties of County Zoning Officer, Board of County Commissioners, and Courts on Matters of Appeal; Repeal - Article 7.00, Enforcement; Article 8.00, Schedule of Fees, Charges and Expenses; and Article 10.00,

Amendments. All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this ordinance are hereby declared repealed.