



---

## PLANNING AND ZONING COMMISSION REQUEST FOR A CONDITIONAL USE PERMIT

---

### Staff Report

Date: April 5, 2023  
From: Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
RE: Request for Conditional Use Permit for delivery donut business

---

**APPLICANT(S):** Carson Witt  
**PURPOSE:** Home Occupation for delivery donut business  
**ADDRESS:** 63 Stewart Street  
Deadwood, Lawrence County, South Dakota  
**LEGAL DESCRIPTION:** THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRECE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF DEADWOOD FOR STREET PURPOSES.  
**FILE STATUS:** All legal obligations have been completed.  
**ZONE:** R1 – Residential District  
**STAFF FINDINGS:**

---

Surrounding Zoning:	Surrounding Land Uses:
North: C1 – Commercial District	Hospital / Clinic
South: R1 – Residential District	Vacant Hill Side
East: R1 – Residential District	Residential Housing
West: R1 – Residential District	Residential Housing

### SUMMARY OF REQUEST

---

The applicant has submitted a request for a Conditional Use Permit for the operations of a small business in the form of a delivery donut shop under Section 17.24.030 Conditional Uses under Home Occupation. The subject property is located on the south side of Stewart Street behind the vicinity of the Deadwood Hospital and Clinic.

[Location shown in Exhibit A]

---

## **FACTUAL INFORMATION**

1. The property is currently zoned R1 – Residential District.
2. The property comprises approximately 7,533 square feet +.
3. The dwelling began as a log cabin, presumably built in 1877. By 1890, it appeared as a two-story wood-frame structure and is a contributing structure to the National Historic Landmark District.
4. The subject property has access from Stewart Street.
5. The subject property is located within a very low-density land use classification on the adopted Zoning Map.
6. The property is located outside of Flood Zone AE – Areas of 100-year flood and Flood Zone X – Areas of 500-year flood.
7. Adequate public facilities are available to serve the property.
8. The area is characterized by a mixture of single-family dwellings located in the Cleveland Historic Overlay Zone.

## **STAFF DISCUSSION**

---

The applicant has submitted a request for a Conditional Use Permit for the operations of a small business in the form of a delivery donut shop under Section 17.24.030 Conditional Uses under Home Occupation in a R1 – Residential District.

Specific detail on the proposed operations and business plan are included with the application and supporting documentation. It appears to be limited impact on the proposed location of the subject property for Home Occupation.

The applicant has coordinated the proposed business operations with the South Dakota Department of Health and would operate under South Dakota's Cottage Food Laws. [See Exhibit B for more details]

## **COMPLIANCE:**

---

1. The Zoning Officer provided notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with Section 17.76.060. This notice was in the form of a direct mailing to property owners within a 300' buffer to said property. [Exhibit C]
2. A sign was posted on the property for which the request for the Conditional Use Permit was filed on Monday, April 3, 2023.
3. Notice of the time and place was published twice in the designated newspaper of the City of Deadwood. [Exhibit D]

**GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:**

---

In reviewing any application under the authority of this chapter and as a further guide to its decision upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

- A. The proposed use shall be in harmony with the general purposes, goals, objectives, and standards to the City Policy Plan, the ordinance, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the City of Deadwood.

*The City Comprehensive Plan encourages a variety of uses and a mixture of housing types. Preserve the existing stock of historic structures by working with the individuals and guiding the uses is an acceptable means. Traffic and parking should not significantly affect the neighborhood since the business will be operated on via a delivery service and not by walk-up or appointment basis. This property does not have off street parking. The delivery vehicle will be the applicant's personal vehicle. The area has a mixture of single-family dwellings.*

- B. Whether or not a community need exists for the proposed use at the proposed location in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use: (a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.

*The subject area is zoned R1 – Residential District. The R1 – Residential District is intended to provide locations for low to medium density, residential development commensurate with an urban area. Currently, there is not an over-concentration of this type of use in the city and there is limited home occupational use of residential property in this vicinity.*

- C. The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvement, public sites, or rights-of-way.

*The proposed use would not result in a substantial or undue adverse effect on adjacent property, or the character of the neighborhood and the use would not alter the character of the neighborhood. There will be no change in the size of the dwelling. To support a denial of a conditional use permit on the grounds that it will cause increased traffic problems, there must be a high degree of probability that the increase would pose a substantial threat to the health and safety of the community. Again, this use would generate minimal traffic.*

- D. Whether or not the proposed use increases the proliferation of non-

conforming uses as well as previously approved Conditional Use Permits which are still in use, when influenced by matters pertaining to the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Policy Plan, this ordinance, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development.

For any conditional use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or near the property mentioned in the application shall be considered in their entirety.

*The proposed use would not increase the proliferation of non-conforming uses. There are approximately nine (9) homes along this portion of Stewart Street with a variety of on and off-street parking. The use is otherwise surrounded by single-family residences. The appearance of the residence will not change and the character and use of the buildings and structures adjoining the subject property will not be adversely affected.*

- E. Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in this section.

*The proposed use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services. Existing services are available onsite.*

**CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:**

---

- A. Following the issuance of a conditional use permit pursuant to the provisions of this ordinance, such permit may be amended, varied, or altered only pursuant to the standards and procedures established by this section for its original approval.
- B. The Board of Adjustments can revoke conditional use permits, once granted, for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filed with the Zoning Administrator and may be initiated by the Planning and Zoning Commission OR any three (3) residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the Conditional Use Permit application hearings.
- C. The Planning and Zoning Commission shall have the authority to review Conditional Use Permits at any time and/or on an annual basis and place additional stipulations to mitigate a problem.

- D. If the use permitted under the terms of a Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.
- E. If the use permitted under the terms of a Conditional Use Permit ceases, for whatever reason, for a period of twelve (12) months, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

If approved, staff recommendations for stipulation(s):

1. The Conditional Use Permit runs with the applicant and not the land; therefore, should the property be sold, the Conditional Use Permit is null and void and the non-conforming status could be voided from the property.
2. Proof of City of Deadwood Business License.

**ACTION REQUIRED FOR CONDITIONAL USE PERMIT:**

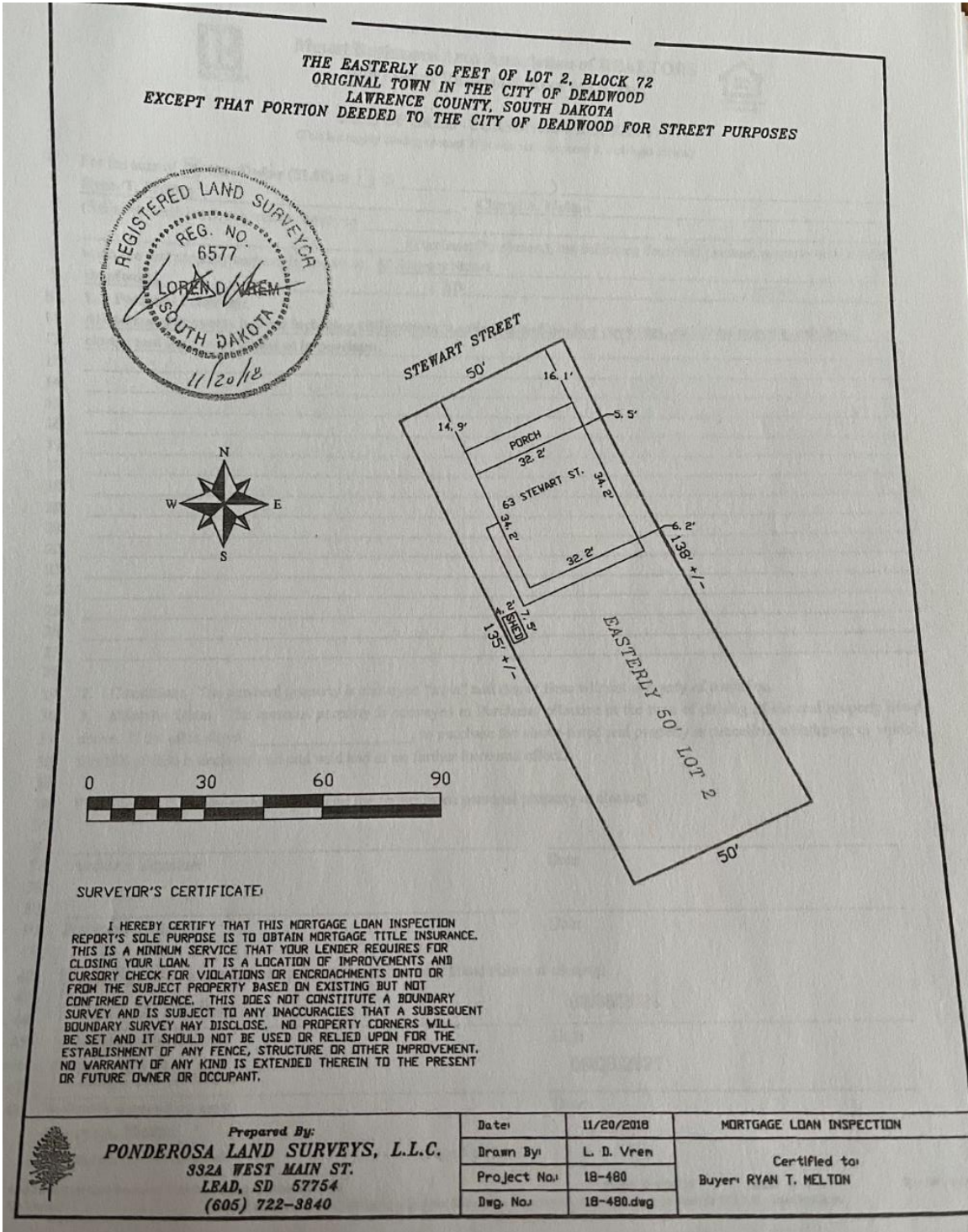
---

1. Recommendation by Planning and Zoning Commission:
  - a. Approval
  - b. Approval with Conditions
  - c. Denial

**Exhibit A – Location Map & Photo(s)**

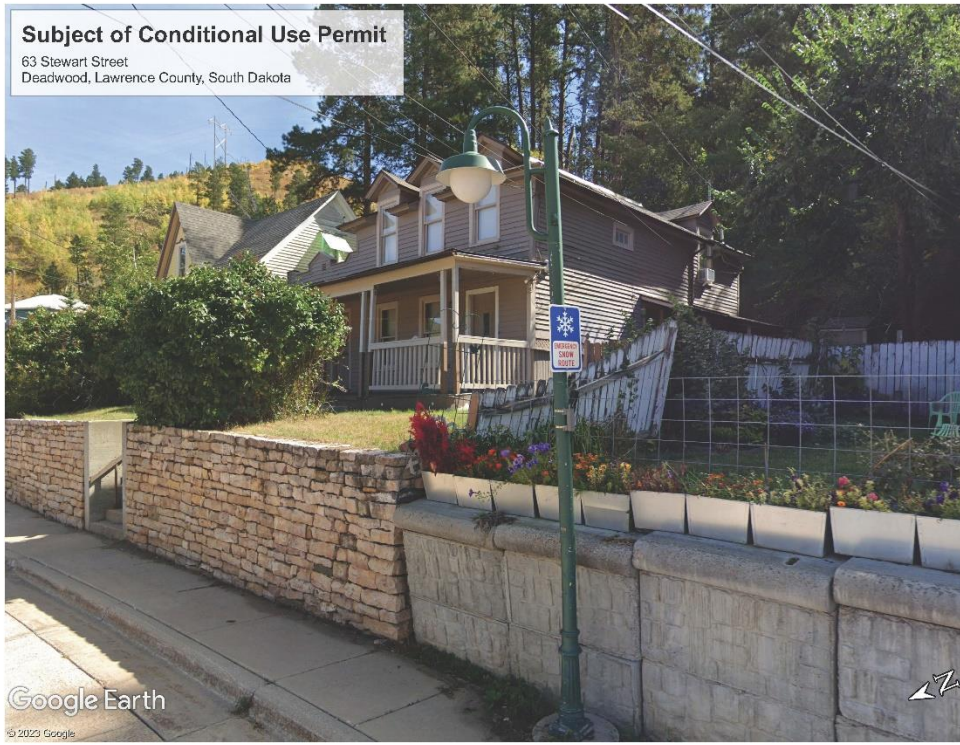


Map showing the general vicinity of the subject property.



Plat Map of Subject Property





Street view of subject property



Street view of subject property





2008 photo of subject property

## Exhibit B -SD Department of Health Regulations

### FARMERS MARKET GUIDANCE For Market Managers & Vendors



Farmers markets provide an important opportunity for producers to provide fresh and wholesome food products directly to consumers located in communities throughout South Dakota. In an effort to encourage and support these markets, South Dakota has passed several "cottage" laws that allow producers to sell food products to the public without the need of a food service license. This handout is intended to help market managers, vendors, and other home food processors understand the laws and requirements pertaining to **food items sold from a home, farmers market or similar temporary sales venue**. It's important to note that all vendors are required to produce safe, wholesome food products in a sanitary manner whether licensed or not.

Please be aware that the law only provides license exemption for specific types of food items. The law does not provide an exemption for all food products and all regulations. In addition, the law only allows for these food products to be sold directly to the consumer from a home, farmers market or similar venue.

### FOOD PRODUCTS — Updated 2022

Please refer to the following list of common food products to help determine applicable licensure and regulation:

Food Product or Home Processed Food	Common Examples	State License Required	Labeling Required
Fresh, whole, uncut, fruits and vegetables	Apples, melons, cucumbers, carrots, beans, corn ears, tomatoes, potatoes, etc.	NO	NO
Intact salad greens and herbs (dried or fresh)	Mixed greens with leaves, microgreens and shoots	NO	NO
Baked goods (includes temperature controlled baked goods that are maintained at 41° F or less)	Cookies, rolls, cakes, pies, kuchen, custard or cream filled baked goods, cheesecake, confectionaries, muffins, breads, lefsa, hard candies, sauces, pesto, etc.	NO	YES (if packaged)
Home canned foods with pH ≤ 4.6 ( <b>high acid foods</b> ) or Aw ≤ .85	Jams, jellies, fruit sauces, applesauce, syrups, pickled or acidified products (e.g. salsas, dill pickles), BBQ sauce, etc.	NO	YES
Frozen fruit/produce (maintained <0° F or less)	Freeze dried-sliced fruit/produce, frozen bagged fruit/produce	NO	YES (if packaged)
Nuts, grains, seeds, dry mixes (e.g. spice/season mix, baking mix, powder drink mix)	Almonds, walnuts, cake mix, cocoa mix, home ground flour, coffee beans, sunflower seeds, granola mix, intact grains, etc.	NO	YES (if packaged)
Naturally fermented foods	Kombucha, kimchi, sauerkraut etc.	NO	YES (if packaged)
Home canned foods with pH > 4.6 ( <b>low acid foods</b> ) or Aw > .85	Peas, beans, tomatoes, corn, beets, squash, soups, meats, nut butters, etc.	YES	YES
Fresh cut fruit/produce (not frozen) and sprouts	Sliced melon, shredded lettuce, diced tomatoes, tossed salad, etc.	YES	YES
Juices and ciders	Orange, apple, grape, berries	YES	YES
Take and bake products	Doughs, unbaked pizzas or unbaked fruit pies, etc.	YES	YES
Other prepared food/drink	Sandwiches, casseroles, hot dishes, stews, smoothies, potato or other salads, garlic/flavored oils, meat suaces, etc.	YES	YES

Please contact SDDOH @ **605-773-4945** for questions or inquiries concerning products which may not be listed above.

### FREQUENTLY ASKED QUESTIONS

#### What are the label requirements for home processed foods?

Each container or package sold must have a label that contains the following:

**1:** Name of product, **2:** Name of the producer, **3:** Physical address of production, **4:** Mailing address of the producer, **5:** Telephone number of the producer, **6:** Date product made or processed, **7:** Ingredients, **8:** A directive to keep food refrigerated or frozen (if required) **9:** A disclaimer that states "This product was not produced in a commercial kitchen. It has been home-processed in a kitchen that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish and crustacean shellfish."

June 2022



**What products are not covered by the “farmers market and cottage laws”?**

Products under jurisdiction of other state or federal agencies include (but are not limited to); meat, poultry, jerky, fish, dairy products, honey, eggs, and non-food items such as home-made soap or lotions.

**What is required to sell canned goods, fermented, frozen and temperature controlled baked foods?**

A producer selling these foods shall, every five years, complete an approved food safety course. The producer shall retain records verifying the timely completion of such training. A producer selling home-processed goods may, in lieu of the requirement for food safety training, maintain verification of each recipe from a third-party processing authority. The processing authority shall provide verification in writing to the producer. Processing authorities and approved food safety course information is provided below. **Note:** No canned good may be sold unless the pH level is 4.6 or less or the water activity level is .85 or less.

**Can home processed foods be sold from home?**

The law allows the sale home processed foods from a primary residence, farmers market or other temporary sale venue. Goods are to be sold in the seller’s physical presence (direct). The seller, or a person residing at the seller’s primary residence may personally deliver home processed foods to the buyer at the completion of the sale. There are no monetary limits on the amount of sales. The home processed foods must be properly labeled and **cannot** be sold wholesale (indirect). Examples of indirect sale may include sales from a retail store or via the internet. Indirect sales would require a state license.

**What happens if I do not follow these regulations?**

Unapproved food products, untrained producers in food safety (or products without a letter of verification) may increase the chance illness or food safety risk to the consumer. Liability issues for the vendor and/or market organization is also a concern. Ultimately, failure to comply with state law may result in a notice of closure for the vendor, prohibiting the further sale of their food item(s).

**Can I provide small food samples at farmers markets for promotional or educational purposes?**

Yes no license is needed, we ask that you follow food sampling requirements found at the SDDOH website.

**PROCESSING AUTHORITIES**

**Curtis Braun**  
SDSU Ext. - Food Safety Specialist  
2001 E. 8th St.  
Sioux Falls, SD 57103  
605 -782-3290 ext.265  
Curtis.Braun@sdstate.edu

**Jayne Stratton, Ph.D**  
Univ. Nebraska-Lincoln 248  
Food Innovation Center  
Lincoln, NE 68588  
402-472-2829  
jstratton@unl.edu

**COURSE INFO.**

SDSU EXTENSION:  
iGrow.org  
(Please contact  
Curtis Braun)

<b>South Dakota Codified Laws:</b> <a href="http://sdlegislature.gov/statutes/">http://sdlegislature.gov/statutes/</a>	<b>South Dakota Dept. of Health:</b> <a href="http://doh.sd.gov/food/">http://doh.sd.gov/food/</a>	<b>SDSU Cooperative Extension Service:</b> <a href="http://extension.sdstate.edu/">http://extension.sdstate.edu/</a>
---	---	---

**WEIGHTS AND MEASURES GUIDANCE**



- Any products sold by weight, must be sold from a legal for trade certified NTEP approved scale.
- Once purchased, a scale must be certified every other year by the Office of Weights and Measures.
- There is a \$28.00 fee that accompanies certification.
- You can call **605-773-3697** to schedule a time to get your scale certified.
- Registered service agents sell and repair NTEP approved scales.

<b>Department of Public Safety</b> <b>The Office of Weights and Measures</b> <a href="mailto:dps.inspectionswminfo@state.sd.us">dps.inspectionswminfo@state.sd.us</a>	<b>Registered Service Agent List</b> <a href="https://dps.sd.gov/inspections/weights-measures/register-agency">https://dps.sd.gov/inspections/weights-measures/register-agency</a>
---	---

**SOUTH DAKOTA CODIFIED LAW – FARMER’S MARKET  
EFFECTIVE 7-1-2022**

**34-18-34. Farmer's market fresh fruits and vegetables--  
Licensure exemption.**

No person selling whole, intact fresh fruits or vegetables at a farmer's market, roadside stand, or similar venue is required to be licensed pursuant to this chapter.

**Source:** SL 2010, ch 172, § 1.

**34-18-35. Sale of homemade foods and food products.**

Except as otherwise provided in § [34-18-38](#), the licensure provisions of this chapter do not apply to a person selling:

- (1) Non-temperature-controlled food prepared at a residence;
- (2) Home-processed canned goods;
- (3) Baked goods prepared at a residence; or
- (4) Any food product prepared at a residence and authorized under § [34-18-36](#) or [34-18-36.1](#).

**Source:** SL 2010, ch 172, § 2; SL 2022, ch 106, § 1.

**34-18-36. Canned goods—Requirements.**

No canned good may be sold unless the pH level is 4.6 or less or the water activity level is .85 or less.

Except as otherwise provided in this section, a producer selling canned goods under this section shall, every five years, complete food safety training approved by the department. The training must be available online. The producer shall retain records verifying the timely completion of such training.

A producer selling home-processed goods under this section may, in lieu of the requirement for food safety training, maintain verification of each recipe from a third-party processing authority. The third-party processing authority must have knowledge of the thermal processing required of food in hermetically sealed containers and shall verify the method of processing and that the pH or water activity threshold levels are met. The processing authority shall provide verification in writing to the producer.

**Source:** SL 2010, ch 172, § 3; SL 2022, ch 106, § 2.

**34-18-36.1. Food safety training—Authorized sales.**

Any producer who verifies compliance with the food safety training requirements set forth in accordance with § [34-18-36](#), may sell the following:

- (1) Any non-heat-processed fermented food, provided the food is consistently maintained at a temperature that is at or below forty-one degrees Fahrenheit;
- (2) Kuchen and baked goods that require time and temperature control for safety, including soft pies, cheesecake, and baked goods having a custard or cream

- (2) Kuchen and baked goods that require time and temperature control for safety, including soft pies, cheesecake, and baked goods having a custard or cream filling, and sauces and pesto that require time and temperature control for safety, provided the food is consistently maintained at a temperature that is at or below forty-one degrees Fahrenheit; and
- (3) Home-processed frozen fruit and produce, provided the food is consistently maintained at a temperature that is at or below zero degrees Fahrenheit.

**Source:** SL 2022, ch 106, § 3.

#### **34-18-37. Label requirements.**

Food prepared at a residence may not be sold unless it has a label that includes the following information:

- (1) Name of the product;
- (2) Name of the producer;
- (3) Physical address of production;
- (4) Mailing address of the producer;
- (5) Telephone number of the producer;
- (6) Date the product was made or processed;
- (7) Ingredients;
- (8) In the case of food sold in accordance with § [34-18-36.1](#), a directive to keep refrigerated or frozen; and
- (9) A disclaimer that states: "This product was not produced in a commercial kitchen. It has been home-processed in a kitchen that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish."

**Source:** SL 2010, ch 172, § 4; SL 2020, ch 143, § 1; SL 2022, ch 106, § 4.

#### **34-18-38. Exemption from licensure—Requirements.**

A person selling food prepared at the person's residence, in accordance with § [34-18-35](#), is exempt from the licensing and license fee provisions of this chapter if:

- (1) The food meets the requirements of § [34-18-37](#);
- (2) The food is sold in the seller's physical presence at:
  - (a) The seller's primary residence;
  - (b) A farmer's market;
  - (c) A roadside stand; or
  - (d) Other temporary sale venue; and
- (3) The seller, or a person residing at the seller's primary residence, personally delivers the food to the buyer at the completion of the sale.

**Source:** SL 2011, ch 158, § 1; SL 2020, ch 143, § 2; SL 2022, ch 106, § 5.



## **Exhibit C – Letter to property owners**

OFFICE OF  
PLANNING, ZONING AND  
HISTORIC PRESERVATION  
108 Sherman Street  
Telephone (605) 578-2082  
Fax (605) 722-0786



Kevin Kuchenbecker  
Planning, Zoning and  
Historic Preservation Officer  
Telephone (605) 578-2082  
kevin@cityofdeadwood.com

### **Public Notification**

Date: March 31, 2023  
To: Deadwood Property Owner / Resident  
From: Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
RE: Request for Conditional Use Permit

**NOTICE IS HEREBY GIVEN**, that the following person(s) has applied to the City of Deadwood Planning and Zoning Office for a Conditional Use Permit for the operations of a small business in the form of a delivery donut shop as allowed under Section 17.24.030 Conditional Uses under Home Occupation.

**APPLICANT(S):** Carson Witt

**LEGAL DESCRIPTION:** THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRECE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF DEADWOOD FOR STREET PURPOSES

**ADDRESS:** 63 Stewart Street

**NOTICE IS FURTHER GIVEN** that said application will be heard by the Planning and Zoning Commission within and for the City of Deadwood, State of South Dakota, at a regular meeting to be held Wednesday, April 19, 2023 in the Commission Room at 102 Sherman Street, Deadwood, South Dakota, will at 5:00 p.m. or soon thereafter as the matter at which time and place any such person interested may appear and show cause if there be any, why such special exception should not be granted.

**NOTICE IS FURTHER GIVEN**, that the proposed request for a Home Occupation is on file and available for public examination at the Deadwood Zoning Office located at 108 Sherman Street, Deadwood, South Dakota.

**ANY** interested person or his/her agent is invited to submit oral or written comments or suggestions regarding the request to the Commissions or their agent prior to or at the public hearing.

The purpose of this mailed notice is to reasonably inform the surrounding property owners of the applications for a Conditional Use Permit and to inform you of the type of use being requested.

If you have any questions, please feel free to contact our office at 605-578-2082.

## **Exhibit D – Notice of Public Hearing**

### **NOTICE OF PUBLIC HEARING BEFORE THE DEADWOOD PLANNING AND ZONING COMMISSION**

City of Deadwood  
Planning and Zoning Commission  
Deadwood, South Dakota 57732

**NOTICE IS HEREBY GIVEN**, that the following person(s) has applied to the City of Deadwood Planning and Zoning Office for a Conditional Use Permit for the operations of a small business in the form of a delivery donut shop as allowed under Section 17.24.030 Conditional Uses under Home Occupation.

**APPLICANTS:** Carson Witt

**LEGAL DESCRIPTION:** THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRECE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF DEADWOOD FOR STREET PURPOSES

**ADDRESS:** 63 Stewart Street

**ZONE:** R1 - Residential District

**NOTICE IS FURTHER GIVEN** that said application will be heard by the Planning and Zoning Commission within and for the City of Deadwood, State of South Dakota, at a regular meeting to be held Wednesday, April 19, 2023 in the Commission Room at 102 Sherman Street, Deadwood, South Dakota, will at 5:00 p.m. or soon thereafter as the matter at which time and place any such person interested may appear and show cause if there be any, why such special exception should not be granted.

**NOTICE IS FURTHER GIVEN**, that the proposed request for a Home Occupation is on file and available for public examination at the Deadwood Zoning Office located at 108 Sherman Street, Deadwood, South Dakota.

**ANY** interested person or his/her agent is invited to submit oral or written comments or suggestions regarding the request to the Commissions or their agent prior to or at the public hearing.

Dated this 3rd of April 2023

City of Deadwood, Lawrence County, South Dakota



Kevin Kuchenbecker  
Planning, Zoning and Historic Preservation Officer

**PUBLISH:** Black Hills Pioneer: April 6 and 13, 2023

Published once at the total approximate cost of \$