

# County Commissions and Boards

People concerned about zoning changes most commonly deal with three commissions or boards. These include the County Commission, the County Planning and Zoning Commission, and the County Board of Adjustment. South Dakota Codified Law outlines the general purpose and responsibilities for these boards, but counties also give specific powers to each official group.

*Detailed information about powers given to each specific board within a county is available from the County Auditor's Office, and should be thoroughly understood before approaching any board.*

## **A. County Commission**

County Commissions are created and receive their powers from Title 7-Chapter 8 of South Dakota Codified Law. *Please reference SDCL 7-8 for complete information.*

- County Commissioners are elected to four-year terms by the people of the county during a general election. The board consists of three, five, or seven members as determined by the respective county's ordinance.
- The Commission administers all business of the county, and protects the interests of the county and its citizens.
- A simple majority vote of the commission is required to pass most decisions unless expressly defined by state or county laws.
- In most counties, meetings can be expected on a regular, usually monthly, schedule. All meetings of a County Commission are subject to the jurisdiction of Open Meeting Laws (*Open Meeting Laws, page 10*).

## **B. County Planning and Zoning Commission**

The County Planning and Zoning Commission is created and defined in detail in Title 11-Chapter 2 of South Dakota Codified Law. *Please reference SDCL 11-2 for complete information.*

- A Planning and Zoning (P&Z) Commission is formed to implement, make recommendations on, or make changes to a county zoning ordinance. Any county that has a comprehensive land use plan is required by state law to have a County Planning and Zoning Commission.

### **Who is the County Auditor?**

- This position is elected in each county every four years, and the office tracks all county government activities and official county records.
- The office is usually located in the County Courthouse, and can provide valuable information regarding:
  1. Copies of all ordinances, zoning regulations, permit applications, and other public documents.
  2. Commission meetings, minutes, and decisions.
  3. Public records of all documents filed with the commission, such as petitions, public meeting minutes, and applications for permits.
- Contact your county auditor for any questions regarding commission activities.

- The P&Z Commission consists of at least five people, one of whom **MUST** be an elected County Commissioner. The members of the P&Z Commission are appointed by the County Commission, and may serve on both boards.
- Appointments to the P&Z Commission are three to five-year terms as defined by the respective county's zoning ordinance. Planning and Zoning Commissioners may be removed from their positions, following a hearing as to the cause for removal, by a majority vote of the Commission.
- The P&Z Commission collects information and hears testimony on proposed changes to comprehensive plans, zoning ordinances, or subdivision ordinances as provided by the County Commission. The P&Z Commission's recommendations are either given to the County Commission for final approval if necessary as, in some counties, the P&Z Commission has the power to enact ordinances.
- The P&Z Commission **MUST** meet at least once every three months, but can meet as often as is necessary to complete their purpose. State law does not require these meetings to be public; however, the P&Z Commission meets the requirements for public meetings as set forth in Title 1-Chapter 25 of South Dakota Codified Law. *Please reference SDCL 1-25 for complete information.*
- Any changes to county zoning, comprehensive plans, or other ordinances require the P&Z commission to hold a public hearing. This hearing requires public notification at least ten days prior to the hearing date.

**Working with a Commission**

Commissions are legal entities but social dynamics play a significant role in interactions with the board, especially in rural areas.

Consider these questions in figuring out the dynamics of your commission.

1. Which Commissioners seem the most approachable?
2. Which Commissioners are obvious allies or opponents?
3. Which citizens or groups are involved in the issues and are they organized?
4. What are the reputations of the people and groups working on the issues?
5. Which issues are important to you, and which issues do you need to learn more about?

**Tip**  
Find out if the County Planning and Zoning Board and/or Board of Adjustment are legitimately and legally operating!

**Why?**  
DRA members in Moody County learned too late that county officials did not have a record of who was appointed to the P&Z Commission, when they were appointed, or the length of their terms.

**The Result**  
A decision made in favor of the citizens was dismissed because the board was found to be invalid.

- The power to appeal or refer decisions made by the P&Z Commission is granted by the County Commission, and should be researched in the relevant county's ordinance.
- All decisions made by the P&Z Commission can be appealed to the Board of County Commissioners.

*Any direct action to enact an ordinance should be appealed to the Board of County Commissioners before being referred by petition.*

### **C. Board of Adjustment**

The County Commission is authorized by Title 11-Chapter 2 of South Dakota Codified Law to create a Board of Adjustment of appointed citizens or to allow the Planning and Zoning Commission to serve as the Board of Adjustment. According to state law, the Board of Adjustment has power to:

1. Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or employee of the county, or if there is a violation of process by which an ordinance or resolution is adopted; and
  2. Authorize, in specific cases, variances, conditional use permits, or other terms of the ordinance as long as they do not violate public interest. These variances and permits can only be approved by the Board of Adjustment if the situation being permitted is not normally allowed by the ordinance, if the situation would relieve an undue hardship, and if substantial justice is done to protect the citizens of the state.
- Appointments to the Board of Adjustment are made by the County Commission. They can appoint members of the Planning and Zoning Board to serve as the Board of Adjustment, or they can appoint five citizens of the county to serve on the Board of Adjustment for a three-year term.
  - The County Commission can appoint up to two alternates to serve on the board in case of an absence or vacancy at a meeting of the board.
  - Members of the Board of Adjustment can be removed upon written explanation of charges of wrongdoing, and a public hearing. Only the County Commission is authorized to remove Board of Adjustment members.
  - Meetings of the Board of Adjustment are open to the public, and are subject to open meeting laws. The board schedules public meetings as needed.
  - Minutes of the meetings are also public record, and votes of the board must be recorded within the official minutes by noting each board member's vote as yea or nay.
  - Any decision made by the Board of Adjustment to grant a conditional use permit or a variance requires at least one public hearing, and an affirmative vote by a two-thirds majority (four of five) of the board.
  - The Board of Adjustment has full power to reverse, deny, or approve any matter with comes before it. Any decision made by this board can only be referred in a court of law, and is NOT subject to citizen referendum.

*For more information about referring Board of Adjustment decisions, see page 26.*



# All about Ordinances

An ordinance is a permanent legislative act of a board of County Commissioners passed with the limits of its bower as granted by state law. Ordinances are a county level equivalent of state law. They are enforceable by legal process, monetary penalty, or incarceration.

- South Dakota Codified Law Title 7-Chapter 18A-Section 2 states, “Each county may enact, amend, and repeal such ordinances and resolutions as may be proper and necessary to carry into effect the powers granted to it by law and provide for the enforcement of each violation of any ordinance.”

## **A. Working with an Ordinance**

- South Dakota Codified Law Title 7-Chapter 18A governs the creation and working of county level ordinances at the basic level.
- Ordinances are a normal part of any County’s operational procedures and govern much more than the lawfulness of a county. They also determine the land use plans and development areas of a county, and can shape the future of a county both socially and economically.

*The technicalities and details of working with ordinances are complex and complicated. DRA encourages citizens to seek a qualified attorney or counsel to interpret the processes and laws for use.*

## **B. Adopting an Ordinance**

A proposed ordinance must be read twice during public meetings, with at least five days between the readings, to serve as public notice of a proposal to pass the ordinance.

- Most often an ordinance is proposed by the sitting Commissioners.  
*Talk to your Commissioner about ideas that you might have for proposing changes or new ordinances.*
- Citizens can also propose changes to an ordinance. This is called an *Initiative*.  
*(Initiatives, page 25).*
- The County Auditor must record the number of yea and nay votes into the public record and the proposed ordinance must receive at least a majority of the votes in order to be enacted.
- According to public record laws, a successfully passed ordinance must be published in a public newspaper and will become effective and enforceable twenty days after it is published.
- Any ordinance adopted by the Board of County Commissioners or the Planning and Zoning Commission is subject to citizen referral.  
*(Referendum Petitions, page 24).*

## **C. Comprehensive Land Use Plans**

According to South Dakota Codified Law, Title 11-Chapter 2, a Comprehensive Land Use Plan shall be for the purpose of:

1. Protecting and guiding the physical, social, economic, and environmental development of the county;
2. Protecting the tax base;
3. Encouraging 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;
4. Lessening governmental expenditures; and
5. Conserving and developing natural resources.

*A county's Comprehensive Land Use Plan (CLUP) can be anywhere from a few pages to a few hundred pages in length depending on the number of land uses and expected growth in a given county. The County Auditor can provide you with a complete copy of the county's CLUP. There may be a small fee for copies of this document. Many counties also have their CLUP available on the county website.*

### **Contents of a County's Comprehensive Land Use Plan (CLUP)**

- Most CLUP's will begin with a statement of purpose for the ordinance. This will include a vision for the future of the county and summarize the intent of the ordinance.
- The plan creates definitions for the types of land use allowed within the county and provides for each use to have a specific ordinance in order to protect the land and citizens from side effects of each use.
- Uses typically allow for "districts" or "zones" such as agricultural, commercial, residential, development districts, town districts, water protection districts, etc. These zones are based on, but not limited to geographical landmarks and landscape, established residential areas, and plans for future expansion of roads, housing, and industry.
- These "zones" are mapped and defined by the uses that are allowed within each zone, which uses require standard or special permits; and also define which uses are strictly prohibited within the zone.
- The CLUP will continue by defining and expanding on the types of activities that are allowed within each zone and require permitting for those activities. This can include itemized definitions based on the needs and resources of an individual property. Examples include:
  1. Housing and building codes, occupancy requirements, minimum safety standards, and location of building types in different zones.

- 2. Setback requirements for buildings, shelterbelts, roads, and activities from buildings, public lands, and other land uses.
  - 3. Number of animals that can be contained on agricultural land and permitting processes for larger concentrations.
  - 4. Size, use, and regulation of road maintenance, expansion, and creation.
- The Comprehensive Land Use Plan outlines the process for permits, variances, and other procedures necessary for Board of County Commissioners to oversee the land uses once the ordinance is in place. (*Permits and Variances, page 8*).

**D. Resolutions**

- Resolutions are statements of position or intent that can be passed by a Board of Commissioners in order to allow them to initiate, impact, or carry out their administrative duties or purpose as a commission.
- Resolutions can simply be policy or position statements or they can become active parts of the ordinance by requiring action on future ordinances or decisions.

**Local Foods and Farmers**

Woodbury County, Iowa passed a resolution mandating that all foods purchased by county institutions, such as the prison and youth centers, purchase food from local and organic producers, thereby shifting more than \$281,000 back into the local economy.

- The public must receive one public notification of the intent to pass a resolution, and the commission can adopt a resolution by a majority vote.
- The number of yes and no voted must be recorded in the official minutes, as must the resolution in its entirety.
- South Dakota Codified Law Title 17-Chapter 18A governs the adoption and implementation of resolutions. (*Please reference SDCL 7-18A for more information*).

**Resolution Opposing Animal ID**

Members of the Western Plains Action Group approached their county commission with concerns about negative impacts if a federal mandatory animal ID system were implemented.

The commissioners identified the reasons for opposing the animal ID system and passed a resolution stating that if the county were confronted with a mandatory system, they would not allow their citizens to be impacted by the law.

**E. Moratoriums**

- A moratorium is a temporary restriction on the implementation or use of an ordinance. This is generally used to stop a process that could harm the citizens of a county and to allow time for ordinances to be changed or revised to properly address an issue.
- A moratorium can be imposed by a Commission, or carried by a petition of the people. Moratoriums must comply with notices, hearings, and public meeting laws, of an ordinance.

- County Comprehensive Land Use Plans specify the process for implementing or petitioning moratoriums. The details can usually be found in the “conditional use” section of the plan.
- Counties that do not have a Comprehensive Land Use Plan will likely not be able to pass a Moratorium. DRA recommends that citizens seek legal counsel in this situation.

*Moratoriums have been requested in numerous counties, but have been successfully used in only a few counties. **Calling for a county-wide moratorium should be carefully and planned. You may want to involve an attorney in this process.***

- Moratoriums may seem like a good way to stop an unwanted development, but a commission will usually not grant a moratorium based on this reasoning. *A moratorium SHOULD NOT be used as legislation, but it can be an effective means to alter an ordinance before an unwanted development can be permitted.*

For example, a commission may pass a moratorium on confinement dairy operations. This DOES NOT give the county the right to stop granting permits indefinitely. However, it does allow the county to temporarily stop issuing permits in order to study the situation and amend their ordinance in a way that either stops operations from being permitted or creates requirements for more responsible operations.

#### **A Request for a Moratorium**

In July of 2005, five Moody County citizens called for a county-wide moratorium on all Class A, B, and C conditional use permits for Concentrated Animal Feeding Operations (CAFOs). They argued that the environmental impacts of these permits could not be predicted, and that a moratorium would allow time for potential impacts to be studied. They presented their request to the Commission, but the Commissioners refused to take any action. In August 2005, the citizens tried again. Thirty-two citizens appeared before the Commission, presented 82 signatures of support from other county citizens, and again requested that a moratorium be placed on all conditional use permits from CAFOs. One Commissioner made a motion to consider the moratorium, but the motion died for lack of support.

Deuel County DRA members also requested a moratorium against CAFOs in their county. They argued that a pending lawsuit would change the ordinance governing CAFO development, and that new permits should not be issued until the lawsuit was decided. The County Commission and a Circuit Court judge refused the moratorium because of discrepancies in the moratorium request compared to the language used in the lawsuit being used to justify the request.

The citizens of both counties remain unsuccessful in their requests for a moratorium



## Requesting a Moratorium

When presenting a request for a moratorium to the County Commission, provide them with a detailed statement of the request, and

1. Give an explanation of why and how this moratorium will be utilized in your county.
  2. Explain what your long-term reasoning and goal is in asking for the moratorium.
- Point out the ordinance or county language that authorizes the Commission to grant a moratorium. *This is usually found in the “conditional use” section of a county ordinance under the heading “Standards for Special Exceptions”.*
  - Moratoriums can be passed by Initiative Petitions in counties with Comprehensive Land Use Plans. (*Initiative Petition, page 25*).

*Due to the complications that will arise in attempting to enforce and follow through with the intent of a moratorium, DRA urges caution in carrying initiative petitions in an attempt to pass a moratorium outside of the County Commission’s approval. If the Commission is not committed to the process, it will fall to the citizens to do the work of researching and passing new ordinance language.*

## F. Permits

- Permits are official notices, from a citizen to the commission, regarding the application of a county ordinance to a planned activity. Permits are required for most activities that will alter the landscape, function, or use of land that is within a zoned area.

For example, a county ordinance requires that a citizen file a building permit before beginning construction on a house. This allows the commission to ensure that the house meets all requirements for safety, location, and land use that are prescribed by the ordinance.

- Permitting is less about regulations than it is about allowing the citizens of a county to have oversight and control of their development activities and allow for proactive and proper enforcement of the ordinances.
- Information about permit applications and requirements for each county can be obtained at the county auditor’s office in the county where the permit will be filed.
- Public input and testimony must be allowed on any permit prior to the Commission’s vote at a public meeting.

### **Board Approval**

Assuming that a permit application meets all of the requirements set forth in an ordinance, the commission will generally approve the application.

Testimony from citizens regarding the possible impact of an ordinance is often the only information that a commission can use to deny an otherwise acceptable application.

Make sure that you understand all aspects of the requested permit by attending the hearings and offering your own comments in support of or opposition to the permit.

- Permits do require approval by a county board at a public meeting
- A notice of the permit application must be published in the local newspaper according to public notification rules defined in state law and county ordinance.
- The particular board responsible for approving a permit is outlined and defined by individual county ordinances.
- Any person aggrieved by the approval or failure of a permit application may appeal the decision to the County Board of Commissioners within twenty days of official notification of the decision.

### **G. Variances**

- Variances are permits granted by a commission if a citizen's land use or activity does not meet the requirements of a county ordinance for the zone in which they are operating, but is deemed to be within the confines of the county's development plans, and if the activity does not negatively impact other citizens.
- Variances are often needed to meet setback requirements. For example, if a homeowner proposes to place a garage next to his existing home, but there is not enough room between his and the neighboring property to allow for the setback ordinance to be met, the homeowner can apply for a variance to allow them to build in a location that varies from the ordinance's requirements.

#### **Varving Assumptions...**

As a GENERAL RULE variances are not granted if someone who is directly impacted by the variance or if an adjoining landowner objects to the variance request.

It is critical that impacted citizens attend the hearings for variances in order to:

1. Support someone who is asking for a responsible variance, but also to
2. Protect your own property and quality of life against irresponsible activities.

Don't assume that the commission will be looking out for your interests if you are not at the hearing to defend them.

- The Process for applying and receiving a variance is different for each county, but the basic steps in the process remain the same.
  1. An application for a variance must be filed with the county auditor.
  2. Public notice must be given in the local paper, and some ordinances require the adjoining landowners must be personally notified or grant permission.
- A public hearing will be held regarding the variance, at which time citizens can offer testimony to support or disagree with the variance application.
- The governing commission or board, as prescribed by the county ordinance, will vote to approve or deny the variance.

## **H. Conditional Use Permit**

A conditional use is any activity not generally allowed within a county land use ordinance, but can be permitted for operation when meeting specific conditions as required by the county land zones, land use plans, and board approval.

Any conditional use permit is subject to different requirements than other uses which are normally permitted by the ordinance in that zone. It allows the County Commission or Board of Adjustment to demand and require provisions that are not specified in the ordinance to be met.

*For example, keeping livestock is a normal use, but a confined animal feeding operation requires a conditional use permit. Similarly, a water wind mill is generally allowed, but electricity generating wind turbines require a conditional use permit.*

- South Dakota Codified Law Title 11-Chapter 2 authorizes the use of conditional permits for real property and allows county ordinances to define, categorize, and grant conditional uses of the property within their jurisdiction. *Please reference SDCL 11-2-17.3 for more information.*
- A county Comprehensive Land Use Plan will define a specific permitting, application, and approval plan for any conditional use that may be considered within the county.
- Check with the county auditor or the county commission about the process for conditional use permits in each county.



# Open Meeting Laws

*The information provided in this section was compiled by the South Dakota Attorney General's office. The pamphlet, "Conducting the Public's Business in Public: A guide to South Dakota's Open Meeting Laws" is available from the Attorney General's office, and on their web site.*

- South Dakota's Open Meeting Law was written in 1965 and has been amended several times since. The law, which is intended to encourage public participation in government, is now contained in three statutes.

1. South Dakota Codified Law Title 1-Chapter 25 requires that official meetings of city, county, school, and other boards and commissions be open to the public. Meetings of boards and commissions which are created by law or which are entitled to receive revenue directly from public tax funds are also subject to open meeting laws.

2. It is a Class 2 misdemeanor to break this law. A Class 2 misdemeanor is punishable by a penalty of up to thirty days in jail, a \$500 fine, or both. (SDCL 22-6-2) Alternatively, violation of this law could result in a public reprimand by a state board.

3. While the open meeting law does not define "official meeting", specific statutes relating to cities, counties, and school districts define what constitutes an official meeting.

- The Attorney General has taken the position that a meeting that must be open to the public occurs when the following conditions exist:
  1. A legal quorum of the board of commission is present at the same place at the same time; and
  2. Public business, meaning an matter relating to the activities of the board or commission, is discussed.

## **A. Public Notification Requirements**

### **What is Local Media?**

- There is no definition for "local media" in the state law that governs open meeting notification. However, the Attorney General assumes that all media both print and broadcast, which regularly carries news to a community, satisfies the "local media" requirement for public notification.

- South Dakota Codified Law Title 1-Chapter 25 requires that all public bodies prominently post a notice and copy of the proposed agenda at the board or commission's principal office at least 24 hours PRIOR to a meeting.

### **South Dakota State Attorney General**

The SDAG is a great resource for information about how public record and meeting laws work.

Contact their office for specific information:  
605-773-3215

- In the case of special or rescheduled meetings, public bodies are asked to comply with the regular meeting notice requirements as much as circumstance will permit.
- The notice must be delivered in person, by mail or over the telephone, to all local news media who have asked to be identified.
- While the law is silent on the issue, it is recommended that local media renew requests for notification annually as a means of reminding the entity of ongoing media interest.

### **Failure to comply with Public Notice Laws**

- No South Dakota court has ever ruled on a case of violation against the open meeting law, so there is no precedent for enforcement.
- The Attorney General's opinion is that any action taken during any meeting that has not been properly noticed could, if challenged, be declared null and void. It could even result in personal liability for members of the governing body involved, depending upon the action taken.

### **B. Closed Meetings**

- South Dakota Codified Law Title 1-Chapter 25 allows a majority of the body present to vote to close a meeting when discussion revolves around employee or student performance, legal matters, employee contract negotiations, or pricing strategies by publicly-owned competitive businesses.
- Meetings may also be closed for certain economic development matters.  
*Note that SDCL does not require that meetings be closed in any of these circumstances.*

#### **The SD Open Meeting Commission**

The Commission was established in 2004 and consists of five SD attorneys appointed by the Attorney General.

Procedures for the Open Meeting Commission are posted on the website for the SD Attorney General at: <http://www.state.sd.us/attorney/>

- If you have any questions on procedures or a pending case, contact the Attorney General's office at 605-77-3215 and ask about the Open Meeting Commission

- Federal legislation regarding student records and medical records often requires school districts and cities or counties to conduct executive sessions or conduct meetings so as to refrain from releasing data regarding student records or medical records.
- Any official action based on closed discussions must be made at an open meeting. Violating this section of the law is a Class 2 misdemeanor and may result in a public reprimand by a state board.

## Public Notice Regarding Subject of Closed Session

- The public body must refer to the general purpose in the motion for calling for an executive session and this must be part of the official meeting minutes.  
*Discussion in the executive session must be strictly limited to the announced subject. The Attorney General encourages public bodies to cite the specific reason when calling for executive session.*
- No official votes may be taken on any matter during an executive session. the governing body must adjourn the executive session and return to open session before any official action can be taken.
- Board members could be held personally liable for the results of an official vote taken illegally during an executive session.  
For example, a contract approved only during an executive session could be found void and the board members could be required to repay any public funds spent under contract.

## C. Violation of Public Access to Open Meetings

Excluding the media or public from a meeting that has not been properly closed subjects the officers to:

1. Prosecution as a Class 2 misdemeanor punishable by up to thirty days in jail, a \$500 fine or both; or
2. A public determination that an open meeting should have been held and explaining the reasons therefore.

### Technology and Open Meetings

#### Video or Telephone Conferences

These mediums are allowed for public meetings, but must be publicly announced according to public meeting laws.

- The agency must provide two places for public participation in a phone meeting.
- No official hearing or final action can be taken via conference call.
- All votes must be taken by roll call.

#### Email Discussions

In some states courts have held that email communications among a quorum of the governing members of a public body constitute a “meeting” of the public body when the emails are used to discuss pending legislation or topics.

- Email participation in creating schedules or similar procedural activities would not, under this analysis, constitute a public meeting.

South Dakota’s courts have not ruled on the legality of this meeting form.

- If an allegation is made regarding an open meeting violation, the local state’s attorney may elect to prosecute the case, may determine the matter has no merit, or may refer the issue to the Open Meeting Commission,. a five-member commission comprised of states’ attorneys, which was created in 2004. The commission is to examine whether violation has occurred and make written public findings.
- If the commission finds that a violation has occurred, the public officer cannot also be prosecuted for the same event.

## **Complaints Regarding Open Meeting Laws**

- Persons alleging violations of open meeting laws must file their complaints with law enforcement officials in the county where the offense occurred. After a signed, notarized complaint is filed and any necessary investigation is conducted, the state's attorney may elect to prosecute the case as a misdemeanor.

*Citizens cannot make complaints directly to the Open Meeting Commission. The state's attorney in the county where the complaint is filed must file the paperwork with the Attorney General's office.*

- If the complaint has no merit, the state's attorney is to report the complaint to the Attorney General for statistical purposes. The state's attorney may also forward the complaint to the Open Meeting Commission for further investigation and determination.

### **D. Who is Impacted by Open Meeting Laws?**

- South Dakota Open Meeting Laws apply to all public bodies that are not specifically exempted by the law. This includes all units of local government including school boards, city and county commissions, and state government boards and commissions.
- Generally speaking, any unit of government that receives public funds as revenue is subject to open meeting laws.

The meetings of boards and commissions which are created by law or which are entitled to receive revenue directly from public tax funds are subject to open meeting laws.

- The law's applicability becomes less clear when it comes to the Legislature, the governor, the constitutional officers, and special committees appointed by local governments. Executive functions of these officers are not subject to open meetings. However, agency and legislative actions are.

For example, if the Attorney General refuses to issue a polygraph examiner's permit, he is acting as an agency, not as attorney general, making the open meeting laws applicable. Open meeting laws are not, however, applicable to the attorney general's staff meetings or to meetings with constituents since these are executive functions of the office holder, not agency actions.

- Federal and state constitutions allow congress and the state legislative body to create rules regarding their own activities and to determine some of the requirements for public meetings as well as open records.



# Meeting Procedures

## A. Agenda for a Public Meeting

Agendas for public meetings must be posted no less than 24 hours in advance of the meeting. The rationale is that the public and media should have some time to determine whether to come to the meeting.

*In one court case, a personnel issue was not posted as part of the agenda and the local circuit court held that the personnel decision made at the meeting was void.*

*~ McElhaney V. city of Edgemont (Fall River County Civ. 98-44)*

- For special or rescheduled meetings, public bodies are to comply to the extent that circumstances permit. Posting less than 24 hours in advance is permissible in emergency situations.

### Bob's Laws

Most public meetings run according to Robert's Rules of Order, which is a commonly accepted and practiced process of parliamentary procedure. Most of us are familiar with Robert's Rules which require a process for making motions, calling for points during a meeting, and allowing participation in a meeting without dissolution of order. Robert's Rules of Order can be found at most libraries, and possibly the County Auditor's office.

## **Items on the meeting agenda**

- Every item on the agenda will be addressed at a meeting. An item may be delayed until another day or the Commission may decide to limit discussion but the meeting will continue until all items have been addressed.
- There is no requirement for a Board or a Commission to allow public input at a public hearing. While many Commissions do allow for public comment/input during the meetings, there is no legal requirement for them to allow public comment on anything that is not strictly advertised as a hearing.

## **Getting on the agenda**

- When an issue of concern to citizens cannot be discussed or explained within the preset time limit, any citizen or group can ask to be placed on the agenda. Being placed on the agenda will result in a time limit; however it will be considerably longer.
- A request to be placed on the agenda should be made to the County Auditor's office, or by talking to the County Commission member representing your district.
- A Commissioner can help you to be placed on the agenda, and make sure that you get the time and attention that you need to voice your concerns.

## B. Public Input

Input can be submitted in the form of letters, testimony, or personal conversations. Other relevant information can also be presented personally to one Commissioner or all members of the board. Make sure that written testimony is legible.

Use the guides included in this toolkit to learn

**How To...**

1. Speak in Public
2. Influence Public Officials
3. Develop a Winning Strategy
4. Deal with Intimidation
5. Take Action
6. Negotiate

- Commissions often take several weeks or months to debate and make final decisions about issues. Public input is an ongoing source of information for the commissioners as they reach decisions, and is also a great way to integrate citizen’s concerns into the process.

*It may be effective to submit your concerns in the weeks or days leading up to an important meeting. This gives the commissioners more time to incorporate your ideas and to be prepared for discussing oral testimony.*

### **C. Presenting Testimony**

- Research and prepare your speech or presentation. If you have facts and figures, summarize the information for your verbal presentation but submit all of the details to the commissioners in writing.
- Always be respectful, even if you are frustrated. Reputations are on the line and crossing lines in a public forum can destroy the effectiveness of your message forever. Always address the commissioners as “Madame Chair” or “Mr. Chairman” and “Commissioner Smith”.
- Request an action from the Commissioners by respectfully telling them what you expect. Any request to the Commission must be within the scope of their power, and within the realm of possibility for the county.
- Be a responsible spokesperson. Speak openly and honestly about your own concerns interests, and knowledge. Never say things like, “All the people in the county want...”, or “My neighbors think...” unless you can back up the statement.
- Don’t answer if you don’t know. The best response is, “I’m not sure, but I will find out and get back to you.” Contact them as soon as you have the correct information that was requested.
- Consider forming a group. Formalizing a group solidifies the power behind a statement like: “Fifty of the voters in this county want...”.

**Tip:**

Commissioners may seem to hear the loudest person first, but in the end, they will likely listen to the most rational person.

Preparing your comments before you arrive at a meeting or hearing will keep you from losing your cool in public, and can make your message much more effective.

# Open Records Laws

## A. Federal Freedom of Information Act

The Freedom of Information Act (FOIA) gives citizens access to all “agency records” unless they are specifically exempt. Records are available on agency operations and actions, and on collected information relating to:

- public health,
  - environmental hazards,
  - consumer product safety,
  - government spending,
  - labor relations,
  - business decisions,
  - taxes,
  - history,
  - foreign policy,
  - national defense, and
  - economic data
- Agencies are required to grant requests for any existing records. They do not collect new information, do research, or analyze information based on individual requests.
  - FOIA applies to all fifteen federal departments and 73 federal agencies in the executive branch of the United States government.
  - It does not apply to elected officials or elected bodies such as congress, the President, state legislatures, or local governments. However, local and state governments can create their own freedom of information laws for those entities.

## B. General South Dakota Open Record Laws

South Dakota Codified Law Title 1-Chapter 27 requires agencies to collect and provide public access to all records that are kept for the state. Specifically, state agencies are required to allow open inspection of any public record, document, or instrument to any person during regular business hours. *Please reference SDCL 1-27 for more information.*

- Specific information about which records the state is required to keep are listed within the relevant state statutes.  
For example, laws about county commission record keeping are written in Titles seven and eleven, which deal with Commission structure and organization.

### Requesting Information

- Information requests are made by submitting a formal letter describing the information that is being requested to the agency that is responsible for retaining the information.
- It may be a good idea to submit the letter to multiple, relevant agencies, especially if you aren't sure who will be able to answer the request.

Requests can be submitted to the agency via written letter or by email.

- The cost of copying your information will often be charged to you and can be quite expensive.  
*Non-profit organizations can usually have the fee waived.*

In your information request you can ask the agency to quote a price before they make any copies.

- A full list of “open record” laws, listed by topic, can be found by contacting the Attorney General’s office, or by visiting [www.state.sd.us/attorney/office/openness/prlist.htm](http://www.state.sd.us/attorney/office/openness/prlist.htm).

# All about Petitions

Carrying petitions as a way to repeal, reverse, or change zoning ordinances can be very powerful and incredibly effective. However, this process is not easy. Writing the petition language and gathering hundreds or thousands of signatures is only the beginning of the process.

Dakota Rural Action members have been both hugely successful and incredibly frustrated with attempts to use petitions. Citizens are urged to use petitions strategically with careful consideration of all possible outcomes and unintended consequences of changing an ordinance.

*Did you know?*

*South Dakota has the oldest and most extensive rights to citizen initiative and referendum of any state in the U.S.*

- Petitions are legal documents that allow citizens to place issues on a ballot for approval or rejection by popular vote.

Most petitions require signatures from a portion of the voters in a political district as proof that a measure has enough support to be placed on the ballot.

A petition measure that is placed on a ballot requires approving vote from a majority of the people at a public election in order to become law.

- A petition goes through several steps before being placed on a ballot for voter approval
  1. First, the petition must be created and formatted legally and appropriately to include the initiated language or the referred decision.
  2. Enough legal signatures must be gathered for the petition and the circulator must verify that the signatures were legally witnessed.
  3. Lastly, the signatures must be verified by the Secretary of State or the County Auditor, depending on the scope of the petition. Assuming that enough legal, verifiable signatures are submitted, the petition question will be placed on the ballot for voter approval.

## **A. Creating a Petition**

A petition has three main parts which are laid out in a standard format as required by the South Dakota Secretary of State. The format of the petition on page 25 is an example of a standard format and several examples of petition language used on actual petitions.

1. Proposed Language or Purpose of the Petition—This goes at the beginning of the form and includes the information about where the new language would fit into the existing ordinance, the actual language that is being proposed, and a statement that the petition would place the language on the ballot for voter approval. A referendum

petition states the date and official description of the decision that is being referred by the petition as well as a statement of referral.

2. Signatures of qualified voters—Signatures are put inside boxes on a grid that is provided in the midsection of the petition. This includes space for signing and printing the voter’s name, the address, city, state, and zip code, as well as the county of residence where the voter is registered.
  3. Sworn affidavit of petition circulator and notarization—At the end of the petition, a space is provided for supplying the information about the person known as the petition circulator. The signature of the circulator must be witnessed and signed by an official notary in order for the petition to be valid and legal.
- The Secretary of State’s office can provide advice about the format and layout of a petition to guarantee that the layout is legal. However, the Secretary of State’s office does not provide advice or input on the legality of a petition’s language.

## **B. Before Carrying a Petition**

### **Before you decide to carry a petition:**

- What are you trying to accomplish?  
**Think Big Picture**
- Will this petition help you reach your goal?
- Can you win this issue?
- What are the long-term consequences of carrying this petition?
- What are the consequences of not carrying this petition?
- Are there alternative actions for reaching the same goal?

1. Research the issue that you are trying to address. Use ordinances from other counties as guidelines for determining what you want and don’t want in your county. Find out which groups will be affected, and what affect it will have on each of the groups in your county.
2. Establish credibility by involving people who are affected by the changes, and get input from several different sources within the impacted area.
3. Determine a timeline and other details about the petition from the County Auditor.
4. File the petition with the County Auditor. Some counties require a petition to be filed with the Auditor before any signatures can be legally gathered. Check your county ordinance to make sure that all filing requirements are met.

5. Plan the petition campaign in a way that transitions into an effective election campaign. Assuming that the petition is successful, the next step will be to secure the vote from the people of the county. Collecting signatures is an excellent way to reach out to the people who will also vote on the issue.

### **C. Proposing Petition Language**

The wording that is used to write the petition will be the exact wording of the language as it appears in the ordinance if it is passed. **This must be done correctly.**

- An incorrectly written petition can cause the legal complications in implementing the language, unintended consequences to citizens in the county, loopholes in the ordinance if passed, or, ultimately, cause the petition to be rejected by the commission.
- The South Dakota Secretary of State’s office will review the petition for style and format, but cannot give advice on wording or the legality of the language.

On pages 32 and 33 you will find several examples of initiative petitions carried by members of DRA, as well as a petition template that can be used for writing your own petitions.

- Hiring an attorney or seeking legal advice is recommended to ensure that the ordinance is able to stand up against legal challenges. An attorney can review the language and give advice on legal terms, wording, and implications.

### **D. Circulating a Petition**

- Each petition must be “carried” or “circulated” by individuals who are responsible for witnessing the accuracy of the signatures placed on that petition.
- Circulators can be paid for their work, but South Dakota does not allow them to be paid per signature. They must be hired on an hourly or other time-based wage.
- South Dakota requires anyone, paid or unpaid, carrying a petition for a South Dakota ballot measure to be a legal resident of South Dakota.
- Petition circulators are allowed to stand in any public place to gather signatures (i.e. post offices, courthouses, sidewalks, etc.).
- A petition circulator should have a good understanding of the issue, and be able to concisely and accurately explain what is being petitioned and ask people to sign the petition.
- The circulator should ask each signer if they are registered to vote in the county where the petition is being circulated, and then witness each signature.

#### **Quality Signatures**

Quantity of signatures is important, but especially in a local election, it is critical that people still want to vote for your cause after meeting the petition circulator.

- It is not a good idea to harass or unrelentingly recruit passerby for their signatures
- Use the thirty seconds that it takes for someone to sign the petition to tell them more about what is motivating the need for the petition and to answer their questions.

- A circulator may fill in the petition on behalf of a signer. The only part that must be completed by the signer is the signature.

## **E. The Science of Signatures**

### **Meeting the Threshold**

On average, ten percent of the signatures gathered will not meet certain requirements and will be disqualified from the petition.

Plan to collect at least ten percent more signatures than necessary in order to ensure that the petition has enough qualifying signatures to be placed on the ballot.

The first and most crucial step to successfully circulating a petition is to have an accurate goal for the number of signatures that are required for the petition to be filed.

- Referendums require qualifying signatures from five percent of the voters registered in the county during the previous election cycle. Referendums also have a filing deadline which will be based on the date that the ordinance being referred was passed. Check with your county ordinance for details.
- Initiative petitions either require signatures from five percent of the voters registered in the county during the previous election cycle to initiate zoning ordinance changes, or require signatures from thirty percent of the landowners in the district that the initiated language will affect. Your county ordinance will provide details about the requirements for your county as well as the filing deadline for the petition.
- The County Auditor or Secretary of State can provide public information about the number of registered voters in the county during the previous election cycle. This information is necessary for developing an accurate goal.

## **Qualified Signatures**

For a signature to be counted towards the total collected, it must first meet a set of criteria which verify that the signature comes from a registered voter within the county.

- State law does require that signatures be liberally examined to make it easy for citizens to participate in direct government through democracy and to limit the disqualification of signatures based on technicalities. However, this does not mean that each signature will be liberally appraised in favor of the petition. Make sure that the circulator has a solid understanding of what is required for a petition signature to qualify.

A qualifying petition signature includes the following:

1. A valid signature
2. A printed name of the person signing
3. A physical address of the person's official residence where they are registered to vote. A PO Box is not a physical address unless it is a rural route box. A dormitory does not qualify as an official residence unless the person is registered to vote at that address.
4. The city, state, and zip code of the official residence.



5. The name of the county in which the person is registered to vote.
  6. The date on which the petition was signed.
- According to South Dakota Codified Law Title 2-Chapter 1, “no signature of a person may be counted unless the person is a registered voter in the county indicated on the signature line.”
  - No signature of a person may be counted if the information required on the petition is incomplete.

### **F. Notarizing and Affidavits**

- The person circulating each page of a petition is required to sign an official statement certifying that the signatures were witnessed and are legal.
- According to South Dakota Codified Law Title 2-Chapter 1, “Each person who circulates a petition and gathers signatures must sign an affidavit, or verification, stating that ‘to the best of the circulator’s knowledge’ each person who signed the petition is a qualified voter and that no state statutes were ‘knowingly violated’ by collecting the signatures.”
- The affidavit must be worn and signed before a notary public who is commissioned in South Dakota or before another officer who is authorized to administer oaths, such as a police officer or judge.
- Failure of a circulator to properly notarize a petition can disqualify the entire petition from being considered. All of the signatures on the petition may become invalid if the circulator does not follow this requirement.
  - State law does not outline the consequences of failing to notarize a petition. However, legal precedent of several South Dakota court cases has shown that disqualification of the petition in question to be a possible consequence.

#### **Petitions are a Resource**

- Make a copy of the petitions before they are submitted.
- Contact the signers to recruit new members for your group, and
- Contact the signers to secure votes, volunteers, and support for the issue once it’s on the ballot.

### **G. Submission and Certification Process**

- All pages of the petition must be submitted as a single unit. It is a good idea to collect all signatures a few days before the absolute deadline to give the designated person or group time to count the signatures and make copies of the petitions before they are submitted.
- Submit the petitions to the county auditor who will then “certify” the petitions.
  - Certifying requires the auditor to consider the accuracy and eligibility of each signature and to disqualify any

#### **Submitting the Signatures**

Signatures must officially be submitted to the county Auditor’s office for approval. However, there are creative ways to get publicity and attention from the commissioners and local media by submitting the petitions at a public Commission meeting or by creating an event around the submission of the signatures.

signatures that do not meet the criteria.

- The auditor will count the signatures and determine if the final count meets the total number of signatures required to place the issue on a ballot in the next election.
- If the total number of signatures meets the criteria then the petitions are certified for the commission. If the number does not suffice, the petition fails and all signatures become invalid.

## **H. Getting on the Ballot**

- The Auditor will submit a certified petition to the board of County Commissioners who must take official action to accept the petition.
- The board of County Commissioners will generally defer to the County State's Attorney to determine if the petition is legal, and to determine the county's legal obligation to allow a vote on the initiated measure, but the official decision remains with the commissioners. They can do one of two things:
  1. The commission can vote to accept the petitions
    - A public election must be scheduled within sixty days of the petition being accepted, or can be held on a regularly scheduled election if one occurs within three months of the petitions being submitted, or
    - The Commission can consider the petition to be an official request for an ordinance change and vote to enact the language of the petition without a public vote. The Commission cannot vote to reject the language of the petition
  2. The commission can vote to reject the petition. This is rarely done, but is possible based solely on legal reasoning.
    - For example, a petition which proposes language for an ordinance that does not fall under the jurisdiction of county boundaries or a petition which triggers one of the loopholes detailed on page 26 may be rejected based on the legal arguments using those claims.
    - A petition may not be rejected based on the opinion of the Commissioners. For example, a petition to change setback distances cannot be rejected because the Commissioners don't approve of the ordinance change.
- Any rejected petition can be appealed to a Circuit Court using a Writ of Certiorari which forces the judge to decide if a vote should be held. South Dakota Codified Law Title 11-Chapter 2 describes this process.

*An attorney must be hired for this process.*

## **I. Dealing with Rejection**

Seeing an initiative or a referendum petition be rejected is very disheartening for any citizen or group to go through. However, a rejected petition does not mean that the idea was bad, or that the campaign is at an end. Take the time to properly and thoroughly evaluate the situation and consider the options that remain:

- Talk to the Commissioners, the County Auditor, the County Attorney or a private attorney to understand why your petition was rejected. If it was due to inadequate signatures or formatting problems, it's easily corrected and the petitions can be gathered again.
- Accepting the Commission's decision to reject the petition is always an option. It is ok to decide not to continue trying to force change through a petition.
- Submitting an appeal to the Commission for reconsideration of the petition request will allow you to make a case with the Commissioners for why it is critical to allow the citizens to vote on the petitions. However, it is rare that a Board of Commissioners will overturn its own decision.
- Legal action against the Commission is always an option. Filing a *Writ of Certiorari* can allow the judge to force a vote to be held, or suits can also be filed against the Commission for unlawfully rejecting the petition or for personal bias. DRA discourages personal lawsuits against Commissioners except for cases of gross prejudice from a Commissioner. A private attorney should be consulted for this type of action. (*Litigation, page 45*)

### **Is This a Crusade?**

Undertaking this type of campaign can become very emotional for all involved. Never stop evaluating the campaign and whether or not it is winnable. All campaigns have natural endings, and prolonging past a reasonable point can cast you credibility, energy, money, and friends.

- Accepting a rejection DOES NOT mean accepting defeat.
- Step back, evaluate your strategy, and RATIONALLY consider your next step.
- It's okay to stop without winning!

- Request a moratorium to allow for more time to explore other avenues for zoning. (*Moratorium, Page 6*)
- Consider alternative possibilities for influencing change to the zoning ordinance.
- Evaluate the need to continue with this issue or ordinance language. Time, money, personal relationships, and community dynamics all factor into local campaigns. Be aware of the impact that a continued campaign can have, and weigh these factors carefully.



# Referendum Petitions

The purpose of a referendum is to allow the voters of the county to determine whether or not a specific decision made by the Commission should be upheld. A referendum requires collecting signatures on a petition, and submitting them to the County Commission. A successful referendum petition will force an election to be held allowing citizens to approve or deny a decision made by the Board of County Commissioners.

## **A. Before Carrying a Referendum Petition**

- Any decision made by a Board of Adjustment or a County Planning and Zoning commission can be appealed for reconsideration to a higher board. Before beginning the work of carrying a petition, consider appealing the decision to a different board.
  - Determine the timeline and procedure for appealing a decision. Make sure you know which commission will hear the appeal.
  - Research the issue and be prepared to present a convincing argument at the hearing to consider the appeal.
- Make sure the decision is referable. Loopholes in the state law, as well as differences between administrative and legislative decision-making are all grounds for making a decision non-referable. Contact Dakota Rural Action, talk to an attorney, or get advice from a county official to make sure that it is possible to refer a decision first.
- Referendum petitions must be submitted to the commission within twenty days of the decision being officially published. Once the twenty day period has passed, a decision can no longer be overturned and can only be reversed by an initiative petition.
  - Submitting a referendum petition will immediately stop the decision in question from taking effect or being used to make other decisions until a final action is taken.

## **B. Writing a Referendum Petition**

- The language of the actual decision being referred provides the groundwork from which the petition should be written. Official minutes, including the language of the Commission's decisions are published in a local newspaper, but can also be retrieved from the County Auditor's office.
- The South Dakota Secretary of State's Office will review a petition for style and format, but will not give legal advice regarding the language. It may be wise to contact an attorney to review the petition.

*An example of a Referendum Petition can be found on page 40.*



# Initiative Petitions

An Initiative Petition allows the citizens of a county to propose language for the ordinance by petition and to approve or reject the proposed language by popular vote. This process circumvents the Board of County Commissioners beyond their approval of the petition signatures and scheduling an election to be held. However, it also gives citizens great latitude to write their own ordinances without the valuable feedback that is provided through public hearing.

- South Dakota Codified Law Title 8 and Title 11 address the rights of citizens to initiate measures for adoption to the zoning ordinance. However, it is essential that the differences of these two titles are understood before beginning an initiative petition.

## **A. Before Carrying an Initiative Petition**

- Prepare the language of the initiated measure in advance.
  - Consult an attorney to make sure that the language is correctly written to avoid unintended consequences when implementing the language.
  - Take time to discuss the proposed language with citizens of the county who will be impacted by changes.
- Determine which part of the ordinance will be impacted by the changes to determine the percentage of voters who will need to sign the petition.
  - Initiating changes to the Comprehensive Land Use Plan requires signatures from thirty percent of the landowners in the district.
  - Initiating changes to the ordinance requires signatures from five percent of the voters in the previous election.

## **B. Writing an Initiative Petition**

- The language used in the petition will be inserted directly into the county ordinance.
- Note the section where the proposed language would be inserted.

*An example of an Initiative Petition can be found on page 38.*





# Loopholes in Petition Laws

Dakota Rural Action members have discovered several frustrating loopholes and unclear language in the state laws that govern the petitioning processes in South Dakota. It is wise to be aware of these situations before beginning a petition campaign.

## **A. Administrative Decisions by the Board of Adjustment**

The Board of Adjustment, as described in previous sections, oversees the application process for all conditional use permits and other administrative actions regarding the implementation of ordinances. Their specific role as administrative decision makers gives them a relative broad immunity from citizen referral by petition.

The referral and appeal of decisions made by different boards are varied. While most decision made by County Commissions and County Planning and Zoning Commissions can be appealed, Dakota Rural Action has experienced several difficulties in appealing administrative and Board of Adjustment decisions.

The South Dakota Supreme Court ruled in June 2007 that the state statutes do not allow for referral of administrative decisions in counties with a valid CLUP.

Here are a few things to be aware of when trying to refer decisions made by various county boards.

### **Referring a Permit**

In 2004, the Deuel County Chapter of Dakota Rural Action carried a referendum petition seeking to reverse a decision by the Board of Adjustment to issue a conditional use permit to a 2,000 head dairy operation in the county. The petition signatures were successfully gathered. However, the Board of County Commissioners rejected the petitions. The citizens filed a Writ of Mandamus to force the Commissioners to allow a vote to be held. In June 2007, the Supreme Court ruled that the citizens could not refer the decision to grant a permit because this is deemed to be an Administrative Decision and was not referable according to South Dakota Codified Law Title 7-Chapter 18A.

### **Administrative Decisions**

- This type of decision puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining, and setting the salaries of employees are administrative decisions.
- Granting permits or variances as outlined by an existing ordinance are deemed to be administrative acts and are not referable by petition.

### **Legislative Decisions**

- This decision enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision
- Creating ordinances or allowing for permits and variances not expressly granted in an ordinance are legislative acts and are referable.

### **Administrative Decisions (cont.)**

- Board of Adjustment and administrative decisions can be appealed if the decision is thought to be illegal in some way. The appeal must outline the charges of unlawful behavior and the appeal must be heard by the courts.

### **Legislative Decisions (cont.)**

- Legislative decisions by the Planning and Zoning commission as well as the Board of Adjustment can be appealed to the Board of County Commissioners. This process is laid out in each county's zoning ordinance.

### **Avoiding the Board of Adjustment Loophole**

- Several Counties in South Dakota have incorporated county zoning that allows decisions made by Boards of Adjustment to be appealed to the county commission. By adopting this type of language, a county can reestablish accountability for administrative decisions.
- Zoning language can also place the responsibility granting variances and conditional use permits within the power of the County Commission, which gives a much larger possibility for appealing decisions through the branches of county government.

County-level zoning may be able to address the rights of citizens to refer decisions made by all of the boards. However, the ultimate change to this loophole must be made by the state legislature.

### **B. The Thirty Percent Rule in Initiative Petitions**

South Dakota Codified Law addresses initiative petitions in two different sections of the statutes; Title 7, which deals with the creation of county governments and Title 11, which addresses the use of County Comprehensive Land Use Plans. Both contain requirements for eligibility to sign a petition initiating ordinance changes.

*Dakota Rural Action encourages citizens to hire an attorney for clarification of these two statutes before beginning the signature collection process.*

#### **Title 7-Chapter 18A-Section 9**

SDCL 7.18A.9 states, "the right to propose ordinances and resolutions for the government of a county shall rest with five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election."

#### **Title 11-Chapter 2-Section 28**

SDCL 11.2.28 states that, "amendment, supplement, change, modification, or repeal (of a comprehensive land use plan) may be requested through a petition by thirty percent of the landowners in the zoning district or districts requesting change."

### **The Thirty Percent Rule in Action**

**The Situation:** In late 2005, members of Dakota Rural Action in Moody County and Deuel County initiated petitions in each of their counties to change ordinances governing setbacks for large scale animal feeding operations. The petitions, certified to meet the five percent threshold of signatures, were rejected by the County Commission based on advice from the State's Attorney claiming that the petitions did not meet the requirement for signatures on an initiative petition.

**The Case:** The citizens of both counties filed *Writ of Mandamus* suits asking a judge to order an election to be held. The Circuit court ruled that the citizens had a right to vote on the petitions and ordered an election. However, the commissioners in Deuel County appealed the decision.

**The Verdict:** The Supreme Court ruled that SDCL 7.18A.9, which requires signatures from five percent of registered voters to initiate a zoning change, did not apply in this case. Instead, SDCL 11.2.28, which deals with Comprehensive Land Use Plans specifically, was applied. According to this statute, initiating changes to a CLUP requires a petition of signatures from thirty percent of the landowners in the district that will be impacted by the changes.

The citizens in both counties were denied a vote on the measure and the petitions were deemed void.

The questions that remain regarding the thirty percent rule are actually quite extensive and deal with who is eligible to sign the petition, as well as determining when the opposing rules come into play. If you are considering using the thirty percent rule to initiate changes, we urge you to seek clarification to these questions regarding a specific petition before beginning.

1. Who is qualified to sign the petition as a "landowner"? Landowner is not specifically defined within Title 11 of the state statutes. However, according to other definitions of landowner within the state way, a "landowner" does not have to be a registered voter within the county to be eligible to sign the petition, which also begs the question of whether a signer must be eighteen to sign the petition.
2. What are the boundaries of the "zoning district" that is being petitioned? According to South Dakota Codified Law Title 11-Chapter 2, a district is defined by the land use zone. For example, a change to the agricultural zoning ordinance would require signatures from landowners whose acreage is zoned agricultural.
3. Which sections of the county's ordinance fall under the Comprehensive Land Use Plan versus the zoning ordinance, and which "zoning district" must be petitioned to effectively initiate changes?



# Examples of Petition Language and Format

## Deuel County Initiated Language

- The following petition language was used in Deuel County to initiate changes to three separate sections of the Deuel County Zoning Ordinance. Each section of the ordinance is identified, and the language to be changed is clearly stated. If successfully petitioned, the exact language of the petition would be presented to the voters and adopted into the corresponding sections of the ordinance upon approval.
- This petition was ultimately defeated by the South Dakota Supreme Court’s decision regarding the application of the thirty percent rule.  
*(Thirty Percent Rule, page 33)*

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WE, THE UNDERSIGNED qualified voters of \_Deuel\_ County in the state of South Dakota, petition that the following (ordinance) (resolution) be submitted to the voters of that county for their approval or rejection pursuant to law.

The proposed (ordinance) (resolution) in proper form is as follows:  
Be it ordained by Deuel County:

That Section 278 of the Deuel County ordinance be amended as follows:

Special Exception. A special exception is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in a zoning division or district as special exceptions, as specific provisions for such exceptions are made in these zoning regulations. ~~Special exceptions are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.~~

That a new Section 508 of the Deuel County Zoning ordinance be added as follows:

The citizens of Deuel County shall have the right of referendum as provided for by South Dakota law on any legislative decision of the Board of Adjustment, the Board of County Commissioners, or of the County Zoning Board.

That Article VI of the Deuel County zoning ordinance be amended by adding the following language:

The citizens of Deuel County shall have the right of referendum as provided for by South Dakota law on any legislative decisions of the Board of Adjustment, the County Zoning Board, or the Board of County Commissioners.

That Section 1304 (6) relating to setbacks be amended as follows:

	<u>Class A</u>	<u>Class B</u>
Established Residences	<del>2640 feet</del>	<del>1760 feet</del>
	7920 feet	5280 feet
Private Wells	<del>640 feet</del>	<del>1760 feet</del>
	7920 feet	5280 feet

**Initiative Petition Format**

- This format must be used for all legal initiative petitions in South Dakota.  
*This form can be obtained from your County Auditor’s Office or from the Secretary of State.*

**COUNTY INITIATIVE PETITION**

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ County in the state of South Dakota, petition that the following (ordinance) (resolution) be submitted to the voters of that county for their approval or rejection pursuant to law.

The proposed (ordinance) (resolution) in proper form is as follows:

---

**INSTRUCTIONS TO SIGNERS:**

1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.
3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.
4. Abbreviations of common usage may be used. Ditto marks may not be used.
5. Failure to provide all information requested may invalidate the signature.

NAME	RESIDENCE	DATE/COUNTY
SIGN 1 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 2 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 3 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 4 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 5 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION

NAME	RESIDENCE	DATE/COUNTY
SIGN 10 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 11 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 12 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 13 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 14 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 15 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 16 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 17 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 18 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION

**VERIFICATION BY PERSON CIRCULATING PETITION**

**INSTRUCTIONS TO CIRCULATOR:** This section **must** be completed following circulation and before filing.

\_\_\_\_\_

Print name of the circulator                      Residence Address                      City                      State

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

\_\_\_\_\_ Signature of Circulator

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(Seal)

\_\_\_\_\_ Signature of Officer Administering Oath

My Commission Expires \_\_\_\_\_

**Referendum Petition Format**

- This format must be used for all legal referendum petitions in South Dakota.  
*This form can be obtained from your County Auditor’s office or from the Secretary of State.*

**COUNTY REFERENDUM PETITION**

WE, THE UNDERSIGNED qualified voters of \_\_\_\_\_ County in the state of South Dakota, petition that the following (ordinance) (resolution), as passed by the County Commissioners of that county, be submitted to the voters of the county for their approval or rejection pursuant to law.

(Here insert the title of the (ordinance) (resolution) and the date of its passage. However, if only a portion of the (ordinance) (resolution) is intended to be covered by the petition, that portion shall be set out at length.)

---

**INSTRUCTIONS TO SIGNERS:**

1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.
3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.
4. Abbreviations of common usage may be used. Ditto marks may not be used.
5. Failure to provide all information requested may invalidate the signature.

NAME	RESIDENCE	DATE/COUNTY
SIGN 1 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 2 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 3 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 4 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 5 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION
SIGN 6 _____ PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER _____ CITY OR TOWN	DATE OF SIGNING _____ COUNTY OF REGISTRATION



NAME	RESIDENCE	DATE/COUNTY
SIGN 8 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
SIGN 9 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION
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SIGN 18 ..... PRINT	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER ..... CITY OR TOWN	DATE OF SIGNING ..... COUNTY OF REGISTRATION

**VERIFICATION BY PERSON CIRCULATING PETITION**

**INSTRUCTIONS TO CIRCULATOR:** This section **must** be completed following circulation and before filing.

Print name of the circulator \_\_\_\_\_

Residence Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

\_\_\_\_\_

Signature of Circulator

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

Signature of Officer Administering Oath

My Commission Expires \_\_\_\_\_

Title of Officer Administering Oath

## **Moody County Petition Language**

- Below are two examples of language used in Moody County to refer decisions made by the County Commission.

WE, THE UNDERSIGNED qualified voters of Moody County in the state of South Dakota, petition that an Ordinance Providing for the Repeal of the Moody County Drainage Ordinance No. 2001-01 and No. 2003-03, which Ordinance was passed by the Moody County Board of Commissioners, on the 7<sup>th</sup> day of March, 2006, and published in the Moody County Enterprise newspaper on the 15<sup>th</sup> day of March, 2006, be submitted to the voters of Moody County for their approval or rejection pursuant to law.

### **Bechen v. Moody County Board of Commissioners**

In 2004, citizens in Moody County, South Dakota, carried a petition to refer a decision granting conditional use permits by the Board of Adjustment. The County Commission rejected the petitions, and the citizens appealed to a court. The judge ruled in favor of the citizens, but this decision was overturned by a higher court. The ruling claimed that because Moody County has a comprehensive zoning plan that allows for conditional use permits, the decision was administrative and therefore not referable.

### Resolution # 04050401

Whereas, the Moody County Board of Commissioners (Board), acting as the Board of Adjustment, have approved Conditional Use Permits for the proposed Moody County Dairy and Britannia Dairy as stated in the minutes of the April 6, 2004 meeting of the Board of Adjustment, and

Whereas, the Board realizes that many of the registered voters in Moody County wish to have the opportunity to vote on whether the Conditional Use Permits should be issued to the two proposed out of state owned factory dairy operations, and

Whereas, the Board realizes that the South Dakota State Legislature has unsuccessfully attempted to take away local control from the voters of Moody County regarding zoning issues several times in recent years, and

Whereas, the citizens of Moody County and South Dakota have successfully held off the legislature's attempts to take away local control from the citizens, and

Whereas, the Board respects the rights of the citizens of Moody County to have the opportunity to vote through the democratic process on decisions that affect their lives and quality of life.

Now, therefore be it resolved, that the Board give the citizens of Moody County the opportunity to vote on whether the Conditional Use Permits for the proposed Britannia and Moody County Dairies should be approved or not.

**Kirschenman v. Hutchinson County Board of Commissioners**

In 2002, the citizens of Hutchinson County, South Dakota carried a petition to refer a decision by the Board of Adjustment, granting a conditional use permit. The Board of Adjustment rejected the petitions and refused to allow the citizens to vote on the decision. The citizens appealed the decision to a circuit court, and were granted the right to vote on the decision made by the Board of Adjustment. The Court ruled that this case did not represent an administrative decision because Hutchinson County did not have a comprehensive zoning plan, and therefore did not allow for conditional use permits to be granted by the Board of Adjustment. The citizens were granted the right to vote on this decision.



# Litigation

Lawsuits and court proceedings have a very definite place in the realm of county government actions. The County Commission has an attorney to advise them regarding almost all decisions that they make. Citizens generally don't have that type of expertise available to them, and a private attorney can be an invaluable asset in exploring alternative actions when a commission balks at attempts by citizens to impact local government.

However, litigation can become a lengthy, expensive process with sometimes frustrating results. DRA urges citizens to carefully evaluate the decision to begin legal action against a commission.

## **A. Deciding to Litigate**

The emotional frustrations of dealing with a rejected petition, an opposing vote, or other losses when trying to use local government can quickly lead to litigation and legal suits as a final and only option. Dakota Rural Action members have found themselves at both ends of lawsuits against County Commissions in South Dakota. Citizens are urged to thoroughly evaluate the need, reasoning, and consequences of pursuing litigation before filing.

### **Why Litigate?**

- Legal action can force the Commissioners to act on an issue within their control. A strategic lawsuit allows a judge to require the commissioners to act in a certain way.
- Appealing a decision to a court of law can be necessary if a commission refuses to hear an appeal, or if the citizens of the county are not satisfied with the commissions decision regarding an appeal.
- Holding Commissioners accountable for their actions as private individuals who serve in a public position can be done through conflict of interest suits or filing suit to allege gross negligence or misconduct in a decision. This is not an easy case to prove, and DRA urges citizens to be extremely cautious in filing personal suits against commissioners.
  - It's the only remaining option after exhausting all other avenues of hearings, petitions and appeals.
  - The Commission has been so hostile, or so grossly negligent that it is impossible to accomplish anything by working with them.

#### **Suing for What**

Suits against the County Commission are referred to as civil suits. The results can force the Commission to uphold their responsibilities, and follow the law.

Unless it is proven that a Commission acted in bad faith or deliberately caused harm to the county or its citizens, there can be no monetary damages awarded.

Often, the County Commission is not even required to pay legal fees. However, if the citizens lose, you may be liable for costs incurred by the County Commission due to your suit.

Talk to your attorney about this before you start anything.

## **Evaluate**

- Is this issue important enough to the future of your county to warrant legal action?
- What implications does a legal action have on your future ability to work with the Commissioners? What effect will it have on your community?
- Consider if litigation and legal action is the only way to reach your goal.

## **Consequences of Litigation**

- Appeals are inevitable. If you win, the likelihood is high that the opposing side will appeal. If you lose, you may consider appealing. Either way, an appeal will cost you more money, and should be a consideration from the start.
- Legal fees add up in a hurry. Paying the attorney is just the beginning. Court costs are placed on top of that, and if you lose the case, you may be required to repay money spent by the county in defending itself.

### **WANTED: ATTORNEY**

Interview a prospective attorney just like you interview a new employee.

Ask for:

- Their experience with your type of case
- What they will charge and how many hours.
- How they will proceed if you hired them
- What will make them accountable to you?
- An opinion of the legal standing of your case
- If similar cases have been successful or not.
- WHY they feel like they can win your case.
- References from other citizens groups

You may want to interview a second attorney, or take some time to think about your decision.

Don't let an attorney pressure you to hire him/her.

- Lawsuits are lengthy. Deuel County waited nine months after their court date to get an answer from the Supreme Court.
- Keep in mind that there may be retaliation or other forms of backlash to you and your group members for filing legal suits against the commissions or in appeal of their actions.
- Most litigation is final. While appeals give some opportunity to review or reverse a decision, once a case is decided by the Supreme Court, it can not be filed against the same person for the same reason.

## **B. The Attorney**

### **Find an Attorney:**

- Experienced with the issue that you are dealing with, and
- Experienced with the process of county boards, commissions and zoning ordinances.
- Able to answer your questions and makes you feel comfortable.

## Talking to an Attorney

- You are paying them for advice and council. Make them accountable to you.
- Listen to their advice, but don't take everything at face value. You may not have a law degree, but you have an opinion - voice it, and be assertive.
- Ask questions if you don't understand the process, the language or the actions being taken by your attorney. The fee that they receive for services grants you the right to understand, or at least be comfortable with their recommendations.

## Losing the Case

- A case can always be appealed to a higher court and in the quest for justice and principles it's easy to feel driven to continue.
- Make sure to carefully examine your options for appealing, and keep in mind that you don't have to appeal.

*Consult your attorney for advice, but remember to rationally evaluate your own feelings about the case. It's your time, money, and community*

## C. Types of Suits

There are many types of lawsuits and angles of law that can be explored when dealing with zoning regulations, county boards and commissions and especially when dealing with the right to petition. It is crucial that individuals and groups consult an attorney when attempting these avenues of litigation. A few suits that Dakota Rural Action and other citizens groups have explored and attempted include *Writs of Mandamus* and Conflict of Interest suits.

### Amicus Brief

This letter is submitted to the courts by influential people, or organizations in support of the arguments presented by one of the parties to a lawsuit.

While this shouldn't sway the legal aspect of a judge's decision it can weigh heavily on the political aspect of a decision. It can also lend credibility and legitimacy to a little-known citizens' group.

### **Writ of Mandamus**

- This is a written appeal to a court to force the Commission to allow an action. It is commonly used to appeal the rejection of a petition for a vote.
- This is a very effective tool if there is a clear legal right for a vote to be held regarding the petitions. However, the administrative versus legislative issue of board decisions has made this a difficult case to win in most counties. Even if the petitions are legal, a court cannot grant an election on a decision that is not referable.

## **Conflict of Interest**

- A conflict of interest suit can be filed against an individual Commissioner. This can include direct or indirect financial gains for the Commissioner or family members and direct or indirect conflicts when a Commissioner receives personal benefits from a decision.
- A conflict of interest is an illegal act and an abuse of power as a County Commissioner. Proving this conflict in court can result in overturning the decision made by the Commission.
  - Commissioners may recuse themselves from voting in these circumstances. If a Commissioner doesn't cast a vote, then there is no conflict of interest
  - Ethically questionable decisions and votes may seem like conflicts of interest, but unless there is a definite legal conflict a lawsuit will not resolve the issue.
- These suits are filed personally against the Commissioners involved, and the consequences should be thoroughly understood for yourself and your group before starting this type of lawsuit.



# Getting Elected or Appointed

Getting involved in government isn't difficult or intimidating. Involvement at any level is an important part of determining the future of your community. DRA has found that when dealing with hostile or uncooperative boards, working to elect responsible officials can be the most effective way of furthering changes in your county. It is often much less expensive, and in the long-run, much more effective than litigation or carrying petitions.

*Dakota Rural Action is a non-partisan, non-profit organization that does not endorse, support, or encourage any specific political party affiliation or specific candidate in any election. DRA does encourage the election of responsible candidates who are accountable to the voters of the district represented. Candidate education and citizen participation is the fundamental key to a working local government system.*

## A. Running for Public Office

Running for public office is a big responsibility, but also gives you the chance to directly affect changes in your community.

### Legal and Eligibility Requirements

- Public offices can be held by anyone who meets the age and residency requirements of that office.
  - Usually this requires a person to be 18 years of age, and a registered voter in the district that will be represented.
  - Sometimes, candidates are required to live within the district for a certain amount of time before becoming eligible as a candidate.
- Education, experience, or background cannot be used to eliminate or discriminate against persons who may run for public office.
- Information about requirements for specific public positions can be obtained from official public offices such as a County Auditor, City Clerk, and/or the Secretary of State.

**Tip:**  
Seeking a public office may seem like the best way to impact the specific issue that you are concerned with, but make sure you are prepared to handle the range of topics that will be dealt with by the Commission that you are running for. Talking to current or past elected officials about the workload and responsibilities can help you to evaluate your qualifications.

### Filing as a Candidate

- In South Dakota, a candidate for county office must officially file for candidacy in order to be placed on the ballot for election. This requires several things.

1. A petition for candidacy must be signed and submitted to the County Auditor which includes signatures from one percent of the number of voters who cast ballots for the candidate's political party in the last election.
  - An independent party candidate can collect signatures from voters registered under any party affiliation, but a voter can only sign one candidate's petition during each election.
2. Petitions for specific party candidacy must be submitted to the County Auditor prior to the election. This timeline varies based on type of election, political affiliation and county rules. Check with the County Auditor for details.
3. Each candidate must report or file some form of financial statement. Each county is able to determine the detailed filing process for county candidates. Check with the County Auditor for more information regarding specific counties.

#### **Educating the Candidates and the Voters**

- Talk to the candidates, and explain your concerns and issues to them before the election. Make an appointment with the candidate to visit with him/her about specific policies, situations, or issues.
- Attend or host candidate forums in your community so that voters have the opportunity to meet the candidates. Make sure to ask questions about your issues so that the voters hear how the candidate proposes to deal with them if elected. By hearing questions about specific issues at several venues, a candidate will realize that it is important to voters.
- Ask the local newspaper, and radio or TV station to host a candidate forum or to publish responses from candidates regarding specific questions facing the county and community.

#### **B. Seeking a Board Appointment**

- Appointing Board members is generally the responsibility of the County Board of Commissioners.
  - Boards of Adjustment as well as the County Planning and Zoning Boards are appointed. Other boards or officers may also be appointed depending on the specific county ordinance.
- Talk to the County Auditor, or refer to your county ordinance to determine the exact process for filling or applying for appointed seats in your county.
- You can formally submit your name or recommendation to the board, but it may be more effective to personally talk to the Commissioners about your recommendation.
  - If you are nominating someone from the community, always thoroughly interview them, so that you have a full knowledge of their opinions, and stances on the issues that are important to you.
- Never nominate someone who has not given their consent.

## **C. Application of Campaign Finance Laws to Local Elections**

Official reporting of campaign finance details is required by law for any initiative, candidate, or referral which appears on any public ballot for voter approval.

### **Counties and School Districts**

- The South Dakota campaign finance disclosure statutes apply and require filing from:
  - **Counties** - with populations greater than 5,000
    - Candidates for county offices and
    - County ballot questions
  - **School Districts** - with average daily membership greater than 2,000
    - Candidates for school district offices and
    - School district ballot questions
    - School districts covered by these statutes must conform to the contribution limits applicable to legislative offices.

#### **Who gets the Paperwork?**

##### **County Auditor**

- Candidates for County Office
- County ballot measures

##### **School Business Manager**

- School Board Office Candidates
- School District Ballot Questions

##### **Miscellaneous Elections**

- Candidates or Ballot questions with no direct supervising office must be reported to the person/office responsible for the administration and oversight of the election.

### **Township, Municipal or Special Purpose Districts**

- State Campaign reporting laws do not apply to township, municipal, or special purpose districts. Candidates for these offices ballot measures within these boundaries are not required to file under state law.
- The governing body of any county, township, municipality, school district, or special purpose district may adopt the campaign reporting requirements of the state, with or without amendments. These requirements are found within the ordinances or laws of the governing body in question.
- Check with the local office of the government that is being petitioned or elected to ensure that campaign reporting laws have been followed appropriately.

Citizens, non-profits, or other entities managing ballot question campaigns, or running for an elected office must file these reports according to state and county law. Violation or failure to file these reports can result in criminal charges and personal liability.

### **Individual Contributions to a Campaign**

- Any election that falls under the jurisdiction of state financial reporting laws allows an individual to contribute up to \$1,000 to a candidate or ballot question campaign during the election cycle.
- Elections that do not require state campaign reporting are allowed to set separate financial giving limits. Please check with the local government office for specific information.

## **D. The Making of a Candidate**

Finding a person who is both qualified and electable as a candidate is key to successfully changing the power structures of rural and local communities. Too often, people run for elections who do not have both of these key characteristics, leaving the voters with a one sided candidate. The candidate ends up losing the election, or winning the election but becoming a disappointing public servant. The person who runs for an elected position must be a good candidate, but also be a good public servant.

- Electability - is an idea that a person will appeal to the voters and be able to remain in the public's favor while serving. This does not mean that someone is always on the popular side of an issue. It does mean that a candidate must be respectable in a way that will win votes and garner support. For example, the spokesperson of a popular but divisive issue may not be electable because of the community perception that they are not community builders even though they may be qualified for the position.
- Qualified – is the requirement that the person running for the office has the capacity to satisfy the demands of the job which they are seeking. This does not mean that someone must have an education or specific resume. It does mean that the candidate must have the capacity to learn about issues, understand arguments and analyze information to make educated decisions. For Example, highly educated people may be qualified for a position, but unless they have charisma, standing in the community, and a knack for leadership, they are unelectable.

When trying to identify community members as potential candidates for public office think about the qualifications, position, and accountability of an ideal candidate that you would vote for. The lists below are meant as a guideline for thinking about who, in your community, may fit into the role of being a good candidate.

### **Qualities of Poor Candidates**

- Lazy
- Fence-rider
- Won't take advice
- Unfocused/distracted by personal life
- One trick pony – one issue candidate
- Too Extreme
- Control Freak attitude
- Ego-Maniac
- No Vision, foresight, big picture
- Power hungry
- Back-stabber or not accountable

### **Qualities of Great Candidates**

- Ambitious/hardworking
- Compassionate
- Pride in community values
- History of strong leadership
- Willing to take a strong position
- Team player
- Humble
- Balanced
- Has Initiative
- Wide community appeal
- Well spoken/articulate
- Knowledgeable about issues
- No skeletons in the closet
- Has a vision for the community
- Team Builders
- Negotiate/compromise strategically
- Integrity and honesty
- Connected to community
- Open minded
- Good listener
- Understanding of common good
- Understanding of big picture

### **Where to Find Great Candidates**

Look around your community for potential candidates. Leaders are often developed through years of service to other organizations, giving them credibility and qualifications they will need to hold public office. Think about the people who hold these types of positions in the community:

- Boards of Directors of organizations
- Leaders of unorganized groups
- Past or current elected officials
- Family members of community leaders
- Community leaders
- Super activists
- Sympathetic allies
- Student groups
- Retirees
- Boards and Commissions
- Church leadership and organizations
- Service groups – 4-H, FFA, Scouts, PTA
- Union reps and organizers

### **Asking Someone to Be a Candidate**

- Interview them to see if they really are a good candidate. This is a great opportunity to evaluate if there are any skeletons in the closet and what their strengths are.
- Find out what they do, who their family is, and what their background is.
- Find out what motivates them and how that can translate into public service.
- Ask about their stance on issues and evaluate their willingness to learn about the spectrum of issues that they will encounter if elected to a public office.

Most people will automatically object to the idea of running for public office. However, if you're prepared for the objections, it's easier to help someone evaluate themselves as a potential candidate.

- Not enough time – This is a very valid concern and also the first and biggest excuse. Talk to current public officials to determine what the actual time commitment is, and talk about what supporters can do to help a good candidate work around this problem.
- Family too busy – Again, this is a valid concern. However, family priorities can compliment a campaign and the time in public office quite nicely. The public respects public officials who are family oriented and still effective public officials. Besides, it can serve as a great lesson for children to see their parents involved in public service.
- Political fears – A lot of people just don't like to talk about politics and taking a public stand on an issue can be intimidating. However, knowing that there is public support for a political position can help to calm this fear.
- Campaigning is Hard – Yes, it is hard, but it can also be fun, and there are a lot of resources to help local candidates in small elections to be more successful.
- Public scrutiny – especially on controversial issues, or divided counties running for office forces a candidate to take sides and have their personal history evaluated by the public. Reassuring a potential candidate that there is support for him/her can help to alleviate these concerns.
- Cost – This should never be a factor in running for election. Costs can be covered by asking for support and donations from community members and citizens who are committed to seeing change in the community. Candidates who have support from the community will be able to cover their costs.

If a potential candidate can't get passed these concerns during a personal conversation, then they will probably not be able to leave the concerns behind during a campaign. If you can't convince them to run, then be prepared to move on to ask someone else. A good candidate must believe that they are a good candidate and be willing to fully commit to the campaign and the term of service.

# Appendix





# Appendix A

## South Dakota Codified Law

### A. County Commissions

- 7-8-1. Number and terms of office of commissioners--Staggered terms. Each organized county shall have a board of commissioners consisting of not less than three nor more than seven members, each of whom shall be elected at a general election only and whose term of office shall be four years commencing on the first Tuesday of January following election. Any commissioner who represents an even-numbered district shall run for election at the general election at which the President is elected; any commissioner who represents an odd-numbered or unnumbered district shall run for election at the general election at which the Governor is elected.
- 7-8-16. Open meetings--Location and notice requirements--Joint county-municipal planning sessions--Continuances. The board of county commissioners shall hold its sessions as an open meeting and transact all business in a public manner. Meetings shall normally be held at the court house or at the usual place of holding court; however the board may occasionally hold its sessions at any other suitable place at the county seat or at other locations within the geographic county area if the meetings are held in a public place and if notice of the meeting is published once a week for at least two successive weeks before the meeting in the legal newspaper or newspapers of the county in which the meeting is to be held. Joint county-municipal planning sessions may be held at any suitable location within the county. All matters pertaining to the interests of the county shall be heard by the board in session only, but it may continue any business from any regular session to an intermediate day.
- 7-8-17. Recording of votes by county commissioners. Whenever any board of county commissioners shall act upon any petition, adopt any resolution, make any appointment to fill any vacancy in a county office, or enter any final order in any proceedings pending before any such board, the members shall vote by yeas and nays and a record of such votes shall be kept by the county auditor who shall include the same in the published report of the minutes containing the record of any such action, resolution, appointment, or order.
- 7-8-20. General powers of county commissioners. In addition to others specified by law, the board of county commissioners shall have power:
- (1) To institute and prosecute civil actions in the name of the county, for and on behalf of the county;
  - (2) To make orders respecting the care and preservation of all property belonging to the county and to sell any real property of the county when authorized by law so to do;
  - (3) To levy a tax not exceeding the amount authorized by law, and to liquidate indebtedness;

- (4) To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit;
- (5) To construct and repair bridges; to open, lay out, vacate, and change highways; to purchase or acquire grounds for courthouse, jail, or other building sites, locate or relocate the courthouse on such sites; to establish election precincts in its county and appoint the judges of election; and, as a board of equalization, to equalize the assessment roll of its county in the manner provided by law;
- (6) To furnish necessary blank books, blanks, and stationery for the county auditor, register of deeds, county treasurer, state's attorney, sheriff, and other elected or appointed county officers, to be paid out of the county treasury; also a fireproof safe or vaults, when in its judgment the same shall be advisable, in which to keep all the books, records, vouchers, and papers pertaining to the business of the board;
- (7) To superintend the fiscal concerns of the county and secure their management in the best possible manner;
- (8) To regulate the transaction of business in alcoholic beverages, the use and consumption thereof, to establish the number of on-sale licenses which may be issued, provide for reasonable classification of on-sale licenses and to fix the fees to be charged for the various classifications which shall be uniform within each class, all consistent with the provisions of Title 35. The secretary of revenue shall be promptly furnished certified copies of all ordinances and resolutions or amendments thereto adopted relating to the exercise of these powers;
- (9) To make ordinances prohibiting the sale or exhibition of any obscene matter; however, no county resolution shall be effective in any incorporated area within said county;
- (10) To do and perform such other duties and acts as it is or may hereafter be required to do and perform;
- (11) To provide additional compensation to the county treasurer, county auditor, county register of deeds, state's attorney, and sheriff. This compensation shall be in addition to the salaries prescribed in §§ 7-7-9.1, 7-7-12, and 7-12-15;
- (12) To provide office space, in addition to that provided in the county courthouse, for state's attorneys, appointed officials of the county and other employees;
- (13) To receive and administer grants, loans and assistance and to enter into agreements for cooperative action, with or on behalf of any public agency or nonprofit organization, to establish, promote and support community development;
- (14) To enact ordinances to regulate and prevent the placing of ashes, dirt, garbage or any offensive matter in any highway or public ground or in any body or stream of water within the county, but outside of an incorporated municipality or outside of the one mile limits of any incorporated municipality;

(15) To enact ordinances to regulate and compel the cleansing, abatement or removal of any sewer, cesspool or any unwholesome or nauseous thing or place;

(16) To license and regulate transient merchants, hawkers, solicitors, peddlers, itinerant vendors, and every person retailing tangible personal property or services, unless such business is carried on exclusively within the boundaries of a municipality or is carried on through home solicitation or from a fixed permanent location and place of business in this state where such goods and services are offered on a continuing basis;

(17) To enact by ordinance, for any portion of the county which is zoned, certain building codes pursuant to § 11-10-5.

(18) To prohibit or restrict open burning, after consultation with local fire officials and law enforcement officials, in order to protect the public health and safety.

## **B. Initiative Petitions**

7-18A-9. Initiated measures -- Number of voters required. The right to propose ordinances and resolutions for the government of a county shall rest with five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election.

7-18A-10. Nullification by initiated ordinance of emergency provisions prohibited -- Time for initiated measure to nullify bond purposes. An initiated ordinance may not be proposed which would nullify such ordinances or resolutions as may be necessary for the immediate preservation of the public peace, health, or safety or for the support of any government or existing public institutions, or which would nullify the purpose for which bonds have been sold by a county pursuant to statutory authority, unless proposed within a period of thirty days after the first publication of the advertisement of the notice of sale of such bonds.

7-18A-11. Initiative petition--Form and contents. The right to propose an ordinance or resolution shall be exercised by filing with the auditor a petition in proper form containing the proposed ordinance or resolution, signed by the required number of qualified voters of the county. The signer or circulator of the petition shall add the signer's place of residence and the date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. A date may be written in full or may be written using standard abbreviations, including numerals.

7-18A-12. Affidavit required of circulators of petition. Each person who has circulated a petition shall, before filing the petition, sign an affidavit, under oath, verifying that he circulated the petition and that either he or the signer added the signer's place of residence and date of signing. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator.

7-18A-13. Board action on initiative petition -- Submission to voters. When a petition to initiate is filed with the auditor, he shall present it to the board of county Commissioners at its next regular or special meeting. The board shall enact the proposed ordinance or resolution and shall submit it to a vote of the voters in the manner prescribed for a referendum within sixty days after the final enactment. However, if the petition is filed within three months prior to the primary or general election, the ordinance or resolution may be submitted at the primary or general election.

7-18A-14. Majority vote required for approval of initiated measure -- When measure effective. No initiated ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon the completion of the canvass of the election returns relating thereto.

### **C. Referendum Petitions**

7-18A-15. Referendum petition--Number of signatures required--Emergency measures excepted. Any ordinance or resolution adopted by a board of county commissioners may be referred to a vote of the qualified voters of the county by the filing of a petition signed by five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election, except such ordinances and resolutions as may be necessary for the immediate preservation of the public peace, health, or safety, or for the support of the county government and its existing public institutions.

7-18A-15.1. Legislative decision of board subject to referendum -- Administrative decision not subject to referendum. Any legislative decision of a board of county Commissioners is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision.

No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining, and setting the salaries of employees are administrative decisions.

7-18A-16. Time of filing referendum petition - Submission to voters required. A petition to refer an ordinance or resolution subject to referendum may be filed with the auditor within twenty days after its publication. The filing of such a petition shall require the submission of any such ordinance or resolution to a vote of the qualified voters of the county for its rejection or approval.

## **D. Boards of Adjustment**

- 11-2-22. Referendum on comprehensive plan, zoning ordinance, or subdivision ordinance--Land uses suspended until referendum completed. The comprehensive plan, zoning ordinance, and subdivision ordinance may be referred to a vote of the qualified voters of the county pursuant to §§ 7-18A-15 to 7-18A-24, inclusive. The effective date of the comprehensive plan, zoning ordinance, or subdivision ordinance on which a referendum is to be held shall be suspended by the filing of a referendum petition until the referendum process is completed. However, if a comprehensive plan, zoning ordinance, or subdivision ordinance is referred to a referendum vote, no land uses that are inconsistent with the plan or ordinance may be established between the time of adoption of the resolution or ordinance by the board, as provided in § 11-2-20, and the time of the referendum vote.
- 11-2-22.1. Revision of plan, zoning ordinance, or subdivision ordinance after rejection by voters. If the voters reject the proposed comprehensive plan, zoning ordinance, or subdivision ordinance, the board may cause the planning commission to revise the plan or regulations and adopt the same as revised, and file and publish the same as required by § 11-2-21.
- 11-2-28. Changes in comprehensive county plan--Initiation by board or petition of landowners. The plan, ordinances, restrictions, and boundaries adopted pursuant to this chapter may be amended, supplemented, changed, modified, or repealed by action of the board. Any such modification or repeal shall be proposed in a resolution or ordinance, as appropriate, presented to the board for adoption in the same manner and upon the same notice as required for the adoption of the original resolution or ordinance. The amendment, supplement, change, modification, or repeal may be requested through a petition by thirty percent of the landowners in the zoning district or districts requesting change.
- 11-2-28.1. Petition by individual landowner for change in zoning--Notice to abutting landowners--Notice to county auditor of abutting county. 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 all other abutting landowners by registered or certified mail of the petitioned zoning change at least seven days before the public hearing is held on the matter by the planning commission. Property is considered as abutting 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 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 seven days before the public hearing is held on the matter by the planning commission.
- 11-2-28.2. Public hearing on petition by landowners--Consideration and recommendation by county planning commission. Following receipt of any petition as provided in § 11-2-28 or 11-2-28.1, the board shall hold a public hearing, subject to the requirements of § 11-2-19, and take action upon the petitioned request. Within forty-five days of receipt by the

board of any such petition, the county planning commission shall consider the requested action and make a recommendation thereon to the board.

- 11-2-49. Appointment of board of adjustment or Commission as board of adjustment--Rules--Variances to terms of ordinance. Except as otherwise provided by § 11-2-60, the board shall provide for the appointment of a board of adjustment, or for the planning and zoning Commission to act as a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter, shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances to the terms of the ordinance.
- 11-2-50. Board of adjustment--Composition--Vacancies--Alternates. A board of adjustment, other than the planning and zoning Commission acting as a board of adjustment, consists of five members, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The appointing authority may also appoint a first alternate and a second alternate for a term of three years each. If a member is unable to attend a meeting, the first alternate, or second alternate, in turn, shall serve in the member's place.
- 11-2-51. Meetings of board of adjustment--Powers of chair--Meetings public. Meetings of the board of adjustment are held at the call of the chair and at such other times as the board of adjustment determines. The chair or, in the chair's absence, the acting chair may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment are open to the public.
- 11-2-53. Powers of board of adjustment. The board of adjustment may:
- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant to this chapter; and
  - (2) 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.
- 11-2-60. County Commissioners as board of adjustment--Powers and duties--Chair-- Two-thirds majority required. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of county Commissioners having adopted and in effect a zoning ordinance may act as and perform all the duties and exercise the powers of the board of adjustment. The chair of the board of county Commissioners is chair of the board of adjustment as so composed. The concurring vote of at least two-thirds of the members of the board as so composed is necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the appellant on any matter upon

which it is required to pass under any zoning ordinance, or to effect any variation in the ordinance.

- 11-2-61. Petition to court contesting decision of board. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, 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 days after the filing of the decision in the office of the board of adjustment.
- 11-2-65. Court may reverse or affirm decision of board--Costs. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs are not allowed against the board of adjustment unless the court determines that the board of adjustment acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.





# **Appendix B**

## **Helpful How-To Information**

























































# Appendix C

## Resources

### A. Dakota Rural Action

*Dakota Rural Action is a grassroots family agriculture and conservation group that organizes South Dakotans to protect our family farmers and ranchers, natural resources, and unique way of life.*

PO Box 549  
Brookings SD 57006  
Phone: (605) 697-5204  
Fax: (605) 697-6230

Email: [action@dakotarural.org](mailto:action@dakotarural.org)  
[www.dakotarural.org](http://www.dakotarural.org)

DRA can help you get involved by:

- Connecting you with other like-minded people, actively involved in their communities, and experienced with many of the same issues facing your community.
- Providing trainings such as public speaking, campaign development, holding public officials accountable, and other opportunities for personal development.
- Providing you with a bimonthly Action Review newsletter, issue factsheets, legislative updates and other timely news about rural issues from across the state.

### Western Organization of Resource Councils

*Western Organization of Resource Councils - WORC is a regional network of seven grassroots community organizations that include 9,500 members and 45 local chapters. WORC helps its member groups succeed by providing training and coordinating issue work.*

220 S. 27<sup>th</sup> Street, Suite B  
Billings, MT 59101

Phone: (406) 252-9672  
Fax: (406) 252-1092

E-mail: [billings@worc.org](mailto:billings@worc.org)  
[www.worc.org](http://www.worc.org)

South Dakota Secretary of State

Chris Nelson  
Capitol Building  
500 East Capitol Avenue Ste 204  
Pierre SD 57501-5070

Phone: (605) 773-6580

Office of the Attorney General

Larry Long  
1302 E Hwy 14, Suite 1  
Pierre SD 57501-8501

Phone: (605) 773-3215

Fax: (605) 773-4106

South Dakota Department of Agriculture

Sec. Bill Evens  
523 E Capitol Ave  
Pierre, SD 57501-3182

Phone: (605) 773-5436

Fax: (605) 773-3481

SD House of Representatives

(605)773-3851

Dept. of Environmental and Natural Resources

523 E Capitol  
Pierre, SD 57501

Phone: (605) 773-3151

Fax: (605) 773-6035

Office of the Governor

Gov. Mike Rounds  
500 E. Capitol Ave.  
Pierre, SD 57501

Phone: (605) 773-3212

Legislative Research Council

Capitol Building, 3rd Floor  
500 E. Capitol Ave.  
Pierre, SD 57501-5070

Phone: (605) 773-3251

SD Senate

(605) 773-3821

Federal Agencies and Government

U.S. House of Representatives

Office of Representative (Name)  
United States House of Representatives  
Washington, D.C. 20510

Phone: (202) 224-3121  
[www.house.gov](http://www.house.gov)

U.S. Attorney General's Office

950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Phone: (202) 353-1555  
[www.usdoj.gov/ag](http://www.usdoj.gov/ag)

U.S. Department of Justice

950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Phone: (202) 514-2000  
[www.usdoj.gov](http://www.usdoj.gov)

U.S. Senate

Office of Senator (Name)  
United States Senate  
Washington, D.C. 20510

Phone: (202) 224-3121  
[www.senate.gov](http://www.senate.gov)

Environmental Protection Agency

Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Phone: (202) 272-0167  
[www.epa.gov](http://www.epa.gov)