TITLE 14

ZONING

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CHAPTER 14-01 - CITY PLANNING AND ZONING COMMISSION

14-01-01. Creation. There was created a body known as the planning commission of the City of Bismarck which has also served as the city zoning commission of the City of Bismarck, which planning and zoning commission has been and is actively serving the community. It is intended that this commission will continue as the Bismarck Planning and Zoning Commission, with duties and functions hereinafter recited, pursuant to the powers authorized by the North Dakota Century Code.
Reference: NDCC Sec. 40-47-06; 40-48-03

14-01-02. Members. The planning and zoning commission shall consist of eleven members. Two of the members shall be the president of the board of city commissioners and the city engineer who shall act as ex officio members of the said commission. Five of the members shall be appointed by the president of the board of city commissioners with the approval of the city commission.

Three of the members of the commission shall be persons residing outside the corporate limits of the City of Bismarck and within four miles thereof, and shall be appointed by the board of county commissioners of Burleigh County. One member of the commission shall be a county commissioner and shall be appointed by the board of county commissioners of Burleigh County. All members shall have equal voting status on all issues.

In addition to the eleven members enumerated above, for all issues before the planning and zoning commission relating to a geographic area outside the City of Bismarck corporate limits, a township supervisor of any organized township wherein such issue is located shall be invited to participate as a voting member. Each township shall designate one township supervisor for this limited planning and zoning commission membership. A township supervisor's participation on the planning and zoning commission shall be limited to those issues occurring outside the City's corporate limits and in his or her respective township.
Reference: NDCC Sec. 40-47-06; 40-48-03; Home Rule Charter for the City of Bismarck
(Ord. 5293, 01-27-04)

14-01-03. Term of Members. The ex officio members of the commission shall serve during and for their respective terms for which they have been elected or appointed. The president of the board of city commissioners shall appoint five members of the commission who shall be residents of the City of Bismarck, and such appointments shall be for a term of five years. The Burleigh County Board of Commissioners shall appoint three members to the planning commission for a period of five years

each. The county commissioner appointed by the Burleigh County Board of Commissioners shall serve during and for his or her elected or appointed term. The township supervisor authorized by Section 14-01-02 shall serve during and for his or her elected or appointed term.

Reference: NDCC Sec. 40-47-06; 40-48-04
(Ord.5293, 01-27-04)

14-01-04. Approval of Appointments. The president of the board of city commissioners shall submit to the city commission at the next meeting after making such appointments, the names of persons who shall be residents of the City of Bismarck. The city commission shall by majority vote, confirm or reject such appointments. If such appointments are rejected, the president shall make other appointments for such appointees as may be rejected, which said appointments shall be approved or rejected in like manner. If a vacancy occurs on the commission, an appointment to fill such unexpired term shall be made in the manner in which original appointments were made.

14-01-05. Powers and Compensation. The city planning and zoning commission shall have all of the powers and perform all of the duties as may now or hereafter be provided by law or as directed by the Board of City Commissioners as provided by the Home Rule Charter for the City of Bismarck, Article 3, Section 11, and shall receive no compensation except they may be allowed actual expenses for traveling as provided by law. These powers shall include but not be limited to recommendations relative to the zoning ordinance text and zoning district recommendations. The commission shall have extended territorial authority to all unincorporated territory located within four miles of the corporate limits of the City of Bismarck as authorized by the North Dakota Century Code, and shall enforce such regulations in the extraterritorial area to the same extent as if such property were situated within the city's corporate limits.

The powers heretofore exercised by the planning and zoning commission of the City of Bismarck, prior to the adoption of this revised ordinance, and its duties and powers as heretofore exercised are hereby in all things continued.

Reference: NDCC Sec. 40-47-01.1, Home Rule Charter for the City of Bismarck, Article 3, Section 11.
(Ord. 5278, 09-23-03)

14-01-06. Appeal Process of Commission. Any final decision of the city planning and zoning commission may be appealed to the city commission by either the aggrieved applicant or by any officer, department, board, or bureau of the city. Notice of appeal in writing shall be delivered to the city administrator or other designated official within 10 days of the city planning and zoning commission's decision. A hearing shall be set before the city commission within 30 days of the receipt of the notice of appeal. At the hearing, each party may present evidence

consisting of sworn testimony and exhibits introduced through sworn testimony in any order deemed sufficient by the city commission so long as each party is given a full opportunity to be heard. After the hearing, the city commission shall decide the appeal on its merits and shall issue its written decision containing its findings and an appropriate order. The written decision shall be issued within 10 days of the close of the hearing.

Reference: NDCC Sec. 40-47-01.1, Home Rule Charter for the City of Bismarck, Article 3, Section 11.
(Ord. 4486, 04-27-93; Ord. 4501, 04-27-93; Ord. 5446, 07-26-05)

CHAPTER 14-02 - GENERAL PROVISIONS AND DEFINITIONS

14-02-01. Intent. It is the intent of the board of city commissioners to promote the health, safety and general welfare by guiding the development of the city by means of a comprehensive land use plan which is in part carried out by the provisions of this ordinance. It is the intent of this ordinance to provide regulations, standards and guides for the city's development which will:

a) Lessen congestion in the streets;

b) Secure safety from fire, panic and other dangers;

c) Promote the health and general welfare;

d) Prevent the overcrowding of land;

e) Provide adequate light and air;

f) Avoid undue concentration of population;

g) Facilitate adequate provision for transportation, water, sewerage, schools, parks and other requirements.

Reference: NDCC Sec. 40-47-03

14-02-02. Application. The zoning ordinances and subdivision regulations of the City of Bismarck shall apply to all unincorporated territory within four miles of the corporate limits as authorized by the North Dakota century Code.

All actions taken and matters resulting therefrom by the city planning and zoning commission of the City of Bismarck, pursuant to ordinance number 3322, are hereby validated.

Ordinances enacted in reliance on Senate Bill 2395 of the 45th Legislative Assembly of the State of North Dakota, which became effective July 1, 1976, are hereby validated. This title is enacted under the authority contained in the Home Rule Charter for the City of Bismarck, Article 3, Section 11.

Reference: NDCC 40-47-01.1.

(Ord. 4486, 04-27-93; Ord. 5278, 09-23-03)

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

All words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural construction of the wording indicates otherwise. The word "building" includes the word "structure". The word "shall" is mandatory and not directory. The word "used" shall be deemed also to include "designed, intended or arranged to be used". Unless otherwise specified, all distances shall be measured horizontally. The word "city" means the City of Bismarck, North Dakota; the term "board of city commissioners" means the board of city commissioners of said city; the term "board of adjustment" means the board of adjustment of said city; the term "city planning commission" means the city planning and zoning commission of said city; the term "board of county commissioners" means the Burleigh County Board of Commissioners; all officials referred to herein refer to the current appointed officials of said city or their authorized representatives.

Accessory building: See "Building-Accessory".

Accessory use: A use or structure that is clearly incidental to and customarily found in connection with a principal structure or use; is subordinate in area, extent and purpose to the principal building or uses; contributes to the comfort, convenience or necessity of occupants of the principal use; and is located on the same lot and in the same zoning district as the principal use.

Adult bookstore: An enclosed building having a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by the emphasis on matter depicting or describing specified sexual activities or specified anatomical areas, for observation by patrons therein in return for payment of a consideration, irrespective of the numbers of patrons who may be able to view the presentation at one time.

Adult care facility. A free-standing facility providing care for more than twelve (12) frail, physically, cognitively and/or functionally impaired adults in a protective setting for less than twenty-four (24) hours per day. An adult care facility may also be located within a hospital, care center or nursing home as an accessory use.

Educational and training programs for cognitively and/or functionally impaired adults in a protective setting for less than twenty-four (24) hours per day is not defined as an adult care facility.

Adult cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.

Adult entertainment center: An adult bookstore or adult cinema, or any establishment allowing any performance, entertainment or appearance, live or otherwise, of any specified anatomical areas or specified sexual activities on the premises, excluding licensed liquor premises.

(For the purposes of this ordinance, the following definitions shall apply to the foregoing terms:

"Specified anatomical areas":

(1) Less than completely and opaquely covered:

(a) Human genitals, pubic region;

(b) Buttocks;

(c) Female breast below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities":

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse or sodomy;

(3) Fondling of human genitals, pubic region, buttock or female breast.)

Alley: A strip of land, dedicated to public use, primarily to provide vehicular service access to the side or rear of properties otherwise abutting on a street.

Animal Feeding Operation: A place where: 1) livestock have been, are, or will be confined, concentrated and fed for forty-five (45) or more days in any twelve (12) month period; 2) pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and 3) animal waste or manure accumulates. All such operations containing more than three hundred (300) animal units, including an animal wintering operation, shall be defined as an animal feeding operation. Adjoining animal feeding operations under the common ownership are considered to be one animal feeding operation if they use common areas or systems for manure handling. An animal feeding operation in place and operating on the date this ordinance amendment is effective shall be considered an existing animal feeding operation and shall not be allowed to expand by any number of animal units.

The following table outlines the maximum number of livestock allowed before the operation is considered an animal feeding operation, based on animal unit equivalents (AUE) for various types of livestock:

Livestock Type	AUE	Maximum Number Allowed (300 AUE)
Horse	2.00	150
Dairy Cow	1.33	225
Mature Beef	1.00	300
Beef Feeder-Finishing	1.00	300
Beef Feeder-Backgrounding	0.75	400
Mature Bison	1.00	300
Bison Feeder	1.00	300
Elk	1.00	300
Swine, >55 lbs.	0.40	750
Swine, Nursery	0.10	3,000
Sheep	0.10	3,000
Goose or Duck	0.20	1,500
Turkey	0.0182	16,500
Chicken	0.01	30,000

Animal Wintering Operation: The confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include: 1) breeding

operations of more than three hundred (300) animal units or 2) weaned offspring which are kept longer than one hundred-twenty (120) days and that are not retained for breeding purposes.

Auditor's plat: See "Plat-Auditor's".

Basement: That portion of a building below the first story joists, the floor of which is more than one-half clear ceiling height below the adjacent finished grade level.

Block: A unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any other barrier to the continuity of development.

Bluff: A topographic feature such as a hill, cliff or embankment having the following characteristics:

(1) Part or all of the feature is located adjacent to the Missouri River;

(2) The slope rises at least 25 feet above the ordinary high water mark of the Missouri River;

(3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water mark of the Missouri River averages 30 percent or greater; and

(4) The slope drains towards the Missouri River.

An area with an average slope of less than 18 percent over a horizontal distance of 50 feet or more shall not be considered part of a bluff.

Bluff, Toe of the: The lower point of a 50-foot horizontal segment with an average slope exceeding 18 percent.

Bluff, Top of the: The higher point of a 50-foot horizontal segment with an average slope exceeding 18 percent.

Brewery: A facility that manufactures over 5,000 barrels (31 gallons/barrel = 155,000 gallons) of fermented malt beverages per year for wholesale with no direct sales to the general public.

Brewpub: A restaurant that manufactures up to 5,000 barrels (31 gallons/barrel = 155,000 gallons) of fermented malt beverages per year for consumption on the premises.

Buffer zone: A strip of land, identified in the zoning ordinance, established to protect one type of land use from another with which it is incompatible.

Building: Any structure used or intended for supporting or sheltering any use or occupancy.

Building-Accessory: A subordinate building or structure, the use of which is customarily incidental to that of a principal building on the same lot, including, without limitation, garages, storage sheds, playhouses, kennels, statuary, trellises, barbecue stoves or similar structures, storm or civil defense shelter, radio towers, satellite receiving or transmitting stations or antennas, and other structures, towers, antenna, ornaments or devices.

Building-Principal: A building occupied by the principal use of the lot on which it is situated.

Building line: A line established in general, parallel to the front street line over which no part of a building shall project, except as otherwise provided by this ordinance.

Carnival: Any entertainment activity utilizing rides, side shows, games of skill, or any combination thereof, designed for participation by the public.

Central sewer system: A system designed and constructed to allow for the disposal of sewerage from more than one user. Each system must be approved by the North Dakota State Health Department and the city engineer. Central sewer systems are intended for use on urban lots.

Child care center: Also known as a day care center, a child care center is a free-standing facility offering care, maintenance, and supervision for hire or compensation, for less than twenty-four (24) hours per day, for more than twelve (12) children under the age of twelve (12) years, and licensed by the North Dakota Department of Human Services as an early childhood program. The following shall not be considered a child care center: 1) child care provided in any educational facility, whether public or private, in grade one or above; 2) child care, preschool, kindergarten, and pre-kindergarten services provided to children under six (6) years of age in any educational facility through a program approved by the North Dakota Superintendent of

Public Instruction; 3) child care provided in facilities operated in connection with a religious facility, business, or organization where children are cared for during periods of time not exceeding four (4) continuous hours while the child's parent, guardian or custodian is attending religious services or is engaged in other activities on the premises; 4) schools or classes for religious instruction conducted by religious orders, Sunday schools, weekly catechism or other classes for religious instruction; 5) sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult; and 6) child care provided in a medical facility by medical personnel to children who are ill.

Circus: Any traveling entertainment event to be held in an open area or temporary structure involving acrobats, wild animals, events of skill, or any combination thereof, and designed for participation of the public as spectators.

Commercial school: Any educational facility owned and operated by a nonpublic sponsor and designed to provide occupational training in a job-related skill or craft.

Commercial parking lot: Any parking facility in which charges are made for vehicular parking privileges.

Comprehensive plan: A statement in documented text setting forth explicit goals, objectives, policies and standards of the jurisdiction to guide public and private development.

Density: The number of families residing on, or dwelling units developed on, an acre of land.

Drive-in restaurant: Any establishment dispensing food or drink where the customers are served in their cars, pick up such food or drink by driving by a pass-out window, or where they step out of the automobile briefly to pick up food or drink.

Dwelling: A building or portion thereof arranged or designed to provide living facilities for one or more families. The term "dwelling" shall not be deemed to include transient housing facilities.

Dwelling-Group: In general, a building in which several unrelated individuals or families permanently reside, but in which individual cooking facilities are not provided for the individual persons or families. Specifically, "group dwelling" shall include rooming houses, fraternity house, sorority house, dormitory, halfway house

and private club in which one or more members have a permanent residence. "Group dwelling" shall not be deemed to include uses such as a hotel, motel, mobile home park, sanitarium, hospital or nursing home.

Dwelling-Multifamily: A building containing three or more dwelling units or a group of two or more buildings on a single parcel with each containing at least two dwelling units.

Dwelling-Multifamily high rise: A building containing over three dwelling units with a height of over sixty feet.

Dwelling-Single-family: A building containing only one dwelling unit designed to be located on a permanent perimeter foundation and, if site built, constructed in accordance with the provisions of the applicable City codes governing construction; or, if manufactured off site, constructed in accordance with either the City codes governing construction or the HUD Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280). All single-family dwellings shall be considered and taxed as real property, as provided by law. Each single-family dwelling shall have a minimum width of twenty (20) feet, a minimum depth of twenty (20) feet, and a minimum ceiling height of seven (7) feet, six (6) inches. A manufactured home that meets all of the requirements herein is classified as a single family dwelling.

Dwelling-Two-family: A building containing only two dwelling units.

Dwelling unit: A building or portion thereof providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Easement: A grant by the property owner of the use of land by the public, or by one or more persons or corporations for a specific purpose or purposes.

Extraterritorial Jurisdiction: The territorial zoning and subdivision authority of the City which extends to all unincorporated land located within four (4) miles of the corporate limits of the City as authorized by the North Dakota Century Code.

Fair: See "Carnival".

Family: One or more persons related by blood, adoption, marriage, or foster care for children, living and

cooking together as a single housekeeping unit; or, a number of persons, but not exceeding four, living together as a single housekeeping unit, though not related by blood, adoption, marriage, or foster care for children. In accordance with the provisions of NDCC 25-16-13, a group home serving six or fewer developmentally disabled persons is classified as a family in all single-family residential districts (RR, RR5, and R5), and a group home serving eight or fewer developmentally disabled persons is classified as a family in all other residential zoning districts.

Family child care: A detached single family dwelling, which also serves as the primary residence of the operator/provider, offering care, maintenance and supervision for hire or compensation, for less than twenty-four (24) hours per day, for no more than twelve (12) children under the age of twelve (12) years, including any children of the operator/provider on the premises that are under the age of twelve (12) years, and generally licensed by the North Dakota Department of Human Services as an early childhood program. Family child care is considered an accessory use to the principal use of the property as single family detached residential dwelling.

Family foster home for adults: An occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation that is licensed by the State of North Dakota.

Family foster home for children. An occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof to no more than four children, unless all children in foster care are related to each other by blood or marriage, in which case such limitation does not apply.

Filling station: A building or lot having pumps and storage tanks where fuels, oils and/or accessories for motor vehicles are dispensed, sold or offered for sale at retail only; repair service is incidental; and no storage or parking space is offered for rent.

Floodplain: The channel and the relatively flat area adjoining the channel of a natural stream or river which has been or may be covered by floodwater.

Floodway: The channel of a natural stream or river and portions of the floodplain adjoining the channel, which

are reasonably required to carry and discharge the floodwater or flood flow of any natural stream or river.

Foster care for adults: The provision of food, shelter, security and safety, guidance, and comfort on a twenty-four hour per day basis, in the home of a caregiver, to a person age eighteen or older, who is unable, neglects, or refuses to provide for the person's own care.

Foster care for children. The provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security, and safety guidance and comfort on a twenty-four hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, group home, or residential child care facility.

Funeral home: A facility used for pre-burial preparations of human cadavers including but not limited to a mortuary, crematorium, chapel, viewing area, vehicular storage, parking, but not including burial facilities.

Functional Classification: The process by which streets and highways are grouped into classes, or systems, according to the character of service they are intended to provide.

Garage-Private: An accessory building or part of a principal building used primarily for the storage of motor vehicles customarily accessory to the principal use.

Garage-Public: A building or premises which is operated for commercial purposes and used for the storage, care or repair of motor vehicles, but a "public garage" shall not be used for the storage of dismantled or wrecked motor vehicles, parts thereof, or junk.

Group-Use: See "Use Group".

Group dwelling: See "Dwelling-Group".

Height of building: The vertical distance measured from the highest of the following three levels:

(a) The street curb level;

(b) The established or mean street grade in case the curb has not been constructed; or

(c) The average finished ground level adjoining the building if it sets back from the street line to the level of the highest point at the roof beams of flat roofs, or roofs including not more than one inch to the foot, and to the mean height level of the top of the main plate and highest ridge for other roofs.

Hotel: A building in which lodging, with or without meals, is provided and offered to the public for compensation, and which is open to transient guests. Hotels include motels and automobile courts, but do not include group dwellings as defined herein.

Improvements: Street grading and surfacing, with or without curbs and gutters, sidewalks, crosswalks, watermains, sanitary and storm sewers, culverts, bridges and street trees.

Interstate: Roadway which provides rapid movement of large traffic volumes between major population centers and other arterials. Interstates are multi-lane divided highways with grade separations at all crossroads, full access control and no parking. The locations of roadways classified as interstates shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Junkyard: The use of any part of any premises whether inside or outside of a building for the storage of, keeping or abandonment of junk, including scrap metals, rags, paper or other scrap material, used lumber, salvage house wrecking and used structural steel material, and equipment or for dismantling. Demolition or storage of unlicensed or abandoned automobiles or other vehicles, or machinery or parts thereof, is included in this definition.

Lot: The word "lot" when used alone shall mean, unless the context of the article clearly indicates otherwise, a "zoning lot" as defined herein.

Lot-Auditor's: Land designated as a separate and distinct lot, parcel or tract on a legally recorded plat of irregular description.

Lot-Corner: A zoning lot at the junction of and abutting on two or more intersecting streets or a curved street when the interior angle of the intersection does not exceed one hundred thirty-five degrees.

Lot-Interior: A zoning lot other than a corner lot.

Lot-Rural: All lots not meeting criteria for urban lots as defined herein.

Lot areas may be readjusted in size when, on building sites, the soil classification can be shown to be other than that shown by the soil survey manual. Proof of such differing classification shall be furnished by a qualified soils engineer who has taken soil samples on the site in question. All changes in soil classification must be approved by the Director of Inspections. In no case shall a lot area of less than forty thousand square feet be allowed.

Lot-Urban: All lots serviced by a central sewer system and a water system which equals municipal water system fire flow capacities.

Lot-Zoning: A tract of land occupied or to be occupied by a principal building and its accessory buildings, together with such open spaces and yards as are required under the provisions of this article, having not less than the minimum area required by this ordinance for a zoning lot in the district in which such land is situated and having its principal frontage on a dedicated public right-of-way or a permanent, exclusive, nonobstructed access easement to a dedicated public right-of-way, not less than twenty feet wide. A "zoning lot" need not necessarily coincide with a "record lot" and may consist of: 1) a single record lot; 2) a portion of a record lot; or 3) a combination of complete record lots, or complete record lots and portions of record lots, or portions of record lots.

Lot depth: The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot line-Rear: The lot line generally opposite or parallel to the front street line. If a rear lot line is less than ten feet long, or the lot comes to a point at the rear, said rear lot line is assumed to be a line at least ten feet long, lying wholly within the lot, parallel to the front street line, or if the front street line is curbed, parallel to the chord of the arc of said front street line.

Lot width: The mean width of a lot measured at right angles to its depth.

Manufactured home. A factory built structure which is to be used as a place for human habitation, which is not

constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with the HUD Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280).

Manufactured home park: A plat of ground under single ownership or management which has been planned and improved for the placement of at least twenty mobile or manufactured homes which are used for dwelling purposes.

Master plan: Any plan meeting the requirements of Section 40-48 of the North Dakota Century Code.

Micro-brewery: A facility that manufactures up to 5,000 barrels of fermented malt beverages per year for wholesale or sale directly to the consumer.

Mobile home: A transportable, factory built home, designed to be used as a year-round residential dwelling and built prior to enactment of the HUD Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280).

Mortuary: See "Funeral home".

Motor vehicle parts salvage yard: The use of a premises for the storage of motor vehicles for dismantling and sale of used parts thereof.

Nonconforming use: The use of a building or other structure or of a tract of land which does not conform to the use or regulations of this title for the district in which it is located, either at the effective date of this title, or as a result of subsequent amendments which may be incorporated into this title.

Nonconforming structure: A structure which does not conform to the regulations of this title for the district in which it is located, either at the effective date of this title or as a result of subsequent amendments which may be incorporated into this title.

Off-street parking space: An off-street area for the parking of one motor vehicle and complying with all requirements of Section 14-03-10 of this ordinance.

Ordinary High Water Mark: The elevation of the Missouri River at a flow rate of 33,000 cubic feet per second. In areas where there are multiple channels, the

ordinary high water mark is the landward extent of the floodway, as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps for the City of Bismarck and Burleigh County.

Overlay zone: A district that contains a set of zoning requirements that is imposed in addition to those of the underlying district. Development within the overlay zone must conform to the requirements of both zones, or if in conflict, the more restrictive of the two.

Parcel: a tract of land created by any means other than a subdivision platted pursuant to Chapter 40-50 NDCC.

Parcel of Record. A parcel that existed as a separate and unique legal description prior to the effective date of this title. For property not under the City's jurisdiction on the effective date of this title, a parcel that existed as a separate and unique legal description prior to coming under the City's jurisdiction.

Parking lot: A parking lot shall mean any land legally used for the parking of motor vehicles.

Planned unit development (PUD): A form of development usually characterized by a unified site design for a number of housing units, clustered buildings and providing common space, density increases, and a mix of building types and land acres.

Plat: Any subdivision platted pursuant to Chapter 40-50 NDCC.

Plat of Irregular Description: A plat made for taxation purposes at the request of the County Auditor in accordance with Section 57-02-39 NDCC. Such a County Auditor's plat is not platting pursuant to Chapter 40-50 NDCC, but rather is made for the convenience of tax officials in describing property on the tax rolls. A plat of irregular description may also be referred to as an Auditor's Plat.

Portable Storage Containers: Containers that are used for storage purposes and are also known as shipping containers, cargo containers, cargo-trailer containers, metal freight containers, metal containers designed for freight and cargo. This definition also includes semi trailers, buses, vans, and other types of non-permanent containers used for storage purposes hereafter referred to as "container(s)." This definition does not include the following: dumpsters actively used for solid waste or

recycling collections, contractors' construction trailers or containers being used at active job sites, or trailers normally associated with private use such as stock car trailers, boat trailers, utility trailers, campers or other similar equipment.

Principal building: See "Building-Principal".

Racetrack: A course in which vehicular races, either competitive or non competitive, are run. Such courses shall include racetracks, drag strips, go-cart tracks and other similar facilities.

Record Lot: Land designated as a separate and distinct lot on a legally recorded subdivision platted pursuant to Chapter 40-50 NDCC.

Recreation Facility - Personal: A place designed and equipped for the conduct of sports and leisure-time activities provided as an accessory use on the same parcel as the principal permitted use and designed to be used by the occupants of the principal use and their guests.

Recreational vehicle: A unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power, is mounted on, stored in or drawn by another vehicle.

Recreational vehicle park: A plat of ground of at least ninety thousand square feet under single ownership or management which has been planned and improved for the parking of recreational vehicles and tents regardless of whether or not a charge is made for such accommodation.

Residential Area Identification Sign: A freestanding monument sign identifying the name of a residential subdivision consisting of twenty (20) or more lots; a multiple family residential complex consisting of twenty (20) or more units; or a manufactured home park.

Row house: A building which has dwelling units erected in a row as a single building on adjoining lots, each being separated from the adjoining unit or units by an approved two-hour or equivalent fire-rated wall extending from the footing to and through the roof and where each dwelling unit is located upon a separate parcel. Each unit in a row house has private front and rear entrances and its own front and rear yards. Row houses are constructed side-by-side and the line(s) dividing the parcel(s) is a straight line from the front property line to the back property line along the common wall.

Rural lot: See "Lot-Rural."

Salvage yards: See "Motor vehicle parts salvage yards."

Senior citizen housing: Multi-family housing designed specifically for occupancy by senior citizens in separate dwelling units within a single building or multiple buildings, including assisted living facilities. Facilities providing a higher degree of care (such as nursing homes and Alzheimer's facilities) are not considered senior citizen housing.

Setback line: See "Building line."

Short Impact Zone: The land located between the ordinary high water mark of the Missouri River and a line parallel to it at a setback of 50 feet.

Sight Triangle: An area of unobstructed vision at the intersections of streets, alleys and driveways. The purpose of the sight triangle is to ensure visibility for operators of motor vehicles, bicycles and pedestrians on intersecting streets, driveways and alleys.

For any use on a corner lot, the sight triangle is the triangle formed by measuring from the point of intersection of the two (2) property lines a distance of twenty-five (25) feet in both directions along the street right-of-way lines and connecting the points to form a sight triangle on the area of the lot adjacent to the street intersection.

For a commercial, industrial, institutional or multi-family use on a lot at the intersection of a street and an alley, the sight triangle is the triangle formed by measuring from the point of intersection of the two (2) property lines a distance of fifteen (15) feet along the street right-of-way line and a distance of fifteen (15)feet along the alley right-of-way line and connecting the points to form a sight triangle on the area of the lot adjacent to the intersection of the street and alley.

For a commercial, industrial, institutional or multi-family use with a driveway, the sight triangle is the triangle formed by measuring from the point of intersection of the property line adjacent to a street and the edge of the driveway a distance of fifteen (125) feet in along the street right-of-way line and a distance of fifteen (15) feet along the edge of the driveway and connecting the points to form a sight triangle on the area of the lot

adjacent to the intersection of the street and the driveway.

For commercial, industrial, institutional or multi-family uses, the City engineer may require a greater sight triangle than indicated above on a case-by-case basis when it is warranted based on the posted speed and traffic volumes on the adjacent roadway, topography, sight distances or any other engineering concern.

Sign: Any device for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag.

Site plan: A plan, to scale, showing uses, structures and associated amenities proposed for a parcel of land.

Small animal veterinary clinic: A facility in which the veterinary practice conducted is essentially an out-patient type of practice with an occasional confinement limited to domestic household pets.

Small Wind Energy System (SWES): A wind turbine of less than 25 kilowatts maximum output capacity and all appurtenant structures and equipment.

Special use: A use permitted in a particular zoning district only upon showing that such in a specified location will comply with all the conditions and standards for the location or operation of such use as specified in a zoning ordinance and authorized by the city planning zoning commission or the Building Official (where allowed).

Steep Slope: Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and/or the site’s soil characteristics, as mapped and described in the Burleigh County Soil Survey or other technical report. Where specific information is not available, steep slopes are defined as lands having an average slope over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

Street: A public thoroughfare which affords principal means of access to abutting property.

Street-Collector: Roadway which provides traffic movements between local roads and arterial roads and also provides direct access to abutting property. Collectors are often only two-lane roads but should be planned and designed to minimize on-street parking and direct driveway

access. The locations of roadways classified as collectors shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Street-Local: Roadway whose primary function is to provide access to abutting property. Local roads are usually two-lane roads with parking and direct access to adjacent lands.

Street-Minor Arterial: Roadway which provides through traffic movements between areas and links collectors with other arterials. Minor arterials usually have two to four lanes and may be divided or undivided roads, preferably with little or no parking, and limited access. The locations of roadways classified as minor arterials shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Street-Principal Arterial: Roadway which provides for rapid movements of relatively large traffic volumes between large land areas, major traffic generators and other arterials. Principal arterials should have controlled access and are usually multi-lane roads with no parking. The locations of roadways classified as principal arterials shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Structural alteration: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any structural change in the roof, or dimension of the rooms therein.

Structure: Anything constructed or erected, which requires location on the ground or is attached to something having a location on the ground; including but not limited to buildings, advertising signs, billboards and poster panels; but not including customary fences or boundary or retaining walls.

Subdivision: The division of a tract or parcel of land into record lots for the purpose, whether immediate or future, of sale or of building development, including any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from such lots, and/or including the creation of new or enlarged parks, playgrounds, plazas or open spaces. However, the division of land for agricultural purposes into parcels of ten or

more acres, not involving any new street or easement of access, shall be exempted from these regulations.

Townhouse: A building which has dwelling units erected together as a single building on adjoining lots, each being separated from the adjoining unit or units by an approved two-hour or equivalent fire-rated wall extending from the footing to and through the roof and where each dwelling unit is located upon a separate parcel. Each unit in a townhouse has a private front entrance. Townhouses are constructed side-by-side and back-to-back and the lines dividing the parcels are straight lines from the front property line to the back property line along the common walls.

Urban lot: See "Lot-Urban."

Urban Service Area Boundary (USAB): An official line, established by the city commission, within the city's zoning and subdivision jurisdiction that distinguishes between future urban and rural densities. Municipal infrastructure expansions could be expected within 10 to 15 years on land within the USAB. Proposed development within the USAB is subject to standards consistent with potential urban expansion and higher-density land uses. Changes to the USAB correspond with growth and expansion of the city and the city's capital improvements plan.

Use: The term referring to:

a. Any purpose for which buildings, other structures or land may be arranged, designed, intended, maintained or occupied; and

b. Any occupation, business, activity or operation carried on (or intended to be carried on) in a building or other structure or on land; or

c. A name of a building, other structure or tract of land which indicates the purpose for which it is arranged, designed, intended, maintained or occupied.

Use Group: Two or more uses similar in physical characteristics, traffic generation, locational, utility or municipal service requirements, or generally compatible with other uses in the use group. Members of the several use groups herein established are specifically listed in this article.

Uses permitted: Any use permitted by the regulations of this article. The term "permitted" or its equivalent shall not be deemed to include any nonconforming use.

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

Vegetative Clearing, Intense: The complete removal of trees, shrubs or natural vegetation in a contiguous patch, strip, row or block.

Veterinary clinic: See "Small animal veterinary clinic".

Yard: An open space of uniform width or depth on the same zoning lot with a building or group of buildings, which open space lies between the buildings or group of buildings and the nearest lot line and is unoccupied and unobstructed, from the ground upward except as may be specifically provided in this article. In measuring a yard, the line of a building shall be deemed to mean a line parallel to the nearest lot line drawn through the point of a building or group of buildings nearest to such lot line, exclusive of such features specified as not to be considered in measuring yard dimensions or as being permitted to extend into a yard, and said measurements shall be taken at right angles from the line of the building to the nearest lot line. When a private roadway easement or access easement is located along a lot line, the yard width or depth shall be measured from the interior edge of said easement rather than the actual lot line.

Yard-Front: A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building. When a private roadway easement or access easement is located along a front lot line, the front yard width shall be measured from the interior edge of said easement rather than the actual lot line.

Yard-Rear: A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building. When a private roadway easement or access easement is located along a rear lot line, the rear yard width shall be measured from the

interior edge of said easement rather than the actual lot line.

Yard-Side: A yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard, or, in the absence of either side yards, is a front or rear lot line, respectively, no case being closer than four feet. The first two feet of the overhang shall not be subtracted from the allowable side yard spacing provided that the overhang is not closer than four feet to the property line. When a private roadway easement or access easement is located along a side lot line, the side yard width shall be measured from the interior edge of said easement rather than the actual lot line.

(Ord. 4165, 07-21-87; 0rd. 4424, 03-31-92; Ord. 4486, 04-27-93; Ord. 4529, 07-06-93; Ord. 4564, 11-23-93; Ord. 4631, 08-30-94; Ord. 4735, 11-14-95; Ord. 4756, 05-14-96; Ord. 4828, 03-25-97; Ord. 4880, 12-30-97; Ord. 4912, 07-14-98; Ord. 4936, 09-08-98; Ord. 5122, 07-10-01; Ord. 5139, 11-13-01; Ord. 5163, 04-09-02; Ord. 5228, 01-28-03; Ord. 5278, 09-23-03; Ord. 5287, 12-16-03; Ord. 5365, 10-26-04; Ord. 5468, 10-25-05; Ord. 5527, 06-27-06; Ord. 5528, 06-27-06; Ord. 5540, 08-22-06; Ord. 5584, 03-27-07; Ord. 5599, 04-24-07; Ord. 5678, 07-22-08; Ord. 5689, 08-26-08; Ord.5719, 05-12-09; Ord. 5728, 05-26-09, Ord. 5764, 01-12-10; Ord. 5811, 03-22-11; Ord. 5859, 01-24-12; Ord. 5887, 05-22-12; Ord. 5958, 03-26-13)

CHAPTER 14-03 - DISTRICTS: USES

14-03-01. Division of City Into Districts. For the purpose of these regulations, the city is hereby divided into twenty classes of districts, which are established as follows:

RR	Residential (rural single-family)
RR5	Residential (rural single-family – 5 acres)
R5	Residential (single-family)
RMH	Residential (manufactured home park)
R10	Residential (two-family)
RM	Residential (multifamily)
RT	Residential (office – multifamily)
HM	Health-Medical
CA	Commercial (neighborhood)
CB	Commercial (downtown)
CG	Commercial (heavy commercial)
CR	Commercial (regional shopping center)
MA	Industrial (light industrial)
MB	Industrial (heavy industrial)
P	Public
A	Agricultural
PUD	Planned Unit Development
FP	Floodplain
AN	Airport Noise
DC	Downtown Core
DF	Downtown Fringe

Reference: NDCC Sec. 40-47-02
(Ord. 4424, 03-31-92; Ord. 4936, 09-08-98; Ord. 5422, 10-24-05)

14-03-02. Boundaries of Districts and Zoning Map. The location and boundaries of districts established in the city are shown on the official zoning map of the city. This map is entitled "Zoning Map of the City of Bismarck, North Dakota" and is on file in the office of the city auditor. This map is hereby made a part of this article. This map shall reflect the ordinances adopted prior to this date and all ordinances adopted after this date relating to the boundaries of zoning districts. The city auditor is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with such ordinances as they are from time to time enacted.

14-03-03. Interpretation of District Boundaries. Where uncertainties exist as to the boundaries of the various districts as shown on the zoning map accompanying and made a part of this title, the following rules shall apply:

1. District boundary lines are intended to follow street, alley or lot lines, or lines parallel to or perpendicular thereto, and such lines shall be construed to be such boundaries.

2. Where district boundaries are so indicated that they approximately follow lot lines and are not more than ten feet distance therefrom, such lot lines shall be such boundaries.

3. Where land within the city limits is not subdivided into lots and blocks or where district boundary lines are not approximately street, alley or lot lines, the district boundary lines on the zoning map shall be determined by the scale shown on such map, and where uncertainty exists, the district boundary line shall be determined by the planning commission by written decision. If land within the city limits has been or is subsequently subdivided into lots and blocks by a duly recorded subdivision map and the lot and block arrangement does not conform to that anticipated when the district boundaries were established, or property is resubdivided by a duly recorded subdivision map into a different arrangement of lots and blocks than shown on said zoning map, the planning commission after notice to the owners of property affected thereby and public hearing, may interpret the zoning map and make minor readjustments in the district boundaries in such a way as to carry out the intent and purpose of these regulations and conform to the street and lot layout of the ground. Such interpretations or adjustments shall be by written decision, and thereafter the copies of the zoning map shall be changed to conform thereto.

4. Any street, alley or railroad right-of-way, watercourse, channel or body of water, included on the zoning map shall, unless otherwise indicated, be included within the zoning district of adjoining property on either side thereof. Where such street, alley, right-of-way, watercourse, channel or body of water, serves as a boundary between two or more different zoning districts, a line midway in such street, alley, right-of-way, watercourse, channel or body of water, and extending in the general direction of the long dimension thereof shall be considered the boundary between zones. If a dedicated street or alley shown on the zoning map is vacated by ordinance, the property formerly in said street or alley shall be included within the zone of the adjoining property on either side of said vacated street or alley. In the event said street or alley was a zone boundary between two or more different zones, the new zone boundary shall be the former center line of said vacated street or alley.

5. Any land or territory in the city which is not indicated on the zoning map as being in any district shall be classified as A-Agricultural.

14-03-04. General Provisions. In interpreting and applying the provisions contained herein, the requirements contained herein are declared to be the minimum requirements necessary to carry out the purpose of this ordinance. The provisions of this title shall not be deemed to interfere with, abrogate, annul or otherwise affect in any manner whatsoever any easements, covenants or other agreements between parties so long as those agreements are not contrary to any laws or ordinances of the United States, the State of North Dakota, and the City of Bismarck. Provided, however, that where this article imposes a greater restriction upon the use of buildings or premises, or upon the height of buildings, or requires larger open spaces than are imposed or required by other articles, rules, regulations or permits, or by easements, covenants or agreements, the provisions of this article shall prevail. Except as hereinafter provided, the following general regulations shall apply:

1. Permitted uses. No building or structure shall be erected, and no existing building or structure shall be moved, altered, added to or enlarged; nor shall any land, building or structure be used, designed or arranged for use for any purpose or in any manner not included among the uses hereinafter listed as permitted in the district in which such building, structure or land be located.

2. Zoning lot. Every building hereafter erected shall be located on a zoning lot as herein defined; and, except as herein provided, there shall be no more than one principal building on such lot.

3. Height. No building or structure shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the district in which such building or structure is located.

4. Area and yards.

a. No building or structure shall be erected; nor shall any existing building or structure be altered, enlarged or rebuilt; nor shall any open space surrounding any building be encroached upon or reduced in any manner except in conformity with the yard, lot, area and building location regulations hereinafter designated for the district in which such building or open space is located.

b. No yard or other open space provided about any building, for the purpose of complying with the provisions of these regulations, shall be considered as a yard or open space for any other building; and no yard or other open space on one lot shall be considered as a yard or open space for a building on any other lot.

c. All yards required by these regulations shall be open and unobstructed to the sky, except as hereinafter provided.

5. Nonconforming uses. The Building Official is authorized to issue a certificate of occupancy for a building if said building fully complies with the zoning ordinance in effect at the date of issuance of the building permit and with the building code and with other ordinances of the City of Bismarck.

6. Property abutting the Missouri River. Zoning designations for property abutting the Missouri River that is not within the corporate limits shall be limited to A-Agricultural, RR – Residential, RR5 – Residential, or PUD – Planned Unit Development.

(Ord. 5287, 12-16-03; Ord. 5371, 11-23-04; Ord. 5728, 05-26-09)

14-03-05. Supplementary Provisions. The regulations specified in this title shall be subject to the following provisions and interpretations:

1. Structures excluded from height limits. A building height limit set forth in this title shall not apply to belfries, chimneys, cupolas, domes, flagpoles, flues, monuments, radio towers, spires, tanks, water towers or similar structures, nor to bulkheads, elevators, water tanks or similar roof structures and mechanical appurtenances. No such structure shall have a total area greater than one third of the roof area of the building; nor shall such structure be used for any use other than a use incidental to the main use of the building. Nothing in this paragraph nor in this article shall be interpreted to permit the erection of any structure in violation of any applicable provisions of the Bismarck municipal airport zoning regulation ordinances.

2. Projection into yards. Steps, terraces and uncovered porches may extend into any minimum front or rear yard not more than six feet, provided the floor thereof is no higher than that of the first floor entrance to the buildings; and such features may extend into any minimum

side yard not more than four feet, provided, however, that such feature shall not be less than four feet from any lot line. Uncovered decks and patios no more than 18" above grade at any point, exclusive of guardrails, may extend into any minimum side or rear yard up to the lot line, and may extend into any minimum front yard no more than 15 feet provided the deck or patio is at least 10 feet from the front lot line. Fire escapes and outside open stairways may project not more than two feet into any minimum required yard. Chimneys may extend into any minimum yard not more than two feet. Civil defense shelters may extend into any required side yard to within two feet of the lot line; they may extend into a required front or rear yard not more than twelve feet. The roof of the shelter that extends into any required yard shall not extend over eight inches above outside grade or above existing basement height, whichever is the lesser. Accessibility ramps for one and two-family dwellings shall be exempt from the provisions of this section, provided they are constructed with the minimum encroachment necessary to accommodate access and are removed when no longer needed.

3. Fences, Walls and Vegetation. The building line and yard requirements of these regulations shall not apply to retaining walls or other walls or fences not over six feet in height; except that, on any lot in any district, no fence, wall, terrace, structure, shrubbery, planting, off-street parking spaces, or other obstruction to vision having a height greater than three feet above the curb level shall be located within the sight triangle, as defined in section 14-02-03. Deciduous trees may be planted within the sight triangle provided they are not an obstruction to vision between three feet and ten feet above the curb level. On a corner lot in a commercial or industrial district, no portion of a building or other obstruction to vision between two and ten feet above the curb level, except a post or column, shall be located within the sight triangle, except for buildings located in zoning districts with no minimum front yard setback.

It shall be unlawful for any person to erect or maintain any barbed wire fence in or along a residential area in the City of Bismarck. Further, any barbed wire fence erected in other areas of the city shall, along any public street or sidewalk, maintain the lowest strand of barbed wire at least six (6) feet above sidewalk grade, over the top of a non-barbed fence over private property and at least six (6) inches inside the property line.

4. Location of accessory buildings.

a. In any residential district except RR and RR5 (see the RR or RR5 district for accessory building regulations specific to that district), all accessory buildings except garages shall be located in the rear yard and shall not be less than three feet from the rear or side lot line when located at least ten feet behind the principal building. Any uncovered deck, patio or porch shall not be considered as part of the principal building for purposes of this subsection. If the ten-foot distance cannot be maintained the same side yard must be maintained as is required for the principal building.

b. A garage located in a rear yard and approached from an alley must be set back from the alley line at least twenty feet. When the approach to the garage is parallel to the alley and the car maneuvers on private property, the distance from the alley and side lot lines to the garage may be not less than three feet.

c. Accessory buildings, including garages, located on a corner lot in a residential district shall be located not less than twenty feet from the lot line of the side street and in no case shall be set back less than the setback distance required for the principal building. The minimum setback from the adjacent lot line of the lot also facing the side street shall be the same as required for the principal building.

d. In a residential district any garage on an inside lot may be located with the same setback from the street as required for the principal building providing that such setback is at least twenty feet and that such garage does not violate the side yard requirements for a principal building for the district in which it is located. If such detached garage is located at least ten feet behind the rear wall of the principal building on the adjacent lots, having the greater setback from the front property line, such garage may be located not less than three feet from the side lot line. In all instances, such measurement shall be made from the eaves.

e. No accessory building shall be allowed on any utility easement.

5. Through lots. Any building constructed on any interior lot having a frontage on two streets shall be

located so as to comply with the regulations governing front yards on both streets.

6. Mixed uses. Any building containing two or more dwelling units and space designed or used for commercial purposes shall comply with all requirements for multifamily dwellings in the district in which it is located. Provided also that no such building designed or used for mixed residential and other uses shall be permitted in any district in which a multifamily dwelling is not permitted.

7. Rural road building setbacks. On platted lots having frontage on a road built to rural standards, the setback shall be the same as for platted lots having frontage on a road built to urban standards, unless otherwise specified in the setback regulations of underlying zoning district.

8. All structures in all zones except RR, RR5 and A shall be built on urban lots when municipal water and sewer service is available within one hundred fifty (150) feet or they may be built on urban lots when a central sewer system and a central water system offering water availability equivalent to urban system fire flow requirements are provided. All other structures and all structures in RR, RR5 and A zones must be built on rural lots.

9. Residential Area Identification Signs.

a. Two (2) residential area identification signs shall be permitted for each multiple family residential complex and two (2) residential area identification signs shall be permitted for each entrance to a residential subdivision or manufactured home park. For purposes of this section, residential subdivisions shall include all phases of approved staged developments.

b. The residential area identification sign shall be located at the entrance to the residential subdivision, multiple family residential complex or manufactured home park.

c. Residential area identification signs shall not encroach into any public right-of-way or be located upon any easement.

d. Signs located within the sight triangle (as defined in this title) shall not exceed three (3) feet in height, inclusive of supports, as measured from the

curb. Signs located between the sight triangle and the required setback line for a structure within the zoning district in which the sign is located shall not exceed six (6) feet in height, inclusive of supports, as measured from the curb. Signs located at or behind the required setback line for a structure within the zoning district in which the sign is located shall not exceed twelve (12) feet in height, inclusive of supports, as measured from the curb.

e. The name, address and/or logo portion of a residential area identification sign shall not exceed thirty-two (32) square feet for signs located within the sight triangle, forty-eight (48) square feet for signs located between the sight triangle and the required setback line for a structure within the zoning district in which the sign is located, and sixty (60) square feet for signs located at or behind the required setback line for a structure within the zoning district in which the sign is located.

f. Residential area identification signs shall be constructed of durable, weather-resistant materials, and all letters or characters on such signs shall be dimensional.

g. Any lighting of a residential area identification sign shall be from an external source directed at the sign, rather than from internal illumination. Lighting for the sign shall be so directed as to not interfere with the movement of traffic on adjacent roadways or be a nuisance to adjacent property owners.

h. Plantings are allowed in conjunction with residential area identification signs; however, plantings within the sight triangle shall be limited to three (3) feet in height, as measured from the curb, upon full maturity of the vegetative species used.

i. Maintenance of all residential area identification signs shall be the responsibility of the property owner in the case of multiple family residential complexes or manufactured home parks, or a homeowners' association in the case of residential subdivisions.

j. A permit for a residential area identification sign must be issued by the City Building Official prior to the construction or installation of such sign in accordance with the provisions of Chapter

4-04 of the City Code of Ordinances (Signs and Outdoor Display Structures). If a homeowners' association is established, documentation on such association shall be submitted to and approved by the City Building Official prior to the granting of a permit for the residential area identification sign.

10. Industrial Park Area Identification Signs.

a. Two (2) industrial park area identification signs shall be permitted for each industrial park.

b. The industrial park area identification signage shall be located at the entrance(s) to the industrial park.

c. Industrial park area identification signs shall be set back a minimum of fifteen (15) feet from all property lines.

d. Signs located within the sight triangle shall not exceed three (3) feet in height, inclusive of supports, as measured from the top of the curb. Signs located between the sight triangle and the required setback line for a structure within the zoning district in which the sign is located shall not exceed six (6) feet in height, inclusive of supports, as measured from the top of the curb. Signs located at or behind the required setback line for a structure within the zoning district in which the sign is located shall not exceed twelve (12) feet in height, inclusive of supports, as measured from the top of the curb.

e. The name, address and/or logo portion of an industrial park area identification sign shall not exceed sixty-four (64) square feet for signs located within the sight triangle, ninety-six (96) square feet for signs located between the sight triangle and the required setback line for a structure within the zoning district in which the sign is located, and one hundred twenty (120) feet for signs located at or behind the required setback line for a structure within the zoning district in which the sign is located.

f. Industrial park area identification signs shall be constructed of durable, weather-resistant materials, and all letters or characters on such signs shall be dimensional.

g. Lighting for the sign shall be so directed as to not interfere with the movement of traffic on

adjacent roadways or be a nuisance to adjacent property owners.

h. Plantings are allowed in conjunction with industrial park area identification signs; however, plantings within the sight triangle shall be limited to three (3) feet in height, as measured from the curb, upon full maturity of the vegetative species used.

i. Maintenance of all industrial park area identification signs and plantings shall be the responsibility of the industrial park owner(s). If a property owners' association is established, documentation on such association shall be submitted to and approved by the City Building Official prior to the granting of a permit for the industrial park area identification sign.

(Ord. 4322, 4-24-90; Ord. 4426 & 4427, 03-31-92; Ord. 4875, 10-14-97; Ord. 4955, 12-08-98; Ord. 5122, 07-10-01; Ord. 5147, 12-18-01; Ord. 5215, 11-12-02; Ord. 5286, 11-13-03; Ord. 5372, 11-23-04; Ord. 5501, 04-25-06; Ord. 5668, 05-27-08; Ord. 5887, 05-22-12)

14-03-06. Incidental Uses. Permitted uses and approved special uses shall be deemed to include accessory uses and accessory structures that are customarily incidental to the principal use, subject to the following standards:

1. Accessory Uses and Buildings.

a. General Requirements. Accessory uses and buildings shall comply with the following standards and all other applicable regulations of this chapter:

1. The accessory use or building shall be incidental and customarily associated with the principal use or structure.

2. Except for accessory buildings for one and two-family residential uses constructed in accordance with the provisions of Section 14-03-06(1)(b), the accessory use or building shall be subordinate in area, extent, and purpose to the principal use or building served.

3. The accessory use or building shall contribute to the comfort, convenience and necessity of the occupants of the principal use or building served.

4. The accessory use or building shall be located on the same zoning lot as the principal use or building.

5. The accessory use or building shall not be injurious to the use and enjoyment of surrounding properties.

6. No accessory building shall be located within any recorded public easement or over any known public utility.

b. One and two-family residential accessory uses and buildings.

1. Accessory uses and buildings commonly associated with residential uses include recreational activities, raising of pets, hobbies and parking of occupants' vehicles.

2. Customary domestic pets are allowed in accordance with the provisions of Title 3 of the Bismarck Code of Ordinances, but not including horses, poultry or agricultural livestock except as allowed in Sections 14-04-01, 14-04-02 or 14-04-17 of this ordinance. No more than three (3) dogs or cats, four months of age or older are allowed.

3. Private swimming pools are allowed in accordance with the provisions of Chapter 4-06 of the City Code of Ordinances.

4. All allowable accessory buildings to a residence shall be limited to a maximum of fourteen hundred (1,400) square feet for lots of 40,000 square feet or less; to a maximum of eighteen hundred (1,800) square feet for lots between 40,000 square feet and 64,999 square feet; to a maximum of twenty-four hundred (2,400) square feet for lots between 65,000 square feet and five and one-half (5.5) acres; and to a maximum of one (1) percent of the total lot area up to a maximum of five thousand (5,000) square feet for lots larger than five and one-half (5.5) acres. For residential accessory buildings, the maximum wall height shall be limited to fourteen (14) feet and the maximum building height shall be limited to twenty-five (25) feet.

Accessory buildings for the above computations shall include the following buildings: barns, stables, storage buildings, and detached garages. Attached garages are not included in the above computations, provided the area occupied by an

attached garage does not exceed one and one-half times the area of the footprint of the dwelling portion of the principal structure to which it is attached.

The allowable accessory buildings for a single-family residence on a lot in an RR – Residential district with 40,000 to 64,999 square feet in area may be increased to a maximum of twenty-four hundred (2,400) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings for a single-family residence on a lot in an RR – Residential or RR5 – Residential district with 65,000 square feet to seven and one-half (7.5) acres in area may be increased to a maximum of thirty-two hundred (3,200) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings to a non-farm single-family residence in an A – Agricultural zoning district may be increased to a maximum of 15,000 square feet as a special use in accordance with the provisions of Section 14-04-17.

5. Construction of a garage or storage building in any RR, RR5, or A zone is allowed prior to the construction of the principal dwelling provided the following conditions are met:

a. A petition waiving any objection to the proposed outbuilding is signed by 60% of all owners of land within one-quarter mile of the request.

b. Limitations of the garage or shed constructed pursuant to this section to one structure of no more than one thousand two hundred (1,200) square feet for lots less than 10 acres in size, one thousand eight hundred (1,800) square feet for lots between 10 and 34 acres in size, and two thousand four hundred (2,400) for lots over 34 acres in size.

6. All allowable accessory buildings shall comply with the applicable provisions of Section 14-03-05.

c. Multi-family accessory uses and structures.

1. Accessory uses and buildings commonly associated with multi-family residential uses include recreational activities, management offices, and parking of occupants' vehicles.

2. Customary domestic pets are allowed in accordance with the provisions of Title 3 of the Bismarck Code of Ordinances, but not including horses, poultry or agricultural livestock except as allowed in Sections 14-04-01, 14-04-02 or 14-04-17 of this ordinance. No more than three (3) dogs or cats, four months of age or older are allowed per dwelling unit.

3. Swimming pools for the use of residents and their guests are allowed in accordance with the provisions of Chapter 4-06 of the City Code of Ordinances.

4. Accessory buildings shall be located on the side or rear of the principal building and are not permitted within any required front yard.

5. The design and construction of any accessory building shall be similar to or compatible with the design and construction of the principal building.

6. All allowable accessory buildings shall comply with the applicable provisions of Section 14-03-05.

d) Non-residential accessory buildings or uses in residential zoning districts:

1. Accessory uses and buildings commonly associated with non-residential uses in residential zoning districts, such as schools and religious facilities, include offices, athletic and recreation facilities, and maintenance facilities.

2. A parish house or similar residential facility is allowed as an accessory use to a religious facility, along with any accessory uses

and buildings commonly associated with a residential use.

3. Signage shall be subject to the provisions of Section 4-04-10 of the City Code of Ordinances.

4. All non-residential accessory buildings in residential zoning districts shall be subject to the applicable provisions of Section 14-03-05.

5. The design and construction of any accessory building shall be similar to or compatible with the design and construction of the principal building.

e) Non-residential accessory uses and buildings in all other zoning districts.

1. Health and Medical Uses. Accessory uses and buildings commonly associated with health and medical uses (health care facilities, not including free-standing medical clinics) include out-patient clinics, offices, laboratories, teaching facilities, meeting areas, cafeterias, housing for staff or trainees and maintenance facilities.

2. Office Uses. Accessory uses and buildings commonly associated with office uses, including medical clinics and financial institutions, include cafeterias, health facilities, maintenance facilities and other amenities primarily for the use of the employees in the building.

3. Institutional Uses. Accessory uses and buildings commonly associated with non-residential uses in residential zoning districts, such as schools and religious facilities, include offices, athletic and recreation facilities, and maintenance facilities.

4. Commercial Uses. Accessory uses and buildings commonly associated with commercial uses include offices, storage of goods for sale on the premises and maintenance facilities.

5. Industrial Uses. Accessory uses and buildings commonly associated with industrial uses include offices, cafeterias, health facilities,

maintenance facilities and other amenities primarily for the use of the employees in the building.

6. Gate houses, guard shelters, and structures for parking attendants may be located in a front or side yard at least five (5) feet from the property line and outside of any required sight triangle.

7. All other accessory buildings and structures, including mechanical equipment and electrical transformers, shall comply with the applicable setbacks (front, side and rear) and lot coverage requirements for principal buildings within the underlying zoning district. The provisions of Section 14-03-05 of the City Code of Ordinances do not apply to non-residential accessory buildings in non-residential zoning districts.

8. The design and construction of any accessory building shall be similar to or compatible with the design and construction of the principal building.

9. Except for agricultural buildings located in the agricultural zoning district, no accessory building shall exceed the height or floor area of the principal building.

10. Manufacturing and repair facilities incidental to the principal use subject to the following limitations:

a. Floor space so used shall not exceed twenty-five percent of the total floor space devoted to the principal use.

b. No motive power other than electricity shall be used.

c. No motor used on any machine for manufacturing and repair shall exceed one horsepower.

d. All operations shall be conducted so that no dust, odor, smoke, noise, vibration, heat or glare created by such operation is perceptible from any boundary line of the lot on which the principal use is located.

2. Home occupation:

a. There is permitted in a dwelling any occupation customarily incidental to the principal use as a dwelling subject to the following limitations:

1. A permit for the home occupation shall be obtained from the Building Official prior to the initiation of the use. Said permit shall be valid for two years. An administrative fee may be charged. Any appeal from a decision relative to said permit shall be referred to the Board of Adjustment.

2. No more than one person other than a member of the immediate family occupying a dwelling is employed, except domestic help.

3. No stock in trade is stored outside, displayed or sold upon the premises.

4. No alteration of the principal building changes the character thereof as a dwelling.

5. No sign is used.

6. No more than twenty-five percent of the area of one story of the building is devoted to the home occupation.

7. The address of the home occupation is not used in any advertising of the business or service.

8. No objectionable noise, odor, vibration or electrical interference is noticeable at the property line.

9. No traffic significantly in excess of present neighborhood levels is created.

b. The following are hereby declared to be home occupations as intended by this section:

1. Dressmaker, seamstress.

2. Artist. A person who is skilled in the profession of the fine arts of creative work or its principles; making or doing of things that display form, beauty and unusual perception and

shall be limited to a person engaging in or teaching painting, sculpture, music, literature, dramatic art and ballet dancing. Group or student assemblies for the purpose of teaching or learning shall be limited to no more than four students at any one time.

3. Emergency treatment only of patients by physician or dentist.

4. Office uses provided said use does not generate traffic significantly in excess of present levels in the neighborhood.

5. Minister.

c. Rummage sales, yard sales or garage sales will be permitted provided that no one location hold more than two such sales in any calendar year.

Rummage, yard or garage sales may be of up to four consecutive days in duration but the two sales permitted under this section may not exceed a total of six days.

3. Portable Storage Containers.

a. General Requirements. Container usage in all zoning districts as allowed in this section is subject to the following requirements.

1. Containers shall not occupy any required building setback area, landscaped area or buffer yard.

2. Containers shall not be placed within a sight triangle as defined in Section 14-02-03.

3. Containers shall be included in lot coverage computations.

4. Containers shall be subject to the provisions of Chapter 8-08 of the City of Bismarck Code of Ordinances concerning rodent control.

5. Containers shall be subject to the provisions of the Fire Code concerning fire department access and hydrant blockage.

b. Portable storage containers in industrial zoning districts.

1. Portage storage containers are allowed in the MA and MB Industrial Zoning Districts.

2. A container that is not temporary in nature may only be used in a manner that would result in the container being subject to taxation as real property and subject to all applicable provisions of the Building Code and Zoning Ordinance.

c. Portable storage containers in commercial zoning districts.

1. Portable storage containers are allowed in the CA, CG and CR Commercial Zoning Districts for the purpose of storage of seasonal merchandise during the following time periods: November 1 through January 15, and April 1 through June 15.

d. Portable storage containers – other requirements in non-industrial zoning districts. Container usage in any non-industrial zoning district is allowed only as follows:

1. Residential moving. Containers may be used for a period not to exceed 30 days for the purpose of loading or unloading furniture and other household goods associated with a residential relocation.

2. Loading & unloading. Semi trailers in the process of transferring goods may occupy a site for up to 48 hours for loading and unloading purposes.

3. Parking lot truckload sales, fund raising activities or similar promotional or charitable events which utilize containers are permitted for a period not to exceed 30 days within any 90-day period.

(Ord. 4235, 1-17-89; Ord. 4327, 4-24-90 & 5-01-90; Ord. 4341, 9-11&18-90; Ord. 4529, 07-06-93; Ord. 4634, 09-27-94: Ord. 4772, 06-25-96; Ord. 4880, 12-30-97; Ord. 5237, 02-25-03; Ord. 5372, 11-23-04; Ord. 5447, 07-26-05; Ord. 5468, 10-25-05; Ord. 5528, 06-27-06; Ord. 5728, 05-26-09; Ord. 5902, 06-26-12)

14-03-07. Use Groups. In order to carry out the purposes of this title, certain uses having similar characteristics are classified together as "use groups". In any district in which a use group is permitted, it is the intent of this title to permit any particular member of that use group to be located within that district. In any district in which a use group is not listed as a permitted use, it is the intent of this title to

prohibit each and every member of that use group from locating within that district. These use groups shall apply to all zoning districts except the Downtown Core and Downtown Fringe district.

1. Group dwelling. A group dwelling is a building used for residential purposes, and in which:

a. The occupants are unrelated.

b. Separate cooking facilities are not provided for individuals or groups of individuals.

c. Persons residing in the building are domiciled more or less permanently, in contrast to transient residents characteristic of hotels.

d. The following uses are declared to be typical group dwelling uses:

1) Boardinghouse.

2) Convent, monastery.

3) Fraternity, sorority house.

4) Rooming house or dormitory.

5) Halfway house.

6) Nursing, convalescent or orphan's home.

2. Retail group A. A use in retail group A is one in which the principal activity is the sale at retail of merchandise and which:

a. Merchandise is not of such a nature as to be customarily taken away by the customer in a truck.

b. Includes no incidental manufacturing or processing carried on in such a manner as to provide offensive noise, dust, odor, glare, heat or vibration perceptible or measurable from outside the building in which the use is located.

c. All household merchandise shall be kept and displayed within an enclosed building.

d. The following uses are declared to be typical uses in retail group A:

1) Antique store.

2) Appliance, radio, television store.

3) Auto accessory store.

4) Book, magazine, newspaper store.

5) Butcher shop.

6) Camera store, art supply store.

7) Candy store.

8) Clothing, clothing accessories store.

9) Delicatessen.

10) Department store.

11) Drugstore.

12) Flower shop.

13) Furniture, office equipment store.

14) Gift shop.

15) Grocery store.

16) Hardware store.

17) Hobby, toy store.

18) Jewelry store.

19) Music store.

20) Notion, variety store.

21) Office supply, stationery store.

22) Package liquor store.

23) Photographic studio.

24) Shoe store.

25) Sporting goods store.

26) Bakery, in which nothing is baked except for retail sale on the premises.

27) Pet shops, limited to cats, dogs, fish and other small mammals provided all pets are confined within a building and same do not create an odor, noise or nuisance affecting the adjacent occupants.

3. Retail group B. A use in retail group B is one in which the principal activity is the sale at retail of merchandise, and in which one or more of the following factors is present:

a. Merchandise is of such a nature as to be customarily taken away by the customer in a truck.

b. Merchandise is of such a nature as to require fifty percent or more of the space within the building for storage of the merchandise.

c. Merchandise is of such a nature as to be stored or customarily displayed outside a building.

d. The following uses are declared to be typical uses in retail group B:

1) Auto, truck sales.

2) Farm implement store.

3) Feed, grain, farm supply store.

4) Trailer sales.

5) Commercial greenhouse.

6) Lumberyard provided all building materials are stored within a building or fenced area.

4. Service group A. A use in service group A is one in which the principal activity is the serving of food for consumption on the premises, personal service, household or clothing service, or the repair of small equipment and which:

a. Operations are carried on in such a manner as to produce no offensive noise, dust, odor, glare, heat or vibration perceptible or measurable from outside the building in which the use is located.

b. All household merchandise for repair, disposal or parts shall be kept within an enclosed building.

c. The following uses are declared to be typical uses in service group A:

1) Barbershop.

2) Beauty shop.

3) Dressmaker, tailor.

4) Laundry pickup agency.

5) Laundry, self-service.

6) Radio and appliance repair.

7) Food service establishment, including brewpub, but exclusive of drive-in restaurant.

8) Shoe repair.

9) Watch, jewelry, camera repair.

10) Dry cleaning plants, providing service for wearing apparel only and complying with all provisions of the fire prevention code for a class four system.

11) Mortuary or funeral home.

12) Commercial child care facility for child care not in excess of four (4) hours in any twenty-four (24) hour period. Facilities shall provide at least thirty-five (35) square feet of play area per child and one (1) parking space per employee as well as one (1) space per ten (10) children.

5. Service group B. The use in service group B is one in which the principal activity is technical or vocational instruction by a private organization for profit, repair and service to motor vehicles (not including a filling station as defined herein) and other service uses not necessary in or appropriate to neighborhood commercial districts, and for which one or more of the following factors is present:

a. Repair or service operations are such as to produce some offensive noise, dust, odor, glare, heat or vibration perceptible or measurable from outside the building in which the use is located.

b. The use is one which, if placed on a lot adjacent to a lot in a residential district, would create an unusual safety hazard for the lot or other lots in said residential district, or would otherwise unduly depreciate the value of any lot in said residential district.

c. The following uses are declared to be typical uses in service group B:

1) Reserved.

2) Motor vehicle repair garage.

3) Commercial school, including business, secretarial, dancing, music, physical culture, technical trade school, adult education or vocational education.

4) Commercial parking lot or structure.

5) Tire and battery repair.

6) Furniture repair and upholstery.

7) Outdoor advertising sign, billboard.

8) Radio, television or communication broadcast and receiving facilities.

6. Office-bank group. A use in the office-bank group is one in which the principal activity is the conduct of commercial, governmental, financial, professional or management activities. The following uses are declared to be typical uses in the office-bank group:

a. Bank.

b. General office.

c. Medical office, including doctor, dentist and chiropractor office, where patients are not kept overnight.

7. Commercial recreation group. A use in the commercial recreation group is one in which the principal

activity is the furnishing of recreation, and for which one or more of the following factors is present:

a. Alcoholic beverages are offered for sale for consumption on the premises.

b. The activity is not operated by a governmental agency.

c. The following uses are declared to be typical uses in the commercial recreation group:

1) Bowling alley.

2) Dance hall.

3) Pool or billiard parlor.

4) Roller and ice skating facilities.

5) Athletic facility.

6) Tavern, saloon, bar.

7) Theater within an enclosed structure, auditorium.

8) Coin-operated amusements and game devices provided they are accessible to minors and do not require a license under Chapter 5-03 of the Code of Ordinances of the City of Bismarck.

9) Private or fraternal clubs.

10) Miniature golf course.

8. Wholesale group. A use in the wholesale group is one in which the principal activity is the sale of merchandise to individuals and corporations for resale to the public, and for which:

a. The merchandise offered for sale is stored wholly within a completely enclosed building.

b. No unusual fire or safety hazard is caused by the storage of the merchandise.

c. No live animals are sold.

d. No junk, wrecked automobiles, secondhand equipment or other salvaged materials or dead animals are stored or sold on the premises.

e. The following uses are declared to be typical uses in the wholesale group:

1) Newspaper, magazine distributor.

2) Wholesale food and grocery sales.

3) Wholesale material sales.

9. Health-medical group. A use in the health-medical group is one in which the principal activity is related to the care or medical treatment of human beings and the training of medical staff. The following uses are declared to be typical uses in the health-medical group:

a. Hospital for human beings.

b. Medical clinic.

c. Medical schools.

d. Adult care facility.

10. Education group. A use in the education group is one in which the principal activity is the education of children or adults by a public or private nonprofit agency. The following uses are declared to be typical uses in the education group:

a. College or junior college.

b. Elementary school.

c. High school or junior high school.

d. Kindergarten.

e. Private or parochial school offering a curriculum substantially equivalent to that offered by public schools.

f. Student or faculty dormitory on college campus.

g. Stadium, gymnasium or field house as an accessory use.

11. Public recreation group. A use in the public recreation group is one in which the principal activity is public recreation and which is carried on by a governmental agency. The following uses are declared to be typical uses in the public recreation group:

a. Community center.

b. Golf course.

c. Museum.

d. Park.

e. Playground or athletic field.

f. Swimming pool.

g. Ice arena.

h. Zoo.

12. Farming group. A use in the farming group is one that is customarily carried on in non-urban areas. It is the intent of this article to permit as an integral part of any particular use in the general farming group all customary accessory buildings for breeding and rearing poultry and livestock and for the storage of feed and farm crops. The following uses are declared to be typical uses in the farming group, provided the operation is not defined as an animal feeding operation:

a. Field crop farming.

b. Dairy farming.

c. Fur farming.

d. Greenhouse, commercial.

e. Livestock raising.

f. Farrowing operation.

g. Poultry hatchery.

h. Poultry farming.

i. Riding stable.

j. Roadside stand for sale of products grown on premises.

k. Apiary.

l. Tree, shrub or plant nursery.

13. Industrial group A. A use in industrial group A is one involving manufacturing or the storage and sale of heavy building materials or equipment and which conforms to the following requirements:

a. There is no unusual fire, explosion or safety hazard.

b. There is no production of noise at any boundary of this district in which such use is located in excess of the average intensity of street and traffic noise at that point.

c. There is no emission of smoke in excess of any density described as No. One as measured by a standard Ringelmann Chart as prepared by the United States Bureau of Mines; provided, however, that smoke of a density not in excess of No. Two on a Ringelmann Chart will be permitted for a period not in excess of four minutes in any thirty minute period.

d. There is no emission of dust, dirt, or toxic or offensive odors or gas.

e. There is no production of heat or glare perceptible from any lot line of the premises on which the use is located.

f. There is no activity which produces electrical, electronic or radio frequency interference beyond the boundaries of the property on which the activity is located.

g. The following uses are declared to be typical uses in the industrial group A:

1) Manufacture, compounding, processing, packaging, treatment or assembly of the following materials and products:

a) Bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, and food products except fish and meat products, sauerkraut vinegar,

yeast and the rendering or refining of fats and oils.

b) Products from the previously prepared materials: Bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, metals, stones, fur, glass, hair, horn, leather, paper, plastics, shell, textiles, wood and yarns.

c) Pottery and other ceramic products using only previously pulverized clay, and kilns fired only by electricity or gas.

d) Electric and neon signs, outdoor advertising signs, commercial advertising structures, and light sheet metal products, including heating and ventilating ducts and equipment, cornices, eaves, and similar products.

e) Musical instruments, toys, novelties and rubber and metal stamps.

f) Welding and machine shop.

g) Laundry, cleaning and dyeing works, and carpet and rug cleaning.

h) Ice manufacturing.

i) Assembly of electric appliances, electronic instruments and devices, including the manufacture of small parts only, such as coils, condensers, transformers, crystal holders and similar products.

j) Soft drink bottling plant.

2) Storage building and warehouses including refrigerated storage.

3) Experimental and testing laboratories.

4) The following uses when conducted wholly within a completely enclosed building, or within an area enclosed on all sides with a solid wall, compact hedge or security fence, not less than six feet in height:

a) Building materials sales yard, including the sale of rock, sand and gravel.

b) Contractors' equipment storage yard.

c) Pipe storage yard, including sales.

d) Feed or fuel storage yard including sales.

e) Public utility service yard.

f) Sale, rental or storage of oil and gas well drilling equipment.

5) Concrete products, material storage and mixing.

6) Petroleum bulk plants, if in compliance with Title 11 of the Code of Ordinances of the City of Bismarck.

7) Manufacturing and storage of alcoholic beverages, including brewery.

14. Industrial group B. A use in industrial group B is one involving manufacturing or the storage, sale of products and material, and in which the operations create a greater degree of hazard or more annoyance than the operations of uses in industrial group A, but which conforms to the following requirements:

a. The design and the operation of the building, and design and use of the premises fully comply with all special requirements established by this paragraph and this article.

b. There is no emission of smoke in excess of a density described as No. Two as measured by a standard Ringelmann Chart as prepared by the United States Bureau of Mines; provided, however, that smoke of a density not in excess of No. Three on a Ringelmann Chart will be permitted for a period not in excess of four minutes in any thirty minute period.

c. There is no emission of toxic gases or fumes.

d. There is no production of heat or glare perceptible from any lot line of the premises on which the use is located.

e. The following uses are declared to be typical uses in the industrial group B:

1) Any use listed in industrial group A, provided that all other requirements of industrial group B uses are complied with.

2) Manufacture, compounding, processing, refining or treatment of the following materials and products:

a) Acetylene.

b) Alcohol.

c) Asphalt and bituminous products.

d) Brick, tile or terra-cotta.

e) Oilcloth or linoleum.

f) Paint, shellac, turpentine, lacquer or varnish.

g) Paper or pulp.

h) Petroleum products.

i) Plastics.

3) Any of the following uses provided that they shall not be located closer than five hundred (500) feet from any zone in which they are prohibited:

a) Cement, lime, gypsum, or plaster of paris manufacture.

b) Drop forge industry, manufacturing forgings with power hammer.

c) Fertilizer manufacturing.

d) Garbage, offal, bone or dead animal reduction.

e) Gas manufacture or utility regulating stations.

f) Electric generating plant.

g) Smelting of tin, copper, zinc or iron ores.

h) Soap manufacture.

i) Stockyards, feeding pens or livestock sale facilities.

j) Slaughter and packing of animals and meat products.

k) Tannery, curing or storing of raw hides.

15. Uses permitted in any district. The following uses are allowed in any district:

a. Utility service group. A use in the utility service group is one necessary for the safe or efficient operation of a gas, water, communication or electric utility or sewerage system for the benefit of the public, and is one in which the following factors are present:

1) The structure or use is necessary for the safe or efficient operation of the utility.

2) The utility which the structure or use serves is one available to the general public.

3) The design and location of the facility and structures are in compliance with all applicable requirements of this section.

4) The use is located on a lot no smaller in area than the minimum lot area required for the zoning district in which it is located.

5) Any building associated with the use complies with all setback regulations for a principal building for the district in which it is located. Structures and equipment other than buildings, such as those found in an electric transformer station, must be setback no less than 15 feet from the front property line in any zoning district, no less than 15 feet from the side or rear lot line in or abutting any agricultural or residential district, and no less than 10 feet from the side or rear lot line in any non-residential zoning district.

6) Wherever the lot on which the use is located adjoins a lot in any residential zoning district, a landscaped buffer yard no less than fifteen (15) feet in width is required along the entire length of any side or rear lot line adjacent to the residential zoning district. Said buffer yard shall be planted with two (2) shade trees, two (2) ornamental trees, and two (2) large upright coniferous trees per 100 linear feet in conjunction with site development. Alternative material types and numbers may be allowed in situations where there are concerns with site security. Minimum material size at the time of planting shall be in accordance with the provisions of Section 14-03-11(10) (Landscaping and Screening/Buffer Yards) of this chapter.

7) Proper security fencing shall be erected around the perimeter of the site where there is any safety hazard whatsoever for children or for site security purposes. Said fencing shall be at least six (6) feet high and may be placed within the required setback along a front, side, or rear yard provided said fence is not located within a required sight triangle and provided that the location of any gated entrance is set back at least twenty (20) feet from any property line.

8) For the proper operation of the utility, it is necessary that the proposed use be located on, or within a short distance of, the site on which it is proposed to be located.

9) The following uses are declared to be typical uses in the utility service group:

a) Electric transformer station, but not a steam generating plant.

b) Electric transmission line.

c) Sewage pumping station.

d) Water pumping station.

e) Storm water pumping station.

f) Water reservoir.

g) Telephone switching or exchange station.

h) Gas regulator stations, excluding stations emitting noise of more than fifty (50) decibels at any property line adjacent to any residentially zoned area.

i) Radio or cellular communication tower.

b. Fire station. Fire stations are permitted as a principal use in any district as a necessity for the protection and safety of the public, subject to district requirements in which it is located. The design of the structure shall be compatible with surrounding structures in the district.

c.Railroad line or spur trackage.

(Ord. 4325, 4-24-90 & 5-01-90; Ord. 4326, 4-26-90 & 5-01-90; Ord. 4428, 3-31-92; Ord. 4486, 04-27-93; Ord. 5139, 11-13-01; Ord. 5205, 10-08-02; Ord. 5422, 05-24-05; Ord. 5501, 04-25-06; Ord. 5719, 05-12-09; Ord. 5944, 01-22-13; Ord. 5958, 03-26-13)

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and Building Official (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and Building Official (where allowed) are hereby given limited discretionary powers relating to the granting of such permit or certificate.

1. General provisions.

a. The uses listed in this section are designated as special uses, and no building permit or certificate of occupancy shall be issued by the Building Official until the application for such permit or certificate has been reviewed and authorized by the city planning and zoning commission except that certain uses may be authorized by the Building Official.

b. The city planning and zoning commission shall not authorize the issuance of a building permit or certificate of occupancy until the applicant has appeared at a public hearing on such application, notice of the time and place of which hearing has been given in a newspaper of general circulation in the City of Bismarck once each week for two (2) consecutive weeks prior to the date of such hearing. Not less than ten (10) days prior to the date of the scheduled public hearing, the City shall attempt to

notify all known adjacent property owners within three hundred (300) feet of the proposed special use. "Notify" shall mean the mailing of a written notice to the address on record with the City Assessor or Burleigh County Auditor. The failure of adjacent property owners to actually receive the notice shall not invalidate the proceedings.

c. Before approving the issuance of a building permit or certificate of occupancy for a special use, the city planning and zoning commission or Building Official (where allowed) shall find:

1) The proposed use is in harmony with the purpose and intent of this title and with the master plan of the City of Bismarck.

2) The proposed use will not adversely affect the health and safety of the public and the workers and residents in the area, and will not be detrimental to the use or development of adjacent properties or of the general neighborhood.

3) The proposed use will comply with all special regulations established by this section, and all special conditions necessary for the safety and welfare of the public.

d. The city planning and zoning commission or Building Official (where allowed) is authorized to impose any conditions on the grant of a building permit or certificate of occupancy for a special use it deems necessary for the protection of the neighborhood and the general welfare of the public.

e. The city planning and zoning commission or Building Official (where allowed) shall not authorize the location of a special use in any district from which it is prohibited.

f. The city planning and zoning commission or Building Official shall not be authorized to permit the issuance of a building permit or certificate of occupancy for any special use if it is found that such special use would fail to comply with any of the requirements of this title or this section.

g. The city planning and zoning commission or Building Official (where allowed) shall require the applicant for authorization of a special use to furnish any engineering drawings or specifications, site plans,

operating plans or any other data the board finds necessary to appraise the need for or effect of such special use.

h. A special use granted under this article must be put into use within twenty-four (24) months of the granting of the special use or it shall lapse and the landowner must re-apply.

i. Special use permit applications that require approval by the city planning and zoning commission shall be submitted to the Director of Community Development by the specified application deadline and on the proper form. The following items shall accompany the special use permit application:

i. The applicable fee.

ii. Three (3) copies of a preliminary site plan at a scale of one (1) inch equals twenty (20) feet or less containing all items required by the Zoning Ordinance for each particular special use, unless waived by the Director of Community Development.

iii. A photographic reduction of the preliminary site plan described above designed to fit an 8-1/2 x 11 inch sheet.

2. Temporary uses (administrative approval). The Building Official is authorized to grant permits for certain temporary uses without a public hearing or approval of the city planning and zoning commission. All temporary structures used for the following uses shall be removed within fifteen days after termination of the use. The following are temporary uses to which such regulations apply:

a. For a religious meeting in a tent or other temporary structure in a CG, MA, MB or A district for a period not to exceed thirty (30) days.

b. For the open lot sale of Christmas trees in a CA, CG, CR, MA, MB or A district for a period not to exceed forty-five (45) days.

c. For seasonal sales of nursery and bedding stock for a period of not more than ninety (90) days in a CA, CG, CR, MA, MB or A district.

d. For sale of fireworks for a period of not more than thirty (30) days in a MA, MB or A district.

e. For sale of locally grown farm or garden produce in a CA, CG, CR, MA, MB or A district of not more than ninety (90) days.

f. For a circus or carnival in a CA, CR, CG, MA, MB, A or P Zone for a period of no more than ten days provided that proof of a bond or liability insurance as required by City Ordinance 5-03-08 is provided prior to the first day of the event and that no less than thirty days prior to the first day of the event the applicant shall submit an application for the event to the Building Official. Such application shall be accompanied by a $100.00 fee which shall be in addition to any other license fees, and a site plan of the event showing at least the following details:

1) General layout with dimensions and legal description.

2) Location and type of sanitary facilities. There shall be at least one toilet facility for each sex for every ten concessions.

3) Circulation plan showing access points, pedestrian areas and parking areas.

4) At least nine hundred square feet of area shall be required for each concession.

5) No public right-of-way shall be utilized for any portion of the event without special permission of the Board of City Commissioners.

6) No noise in excess of sixty decibels may be emitted after 11:00 p.m.

7) No event may begin earlier than 9:00 a.m. nor continue later than 1:00 a.m.

8) Each event shall post a $500,000 bond or liability insurance as required by City Ordinance 5-03-08.

3. Permanent uses (administrative approval). The Building Official may issue special use permits for the following uses without a public hearing or approval of the city planning and zoning commission:

a. Small animal veterinary clinic. Defined as a facility in which the practice conducted is essentially an outpatient type of practice with an occasional confinement limited to domestic household pets. A small animal veterinary clinic may be permitted in a CG, MA, MB or A district as a special use provided.

1. The clinic shall be maintained within a completely enclosed sound resistant building. The building must contain adequate heating and the ventilation system must have filters incorporated so as to absorb all objectionable inside odor.

2. The building must be constructed so as to contain sound and odors in such a way as to produce no objectionable noise or odors outside the building.

3. The structure shall be sufficient to meet the requirements set forth by the Animal and Plant Health Service, U.S. Department of Agriculture.

4. All animal treatment shall be conducted within the confines of the clinic building.

5. Off-street parking space shall be provided as required in section 14-03-10(1)(i), office buildings, of this article.

4. Permanent uses (planning commission approval). The city planning and zoning commission is authorized to grant special use permits for the following uses:

a. Airports. An airport or heliport may be permitted in any A, MA, MB or P district as a special use, provided:

1. The area shall be sufficient to meet the Federal Aviation Administration's requirements for the class of airport proposed.

2. There are no existing flight obstructions such as towers, chimneys or other tall structures, or natural obstructions outside the proposed airport which would fall within the approach zone to any of the proposed runways or landing strips of the airport.

3. There is sufficient distance between the end of each usable landing strip and the airport boundary to satisfy the requirements of the Federal Aviation Administration or any other appropriate authority. In cases where air rights or easements have been acquired from the owners of abutting properties in which approach zones fall, satisfactory evidence thereof shall be submitted with the application.

4. Any buildings, hangars or other structures shall be at least one hundred feet from any street or lot line.

5. Adequate space for off-street parking of at least fifty (50) vehicles has been provided. If, in the opinion of the City Planning and Zoning Commission, off-street parking space for more than fifty (50) vehicles will be required, the commissioners shall increase this requirement.

6. The application for authorization of an airport shall be accompanied by a plan, drawn to scale, showing the proposed location of the airport; boundary lines; dimensions; names of owners of abutting properties; proposed layout of runways, landing strips or areas, taxi strips, aprons, roads, parking areas, hangars, buildings, and other structures and facilities; the location and height of all buildings, structures, trees and overhead wires falling within the airport approach zone and less than five hundred (500) feet distant from the boundary lines of the airport; other pertinent data such as topography and grading plan, drainage, water and sewage, etc.

7. In its approval of the proposed airport, the city planning commission shall make at least the following two findings:

a) The airport is not in conflict with any existing element of a master plan.

b) The benefits of and need for the airport are greater than any depreciating effects and damages to neighboring property.

b. Cemetery. A cemetery, mausoleum or columbarium (except for columbarium allowed as an accessory use to a church in accordance with this

section) may be permitted in any A or P district as a special use, provided:

1. No graves shall be located less than ten (10) feet distant from any property line.

2. No public mausoleum, columbarium or cemetery chapel shall be erected within one hundred (100) feet of any boundary of the lot or parcel on which it is located.

3. The owners of any cemetery parcel which lies across any proposed major or secondary thoroughfare shown on a master plan of the City of Bismarck shall reserve and dedicate a right-of-way for such thoroughfare having a minimum width of one hundred (100) feet, or such greater minimum width as the city engineer of the City of Bismarck shall determine necessary in the fee simple to the City of Bismarck for highway purposes and those portions of said cemetery lying on either side of such dedicated thoroughfare shall be considered as separate cemeteries for the purpose of determining grave setbacks, landscaped strips, and building setbacks.

4. Crematoriums may be allowed as an accessory use to a cemetery, provided that no crematorium shall be located within fifty (50) feet of any boundary of the lot or parcel on which it is located. The addition of a crematorium to an existing cemetery requires a special use permit.

c. Golf driving range. A golf driving range not an accessory use to a golf course may be permitted in an A, CG, or MA district as a special use, provided:

1. The area within one hundred (100) feet of the range is not developed in residences.

2. Any floodlights used to illuminate the premises are so directed and shielded as not to be an annoyance to any developed property.

3. The driving range shall be arranged so as to keep golf balls from leaving the property, particularly near public rights-of-way.

4. Parking shall be provided to equal 90% of the facility's rated capacity as determined by the Building Official.

d. Recreational vehicle parks. A recreational vehicle park may be permitted in any A or MA district as a special use provided all recreational vehicle parks hereinafter erected or altered shall conform to the following:

1. The minimum total area of the premises shall contain at least ninety thousand (90,000) square feet.

2. The site shall be well-drained and not exposed to objectionable noise or odors.

3. Each recreational vehicle space shall contain at least fifteen hundred (1,500) square feet and be at least thirty (30) feet wide. Each space shall be clearly defined on the ground by stakes or markers.

4. Recreational vehicle spaces shall be so arranged that no recreational vehicle will be parked less than fifteen (15) feet from an adjacent recreational vehicle. Recreational vehicle spaces adjacent to a major street or highway shall provide a setback of at least thirty (30) feet.

5. Access to recreational vehicle parks shall be directly from a major street or highway and such access shall be of a design that will minimize traffic congestion. The minimum street or roadway within such park shall be twenty (20) feet in width. Dead-end streets shall not exceed one hundred seventy-five (175) feet in length and the turning circle shall be at least eighty (80) feet in diameter.

6. All entrance and exit lanes within such park shall be lighted to provide an intensity of at least five (5) footcandles.

7. A recreational area shall be provided in each recreational vehicle park at a ratio of at least two hundred (200) square feet per space, with a minimum of five thousand (5,000) square feet per park.

8. All provisions for water, laundry, sanitary facilities, swimming facilities, fire protection, and electrical services shall be installed and maintained in accordance with all applicable city ordinances.

9. No recreational vehicle shall occupy any space for more than ninety (90) days continuously.

e. Filling stations. A filling station may be permitted in a CA, CB, CG, CR, or MA district as a special use provided:

1. The minimum total area of the premises shall be at least twenty-one thousand (21,000) square feet with minimum lot dimensions of one hundred forty (140) feet in width and length.

2. Pump dispensers shall have a setback of at least fourteen (14) feet from the property line.

3. The filling station building shall have a fifty (50) foot setback from property lines adjacent to public streets.

4. A filling station may front on only one arterial or collector street and may also be adjacent to a local street.

5. Ingress and egress points shall be maintained at not less than sixty (60) feet from an intersecting street corner of arterial or collector streets, and not less than forty (40) feet from intersecting street corner on local streets.

6. All repair areas, grease and wash racks shall be maintained within the principal building.

7. Rubbish bins and storage racks shall be maintained within a screened area only.

8. Adequate off-street parking must be provided for all operator equipment and at least one space for each two employees and at least five (5) spaces for each service stall or bay on the premises.

9. No storing or parking of wrecked or partially disassembled automobiles or trucks for

periods of greater than ninety-six (96) hours shall be allowed.

10. Above-ground storage of petroleum products may be allowed only in MA-Industrial District subject to prior written approval of the Fire Department and adherence to the requirements of subsection p of this section.

EXCEPTION: LPG storage in any zoning district must meet all the requirements of Chapter 82 of the Uniform Fire Code.

f. Churches. A church may be permitted in any district except MA, MB, P or RMH districts as a special use, provided:

1. The lot area, lot width, front yard, side yard, rear yard and height limits of a church shall conform to the lot, yard and height requirements specified for a principal building in the district regulations where the building permit is requested.

2. The ground area occupied by the principal and accessory buildings shall not exceed thirty-five (35) percent of the total area of the lot.

3. Space for off-street parking shall be provided as per section 14-03-10 hereof or as the city planning and zoning commission may require.

4. No application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building a plot plan showing the open space designated as being reserved for off-street parking purposes to be provided in connection with such building and no certificate of occupancy shall be issued unless the required facilities have been provided in accordance with those shown on the approved plan.

5. A columbarium is allowed as an accessory use to a church in any district in which a church is permitted, provided it is included within the principal structure.

g. Drive-in retail or service establishments. An establishment dispensing goods at retail or providing

services through a drive-in facility, including, but not limited to drive-in restaurants, banks or other drive-in facilities exclusive of theatres may be permitted in a CG, CR, MA or HM district (drive-in banks only may also be permitted in a CA district) as a special use provided:

1. The lot area, lot width, front yard, side yards, rear yard, floor area and height limit of the structure and its appurtenances shall conform to the requirements of the district in which it is located.

2. Access to and egress from a drive-in establishment shall be arranged for the free flow of vehicles at all times, so as to prevent the blocking or endangering of vehicular or pedestrian traffic through the stopping or standing or backing of vehicles on sidewalks or streets.

3. Adequate off-street parking shall be provided in conformance with section 14-03-10 of this ordinance. In addition, vehicle stacking spaces shall be provided on the premises in accordance with section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

4. Ingress and egress points shall be maintained at not less than sixty (60) feet from an intersecting street corner of arterial or collector streets, and not less than forty (40) feet from an intersecting street corner on local street.

5. All access and egress driveways shall cross a sidewalk only in such a manner that its width at the inner edge of the sidewalk is no greater than its width at the curb, excluding any curved or tapered section known as the curb return. Any portion of a parking or loading area abutting a sidewalk at a point other than a permitted driveway shall be provided with wheel stops, bumper guards, or other devices to prevent encroachment of parked, standing or moving vehicles upon any sidewalk area not contained within a permitted driveway. All curb cuts, widths and other specifications shall comply with the standards established by the city engineer.

6. On a corner lot no fence, wall, terrace, structure, shrubbery or automobile shall be parked or other obstruction to vision having a height greater than three (3) feet above the curb shall occupy the space in a triangle formed by measuring ten (10) feet back along the side and front property lines.

h. Motor Vehicle Parts Salvage Yard. In addition to other provisions of Title 14 of the revised ordinances of the City of Bismarck, a motor vehicle parts salvage yard may be operated in the MA or MB industrial districts as a special use, provided:

1. That the certificate of occupancy granted under the provisions of this article shall be revoked by the Building Official if the holder violates any provisions of this ordinance or any special provision imposed by the city planning and zoning commission.

2. That all storage and salvage operations be conducted within an enclosed building or within an area enclosed on all sides with an opaque wall or fence not less than eight (8) feet in height or as approved by the city planning and zoning commission.

3. That the wall or fence be set back at least fifteen (15) feet from those property lines which border public rights-of-way.

4. That there shall be no burning of wrecked motor vehicles and that there shall be no stacking of motor vehicles.

5. There shall be no parts handled other than for motor vehicles.

6. That a completely and permanently landscaped setback strip of at least fifteen (15) feet be installed around those portions of the salvage yard perimeter which border public rights-of-way. All area between the property line and the required wall or fence shall be landscaped. The primary landscaping materials used in the setback strip shall be trees, shrubbery, ground cover, hedges, lawn, and other live planting materials. The land owners shall be responsible for providing, protecting and

maintaining all landscaping materials in healthy growing condition.

7. That the total area of the premises shall be a minimum of two (2) acres and a maximum of five (5) acres in size.

i. Junkyards. A junkyard may be permitted in a MA or MB industrial district as a special use, provided:

1. That the total area of the premises shall be a minimum of two (2) acres and a maximum of five (5) acres in size.

2. That no burning of salvaged material or junk be permitted on the premises.

3. That the buildings comply with the setback requirements of the city zoning regulations.

4. That the entire junkyard be enclosed with an opaque wall or fence at least eight (8) feet in height or as approved by the city planning and zoning commission.

5. That the wall or fence be set back at least fifteen (15) feet from those property lines which border public rights-of-way.

6. That all junk be stored within the fenced area.

7. That the operation not be located immediately adjacent to any arterial street or highway.

8. That the operation be conducted and the area be maintained in such a manner as to prevent unsightliness to the adjacent area.

9. That a completely and permanently landscaped setback strip of at least fifteen (15) feet be installed around those portions of the junkyard perimeter which border public rights-of-way. All area between the property line and the required wall or fence shall be landscaped. The primary landscaping materials used in the setback strip shall be trees, shrubbery, ground cover, hedges, lawn and other live planting materials.

The land owners shall be responsible for providing, protecting and maintaining all landscaping materials in healthy growing condition.

j. Mortuary or funeral homes. A funeral home or mortuary may be permitted in an RT residential district as a special use, provided:

1. An application for a special use to locate a funeral home or mortuary in an RT residential district shall be accompanied by a plat plan filed with the city planning and zoning commission showing compliance with the following minimum provisions:

a) Minimum lot size shall be twenty thousand (20,000) square feet.

b) The lot width, front yard, height limits, and lot coverage shall conform to the district requirements.

c) Off-street parking - One space for each four (4) seats for patron use or one space for each sixty (60) square feet of building area, whichever is greater.

d) Funeral home or mortuary shall have a horizontal separation of at least fifty (50) feet from any adjacent residential building site.

e) Adjacent streets shall not be considered as automobile parking space for any use of the funeral home and ingress and egress from premises shall be so designed to prevent traffic congestion.

f) All property owners within a three hundred (300) foot radius of the proposed site shall be notified of the time and date of the public hearing for the proposed special use.

k. Animal hospital or kennel. An animal hospital or kennel may be permitted in any A, MA, or MB district as a special use, provided:

1. The structure shall be sufficient to meet the requirements set forth by the Animal and Plant Health Service, Department of Agriculture.

2. The structure's setback lines be approved by the city planning and zoning commission on a case-by-case basis, but in no case shall they be less than twenty-five (25) feet.

3. The hospital or kennel must be maintained within a completely enclosed sound resistant building. The building must contain adequate heating and the ventilation system must have filters incorporated so as to absorb all objectionable inside odors.

4. If any exercise yard, run or corral is maintained without an enclosed structure provided they must be shielded from view, the sound muffled by a fixed and immovable barrier, and no residence or residentially zoned area may be located closer than one thousand (1,000) feet to any such facility.

5. The building must be constructed so as to contain sound and odor in such a way as to produce no objectionable noise or odor outside the building.

6. Off-street parking space be provided at a rate of three (3) spaces per doctor and one and one-half (1-1/2) additional spaces for every employee.

l. Adult entertainment centers. Notwithstanding anything in this zoning ordinance to the contrary, an adult entertainment center shall be permitted only in an MA or MB district and in no other district, providing the center meets the following conditions:

1. The center is located no closer than two thousand (2,000) feet from any preexisting church, school, or residentially zoned property and/or property used for residential purposes.

2. The center excludes from its premises those persons less than eighteen years of age.

3. The center displays no signs visible from the exterior of the center except signs

identifying the center as an adult bookstore or adult cinema or both.

4. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center.

5. The manager and the owners of the center are registered with the chief of police and have provided him with such information as he reasonably may require with respect to their identities, including fingerprints, and prior criminal records, if any.

6. The business premises of the center which are generally open to its patrons are open equally at the same time without charge to members of the city police force who may wish to enter thereon, provided the entry is in the course of the discharge of the policemen's duties.

7. The business premises of the center which are generally open to its patrons shall be closed to its patrons from 1:00 a.m. to 8:00 a.m. daily, except Sundays 12:01 a.m. to 8:00 a.m. the following day.

8. The center shall be licensed by the city.

m. Auto laundry-car wash. An auto laundry or car wash may be permitted in a CG, CR, MA or MB district as a special use, provided:

1. The lot area, lot width, front yard, side yards, rear yards, floor area and height limit of the structure and its appurtenances shall conform to the requirements of the district in which it is located except that the minimum front yard setback shall be twenty-five (25) feet.

2. Access to and egress from an auto laundry facility shall be arranged for the free flow of vehicles at all times, so as to prevent the blocking or endangering of vehicular or pedestrian traffic through the stopping or standing or backing of vehicles on sidewalks or streets. In addition, vehicle stacking spaces shall be provided on the premises in accordance with section 14-03-10 of this ordinance, in

addition to all common ingress and egress areas provided.

3. Ingress and egress points shall be maintained at not less than sixty (60) feet from an intersecting street corner of arterial or collector streets, and not less than forty (40) feet from an intersecting street corner on local streets.

4. An auto laundry-car wash may front on only one arterial or collector street and may also be adjacent to a local street.

5. All access and egress driveways shall cross a sidewalk only in such a manner that its width at the inner edge of the sidewalk is no greater than its width at the curb, excluding any curved or tapered section known as the curb return. All curb cuts, widths, and other specifications shall comply with the standards established by the city engineer.

6. No fence, wall, terrace, structure, shrubbery or other obstruction to vision having a height greater than three (3) feet above the curb shall occupy the front ten (10) feet of any lot except a sign pole of two (2) feet or less in any dimension.

7. No automobile shall be parked in the first fifteen feet of a required setback area.

n. Racetracks. A racetrack not within an enclosed structure may be allowed as a special use in any A, MA or MB district provided:

1. Adequate direct road access to the site is provided, with such access designed to minimize traffic congestion; and

2. Sufficient off-street parking areas are provided in conformance with Section 14-03-10; and

3. The site is located at least one (1) mile from any residentially zoned area; and

4. The sound produced by the use shall not exceed 55 decibels, measured at a

distance of one (1) mile or more from the perimeter of the racetrack.

o. Flammable, combustible or hazardous material bulk storage plants. Bulk storage plants for the purpose of storage and distribution of flammable, combustible or hazardous materials in a liquid, gaseous or solid state may be allowed in an MA, MB or A district as a special use, provided such installations:

1. Meet all requirements of the city's fire code;

2. Shall not be adjacent to waterways or drainage ways;

3. Copies of appropriate certificates of siting from the Environmental Protection Agency shall be furnished by the applicant;

4. Shall be located at least four hundred (400) feet from any residential area;

5. Shall be located within eight hundred (800) feet of a dependable water supply for fire suppression purposes.

p. Solid Waste Disposal Facility. Solid waste disposal facilities as regulated by this section shall include all facilities for the incineration or disposal of solid waste or solid waste residue which are required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories. A solid waste disposal facility may be allowed in any A Agricultural, or MA and MB Industrial zones as a special use provided:

1. It is located at least one-half (1/2) mile from any residences or residentially zoned area and the approval required by Section 4 hereof is obtained.

2. It is continuously licensed and approved by the North Dakota Department of Health and Consolidated Laboratories as to location and operation.

3. There is no substantive evidence that the facility will endanger the public health or the environment.

4. The special use permit will be valid for a period of time set by the Board of City Commissioners. For the permit to be approved sixty percent (60%) of all property owners within one-half (1/2) mile of the proposed location must approve of the proposed facility.

5. Medical waste incinerators:

a. No medical waste incinerator may be constructed in the corporate limits of the City of Bismarck or its extraterritorial jurisdiction.

(Source: Section 5 was enacted as the result of an initiated ordinance adopted in an election held June 9, 1992)

q. Child Care Center. Child Care centers may be permitted as a special use in all zoning districts except RMH or MB districts, provided:

1) Each building shall provide not less than thirty-five (35) square feet of interior recreation area per child. Work areas, office areas, and other areas not designed for use of the children may not be counted in this computation.

2) Each lot shall provide an outdoor recreation area of not less than seventy-five (75) square feet per child. The recreation area shall be fenced, have a minimum width of twenty (20) feet, a minimum depth of twenty (20) feet, be located on the same lot or parcel of land as the facility it is intended to serve, and must be located behind the building setback lines.

3) Adequate off street parking shall be provided at the following ratio: One space for each employee and one space for each ten (10) children.

4) Child Care centers shall conform to all applicable requirements of the International Building Code and The International Fire Code as adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations), and all requirements of the North Dakota Department of Human Services.

5) Child care centers shall comply with all applicable requirements relating to health and sanitation that have been adopted by the City of Bismarck (Title 8 of the City Code of Ordinances –

Health and Sanitation), and all requirements of the North Dakota Department of Health.

r. Moving of buildings and structures. The following moved-in buildings and structures that have been previously located for use may be permitted in any zoning district as a special use,

1. Principal buildings and structures; and

2. Accessory buildings and structures that are twelve hundred (1,200) square feet or larger in size.

The above described principal buildings and structures may be permitted, provided:

a. The moved-in building or structure is a permitted use and complies with all requirements of the zoning district in which it is to be located.

b. All provisions of Chapters 4-02 (Uniform Building Code) and 4-06 (Moving of Buildings) of the Code of Ordinances of the City of Bismarck; and if applicable, the Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280) have been complied with.

c. The moved-in building or structure shall be compatible with the surrounding neighborhood.

s. Retail Liquor Sales. Retail liquor sales for Burleigh County Class AA, B, D and E liquor license holders may be permitted within the city's four-mile extraterritorial jurisdiction in any CA, CB, CG, CR or MA district as a special use provided:

1. The site is not within three hundred (300) feet from the nearest lot line point of any church, public or parochial school, public library, hospital, or college or university building used for academic purposes.

2. The site is a minimum of three hundred (300) feet from similarly licensed premises, to be measured upon a straight line drawn directly between the nearest primary public accesses onto the licensed liquor premises. The line may not

pass through obstructions but shall follow the public right-of-way around them as nearly as possible.

3. The site will not impede the orderly development of the city.

4. The site must not have an adverse impact on the character of the neighborhood. The following criteria may be used to evaluate proposed sites: the effect on traffic movements in the area, the number and nature of sites already existing in the area, the general nature, character, age and condition of the adjacent development, the proximity to residential areas, regardless of zoning, or any other criteria the city may deem pertinent.

5. The site will be licensed by the county and comply with the requirements of the license.

6. The site must comply with applicable building code, health and sanitation, and zoning regulations.

t. Asphalt and Concrete Batch Plants. Asphalt and concrete batch plants, either permanent or temporary, may be permitted in any A or MA district as a special use provided:

1. The site is located at least 1/2 mile from any residentially zoned property.

2. A site plan is submitted showing the overall dimensions of the site, the location of specific activities, fences, parking areas and access roads.

3. A written narrative is submitted describing the operation of the facility, including fugitive dust management, run-off control, and spill containment.

4. A permit to operate is issued by the North Dakota Department of Health prior to operation of the facility, if required.

5. The County Engineer and/or City Engineer, depending on location of the site, has

approved the proposed access (ingress/egress) for the operation.

6. For temporary asphalt or concrete batch plants, the following additional provisions apply:

a) The temporary asphalt or concrete batch plant is for a specific construction project and not for general sale of product to the public.

b) At the time of initial consideration, the applicant provides a detailed written explanation of the length of time needed for the use.

c) The use is for a specified period of time, tied to the duration of the construction project, which shall be clearly stated in the approval of the temporary use permit.

u. Microbrewery. A microbrewery may be permitted in any CG or DC district as a special use provided:

1. The site may not be located within three hundred (300) feet of the nearest lot line of any church, public or parochial school, public library, hospital, or college or university building used for academic purposes, unless the entity(s) affected by the above limitation consent to the granting of the special use permit.

2. A facility at the proposed site will not have an adverse impact on the character of the neighborhood. The following criteria may be used to evaluate proposed sites: the effect on traffic movements in the area; the general nature, character, age and condition of the adjacent development; the proximity to residential areas, regardless of zoning; or any other criteria the City may deem pertinent.

3. All brewing and storage activities are located within a completely enclosed building.

4. The facility complies with all applicable building code, health and sanitation, and zoning regulations.

5. The facility complies with all applicable licensing and operational requirements of the State.

6. Beverages brewed onsite cannot be sold or otherwise provided for consumption on the premises unless the owner of the microbrewery holds the appropriate liquor license from the City.

7. Beverages brewed onsite cannot be sold or otherwise provided to non-wholesale customers for consumption off the premises unless the owner of the microbrewery holds appropriate liquor license from the City.

8. Adequate parking is provided onsite in accordance with the provisions of Section 14-03-10.

v. Small Wind Energy Systems. This section is intended to provide reasonable standards for the use of a Small Wind Energy System (SWES) which would allow electrical power consumers to supplement or replace their use of utility-provided electrical power without creating negative impacts to adjacent properties or the public.

1. For the purposes of this section, a SWES is defined as a wind turbine of less than 25 kilowatts maximum output capacity and all appurtenant structures and equipment. A SWES is incidental and accessory to a permitted principal use located on the same lot or parcel of land. A SWES is intended to produce electricity primarily for on-site consumption but excess electrical power may be transferred to a utility company power supply grid pursuant to utility company interconnection agreements.

2. A SWES may be permitted in any zoning district subject to approval of a special use permit by the Bismarck Planning and Zoning Commission. A special use permit may be revoked at any time if the SWES is found to be in

violation of any of the rules of this or other sections of the Bismarck Code of Ordinances or in violation of any of the conditions imposed by the Bismarck Planning and Zoning Commission in granting the special use permit.

3. The minimum building setback distance shall be 150% of the height of the structure.

a. The setback distance is the horizontal distance from the center of the supporting structure to the nearest property line or to the nearest overhead utility easement or underground petroleum product pipeline easement.

b. The height of the structure is the vertical distance from the ground surface to the highest point of a rotor blade when in an upright position.

4. The bottom of the rotor blade sweep shall be no closer than 35-feet above the ground surface. Blades may not extend over parking areas, driveways, or sidewalks.

5. The location of any SWES shall not result in the net displacement of required parking as specified in Chapter 14-03-10 of the Bismarck Code of Ordinances.

6. Sound produced by a SWES shall not exceed the following limits at the property line:

Zoning District	Day	Night
Residential: RR, RR5, R5, RMH, R10, RM, RT, HM, DF	55	45
Commercial: CA, CG, CR, DC	60	50
Industrial: MA, MB, P, A	65	60

a. Sound pressure level limits are measured in dB(A) as specified in the latest edition of the American National Standards Institute specifications.

b. Sound is measured at the property line of any receiving property.

c. Day is defined as the time period from 7:00 a.m. to 10:00 p.m. Night is defined as the time period from 10:00 p.m. to 7:00 a.m.

7. Additional rules regarding SWES's.

a. Sound Measurements. Following approval and installation of a SWES, the Building Official may require the owner/operator of the SWES to engage a certified technician to perform sound measurements at the closest property line to determine and report ambient and operating decibel levels.

b. Braking Controls. A SWES shall be equipped with both automatic and manual braking controls to prevent uncontrolled rotation and to limit the rotation speed to the design limits of the SWES.

c. Insurance. The owner/operator of a SWES must provide proof of liability insurance at the time of application.

d. Shadow Flicker. Shadow flicker shall not negatively impact any adjacent properties.

e. Electronic Interference. The SWES shall not cause electronic or electromagnetic interference with signal receptions or transmissions beyond the boundaries of the property upon which the SWES is located.

f. Monopole Requirement. Within the corporate boundary of the City of Bismarck, wind turbines are required to be mounted on monopole structures without guy wires. Within the extraterritorial zoning jurisdiction of the City of Bismarck, monopole structures are not required for wind turbines and guy wires may be used.

g. Roof-mounted SWES. A roof-mounted SWES is not allowed on residential structures.

h. Color. To minimize off-site visibility to the greatest extent possible, the color of a structure shall be a neutral white or light gray and the surface finish shall be non-reflective.

i. Lighting. The use of flood lights, laser lights, strobe lights, searchlights, beacons and similar lighting is prohibited unless required by the FAA.

j. Signs. No signs are allowed on SWES structures except for safety or warning signs which are limited to three square feet in area.

k. Climbing Apparatus. No climbing apparatus shall be located within 12-feet of the ground on any structure. All structures shall be designed to prevent climbing by unauthorized persons.

l. Removal of Defunct Systems. Facilities shall be well maintained in an operational condition that poses no potential safety hazard.

1. If a SWES remains nonfunctional for a continuous period of one-year, the system shall constitute a public nuisance and shall be removed.

2. The owner shall remove a defunct system at the owner’s expense.

3. Removal includes the entire structure and related appurtenances including any foundation and transmission systems.

m. Building Permit Required. Following approval of a special use permit and prior to installing a SWES, the applicant shall obtain a building permit from the Building Inspections Division.

n. Compliance with Airport Zoning. A SWES must comply with Airport zoning rules under Chapter 10-09.

8. An application for a special use permit for the placement of a SWES shall include the following:

a. Scaled and dimensioned site plan drawing showing features of the property and adjacent land within 300-feet of the subject parcel, including but not limited to:

1. Location and height of the SWES;

2. Property boundaries;

3. Distances from a SWES to closest points on adjacent property boundaries;

4. Location and dimensions of structures;

5. Zoning districts of all adjacent properties;

6. Owners of all adjacent properties;

7. Locations, dimensions and descriptions of utility easements;

8. Location of overhead utility lines;

9. Location of underground petroleum pipelines; and

10. Distances from the SWES to the closest points on utility easements.

b. Written information from the manufacturer on the proposed SWES stating the following:

1. Compliance with noise standards established by paragraph v(6) of this section;

2. Compliance with electronic interference standards established by paragraph v(8) of this section;

3. Evidence that the proposed SWES model has an operational history of at least one year; and

4. Shadow flicker properties.

c. Unless certified by the manufacturer as not causing shadow flicker in the proposed installation, a shadow flicker model and map showing:

1. Shadow flicker map coverage area of 1,000-feet from a SWES; and

2. Shadow flicker model representing locations affected, intensity, and duration.

d. Copy of letter of compliance of the proposed SWES with airport zoning from the Bismarck Municipal Airport.

e. Copies of letters of compliance of the proposed SWES from the following:

1. Federal Aviation Administration;

2. United States Fish and Wildlife Service; and

3. The local electrical utility company serving the subject property.

9. An application for a building permit for the placement of a SWES must include*:*

a. A copy of the special use permit, with the site plan, as approved by the city planning and zoning commission;

b. Dimensioned engineering drawings of the structure including the tower, base, and footings;

c. Line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation will meet compliance with the electrical code; and

d. Documentation certifying that the SWES will meet structural loading requirements for a 90 m.p.h. sustained wind. Wind load certification shall be prepared by a professional structural engineer registered in the State of North Dakota.

w. Roadway Maintenance Facilities. Roadway maintenance facilities necessary for the provision of services by a governmental entity may be permitted in any A - Agricultural district as a special use provided:

1. The parcel meets the dimensional requirements for the A – Agricultural zoning district.

2. The parcel is located along an improved section line roadway or other roadway classified as an arterial.

3. The parcel is located at least 1/2 mile (2640 feet) from any residentially zoned property.

4. All proposed buildings will meet the setback requirements for the A – Agricultural zoning district.

5. All exterior equipment and material storage areas will be set back no less than one hundred fifty (150) feet from a front property line and no less than seventy-five (75) feet from a side or rear property line.

6. A landscaped buffer yard is provided around the perimeter of the site to screen the operation from adjacent land uses. Said buffer yard shall be no less than fifty (50) feet in width and shall be densely planted in conjunction

with site development in accordance with the requirements of Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening).

7. A site plan is submitted showing the overall dimensions of the site, the location of specific activities, fences, landscaped buffer yards, parking areas, adjacent roadways and proposed access (ingress/egress).

8. A written narrative is submitted describing the operation of the facility, including fugitive dust management, run-off control and spill containment.

(Ord. 4136, 4-28-87; Ord. 4286, 08-22-89; Ord. 4312, 2-20-90; Ord. 4331, 6-05-90; Ord. 4425, 03-31-92; Ord. 4486, 04-27-93; Ord. 4563, 12-07-93; Ord. 4564, 11-23-93; Ord. 4598, 04-28-94; Ord. 4598, 04-28-94; Ord. 4620, 07-19-94; Ord. 4702, 06-13-95; Ord. 4713, 08-22-95; Ord. 4738, 11-14-95; Ord. 4739, 11-14-95; Ord. 4745, 02-13-96; Ord. 4802, 11-12-96; Ord. 4808, 11-12-96; Ord. 4912, 07-14-98; Ord. 4913, 06-09-98; Ord. 4936, 09-08-98; Ord. 4946, 10-27-98; Ord. 5027, 02-08-00; Ord. 5214, 11-12-02; Ord. 5218, 11-26-02; 5224, 12-17-02; Ord. 5228, 01-28-03; Ord. 5278, 09-23-03; Ord. 5317, 06-22-04; Ord. 5343, 06-22-04; Ord. 5348, 07-27-04; Ord. 5351, 08-24-04; Ord. 5438, 06-28-05; Ord. 5467, 10-25-05; Ord. 5527, 06-27-06; Ord. 5719, 05-12-09; Ord. 5728, 05-26-09; Ord. 5764, 01-12-10; Ord. 5820, 4-26-11; Ord. 5852, 11-22-11; Ord. 5958, 03-26-13)

14-03-09. Nonconforming Uses. Any lawful use of the land or buildings existing at the date of passage of this title, and located in a district in which it would not be permitted as a new use under the regulations of this title, is hereby declared to be a nonconforming use, and not in violation of this title. Provided, however, a nonconforming use shall be subject to, and the owner shall comply with the following regulations:

1. Certificate of occupancy. After the adoption of this title, the owner of a nonconforming use shall be notified, by the Building Official, of the provisions of this title. Within thirty days after receipt of said notice, the owner shall apply for and be issued a certificate of occupancy for the nonconforming use. The application for such certificate shall designate the location, nature and extent of the nonconforming use and such other details as may be necessary for the issuance of the certificate of occupancy. If the owner of a nonconforming use fails to apply for a certificate of occupancy within thirty days after receipt of the foregoing notice, the use ceases to be nonconforming and is hereby declared to be in violation of this title. The Building Official and city attorney shall take appropriate action to enjoin such violation. If the Building Official shall find, upon reviewing the application for a certificate of occupancy that the existing use is illegal or in violation of other ordinances or laws, or if he finds that the building for which the certificate is requested has been

constructed or altered for the existing use or any other use without full compliance with the building code or zoning ordinance in effect at the time of construction or alteration, he shall not issue the certificate of occupancy, but shall declare such use to be in violation of this article.

2. Nonconforming Use-Extension. The nonconforming use of a building may be extended throughout any part of a building clearly designed for such use but not so used at the date of the adoption of this title. No nonconforming use may be extended to occupy any land outside the building nor any additional building not used for such nonconforming use at the date of adoption of this title. The nonconforming use of land shall not be extended to any additional land not so used at the date of the adoption of this title.

3. Nonconforming Use-Additions, repair, alteration. No building used for a nonconforming use shall be enlarged, extended, reconstructed, or structurally altered, unless the use is changed to one which complies with the provisions of this title. Provided, however, permits may be issued for the reconstruction of an existing building to be continued as a nonconforming use if the following conditions are complied with:

a. New use would decrease the number of living units or population density in case such is violated.

b. New use would decrease the automobile parking congestion in the area.

c. New use would not increase the cubical contents of the structure if such would violate provisions of this ordinance.

d. Such reconstruction would be one in accordance with the city building, plumbing, electrical codes and fire prevention code.

e. The issuance of such permit would not violate the provisions of paragraph 4 of this section.

In addition, repairs and maintenance work may be carried out each year in an amount not to exceed twenty-five percent (25%) of the assessed value of the building for that year. Such repairs and maintenance work shall not increase the cubical content of the building, nor the floor area devoted to the nonconforming use. Nor shall it increase the number of dwelling units provided in a building. Nothing

in this article shall be deemed to prevent the strengthening or repair of a building which may be necessary to restore the building to a safe condition or to improve the sanitary conditions of the building, provided that such strengthening and repair may not be used to restore a building to the provisions of paragraph 4 of this section.

Alterations may be made to a nonconforming principal residential structure or any principal building in which there is a nonconforming residential use when the alteration will improve the livability thereof, provided it will not increase the number of dwelling units or the outside dimensions of the building.

4. Nonconforming Use-Destruction. If any nonconforming structure or any building in which there is a nonconforming use is damaged by fire, flood, explosion, wind, war or other catastrophe, in an amount equal to or greater than fifty percent (50%) of its assessed valuation, it shall not be again used or reconstructed to be used for any use except one complying with the provisions of this article for the district in which it is located.

Notwithstanding the foregoing provisions of this paragraph, any principal nonconforming use or structure devoted in whole or in part to a residential use that is damaged or destroyed by any means, to the extent of more than fifty percent (50%) of its structural value prior to the damage, that structure may be restored, repaired or rebuilt in its entirety if all of the following conditions are met:

a. The building or structure will not occupy any portion of the lot that was not occupied by the destroyed structure;

b. The building or structure will not have a greater floor area than the destroyed structure;

c. The building or structure will not exceed the height or number of stories contained in the destroyed structure;

d. The number of off-street parking spaces located on the property will not be reduced from the number available before the damage; and

e. The building permit for the repair or restoration must be obtained within six (6) months of date of the damage and restoration must begin within one (1) year of the date of the damage.

5. Nonconforming Use-Moving Building. Any building in which there is a nonconforming use shall not be moved unless it is moved to a district in which the use for which the building was designed is permitted by this title. If any building in which there is a nonconforming use is moved any distance whatsoever, the building shall thereafter be used only in compliance with the provisions of this article for the district in which it is located.

6. Nonconforming Use-Change. A nonconforming use may be continued in accordance with the provisions of this section, but it shall not be changed to any other use except the one which would be permitted as a new use in the district in which the building is located.

7. Nonconforming Use-Discontinuance.

a. If for any reason a nonconforming use of land ceases for a continuous period of more than thirty (30) days, the land shall thereafter not be used except in compliance with the provisions of this article for the district in which the land is located.

b. If for any reason a nonconforming use of a building ceases for a continuous period of more than six (6) months, the building shall thereafter not be used except in compliance with the provisions of this title for the district in which the building is located.

8. Nonconforming Use-Continuance. Any legal nonconforming use, except those listed in paragraph 9 of this section, may be continued. The certificate of occupancy issued by the Building Official for a nonconforming use shall state that the use may be continued indefinitely or, for those uses listed in paragraph 9 of this section, that the use must be discontinued.

All periods of time shown below in paragraph 9 shall begin thirty-one (31) days after receipt by the owner of notice of the provisions of this title. Upon application to the board of adjustment the board may, in certain cases, extend the date of the certificate of occupancy for one period of time not to exceed the limit indicated in paragraph 9 of this section.

9. Nonconforming Use-Period of Continuance. Certain nonconforming uses, indicated in the following table shall be discontinued at the expiration of the periods of time shown, or at the expiration of one extension period, as provided in paragraph 8 of this section:

Nonconforming Use	Period of Continuance	Limit of Extension
Loam stripping	30 days	10 days
Garbage, trash dump	30 days	10 days
Livestock feeding	90 days	90 days
Junk, auto wrecking yard	180 days	30 days
Sand, gravel extraction	1 year	60 days
Other open uses of land	1 year	90 days

(Ord. 5728, 05-26-09; Ord. 5901, 06-26-12)

14-03-10. Off-Street Parking and Loading.

1. Off-street parking. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street parking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. Each required parking space shall be of an area at least nine (9) feet wide and eighteen (18) feet in length, in addition to the ingress and egress driveways required. All off-street parking spaces required and all driveways on private property leading to such parking areas shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material. All parking areas containing four (4) or more spaces or containing angled parking shall have the parking spaces and aisles clearly marked on the pavement. The number of off-street parking spaces shall be provided on the basis of the following minimum requirements:

a. Dwellings:

1) Single-family and two-family dwellings - Two (2) spaces for each dwelling unit.

2) Multiple-family dwellings - One (1) space for each efficiency unit; one and one-half spaces for each one-bedroom unit; two (2) spaces for each two-bedroom unit; two and one-half (2.5) spaces for each three-bedroom unit or larger.

b. Rooming houses: One space for each sleeping room rented, plus two (2) additional spaces for the owner or operator of the rooming house.

c. Hotels and motels, including clubs: One space for each guest room. If in addition to sleeping rooms, patrons or residents are provided with assembly halls, bars, restaurants, nightclubs, retail shops, service establishments or other businesses, additional off-street parking spaces will be required for such other uses in accordance with the regulations of this section for such uses.

d. Hospitals: One space for each two patient beds plus one additional space for each two employees.

e. Restaurants, including bars, taverns, night-clubs, lunch counters, diners, drive-ins and all other similar dining or drinking establishments: One space for each sixty (60) square feet of gross floor area. Patio area shall be included when calculating gross floor area.

f. Theaters: One space for each sixty (60) square feet of gross floor area.

g. Places of public assembly, including private clubs, lodges and fraternal buildings not providing overnight accommodations, assembly halls, exhibition halls, convention halls, auditoriums, skating rinks, dance halls, bowling alleys, sport arenas, stadiums, gymnasiums, amusement parks, zoos, racetracks, fair-grounds, circus grounds, community centers, libraries, museums, and all other similar places of public assembly: One space for each sixty (60) square feet of gross floor area.

h. Retail establishments, including personal service shops, equipment or repair shops:

1) In a RT, CA, CB, CG commercial and MA industrial district – Off-street parking shall be provided in an amount equivalent to one space for each two hundred (200) square feet of gross floor space area on the ground floor, plus one space for each three hundred (300) square feet of gross floor area in a basement or any story above the ground floor; except that a furniture store shall have one space for each six hundred square feet of gross floor area.

2) In a CR commercial zone – Off-street parking shall be provided in an amount equivalent to five 5.0 spaces per thousand square feet of gross leasable area. Where minimum setbacks occur, no parking shall be allowed between a building and an adjacent street. A site circulation plan shall be prepared by the shopping center and approved by the Building Official.

i. Office buildings, adult or vocational education facilities, engraving works, blueprinting, and small animal veterinary clinics, including commercial, governmental and professional buildings, except as otherwise provided for in this section: One space for each two hundred fifty square feet of gross floor area.

j. Manufacturing and industrial plants, public utility buildings, contractor equipment yards, soft drink bottling establishments, fabricating plants and all other structures devoted to similar industrial pursuits: One space for each manufacturing employee on the largest shift, plus sufficient space to park all company-owned or leased vehicles including passenger automobiles, trucks, tractors, trailers and similar company-owned motor vehicles, plus one space for each two hundred fifty square feet of office area.

k. Terminal facilities, including airports, railroad, passenger and freight stations, bus depots, truck terminals and all other similar personal or material terminal facilities: Off-street parking space in an amount determined by the board of adjustment to be adequate to serve the public as customers, patrons and visitors, plus space to provide one off-street parking space for each employee plus space to provide off-street parking for all owned, leased or operated commercial vehicles, buses and similar motor vehicles.

l. Schools, including colleges, elementary schools, junior and senior high schools, whether public, private or parochial: One space for each employee, plus additional space for any places of public assembly in accordance with the requirements set forth in this section for such uses. In addition, all senior high schools and colleges shall provide one space for every five students.

m. Sanitariums, asylums, orphanages, adult or disabled care centers, convalescent homes, and similar

institutions: One space for each four patient beds, plus one additional space for each employee.

n. Wholesale, warehouses and storage buildings, lumberyards and all other similar facilities. One space for each six hundred (600) square feet of storage area. Retail and office areas shall meet the requirements of subsections h. and i. of Section 14-03-10 of the Zoning Ordinance.

o. Mortuary or funeral homes: One space for each four seats for patron use or one space for each sixty square feet of building area, whichever is greater.

p. Child care center: One space for each employee and one space for each ten (10) children.

q. Animal hospital: Three spaces per doctor and one and one-half (1-1/2) additional spaces for every employee.

r. Senior Citizen Housing: .65 space for each living unit.

s. Filling stations: Adequate off-street parking must be provided for all operator equipment and at least one space for each two employees and at least five spaces for each service stall or bay on the premises.

t. Motor vehicle repair garages: Two spaces per repair stall.

u. Churches and other religious institutions: One space for each sixty (60) square feet of gross floor area in the largest assembly area.

2. Off-street vehicle stacking. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy for a commercial or industrial use shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street vehicle stacking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. Each required vehicle stacking space shall be of an area at least ten (10) feet wide and twenty (20) feet in length. Vehicle stacking lanes shall be

located completely upon the parcel of land that includes the structure they are intended to serve and shall be so designed as to not impede on- or off-site traffic movements. All vehicle stacking spaces shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material. The number of off-street vehicle stacking spaces shall be provided on the basis of the following minimum requirements:

Type of Use	Minimum Number of Stacking Spaces	Measured From
Financial institution- ATM	3 spaces per lane	Kiosk
Financial institution – teller	4 spaces for first lane, 3 spaces for each additional lane	Window or pneumatic tube kiosk
Drive-through restaurant	12 spaces	Pick-up window
Drive-through coffee shop	10 spaces	Pick-up window
Car wash, automatic	6 spaces per bay	Entrance
Car wash, self-service	3 spaces per bay	Entrance
Drive-through car service (oil change and similar)	3 spaces per bay	Entrance
Drive-through pharmacy	3 spaces	Window
Drive-through cleaners	3 spaces	Window
Drive-through photo lab	3 spaces	Window
Self-service fueling station	2 spaces per fueling island	Each end of the fueling island
Gated parking lots and entrances	2 spaces	Gate

For uses not specified above, the Planning and Zoning Commission shall determine the appropriate number of spaces required based on the requirements for a similar use.

A drive-through facility with vehicle stacking spaces based on one type of use may not be converted to another type of use without the submittal and approval of a new site plan. A new special use permit shall be required for any change to a use with greater vehicle stacking space requirements. A drive-through facility which has been discontinued cannot be

re-established unless a new special use permit has been approved.

3. Off-street loading. Except as provided elsewhere in this section, no application for a building permit or certificate of occupancy for a commercial or industrial use shall be approved unless there is included with the plan for such building improvement or use, a plot plan showing the required space or structural design for off-street loading purposes to be provided in connection with such building, improvement or use, in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided in accordance with those shown on the approved plan. Such off-street loading space shall be provided in accordance with the following minimum requirements:

a. Each department store, freight terminal or railroad yard, hospital or sanitarium, industrial plant, manufacturing establishment, retail establishment, storage warehouse or wholesale establishment which has an aggregate gross floor area of twenty-five thousand (25,000) square feet or more, arranged, intended or designed for such use, shall provide off-street truck loading or unloading berths in accordance with the following table:

Square Feet of Aggregate Gross Floor Area Devoted to Such Use	Required Number of Berths
25,000 but less than 40,000.	1
40,000 but less than 100,000	2
100,000 but less than 160,000.	2
160,000 but less than 240,000.	4
240,000 up to and including 320,000.	5
For each additional 90,000	1 Addl

b. Each multifamily dwelling having ten (10) dwelling units - One off-street loading berth for ten (10) up to and including thirty (30) dwelling units, plus one additional off-street loading berth for each additional thirty dwelling units.

c. Each auditorium, convention hall, exhibition hall, funeral home, hotel, office building, restaurant, sports arena, hospital or welfare institution which has an aggregate gross floor area of fifty thousand (50,000) square feet or more used or intended to be used for service to the arranged, intended or designed

uses - One off-street loading berth for fifty thousand (50,000) square feet up to and including two hundred fifty thousand (250,000) square feet and one additional berth for each additional two hundred thousand (200,000) square feet of floor area.

d. In computing the ground coverage of the principal building and all accessory buildings for any nonresidential use, sufficient area shall be added to the actual area of the principal building and all accessory buildings to provide off-street parking as required by section 14-03-10 of this ordinance.

4. Uses not specifically mentioned or unique situations. For any use not specifically mentioned in this section or in unique situations, the Building Official/Zoning Administrator has the authority to modify the number of off-street parking spaces required based on the occupancy load. In such cases, either the Building Official/Zoning Administrator or the applicant for the certificate of occupancy or building permit may apply to the board of adjustment for an interpretation of the provisions of this article for such off-street parking and off-street loading requirements and the board of adjustment shall render a decision in writing in the manner provided for in this article for such action.

5. Continuing character of obligation. The schedule of requirements for off-street parking space and off-street loading space shall be a continuing obligation of the owner of the real estate on which any such structure is located as long as the structure is in existence and its use requiring vehicle parking or vehicle loading facilities continues. It shall be unlawful for an owner of any building affected by this section to discontinue, change or dispense with, or to cause the discontinuance or change of the required vehicle parking or loading spaces apart from the discontinuance, sale or transfer of such structure, without establishing alternative vehicle parking or loading space which meets with the requirements of and is in compliance with this section. It shall be unlawful for any firm or corporation to use such building without acquiring such land or other suitable land for vehicle parking or loading space which meets with the requirements of and is in compliance with this article.

6. Fractional measurements. When units or measurements determining number of required off-street parking and off-street loading spaces result in the requirements of a fractional space, any fraction up to and including one-fourth shall be disregarded, and fractions

over one-fourth shall require one off-street parking or off-street loading space.

7. Off-street parking and loading requirements in certain zoning districts. In that section of the city described as follows: Commencing at the intersection of the east line of Ninth Street and Thayer Avenue; thence south on Ninth Street to a point one hundred fifty feet south of the south boundary line of Main Avenue being the center line of the Burlington Northern Railway Company right-of-way; thence west along the said center line of the Burlington Northern Railway Company right-of-way to the west line of Seventh Street extended; thence south to the center line of Bowen Avenue; thence west along the center line of Bowen Avenue to Fifth Street; thence north along the center line of Fifth Street to Front Avenue; thence west along the center line of Front Avenue to Third Street; thence north on Third Street one hundred fifty feet to the center line of the Burlington Northern Railway Company right-of-way; thence west along the center line of the Burlington Northern Railway Company right-of-way to the east line of Washington Street extended; thence north along the east line of Washington Street to the northwest corner of Lot 24, Block 84, Original Plat; thence east from the northwest corner of Lot 24, Block 84, Original Plat to the southwest corner of Lot 6, Block 84, Original Plat; thence north from the southwest corner of Lot 6, Block 84, Original Plat to the south line of Thayer Avenue; thence east along the south line of Thayer Avenue to the east line of Mandan Street; thence north along the east line of Mandan Street to the south line of Rosser Avenue; thence east along the south line of Rosser Avenue to the east line of First Street; thence south along the east line of First Street to the northwest corner of Lot 18, Block 110, Original Plat; thence east from this point to the east line of Second Street; thence north along the east line of Second Street to the south line of Rosser Avenue; thence east along the south line of Rosser Avenue to the east line of Third Street; thence north along the east line of Third Street to the south line of Avenue A; thence east along the south line of Avenue A to the east line of Lot 4, Block 26, Northern Pacific Second Addition; thence south from this point along the center line of Block 26, Northern Pacific Second Addition and Block 126, Original Plat to the south line of Rosser Avenue; thence east along the south line of Rosser Avenue to the west line of Eighth Street; thence south along the west line of Eighth Street to the south line of Thayer Avenue; thence east along the south line of Thayer Avenue to the point of beginning, the following off-street parking provisions shall apply:

a. For any new building replacing a building existing at the date of this article, a new building being constructed on vacant land or any building in which the floor space is increased by any additions or structural alterations, off-street parking space will not be required under this article, but will be provided by the City of Bismarck, as the governing body of this city may from time to time provide by eminent domain, or other authorized legal means, and assess against the benefited property.

b. Notwithstanding any other requirements of this section relative to off-street parking, off-street loading shall be provided as designated elsewhere in this section.

8. Location of required parking and loading facilities. The off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve; provided, however, when practical difficulties, as determined by the board of adjustment, prevent the establishment of such facilities upon the same lot or parcel, they shall be furnished within four hundred feet of the premises to which they are appurtenant. The off-street loading facilities required by this section shall in all cases be on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be part of the area used to satisfy the off-street parking requirements of this article. All required off-street parking and loading facilities along with all ingress and egress driveways thereto shall be zoned adequately for the principal use which they are intended to serve.

9. Plan of required off-street parking or loading areas. For the purpose of converting parking or loading spaces into the required parking or loading area, plans must be submitted to the Building Official to show how the required parking or loading space shall be arranged in the area supplied for that purpose and to indicate sufficient space for parking maneuvers, as well as adequate ingress and egress to the parking or loading area. For each parking space, not under roof, there shall be provided additional area for lanes, alleys, aisles and drives necessary for safe and adequate parking maneuvering. For each off-street loading space required by this section there shall be provided space clear and free of all obstructions, at least ten (10) feet in width, fifty feet (50) feet in length and fourteen (14) feet in height. Off-street parking and off-street loading space shall be provided with methods of ingress and egress such that it will be unnecessary for

trucks or tractor-trailer combinations to back into them from a street or out of them into a street.

10. Use of required off-street parking by another building. No part of an off-street parking area required for any building or use for the purpose of complying with the provisions of this section shall be included as a part of an off-street parking area similarly required for another building or use unless the type of structure indicates that the periods of usage for such structures will not be simultaneous with each other, as determined by the board of adjustment.

11. Maintenance of public off-street parking places provided. All off-street parking facilities for the use of the public required pursuant to the provisions of this section shall be paved, drained, lighted and periodically maintained by the owner in accordance with specifications of the city engineer, and such facilities shall be arranged for convenient access and safety of pedestrians and vehicles. No open area in an off-street parking area shall be encroached upon by buildings, storage or any other use; nor shall the number of parking spaces be reduced except upon the approval of the board of adjustment and then only after proof that, by reason of diminution of floor space, seating capacity, number of employees, or change in other factors controlling the regulation of the number of parking spaces, the proposed reduction is reasonable and consistent with the intent of this section.

12. Collective action relative to off-street parking and loading. Nothing in this title shall be construed to prevent the joint use of off-street parking or off-street loading space for two or more buildings or uses, if the total of such spaces when used together shall not be less than the sum of the requirements for the various individual uses computed separately in accordance with this section.

13. Mixed uses. In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections 1 and 2 of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.

14. Nonconforming uses. In the case of nonconforming uses where major repairs, substantial alterations or extensions are made, no such major repairs, substantial alterations or extensions shall be permitted unless and

until the off-street parking and off-street loading facility space requirements of this section, so far as they apply to the use to which such building is devoted, shall be fully provided for. Provided, however, this item shall not apply to the rebuilding of nonconforming uses that are being rebuilt according to section 14-03-09 of the zoning ordinance, or to structures located upon lots in districts being assessed for city-operated parking lots.

15. Vacant lots. Vacant lots may be used for temporary off-street parking purposes if they meet the following criteria:

a. Location. Lot is located not more than six hundred (600) feet in distance from a parking district boundary.

b. Surfacing. Lot shall be surfaced and said surfacing shall be approved by the city engineer.

c. Access. Lot shall have separate ingress and egress driveways and said driveways shall be approved by the city engineer.

d. Minimum size. Lot shall be of sufficient size to contain not less than ten (10) automobiles, with each parking space at least nine (9) feet wide and twenty feet long, in addition to the ingress and egress driveways required.

e. Permit. Lots shall be authorized by the issuance of a certificate of occupancy from the director of inspection's office following compliance with and receipt of approval of items a, b, c and d described above.

(Ord. 4117, 12-30-86; Ord. 4213, 8-02-88; Ord. 4323, 4-24-90; Ord. 4236, 1-17-89; Ord. 4325 and 4326, 4-24-90 & 5-01-90; Ord. 4333, 6-05-90; Ord. 4332, 6-05-90; Ord. 4336, 7-31-90; Ord. 4770, 06-25-96; Ord. 4821, 02-25-97; Ord. 4863, 08-12-97; Ord. 4936, 09-08-98; Ord. 5206, 10-08-02; Ord. 5207, 10-08-02; Ord. 5247, 04-22-03; Ord. 5295, 02-24-04; Ord. 5501, 04-25-06; Ord. 5527, 06-27-06; Ord. 5693, 09-23-08; Ord. 5728, 05-26-09; Ord. 5852, 11-22-11)

14-03-11. Landscaping and Screening.

1. *Purpose*. The purpose of these regulations are to maintain the City’s quality and character by enhancing its visual appearance through the use of landscaping; enhance environmental conditions by providing shade, air purification, reduction of storm water run-off, and filtering of noise and light; promote neighborhood character, traffic calming, wildlife habitat, pedestrian amenity and aesthetic value, screen off-

street parking areas and exterior storage areas from view of persons on public streets and adjoining properties and mitigate off-site headlight projection; provide buffer areas between land uses of differing intensity; and encourage the planting of trees and other plant materials throughout the community that are native or generally suitable for this area.

2. *Applicability.* The landscaping requirements contained herein shall apply to any of the following:

   a. The construction of any principal commercial, industrial, institutional, or multi-family building(s) with three (3) or more units or an accessory building for any of the above uses;

   b. The installation of any parking area or the expansion of any existing parking area by five (5) or more required off-street parking spaces;

   c. A change in the use of the property that requires rezoning to a more intensive zoning classification or a special use permit; and

   d. The reconstruction of a portion of an existing off-street parking lot equal to or greater than twenty percent (20%) at one time or forty percent (40%) over a five (5) year period, regardless of whether or not required parking spaces are added, and provided the required plant materials do not reduce the number of off-street parking spaces below what is required. Reconstruction includes any land disturbance activity or exposure of any subgrade or soil material. Regular maintenance, minor repairs, patch work or a partial mill and overlay would not constitute reconstruction. Only those portions of the off-street parking areas being reconstructed would be subject to these requirements. Consideration may be given by the Director of Community Development and the City Forester on a case-by-case basis to modify the requirements for the reconstructed off-street parking areas.

3. *General Requirements.* All exposed ground areas, including areas not devoted to off-street parking, drives, sidewalks or other such improvements shall be landscaped with grass, vegetative ground cover, shrubs, trees or other ornamental landscape materials

in conjunction with site development. All landscaped areas shall be kept neat, clean and uncluttered. No required landscaped area shall be used for parking of vehicles or for the storage or display of materials, supplies or merchandise. Boulevard areas shall be subject to the requirements of Sections 10-03-14 and 10-05-04.

4. *Landscaping Plan Required.* A landscape plan shall be required for all development subject to the provisions of this subsection. All landscape plans submitted for approval shall contain, at a minimum, the following information:

   a. North point and scale;

   b. The boundary lines of the property with dimensions and area;

   c. The location of all driveways, parking areas, sidewalks, structures, utilities, or other features, existing or proposed, affecting the landscaping of the site;

   d. The location, common name, scientific name to the species level, size and quantity of all existing trees, shrubs or other vegetation intended for use in meeting the requirements of this subsection;

   e. The location, common name, scientific name to the species level, size and quantity of all proposed landscape materials;

   f. The location and height of any proposed earthen berms, masonry fences or other features used to meet the landscaping or buffer yard requirements;

   g. The location of any existing and/or proposed easements; and

   h. The square footage of each interior parking lot landscaping area and the overall square footage of all interior parking lot landscaping areas shown.

5. *Landscape Design Considerations*. Landscape design should serve to provide visually interesting open space, reduce the potential negative impact of

development on adjacent land uses, and complement the scale of the development and its surroundings. The following items are to be considered in developing a landscape plan for submittal to the City:

a. Landscape materials and structural items placed within the sight triangle of a corner lot, as defined in Section 14-02-03, shall not have a height of more than three (3) feet above the curb level during all stages of plant growth. Deciduous trees may be planted within the sight triangle provided they are not an obstruction to vision between three (3) feet and ten (10) feet above the curb level;

b. Landscape materials and structural items at driveway entrances shall be placed so that visibility for vehicles entering or exiting a parking lot is not obstructed;

c. Trees or shrubs shall not be planted under utility lines when their ultimate height may interfere with the lowest lines;

d. Landscaped areas shall be of adequate size to promote proper plant growth and to protect plantings from pedestrian traffic, vehicle traffic, and other types of concentrated activity;

e. Landscaped areas and plantings shall be located in a manner to allow adequate room for proper maintenance;

f. A variety of tree and shrub species shall be utilized to provide year around visual interest. Except for continuous hedges and street trees, not more than fifty percent (50%) of the required number of trees or shrubs may be comprised of any one (1) species. In addition, not more than fifty percent (50%) of the shrubs and perennials within any planting bed larger than five hundred (500) square feet in area may be comprised of any one (1) genus;

g. Final slopes greater than a 3:1 ratio, including slopes on earthen berms, will not be permitted without special approval or treatment, such as

special seed mixtures or reforestation, terracing or retaining walls; and

h. Within the DC – Downtown Core and DF – Downtown Fringe zoning districts, streetscape elements from the City's Streetscape Guidelines should be incorporated into the perimeter parking lot landscaping.

6. *Landscape Materials Standards*.

a. Plant Quality. Plants installed to satisfy the requirements of this subsection must meet or exceed the plant quality standards of the most recent edition of *American Standards for Nursery Stock*, published by the American Association of Nurserymen, be nursery grown and adapted to the local area.

b. Artificial Plants. No artificial plants or vegetation may be used to meet any standard of this section.

c. Sizes.

Type of Material	Minimum Size at Time of Planting
Shade Trees	Caliper of 1½ inches measured 6 inches above the root collar for trees with a mature height of 30 feet or greater
Ornamental Trees	Caliper of 1 inch measured 6 inches above the root collar for trees with a mature height of less than 30 feet
Upright Coniferous Trees	Minimum height of 4 feet above grade
Shrubs	Minimum container size of 2 gallons and minimum mature height of 3 feet above grade
Perennials	Minimum container size of 1 gallon

d. Existing Plant Material. Existing, healthy plant material may be utilized to satisfy landscaping requirements, provided it meets the minimum sizes specified above.

e. Ground Cover. Vegetative ground cover shall be of a size and spacing to provide a minimum of fifty percent (50%) coverage during the first full growing season and complete coverage upon maturity. Only pervious weed barriers shall be allowed. Mulch may not be used in lieu of vegetative ground cover, except in those situations where mulch is necessary to promote healthy tree and shrub growth.

   Where mulch is used, an adequate vertical barrier must be included around the perimeter of the mulch area to prevent mulch from washing into the public right-of-way or on to adjacent properties.

f. Soil in Landscaped Areas. Soil in landscaped areas shall consist of loose, friable, loamy topsoil that is free of excess acid and alkali. It shall be free from objectionable amounts of sod, hard lumps, gravel, subsoil or other undesirable material, to a depth of eighteen (18) inches.

7. *Street Trees.*

a. Purpose. The street tree requirements are intended to promote air quality, shade, neighborhood character, traffic calming, reduced storm water runoff, wildlife habitat, pedestrian amenity and aesthetic value.

b. Applicability. Street trees shall be installed in conjunction with the construction of any principal commercial, industrial, institutional or multi-family building with more than three (3) units along a section of public roadway with curb and gutter installed or scheduled to be installed in conjunction with the project.

c. Location. Street trees shall be installed within the public right-of-way or within ten (10) feet of the public right-of-way.

d. Spacing and Planting Requirements. Unless the City Forester determines that it is necessary to address specific site conditions, three (3) deciduous trees are required for every one hundred (100) linear feet of street frontage.

Street trees need not be placed at exact intervals, but they must be placed evenly along the street frontage. The City Forester shall have the authority to determine the final location of street trees in accordance with Section 13-02-01 of the City Code. Mulch shall be installed to a minimum coverage thickness of two (2) inches within a radius of three (3) feet of the trunk base. Tree grates may be used in lieu of mulching at the discretion of the City Forester.

e. Permit Required. A planting permit must be obtained from the Forestry Division of the Public Works Department prior to planting any trees within the public right-of-way.

8. *Perimeter Parking Lot Landscaping.*

a. Purpose. The perimeter parking lot landscaping requirements are intended to screen views of parking lots and access lanes from public rights-of-way, mitigate off-site headlight projection, and provide pervious surfaces to reduce storm water run-off.

b. Applicability. Perimeter parking lot landscaping shall be required with the installation or reconstruction (as defined in subsection 2(d))of any off-street parking area or access lane adjacent to the public right-of-way and/or visible from and within three hundred (300) feet of a public right-of-way.

c. Standards. All parking lots and access lanes shall provide perimeter landscaping between said off-street parking areas and access lanes and adjacent public rights-of-way. Said perimeter landscaping shall be constructed with standard poured-in-place concrete curbing on the parking lot side in order to minimize damage to plant material.

d. Trees and Shrubs. Trees and shrubs shall be installed in accordance with the following table. The intent of the minimum requirements column is to provide a total number of trees and shrubs required based on street frontage, not to dictate the spacing of the trees and shrubs within that frontage. For fractions of the specified linear

feet, the number of trees and shrubs required shall be the corresponding fraction.

Parking Lot Size (Number of Spaces)	Minimum Landscaping Width	Minimum Requirements
Less than 100	4 feet; or	Masonry wall, decorative fencing or continuous evergreen or deciduous hedge with a minimum height of 3 feet.
	6 feet	1 shade or ornamental tree and 5 shrubs for every 25 linear feet of street frontage.
100 to 399	10 feet; or	4 shade or ornamental trees and 40 shrubs for every 100 linear feet of street frontage; or
		Masonry wall, decorative fencing combined with a variety of landscape materials, or continuous evergreen or deciduous hedge with a minimum height of 3 feet
	20 feet; or	Earthen berm with a minimum height of 3 feet plus 2 shade or ornamental trees for every 100 linear feet of street frontage; or
		2 shade or ornamental trees and 15 shrubs for every 100 linear feet of street frontage.
	30 feet	4 shade or ornamental trees and 10 shrubs for every 100 linear feet of street frontage.

400 or more	20 feet	Earthen berm with a minimum height of 3 feet plus 4 shade or ornamental trees for every 100 linear feet of street frontage; or
		4 shade or ornamental trees and 15 shrubs for every 100 linear feet of street frontage; or
		Masonry wall, decorative iron fencing combined with a variety of landscape materials, or continuous evergreen or deciduous hedge with a minimum height of 4 feet.
	30 feet	4 shade or ornamental trees and 10 shrubs for every 100 linear feet of street frontage.
	40 feet or greater	4 shade or ornamental trees for every 100 linear feet of street frontage.

e. Applicability to Industrial Districts. Within the MA – Industrial and MB – Industrial zoning districts, the Director of Community Development and the City Forester may waive or modify perimeter parking lot landscaping requirements based on site conditions if the parking lot has twenty-five (25) or fewer parking spaces and the property is not located along a collector or arterial roadway.

f. Grade Differential. Consideration will be given for parking areas and access lanes that are significantly above or below the finish grade of the adjacent public right-of-way. Modifications to the required plant quantities will be considered on a case-by-case basis by the Director of Community Development and the City Forester with the submittal of section and/or elevation drawings showing how the design will meet the intent of the ordinance.

g. Separation. For off-street parking areas with varying widths adjacent to a public right-of-way, the average separation distance between the parking area and the right-of-way will be the basis for the required plant materials.

h. Substitutions. The Director of Community Development and the City Forester may allow perennials to be substituted for a portion of the required shrubs on a one-to-one basis, and for one shade tree to be substituted for three shrubs, based on specific site conditions and the overall landscape design for the site.

9. *Interior Parking Lot Landscaping.*

a. Purpose. The interior parking lot landscaping requirements are intended to break up large expanses of pavement, provide relief from the heat island effect associated with paved areas, promote air quality, shade, aesthetic value, and provide pervious surfaces to reduce storm water run-off.

b. Applicability. Interior parking lot landscaping applies to any new or reconstructed parking lot (as defined by subsection 2(d)).

c. Standards. All parking lots containing fifty (50) or more off-street parking spaces shall provide interior landscape areas within the parking lot. Said landscape areas shall be provided at the rate of ten (10) square feet per parking space, shall be no less than ten (10) feet by ten (10) feet (100 square feet), and shall be constructed with poured-in-place concrete curbing to minimize damage to plant material. The poured-in-place concrete curbing requirement may be waived by the Director of Community Development and the City forester for landscape beds intended to function as rain gardens, storm water infiltration areas or storm water detention facilities. For parking lots with one hundred (100) to four hundred (400) parking spaces, at least fifty percent (50%) of the landscape areas shall be no less than six hundred (600) square feet in area with a minimum width dimension of ten (10) feet. For parking lots with more than four hundred (400) parking spaces, at least fifty percent (50%) of the

landscape areas shall be no less than twelve hundred (1200) square feet in area with a minimum width dimension of ten (10) feet.

d. Placement of Landscape Areas. Live plant material should be evenly dispersed throughout the parking area.

e. Trees and Shrubs. At least one (1) shade tree and three (3) shrubs shall be provided for every twenty (20) parking spaces or fraction thereof within the off-street parking area. One (1) shade tree may be substituted for three (3) shrubs, but shrubs may not be substituted for shade trees. The Director of Community Development and the City Forester may allow perennials to be substituted for a portion of the required shrubs on a one-to-one basis, based on specific site conditions and the overall landscape design for the site.

10. Buffer Yards.

a. Purpose. The buffer yard requirements are intended to provide separation between land uses of differing intensity. Buffer yards utilize a combination of distance and plantings to form a dense landscaping screen to mitigate the undesirable impacts associated with incompatible land uses on adjacent properties. Earthen berms and/or opaque wood or similar screening fence as defined in this section may also be used where appropriate at the discretion of the Director of Community Development and the City Forester.

b. Applicability. Buffer yards shall be required between a single- or two-family residential use and any other non-agricultural land use, and between a multiple family residential use (three (3) or more units) and any commercial, industrial or institutional use. Buffer yards shall also be required for parking lots and access lanes associated with these uses, whether they are located on the same parcel or on a separate parcel.

c. Location of Buffer Yards. Buffer yards shall be located along the entire length of any lot line where two (2) land uses of differing intensity

abut, excluding areas adjacent to access points and sight triangles. Such buffer yards may be located within required yards, but not within any portion of the public right-of-way or over any established trail or access easement.

d. Responsibility for Buffer Yard Installation. Installation of all required buffer yards shall be the responsibility of the proposed higher intensity use and shall be located on the lot of the higher intensity use unless a perpetual landscape easement is obtained from the property owner with the lower intensity use, in which case the buffer yard may be located on the lot with the lower intensity use. In situations where the higher intensity use was in place prior to the adoption of this section (October 8, 2002), or any subsequent amendments, a buffer yard shall not be required with the subsequent development of the adjacent lower intensity land use. Landscape easements for buffer yards may be required in conjunction with the platting process in situations where such buffer yards will be required based on existing or proposed zoning and/or land uses.

e. Standards. Buffer yards shall be installed in accordance with the following table:

Area Where Buffer Yard Required	Minimum Width of Buffer Yard	Landscape Materials Required per 100 Linear Feet
Side or rear yard of any expanding higher intensity land use adjacent to single and two-family residential uses or zoning	10 feet w/6-foot screening fence	4 shade trees and 2 ornamental trees

Side or rear yard of any new multi-family land use adjacent to single and two-family residential uses or zoning or Side or rear yard of any new commercial or institutional use adjacent to a multi-family residential use or zoning	15 feet or	3 shade trees, 4 ornamental trees, 2 large upright coniferous trees, 10 small upright coniferous trees and 14 shrubs (25% of shrubs must be evergreens)
	15 feet w/6-foot screening fence	2 shade trees and 2 ornamental trees and 2 large upright coniferous trees
Side or rear yard of any new commercial or institutional land use adjacent to a single or two-family residential use or zoning	20 feet or	2 shade trees and 4 ornamental trees and 3 large upright coniferous trees and 10 small upright coniferous trees and 14 shrubs
	20 feet w/6-foot screening fence	2 shade trees and 3 ornamental trees and 2 large upright coniferous trees
Side or rear yard of any new industrial use adjacent to any residential use or zoning	50 feet w/6-foot berm	5 shade trees and 7 ornamental trees and 10 large upright coniferous trees and 10 small upright coniferous trees and 24 shrubs

A screening fence may be made of solid wood, composite material with the appearance of solid wood, vinyl with the appearance of solid wood, masonry, or a combination of masonry and any of the other materials listed. In situations where the rear walls of accessory garages are located within twenty (20) feet of a property line, the planting material numbers required for a buffer yard with a screening fence will apply, provided the wall of the accessory garages is at least one hundred (100) feet in length and provided that the number of planting materials required for a buffer yard without a fence are provided in areas not occupied by such garages.

In order to provide flexibility in the application of this ordinance, the Director of Community Development and the City Forester may allow material numbers and/or types to be modified on a case-by-case basis with the submittal of an oblique view or elevation sketch of the buffer yard showing how the proposed materials will meet the dense landscaping screen intent of this ordinance within five (5) years of initial installation and at full maturity.

f. Sizes. In order to provide an effective landscaping screen in conjunction with site development, minimum sizes at the time of planting and minimum heights at maturity have been established. The classification of various types of materials shall be based on the City of Bismarck's Forestry standards and specifications.

Type of Materials	Minimum Size at Time of Planting	Minimum Height at Maturity
Shade Trees	Caliper of 1.5 inches measured 6 inches above the root collar	20 feet
Ornamental Trees	Caliper of 1 inch measured 6 inches above the root collar	15 feet

Small Upright Coniferous Trees	Minimum height of 2 feet above grade or minimum container size of 5 gallons	6 feet
Large Upright Coniferous Trees	Minimum height of 4 feet above grade	20 feet
Shrubs	Minimum height of 2 feet above grade or a minimum container size of 2 gallons	3 feet

g. Applicability to Non-Conforming Uses. Proposed modifications to a required buffer yard adjacent to any non-conforming use, based on zoning, may be considered on a case-by-case basis by the Director of Community Development and the City Forester.

h. Applicability to Buffer Yards in Areas Within the Extraterritorial Area. Consideration will be given by the Director of Community Development and the City Forester on a case-by-case basis to allow a modified buffer yard in developing areas within the extraterritorial area. Consideration will be given for reduced plant quantities, sizes, locations and plant species.

i. Grade Differential. Consideration will be given for required buffer yards that are significantly above or below the finish grade of the adjacent property. Modifications to the required plant quantities may be considered on a case-by-case basis by the Director of Community Development and the City Forester with the submittal of section and/or elevation drawings showing how the design will meet the intent of the ordinance.

11. *Installation, Maintenance, Replacement, Inspection and Enforcement.*

a. Installation of Street Trees. The City Forester shall determine the time for installation of street trees.

b. Installation of Other Required Landscaping. All other landscaping and buffer yards required by this subsection shall be healthy and in-place as soon as grading or construction has been completed to eliminate or reduce wind and/or water erosion. When landscaping cannot be completed in conjunction with site development due to seasonal constraints, the plant material shall be installed at the beginning of the next growing season, unless otherwise approved by the Director of Community Development and the City Forester.

c. Maintenance and Replacement. The owner, or successors in interest, or agent, if any, shall be responsible for regular maintenance of all landscaping in good condition in a way that presents a healthy, neat and orderly appearance. All landscaping must be maintained free from disease, pests, weeds and litter. This maintenance must include weeding, watering, fertilizing, pruning, mowing, edging, mulching and other maintenance, as needed and in accordance with acceptable horticultural practices. Dead plants must be promptly removed and replaced within the next growing season. Trees located along fire department access routes, as identified on an approved site plan, must be pruned as needed to maintain a vertical clearance height of no less than fourteen (14) feet.

d. Inspection and Enforcement. All landscaping shall be subject to periodic inspection by the City Forester. Landscaping that is not installed, maintained or replaced as needed to comply with the approved landscape plan shall be considered a violation of this Section and shall be subject to the enforcement provisions Chapter 13-02-14.

(Ord. 5437, 06-28-05; Ord. 5450, 08-23-05; Ord. 5562, 11-28-06; Ord. 5640, 10-09-07; Ord. 5812, 03-22-11)

14-03-12. Screening of Mechanical Equipment and Solid Waste Collection Areas.

1. *Mechanical Equipment*. All rooftop and ground mounted mechanical equipment shall be designed and located so to be as unobtrusive as possible. If this is not possible, ground equipment shall be screened from view of adjacent properties and public rights-of-way by

landscape plantings, fencing or other screening treatment compatible with the principal building.

2. *Solid Waste Collection Areas.* All solid waste collection areas for commercial, industrial, institutional or multi-family buildings with more than four units shall be screened from view of adjacent properties and public rights-of-way on at least three sides with a six-foot solid masonry wall, opaque wood fence or other compatible building material.

(Ord. 5207, 10-08-02; Ord. 5295, 02-24-04)

CHAPTER 14-04 - DISTRICT REGULATIONS

14-04-01. RR Residential District. In any RR residential district, the following regulations shall apply:

1. General description. The RR residential district is established as a district in which the principal use of the land shall be for low density, large lot single-family dwellings, limited agriculture, and limited equine husbandry. For the RR residential district, in promoting the general purposes of this title, the specific intent of this section is:

a. To encourage the construction or placement of and use of land for single-family dwellings on large rural lots and for limited agricultural uses.

b. To prohibit general commercial and industrial uses of the land and to prohibit any use which would substantially interfere with the development or the continuation of single-family dwellings and limited agricultural uses.

c. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this title.

d. To discourage any use which would generate traffic on the streets of the district other than normal traffic to serve the single-family residences of the area.

e. To provide additional development standards for rural residential properties abutting the Missouri River platted after December 16, 2003.

2. Uses permitted. The following uses are permitted.

a. Single-family dwellings.

b. Education group.

c. Public recreational group.

d. Private riding stables provided that animals shall be used for private use only; that no animal, animal stable, barn or shelter shall be located within one hundred (100) feet of any neighboring residence or structure; that two (2) horses shall be permitted on any premises which contains at least two (2) acres and additional horses shall be allowed at the rate of one horse for every additional three (3) acres of property owned. For the purposes of this ordinance the definition of a horse will be only those horses that are one calendar year of age or older and a miniature horse shall be defined as a horse less than 50 inches high measured at the withers. For the purpose of calculating the number of horses allowed under this section, a miniature horse shall be deemed to be the equivalent of .66 of a horse.

e. Family foster home for adults.

f. Animal husbandry activity or project conducted primarily for educational purposes or school credits, provided such activities are not conducted for commercial purposes and the premises are maintained in a sanitary manner.

g. Family child care.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Child care centers.

b. Church.

3. Lot area. Each principal building erected, together with its accessory buildings, shall be located on a lot containing a minimum area of 65,000 square feet with a minimum lot width of 150 feet and a minimum lot depth of 200 feet. Provided, however, that on a record lot corresponding to a plat recorded prior to September 23, 2003, a single-family dwelling and accessory buildings may be erected, provided said lot contains no less than forty thousand (40,000) square feet.

4. Front yard. Each platted lot shall have a front yard not less than forty (40) feet in depth as measured from the front property line.

5. Side yard. Each lot shall have two (2) side yards, one on each side of the principal and accessory buildings. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot, and in no case less than fifteen (15) feet per yard.

6. Rear yard. Each lot or premises shall have a rear yard depth of not less than fifty (50) feet or twenty (20) per cent of the depth of the lot or premises whichever is the larger, but need not exceed seventy-five (75) feet.

7. Height limits. No single-family dwelling shall exceed forty (40) feet in height nor shall any other principal structure exceed fifty (50) feet in height nor shall any accessory structure exceed twenty-five (25) feet in height. For each foot or fraction thereof, that a building exceeds thirty-five (35) feet in height there shall be added four (4) feet to the minimum depth of each rear yard required by this section.

8. Automobile parking. Adequate automobile parking shall be provided for each dwelling as set forth by Section 14-03-10 hereof.

9. Minimum road standards. Right-of-way and roadway widths shall conform to the standards as set forth by Part K of Subsection 1 of Section 14-09-05 hereof.

Sufficient temporary construction easements shall be given to allow for proper road construction. All streets to be used for on-street parking shall be forty (40) feet in roadway width if constructed with curb and gutter section or thirty-six (36) feet in roadway width if constructed without curb and gutter section.

10. Accessory Buildings. All allowable accessory buildings to a residence shall be limited to a maximum of fourteen hundred (1,400) square feet for lots of 40,000 square feet or less; to a maximum of eighteen hundred (1,800) square feet for lots between 40,000 square feet and 64,999 square feet; to a maximum of twenty-four hundred (2,400) square feet for lots between 65,000 square feet and five and one-half (5.5) acres; and to a maximum of one (1) percent of the total lot area up to a maximum of five thousand (5,000) square feet for lots larger than five and one-half (5.5) acres. For residential accessory buildings,

the maximum wall height shall be limited to fourteen (14) feet and the maximum building height shall be limited to twenty-five (25) feet.

The allowable accessory buildings for a single-family residence on a lot in an RR – Residential district with 40,000 to 64,999 square feet in area may be increased to a maximum of twenty-four hundred (2,400) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings for a single-family residence on a lot in an RR – Residential district with 65,000 square feet to seven and one-half (7.5) acres in area may be increased to a maximum of thirty-two hundred (3,200) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

Accessory buildings for the above computations shall include the following buildings: barns, stables, storage buildings, and detached garages. Attached garages are not included in the above computations, provided the area occupied by an attached garage does not exceed one and one-half times the area of the footprint of the dwelling portion of the principal structure to which it is attached.

11. Additional Development Standards for Land Abutting the Missouri River. In order to preserve and enhance the environmental and recreational qualities of the Missouri River, conserve the scenic and historic values of the Missouri River shoreland, protect shoreland development from river bank erosion, and provide for the wise use of the river and related land resources, the following additional development standards are hereby established for land abutting the Missouri River platted after November 25, 2003:

a. Structure Setbacks. All structures shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

b. Design Criteria. Structures should be placed and designed in a manner as to reduce visibility as viewed from the river and adjacent shoreland by vegetation, topography or the color of the structure, assuming summer, leaf-on conditions.

c. Impervious Surface Coverage. The percentage of lot covered by impervious surfaces (structures,

paved surfaces, etc.) shall not exceed 25 percent of the lot area.

d. On-Site Sewage Treatment Facility Setbacks. All sewage treatment facilities, including drainfields, shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

e. Stairways, Lifts and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements: 1) stairways and lifts shall not exceed four feet in width; 2) landings for stairways and lifts shall not exceed 32 square feet in area; 3) canopies or roofs are not allowed on stairways, lifts or landings; 4) stairways, lifts and landings may be constructed on posts/pilings or placed in the ground, provided they are designed and built in a manner than controls soil erosion, meets building code requirements, and does not affect the integrity of bank stabilization projects.

f. Boat Docks. The placement of boat docks shall be allowed in accordance with the requirements of the North Dakota Century Code and any other applicable regulations.

g. Shore Impact Zone. Structures and accessory facilities, except stairways and landings, shall not be placed within a shore impact zone.

h. Steep Slopes. For structures and/or facilities to be placed on steep slopes, the Building Official may attach conditions on the building permit to prevent erosion and preserve existing vegetation.

i. Vegetation Alterations. Intensive vegetative clearing within the shore impact zone and on steep slopes is prohibited. Limited clearing of vegetation is permitted in order to provide a view of the river from the principal dwelling site and to accommodate the placement of permitted stairways, lifts or landings. Removal of vegetation that is dead, diseased or that poses a safety hazard is allowed.

j. Topographic Alterations Above the Ordinary High Water Mark. Grading, filling and excavation necessary for the construction of structures, sewage

treatment systems or driveways under validly issued permits shall be allowed. Notwithstanding any other applicable regulations, any other topographic alterations must meet the following standards: 1) alterations shall not adversely affect adjacent or nearby properties; and 2) alterations must be designed and conducted in a manner that minimizes soil erosion, including the installation of erosion control measures as needed.

k. Topographic Alterations Below the Ordinary High Water Mark. All topographic alterations below the ordinary high water mark must be approved by the United States Army Corps of Engineers.

(Ord. 4564, 11-23-93; Ord. 4577, 02-01-94; Ord. 4631, 08-30-94; Ord. 4756, 05-14-96; Ord. 4772, 06-25-96; Ord. 4828, 03-25-97; Ord. 4875, 10-14-97; Ord. 5280, 09-23-03; Ord. 5286, 11-13-03; Ord. 5287, 12-16-03; Ord. 5369, 11-23-04; Ord. 5566, 12-12-06; Ord. 5902, 06-26-12; Ord. 5958, 03-26-13)

14-04-01.1. RR5 Residential District. In any RR5 residential district, the following regulations shall apply:

1. General description. The RR5 residential district is established as a district in which the principal use of the land shall be for low density, large lot single-family dwellings, limited agriculture, and limited equine husbandry. For the RR5 residential district, in promoting the general purposes of this title, the specific intent of this section is:

a. To encourage the construction or placement of and use of land for single-family dwellings on large rural lots that are no less than five acres in size and for limited agricultural uses.

b. To prohibit general commercial and industrial uses of the land and to prohibit any use which would substantially interfere with the development or the continuation of single-family dwellings and limited agricultural uses.

c. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this title.

d. To discourage any use which would generate traffic on the streets of the district other than normal traffic to serve the single-family residences of the area.

e. To provide a zoning classification for existing single-family dwellings on large rural lots that are no less than five acres in size.

2. Uses permitted. The following uses are permitted.

a. Single-family dwellings.

b. Education group.

c. Public recreational group.

d. Private riding stables provided that animals shall be used for private use only; that no animal, animal stable, barn or shelter shall be located within one hundred (100) feet of any neighboring residence or structure; that three (3) horses shall be permitted on any premises which contains at least five (5) acres and additional horses shall be allowed at the rate of one (1) horse for every additional three (3) acres of property owned. For the purposes of this ordinance the definition of a horse will be only those horses that are one calendar year of age or older and a miniature horse shall be defined as a horse less than 50 inches high measured at the withers. For the purpose of calculating the number of horses allowed under this section, a miniature horse shall be deemed to be the equivalent of .66 of a horse.

e. Family foster home for adults.

f. Animal husbandry activity or project conducted primarily for educational purposes or school credits, provided such activities are not conducted for commercial purposes and the premises are maintained in a sanitary manner.

g. Family child care.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Child care centers.

b. Church.

3. Lot area. Each principal building erected, together with its accessory buildings, shall be located on a lot containing a minimum area of 5.0 acres with a minimum lot width of 300 feet and a minimum lot depth of 400 feet.

4. Front yard. Each platted lot shall have a front yard of not less than forty (40) feet in depth as measured from the front property line.

5. Side yard. Each lot shall have two (2) side yards, one on each side of the principal and accessory buildings. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot, and in no case less than fifteen (15) feet per yard.

6. Rear yard. Each lot or premises shall have a rear yard depth of not less than fifty (50) feet.

7. Density. Density shall be one dwelling unit per five acres.

8. Height limits. No single-family dwelling shall exceed forty (40) feet in height nor shall any other principal structure exceed fifty (50) feet in height nor shall any accessory structure exceed twenty-five (25) feet in height. For each foot or fraction thereof, that a building exceeds thirty-five (35) feet in height there shall be added four (4) feet to the minimum depth of each rear yard required by this section.

9. Automobile parking. Adequate automobile parking shall be provided for each dwelling as set forth by Section 14-03-10 hereof.

10. Minimum road standards. Right-of-way and roadway widths shall conform to the standards as set forth by Part K of Subsection 1 of Section 14-09-05 hereof.

11. Accessory Buildings. All allowable accessory buildings to a residence shall be limited to a maximum of twenty-four hundred (2,400) square feet for each lot of five and one-half (5.5) acres or less and to one (1) percent of the total area of the lot up to a maximum of five thousand (5,000) square feet for lots larger than five and one-half (5.5) acres. For residential accessory buildings, the maximum wall height shall be limited to fourteen (14) feet and the maximum building height shall be limited to twenty-five (25) feet.

The allowable accessory buildings for a single-family residence on a lot in an RR5 – Residential district with five and one-half (5.5) acres to seven and one-half (7.5) acres in an area may be increased to a maximum of thirty-two hundred (3,200) square feet provided a special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

Accessory buildings for the above computations shall include the following buildings: barns, stables, storage buildings and detached garages. Attached garages are not included in the above computations, provided the area occupied by an attached garage does not exceed one and one-half times the area of the footprint of the dwelling portion of the principal structure to which it is attached.

12. Additional Development Standards for Land Abutting the Missouri River. In order to preserve and enhance the environmental and recreational qualities of the Missouri River, conserve the scenic and historic values of the Missouri River shoreland, protect shoreland development from river bank erosion, and provide for the wise use of the river and related land resources, the following additional development standards are hereby established for land abutting the Missouri River platted after November 25, 2003:

a. Structure Setbacks. All structures shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

b. Design Criteria. Structures should be placed and designed in a manner as to reduce visibility as viewed from the river and adjacent shoreland by vegetation, topography or the color of the structure, assuming summer, leaf-on conditions.

c. Impervious Surface Coverage. The percentage of lot covered by impervious surfaces (structures, paved surfaces, etc.) shall not exceed 25 percent of the lot area.

d. On-Site Sewage Treatment Facility Setbacks. All sewage treatment facilities, including drainfields, shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

e. Stairways, Lifts and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements: 1) stairways and lifts shall not exceed four feet in width; 2) landings for stairways and lifts shall not exceed 32 square feet in area; 3) canopies or roofs are not allowed on stairways, lifts or landings; 4) stairways, lifts and landings may be constructed on posts/pilings or placed in the ground, provided they are designed and built in a manner than controls soil erosion, meets building code requirements, and does not affect the integrity of bank stabilization projects.

f. Boat Docks. The placement of boat docks shall be allowed in accordance with the requirements of the North Dakota Century Code and any other applicable regulations.

g. Shore Impact Zone. Structures and accessory facilities, except stairways and landings, shall not be placed within a shore impact zone.

h. Steep Slopes. For structures and/or facilities to be placed on steep slopes, the Building Official may attach conditions on the building permit to prevent erosion and preserve existing vegetation.

i. Vegetation Alterations. Intensive vegetative clearing within the shore impact zone and on steep slopes is prohibited. Limited clearing of vegetation is permitted in order to provide a view of the river from the principal dwelling site and to accommodate the placement of permitted stairways, lifts or landings. Removal of vegetation that is dead, diseased or that poses a safety hazard is allowed.

j. Topographic Alterations Above the Ordinary High Water Mark. Grading, filling and excavation necessary for the construction of structures, sewage treatment systems or driveways under validly issued permits shall be allowed. Notwithstanding any other applicable regulations, any other topographic alterations must meet the following standards: 1) alterations shall not adversely affect adjacent or nearby properties; and 2) alterations must be designed and conducted in a manner that minimizes soil erosion,

including the installation of erosion control measures as needed.

k. Topographic Alterations Below the Ordinary High Water Mark. All topographic alterations below the ordinary high water mark must be approved by the United States Army Corps of Engineers.

(Ord. 5296, 02-24-04; Ord. 5371, 11-23-04; Ord. 5902, 06-26-12)

14-04-02. RRMH Rural Mobile Home Residential District.

Repealed 05-14-96, Ord. No. 4756.

14-04-03. R5 Residential District. In any R5 residential district the following regulations shall apply:

1. General description. The R5 residential district is established as a district in which the principal use of land is for single-family dwellings. For the R5 residential district, in promoting the general purposes of this title, the specific intent of this section is:

a. To encourage the construction or placement of, and the continued use of the land for single-family dwellings on urban lots.

b. To prohibit commercial and industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of single-family dwellings in the district.

c. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this title.

d. To discourage any use which would generate traffic on minor streets other than normal traffic to serve residents on those streets.

e. To discourage any use which because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family dwellings.

2. Uses permitted. The following uses are permitted:

a. Single-family dwelling.

b. Education group.

c. Public recreation group.

d. Family foster home for adults.

e. Family child care.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Child care center.

b. Church.

3. Density. The maximum allowable density is five (5) families per gross acre.

4. Lot area. Each permitted structure hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953, a single-family dwelling and accessory buildings may be erected, provided said lot contains no less than five thousand (5,000) square feet.

5. Lot width. Each lot shall have a front property line width of not less than forty (40) feet, and in addition, shall have a width of not less than sixty (60) feet, measured along a line approximately parallel to and forty (40) feet back from the front property line. Provided, however, that on a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

6. Lot coverage. The ground area occupied by the principal and accessory buildings shall not exceed thirty (30) per cent of the total area of the lot. In computing lot coverage, off-street parking areas complying with Section 14-03-10 hereof shall be added to the actual area of the buildings, if such space is not furnished within a building.

7. Front yard. Each lot shall have a front yard not less than twenty-five (25) feet in depth.

8. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The

sum of the widths of the two (2) side yards shall not be less than twenty (20) percent of the average width of the lot, except in cases where the ratio between the front lot width and the rear lot width is three (3) or greater. On any lot having an average width of sixty (60) feet or less, each side yard shall not be less than ten (10) percent of the average width of the lot, and in no case shall a side yard be less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet, neither side yard shall be less than six (6) feet in width. On any lot where the ratio between the front lot width and the rear lot width is three (3) or greater, the sum of the widths of the two (2) side yards need not be greater than sixteen (16) feet with neither side yard being less than eight (8) feet. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Side yard measurements are to be taken at right angles to the building at the closest points to a property line.

9. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth.

10. Height limits. No single-family dwelling shall exceed forty (40) feet in height. No principal building for any other permitted use shall exceed fifty (50) feet in height. For each one foot or fraction thereof that a building exceeds thirty-five (35) feet in height, there shall be added four (4) feet to the minimum width of each side yard, two (2) feet to the minimum depth of front yard, and two (2) feet to the minimum depth of rear yard required by this section. No accessory building shall exceed twenty-five (25) feet in height.

(Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4610, 05-24-94; Ord. 4703, 06-13-95; Ord. 4756, 05-14-96; Ord. 4991, 06-22-99; Ord. 5958, 03-26-13)

14-04-04. RMH Mobile Home Residential District. Repealed.
(Ord. 4756, 05-24-96)

14-04-05. RMH Residential District.

1. Description. The RMH residential district is established as a district in which the principal use of land is for single-family mobile and manufactured home dwellings located within manufactured home parks. For the RMH residential district the specific intent of this section is:

a. To encourage the placement of, and the continued use of land for single-family mobile and manufactured home dwellings located within manufactured home parks.

b. To prohibit commercial and industrial uses of the land.

c. To encourage suitable and proper development of manufactured home parks.

2. Permitted Uses. The following use is permitted:

a. Single-family mobile home dwellings or manufactured homes with or without a permanent foundation when located within manufactured home parks.

3. Development Standards.

a. Density. The maximum allowable density for all manufactured home parks shall be seven (7) families per net acre.

b. Lot Dimensions.

1. For single-wide manufactured home dwelling units, minimum lot dimensions shall be fifty (50) feet and the minimum lot area shall be five thousand (5,000) square feet.

2. For double-wide manufactured home dwelling units, minimum lot dimensions shall be sixty (60) feet and the minimum lot area shall be six thousand (6,000) square feet.

c. Park Area. The minimum total area of a manufactured home park shall be at least one hundred forty thousand (140,000) square feet.

d. Lot Coverage. The ground area occupied by a manufactured home, all utility structures, roofed deck or patio, and required off-street parking spaces shall not exceed forty (40) per cent of the total area of the lot. In computing the ground coverage, sufficient off-street parking space to comply with Section 14-03-10 hereof shall be added to actual area of the principal and accessory buildings. Each lot shall be limited to one attached utility structure of no more than one hundred twenty (120) square feet.

e. Height Limits. No accessory building shall exceed fifteen (15) feet in height, nor shall any legal attachment to a principal building except the height of the principal building.

f. Setbacks. Lot development shall observe the following setbacks:

1. No manufactured home or any other legal attachments to said dwelling shall be located less than twenty (20) feet from the front lot line or six (6) feet from the side lot line measured back from the walkway or sidewalk. No building on a corner lot shall have a side yard on the side street less than twenty (20) feet in width measured back from the walkway or sidewalk. Side yard measurements are to be taken at right angles to the building at the closest points to a property line. Detached accessory buildings shall be located not less than five (5) feet from the side or rear lot lines. The ends of the manufactured homes shall be at least twelve (12) feet apart. No portion of a manufactured home, or attachment thereto, or any other structure in nonconforming manufactured home parks shall be located less than fifteen (15) feet away from any property line adjacent to a public right-of-way.

2. Landscaped setback area. All manufactured home parks must provide a completely and permanently landscaped setback area of at least thirty (30) feet in width around those portions of the park perimeter which border public rights-of-way. The primary landscaping materials used in the setback areas shall be trees, shrubbery, ground cover, hedges, lawn and other live planting materials. The land owners shall be responsible for providing, protecting and maintaining all landscaping materials in healthy growing condition. Fences shall not be permitted within landscaped setback areas, nor shall any structures or accessory uses be installed within such areas by park residents.

g. Parking. Off-street parking shall be provided in accordance with Section 14-03-10 hereof.

h. Streets. The minimum street or accessway on which each manufactured home fronts shall be at least thirty-six (36) feet from curb to curb in width. Dead-end streets shall terminate in a cul-de-sac with a turning diameter of at least forty (40) feet. All streets shall be hard-surfaced, either concrete or bituminized.

i. Walkways. Manufactured home parks shall be provided with walkways at least four (4) feet wide adjacent to streets or accessways.

j. Lighting. All entrances, exits, lanes and driveways between rows of manufactured homes shall be lighted to provide an intensity of at least five (5) footcandles, measured at ground level.

k. Services. All provisions for water supply, sewage and fire protection to be provided in any manufactured home park shall have been approved by the appropriate city department and shall meet urban service standards.

l. Recreation Area. There shall be provided within each manufactured home park an adequate site or sites for recreation for the exclusive use of the park occupants. Such recreation site or sites shall have a minimum area in the aggregate of four thousand (4,000) square feet plus one hundred (100) square feet for each manufactured home space in said park. The recreation sites shall be approved by the planning commission and provided with adequate equipment.

m. Enlargement or Alteration. Any enlargement or alteration of a manufactured home park that exceeds ten (10) per cent of the total number of lots or spaces shall comply with the provisions of Subsection 3 of this Section. The remaining portion of a manufactured home park not being enlarged or altered will not be required to comply with the provisions of Subsection 3.

n. Business Uses. No business shall be conducted in any manufactured home park except manufactured home sales.

o. Public Right-of-Way. If public right-of-way bisects a manufactured home park, all lots located adjacent to such public right-of-way shall conform to the standards and setbacks as specified in the R5-Residential District.

4. Community Storage Buildings. Private garages or storage buildings located within manufactured home parks but not located on individual lots may be allowed, provided:

a. Height Limits. No community storage building sidewall shall exceed fourteen (14) feet in height. The maximum roof pitch of such buildings shall not exceed 3:12.

b. Activities. No activities other than storage of vehicles and household goods by residents of the manufactured home park shall be allowed.

c. Dimensions. No single building dimension shall exceed one hundred-twenty (120) feet and no individual building shall exceed a total of three thousand (3,000) square feet in size. All such buildings must be separated by a minimum of twelve (12) feet. No more than four (4) storage buildings may be grouped together in one location within a manufactured home park. All such groups of buildings must be separated by a minimum of five hundred (500) feet.

d. Accessways. Accessways to community storage buildings shall be hard-surfaced, either concrete or bituminized.

e. Floors. All floors in community storage buildings shall be hard surfaced.

f. Site Plan. No community storage building or buildings shall be constructed until a site plan has been approved by the Building Official.

5. Additional Manufactured Home Requirements. All mobile and manufactured homes shall be installed in conformance with the requirements of Chapter 4-12 of the Code of Ordinances.

(Ord. 4756, 05-14-96; Ord. 4936, 09-08-98; Ord. 5728, 05-26-09)

14-04-06. R10 Residential District. In any R10 residential district, the following regulations shall apply:

1. General description. The R10 residential district is established as a district in which the principal use of land is for single-family and two-family dwellings. For the R10 residential district, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the construction or placement of and the continued use of the land for single-family and two-family dwellings on urban lots.

b. To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with development or continuation of single-family and two-family dwellings in the district.

c. To encourage the discontinuation of existing uses that would not be permitted as new uses under the provisions of this ordinance.

d. To discourage any use which would generate traffic on minor streets other than normal traffic to serve residences of those streets.

e. To discourage any use which because of its character or size would create requirements and costs for public services such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family and two-family dwellings.

2. Uses permitted. The following uses are permitted:

a. Single-family dwelling.

b. Two-family dwelling.

c. Education group.

d. Public recreation group.

e. Row house. Attached single-family dwelling in groups of two (2).

1) Density. The maximum allowable density shall be ten (10) families per gross acre.

2) Lot area.

a) Lot and yard requirement regulations for row house, townhouse or zero lot line attached units. Each attached single-family dwelling hereafter erected shall conform to the following minimums:

Lot area in square feet--not less than 3,500 feet per unit;

Lot width of front building line-not less than 30 feet;

Depth of front yard in feet--not less than 25 feet;

Width of side yard in feet--20 percent of the lot width for each dwelling unit but not less than 6 feet, except 25 feet shall be maintained at corner lots.

Depth of rear yard in feet--20 feet average but not less than 15 feet at nearest point.

3) Height regulations. The maximum height of any principal building shall be forty (40) feet.

4) Safety provisions. Row house, townhouse or zero lot line attached units shall have wall separations between each dwelling unit of at least a two-hour, fire-resistant wall which shall extend from the footing to and through the roof at least thirty (30) inches except as may be allowed by the city building code pertaining to area separation walls.

5) Off-street parking. Off-street parking spaces shall be provided for each dwelling unit in compliance with Section 14-03-10 hereof.

6) Regulations Imposed on Overall Structure. The lot coverage requirements and the minimum front, side and rear yard setbacks shall be imposed on the overall structure rather than on each individual unit.

f. Family foster home for adults.

g. Family child care, when located in a detached single family dwelling.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Child care center.

b. Church.

3. Density. The maximum allowable density is ten (10) families per gross acre.

4. Lot area. Each permitted structure hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a

record lot corresponding to a plat recorded prior to 1953, a single-family or two-family dwelling and accessory buildings may be erected, provided said lot contains not less than five thousand (5,000) square feet.

5. Lot width. Each lot shall have a front property line width of not less than forty (40) feet, and in addition, shall have a width of not less than sixty (60) feet, measured along a line approximately parallel to and forty (40) feet back from the front property line. Provided, however, that on a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

6. Lot coverage. The ground area occupied by the principal and accessory buildings shall not exceed forty (40) per cent of the total area of the lot. In computing lot coverage, off-street parking areas complying with Section 14-03-10 hereof shall be added to the actual area of the buildings, if such parking space is not furnished within a building.

7. Front yard. Each lot shall have a front yard of not less than twenty-five (25) feet in depth.

8. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) percent of the average width of the lot, except in cases where the ratio between the front lot width and the rear lot width is three (3) or greater. On any lot having an average width of sixty (60) feet or less, each side yard shall not be less than ten (10) percent of the average width of the lot, and in no case shall a side yard be less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet, neither side yard shall be less than six (6) feet in width. On any lot where the ratio where the ratio between the front lot width and the rear lot width is three (3) or greater, the sum of the widths of the two (2) side yards need not be greater than sixteen (16) feet with neither side yard being less than eight (8) feet. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Side yard measurements are to be taken at right angles to the building at the closest points to a property line.

9. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth.

10. Height limits. No single-family dwelling and no two-family dwelling shall exceed forty (40) feet in height. No principal building for any other permitted use shall exceed fifty (50) feet in height. For each foot or fraction thereof that a building exceeds thirty-five (35) feet in height, there shall be added four (4) feet to the minimum width of each side yard, and two (2) feet to the minimum depth of the front yard, and two (2) feet to the minimum depth of the rear yard required by this section. No accessory buildings shall exceed twenty-five (25) feet in height.

(Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4610, 05-24-94; Ord. 4649, 12-06-94; Ord. 4703, 06-13-95; Ord. 4756, 05-14-96; Ord. 4828, 03-25-97; Ord. 4991, 06-22-99; Ord. 5027, 02-08-00; Ord. 5666, 05-27-08; Ord. 5958, 03-26-13)

14-04-07. RM Residential District. In any RM residential district the following regulations shall apply:

1. General description. The RM residential district is established as a district in which the principal use of land is for multifamily dwellings and similar high density residential development. For the RM residential district, in promoting the general purposes of this title, the specific intent of this section is:

a. To encourage the construction of and the continued use of the land for residential purposes on urban lots.

b. To prohibit commercial and industrial use of the land and to prohibit any other use which would substantially interfere with the development or continuation of residential structures in this district.

c. To encourage the discontinuance of existing uses that would not be permitted as new uses in the district.

d. To discourage any use which because of its character or size would generate traffic or require municipal services substantially in excess of traffic and services that would exist if the district were developed solely for multifamily dwellings.

2. Uses permitted. The following uses are permitted.

a. Multifamily dwelling.

b. Group dwelling.

c. Education group.

d. Public recreation group.

e. Row houses. Attached single-family dwelling in groups of not more than eight (8) or less than two (2).

1) Density. The maximum allowable density per acre shall be as stipulated in the underlying zoning district.

2) Lot and Yard Requirements.

Each attached single-family dwelling hereafter erected shall conform to the following minimum lot area and yard requirements:

	Interior	End	Corners
Lot area in square feet	2,300	3,220	3,795
Lot width of front building line in feet	20	28	33
Depth of lot in front	115	115	115
Depth of front yard in feet	25	25	25
Width of side yard in feet		10	25
Depth of rear yard in feet	20	20	20

3) Height regulations. The maximum height of any principal building shall be forty (40) feet.

4) Safety provision. Row houses shall have wall separations between each dwelling unit of at least a two-hour fire-rated wall which shall extend from the footing to and through the roof at least thirty (30) inches except as may be allowed by the city building code pertaining to area separation walls.

5) Off-street parking. Off-street parking spaces shall be provided for each dwelling unit in compliance with Section 14-03-10 hereof.

6) Regulations Imposed on Overall Structure. The lot coverage requirements and the

minimum front, side and rear yard setbacks shall be imposed on the overall structure rather than on each individual unit.

f. Health medical group. Only within area bounded by Fourth and Tenth Streets and Avenue A and Boulevard Avenue.

g. Single-family and two-family dwelling only within the following described area:

1) Area bounded by Washington Street, Boulevard Avenue, Sixteenth Street and Broadway Avenue;

2) Area bounded by Ninth Street, Sweet Avenue, Sixteenth Street and Indiana Avenue;

3) Area bounded by Third Street, Divide Avenue, Fourth Street and Boulevard Avenue.

h. Townhouses. Attached single-family dwelling in groups of not more than ten (10) or less than four (4).

1) Density. The maximum allowable density per acre shall be as stipulated in the underlying zoning district.

2) Lot and Yard Requirements. Each attached single-family dwelling hereafter erected as part of a townhouse shall conform to the following minimum lot area and yard requirements:

	Interior	End
Lot area in square feet	1,200	1,400
Lot width of front building line in feet	20	25
Depth of lot in front	40	40
Depth of front yard in feet	5	5
Width of side yard in feet	N/A	5
Depth of rear yard in feet	N/A	N/A

3) Height regulations. The maximum height of any principal building shall be forty (40) feet.

4) Safety provision. Townhouses shall have wall separations between each dwelling unit of at least a two-hour fire-rated wall which shall extend from the footing to and through the roof

at least thirty (30) inches except as may be allowed by the city building code pertaining to area separation walls.

5) Off-street parking. Off-street parking spaces shall be provided for each dwelling unit in compliance with Section 14-03-10 hereof.

6) Regulations Imposed on Overall Development. The lot coverage requirements and the minimum front, side and rear yard setbacks for the underlying district shall be imposed on the overall development rather than on each individual unit or structure. If the townhouse project is arranged with each structure on a separate common parcel rather than on a common parcel for the overall development, the lot coverage requirements and the minimum front, side and rear yard setbacks for the underlying district shall be imposed on each structure rather than the overall development.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Child care center.

b. Church.

3. Density. The maximum allowable density per net acre shall be stipulated in each district. The density shall vary between three (3) and thirty (30) units per net acre.

4. Lot area. Each permitted structure hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953, a multiple-family dwelling and accessory buildings may be erected subject to zone density restrictions and provided said lot contains at least five thousand (5,000) square feet.

5. Lot width. Each lot shall have a width of not less than sixty (60) feet, measured along the front building line. Provided, however, that for a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

6. Lot coverage. The ground area occupied by the principal building and all accessory buildings shall not exceed fifty (50) per cent of the total lot area. In computing the ground coverage, off-street parking area complying with Section 14-03-10 hereof shall be added to the actual area of the buildings, if such spaces are not furnished within a building.

7. Front yard. Each lot shall have a front yard not less than twenty-five (25) feet in depth. Such front yard setbacks shall apply to all structures permitted on or after August 12, 1997. Any structure originally permitted prior to August 12, 1997 that is damaged to the extent that the foundation is no longer usable must comply with this section if it is rebuilt.

8. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot and in no case shall a side yard be less than ten (10) feet in width. On any lot having an average width of fifty (50) feet or less, each side yard shall not be less than ten (10) per cent of the width of the lot and in no case less than five (5) feet in width. For lots where the average lot width exceeds two hundred (200) feet, the sum of the two (2) side yards shall be no less than forty (40) feet, but in no case shall a side yard in excess of twenty (20) feet be required except as required herein for increased building height. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Such sideyard setbacks on corner lots shall apply to all structures permitted on or after August 12, 1997. Any structure originally permitted prior to August 12, 1997 that is damaged to the extent that the foundation is no longer usable must comply with this section if it is rebuilt. For buildings in excess of two stories in height permitted on or after October 1, 2007, the required side yard setback shall be increased by 10 feet for each additional story in height over two.

9. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in width. Such rear yard setbacks shall apply to all structures permitted on or after August 12, 1997. Any structure originally permitted prior to August 12, 1997 that is damaged to the extent that the foundation is no longer usable must comply with this section if it is rebuilt. For buildings in excess of two stories in height permitted on or after October 1, 2007, the required rear yard setback shall be increased by 10 feet for each additional story in height over two.

10. Height limits. No principal building shall exceed sixty (60) feet in height. No accessory building shall exceed twenty-five (25) feet in height. For buildings in excess of two stories in height permitted on or after October 1, 2007, the required side and rear yard setbacks shall be increased by 10 feet for each additional story in height over two.

(Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 4864, 08-12-97; Ord. 4947, 10-27-98; Ord. 4970, 04-27-99; Ord. 5027, 02-08-00; Ord. 5527, 06-27-06; Ord. 5563, 11-28-06; Ord. 5641, 10-09-07; Ord. 5678, 07-22-08; Ord. 5958, 03-26-13)

14-04-08. RT Residential District. In any RT residential district the following regulations shall apply:

1. General description. The RT residential district is established as a district in which the use of land is high density residential uses and limited business development. For the RT residential district, in promoting the general purposes of this title, the specific intent of this section is:

a. To encourage the construction of and continued use of the land for residential purposes and limited business uses on urban lots.

b. To prohibit those commercial and service uses and industrial uses characterized by a high volume of direct daily customer contact and heavy volumes of vehicular traffic.

c. To encourage the discontinuance of uses that would not be permitted as new uses under the provisions of this title.

d. To discourage the expansion of commercial uses and encroachment of such districts into surrounding residential districts.

e. To discourage any use, which because of its character or size would create requirements and cost for public services, such as police and fire protection, water supply and sewerage substantially in excess of such requirements if the district were developed solely for multifamily dwellings and limited business development.

2. Uses permitted. The following uses are permitted.

a. A single- or two-family living unit when used in conjunction with a commercial use.

b. Multifamily dwelling.

c. Group dwelling.

d. Education group.

e. Health and medical group.

f. Public recreation group.

g. Office-bank group.

h. Row houses. Attached single-family dwelling in groups of not more than eight (8) nor less than two (2).

1) Density. The maximum allowable density is sixteen (16) families per net acre.

2) Lot area.

a) Lot and yard requirement regulations for row house use. Each attached single-family dwelling hereafter erected shall conform to the following minimums:

	Interior	Interior End	Street Corners
Lot area in square feet	2,300	3,220	3,795
Lot width of front building line in feet	20	28	33
Depth of lot in feet	115	115	115
Depth of front yard in feet	25	25	25
Width of side yard in feet	-	10	25
Depth of rear yard in feet	20	20	20

3) Height regulations. The maximum height of any principal building shall be forty (40) feet.

4) Safety provision. Row houses shall have wall separations between each dwelling unit of at least a two-hour fire-rated wall which shall extend from the footing to and through the roof at least thirty (30) inches except as may be allowed

by Chapter 5 of the city building code pertaining to area separation walls.

5) Access to rear yards. The required rear yard to each row dwelling shall have an unobstructed access to a public walkway at least four (4) feet wide extending to an alley or street.

6) Off-street parking. Off-street parking spaces shall be provided for each dwelling unit as provided under Section 14-03-10 of this ordinance.

i. Beauty shop, barber shop.

j. Ancillary retail sales of material products directly related to the primary business such as hair care products being sold at a beauty shop or barber shop. Such product display areas shall not occupy more than 25% (twenty-five percent) of the gross floor area of the primary business.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Church.

b. Child care center.

c. Mortuary/funeral homes.

3. Density. The maximum allowable density is thirty (30) families per net acre.

4. Lot area. Each building containing dwelling units hereafter erected shall be located on a lot having not less than the following:

a. Each multifamily dwelling hereafter erected together with its accessory buildings shall comply with all regulations governing such uses in an RM residential district as provided under Section 14-04-07 except no lot shall be less than seven thousand (7,000) square feet in size.

b. A permitted commercial use shall be located on a lot containing at least seven thousand (7,000) square feet.

5. Lot width. Each lot shall have a width of not less than sixty (60) feet measured along the front building line.

6. Lot coverage. Residential and commercial uses.

a. Residential use. The ground area occupied by the principal building and all accessory buildings shall not exceed fifty (50) per cent of the total lot area. In computing the floor area ratio and ground coverage, appropriate square footage shall be added to the actual area of the principal building and all accessory buildings to provide off-street parking spaces as required by Section 14-03-10 of this ordinance, if such spaces are not furnished within a building.

b. Commercial use or commercial and residential uses. The ground area occupied by the principal building and accessory buildings shall not exceed seventy-five (75) per cent of the area of the lot. In computing the ground coverage of a building, off-street parking area complying with Section 14-03-10 hereof shall be added to the actual area of the building, if such spaces are not furnished within the building.

7. Front yard. Each lot shall have a front yard not less than fifteen (15) feet in depth.

8. Side yards.

a. Residential use. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) per cent of the average width of the lot. In no case shall any side yard be less than ten (10) feet. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2).

b. Non-residential use. On any lot on which the principal building is designed and used for nonresidential use, no side yards shall be required except where such lot is located adjacent to a residential district, in which case that side adjoining such residential district shall comply with the side yard requirements of such residential district. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the

required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) for any side yard located adjacent to an R5, R10 or RM zoning district.

9. Rear yards.

a. Residential use. Each lot shall have a rear yard not less than ten (10) feet in depth. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2).

b. Non-residential use. Each lot shall have a rear yard not less than ten (10) feet in depth. Provided, however, that where the rear of a lot adjoins an alley, no rear yard shall be required for a principal nonresidential building. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2) for any rear yard located adjacent to an R5, R10 or RM zoning district.

10. Height limit. No principal building shall exceed fifty (50) feet in height; no accessory building shall exceed twenty-five (25) feet in height. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required side and rear yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) as required by this section.

(Ord. 4323, 4-24-90; Ord. 4351, 1-02-91; Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 5027, 02-08-00; 5451, 08-23-05; Ord. 5527, 06-27-06; Ord. 5763, 12-22-09; Ord. 5958, 03-26-13)

14-04-09. <u>HM Medical Facility District</u>.

1. General description. The HM medical facility district is established as a district in which the principal use of the land is for health and medical uses. For HM medical facility districts, in promoting the general purposes of this title, the specific intent of this section is:

a. To encourage construction and continuing operation of the land uses which directly affect the health of community residents on urban lots.

b. To provide an identifiable area within the community for cooperation and continuing medical research and treatment of human beings.

c. To provide for such other uses as are in harmony with the medical uses existing in the district.

d. To prohibit uses which are or may be disruptive of the main purpose of the district.

e. To encourage discontinuance of existing uses that would not be permitted as new uses under the provision of this title.

2. Uses permitted. The following uses are permitted in HM medical facility districts:

a. Single-family dwelling.

b. Two-family dwelling.

c. Multiple family housing.

d. Row houses/townhouses (subject to all requirements for same in RM residential zone.)

e. Group dwelling.

f. Professional offices other than health care offices provided they occupy no more than fifty (50) per cent of the gross leasable area of any structure.

g. Education group.

h. Hotel.

i. Motel.

j. Health-medical group.

k. Public recreation group.

l. Restaurant, provided that all food is consumed within and enclosed building and provided further that this use is an accessory use to another allowable use in this district.

m. Service group A uses as follows: Travel agency, barbershop, beauty shop, dressmaker, tailor, dry cleaning pickup agency, laundry pickup agency and self-service laundry.

n. Retail group A uses as follows: Book, magazine or newspaper store, candy store, delicatessen,

drugstore, flower shop, ice cream parlor and hobby shop.

o. Commercial parking lot.

p. Banks.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Child care center.

b. Church.

3. Density. Maximum allowable densities are the same as allowed for the corresponding type of construction and occupancy in RM residential zone.

4. Lot area. Each building containing dwelling units hereafter erected shall be located on a lot having not less than the following:

a. Each multifamily dwelling, townhouse or row house hereafter erected together with its accessory building shall comply with all regulations governing such uses in RM residential district as provided under Section 14-04-07 except no lot shall be less than seven thousand (7,000) square feet in size. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953, a single-family or two-family dwelling and accessory buildings may be erected on a lot containing not less than five thousand (5,000) square feet.

b. Any other permitted uses shall be located on a lot containing at least seven thousand (7,000) square feet.

5. Lot width. Each lot shall have a width of not less than sixty (60) feet measured along the front building line; provided, however, that on a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

6. Lot coverage. Residential and commercial use.

a. Residential use. The ground area of the principal building and all accessory buildings shall not exceed fifty (50) per cent of the total lot area. In computing the ground coverage, sufficient area shall

be added to the actual area of the buildings to provide off-street parking spaces as required by Section 14-03-10 of this ordinance, if such spaces are not furnished within a building.

b. Commercial use or commercial and residential uses. The ground area occupied by the principal building and accessory building shall not exceed seventy-five (75) per cent of the area of the lot. In computing the ground coverage of a building, sufficient area shall be added to the coverage of said building for off-street parking space as required by Section 14-03-10 if such spaces are not furnished within the building.

Exception. Upon presentation of a site plan indicating building locations, sizes, design and other land uses, the board of adjustment may adjust lot coverage up to one hundred (100) per cent of the lot.

7. Front yard. There is no minimum front yard setback, unless the property is immediately adjacent to a residentially-zoned property, in which case the minimum front yard setback shall be fifteen (15) feet.

8. Side yards. A lot on which is erected a residential structure shall have two (2) side yards, one on each side of the principal building. The sum width of the two(2) side yards shall not be less than twenty (20) per cent of the average width of the lot. In no case shall the side yard be less than six (6) feet. On any lot on which the principal building is designed and used for nonresidential use, no side yards shall be required except where such lot is located adjacent to a residential district in which case that side adjoining such residential district shall comply with the side yard requirement of such residential district. Commercial buildings of wood and unprotected metal shall have side yards, complying with the requirements of the city building code, Chapter 4-02 of the Code of Ordinances of the City of Bismarck. All side yards are subject to variance under provisions of subsection (6)(b) of this district regulation.

9. Rear yards. Each lot shall have a rear yard not less than ten (10) feet in depth, except as may be allowed under provisions of subsection 6(b) of this district regulation. Provided, however, that where the rear of a lot adjoins an alley, no rear yard shall be required for a principal non-residential building.

10. Height limit. No nonmedical principal building shall exceed fifty (50) feet in height; no accessory building shall exceed twenty-five (25) feet in height. Buildings housing more than fifty (50) per cent occupants whose uses fall within health-medical group uses in excess of fifty (50) feet in height may not be located within one hundred (100) feet of a single- or two-family dwelling in a residential zoning district.

(Ord. 4351, 1-02-91; Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 5027, 02-08-00; Ord. 5527, 06-27-06; Ord. 5768, 04-27-10; Ord. 5958, 03-26-13)

14-04-10. CA Commercial District. In any CA commercial district, the following regulations shall apply:

1. General description. The CA commercial district is established as a district in which the predominant use of the land is for commercial and service uses to serve residential districts in the general area. The CA commercial district should be served by arterial or collector streets. For the CA commercial district, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the continued use of the land for neighborhood commercial and services uses.

b. To prohibit heavy commercial and services uses and industrial uses of the land, and to prohibit any other use which would substantially depreciate the value of residential districts surrounding the CA commercial district.

c. To encourage the discontinuance of mixed uses and uses that would not be permitted as new uses under the provisions of this article.

d. To discourage the expansion of CA commercial districts and the encroachment of such districts into surrounding residential districts.

e. To discourage any use, which because of its character or size, would create requirements and costs for public services, such as police and fire protection, water supply and sewerage substantially in excess of those necessary if the district were developed solely for neighborhood commercial and service uses.

2. Uses permitted. The following uses are permitted:

a. A single- or two-family dwelling when used in conjunction with a commercial use.

b. Multifamily dwelling.

c. Group dwelling.

d. Row houses/townhouses (subject to RM residential zone regulations).

e. Retail group A.

f. Service group A.

g. Office-bank group.

h. Health-medical group.

i. Public recreation group.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Temporary Christmas tree sales.

b. Temporary farm and garden produce sales.

c. Filling station.

d. Seasonal nursery and bedding stock sales.

e. Church.

f. Child care center.

g. Drive-in bank.

h. Retail liquor sales.

3. Lot area.

a. Commercial use. Each principal building hereafter erected, together with accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet.

b. Multifamily residential use. Each dwelling unit hereafter erected or altered shall comply with all regulations governing such uses in an RM residential district.

4. Lot width. Each residential lot shall have a width of not less than sixty (60) feet, measured along the front building line.

5. Lot coverage.

a. Commercial use. The lot coverage of a commercial building and its accessory buildings shall not exceed seventy (70) per cent of the lot area. In computing the lot coverage of a commercial building and its accessory buildings, sufficient area shall be added to its ground coverage for each off-street parking space as required by Section 14-03-10 of this ordinance.

b. Residential use. The ground area occupied by the principal building and all accessory buildings shall not exceed fifty (50) per cent of the total area. In computing the lot coverage, sufficient area shall be added to the actual area of the principal building and all accessory buildings to provide off-street parking spaces as required by Section 14-03-10 of this ordinance if such spaces are not furnished within a building.

6. Front yard. Each lot shall have a front yard not less than fifteen (15) feet in depth.

7. Side yard.

a. Residential use. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall be not less than twenty (20) per cent of the average width of the lot. In no case shall the side yard be less than ten (10) feet. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2).

b. Commercial use. On any lot on which the principal building is designed or used for a commercial use, the side yards shall be at least ten (10) feet in width. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) for any side yard located adjacent to an R5, R10 or RM zoning district.

8. Rear yard.

a. Residential use. Each lot shall have a rear yard not less than ten (10) feet in depth. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2).

b. Commercial use. Each lot shall have a rear yard not less than ten (10) feet in depth unless adjacent to a public alley. For buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2) for any rear yard located adjacent to an R5, R10 or RM zoning district.

9. Height limits.

a. Commercial buildings. No building shall exceed forty (40) feet in height. No accessory building shall exceed twenty-five (25) feet in height. For buildings in excess of two (2) stories in height, permitted on or after December 22, 2009, the required side and rear yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) for any side or rear yard located adjacent to an R5, R10 or RM zoning district.

b. Residential buildings. Height limits shall follow those in effect in RM residential zones. For buildings in excess of two (2) stories in height, permitted on or after December 22, 2009, the required side and rear yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2).

10. Off-street parking space. Off-street parking space requirements of Section 14-03-10 hereof shall be complied with.

(Ord. 4564, 11-23-93; Ord. 4702, 06-13-95; Ord. 4808, 11-12-96; Ord. 5027, 02-08-00; Ord. 5527, 06-27-06; Ord. 5763, 12-22-09; Ord. 5958, 03-26-13)

14-04-11. CB Commercial District. Section 14-04-11 is hereby repealed.

(Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 4808, 11-12-96; Ord. 5027, 02-08-00; Ord. 5564, 11-28-06)

14-04-12. CG Commercial District. In any CG commercial district the following regulations shall apply:

1. General description. The CG commercial district is a heavy commercial area located outside the central business district to provide commerce and service to the City of Bismarck and surrounding regional market. The CG commercial district is established to promote the general purpose of this article, the specific intent of this section is:

a. To encourage the continued expansion of the commercial facilities within the city without creating increased vehicular congestion in the existing central business district.

b. To provide an orderly and comprehensive expansion of commercial services within the city.

c. To prevent commercial encroachment on existing residential districts.

d. To encourage the development of a conveniently arranged district offering a broad range of commercial and professional services in a relaxed atmosphere and in an area where adequate off-street parking will be provided.

2. Uses permitted. The following uses are permitted:

a. A single- or two -family dwelling when used in conjunction with a commercial use.

b. Multifamily dwelling.

c. Group dwelling.

d. Multifamily high rise.

e. Hotel-motel.

f. Retail group A.

g. Service group A.

h. Office-bank group.

i. Retail group B.

j. Service group B.

k. Commercial recreation group.

l. Wholesale group.

m. Health-medical group.

n. Education group.

o. Public recreation group.

p. Railroad or bus passenger station.

q. Commercial greenhouse.

r. Commercial parking lot.

The following special uses are allowed as special uses pursuant to Section 14-03-08 hereof:

a. Temporary Christmas tree sales.

b. Temporary religious meetings.

c. Temporary farm and garden produce sales.

d. Seasonal nursery and bedding stock sales.

e. Filling station.

f. Church.

g. Drive-in retail or service establishment.

h. Child care center.

i. Small animal veterinary clinic.

j. Golf driving range.

k. Auto laundry - car wash.

l. Retail liquor sales.

m. Microbrewery.

3. Lot area. Any permitted principal building or structure, together with its accessory buildings shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that such building and accessory buildings may be located on a lot containing not less than five thousand (5,000) square feet if such lot is on a plat recorded prior to 1953.

4. Lot width. Each lot shall have a width of not less than sixty (60) feet, measured along the front building line. Provided, however, that on a record lot corresponding to a plat or deed recorded prior to 1953, the minimum lot width measured along the front building line may be reduced to not less than fifty (50) feet.

5. Lot coverage. The lot coverage of any nonresidential building and its accessory building shall not exceed eighty (80) per cent. In computing the lot coverage, sufficient area shall be added for each off-street parking space as required in Section 14-03-08 of this article. For the purposes of this section any structure with living units below the second floor shall be considered a residential use. All residential uses shall comply with RM residential zone regulations.

6. Front yard. A fifteen (15) foot front yard shall be required of any building in a CG commercial district except that all structures located on principal arterials shall have a fifty (50) foot front yard. Buildings located on the following principal arterials shall be exempt from the fifty (50) foot front yard requirement: Main Avenue west of 26th Street; State Street between Divide Avenue and Interstate 94; and 7th and 9th Streets between Bismarck Expressway and Boulevard Avenue.

7. Side yards. No side yard shall be required of any principal nonresidential building in a CG district. For non-residential buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required side yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) for any side yard located adjacent to an R5, R10 or RM zoning district. Residential structures shall comply with requirements in effect for RM residential zones.

8. Rear yard. Each lot shall have a rear yard not less than ten (10) feet in depth. Provided, however, that where the rear of a lot adjoins an alley, no rear yard shall be required for a principal nonresidential building. For non-residential buildings in excess of two (2) stories in height permitted on or after December 22, 2009, the required rear yard setback shall be increased by ten (10) feet for each additional story in height over two (2) for any rear yard located adjacent to an R5, R10 or RM zoning district. Residential structures shall comply with requirements in effect for RM residential zones.

9. Height limit. No building shall exceed one hundred thirty (130) feet in height. For buildings in

excess of two (2) stories in height permitted on or after December 22, 2009, the required side and rear yard setbacks shall be increased by ten (10) feet for each additional story in height over two (2) as required by this section.

10. Dwelling regulations. Each multifamily or group dwelling hereafter erected shall comply with all regulations governing such uses in an RM residential district.

11. Dwelling regulations – high-rise. Each multifamily high-rise dwelling hereafter erected shall comply with the following regulations:

a. Height limits. No multifamily high-rise apartment house shall exceed one hundred thirty (130) feet in height. For each story in excess of two (2) there shall be added one foot to the minimum width and depth of each required yard.

b. Maximum density. The maximum allowable density is forty-two (42) families per acre.

c. Lot coverage. The ground area occupied by the principal building and all accessory buildings shall not exceed seventy-five (75) per cent of the total lot area. In computing the floor area ratio and ground coverage, sufficient parking area shall be added to the actual area of the principal building and all accessory buildings to provide off-street parking spaces as required by Section 14-03-10 of this ordinance, if such spaces are not furnished within a building.

d. Front yard. Each lot shall have a front yard not less than fifteen feet in depth.

e. Side yards. Each lot shall have two side yards, one on each side of the principal building. The minimum width of each side yard shall be fifteen feet. No building on a corner lot shall have a side yard on the side street of less than fifteen feet; provided, further, that no high-rise dwelling shall be located within one hundred fifty feet of any residential zoning district.

f. Rear yard. Each lot shall have a rear yard of not less than fifteen feet in depth.

12. Off-street parking and loading space. Off-street parking and loading space requirements of section 14-03-10 hereof shall be complied with.

(Ord. 4208, 5-10-88; Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4703, 06-13-95; Ord. 4734, 11-14-95; Ord. 4735, 11-14-95; Ord. 4808, 11-12-96; Ord. 4811, 12-17-96; Ord. 5027, 02-08-00; Ord. 5527, 06-27-06; 5719, 05-12-09; Ord. 5763, 12-22-09; Ord. 5958, 03-26-13)

14-04-13. CR Commercial District.

1. General description. The CR commercial district is established as a district in which the principal use of the land is for regional shopping centers and related services. For the CR commercial district in promoting the general purposes of this article, the specific intent of this section is:

a. To prohibit residential, heavy commercial and industrial uses of the land, and to prohibit any other use which would substantially interfere with the development or continuation of commercial structures in the district.

b. To discourage any use which, because of its character or size, would interfere with the use of land in the district as a shopping and service center for the regional area served.

2. Uses permitted. The following uses are permitted:

a. Retail group A.

b. Service group A.

c. Office-bank group.

d. Commercial recreational group.

e. Health-medical group.

The following uses are allowed under special uses pursuant to Section 14-03-08 hereof:

a. Temporary Christmas tree sales.

b. Temporary farm and garden produce sales.

c. Seasonal nursery and bedding stock sales.

d. Filling station.

e. Child care center.

f. Drive-in retail or service establishment.

g. Church.

h. Auto laundry - car wash.

i. Retail liquor sales.

3. Lot area. No CR commercial district shall contain less than forty (40) acres.

4. District width. Each CR commercial district shall have an average width of not less than one thousand (1,000) feet and shall have no principal dimension less than five hundred (500) feet in length.

5. Floor area. The gross floor area of the principal building shall be not less than three hundred thousand (300,000) square feet.

6. Setback. A minimum setback of fifty (50) feet shall be required of the principal building except when it fronts on an interior street within the district. A setback of at least twenty-five (25) feet shall apply for all other buildings.

7. Height limits. No building shall exceed fifty (50) feet in height.

8. Off-street parking. Off-street parking shall be provided in an amount equivalent to five 5.0 spaces per thousand (1,000) square feet of gross leasable area. Where minimum setbacks occur, no parking shall be allowed between a building and an adjacent street. A site circulation plan shall be prepared by the shopping center and approved by the Building Official.

(Ord. 4462, 08-18-92; Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4808, 11-12-96; Ord. 5027, 02-08-00; Ord. 5728, 05-26-09; Ord. 5958, 03-26-13)

14-04-14. MA Industrial District. In any MA industrial district the following regulations shall apply:

1. General description. The MA industrial district is established as a district in which the principal use of land is for heavy commercial establishments and non-nuisance industries. For MA industrial districts, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the construction of and the continued use of the land for commercial and industrial buildings.

b. To prohibit use of the land for heavy nuisance industry or any other use which would substantially interfere with the development or continuation of commercial and industrial establishments in the district.

c. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this article.

d. To discourage the use of the land for residences for the purpose both of preserving the area for its appropriate use and for preventing the location of residences in an area inappropriate for residential use.

2. Uses permitted. The following uses are permitted:

a. Hotel-motel.

b. Retail group A.

c. Retail group B.

d. Service group A.

e. Service group B.

f. Wholesale group.

g. Truck terminal.

h. Railroad or bus passenger station.

i. Railroad freight station.

j. Industrial group A.

k. Radio or television transmitting station.

l. Commercial recreation group.

m. Office-bank group.

The following uses are allowed as special uses pursuant to Section 14-03-08 hereof:

a. Temporary Christmas tree sales.

b. Temporary religious meetings.

c. Temporary circus/fair/carnival.

d. Temporary farm and garden produce sales.

e. Temporary fireworks sales.

f. Seasonal nursery and bedding stock sales.

g. Solid waste disposal facility.

h. Airport.

i. Recreational vehicle park.

j. Filling station.

k. Drive-in retail or service establishment.

l. Motor vehicle parts salvage yard.

m. Small animal veterinary clinic.

n. Animal hospital or kennel.

o. Golf driving range.

p. Junkyard.

q. Retail liquor sales.

r. Racetracks.

s. Child care center.

3. Lot area. Each principal building hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than ten thousand (10,000) square feet.

4. Lot width. Each lot shall have width of not less than sixty (60) feet measured along the front building line.

5. Lot coverage. The ground area occupied by the principal building or buildings and accessory buildings shall not exceed eighty (80) percent of the total area of the lot. In computing the lot coverage of a principal building and its accessory buildings, sufficient area shall be added to its ground coverage for each off-street parking space as required by Section 14-03-10 of this ordinance.

6. Front yard. A fifteen (15) foot front yard shall be required of any building in an MA industrial district except that all structures located on principal arterials shall have a fifty (50) foot front yard. Buildings located on the following principal arterials shall be exempt from the fifty (50) foot front yard requirement: Main Avenue west of 26th Street; State Street between Divide Avenue and Interstate 94; and 7th and 9th Streets between Bismarck Expressway and Boulevard Avenue.

7. Side yards. No side yards shall be required except where a lot adjoins a lot in a residential district. The side yards shall be as required for the residential district.

8. Rear yard. A rear yard of at least ten (10) feet is required except when located adjacent to a public alley.

9. Height limits. No principal building shall exceed seventy-five (75) feet in height. All accessory buildings shall not exceed fifty (50) feet in height.

10. Off-street parking and loading space. Off-street parking and loading requirements of Section 14-03-10 hereof shall be complied with.

(Ord. 4242, 2-28-89; Ord. 4461, 08-18-92; Ord. 4486, 04-27-93; Ord. 4735, 11-14-95; Ord. 4808, 11-12-96; Ord. 4811, 12-17-96; Ord. 4912, 07-14-98; Ord. 5958, 03-26-13)

14-04-15. MB Industrial District. In any MB industrial district the following regulations shall apply:

1. General description. The MB industrial district is established as a district in which the principal use of land is for heavy commercial and industrial establishments, which may create some nuisance, and which are not properly associated with nor compatible with residential, institutional and neighborhood commercial and service establishments. For the MB industrial district, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the construction of and the continued use of the land for heavy commercial and industrial purposes.

b. To prohibit residential and neighborhood commercial use of the land and to prohibit any other use which would substantially interfere with the development, continuation or expansion of commercial and industrial uses in the district.

2. Use permitted. The following uses are permitted.

a. Retail group B.

b. Service group B.

c. Wholesale group.

d. Truck terminal.

e. Railroad freight classification yards and stations.

f. Farming group.

g. Industrial group A.

h. Industrial group B.

i. Oil or gas well.

j. Radio or television transmitting station.

k. Sand or gravel extraction and processing.

l. Sewage treatment plant.

The following uses are allowed as special uses pursuant to Section 14-03-08 hereof:

a. Temporary Christmas tree sales.

b. Temporary circus/fair/carnival.

c. Temporary religious meeting.

d. Seasonal nursery and bedding stock sales.

e. Temporary fireworks sales.

f. Temporary farm and garden produce sales.

g. Airport.

h. Solid waste disposal facility.

i. Motor vehicle parts salvage yard.

j. Small animal veterinary clinic.

k. Animal hospital or kennel.

l. Junkyard.

m. Adult entertainment center.

n. Auto laundry - car wash.

o. Vehicular racetrack.

p. Hazardous material bulk storage plant.

3. Lot area. Each principal building hereafter erected, together with its accessory buildings, shall be located on a lot having not less than ten thousand (10,000) square feet. Provided, however, that in a MB industrial district, and in no other residential, commercial or industrial district, it is permissible to erect more than one principal building on a zoning lot, provided that all other requirements of this section and this article are complied with.

4. Lot width. Each lot shall have a width of not less than seventy-five (75) feet measured along the front building line.

5. Lot coverage. The lot coverage of the principal building and all accessory buildings shall not exceed eighty (80) percent of lot. In computing the lot coverage of a principal building and its accessory buildings, sufficient area shall be added to its ground coverage for each off-street parking space as required by Section 14-03-10 of this ordinance.

6. Front yard. Each lot shall have a front yard not less than fifty (50) feet in depth.

7. Side yards. Each lot shall have two (2) side yards, one on each side of any principal building. The sum of the widths of the two (2) side yards shall be not less than twenty (20) per cent of the average width of the lot. On any lot having an average width of seventy-five (75) feet or less, each side yard shall be not less than ten (10) per cent of the width of the lot, and in no case shall a side yard be less than five (5) feet in width. On a lot having an average width greater than seventy-five (75) feet, neither side yard shall be less than seven and one-half (7.5) feet in width and no side yard need be greater than fifty (50) feet in width. On a lot containing two (2) principal buildings located side by side, there are no minimum requirements for side yards between the two (2) buildings.

8. Rear yard. Each lot shall have a rear yard not less than twenty-five (25) feet in depth.

9. Height limits. No principal building shall exceed seventy-five (75) feet in height. No accessory building shall exceed fifty (50) feet in height.

10. Off-street parking and loading space. Off-street parking and loading requirements of Section 14-03-10 hereof shall be complied with.

(Ord. No. 4242, 2/28/89; Ord. 4486, 04/27/93)

14-04-16. "P" Public Use District. In any P public use district the following regulations shall apply.

1. General description. The P public use district is established as a district in which the predominant use of land is for public uses. For the P public use district, in promoting the general purposes of this article, the specific intent of this section is:

a. To encourage the continued use of the land for public recreation, education and other government services.

b. To prohibit residential, commercial and industrial uses of the land, and to prohibit any use of the land which would diminish its value in serving the needs of the public.

2. Uses permitted. The following uses are permitted.

a. Education group.

b. Public recreation group.

c. Water treatment plant.

d. Buildings and necessary on-site facilities required for conduct of government.

e. Commercial recreation group occupying public owned lands.

f. Sewerage treatment plant.

g. Municipal landfill.

h. Parking lots.

i. Gift shop occupying public owned lands.

j. Food service establishment exclusive of drive-in restaurant, occupying public owned lands.

The following special uses are permitted as per Section 14-03-08 hereof:

a. Airport.

b. Cemetery.

3. Lot coverage. The lot coverage of the principal building and all accessory buildings shall not exceed thirty (30) per cent of the lot.

4. Front yard. Each lot shall have a front yard of not less than twenty-five (25) feet in depth.

5. Side yards. Each lot shall have two (2) yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall be not less than twenty (20) per cent of the average width of the lot. On any lot having an average width of sixty (60) feet or less, each side yard shall be not less than ten (10) per cent of the width of the lot, and in no case shall a side yard be less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet neither side yard shall be less than six (6) feet in width; provided, however, that for a building thirty-five (35) feet or less in height, neither side yard is required to exceed fifteen (15) feet in width.

6. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth.

7. Height limits. No principal building shall exceed fifty (50) feet in height. For each one foot or fraction thereof that a building exceeds thirty-five (35) feet in height there shall be added four (4) feet to the minimum width of each side yard, two (2) feet to the minimum depth of front yard, and two (2) feet to the minimum depth of rear yard required by this section. Any accessory building that exceeds twenty-five (25) feet in height shall be considered a principal building for the purpose of figuring yards and distance from lot boundary lines.

8. Additional Development Standards for Land Abutting the Missouri River. In order to preserve and enhance the environmental and recreational qualities of the Missouri River, conserve the scenic and historic values of the

Missouri River shoreland, protect shoreland development from river bank erosion, and provide for the wise use of the river and related land resources, the following additional development standards are hereby established for land abutting the Missouri River which is outside of the corporate limits of the City of Bismarck and within the Extraterritorial Area (ETA):

a. Structure Setbacks. All structures shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

b. Design Criteria. Structures should be placed and designed in a manner as to reduce visibility as viewed from the river and adjacent shoreland by vegetation, topography or the color of the structure, assuming summer, leaf-on conditions.

c. Impervious Surface Coverage. The percentage of lot covered by impervious surfaces (structures, paved surfaces, etc.) shall not exceed 25 percent of the lot area.

d. On-Site Sewage Treatment Facility Setbacks. All sewage treatment facilities, including drainfields, shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

e. Stairways, Lifts and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements: 1) stairways and lifts shall not exceed four feet in width; 2) landings for stairways and lifts shall not exceed 32 square feet in area; 3) canopies or roofs are not allowed on stairways, lifts or landings; 4) stairways, lifts and landings may be constructed on posts/pilings or placed in the ground, provided they are designed and built in a manner that controls soil erosion, meets building code requirements, and does not affect the integrity of bank stabilization projects.

f. Boat Docks. The placement of boat docks shall be allowed in accordance with the requirements of the North Dakota Century Code and any other applicable regulations.

g. Shore Impact Zone. Structures and accessory facilities, except stairways and landings, shall not be placed within a shore impact zone.

h. Steep Slopes. For structures and/or facilities to be placed on steep slopes, the Building Official may attach conditions on the building permit to prevent erosion and preserve existing vegetation.

i. Vegetation Alterations. Intensive vegetative clearing within the shore impact zone and on steep slopes is prohibited. Limited clearing of vegetation is permitted in order to provide a view of the river from the principal dwelling site and to accommodate the placement of permitted stairways, lifts or landings. Removal of vegetation that is dead, diseased or that poses a safety hazard is allowed.

j. Topographic Alterations Above the Ordinary High Water Mark. Grading, filling and excavation necessary for the construction of structures, sewage treatment systems or driveways under validly issued permits shall be allowed. Notwithstanding any other applicable regulations, any other topographic alterations must meet the following standards: 1) alterations shall not adversely affect adjacent or nearby properties; and 2) alterations must be designed and conducted in a manner that minimizes soil erosion, including the installation of erosion control measures as needed.

k. Topographic Alterations Below the Ordinary High Water Mark. All topographic alterations below the ordinary high water mark must be approved by the United States Army Corps of Engineers.

(Ord. 4384, 07-30-91; Ord. 5486, 02/28/06)

14-04-17. "A" Agricultural District. In an A agricultural district, the following regulations shall apply:

1. General description. The agricultural district is established as a district in which the predominant use of land is for general agricultural uses. For an A agricultural district, in promoting the general purposes of this ordinance, the specific intent of this section is:

a. To encourage the continued use of land for agricultural uses.

b. To prohibit scattered commercial and industrial use of land, and to prohibit any other use which would interfere with an integrated and efficient development of the land for more intensive urban uses as the city expands.

c. To discourage any use, which because of its character or size, would create unusual requirements and costs for public services, such as police and fire protection, water supply and sewerage before such services could be expanded efficiently in the normal development of the city.

d. To provide additional development standards for non-farm rural properties abutting the Missouri River developed after November 25, 2003.

2. Uses permitted. The following uses are permitted.

a. Public recreation group.

b. Farming group.

c. Golf course.

d. Livestock sales pavilion.

e. Loam stripping.

f. Oil or gas well.

g. Radio or television transmitting station.

h. Sand or gravel extraction and processing.

i. Sewage treatment plant.

j. One single-family dwelling shall be allowed for each parcel of land not less than forty (40) acres in size or the aliquot part of a corrective section intended to comprise a quarter-quarter-section, provided such aliquot part is not less than thirty-five (35) acres in size. For purposes of this section, a parcel refers to a contiguous tract of land which is taxed as a single tax parcel, located within a single section of land, and not bisected by a public roadway.

k. Family child care.

The following special uses are allowed as per Section 14-03-08 hereof:

a. Temporary circus/fair/carnival.

b. Temporary Christmas tree sales.

c. Temporary religious meetings.

d. Seasonal nursery and bedding stock sales.

e. Temporary fireworks sales.

f. Temporary farm and garden produce sales.

g. Solid waste disposal facility.

h. Recreational vehicle park.

i. Small animal veterinary clinic.

j. Animal hospital or kennel.

k. Airport.

l. Cemetery.

m. Junkyard.

n. Child care center.

o. Church.

p. Golf driving range.

q. Vehicular racetrack.

r. Hazardous material bulk storage plant.

3. Lot width. Each lot shall have a width of not less than six hundred sixty (660) feet, measured along the front property line.

4. Front yard. Each lot shall have a front yard as follows, as measured from the property line:

Arterial Road (feet)	*Collector Road (feet)*	*Local Road (feet)*
175	125	40

All section line roads shall be classified as arterial highways unless specifically designated as a collector highway or local road.

5. Side yards. Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the width of the two (2) side yards shall be not less

than twenty (20) per cent of the average width of the lot, but in no case less than fifteen (15) feet per yard. Provided further, that no building housing livestock or poultry shall be less than fifty (50) feet distant from any residential building on an adjacent lot, nor shall such a building be less than fifty (50) feet from the boundary of any lot in a residential or commercial district. No building on a corner lot shall have a side yard on the side street less than the front yard requirements specified in this section.

6. Rear yard. Each lot shall have a rear yard not less than twenty (20) feet in depth. If such rear yard abuts an arterial or collector road right-of-way, building locations shall also conform to the front yard requirements specified in this section.

7. Height limits. No principal building for any permitted use shall exceed fifty (50) feet in height. For each one foot or fraction thereof that a building exceeds thirty-five (35) feet in height, there shall be added four (4) feet to the minimum width of each side yard, two (2) feet to the minimum depth of front yard, and two (2) feet to the minimum depth of rear yard required by this section. Any accessory building that exceeds twenty-five (25) feet in height shall be considered a principal building for the purpose of figuring yards and distances from lot boundary lines.

8. Parking requirements. All requirements for off-street parking and loading as shown in Section 14-03-10 of this ordinance shall apply only to nonagricultural uses which involve building(s).

9. Definition of "farm." For the purpose of the administration of this ordinance - A "farm" shall mean a single tract, or contiguous tract, of agricultural land containing a minimum of ten (10) acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than fifty (50) per cent of his annual net income; and the term "farmer" means an individual who normally devotes the major portion of his/her time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty (50) per cent of his/her annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who

at the time of retirement owned and occupied, as a farmer, the premises.

10. Additional Development Standards for Land Abutting the Missouri River. In order to preserve and enhance the environmental and recreational qualities of the Missouri River, conserve the scenic and historic values of the Missouri River shoreland, protect shoreland development from river bank erosion, and provide for the wise use of the river and related land resources, the following additional development standards are hereby established for land abutting the Missouri River:

a. Structure Setbacks. All structures shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

b. Design Criteria. Structures should be placed and designed in a manner as to reduce visibility as viewed from the river and adjacent shoreland by vegetation, topography or the color of the structure, assuming summer, leaf-on conditions.

c. On-Site Sewage Treatment Facility Setbacks. All sewage treatment facilities, including drainfields, shall be setback a minimum of 100 feet from the ordinary high water mark of the Missouri River.

d. Stairways, Lifts and Landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements: 1) stairways and lifts shall not exceed four feet in width; 2) landings for stairways and lifts shall not exceed 32 square feet in area; 3) canopies or roofs are not allowed on stairways, lifts or landings; 4) stairways, lifts and landings may be constructed on posts/pilings or placed in the ground, provided they are designed and built in a manner than controls soil erosion, meets building code requirements, and does not affect the integrity of bank stabilization projects.

e. Boat Docks. The placement of boat docks shall be allowed in accordance with the requirements of the North Dakota Century Code and any other applicable regulations.

f. Shore Impact Zone. Structures and accessory facilities, except stairways and landings, shall not be placed within a shore impact zone.

g. Steep Slopes. For structures and/or facilities to be placed on steep slopes, the Building Official may attach conditions on the building permit to prevent erosion and preserve existing vegetation.

h. Vegetation Alterations. Intensive vegetative clearing within the shore impact zone and on steep slopes is prohibited. Limited clearing of vegetation is permitted in order to provide a view of the river from the principal dwelling site and to accommodate the placement of permitted stairways, lifts or landings. Removal of vegetation that is dead, diseased or that poses a safety hazard is allowed.

i. Topographic Alterations Above the Ordinary High Water Mark. Grading, filling and excavation necessary for the construction of structures, sewage treatment systems or driveways under validly issued permits shall be allowed. Notwithstanding any other applicable regulations, any other topographic alterations must meet the following standards: 1) alterations shall not adversely affect adjacent or nearby properties; and 2) alterations must be designed and conducted in a manner that minimizes soil erosion, including the installation of erosion control measures as needed.

j. Topographic Alterations Below the Ordinary High Water Mark. All topographic alterations below the ordinary high water mark must be approved by the United States Army Corps of Engineers.

11. Accessory Buildings. All allowable accessory buildings to a non-farm single-family residence shall be limited to a maximum of one (1) percent of the total area of the lot up to a maximum of five thousand (5,000) square feet. Accessory buildings for the above computations shall include the following buildings: barns, stables and storage buildings, attached and detached garages. Attached garages are not included in the above computations, provided the area occupied by an attached garage does not exceed one and one-half times the area of the footprint of the dwelling portion of the principal structure to which it is attached.

All allowable accessory buildings to a non-farm single-family residence may be increased to a maximum of fifteen thousand (15,000) square feet in area, provided:

a. The property on which the accessory building(s) is to be located is no less than 80 acres in size.

b. The property on which the accessory building(s) is to be located is at least two (2) miles from the current corporate limits of Bismarck.

c. A special use permit is approved by the Planning Commission in accordance with the provisions of Section 14-03-08.

(Ord. 4486, 04-27-93; Ord. 4564, 11-23-93; Ord. 4803, 11-12-96; Ord. 5026, 02-08-00; Ord. 5027, 02-08-00; Ord. 5286, 11-13-03; Ord. 5287, 12-16-03; Ord. 5368, 11-23-04; Ord. 5478, 12-13-05; Ord. 5665, 05-27-08; Ord. 5902, 06-26-12; Ord. 5958, 03-26-13)

14-04-18. Planned Unit Developments. It is the intent of this section to encourage flexibility in development of land in order to promote its most appropriate use; to improve the design, character and quality of new development; to facilitate the adequate and economical provision of streets and utilities; and to preserve the natural and scenic features of open space.

1. Site plan, written statement and architectural drawings. The application must be accompanied by a site plan, a written statement and architectural drawings:

a. Site plan. A complete site plan of the proposed planned unit prepared at a scale of not less than one (1) inch equals one hundred (100) feet shall be submitted in sufficient detail to evaluate the land planning, building design, and other features of the planned unit. The site plan must contain, insofar as applicable, the following minimum information.

1) The existing topographic character of the land;

2) Existing and proposed land uses;

3) The location of all existing and proposed buildings, structures and improvements;

4) The maximum height of all buildings;

5) The density and type of dwelling;

6) The internal traffic and circulation systems, off-street parking areas, and major points of access to public right-of-way;

7) Areas which are to be conveyed, dedicated or reserved as common park areas, including public parks and recreational areas;

8) Proposed interior buffer areas between uses;

9) Acreage of PUD;

10) Utility service plan showing existing utilities in place and all existing and proposed easements;

11) Landscape plan; and

12) Surrounding land uses, zoning and ownership.

b. Written statement. The written statement to be submitted with the planned unit application must contain the following information:

1) A statement of the present ownership and a legal description of all the land included in the planned unit;

2) An explanation of the objectives to be achieved by the planned unit, including building descriptions, sketches or elevations as may be required to described the objectives; and

3) A copy of all proposed condominium agreements for common areas.

c. Architectural drawings - the following architectural drawings shall be submitted in sufficient detail to allow evaluation of building height, form, massing, texture, materials of construction, and type, size, and location of door and window openings:

1) Elevations of the front and one side of a typical structure.

2) A perspective of a typical structure, unless waived by the planning department.

2. Review and approval.

a. All planned units shall be considered by the planning commission in the same manner as a zoning change. The planning commission may grant the proposed planned unit in whole or in part, with or without modifications and conditions, or deny it.

b. All approved site plans for planned units, including modifications or conditions shall be endorsed by the planning commission and filed with the Director of Community Development. The zoning district map shall indicate that a planned unit has been approved for the area included in the site plan.

3. Standards. The planning commission must be satisfied that the site plan for the planned unit has met each of the following criteria:

a. Proposal conforms to the comprehensive plan.

b. Buffer areas between noncompatible land uses may be required by the planning commission.

c. Preservation of natural features including trees and drainage areas should be accomplished.

d. The internal street circulation system must be designed for the type of traffic generated. Private internal streets may be permitted if they conform to this ordinance and are constructed in a manner agreeable to the city engineer.

e. The character and nature of the proposal contains a planned and coordinated land use or mix of land uses which are compatible and harmonious with adjacent land areas.

4. Changes.

a. Minor changes in the location, setting, or character of buildings and structures may be authorized by the Director of Community Development.

b. All other changes in the planned unit shall be initiated in the following manner:

1) <u>Application for Planned Development Amendment</u>.

a) The application shall be completed and filed by all owners of the property

proposed to be changed, or his/their designated agent.

b) The application shall be submitted by the specified application deadline and on the proper form and shall not be accepted by the Director of Community Development unless and, until all of the application requirements of this section have been fulfilled.

2) Consideration by Planning Commission. The planning commission secretary, upon the satisfactory fulfillment of the amendment application and requirements contained herein, shall schedule the requested amendment for a regular or special meeting of the planning commission, but in no event later than sixty (60) calendar days following the filing and acceptance of the application. The planning commission may approve and call for a public hearing on the request, deny the request or table the request for additional study.

3) Public Hearing by Planning Commission. Following preliminary approval of an amendment application, the Director of Community Development shall set a time and place for a public hearing thereon. Notice of the time and place of holding such public hearing shall be published in a newspaper of general circulation in the City of Bismarck once each week for two (2) consecutive weeks prior to the hearing. Not less than ten (10) days prior to the date of the scheduled public hearing, the City shall attempt to notify all known adjacent property owners within three hundred (300) feet of the planned unit development amendment. "Notify" shall mean the mailing of a written notice to the address on record with the City Assessor or Burleigh County Auditor. The failure of adjacent property owners to actually receive the notice shall not invalidate the proceedings. The Planning Commission may approve, approve subject to certain stated conditions being met, deny or table the application for further consideration and study, or, because of the nature of the proposed change, make a recommendation and send to the Board of City Commissioners for final action.

(Ord. 4364, 05-07-91; Ord. 4876, 11-25-97; Ord. 4946, 10-27-98; Ord. 5218, 11-26-02; Ord. 5343, 06-22-04; Ord. 5351, 08-24-04; Ord. 5728, 05-26-09)

14-04-19. FP Floodplain District. In any FP floodplain district, the following regulations shall apply:

1. Statement of purpose. It is the purpose of this section to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

a. To protect human life and health;

b. To minimize expenditure of public money for costly flood control projects;

c. To minimize the need for rescue and relief efforts associated with flooding, generally undertaken at the expense of the general public;

d. To minimize prolonged business interruptions;

e. To minimize damage to public facilities and utilities located in special flood hazard areas such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges;

f. To help maintain a stable tax base by providing for the use and development of special flood hazard areas so as to minimize future flood blight areas;

g. To ensure that potential buyers are notified that property is located in a special flood hazard area;

h. To ensure that those who occupy the special flood hazard areas assume responsibility for their actions; and

i. To provide an increased level of protection in anticipation of future increases in the base flood elevation (BFE).

2. Methods of reducing flood losses. In order to accomplish its purposes, this section includes methods and provisions for:

a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging

increases in erosion, flood water elevations or flow velocities;

b. Requiring that uses vulnerable to flooding, including attendant utilities and facilities which serve such uses, be protected against flood damage at the time of initial construction;

c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or convey flood waters;

d. Controlling filling, grading, dredging, and other development which may increase flood damage; and

e. Preventing or regulating the construction of flood barriers or obstructions which will unnaturally divert flood waters or which may increase flood hazards in other areas.

3. Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this section or a request for a variance.

"Attendant utilities and equipment" means utilities, electrical, plumbing, heating, ventilation, and air conditioning equipment, as well as facilities and services associated with new construction.

"Base flood or 100-year flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

"Base flood elevation (BFE)" means the height of the base flood or 100-year flood, usually in feet above mean sea level, as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by the storm water management plan prepared for the area in which the property is located.

"Basement" means any area of a building having its floor subgrade (below ground level) on all sides.

"Best available data (BAD)" means water elevation information from any source used to estimate or determine the base flood elevation (i.e., high water mark).

"Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given location that determines the flow-carrying capacity at that location.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

"Fill" means materials such as soil, gravel, or crushed stone that is placed in an area and increases the ground elevation, whether or not that was the intention.

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood insurance rate map (FIRM) or digital flood insurance rate map (DFIRM)" means the official map issued by the Federal Emergency Management Agency (FEMA) where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

"Flood insurance study (FIS)" means the official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the flood insurance rate map (FIRM), and the water surface elevation of the base flood.

"Floodplain or flood-prone area" means any land area susceptible to partial or complete inundation by water from any source.

"Floodplain Administrator" means the person designated by the City of Bismarck to administer the City's floodplain regulations.

"Floodproofing (dry)" means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight to two (2) feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

"Floodway or regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas

that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Letter of map amendment (LOMA)" means an official amendment to the currently effective flood insurance rate map (FIRM) which establishes that a property is not located in a special flood hazard area. A letter of map amendment (LOMA) is issued by FEMA.

"Letter of map revision (LOMR)" means an official amendment to the currently effective flood insurance rate map (FIRM) which is issued by FEMA and changes flood zones, delineations and elevations. A letter of map revision based on fill (LOMR(f)) is a LOMR issued by FEMA based on the placement of fill.

"Lowest floor" means the lowest floor of a structure including the basement and/or crawl space.

"Manufactured home" means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle, but does include a mobile home.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this section.

"Non-residential" means any building or structure or portion thereof that is not classified as residential.

"Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational vehicle" means a vehicle which is built on a single chassis; four hundred (400) square feet or less when measured at the largest horizontal projection; designated to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal uses.

Recreational vehicles include, but are not limited to, travel trailers, trailers on wheels, park-model trailers and other similar vehicles.

"Residential" means:

a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;

b. Residential structures, including but not limited to one and two-family dwellings, multifamily dwellings, group dwellings, bed and breakfast facilities, hotels and motels; and

c. Institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, nursing homes, group homes, congregate care facilities, hospitals, medical centers, jails and detention centers.

"Special flood hazard area (SFHA)" means an area of land that would be inundated by a flood having a one percent (1%) chance of being equaled or exceeded in any given year (100-year flood).

"Start of construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms.

"Storage tank" means any closed vessel used to store gases or liquids.

"Storm water management plan" means a document prepared in accordance with the provisions of Title 14.1 of the City Code of Ordinances to evaluate surface water runoff and flood risks within a development, plat or watershed; to

document special flood hazard areas; and to determine the systems required to convey or control flood flows within and through the area.

"Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value as assessed of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value as assessed of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this section which permits construction in a manner that would otherwise be prohibited by this section.

4. General provisions.

a. Jurisdiction. This section shall apply to all special flood hazard areas within the jurisdiction of the City of Bismarck, including all lands within the corporate limits of the City of Bismarck and the extraterritorial jurisdiction as provided for in Section 40-47-01.1 of the North Dakota Century Code, including areas specifically included in the jurisdiction of the City of Bismarck through agreement as approved by the Board of City Commissioners.

b. Basis for establishing the special flood hazard areas. The special flood hazard areas

identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report titled "The Flood Insurance Study for Burleigh County, North Dakota and Incorporated Areas", dated July 19, 2005, with an accompanying flood insurance rate map (FIRM), and as subsequently updated by any Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR) and/or Letter of Map Revision Based on Fill (LOMR(f)) issued by the Federal Emergency Management Agency (FEMA), is hereby adopted by reference and declared to be a part of this section. The Flood Insurance Study (FIS) is on file in the office of the Floodplain Administrator. Special flood hazard areas may also be designated in a storm water management plan prepared for a development, plat or watershed.

c. Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this section and other applicable regulations, unless a valid building permit was in place prior to July 27, 2010, except as provided for in subsection 6(b)(5) (additions to existing structures).

d. Greater restrictions. This section is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this section and another section of the City Code of Ordinances, an easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

e. Interpretation. In the interpretation and application of this section, all provisions shall be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the City of Bismarck; and

3. Deemed neither to limit nor repeal any other powers granted to the City under the North Dakota Century Code or the Home Rule Charter for the City of Bismarck.

f. Warning and disclaimer of liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural

causes. This section does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Bismarck, any officer or employee thereof, or the Federal Emergency Management Agency (FEMA) for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

g. Letter of Map Revision (LOMR). Development on any parcel for which a Letter of Map Revision (LOMR) has been issued shall comply with all of the requirements and recommendations as contained therein. Development on any parcel for which a LOMR has been issued shall be constructed in accordance with the provisions of FEMA Technical Bulletin 10-01.

h. Non-conforming Status. Any structure constructed with the lowest floor elevated as required by the regulations in effect at the time of construction shall be considered a non-conforming structure for the purposes of this section, provided the lowest floor of said structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation.

5. Administration.

a. Establishment of a development permit. A development permit shall be obtained before construction or development begins within any special flood hazard area established in subsection 4(b) (basis for establishing the special flood hazard areas). Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level (NAVD88), of the lowest floor (including basements and/or crawl spaces) of all structures;

2. Elevation in relation to mean sea level (NAVD88) to which any structure has been floodproofed;

3. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in subsection 6(b)(2) (nonresidential construction); and

4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

b. Establishment of a non-structural development permit. A non-structural development permit shall be obtained before any land disturbing activity begins within any special flood hazard area established in subsection 4(b)(basis for establishing the special flood hazard areas). Application for a non-structural development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; proposed elevations upon completion of the land disturbing activity; the type of fill being used, if fill is proposed; and a description of the extent to which any watercourse will be altered or relocated as a result of proposed land disturbing activity.

c. Designation of the Floodplain Administrator. The Building Official is hereby appointed to administer and implement this section by granting or denying development permit and non-structural development permit applications in accordance with its provisions.

d. Duties and Responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

1. Permit application review.

a. Review all development permit applications and non-structural development permit applications to determine that the permit requirements of this section have been satisfied.

b. Review all development permit applications and non-structural development permit applications to determine that all

necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

c. Review all development permit applications and non-structural development permit applications to determine if the proposed development or land disturbing activity is located in the floodway. If located in the floodway, assure that the encroachment provisions of this section are met.

2. Use of other base flood data. When base flood elevation data has not been provided in accordance with subsection 4(b) (basis for establishing the special flood hazard areas), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available (known as best available data (BAD)) from a federal, state or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with subsection 6(b) (specific standards).

3. Information to be obtained and maintained.

a. Obtain and record the actual elevation (in relation to mean sea level in NAVD88) of the lowest floor (including basement and/or crawl space) of all new or substantially improved structures, and whether or not the structure contains a basement and/or crawl space.

b. For all new or substantially improved floodproofed structures:

i. Obtain and record the actual elevation (in relation to mean sea level in NAVD88) to which the structure has been floodproofed; and

ii. Maintain the floodproofing certifications required in subsection 5(a)(3).

c. Maintain for public inspection all records pertaining to the provisions of this section.

4. Alteration of watercourses. The Floodplain Administrator shall:

a. Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished; and

c. Notify the appropriate water resource district prior to removal or placement of fill within two hundred (200) feet of the ordinary high water mark of a body of water during normal flow or stage.

5. Interpretation of flood insurance rate map (FIRM) or digital flood insurance rate map (DFIRM) boundaries. Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection 7 (variance procedure). The Floodplain Administrator may require information be submitted by a registered land surveyor.

6. Provisions for flood hazard reduction.

a. General standards. In all special flood hazard areas the following standards are required:

1. Anchoring.

a. All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.

b. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

2. Construction materials and methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and

c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Such facilities shall be located in areas that have been elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation for residential structures and manufactured homes.

3. Utilities.

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

b. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters; and

c. All new and replacement on-site waste disposal systems shall be located to

avoid impairment to them or contamination from them during flooding.

4. Subdivision proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage;

b. All subdivision proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

d. Base flood elevation data shall be provided for all subdivision proposals and other proposed developments. Elevation data must be provided in NAVD88 for areas with a flood insurance rate map (FIRM) or other base flood elevation data in that datum.

b. Specific standards. In all special flood hazard areas where base flood elevation data have been provided as set forth in subsection 4(b) (basis for establishing the special flood hazard areas) or subsection 5(d)(2) (use of other base flood data), the following provisions are required:

1. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation.

2. Nonresidential construction. Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed to at least two (2) feet above the base flood elevation, so that below this elevation the structure is

watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Floodplain Administrator as set forth in subsection 5(d)(3) (information to be obtained and maintained).

3. Manufactured homes.

a. Manufactured homes shall be anchored in accordance with subsection 6(a)(1) (anchoring).

b. All manufactured homes or those to be substantially improved shall be on a permanent foundation, have the lowest floor of the manufactured home elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation, and be securely anchored to an adequately anchored foundation system.

4. Attached garages, decks and landings providing primary access, and accessory buildings.

a. Garages attached to any residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it is attached.

b. Decks and landings providing access to the primary entrance of a residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it provides access.

c. Accessory buildings over one hundred twenty (120) square feet in area for residential structures, non-residential structures and manufactured homes shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it is accessory.

5. Additions to existing structures.

a. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory building that is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure, provided the lowest floor of the existing structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation.

c. Floodways. Floodways are designated areas located within the special flood hazard areas established in subsection 4(b) (basis for establishing the special flood hazard areas). Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If the preceding subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of subsection 6 (provisions for flood hazard reduction).

7. Variance procedure.

a. Board of Adjustment. The Board of Adjustment, as established in Chapter 14-06 of the City Code of Ordinances (Board of Adjustment), shall hear

and decide appeals and requests for variances from the requirements of this section.

b. Appeals. An appeal may be filed by any person, firm, or corporation aggrieved, or by any governmental officer, department or board affected by any decision or determination made by the Floodplain Administrator in the enforcement or administration of this section, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).

c. Variances. An application for a variance may be made by any person, firm, or corporation with a legal interest in the property for which the variance is being sought, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).

d. In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:

1. The danger to life and property due to flooding or erosion damage;

2. The danger that materials may be swept onto other lands to the injury of others;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

7. The compatibility of the proposed use with the existing and anticipated development;

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

e. Upon consideration of the factors in subsection (7)(d) and the purposes of this section, the Board of Adjustment may attach such conditions to the granting of a variance as it deems necessary to further the purpose of this section.

f. Conditions for variances.

1. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this subsection.

2. Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

g. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation lower than two (2) feet above the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

h. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances granted to the Federal Emergency Management Agency (FEMA) upon request.

8. Penalties for Violations. Penalties for violation of this section shall be in accordance with the provisions of Chapter 14-05 (Enforcement) of the City Code of Ordinances.

(Ord. 4137, 5-26-87; Ord. 4737, 11-14-95; Ord. 4948, 10-13-98; Ord. 5037, 03-14-00; Ord. 5259, 05-27-2003; Ord. 5423, 05-24-05; Ord. 5728, 05-26-09; Ord. 5779, 07-27-10 and 08-10-10; Ord. 5811, 03-22-11)

14-04-20. AN Airport Noise Overlay District. In any AN Airport Noise overlay district, the following regulations shall apply:

1. General description. The AN Airport Noise overlay district for the area around the Bismarck Municipal Airport is hereby established based on the analysis and recommendations of the F.A.R. Part 150 Noise Compatibility Plan prepared for the Bismarck Municipal Airport. The AN zone is an overlay zone, the requirements and standards of which shall supplement the requirements and standards of the underlying zone. For the AN Airport Noise district, in promoting the general purposes of this ordinance, the specific interest of this section is:

a. To establish specific standards within noise-impacted areas to help mitigate the problems caused by airport noise.

b. To encourage the establishment of, and continuing operation of land uses within the overlay district which are compatible with the recommendations of the F.A.R. Part 150 Noise Compatibility Plan for the airport.

c. To permit the establishment of, and continuing operation of land uses within the overlay district which are non-compatible with the recommendations of the F.A.R. Part 150 Noise Compatibility Plan for the airport, provided such uses are located on lots of record which exist as of the date of enactment of this ordinance.

d. To prohibit the development of new noise-sensitive land uses within the overlay district, except as provided under the provisions of this ordinance.

2. AN district boundaries. The boundaries of the AN airport noise district are shown on the official zoning map of the city and generally correspond to the area impacted by noise exceeding 65 Ldn based on a combination of noise contours for the 1989 Official Noise Exposure Map, the 1990 Noise Compatibility Plan, and the 1995 Noise Compatibility Plan as presented in the F.A.R. Part 150 Noise Compatibility Study prepared for the Bismarck Municipal Airport and dated February 12, 1991.

3. Definitions.

a. Day-Night Sound Level(Ldn): A cumulative noise metric which describes the noise occurring during a 24-hour period as averaged over one year. The Ldn metric assesses a 10 dB penalty to all noise events occurring between 10:00 p.m. and 7:00 a.m., reflecting the greater annoyance associated with nighttime noise.

b. Ldn Contour: A line linking together a series of points of equal cumulative noise exposure based on the Ldn metric. Aircraft noise contours are developed based on aircraft flight patterns, number of daily aircraft operations by type of aircraft and time of day, noise characteristics of each aircraft, and typical runway usage patterns.

c. Lot of Record: A record lot as defined in Section 14-02-03 of the Zoning Ordinance.

d. Navigable Airspace: The airspace above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section

101(24) 49 United States Code 1301, including the airspace needed to ensure safety in the take-off and landing of aircraft.

e. Noise Compatibility Plan: A plan developed in conformance with Part 150 of the Federal Aviation Regulations proposing noise abatement and land use management measures to reduce the adverse impact of aircraft noise on surrounding residents and noise-sensitive land uses.

f. Non-compatible Land Use: A land use shown in the Table of Land Use Compatibility Standards as not permitted within the AN Airport Noise Overlay Zone.

g. Official Noise Exposure Map: A map showing either existing or forecast aircraft noise exposure prepared in conformance with Part 150 of the Federal Aviation Regulations.

4. Uses permitted. Land uses permitted in the AN district shall be as specified in the Table of Land Use Compatibility Standards.

5. Use prohibited. Land uses prohibited in the AN district shall be as specified in the Table of Land Use Compatibility Standards.

6. Land Use Compatibility Standards:

TABLE OF LAND USE COMPATIBILITY STANDARDS

SLUCM NO.	*Land Use Name*	*Overlay Zoning District AN (65+Ldn)*
10	***RESIDENTIAL***	
11	Household units	
11.11	Single Unit - detached	N[1]
11.12	Single Unit - semi-detached	N[1]
11.13	Single Unit - attached row	N[1]
11.21	Two units - side by side	N[1]
11.22	Two units - over-under	N[1]
11.31	Apartments - walk-up	N[1]
11.32	Apartments - elevator	N[1]
12	Group quarters	N[1]
13	Residential hotels	N[1]
14.1	Mobile home parks	N
14.2	Mobile homes in existing parks	N[1]
15	Transient lodgings, hotels, motels	Y[2]
16	Other residential	N[1]
20	***MANUFACTURING***	
21	Food & kindred products	Y
22	Textile mill products	Y
23	Apparel & other finished products made from fabrics, leather & similar materials	Y
24	Lumber & wood products (except furniture)	Y
25	Furniture & fixtures	Y
26	Paper & allied products	Y
27	Printing, publishing & allied industries	Y
28	Chemicals & allied products	Y
29	Petroleum refining and related industries	Y
30	***MANUFACTURING (Continued)***	
31	Rubber & miscellaneous plastic products	Y
32	Stone, clay & glass products	Y
33	Primary metal industries	Y
34	Fabricated metal products	Y
35	Professional, scientific & controlling instruments; photographic & optical goods; watches & clocks	Y
39	Miscellaneous manufacturing	Y
40	***TRANSPORTATION, COMMUNICATIONS & UTILITIES***	
41	Rail transportation	Y
42	Motor Vehicle transportation	Y

43	Aircraft transportation	Y
44	Marine craft transportation	Y
45	Highway & street right-of-way	Y
46	Automobile parking	Y
47	Communication	Y
48	Utilities	Y
49	Other transportation, communication & utilities	Y
50	***TRADE***	
51	Wholesale trade	Y
52	Retail trade - building materials, hardware & farm equipment	Y
53	Retail trade - general merchandise	Y
54	Retail trade - food	Y
55	Retail trade - automotive, marine craft & aircraft	Y
56	Retail trade - apparel & accessories	Y
57	Retail trade - furniture & home furnishings	Y
58	Retail trade - eating & drinking	Y
59	Other retail trade	Y
60	***SERVICES***	
61	Finance, insurance & real estate services	Y
62	Personal services	Y
62.4	Cemeteries	Y
63	Business services	Y
64	Repair services	Y
65	Professional services	Y
65.1	Hospitals, nursing homes	N[1]
65.19	Other medical facilities	Y
66	Contract construction services	Y
67	Governmental services	Y
68	Educational services	N[1]
69	Miscellaneous services	Y
70	***CULTURAL, ENTERTAINMENT AND RECREATIONAL***	
71	Cultural activities (including churches)	Y[2]
71.2	Nature exhibits	Y
72	Public Assembly	Y[2]
72.11	Outdoor music shells, amphitheaters	N
72.2	Outdoor sports arenas, spectator sports	Y
72.3	Auditoriums, concert halls	Y[2]
73	Amusements	Y
74	Recreational activities (including golf courses, riding stables, water recreation)	Y
75	Resorts & group camps	Y
76	Parks	Y
79	Other cultural, entertainment & recreation	Y

KEY TO TABLE OF LAND USE COMPATIBILITY STANDARDS

SLUCM	Standard Land Use Coding Manual, U.S. Urban Renewal Administration and Bureau of Public Roads, 1965
Y (Yes)	Land use and related structures are permitted.
N (No)	Land use and related structures are not compatible and shall be prohibited.
1	These uses may be permitted on existing lots of record. Although not required, builders and developers should be encouraged to incorporate measures to achieve a noise level reduction of 25 dBA (outdoor to indoor).
2	Although not required, builders and developers should be encouraged to incorporate measures to achieve a noise level reduction of 25 dBA (outdoor to indoor) in the construction of those portions of these buildings where the public is received, office areas, and other noise-sensitive areas.

(Ord. 4424, 03-31-92)

14-04-21. Downtown Districts.

1. Districts Established. The following downtown zoning districts are hereby established: DC Downtown Core District and DF Downtown Fringe District.

2. Use Table. The table contained herein lists the uses allowed within the downtown zoning districts.

a. Use Categories. All of the categories listed in the use table are explained in detail in Section 14-04-21.3. The second column of the use table contains an abbreviated explanation of the respective use category. If there is a conflict between the abbreviated explanation and the full explanation in Section 14-04-21.3, the provisions of Section 14-04-21.3 shall prevail.

b. Use Standards. An “X” in the third column of the use table indicates that the use is subject to use-specific standards. These standards are listed alphabetically in Section 14-04-21.4.

c. Uses Permitted By Right. A “P” indicates that a use category is allowed by right in the

respective zoning district. These permitted uses are subject to all other applicable provisions of this chapter.

d. Special Uses. An "SUP" indicates that the use is allowed only if reviewed and approved as a Special Use, in accordance with the Special Use provisions in Section 14-03-08, and is subject to all other applicable regulations in this chapter.

e. Uses Not Allowed. An "---" indicates that the use is not allowed in the respective zoning district.

Use Table.

Use Category	Definition	Use Standards	District	
			DC	DF
Residential Uses				
Group Living	Residential occupancy of a structure by a group of people who do not meet the definition of household.		P	P
Household Living	Residential occupancy of a dwelling unit by a household (related or up to four unrelated).			
Single-family, detached			---	P
Duplex/single-family attached (2)			---	P
Single-family, attached (3-8)			---	P
Multi-family structure			P	P
Multi-family – senior citizens		X	P	P
Residences on 2nd floor & above			P	P
Commercial Uses				
Drive-through Facilities	Drive-through facilities in conjunction with a permitted principal use.	X	SUP	SUP
Entertainment Event, Major	Activities and structures that draw		P	---

	large numbers of people to specific events or shows. This category does not include outdoor recreation and entertainment uses, such as golf driving ranges and racetracks.			
Microbrewery	Small-scale brewery that manufactures up to 5,000 barrels of fermented malt beverages per year.	X	SUP	---
Office	Activities conducted in an office setting and generally focusing on business, government, professional, medical or financial services.		P	P
Parking, Accessory	Parking that is accessory to a specific use, but not located on the same parcel as the use – use standards for accessory parking that is adjacent to a residential use.	X	SUP	SUP
Parking, Commercial	Parking that is not accessory to a specific use – fees may or may not be charged.	X	SUP	SUP
Retail Sales and Services Sales-Oriented Personal Service-Oriented Entertainment-Oriented Repair-Oriented	Establishments involved in the sale, lease or rental of any new or used products to the general public – they may also provide personal services or entertainment or provide product repair or services for consumer and business goods – use standards for convenience store/gas stations, mortuaries/funeral homes and vehicle sales lots. This category	X	P	P

	does not include self-service storage uses, adult entertainment centers, animal hospitals or kennels, off-premise advertising signs or microbreweries. Convenience store/gas stations are not allowed within the Downtown Core.			
Proposed Use Category	Definition	Use Standards	District	
			DC	DF
Commercial Uses				
Vehicle Repair	Service to passenger vehicles, light trucks and other consumer motor vehicles – generally, the customer does not wait at the site while the service or repair is being performed.	X	SUP	P
Vehicle Service, Limited	Direct services to motor vehicles where the driver generally waits in the car or nearby while the service is performed.	X	SUP	P
Institutional Uses				
Colleges	Colleges and institutions of higher learning.		P	P
Community Services	Public, non-profit or charitable uses, generally providing a local service to the community.	X	P	P
Child care	Care, protection and supervision for children and adults on a regular basis away from their primary residence for less than 24 hours/day.			
Family child care		X	---	P
Child care center		X	---	SUP

Health Care Facilities	Medical or surgical care to patients, with overnight care.		P	P
Parks and Open Areas	Natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, etc.		P	P
Religious Institutions	Meeting area for religious activities	X	P	P
Safety Services	Public safety and emergency response services.		P	P
Schools	Schools at the primary, elementary, middle, junior high or high school level.	X	---	P
Other Uses				
Detention Facilities	Government-operated facilities for the detention or incarceration of people.	X	P	---
Moving of buildings/structures	Moving in of a building or structure that has been previously occupied in another location.	X	---	SUP
Passenger Terminals	Passenger terminals for regional bus and rail service.	X	P	P
Telecommunications Facilities	Devices and supporting elements necessary to provide telecommunication services.		SUP	SUP
Utilities and Essential Services	Infrastructure services that need to be located in or near the area where the service is provided.		P	P

(Ord. 5422, 05-24-05; Ord. 5719, 05-12-09; Ord. 5958, 03-26-13)

14-04-21.1 ***<u>DC Downtown Core District</u>***.

1. Purpose. The purpose of the Downtown Core District is to preserve and enhance the mixed-use, pedestrian-oriented nature of the City's downtown area. The

district allows a wide range of mutually supportive uses in order to enhance downtown Bismarck's role as a commercial, cultural, governmental, health/ medical, entertainment and residential center. The district standards also facilitate the creation of a strong and distinctive sense of place through the inclusion of open space and public plazas. The use of design standards will maintain the historical integrity, enhance the quality of design, and preserve the human-scale development of downtown.

2. Uses. Uses are allowed in the Downtown Core District in accordance with the Use Table of Section 14-04-21.

3. Dimensional Standards. Development within the Downtown Core District is subject to the following dimensional standards:

a. Lot Area. The minimum lot area is 7,000 square feet. For lots platted prior to 1953, the minimum lot area is 5,000 square feet.

b. Lot Width. The minimum lot width is 25 feet.

c. Lot Depth. There is no lot depth requirement.

d. Front Yard Setback. There is no minimum front yard setback. If the development site is between two existing buildings which are both setback from the front property line, the front yard setback may not exceed the average setback of the adjoining buildings. In no case shall a setback greater than 15 feet be allowed, and this area must be landscaped and/or incorporate streetscape elements.

e. Side Yard Setback. There is no minimum side yard setback, unless the side property line abuts residentially-zoned property, in which case the minimum side yard setback shall be 6 feet.

f. Rear Yard Setback. There is no minimum rear yard setback, unless the rear property line abuts residentially-zoned property, in which case the minimum rear yard setback shall be 10 feet.

g. Height. The maximum height is 130 feet, unless a special use permit to exceed this height is

granted in accordance with the provisions of Section 14-08-03. The minimum height is two stories or 20 feet.

h. Lot Coverage. The maximum lot coverage is 100%.

4. Design Standards. All development within the Downtown Core District is subject to the following design standards:

a. Intent. The intent of the design standards is to create and maintain a high visual quality and appearance for the Downtown Core District. The regulations are also intended to ensure that new buildings, building additions, façade alterations, building rehabilitations, and signage are compatible with or improve the character of the Downtown Core District and fit into their surroundings. It is also the intent of these regulations to stimulate and protect public and private investment through the establishment of high standards with respect to architectural design, building materials, and appearance, and to support the preservation of historically significant buildings.

b. Review and Approval. All new buildings, building additions, facade alterations (both structural and non-structural), demolition of existing buildings, signage, streetscape installation or modification, fences, lighting and improvements within the public right-of-way within the Downtown Core District shall be subject to the City's downtown design review procedures. An administrative decision by City staff regarding the design standards may be appealed to the City's Renaissance Zone Authority and will be subject to the Authority's standard hearing procedures. Any decision of the Renaissance Zone Authority regarding design standards may be appealed to the Board of City Commissioners pursuant to the process outlined in Section 14-06-03(3).

c. ***Remodeling of Historically Significant Buildings.*** Any building listed on the National Register of Historic Places, identified as being individually eligible for listing on the National Register or identified as contributing to the downtown Bismarck historic district in the Historic Architectural Inventory and Evaluation (2000) or any

subsequent inventory and evaluation, is considered to be a historically significant building. For any building not identified above that is more than 50 years old, a determination shall be made on a case-by-case basis as to whether or not the building is historically significant. Projects involving the remodeling, renovation or rehabilitation of existing historically significant buildings should reflect the original architectural character of the building. The introduction of any new design elements should be consistent with the traditional features of the building. The rehabilitation of existing historically significant buildings is encouraged to be in accordance with the Secretary of the Interior's Standards for Rehabilitation.

d. ***New Construction.*** Projects involving new construction shall consider the context of the site and be compatible with the general character of the downtown area. While new buildings are required to fit into their surroundings, the City will not require uniformity of design or dictate specific architectural styles. The overall context of the downtown area includes a variety of architectural styles and these regulations are intended to allow both flexibility and creativity in achieving compatible design solutions.

e. Building Materials. For new construction, all walls visible from the street shall be primarily faced with architectural materials such as brick, stone, architectural concrete or pre-cast concrete panels, glass, exterior insulation finish insulation systems, or an equivalent or better. The use of plain surface concrete block shall be prohibited (i.e. the surface must be dimensional). The use of typical residential exterior materials shall be prohibited (i.e. residential grade vinyl siding, residential grade steel siding, composite brick). Non-transparent mirrored or one-way glass with a reflectance greater than forty percent (40%) shall be prohibited from covering more than forty percent (40%) of the exterior walls.

All subsequent renovations, additions and related structures undertaken after the construction of an original building shall be finished with materials comparable to those used in the original construction and shall be designed in a manner conforming to the original architectural design and general appearance.

For existing historically significant buildings, the sheathing or installation of another material over the facade or any wall visible from the street shall be prohibited unless deemed necessary to preserve the structural integrity of the building.

f. ***Building Colors.*** In order to maintain a sense of harmony within the Downtown Core District, color schemes used should complement the predominant hues of adjoining buildings. Color schemes should generally be simple, using the minimum number of colors necessary to accentuate architectural features. The use of extremely bright hues should generally be limited to smaller accent features of the building. Repainting projects which do not substantially change the existing color scheme are not subject to the building color criteria.

g. Height. The height of a new mid-block building shall be within one story/15 feet of any adjoining building. If a proposed mid-block development is between two existing buildings that vary more than three stories in height, the new building shall be within one story/15 feet in height of either the taller or shorter building. The height of a new corner building may be higher than buildings on adjoining parcels, but should generally be within the average height of the buildings occupying the three adjacent corners of the intersection. It is not the intent of this provision to regulate the height of a new building which occupies one-quarter of a block or more as it relates to adjacent or adjoining buildings.

h. Alignment. New infill development in the Downtown Core District shall maintain the zero setback and the alignment of adjoining facades at the property line.

i. Width. New buildings shall reflect the existing characteristic rhythm of facades along the street. New construction on multiple lots, including parking ramps, should respect this pattern by designing the pattern of adjacent façade widths into the new facade.

j. Horizontal Rhythms. New development shall maintain the alignment of building windows, cornices,

and rooflines that dominate the block on which it will be constructed. Character and scale shall be compatible with surrounding structures through the use of materials, detailing and window placement. A clear visual division between the street level and upper floors shall also be maintained. Canopies and awnings consistent with the architectural style of the building are encouraged to accentuate the street level relationship between the building and streetscape and to provide protection for pedestrians.

k. Entrances. Main entrances to buildings shall face and be clearly visible from the street, and be recessed to maintain a coherent pattern along the sidewalk and to define the entry point.

l. Windows. The original size, shape and proportion of all windows on existing historically significant buildings shall be preserved. For new non-residential buildings, a minimum of fifty percent (50%) of first floor facades fronting the street shall be windows, doors and other transparent elements. In order to preserve the character of existing historically significant buildings, it is not the intent of this provision to require windows to be installed where none existed in the original design. However, if the exterior of an existing historically significant building is being remodeled, renovated or rehabilitated, the size, shape and proportion of the original window openings shall generally be restored or maintained. Replacement windows shall generally conform with the style of the original windows used in the building, with wood or prefinished aluminum as the finish material.

m. Rooftop Equipment. Rooftop equipment shall be screened from ground level views with parapet walls or enclosures similar in form, material and detail to the primary structure.

n. Vacant Buildings. Vacant and abandoned buildings shall be made to appear inhabited. Boarding up windows in vacant or abandoned buildings shall be prohibited.

o. Demolition and Vacant Lots. Any demolition shall be in accordance with the provisions of Section 4-05-03 of the City Code of Ordinances. Any lots left vacant after demolition shall be treated to control

fugitive dust. If the lot is to remain vacant for more than sixty (60) days, said lot shall be landscaped, mulched and seeded or sodded to establish a perennial vegetative grass cover. The lot shall be maintained and kept free of debris and litter.

p. Exposed Common Walls. If common walls are exposed due to demolition of adjoining buildings, the walls shall be treated to ensure that the walls do not become a visual eyesore. The treatment may be temporary or permanent depending on the potential for redevelopment of adjoining parcels. Temporary alternative treatments include masonry paint or vines. Permanent alternative treatments include architectural treatment that is similar to the front façade of the building or stucco. The wall treatment shall be in place within ninety (90) days of the date of demolition, unless a longer period is authorized at the time of approval of the demolition plans, and shall be the financial responsibility of the owner of the property upon which the demolished building was located.

q. Work in Public Right-of-Way. Any work within the public right-of-way that relates to an identified streetscape element, as identified in the Streetscape Guidelines for Downtown Bismarck (May 1995) or subsequent updates, shall be in accordance with the design elements identified by those guidelines and shall comply with the standards established by the City Engineer.

r. ***Landscaping and Screening.*** New construction and major remodeling, renovation or rehabilitation projects shall be subject to the requirements of Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening), including the installation of street trees if required.

5. Off-street Parking and Loading. Off-street parking and loading shall be provided in accordance with the provisions of Section 14-03-10. Off-street parking shall not be required for properties within the Downtown Parking District.

6. Landscaping and Screening. Development within the Downtown Core District, including the development of parking areas, shall be subject to the requirements of Section 14-03-11. If decorative fencing or any other

streetscape elements are used, they shall be consistent with or complementary to the designated downtown streetscape elements

7. Signage. All signage in the Downtown Core District shall be installed and maintained in accordance with the provisions of Chapter 4-04 of the City Code of Ordinances. Canopies used for signage shall be consistent with the architectural style of the building.

(Ord. 5422, 05-24-05; Ord. 5813, 03-22-11; Ord. 5852, 11-22-11)

14-04-21.2 DF Downtown Fringe District.

1. Purpose. The purpose of the Downtown Fringe District is to strengthen and complement the City's downtown area by allowing uses not normally allowed in the Downtown Core District. The Downtown Fringe District also serves to provide a transitional area between the Downtown Core District and adjacent commercial and residential zoning districts. The uses allowed in this district usually require larger parcels and a greater emphasis on automobile access and parking.

2. Uses. Uses are allowed in the Downtown Fringe District in accordance with the Use Table of Section 14-04-21.

3. Dimensional Standards. Development within the Downtown Fringe District is subject to the following dimensional standards:

a. Lot Area. The minimum lot area is 7,000 square feet. For lots platted prior to 1953, the minimum lot area is 5,000 square feet.

b. Lot Width. The minimum lot width is 60 feet. For lots platted prior to 1953, the minimum lot width is 50 feet.

c. Lot Depth. There is no lot depth requirement.

d. Front Yard Setback. There is no minimum front yard setback, unless the property is immediately adjacent to a residentially-zoned property, in which case the minimum front yard setback shall be 15 feet. In no case shall a setback greater than 25 feet be allowed, and this area must be landscaped and/or incorporate streetscape elements.

e. Side Yard Setback. There is no minimum side yard setback, unless the property is immediately adjacent to a residentially-zoned property, in which case the minimum side yard setback shall be 6 feet.

f. Rear Yard Setback. There is no minimum rear yard setback, unless the property is immediately adjacent to a residentially-zoned property, in which case the minimum rear yard setback shall be 10 feet.

g. Height. The maximum height is 75 feet, unless the property is immediately adjacent to a residentially-zoned property, in which case the maximum height is 50 feet.

h. Lot Coverage. The maximum lot coverage is 100%, unless the property is immediately adjacent to a residentially zoned parcel, in which case the maximum lot coverage shall be 70%.

4. Design Standards. All development within the Downtown Fringe District is subject to the following design standards:

a. Intent. The intent of the design standards is to create and maintain a high visual quality and appearance for the Downtown Fringe District. The regulations are also intended to ensure that new buildings, building additions, façade alterations, building rehabilitations, and signage are compatible with the character of the Downtown Fringe District and fit into their surroundings. It is also the intent of these regulations to stimulate and protect public and private investment through the establishment of high standards with respect to architectural design, building materials, and appearance, and to support the preservation of historically significant buildings.

b. Review and Approval. All new buildings, building additions, facade alterations (both structural and non-structural) demolition of existing buildings, signage, streetscape installation or modification, fences, lighting and improvement within the public right-of-way within the Downtown Fringe District shall be subject to the City's downtown design review procedures. An administrative decision by City staff regarding the design standards may be appealed to the City's Renaissance Zone Authority and

will be subject to the Authority's standard hearing procedures. Any decision of the Renaissance Zone Authority regarding design standards may be appealed to the Board of City Commissioners pursuant to the process outlined in Section 14-06-03.

c. ***Remodeling of Historically Significant Buildings.*** Any building listed on the National Register of Historic Places, identified as being individually eligible for listing on the National Register or identified as contributing to the downtown Bismarck historic district in the Historic Architectural Inventory and Evaluation (2000) or any subsequent inventory and evaluation, is considered to be a historically significant building. For any building not identified above that is more than 50 years old, a determination shall be made on a case-by-case basis as to whether or not the building is historically significant. Projects involving the remodeling, renovation or rehabilitation of existing historically significant buildings should reflect the original architectural character of the building. The introduction of any new design elements should be consistent with the traditional features of the building. The rehabilitation of existing historically significant buildings is encouraged to be in accordance with the Secretary of the Interior's Standards for Rehabilitation.

d. ***New Construction.*** Projects involving new construction shall consider the context of the site and be compatible with the general character of the downtown area. While new buildings are required to fit into their surroundings, the City will not require uniformity of design or dictate specific architectural styles. The overall context of the downtown area includes a variety of architectural styles and these regulations are intended to allow both flexibility and creativity in achieving compatible design solutions.

e. Building Materials. For new non-residential and multi-family residential buildings containing more than eight (8) units, all walls visible from the street shall be primarily faced with architectural materials such as brick, stone, architectural concrete or pre-cast concrete panels, glass, exterior insulation finish systems, or an equivalent or better. The use of plain surface concrete block shall be prohibited (i.e. the surface must be dimensional). The

use of typical residential exterior materials shall be prohibited (i.e. residential grade vinyl siding, residential grade steel siding, composite brick). Non-transparent mirrored or one-way glass with a reflectance greater than 40 percent (40%) shall be prohibited from covering more than forty percent (40%) of the exterior walls.

For residential buildings containing eight (8) or fewer units, typical residential building materials may be used.

All subsequent renovations, additions and related structures undertaken after the construction of an original building shall be finished with materials comparable to those used in the original construction and shall be designed in a manner conforming to the original architectural design and general appearance.

For existing historically significant buildings, the sheathing or installation of another material over the façade or any wall visible from the street shall be prohibited unless deemed necessary to preserve the structural integrity of the building.

f. ***Building Colors.*** In order to maintain a sense of harmony within the Downtown Fringe District, color schemes used should complement the predominant hues of adjoining buildings. Color schemes should generally be simple, using the minimum number of colors necessary to accentuate architectural features. The use of extremely bright hues should generally be limited to smaller accent features of the building. Repainting projects which do not substantially change the existing color scheme are not subject to the building color criteria.

g. Height. The height of a new building should be within one story/15 feet of any buildings on adjoining parcels. It is not the intent of this provision to regulate the height of a building which occupies one-quarter of a block or more as it relates to buildings on adjoining parcels.

h. Alignment. The setbacks and alignment of a new building should be similar to any buildings on adjoining parcels.

i. Entrances. Main entrances to buildings shall face and be clearly visible from the street.

j. Rooftop Equipment. Rooftop equipment shall be screened from ground level views with parapet walls or enclosures similar in form, material and detail to the primary structure.

k. Vacant Buildings. Vacant and abandoned buildings shall be made to appear inhabited. Boarding up windows in vacant or abandoned buildings shall be prohibited.

l. Demolition and Vacant Lots. Any demolition shall be in accordance with the provisions of Section 4-05-03 of the City Code of Ordinances. Any lots left vacant after demolition shall be treated to ensure to control fugitive dust. If the lot is to remain vacant for more than sixty (60) days, said lot shall be landscaped, mulched and seeded or sodded to establish a perennial vegetative grass cover. The lot shall be maintained and kept free of debris and litter.

m. Exposed Common Walls. If common walls are exposed due to demolition of adjoining buildings, the walls shall be treated to ensure that the walls do not become a visual eyesore. The treatment may be temporary or permanent depending on the potential for redevelopment of adjoining parcels. Temporary alternative treatments include masonry paint or vines. Permanent alternative treatments include architectural treatment that is similar to the front façade of the building or stucco. The wall treatment shall be in place within ninety (90) days of the date of demolition, unless a longer period is authorized at the time of approval of the demolition plans, and shall be the financial responsibility of the owner of the property upon which the demolished building was located.

n. Work in Public Right-of-Way. Any work within the public right-of-way that relates to an identified streetscape element, as identified in the Streetscape Guidelines for Downtown Bismarck (May 1995) or subsequent updates, shall be in accordance with the design elements identified by those guidelines and shall comply with the standards established by the City Engineer.

o. ***Landscaping and Screening.*** New construction and major remodeling, renovation or rehabilitation projects shall be subject to the requirements of Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening), including the installation of street trees if required.

5. Off-street Parking and Loading. Off-street parking and loading shall be provided in accordance with the provisions of Section 14-03-10. Off-street parking shall not be required for properties within the Downtown Parking District.

6. Landscaping and Screening. Development within the Downtown Fringe District, including the development of parking areas, shall be subject to the requirements of Section 14-03-11. If decorative fencing or any other streetscape elements are used, they shall be consistent with or complementary to the designated downtown streetscape elements.

7. Signage. All signage in the Downtown Fringe District shall be installed and maintained in accordance with the provisions of Chapter 4-04 of the City Code of Ordinances. Canopies used for signage shall be consistent with the architectural style of the building.

(Ord. 5422, 05-24-05; Ord. 5813, 03-22-11)

14-04-21.3 *Use Categories*.

1. Residential Use Categories.

a. Group Living. Group living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of a household on a monthly or longer basis. Uses where tenancy may be for a shorter period of time are considered to be transient lodging, rather than residential (see sales and service). The size of the group may be larger than the average size of a household and cooking facilities are shared by all members of the group. The residents may receive care, training, or treatment, as long as the care giver also resides at the site. Examples include rooming houses, dormitories, fraternities and sororities, monasteries and convents, nursing and convalescent homes, group homes, residential programs for drug and alcohol treatment, and alternative or post incarceration facilities.

b. Household Living. Household living is characterized by the residential occupancy of a dwelling unit by a household/family on a monthly or longer basis. Uses where tenancy may be for a shorter period of time are considered to be transient lodging, rather than residential (see sales and service). Examples include single-family dwelling - detached, two-family dwelling/duplex/twinhome, single-family dwelling - attached (3 to 8 units); multi-family structures, retirement/senior citizen apartments, manufactured housing, and other structures with self-contained dwelling units.

2. Commercial Use Categories.

a. Drive-through Facilities. Drive-through facilities are any portion of a building from which business is transacted, or capable of being transacted, directly with customers located in a motor vehicle. Such a facility is usually accessory to a principal use and may also be referred to as a drive-in or drive-up. Examples include drive-through windows at financial institutions and restaurants.

b. Entertainment Event, Major. Major entertainment events are characterized by activities and structures that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature. Examples include stadiums, sports arenas, auditoriums, exhibition halls, convention centers and fairgrounds. This category does not include outdoor recreation and entertainment uses, such as golf driving ranges and racetracks.

c. ***Microbrewery.*** Microbreweries are small-scale breweries that manufacture up to 5,000 barrels of fermented malt beverages per year for wholesale or sale directly to the consumer.

d. Office. Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical or financial services. Examples include professional services such as lawyers, accountants, engineers or architects; financial businesses such as lenders, brokerage houses, bank headquarters or real estate agents; data processing; sales offices; government offices and public utility

offices; TV and radio studios; medical and dental clinics; medical and dental labs; and blood-collection facilities.

e. Parking, Accessory. Accessory parking facilities provide parking that is accessory to a specific use, but not located on the same parcel as the use. Examples include short and long-term parking facilities, both surface and in structures. A facility that provides both accessory parking for a specific use and fee parking for people not connected to the use is classified as a commercial parking facility.

f. Parking, Commercial. Commercial parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and fee parking for people not connected to the use is also classified as a commercial parking facility. Examples include short and long-term parking facilities, both surface and in structures.

g. Retail Sales and Services. Retail sales and services are firms that are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods. Examples of retail sales and services are broken down into four categories: sales-oriented, personal-service-oriented, entertainment-oriented, and repair oriented.

Examples of sales-oriented uses include stores selling, leasing or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery and videos; food sales; and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light trucks and other recreational vehicles.

Examples of personal services-oriented uses include branch banks; laundromats; photographic studios; photocopy and blueprint services; hair, tanning and personal care services; business, martial arts and other trade schools; dance or music classes;

taxidermists; mortuaries; veterinarians (out-patient only); and animal grooming.

Examples of entertainment-oriented uses include restaurants, cafes, delicatessens, brewpubs, bars and taverns; indoor entertainment activities such as bowling alleys, ice rinks, game arcades, and pool halls; dance halls; indoor firing ranges; theaters; health clubs and gyms; membership clubs and lodges; and hotels, motels and other temporary lodging with an average stay of less than 30 days, including bed and breakfast facilities.

Examples of repair-oriented uses include repair of televisions, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; tailor; locksmith; and upholsterer.

This category does not include self-service storage uses, adult entertainment centers, animal hospitals or kennels, off-premise advertising signs or microbreweries.

h. Vehicle Repair. Vehicle repair uses service passenger vehicles, light trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait on site while the service or repair is being performed. Examples include vehicle repair, transmission or muffler shop, auto body shop, auto upholstery shop, auto detailing, and tire sales and mounting.

i. Vehicle Service, Limited. Limited vehicle service uses provide direct service to motor vehicles where the driver generally waits in the car or nearby while the service is performed. Examples include full-service and self-service gas stations; free-standing carwash facilities; and quick lubrication services. This category does not include convenience store/gas stations.

3. Institutional Uses.

a. Colleges. This category includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree. Colleges tend to be in campus-like settings or on multiple blocks. Examples include universities,

liberal arts colleges, community colleges, seminaries, and nursing and medical schools not accessory to health care facilities.

b. Community Services. Community services are uses of a public, nonprofit or charitable nature generally providing a local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. The service is ongoing, not just for special events. The use may also provide special counseling, education or training of a public, nonprofit or charitable nature. Examples include libraries, museums, senior centers, community centers, publicly-owned swimming pools, youth club facilities, hospices, social service facilities, temporary shelters, and vocational training for persons with physical or mental disabilities.

c. Child Care. Child care uses provide care, protection and supervision for children on a regular basis away from their primary residence for less than 24 hours per day. Examples include preschools, child care centers, nursery schools and latch key programs. Child care facilities providing care for no more than twelve (12) children within a single-family residence are classified as family child care; and facilities providing care for more than twelve (12) children are classified as child care centers. The following shall not be considered a child care center: 1) child care provided in any educational facility, whether public or private, in grade one or above; 2) child care, preschool, kindergarten, and pre-kindergarten services provided to children under six (6) years of age in any educational facility through a program approved by the North Dakota Superintendent of Public Instruction; 3) child care provided in facilities operated in connection with a religious facility, business, or organization where children are cared for during periods of time not exceeding four (4) continuous hours while the child’s parent, guardian or custodian is attending religious services or is engaged in other activities on the premises; 4) schools or classes for religious instruction conducted by religious orders, Sunday schools, weekly catechism or other classes for religious instruction; 5) sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult; and 6) child care provided in a medical

facility by medical personnel to children who are ill.

d. Health Care Facilities. Health care facilities include uses providing medical or surgical care to patients and offering overnight care. Examples include medical centers and hospitals.

e. Parks and Open Areas. Parks and open areas are uses of land focusing on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens or public squares. Lands occupied by these uses tend to have few structures. Examples include parks, golf courses, cemeteries, public squares, plazas, recreational trails, botanical gardens and nature preserves.

f. Religious Institutions. Religious institutions primarily provide meeting areas for religious activities. Examples include churches, temples, synagogues and mosques.

g. Safety Services. Safety services are uses that provide public safety and emergency response services. They often need to be located in or near the area where the service is provided. Employees are generally present on-site. Examples include fire stations, police stations and emergency medical and ambulance stations.

h. Schools. This category includes public and private schools at the primary, elementary, middle, junior high or high school level that provide state-mandated basic education. Examples include public and private daytime schools, boarding schools and military academies.

4. Other Uses.

a. Detention Facilities. Detention facilities include facilities for the judicially required detention or incarceration of people. Inmates and detainees are under 24 hour supervision by sworn officers, except when on approved leave. Examples include prisons, jails, probation centers and juvenile detention homes.

b. Moving of Buildings/Structures. This category includes the moving of a building or structure previously occupied in another location.

c. Passenger Terminals. This category includes passenger terminals for regional bus service and regional rail service.

d. Telecommunication Facilities. Telecommunication facilities include all devices, equipment, machinery, structures or supporting elements necessary to produce non-ionizing electromagnetic radiation within the range of frequencies from 100 KHz to 300 GHz and operating as a discrete unit to produce a signal or message. Facilities may be self-supporting, guyed, or mounted on poles, light posts, power poles, buildings or other structures. This category shall also include interconnection translators, connections from over-the-air to cable, fiber optic, or other landline transmission system. Examples include broadcast towers, attached telecommunication facilities, telecommunication support towers, point-to-point microwave towers, and amateur radio facilities that are owned and operated by a federally-licensed amateur radio station operator.

e. Utilities, Basic. Basic utilities are infrastructure services that need to be located in or near the area where the service is provided. Basic utility services generally do not regularly have employees on-site. Services may be public or privately provided. Examples include water and sewage pumping stations; electrical substations; water towers and reservoirs; storm water retention and detention facilities; telephone exchanges; recycling collection centers; and park-and-ride facilities for mass transit.

(Ord. 5422, 05-24-05; Ord. 5719, 05-12-09; Ord. 5958, 03-26-13)

14-04-21.4 <u>Use Standards</u>.

1. Child Care.

a. Child care shall be allowed only as an accessory use to a permitted detached single-family residential use which serves as the primary residence of the operator/provider.

b. Child care centers shall provide not less than thirty-five (35) square feet of interior recreation area per child. Work areas, office areas, and other areas not designed for use of the children may not be counted in this computation.

c. Child care centers shall provide an outdoor recreation area of not less than seventy-five (75) square feet per child. The recreation area shall be fenced, have a minimum width of twenty (20) feet, a minimum depth of twenty (20) feet, be located on the same lot or parcel of land as the facility it is intended to serve, and must be located behind the building setback lines.

d. For child care centers, adequate off street parking shall be provided at the following ratio: One space for each employee and one space for each ten (10) children.

e. Child care centers shall conform to all applicable requirements of the International Building Code and the International Fire Code as adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations), and all requirements of the North Dakota Department of Human Services.

f. Child care centers shall comply with all applicable requirements relating to health and sanitation that have been adopted by the City of Bismarck (Title 8 of the City Code of Ordinances – Health and Sanitation), and all requirements of the North Dakota Department of Health.

2. Drive-through Facilities.

a. Access to and egress from a drive-through facility shall be arranged for the free flow of vehicles at all times, so as to prevent the blocking or endangering of vehicular or pedestrian traffic through the stopping or standing or backing of vehicles on sidewalks or streets.

b. Adequate off-street parking shall be provided in conformance with Section 14-03-10 of this ordinance. In addition, vehicle stacking spaces shall be provided on the premises in conformance with

Section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

c. Ingress and egress points shall be maintained at not less than sixty (60) feet from an intersecting street corner on arterial or collector streets, and not less than forty (40) feet from an intersecting street corner on local streets.

d. All access and egress driveways shall cross a sidewalk only in such a manner that its width at the inner edge of the sidewalk is no greater than its width at the curb, excluding any curved or tapered section known as the curb return. All curb cuts, widths and other specifications shall comply with the standards established by the City Engineer.

e. Any portion of a parking or loading area abutting a sidewalk at a point other than a permitted driveway shall be provided with wheel stops, bumper guards, or other devices to prevent encroachment of parked, standing or moving vehicles upon any sidewalk area not contained within a permitted driveway.

f. On a corner lot no fence, wall, terrace, structure, shrubbery or automobile shall be parked or other obstruction to vision having a height greater than three (3) feet above the curb shall occupy the space in a triangle formed by measuring ten (10) feet back along the side and front property lines.

g. For a drive-through lane adjacent to a public right-of-way, landscaping must be provided in accordance with the provisions of Section 14-03-11 of this ordinance.

3. Detention Facilities.

a. Detention facilities shall be located no less than 500 feet from any residentially-zoned property.

4. Household Living – Senior Citizen Housing.

a. The submitted site plan shall include details on the following: building(s) height and design; unit and room size; open space and recreational areas; and off-street parking layout.

b. All proposals must stipulate to a density not to exceed forty-five (45) units per acre.

c. All proposals must observe a twenty (20) foot buffer between the proposal and each adjacent land use.

d. All proposals must include off-street parking spaces in conformance with Section 14-03-10 of this ordinance.

5. Microbrewery.

a. The site may not be located within three hundred (300) feet of the nearest lot line of any church, public or parochial school, public library, hospital, or college or university building used for academic purposes, unless the entity(s) affected by the above limitation consent to the granting of the special use permit.

b. A facility at the proposed site will not have an adverse impact on the character of the neighborhood. The following criteria may be used to evaluate proposed sites: the effect on traffic movements in the area; the general nature, character, age and condition of the adjacent development; the proximity to residential areas, regardless of zoning; or any other criteria the City may deem pertinent.

c. All brewing and storage activities are located within a completely enclosed building.

d. The facility complies with all applicable building code, health and sanitation, and zoning regulations.

e. The facility complies with all applicable licensing and operational requirements of the State.

f. Beverages brewed onsite cannot be sold or otherwise provided for consumption on the premises unless the owner of the microbrewery holds the appropriate liquor license from the City.

g. Beverages brewed onsite cannot be sold or otherwise provided to non-wholesale customers for consumption off the premises unless the owner of the

microbrewery holds appropriate liquor license from the City.

h. Adequate parking is provided onsite in accordance with the provisions of Section 14-03-10.

6. Moving of Buildings and Structures.

a. No principal building or accessory building 1,200 square feet or larger in size, which has been previously occupied in another location, shall be moved on to a property unless a special use permit is approved in accordance with the provisions of Section 14-03-08.

b. The moved-in building or structure is a permitted use and complies with all requirements of the zoning district in which it is to be located.

c. All provisions of Chapters 4-02 (City Building Code) and 4-06 (Moving of Buildings) of the Code of Ordinances of the City of Bismarck; and if applicable, the Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280) have been complied with.

d. The moved-in building or structure shall be compatible with the surrounding neighborhood.

7. Parking, Accessory.

a. For surface parking lots, landscaping must be provided in accordance with the provisions of Section 14-03-11 of this ordinance.

b. For surface parking lots adjacent to a residential use, a buffer yard must also be provided in accordance with the provisions of Section 14-03-11 of this ordinance.

c. For parking structures in the downtown area, the design standards for buildings shall apply.

8. Parking, Commercial.

a. For surface parking lots, landscaping must be provided in accordance with the provisions of Section 14-03-11 of this ordinance.

b. For surface parking lots adjacent to a residential use, a buffer yard must also be provided in accordance with the provisions of Section 14-03-11 of this ordinance.

c. For parking structures in the downtown area, the design standards for buildings shall apply.

9. Religious Institutions.

a. The ground area occupied by the principal and accessory buildings shall not exceed thirty-five (35) percent of the total area of the lot.

b. Space for off-street parking shall be provided as per section 14-03-10 hereof or as the City Planning and Zoning Commission may require.

c. No application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building a plot plan showing the open space designated as being reserved for off-street parking purposes to be provided in connection with such building and no certificate of occupancy shall be issued unless the required facilities have been provided in accordance with those shown on the approved plan.

d. A columbarium is allowed as an accessory use to a church provided it is included within the principal structure.

e. At least thirty-five (35) percent of the parcel shall be maintained as landscaped open space.

10. Retail Sales and Service – Convenience Store/Gas Station.

a. The minimum total area of the premises shall be at least twenty-one thousand (21,000) square feet with minimum lot dimensions of one hundred forty (140) feet in width and length.

b. Pump dispensers shall have a setback of at least fourteen (14) feet from the property line.

c. The building shall have a setback of at least twenty-five (25) feet setback from any property line adjacent to a public street.

d. Access to and egress from a convenience store/gas station shall be arranged for the free flow of vehicles at all times, so as to prevent the blocking or endangering of vehicular or pedestrian traffic through the stopping or standing or backing of vehicles on sidewalks or streets.

e. Adequate off-street parking shall be provided in conformance with Section 14-03-10 of this ordinance. In addition, for car wash facilities, vehicle stacking spaces shall be provided on the premises in accordance with Section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

f. Ingress and egress points shall be maintained at not less than sixty (60) feet from an intersecting street corner on arterial or collector streets, and not less than forty (40) feet from an intersecting street corner on local streets.

g. All access and egress driveways shall cross a sidewalk only in such a manner that its width at the inner edge of the sidewalk is no greater than its width at the curb, excluding any curved or tapered section known as the curb return. All curb cuts, widths, and other specifications shall comply with the standards established by the City Engineer.

h. Any portion of a parking or loading area abutting a sidewalk at a point other than a permitted driveway shall be provided with wheel stops, bumper guards, or other devices to prevent encroachment of parked, standing or moving vehicles upon any sidewalk area not contained within a permitted driveway.

i. On a corner lot no fence, wall, terrace, structure, shrubbery or automobile shall be parked or other obstruction to vision having a height greater than three (3) feet above the curb shall occupy the space in a triangle formed by measuring ten (10) feet back along the side and front property lines.

11. Retail Sales and Service – Mortuary/Funeral Home.

a. Minimum lot size shall be twenty thousand (20,000) square feet.

b. Off-street parking - One space for each four (4) seats for patron use or one space for each sixty (60) square feet of building area, whichever is greater.

c. Funeral home or mortuary shall have a horizontal separation of at least fifty (50) feet from any adjacent residential building site.

d. Adjacent streets shall not be considered as automobile parking space for any use of the funeral home and ingress and egress from premises shall be so designed to prevent traffic congestion.

12. Retail Sales and Service – Outdoor Sales Display Area.

a. The sales display area shall be maintained in an orderly fashion, with display items consisting solely of products sold or distributed on the site.

b. The sales display area shall not occupy any required parking or landscaping areas.

c. Items for sale shall not be displayed within the public right-of-way, except as specifically approved by the City Commission.

13. Retail Sales and Service – Vehicle Sales Lots.

a. Vehicle sales lots shall be subject to the perimeter landscaping requirements of Section 14-03-11.

b. Vehicles for sale shall not be displayed within the public right-of-way.

c. On a corner lot no fence, wall, terrace, structure, shrubbery or automobile shall be parked or other obstruction to vision having a height greater than three (3) feet above the curb shall occupy the space in a triangle formed by measuring ten (10) feet back along the side and front property lines.

14. Schools.

a. At least thirty-five (35) percent of the site area shall be maintained as landscaped open space.

15. Telecommunication Facilities.

a. Wherever possible, all telecommunications facilities shall be placed on existing poles, tanks, towers, roofs, signs, or other existing manmade or natural features to make the equipment inconspicuous. Every reasonable effort shall be taken to design the equipment so as to minimize its visual impact. Whenever possible, natural terrain and hillsides shall be used to elevate equipment. Towers, antennae, poles, dishes and other equipment shall be the least size and height necessary to perform their intended functions and to maximize opportunities for co-locations, thereby minimizing new wireless telecommunications sites.

b. Towers shall be located, to the extent possible, to minimize any adverse impacts on residential property.

c. All antennas and towers shall be located and designed in a manner to minimize off-site visibility to the greatest extent possible and shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA).

d. The height of any building mounted antennae or satellite dish, including its support structure, shall not exceed 20 feet above the highest point of the roof, and in no case shall the overall height of the building and tower together exceed the height limitations for the underlying zoning district.

e. Free-standing antennas and towers shall not exceed the height limitation for the underlying zoning district.

f. No signs, other than public safety warning or equipment information, shall be affixed to any portion of the structure or accessory equipment enclosure.

g. No artificial illumination, except when required by law or by a governmental agency to protect the public’s health and safety, shall be utilized.

h. Accessory equipment or buildings shall be screened in accordance with the provisions of Section 14-03-12.

i. Support buildings or enclosures to house switching and other equipment shall be constructed of materials compatible with the surrounding buildings.

16. Vehicle Repair.

a. The building shall have a front yard setback of at least twenty-five (25) feet from any property line adjacent to a public right-of-way.

b. All vehicles awaiting repair or pickup shall be stored on site within an enclosed building or in a defined parking space.

c. All repair shall be performed within an enclosed building.

d. All vehicles parked or stored on site shall display a current license plate with a current license tab. Outside storage of automotive parts or storage of junk vehicles shall be prohibited.

e. Venting of odors, gas and fumes shall be directed away from residential uses.

17. Vehicle Service, Limited.

a. The building shall have a front yard setback of at least twenty-five (25) feet from any property line adjacent to a public right-of-way.

b. Access to and egress from a limited vehicle service facility shall be arranged for the free flow of vehicles at all times, so as to prevent the blocking or endangering of vehicular or pedestrian traffic through the stopping or standing or backing of vehicles on sidewalks or streets.

c. Adequate off-street parking shall be provided in conformance with Section 14-03-10 of this ordinance. In addition, for car wash facilities, vehicle stacking spaces shall be provided on the premises in accordance with Section 14-03-10 of this ordinance, in addition to all common ingress and egress areas provided.

d. Ingress and egress points shall be maintained at not less than sixty (60) feet from an intersecting street corner on arterial or collector streets, and not less than forty (40) feet from an intersecting street corner on local streets.

e. All access and egress driveways shall cross a sidewalk only in such a manner that its width at the inner edge of the sidewalk is no greater than its width at the curb, excluding any curved or tapered section known as the curb return. All curb cuts, widths, and other specifications shall comply with the standards established by the City Engineer.

f. Any portion of a parking or loading area abutting a sidewalk at a point other than a permitted driveway shall be provided with wheel stops, bumper guards, or other devices to prevent encroachment of parked, standing or moving vehicles upon any sidewalk area not contained within a permitted driveway.

g. On a corner lot no fence, wall, terrace, structure, shrubbery or automobile shall be parked or other obstruction to vision having a height greater than three (3) feet above the curb shall occupy the space in a triangle formed by measuring ten (10) feet back along the side and front property lines.

(Ord. 5422, 05-24-05; Ord. 5719, 05-12-09; Ord. 5852, 11-22-11; Ord. 5958, 03-26-13)

CHAPTER 14-05 - ENFORCEMENT

14-05-01. Building Permits and Approval of Plan. This article shall be enforced by the Building Official, who shall in no case grant any permit for the construction, moving, or alteration of any building if the building as proposed to be constructed, moved or altered would be in violation of any of the provisions of this article. All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual shape and dimensions of the plot to be built upon, the exact sizes and locations on the plot of the buildings and accessory buildings then existing, and the lines within which the proposed building or structure shall be erected or altered, the existing and intended use of such building or part of a building, the number of families or housekeeping units the building is designed to accommodate, and such other information with regard to the plot and neighboring plots as may be necessary to determine and provide for the enforcement of this chapter. One copy of such plans shall be returned to the

owner when such plans shall have been approved by the Building Official.
(Ord. 4486, 04-27-93; Ord. 5728, 05-26-09)

14-05-02. Certificate of Occupancy. It shall be unlawful to use or permit the use of any building or premises or part thereof, hereafter created, erected, changed, converted, moved, altered or enlarged wholly, or partly in its use or structure, until a certificate of occupancy shall have been issued therefore by the Building Official. Such certificate shall show that such building or premises or part thereof and the proposed use thereof are in conformity with the provisions of this article.
(Ord. 4486, 04-27-93; Ord. 5728, 05-26-09)

14-05-03. Duties of Building Official, Fire Chief, Courts, City Planning and Zoning Commission and Board of City Commissioners as to Matter of Appeal. It is the intent of this article that questions arising in connection with the enforcement of the article shall be presented first to the Building Official and that such questions shall be presented to the board of adjustment only on appeal from the Building Official and that from the decision of the board of adjustment, appeal may be made to the board of city commissioners as provided by ordinance. Questions involving the enforcement of Section 14-05-05.1 shall be presented first to the Fire Chief and that such questions shall be presented to the board of adjustment only on appeal from the Fire Chief and that from the decision of the board of adjustment, appeal may be made to the board of city commissioners as provided by ordinance. Questions involving special uses shall be presented to the city planning and zoning commission and appeal may be made to the board of city commissioners as provided by ordinance. Temporary special uses may be granted by the Building Official and appealed to the board of city commissioners.
(Ord. 4486, 04-27-93; Ord. 5728, 05-26-09)

14-05-03.1. Notice and Order. Whenever a violation of this title is found, the Building Official or his or her agent shall give written notifications to the owner of the property or to the occupant or renter of the property that a violation has occurred and order the violation abated and the property, building or use brought into compliance with this title. Whenever a violation of Section 14-05-05.1 of this title is found, the Fire Chief or his or her agent shall give written notifications to the owner of the property or to the occupant or renter of the property that a violation has occurred and order the violation abated and the property, building or use brought into compliance with this title. A reasonable amount of time must be allowed for compliance.
(Ord. 4862, 08-12-97; Ord. 5728, 05-26-09)

14-05-04. Remedies. In case any building or structure is erected, constructed, reconstructed, repaired, moved, converted or maintained, or any building, structure, or land is used in violation of this article, the building inspector or any other appropriate authority or any adjacent, nearby or neighboring property owner who would be affected by such violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action in proceeding to prevent the occupancy of such building, structure or land.

14-05-05. Fees. The fees to be charged and collected for consideration of any application for a variance, appeal to the Board of Adjustment, special use permit, zoning map amendment, annexation or certificate of occupancy for uses not requiring a building permit shall be as established by the Board of City Commissioners and shall be collected at the time of filing of an application.

(Ord. 4385, 07-30-91; Ord. 4486, 04-27-93; Ord. 4635, 09-27-94; Ord. 5028, 02-22-00; Ord. 5063, 07-25-00; Ord. 5214, 11-12-02)

14-05-05.1. Accumulation of Certain Items Prohibited.

1. No person shall cause, permit, keep, accumulate or allow the accumulation of any commercial equipment, junk, refuse, surplus, scrap, salvage or other similar items outside of a closed building in any residentially-zoned district. The items for which accumulations are prohibited under this section may include one or more of the following but are not limited to hazardous wastes, scrap metals, used or scrap lumber, household appliances, machinery, farm machinery, commercial equipment, new or used building materials, construction or demolition waste or salvage, abandoned or unlicensed vehicle(s), automotive or machinery parts, tires, used oil or solvents, garbage or rubbish of any kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items. The fact that an item or items has value or is operational shall not excuse conduct prohibited by this section. For the purposes of this section, residential districts shall include RR, RR5, R5, RMH, R10, RM, RT, PUD, and HM. Prior to signing a complaint under this section, the Fire Chief or his or her agent must serve the property owner or tenant with a notice and order pursuant to Section 14-05-03.1.

2. No person shall cause, permit, keep, accumulate or allow the accumulation of any junk, refuse, surplus, scrap, salvage or similar items outside of a closed building or opaque fencing in any commercially, industrially or agriculturally-zoned district absent a special use permit. The items for which accumulations are prohibited under this

section may include one or more of the following but are not limited to hazardous wastes, scrap metals, used or scrap lumber, household or commercial appliances, used building materials or salvage, construction demolition waste or salvage, abandoned or unlicensed vehicle(s), automotive or machinery parts, used tires, used oil or solvents, garbage or rubbish of any kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items. The fact that an item or items may have value does not excuse the conduct prohibited by this section. The prohibitions contained in this section shall apply to properties zoned CA, CB, PUD, CR, CG, MA, MB, or A. Prior to signing a complaint under this section, the Fire Chief or agent must serve the property owner or tenant with a notice and order pursuant to Section 14-05-03.1.

(Ord. 4861, 08-12-97; Ord. 4936, 09-08-98; Ord. 5728, 05-26-09)

14-05-06. Violations. The erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure, or the use of any building, structure or land, in violation of this title, or of any regulation, order, requirement, decision or determination made under authority conferred by this title shall constitute the maintenance of a public nuisance and any appropriate action or proceeding may be instituted by the City of Bismarck, through any administrative official, department, board or bureau charged with the enforcement of this title.

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;

2. To restrain, correct or abate such violation;

3. To prevent the occupancy of the building, structure or land; or

4. To prevent any illegal act, conduct, business or use in or about such premises.

A violation of any provision of this title or a violation of or refusal or failure to comply with any regulation, order, requirement, decision or determination made under authority conferred by this title shall be an infraction and punishable as provided in Title 1 entitled "General Provisions" of the Code of Ordinances of the City of Bismarck. Each day the violation continues constitutes a separate violation.

(Ord. 4963, 02-23-99)

14-05-06.1 Abatement. The imposition of a penalty provided by the provisions of this title shall not preclude the city from

instituting proceedings to restrain, correct or abate a continuing violation of this title. If within ten days of a final order that order has not been obeyed, the Building Official or his or her agent is hereby authorized to restrain, correct or abate the violation and have the costs incurred assessed against the property. An order of the Fire Chief issued pursuant to Section 14-05-03.1 becomes final when upheld by the Board of City Commissioners or when the time specified for appeal to the board of city commissioners has expired.
(Enacted: Ord. 4963, 02-23-99)
(Ord. 5728, 05-26-09

14-05-07. Requirement for Building Permit. No permit for the erection of any new principal building or any new accessory building prior to the construction of the principal building shall be issued unless such building is to be located on a lot in a subdivision platted pursuant to Chapter 40-50 NDCC or on a tract of land not less than forty (40) acres in size or the aliquot part of a corrective section intended to comprise a quarter-quarter-section, provided such aliquot part is not less than thirty-five (35) acres in size.

A building permit may be issued for an addition to an existing single-family principal building on a parcel of record, provided: 1) the value of said addition does not exceed twenty-five (25) percent of the assessed value of the building to which it is being added; 2) the parcel of record meets the minimum lot area requirement for a zoning lot in the district in which the parcel is located; 3) the parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty feet wide; and 4) the parcel of record is an auditor’s lot or an aliquot description rather than a metes and bounds description.

A building permit may be issued to reconstruct an existing single-family principal building damaged by fire, flood, explosion, wind, war or other catastrophe on a parcel of record, provided: 1) the value of the reconstruction does not exceed fifty (50) percent of the assessed value of the building being reconstructed; 2) the reconstruction is within the original footprint of the building being reconstructed; 3) the parcel of record meets the minimum lot area requirement for a zoning lot in the district in which the parcel is located; 4) the parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty (20) feet wide; and 5) the parcel of record is an auditor’s lot or aliquot description rather than a metes and bounds description.

A building permit may be issued to construct a replacement single-family principal building on a parcel of record, provided: 1) the parcel of record meets the minimum lot area requirement for a zoning lot in the district in which the parcel is located; 2) the parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty (20) feet wide; 3) the parcel of record is an auditor's lot or aliquot description rather than a metes and bounds description; 4) the replacement single-family principal building meets all of the setback and other development requirements for the district in which the parcel is located; and 5) the existing single-family principal building is removed from the property or no longer used as a residential structure upon completion of the new single-family principal building.

A building permit may be issued for a new accessory building on a parcel of record with an existing single-family principal building, provided: 1) the parcel of record meets the minimum lot area requirement for a zoning lot in the district in which the parcel is located; 2) the parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty feet wide; and 3) the parcel of record is an auditor’s lot or aliquot description rather than a metes and bounds description.
(Ord. 4423, 03-31-92; Ord. 5026, 02-08-00; Ord. 5278, 09-23-03; Ord. 5689, 08-26-08; Ord. 5726, 05-26-09)

CHAPTER 14-06 - BOARD OF ADJUSTMENT

14-06-01. Members. The board of adjustment heretofore created by ordinance shall continue in full force and effect. The board of adjustment shall consist of six (6) members, each to be appointed by the board of city commissioners for a term of three (3) years. The board of adjustment shall have all of the powers and duties imposed upon it by the statutes of the State of North Dakota and the ordinances of the City of Bismarck.
(Ord. 5667, 05-27-08)

14-06-02. Powers and Duties. The board of adjustment is an administrative board whose powers and duties are limited generally by the laws of the State of North Dakota, particularly by the powers and duties set forth in this section. The board of adjustment shall not have the power to amend this article on zoning, nor to permit nor prohibit any actions which accomplish an amendment of this article on zoning, nor to permit any action nor fail to prohibit any action which would violate this article. However, it is declared the intent of this section that any actions taken by the board of adjustment in full compliance with the provisions of this section shall be deemed to be administrative actions, and shall not be interpreted as

unauthorized amendments of the article. The board of adjustment shall have the following powers and duties:

1. Interpretation. On appeal from an order, requirement, determination or provision made by the Building Official or other administrative official, or by request from any official, agency or head of the city, the board of adjustment shall decide any question involving the interpretation of any provision of this article. The board of adjustment may, in conformity with this article, reverse, affirm, or modify wholly or in part, or render a decision upon any such appeal or request.

2. Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this article in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

No adjustment in the strict application of any provisions of this article shall be granted by the board of adjustment unless it finds:

a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.

b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.

c. That the grant of the variance will be in harmony with the general purposes and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

d. A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse and the landowner must re-apply.

3. Conditional Variance. In granting any variance, the board of adjustment shall prescribe any conditions applying thereto that it may deem necessary or desirable to carry out the general purposes of the article or preserve the neighborhood or general welfare from injury.

4. Renewal of Certificate of Occupancy for Nonconforming Use. The board of adjustment shall have the power to renew a certificate of occupancy for nonconforming use in accordance with the provisions of Section 14-03-09 of this article. In granting such renewal, the board of adjustment shall determine that the temporary continuation will not be injurious to the neighborhood, nor to the public welfare, and that there are unusual circumstances or conditions which would create an unnecessary hardship on the applicant for extension, if such extension were refused. The board of adjustment may refuse to grant an extension of the certificate of occupancy for a nonconforming use if application for such extension is received by the board of adjustment less than fifteen (15) days prior to the expiration of the original certificate of occupancy.

5. Renewal of Automatically Revoked Building Permit: Upon appeal by any person holding a building permit automatically revoked by the provisions of Section 14-03-04 of this article, the board of adjustment shall hear and determine whether or not such revoked building permit will be renewed. The board of adjustment shall authorize such renewal only where it specifically finds:

a. Construction of the building has, in fact, been started;

b. Substantial expenditures have been made for such construction; and

c. The plans for building and actual construction of the building are in full compliance with the zoning ordinance in effect at the date of issuance of the building permit, and

in full compliance with the building code and any other ordinance of the City of Bismarck.

6. Off-street Parking. The board of adjustment shall, upon application, hear and decide any question relating to the decrease of required off-street parking or off-street loading spaces as set forth in Section 14-03-10 of this article.

7. Airport Zoning. The board of adjustment shall have all powers and duties granted to it by the Bismarck Municipal Airport zoning regulation ordinance.

8. Recommendations to City Planning and Zoning Commission. The board of adjustment is authorized to recommend to the city planning and zoning commission for study or action any changes or amendments to the text or district zoning maps that said board finds desirable. The city planning and zoning commission shall consider such recommendation and may prepare appropriate amendments for the consideration of the board of city commissioners to carry out said recommendation.

9. Miscellaneous Powers and Duties. The board of adjustment shall have such other powers and duties as may be authorized by this article, or any amendment thereto.

10. Rules. The board of adjustment is authorized to establish such rules of procedure, not in conflict with any provisions of the laws of North Dakota, this article, or any other ordinance of the City of Bismarck, as it may deem necessary to carry out the provisions of this article.

(Ord. 4486, 04-27-93; Ord. 5728, 05-26-09)

14-06-03. Appeal Procedure.

1. Appeal - How taken: An appeal to the board of adjustment may be taken by any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Building Official based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Building Official and with the board of adjustment a notice of appeal and specifying the grounds thereof. The Building Official shall forthwith transmit to the board all the papers constituting the record

upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Building Official certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Building Official and on due cause shown.

2. Appeal - Procedure. The board of adjustment shall fix a reasonable time for the hearing of an appeal or for action on any matter upon which it is required to pass under this article and give due notice thereof to interested parties, and make all decisions within a reasonable time. Upon any hearing, any party may appear in person or by agent or attorney. The concurring vote of four members of the board shall be necessary to reverse an order, requirement, decision or determination of the Building Official or other official, or to decide in favor of the applicant any matter upon which it is required to pass under this article. The board shall adopt rules of procedure and shall keep records of applications and action thereon, which shall be a public record.

3. Appeal to the Board of City Commissioners. A decision of the board of adjustment may be appealed to the board of city commissioners by either the aggrieved applicant or by any officer, department, board, or bureau of the city by filing, within fifteen days after notice of the decision, with the city auditor a notice of appeal pursuant to the provisions of section 40-47-11, NDCC. The board of city commissioners shall fix a time, within thirty days, for the hearing of the appeal and shall give due notice of the hearing to the parties. The appeal shall be decided within a reasonable time. Any party may appear in person or by agent or by attorney at the hearing of the board of city commissioners on the appeal. The board of city commissioners may reverse or affirm the decision of the board of adjustment, in whole or in part, or may modify the order, decision or determination appealed.
(Ord. 4486, 04-27-93; Ord. 5728, 05-26-09)

CHAPTER 14-07 - AMENDMENTS

14-07-01. Purposes. Wherever the public necessity, convenience, general welfare, or good zoning practice requires, the board of city commissioners may amend, supplement, or change the regulations in the zoning ordinance, or the zoning

boundaries or classification of property on the zoning map, as set forth herein.

14-07-02. Procedure.

1. Initiation of Amendments. Amendments to the zoning ordinance shall be initiated only in the following manner:

a. Amendments to the text of the ordinance and/or changes in the zoning boundaries or classification of properties shown on the zoning map may be initiated by the board of city commissioners or the planning commission.

b. Amendments to the zoning boundaries or classification of property shown on the zoning map may be initiated by property owners of the land proposed to be rezoned, by the filing with the planning commission secretary of a zoning change application, which application shall be provided by the planning commission secretary, and accompanied by the applicable fee and all other materials and data required in said application.

2. Application for Amendment.

a. The zoning change application shall be completed and filed by all owners of the property proposed to be changed, or his/their designated agent.

b. The zoning change application shall be submitted to the Director of Community Development by the specified application deadline and on the proper form and shall not be accepted by the Director of Community Development unless and until all of the application requirements of this section have been fulfilled.

3. Preliminary Consideration by Planning Commission. The planning commission secretary, upon the satisfactory fulfillment of the zoning change application and requirements contained herein, shall schedule the requested amendment for a regular or special meeting of the planning commission, but in no event later than sixty (60) calendar days following the filing and acceptance of the application. The planning commission may approve and call for a public hearing on the request, deny the request or table the request for additional study.

4. Public Hearing by Planning and Zoning Commission. Following preliminary approval of a zoning change application, the Director of Community Development shall set a time and place for a public hearing thereon. Notice of the time and place of holding such public hearing shall be published in a newspaper of general circulation in the City of Bismarck once each week for two (2) consecutive weeks prior to the hearing. Not less than ten (10) days prior to the date of the scheduled public hearing, the City shall attempt to notify all known adjacent property owners within three hundred (300) feet of the proposed zoning change. "Notify" shall mean the mailing of a written notice to the address on record with the City Assessor or Burleigh County Auditor. The failure of adjacent property owners to actually receive the notice shall not invalidate the proceedings. The Planning and Zoning Commission may approve, approve subject to certain stated conditions being met, deny or table the application for further consideration and study.

5. Planning and Zoning Commission Recommendations. Following the public hearing, the Director of Community Development shall forward the proposed amendment to the Board of City Commissioners together with the Planning and Zoning Commission's recommendation and a report fully setting forth the reasons for such recommendation.

6. Board of City Commissioners' Actions. Upon receipt of the Planning Commission's recommendation and report, the Board of City Commissioners shall consider the proposed amendment and schedule a public hearing on same within ninety (90) days following the time said recommendation and report were first received by the Secretary to the Board of City Commissioners. Notice of the time and place of holding such public hearing shall first be published in a newspaper of general circulation in the City of Bismarck once each week for two (2) consecutive weeks prior to the hearing. A hearing shall be granted to any person interested, and the time and place specified. Following the public hearing on the proposed amendment, the Board of City Commissioners may approve, approve subject to certain stated conditions being met, deny or table the application for further consideration and study.

7. Protest. If a protest petition against a change, supplement, modification, amendment or repeal is filed and signed by owners of twenty (20) per cent or more of the property immediately adjacent and within one hundred fifty (150) feet of the request, excluding street right-of-way widths, the amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all members of

the board of city commissioners, otherwise said amendment shall not be approved or adopted without proceeding anew as in the case of a new amendment. No amendments to the zoning ordinance shall be approved for a change in zoning classification different from the one applied for and contained in the public notice of hearing nor for any land not included therein without referring said change to the planning commission for its review and recommendations, and proceeding pursuant to subsections (2), (3) and (4) above, provided, however, that an amendment may be approved for only a portion of the area proposed for rezoning if the portion rezoned is accurately and sufficiently delimited in the approval action.

8. Withdrawal of Applications. Any application filed pursuant to subsection (b) of subsection (2) above may be withdrawn upon written request by the applicant any time prior to the submission of any public hearing notice for advertisement; provided, that the request for withdrawal shall be only with the consent of either the planning commission or the board of city commissioners, whichever body has advertised the hearing, or their respective secretaries.

(Ord. 4222, 1-03-89; Ord. 4298, 10-31-89; Ord. 4647, 12-06-94; Ord. 4946, 10-27-98; Ord. 5214, 11-12-02, Ord. 5218, 11-26-02; Ord. 5343, 06-22-04; Ord. 5728, 05-26-09)

CHAPTER 14-08 - MASTER PLAN

14-08-01. Master Plan Established. All street, road, land use, water, sanitary sewer and drainage plans as might from time to time be adopted by the City of Bismarck pursuant to statute and filed with the register of deeds shall be in full force and effect from and after their final passage and adoption. The various master plans shall hereinafter be referred to as the "master plan" or "the plan."

14-08-02. Purposes of Plan. The street and highway plan is adopted to protect and promote public health, safety, comfort, convenience and general welfare and for the accomplishment thereof is adopted for the following purposes:

1. To assist in providing a definite plan of development for the City of Bismarck and adjacent territory, and to guide, control and regulate the future growth of said area in accordance with said plan.

2. To provide a guide for the intelligent outlay of the capital expenditures of said city for street, highway, drainage and utility improvements.

3. To provide an authentic source of information as to the development of the city for prospective residents and investors therein.

4. To provide a pattern for such future subdivisions of land as may take place in said city and adjacent territory.

5. To obviate the menace to the public safety resulting from inadequate provision of city improvements in connection with and as a result of the development of the city.

6. To prevent deterioration of property values and impairment of conditions making for desirable agricultural, residential, commercial or industrial development, as the case may be, which would result from a lack of plans designed to assure the orderly, harmonious and beneficial development of the city and territory adjacent thereto.

14-08-03. Territorial Application. The territorial application or jurisdiction of the master plan shall be the entire area within the corporate and extraterritorial limits of the city and adjacent territory beyond the corporate and extraterritorial limits which the commission has determined bears a relation to the planning of the city and is designated on said master plan.

14-08-04. Streets, Sewers, Mains to Conform to Plan. The City of Bismarck shall not accept, lay out, open, improve, grade, pave, or curb any street, or lay or authorize to be laid sewers or connections thereto, or water mains or connections thereto, in any street or right-of-way within the territory of subdivision jurisdiction described in Section 14-08-03, unless such street (a) shall have been accepted or open as, or shall otherwise have received the legal status of a public street prior to the adoption of this street and highway plan; or unless such street (b) corresponds with a street shown on the street or highway plan, or an amendment thereto. Utilities may be placed on private property or in private rights-of-way with the city engineer's approval.

14-08-05. Buildings to Conform to Plan. No building shall be erected on any lot within the territory designated in Section 14-08-03, nor shall a building permit be issued for such building unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted, opened or shall otherwise have received legal status of a public or private street prior to that time; or (b) unless such a street corresponds with a street shown on the master plan or an amendment thereto. Any building erected in violation of

this section shall be deemed an unlawful structure and the building inspector or other appropriate official may cause it to be vacated and have it removed.

CHAPTER 14-09 - REGULATIONS GOVERNING THE SUBDIVISION OF LAND

14-09-01. Planning Commission.

1. The planning commission of the City of Bismarck is hereby authorized and instructed to review and approve or disapprove the formal subdivision of land within its jurisdiction.

2. The territorial jurisdiction of the city planning commission over the subdivision or platting of land shall include all land located within the corporate limits, and all land lying within the extraterritorial jurisdiction as defined in Section 14-02-03 hereof.

(Ord. 5278, 09-23-03)

14-09-02. Purpose of Subdivision Regulations; Approval of Plats. As each new subdivision of land in the City becomes a permanent unit in the basic structure of the expanding community, to which the community will be forced to adhere, the design and arrangement of such subdivisions must correlate to the unified scheme of community interests. In order to provide for the proper arrangement of streets in relation to other existing and planned streets, and to the master plan of the City of Bismarck; to provide for adequate and convenient open spaces, for recreation, for light and air; in order to avoid congestion of population; in order to provide for traffic, for utilities, for access of fire-fighting apparatus; in order to promote, preserve and enhance area natural resources; in order to provide for and improve the public health, safety and general welfare of the City of Bismarck, the following rules and regulations for the platting and subdivision of land within the City of Bismarck and adjacent territory have been adopted by the Planning Commission of the City of Bismarck, in accordance with the laws of the State of North Dakota and the ordinances of the City of Bismarck.

Every piece of land proposed within the City or within the City's extraterritorial area shall be prepared, presented for approval and recorded as described in this Chapter. This chapter applies to the platting of land into a single parcel, the subdivision of a lot or parcel of land into two or more lots, or other division of land for the purpose of sale or development, whether immediate or future, including the resubdivision or replatting of lots. No plat of a subdivision of land within the City of Bismarck or within the adjacent territory designated on any filed master plan as subject to

subdivision regulations of the City of Bismarck, shall be filed or recorded until it shall have been approved by the Planning Commission of the City of Bismarck and such approval entered in writing on the plat by the chairman and secretary of the City Planning Commission. Such subdivision plats must be prepared in accordance with provisions of Chapter 40-50 of the North Dakota Century Code. The filing of a plat of irregular description in accordance with Chapter 57-02-39 of the North Dakota Century Code does not meet the requirements of this Chapter.
(Ord. 4822, 02-25-97; Ord. 5146, 12-18-01)

14-09-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

Collector: Roadway which provides traffic movements between local roads and arterial roads and also provides direct access to abutting property. Collectors are often only two-lane roads but should be planned and designed to minimize on-street parking and direct driveway access. The locations of roadways classified as collectors shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Functional Classification: The process by which streets and highways are grouped into classes, or systems, according to the character of service they are intended to provide.

Ghost platting: A method of master planning for future urban densities in rural residential large-lot subdivisions located within the Urban Service Area Boundary (USAB). Platting for future urban densities is achieved by establishing lines for future splits of large lots into smaller lots and dedication of right-of-way and easements for future streets, utilities, storm water facilities etc. As the city grows and rural residential large-lot subdivisions are incorporated into the city, costs of public facility improvements can be shared among more users by planning ahead for conversion of rural residential subdivisions into urban density neighborhoods.

Interstate: Roadway which provides rapid movement of large traffic volumes between major population centers and other arterials. Interstates are multi-lane divided highways with grade separations at all crossroads, full access control and no parking. The locations of roadways classified as interstates shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Local: Roadway whose primary function is to provide access to abutting property. Local roads are usually two-lane roads with parking and direct access to adjacent lands.

Lot: As used in Section 14-09-01 and following of this ordinance shall mean a "record lot" as defined in Section 14-02-02 hereof unless otherwise stated.

Minor Arterial: Roadway which provides through traffic movements between areas and links collectors with other arterials. Minor arterials usually have two to four lanes and may be divided or undivided roads, preferably with little or no parking, and limited access. The locations of roadways classified as minor arterials shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Principal Arterial: Roadway which provides for rapid movements of relatively large traffic volumes between large land areas, major traffic generators and other arterials. Principal arterials should have controlled access and are usually multi-lane roads with no parking. The locations of roadways classified as principal arterials shall be as designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Subdivision: The division of a tract or parcel of land into record lots for the purpose, whether immediate or future, of sale or of building development, including any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from such lots, and/or including the creation of new or enlarged parks, playgrounds, plazas or open spaces. However, the division of land for agricultural purposes into parcels of ten (10) or more acres not involving any new street or easement of access, shall be exempted from these regulations.

Subdivision Plat, Minor: A subdivision, platted pursuant to Chapter 40-50 NDCC, that meets all of the following criteria:

a. Does not require the dedication of public rights-of-way or the construction of new streets;

b. Does not create any public improvements other than sidewalks;

c. Does not land-lock or otherwise impair convenient ingress and egress to or from the rear or side of the subject tract or any adjacent property;

d. Does not violate any local, state or federally-adopted law, ordinance, regulation, plan or policy;

e. Is part of a previously platted subdivision.

Subdivision Plat, Major: Any subdivision, platted pursuant to Chapter 40-50 NDCC, that does not meet the definition of a minor subdivision.

Plat of Irregular Description: A plat made for taxation purposes at the request of the County Auditor in accordance with Section 57-02-39 NDCC. Such a County Auditor's plat is not platting pursuant to Chapter 40-50 NDCC, but rather is made for the convenience of tax officials in describing property on the tax rolls.

Lot Line Adjustment: An adjustment of an existing platted lot line between two (2) adjoining lots by relocation of a common boundary that meets the following criteria:

a. Does not involve lots within more than one zoning classification;

b. Is not one lot line adjustment in a series of lot line adjustments proposed for contiguous lots as a way to circumvent the minor subdivision plat process.

c. Both of the resulting parcels conform to the minimum lot area, width and depth for the zoning district in which the property is located, or will when combined with an adjacent parcel as part of the same lot modification action;

d. The resulting parcels can be legally described with no more than two (2) directional descriptors (e.g. the north 100 feet of the west 200 feet of Lot 1, Block 1, ABC Addition). For lot line adjustments between irregularly-shaped parcels or to transfer an irregularly-shaped portion of a lot to an adjacent land owner, the Director of Community Development may waive this requirement, provided the resulting parcels can be legally described as the original lot number combined with a letter (e.g. Lot 1 would become Lots 1A, 1B and 1C);

Lot Combination: A combination of two (2) or more platted lots into a single lot whose boundaries coincide

with the lot lines shown on the recorded plat of the subdivision, that meets the following criteria:

a. Does not involve the vacation of existing easements;

b. does not involve lots within more than one zoning classification.

Lot Split: The division of a previously platted lot into not more than three (3) lots, that meets the following criteria:

a. The lot split does not involve the creation of new utility easements;

b. The lot split does not require the dedication of public rights-of-way for the purpose of gaining access to the property;

c. All parcels conform to the minimum lot area, width and depth for the zoning district in which the property is located;

d. The resulting parcels can be legally described with no more than two (2) directional descriptors (e.g. the north 100 feet of the west 200 feet of Lot 1, Block 1, ABC Addition). For an irregularly-shaped lot, the Director of Community Development may waive this requirement, provided the resulting parcels can be legally described as the original lot number combined with a letter (e.g. Lot 1 would become Lots 1A, 1B and 1C), and provided that any line dividing the parcel along a common wall is a straight line from the front property line to the back property line among the common wall;

(e) The property has not previously been divided through the lot split provisions of this ordinance.

Lot Modification: A lot line adjustment, lot split or lot combination as defined herein.

(Ord. 4631, 08-30-94; Ord. 4735, 11-14-95; Ord. 5146, 12-18-01; Ord. 5279, 09-23-03; Ord. 5452, 08-23-05; Ord. 5539, 08-22-06; Ord. 5728, 05-26-09; Ord. 5819, 04-26-11)

14-09-04. Procedure.

1. Preliminary steps:

a. Prior to preparing a subdivision plat for submittal, the applicant shall meet with planning and engineering staff to discuss the proposed

plat, consistency of the plat with City policies and plans, the overall concept plan for the area, extension of municipal utilities to service the plat, compliance with the fringe area road master plan, and storm water management issues.

b. The subdivider should also consult with parties potentially interested with him or with the ultimate users of the development, such as mortgage, insurance and lending institutions, with a view to reaching at this stage a clear understanding of the part of the market demand that should be served, suitability of the location of the proposed subdivision, the most advantageous general plan or arrangement of streets, lots, and other features of the proposed development.

c. It will be the duty of the planning commission to discourage the subdividing of lands that are far in advance of the needs of the community; that by their location cannot be efficiently served by public utilities, fire protection, police protection or other municipal services; that are located in areas subject to flooding; that are located in areas that would adversely impact water quality and environmentally sensitive lands; that are topographically unsuitable for development; or that for any other reason are being unwisely or prematurely subdivided. It shall also be the duty of the planning commission to encourage the replatting of lands deemed to be unsatisfactorily subdivided or which represent an obstacle to the orderly and efficient growth of the city. It shall also be the duty of the planning commission to encourage the coordinated platting of adjacent parcels of land.

2. Lot Modifications - Lot Line Adjustments, Lot Splits and Lot Combinations:

a. The purpose of this subsection is to provide for approval of lot modifications that meet specific criteria and for the waiver of standard platting requirements specified elsewhere in this Chapter. This process is intended to facilitate the further division of previously platted lots, the combination of previously platted lots or for the adjustment of an existing lot line by relocation of a common boundary.

b. Any person having a legal interest in the property may file an application for a lot modification. For an adjustment of an existing lot line, an affidavit from all affected property owners indicating their consent must also be submitted.

c. An application for a lot modification shall be submitted to the Director of Community Development, along with the applicable fee; a certificate of survey prepared by a registered land surveyor showing the parcel or lot, the proposed modification, and all existing building or structures; a legal description of the original parcel, and a legal description of the resulting parcel(s).

d. For lot combinations and lot line adjustments in all zoning districts and for lot splits in all zoning districts except RR – Residential and RR5 – Residential, the application will be reviewed by the Director of Community Development in consultation with the City Engineer. No hearing or review by either the Planning and Zoning Commission or City Commission is necessary.

e. For lot splits in RR – Residential and RR5 – Residential districts, the application shall be subject to a public hearing before the Planning and Zoning Commission, in accordance with the following procedure:

i. The application for a lot modification, along with all required items identified herein, shall be submitted to the Director of Community Development at least twenty-three (23) days prior to the Planning and Zoning Commission meeting at which the request is to be acted upon.

ii. After receipt of all items required for the application for approval of a lot split, the Director of Community Development shall give notice of a public hearing on the proposed lot split by advertising the time and place of such hearing in a newspaper of general circulation in the City of Bismarck once each week for two (2) consecutive weeks prior to the date of such hearing. Not less than ten (10) days prior to the date of such

hearing, all known adjacent property owners within 1,320 feet of the proposed lot split shall be notified of the public hearing by letter. The Director of Community Development shall send a notice of the time and place of such public hearing to the property owner(s) before the date fixed for the hearing. The public hearing may be held at any regular or special meeting of the Planning and Zoning Commission.

iii. After a public hearing, the Planning Commission may act upon the request for a rural residential lot split. The action of the Planning Commission, together with the reasons therefore, will be entered in the official records of the Planning Commission and the applicant shall be so notified. If the Planning Commission approves the lot split, the applicant shall record a document that legally creates the two new parcels with the Burleigh County Recorder. Failure to record such a document within sixty (60) days shall nullify the approval of the lot split.

3. Minor Subdivision Plat.

a. The purpose of this subsection is to provide for an expedited review and approval process for the resubdivision of previously platted property that meets the criteria for a minor subdivision plat. Subdivision plats that do not meet the criteria shall be considered major subdivision plats.

b. The subdivider shall apply in writing to the Director of Community Development for approval of a minor subdivision plat by the specified application deadline and on the proper form. All current owners of property within the plat shall sign or ratify the application form.

c. The number of prints of the minor subdivision final plat as indicated on the current application form shall accompany the application for approval. The minor subdivision final plat shall comply with the provisions of Section 14-09-07(2) of these regulations and shall be accompanied by:

i. The applicable fee;

ii. Either a copy of a current title insurance policy or a current attorney's opinion of ownership;

iii. An 8½ x 11 reduction of the plat;

iv. A digital copy of the plat; and

v. A storm water management plan in accordance with Title 14.1 of the Zoning Ordinance.

d. After receipt of the application for minor subdivision plat approval, the Director of Community Development shall give notice of a public hearing on such proposed subdivision by advertising the time and place of such hearing in a newspaper of general circulation in the City of Bismarck once each week for two (2) consecutive weeks prior to the date of such hearing. Not less than ten (10) days prior to date of the scheduled public hearing, the City shall attempt to notify all known adjacent property owners within three hundred (300) feet of the proposed minor subdivision plat. "Notify" shall mean the mailing of a written notice to the address on record with the City Assessor or Burleigh County Auditor. The failure of adjacent property owners to actually receive the notice shall not invalidate the proceedings. The Director of Community Development shall send a notice of the time and place of such public hearing to the subdivider and property owner(s) before the date fixed for the hearing. The public hearing may be held at any regular or special meeting of the Planning and Zoning Commission.

e. After a public hearing, the Planning Commission may act upon the request for minor subdivision plat approval. If the Planning Commission approves the minor subdivision plat, such approval will be entered upon the tracing and will be signed by the secretary of the Planning Commission (Director of Community Development) and the Chair of the Planning and Zoning Commission. If the Planning and Zoning Commission disapproves the subdivision, such action, together with the reasons therefore, will be entered in the official records of the

Planning and Zoning Commission and the subdivider shall be so notified.

f. A minor subdivision plat that is approved by the Planning and Zoning Commission will be recommended for approval to the Board of City Commissioners. Following final approval by the Board of City Commissioners, a plat in recordable form shall be furnished to the Director of community Development within one hundred eighty (180) days following approval. The Director of Community Development may grant extensions of thirty (30) days for good cause shown in writing. Upon review and obtaining required signatures, the Director of Community Development shall file and record the original signed plat with the Burleigh County Recorder. All final plats shall be provided digitally formatted to the City of Bismarck's current computer-aided drafting and geographic system software and policy, including coordinate system ties as defined within this zoning ordinance.

4. Tentative approval - Major Subdivision Plat:

a. The subdivider shall apply in writing to the Director of Community Development for tentative approval of a major subdivision plat by the specified application deadline and on the proper form. All current owners of property within the plat shall sign or ratify the application form.

b. The number of prints of the preliminary plat as indicated in the current application form shall be filed with the Director of Community Development at the time application for tentative approval is made. The plat shall comply with the provisions of Section 14-09-07(1) of these regulations and shall be accompanied by:

i. The applicable fee;

ii. An 8½ x 11 reduction of the plat;

iii. A digital copy of the plat;

iv. A concept development plan showing the proposed location of roadways and a generalized lot layout for all adjacent land within ½ mile of the proposed plat that is owned by the applicant.

v. A preliminary storm water management plan that includes:

a. The proposed preliminary grading plan shown at contours as required to clearly indicate the relationship of the proposed changes to existing topography and remaining features;

b. A preliminary drainage plan of the developed site delineating the direction and at what rate storm water runoff will be conveyed from the site and setting forth the areas of the site where storm water will be collected; and

c. Any other information pertinent to the particular project which, in the opinion of the applicant, is necessary for the preliminary review of the project.

c. For a proposed subdivision plat within or adjacent to the corporate limits, a preliminary utility servicing plan is also required. This preliminary utility servicing plan shall include:

i. An accurate location map;

ii. The proposed layout of lots and streets;

iii. Topographic contours with a minimum contour interval of two (2) feet;

iv. The location of any existing municipal utilities within or adjacent to the plat; and

v. The proposed location of water and sanitary sewer mains within the subdivision, how these mains are proposed to connect to the existing utility systems, and any easements on adjacent property required to accommodate connections.

d. For proposed subdivision plats outside of the corporate limits, but within the Urban Service

Area Boundary, the following profiles for roads/streets are also required:

i. Three profiles of existing ground elevation; one at centerline and one on each side of the right-of-way, fifty feet beyond the right-of-way lines, and

ii. Two centerline profiles of proposed design elevations; one for a rural road section and another for a future urban street section design.

e. For proposed subdivision plats within two-miles of the corporate limits, the source of water shall be identified. If the subdivision is to be served by South Central Regional Water District a formal request from South Central Regional Water District to service the subdivision shall be submitted in conjunction with the request for tentative approval. Said request shall include a statement indicating that all rural water service lines installed by or on behalf of South Central Regional Water District will be installed to City specifications. The City Engineer shall review the request and make a determination as to whether or not South Central Regional Water District service will be allowed.

f. All areas proposed for development shall be platted to the edge of the property with all undevelopable land included within the plat (subject to discussion and agreement by the landowner and the City).

i. Land determined by the owner and City to be undevelopable and/or needed for stormwater purposes shall be:

a. Included in adjoining platted lot(s) as a stormwater easement that is privately owned, with only major maintenance by City. The amount of property taxes and special assessments for these areas will be determined by the City based on the level of benefit and the value of the land; or

b. Platted as a separate lot(s) that is owned and maintained by the City, as a regional stormwater conveyance or detention facility; or

c. Platted as a separate lot(s) that is owned and maintained by the Bismarck Parks and Recreation District (subject to their agreement) as a natural area; or

d. Platted as a separate lot(s) that is owned and maintained by the Bismarck Parks and Recreation District, (subject to their agreement) and including a City-maintained stormwater easement; or

e. Any combination of the above options.

Undevelopable land will be maintained as a natural area unless a drainage easement is present and the easement requires major maintenance. Major maintenance shall include maintenance of existing structures, mowing below floodplain elevation, cleaning of sediment and maintenance of access.

g. The Planning Commission shall approve, approve conditionally, table or disapprove such preliminary major subdivision plat. If approved with modification or waiver of certain requirements by the planning commission, the reasons therefore shall be specified. If approved conditionally, the conditions and reasons therefore shall be specified. In any conditional approval, the Planning Commission may require the subdivider to submit a revised preliminary major subdivision plat. If disapproved, the reasons for that action shall be stated, and if possible, the Planning Commission shall make recommendations on the basis of which the proposed subdivision may be approved.

h. The action of the Planning Commission shall be entered on the official records of the Planning Commission, including any conditions imposed and the reasons for any disapproval of a preliminary major subdivision plat.

i. Tentative approval of a preliminary major subdivision plat by the Planning Commission is not an acceptance of the major subdivision plat for record, but is rather an expression of approval of a general plat for the final approval and recording upon fulfillment of all requirements of these regulations.

j. Tentative approval shall be effective for a maximum period of twelve (12) months, unless upon application by the subdivider, the Director of Community Development grants an extension. If the final major subdivision plat has not been submitted for final approval within this time limit, a preliminary major subdivision plat must again be submitted to the Planning and Zoning Commission for tentative approval.

5. Final approval - Major Subdivision Plats:

a. The subdivider shall apply in writing to the Director of Community Development for final approval of a major subdivision plat by the specified application deadline and on the proper form. All current owners of property within the plat shall sign or ratify the application form.

b. The number of prints of the final major subdivision plat as indicated in the current application form shall accompany the application for final approval. The final plat shall comply with the provisions of Section 14-09-07(2), of these regulations, and shall be accompanied by:

i. Either a copy of a current title insurance policy or a current attorney’s opinion of ownership, running to the benefit of the City of Bismarck;

ii. An 8½ x 11 reduction of the plat;

iii. A digital copy of the plat, if required; and

iv. A storm water management plan in accordance with Title 14.1 of the Zoning Ordinance.

c. For proposed subdivision plats located within the City of Bismarck's extraterritorial area, an assurance of completion of the required improvements (in a form acceptable to the

Planning Commission) shall be required only if such improvements are not constructed and accepted prior to recording of the plat.

d. For plats proposed within the Urban Service Area Boundary, the following are also required:

   i. Grading plans for both rural section roadways to be constructed to serve the rural lots and future urban roadway sections to be constructed to serve the ghost platted urban lots.

   ii. Master plans for the future extension of municipal water and sewer facilities to ghost platted urban lots.

   iii. Watershed Master Plan (as defined in Section 14.1-01-02).

e. After receipt of the application for final major subdivision plat approval, the Director of Community Development shall give notice of a public hearing on such proposed subdivision by advertising the time and place of such hearing in a newspaper of general circulation in the City of Bismarck once each week for two (2) consecutive weeks prior to the date of such hearing. Not less than ten (10) days prior to date of the scheduled public hearing, the City shall attempt to notify all known adjacent property owners within three hundred (300) feet of the proposed major subdivision plat. “Notify” shall mean the mailing of a written notice to the address on record with the City Assessor or Burleigh County Auditor. The failure of adjacent property owners to actually receive the notice shall not invalidate the proceedings. The Director of Community Development shall send a notice of the time and place of such public hearing to the subdivider and property owner(s) before the date fixed for the hearing. The public hearing may be held at any regular or special meeting of the Planning and Zoning Commission.

f. After a public hearing, the Planning and Zoning Commission may act upon the request for final approval. If the Planning and Zoning Commission approves the subdivision, such approval will be entered upon the tracing and will be signed by the secretary (Director of community Development)

and the Chair of the Planning and Zoning Commission. If the Planning and Zoning Commission disapproves the subdivision, such action, together with the reasons therefor will be entered in the official records of the Planning and Zoning Commission and the subdivider shall be so notified.

g. Upon final approval of a major subdivision plat involving the creation of new street(s), the widening, decreasing or vacation of existing street(s) or alley(s), or the creation, enlargement or decrease of other lands devoted to public use, the planning commission shall at the same time and without further public hearing, approve such change in streets, alleys or public lands as an amendment to the master plan. The planning commission will transmit notice of such action to the board of city commissioners of the City of Bismarck together with appropriate recommendations concerning the acceptance of dedicated streets and alleys, or the vacation thereof, and of the acceptance of other dedicated lands. In the case of streets, alleys and public lands lying outside the City of Bismarck, notice of the action of the planning commission and appropriate recommendations will be transmitted to the board of county commissioners of Burleigh County or other body having jurisdiction in order to procure approval of roadway dedications.

h. Final approval of a major subdivision plat by the planning commission shall in no way constitute legal acceptance of any dedicated streets, alleys or other public lands.

i. A final major subdivision plat that is approved by the Planning and Zoning Commission will be recommended for approval to the Board of City Commissioners. Following final approval by the Board of City Commissioners, a plat in recordable form shall be furnished to the Director of Community Development within one hundred eighty (180) days following approval. The director of Community Development may grant extensions of thirty (30) days for good cause shown in writing. Upon review and obtaining required signatures, the Director of Community Development shall file and record the original signed final major subdivision plat with the Burleigh County Recorder. All final plats shall be provided

digitally formatted to the City of Bismarck's current computer-aided drafting and geographic system software and policy, including coordinate system ties as defined within this zoning ordinance.

Ord. 4393, 08-27-91; Ord. 4483, 02-02-93; Ord. 4733, 11-14-95; Ord. 4804, 11-12-96; Ord. 4822, 02-25-97; Ord. 4946, 10-27-98; Ord. 5097, 02-13-01; Ord. 5138, 11-13-01 Ord. 5146, 12-18-01; 5218, 11-26-02l Ord. 5279, 09-23-03; Ord. 5297, 02-24-04; Ord. 5343, 06-22-04; Ord. 5351, 08-24-04; Ord. 5370, 11-23-04; Ord. 5452, 08-23-05; Ord. 5453, 08-23-05; Ord. 12-12-06; Ord. 5728, 05-26-09)

14-09-05. Design Standards.

1. Streets and alleys:

a. The arrangement, character, extent, width, grade, and location of all streets shall conform to the master plan and shall be considered in relation to existing and planned streets, to topographical conditions, and to the proposed uses of lands to be served thereby.

b. Where it is now shown on the master plan, the arrangement of streets in a subdivision shall either:

1. Provide for the continuation or appropriate projection of existing arterial and collector streets in surrounding areas; or

2. Conform to a plan for the neighborhood approved or adopted by the planning commission to meet a particular situation where topographical or other conditions make continuance of or conformance to existing streets impractical.

c. Local streets shall be so laid out that their use by through traffic is discouraged.

d. Where a subdivision abuts or contains an existing or proposed arterial street, the planning commission shall limit access to the arterial street and may require reverse frontage of lots with a screen planting contained in a non-access reservation along the rear property lines, deep lots with rear services alleys, or other treatment that it deems advisable to limit such access and to give adequate protection to residential properties and to afford separation of through and local traffic.

e. Private streets may be permitted provided that the plat of any subdivision with private streets shall clearly establish or indicate private easement on such streets for the benefit of those who may become

owners of lots in such subdivision, and further shall provide use of such private street easements to and for the use of any governmental subdivision, its officers and employees for utilities and any other governmental use or uses it deems necessary or advisable, provided the city shall not be responsible in any way to furnish any city services if such private street easements are not properly maintained or are obstructed by the owners of property in the subdivision.

f. Nonaccess lines shall be placed along all arterial streets and intersections thereof with the dimensions of same to be approved by the planning commission.

g. Street jogs should be avoided.

h. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.

i. When connecting street lines deflect from each other by more than ten (10) degrees they shall be connected by a curve of adequate radius to insure clear visibility for vehicles.

j. Intersecting streets shall be laid out at as nearly right angles as possible, and no such angle of intersection shall be less than sixty (60) degrees.

k. In all areas within the corporate limits of the City of Bismarck, unless otherwise shown on the master plan, right-of-way and roadway widths shall be as follows:

Functional Classification	Minimum Right-of-Way (in feet)	Typical Roadway Width (in feet)
Principal Arterial	150	63
Minor Arterial	120	51
Collector	80	44
Local	66	40
Local (mountable curb only)	60	37

If demonstrated by the developer that special circumstances exist, the City Engineer may adjust minimum required right-of-way widths.

In all areas outside the corporate limits but within the two-mile extraterritorial area of the City of Bismarck, unless otherwise shown on the master plan, right-of-way and roadway widths shall be as follows:

Functional Classification	Minimum Right-of-Way (in feet)	Typical Roadway Width (in feet)
Principal Arterial	150	40
Minor Arterial	150	36
Collector	120	30
Local	80	26

If demonstrated by the developer that special circumstances exist, the County Engineer may adjust minimum required right-of-way widths.

Private streets shall meet, at a minimum, the requirements of the city fire code and shall not become a city maintenance liability. Each private street shall be evaluated by the city prior to installation.

l. Half-streets shall be prohibited except where essential to the reasonable development of the subdivision in conformity with the other standards of these regulations, and where the planning commission finds it will be practicable to require the dedication of the other half-street when the adjoining property is subdivided. Wherever there exists a half-street adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.

m. Cul-de-sacs. The use of cul-de-sac streets shall be limited in order to promote a well-connected street network that provides for safe, direct and convenient access by vehicles, bicycles, and pedestrians. Cul-de-sac streets may be permitted in instances where there is no reasonable opportunity to provide for future connections to adjoining streets, including natural barriers such as topography or water features, man-made barriers such as railroad tracks, or to discourage through traffic between incompatible land uses. Detailed written justification for the use of cul-de-sac streets in proposed subdivision plats shall be provided as part of the plat application process. In such cases where cul-de-sacs are accepted by the City, the following standards shall apply:

1. Length. The maximum overall length of a cul-de-sac shall be seven hundred-fifty (750)

feet. The minimum throat length of a cul-de-sac shall be two hundred-thirty (230) feet. Such lengths shall be measured from the centerline intersection with the through street to the center point of the turnaround.

2. Turnaround Dimension. One of the following sets of dimensional standards shall apply:

a. Circular cul-de-sac turnarounds shall have a dedicated right-of-way diameter of at least one hundred twenty-two (122) feet and a paved diameter of at least ninety-six (96) feet. Such paved diameter shall be measured from face to face of the curb.

b. Irregular cul-de-sac turnarounds shall provide a minimum inside radius of twenty-eight (28) feet to the face of the curb and a minimum outside turning radius of forty-eight (48) feet to the face of the curb. Additional area beyond the minimum outside radius will need to be provided if parking is allowed.

3. Lot Width. In the R5 and R10-Residential zoning districts, each lot located on a cul-de-sac street shall have a minimum width of forty (40) feet, measured at the front property line and in addition, shall have a minimum width of sixty (60) feet, measured at the front setback line.

4. Multi-use Paths. Access easements may be required to provide current and/or future access connections from the turnaround terminus area to other streets, schools, neighborhood activity centers, or open space areas. Such access easements shall be included in a maintenance agreement with either a neighborhood association or governmental entities, subject to review and approval by the City and recorded as part of the subdivision plat approval process.

5. Islands/Medians. Islands or medians within a cul-de-sac are subject to the following standards:

a. Maintenance. Landscaped islands or medians may be permitted provided a neighborhood association assumes responsibility for curb and vegetation maintenance. Maintenance agreements shall be reviewed and approved by the City and

recorded as part of the subdivision plat approval process.

b. Parking. Islands and medians may provide off-street parking areas. All such parking shall be subject to review and approval by the City.

c. Snow storage. Islands or medians, including any adjacent parking area shall be available for snow storage purposes by the City.

d. The design of such proposed islands or medians shall be subject to review and approval by the City during the subdivision plat approval process. Landscaping within islands or medians shall be subject to the City's landscape permit approval process.

6. Street Surface Width. The minimum width of street surface on a cul-de-sac shall be forty (40) feet, or if separated by an island or median, each lane shall be at least twenty (20) feet in width. If constructed with mountable curbs, the minimum street surface width may be reduced to thirty-seven (37) feet and the minimum width of each lane may be reduced to eighteen and one-half (18.5) feet. If fire hydrants are located along a cul-de-sac, all such lane widths shall be at least twenty-six (26) feet.

n. No street names will be used that will duplicate or be confused with the names of existing streets. Streets that are now or will eventually be continuations of existing streets shall be called by the names of the existing streets. The city shall make at least general recommendations for street names.

o. All streets shall have a grade of not less than three-tenths (0.3) per cent. No arterial street shall have a grade in excess of five (5) per cent, and no other street shall have a grade in excess of ten (10) per cent except that roadways with grades not meeting these standards may be allowed where topography makes it impossible to meet normal standards.

p. Alleys shall be avoided in residential districts but may be required in commercial and industrial districts.

q. The width of all alleys shall be twenty (20) feet.

r. Dead-end alleys should be avoided, but if unavoidable, shall be provided with adequate turnaround facilities at the closed end.

s. On rural road sections the following standards shall apply:

1. Adequate culverts shall be installed to handle all drainage, with a minimum size of eighteen (18) inches in diameter or equivalent. The owner shall present to the engineer of the appropriate jurisdiction two (2) copies of a report proposing the size, type, and location of all drainage structures. All drainage structures shall conform to current North Dakota State Highway Department standard specifications. For drainage structures with drainage areas of over forty (40) acres, the report shall include acceptable engineering calculations for the required hydraulic capacity. Written approval shall be obtained from the engineer of the appropriate jurisdiction prior to the installation of drainage structures.

2. Gravel surfacing, where permitted, shall be in accordance with the standards and specifications of the engineer of the appropriate jurisdiction (city, township, or county).

Rural subdivision roadways must be paved in accordance with the standards and specifications of the engineer of the appropriate jurisdiction (city, township or county).

All approaches shall be graveled in accordance with the standards and specifications of the engineer of the appropriate jurisdiction (city, township, or county).

3. All drainage under streets, private drives, and approaches must have culverts installed where required by the engineer of the appropriate jurisdiction or superintendent of roads.

4. All streets must be constructed to an adequate height to insure proper snow clearance and removal. Any deviation from the minimum road

section must have written approval of the engineer of the appropriate jurisdiction prior to construction. Protective covenants shall be filed by the owner to preserve the backslopes extending onto the lots.

5. The engineer of the appropriate jurisdiction or superintendent of roads will inspect the completed roads in each subdivision before assuming responsibility and maintenance of the roads and streets to insure that the above standards, and those of the zoning and subdivision regulations, have been complied with.

6. No more than two (2) approaches onto a county or township road in any one thousand three hundred twenty (1,320) feet of distance will be allowed without prior approval of the board of county commissioners and the engineer of the appropriate jurisdiction. No approach may be constructed without first having obtained an approach permit from the engineer of the respective jurisdiction.

2. Easements:

a. Easements across lots or on rear or side lot lines shall be at least ten (10) feet wide where necessary for overhead or underground utilities.

b. Where a subdivision is traversed by a watercourse, coulee, drainageway, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width for construction that will be adequate for such purpose. Parallel streets or parkways may be required in connection with such drainage easement.

c. There shall be a sidewalk construction and maintenance easement established on the front one and one-half feet of each lot except where this area is covered by a building.

3. Blocks:

a. Block length should usually not exceed one thousand three hundred twenty (1,320) feet nor be less than three hundred (300) feet, measured from street center line to street center line.

b. Pedestrian walkways not less than twelve (12) feet wide may be required in blocks longer than nine hundred (900) feet where such crosswalks are deemed by the planning commission to be essential to provide circulation, or access to schools, playgrounds, shopping centers, transportation, or other community facilities. Crosswalks may be six (6) feet wide if they are no more than one hundred fifty (150) feet in length.

c. Blocks intended for business and industrial use should be designed for such purposes.

4. Lots:

	Minimum Width at Building Line (feet)	Minimum Depth (feet)	Minimum Area (square feet)
Lots served by a public water supply system and a central sanitary sewer system approved by the North Dakota Department of Health	60	100	7,000
Lots not served by a central sanitary sewer system approved by the North Dakota Department of Health,	150	200	65,000

a. Lot dimensions and areas shall be no less than shown in the above table, shall be no less than the minimum requirements of the underlying zoning district, and shall be sized to accommodate on-site wastewater, storm water and water supply facilities as soil conditions require.

b. Rural residential lots platted within the city's Urban Service Area Boundary (USAB) shall show future re-subdivision into urban sublots (ghost lots) which meet the minimum lot width, depth, and area requirements of the R5 – Residential zoning district. These sublots shall be lettered and dimensioned within the boundaries of the plat and the area of each sublot shall be shown in a table format to avoid confusion with the area shown for the numbered rural lots. A plat note shall also be included which indicates that the sublots must be held in common ownership until annexation and servicing by municipal utilities occurs. Within the Urban Service Area Boundary, proposed structures shall be subject to the R5 sideyard and rearyard building setbacks from interior ghost lot lines, in addition to any setbacks from the primary lot lines required in the underlying zoning district.

c. Within the Urban Service Area Boundary and as part of the ghost platting process, dedications are required for any additional right-of-way, utility easements or stormwater easements needed for further

subdivision and the future development of ghost lots. Installation of roadways and utilities within the dedications are not required until annexation occurs.

d. All lots shall abut on a street or other public or private right-of-way.

e. Double frontage or reverse frontage lots shall not be permitted except where lots back on arterial streets or highways, or where topographic or other conditions render subdividing in another fashion unreasonable. Such double frontage lots shall have an additional depth of at least twenty (20) feet over and above normal lot size in order to allow screen planting and landscaping along the back lot line.

f. Corner lots shall be of extra width sufficient to maintain building lines on both streets.

g. Side lot lines shall be approximately at right angles or radial to street lines.

h. A screen planting easement is required between residential and commercial or industrial lots in accordance with Section 14-03-11.

(Ord. 4166, 7-21-87; Ord. 4631, 08-30-94; Ord. 4875, 10-14-97; Ord. 5279, 09-23-03; Ord. 5539, 08-22-06; Ord. 5688, 08-26-08)

14-09-06. Improvements.

1. Before issuing a building permit for any structure within the city limits, the city will require that the following improvements are either:

a. Constructed and in place;

b. Assured of completion by the deposit with the City of Bismarck of a certified check in an amount sufficient to construct such improvements, the amount to be determined by the city engineer; or,

c. Assured of completion by the posting of a bond with the City of Bismarck, in an amount sufficient to construct such improvements, the amount to be determined by the city engineer, and the form and surety of the bond to be approved by the city legal officer. The improvements required shall be:

1) Street and alley grading.

2) Sanitary sewers, except where, in the opinion of the city engineer, the provision of sanitary sewers is impractical, in which case individual lots will comply with the size requirements of these regulations and will be provided with approved septic tanks and disposal fields prior to or at the time of construction of any buildings on such lots.

3) Watermains, except where, in the opinion of the city engineer, connection to a public water supply is impractical, in which case individual lots will comply with the size requirements of these regulations.

4) Monuments, as required by the North Dakota Century Code.

5) Fences shall be provided along the boundary of any subdivision at all points at which the subdivision abuts or adjoins interstate highway right-of-way or any open drainage facility where required. Said fence shall meet the requirements of the North Dakota Department of Transportation where applicable, and the city engineer.

2.

a. No improvements shall be made unless and until all necessary plans, profiles and specifications therefor shall have been submitted to and approved by the city engineer.

b. At the time such plans, profiles and specifications are submitted for review, the city engineer shall prepare an estimate of cost for office checking and field inspection of all improvements. The subdivider shall thereupon deposit with the city auditor an amount of money equal to said estimated cost. All work done by the city engineer in connection with checking, computing and correcting such plans for improvements and in connection with field inspection of the construction thereof, shall be charged to such deposit. If during the progress of the work, it shall appear that the cost thereof will exceed the amount so deposited, the city engineer shall notify the subdivider of this fact and shall do no further work in connection with such review or field inspection until the subdivider has deposited the additional amount of money necessary to cover the cost of the work.

c. Upon completion of the work of checking plans and inspecting the construction of improvements, the city engineer shall forward to the city auditor a statement of the amount of the engineering and inspection costs to be charged against the deposit made by the subdivider. The city auditor shall thereupon refund to the subdivider any unexpended balance of such deposits. If such engineering and inspection charges shall for any reason exceed the amount of the deposits, the city auditor shall collect the balance due and shall issue a statement that such charges have been paid.

3. At the time of filing an application for a building permit the applicant will submit either (a) a certificate signed by the city engineer that all required improvements are in place or (b) a certificate signed by the city engineer that plans, specifications, and profiles for such improvements have been filed with and approved by him, and a certificate signed by the city auditor that a certified check or satisfactory performance bond has been posted for completion of improvements. Where part of the improvements has been completed, appropriate certification will be filed.

4. Other improvements which may be required by the city after a building permit is issued include:

a. Crosswalks;

b. Street and alley paving;

c. Sidewalks;

d. Curb and gutter;

e. Storm sewers, culverts and bridges;

f. Street lights.

5. Improvements within the Extraterritorial Area.

a. A building permit for any structure within a platted subdivision within the extraterritorial area may not be issued until all improvements described in paragraph b. of this section are constructed and accepted by the County Engineer.

b. The improvements required are:

1. The grading of all roadways within the subdivision;

2. The paving of all roadways within the subdivision, unless this requirement was specifically waived in conjunction with the approval of the subdivision;

3. The installation of the storm water management facilities required to manage storm water in accordance with the approved storm water management plan and submittal of a statement from the consulting engineer that certifies that the facilities were built in accordance with the approved storm water management plan; and

4. The construction of any other required facilities, such as turning lanes or bridges.

c. Improvements that are required within a right-of-way under the jurisdiction of the North Dakota Department of Transportation must be accepted by the NDDOT District Engineer.

d. The completion of required off-site improvements, such as the construction of turning lanes or the paving of section line roadways, may be delayed with the submittal of an assurance of completion.

(Ord. 4914, 06-09-98; Ord. 5477, 12-13-05)

14-09-07. Specifications for Plats.

1. The preliminary plat shall contain the following:

a. Proposed name of subdivisions.

b. Location of subdivision by section, township and range, to the quarter section, or other legal description.

c. Names and addresses of property owner(s) and registered land surveyor who prepared the plat.

d. Scale of plat, which shall be one (1) inch equals one hundred (100) feet or less and shown graphically.

e. Date.

f. North point indication.

g. Boundary line of proposed subdivision indicated by a solid heavy line.

h. Total acreage within subdivision.

i. A location map inset showing the boundary of the proposed subdivision and covering the area within a one-mile radius of the subdivision.

j. Existing and proposed access points along public right-of-way within or adjacent to the subdivision. In addition, all such adjacent access points within one-quarter (1/4) mile of the subdivision shall be shown or noted if the subdivision is located within the extraterritorial jurisdiction.

k. Name, location, width of all existing or previously platted streets, including the type and width of surfacing within or adjacent to the subdivision.

l. Name, dimensions and location of any railroad right-of-way within or adjacent to the subdivision.

m. Name, dimensions and location of any utility easements within or adjacent to the subdivision.

n. Name, dimensions and location of any parks, public land or multi-use trails or crosswalks within or adjacent to the subdivision.

o. Name, dimensions and location of any permanent buildings or structures within or adjacent to the subdivision.

p. Location of any corporate boundaries within or adjacent to the subdivision.

q. Location and identification of any section lines within or adjacent to the subdivision.

r. Existing water mains, storm sewers, sanitary sewers, culverts, bridges, poles, pipelines and other utility structures within or adjacent to the tract, indicating pipe sizes, grades, and exact locations.

s. Existing zoning of proposed subdivision and adjacent tracts of subdivided and un-subdivided land.

t. Boundary lines of tracts of subdivided and un-subdivided land within or adjacent to the proposed subdivision. Owners' names are not needed for adjacent tracts within the corporate limits but must be shown for any adjacent tracts within the extraterritorial jurisdiction.

u. Topographic contours with a minimum contour interval of two (2) feet, with indication of datum used (NGVD29 or NAVD88 with NAVD88 required for areas with current floodplain information in that datum).

v. 100-year floodplain and floodway elevations if any portion of the subdivision is within the floodplain, with indication of datum used (NAVD88 required for areas with current floodplain information in that datum).

w. Layout, numbers and dimensions of lots and blocks.

x. Layout of proposed streets, alleys, crosswalks and easements, showing all widths and proposed street names.

y. Location and dimensions of proposed utility easements, including easements for storm water management facilities and proposed locations of culverts and retention/detention areas, if available.

z. Location and dimension of all non-access lines.

aa. Identification of parcels of land intended to be dedicated or reserved for public use, or set aside for use of property owners within the subdivision.

bb. Fencing note for fencing along Interstate 94 or drainage facilities in accordance with Section 14-09-06.

cc. The airport noise contours as established by the latest available data.

2. The final plat shall be submitted on high quality mylar in sheets thirty (30) inches by thirty-six (36) inches, provided that when more than one sheet is required, there shall also be filed an index sheet on high quality mylar and of the same dimensions, showing the entire subdivision on one sheet and giving block and lot numbers. The final plat shall contain the following:

a. Name of subdivision.

b. Location of subdivision by section, township and range, to the quarter section, or other legal description.

c. Names and addresses of owners and registered land surveyor.

d. Scale of plat, which shall be one (1) inch equals one hundred (100) feet or less and shown graphically.

e. Date.

f. North point indication.

g. Basis of bearings, as derived from State Plane Coordinates.

h. Indication of both vertical datum and horizontal datum used for the plat.

i. Boundary line of subdivision based on an accurate traverse, with angular and lineal dimensions indicated.

j. Legal description of property being platted, including any section line right-of-way not previously deeded for plats within the extraterritorial jurisdiction.

k. Accurate locations of all monuments. For plats located within the corporate limits or plats that will be annexed prior to development, one such monument shall be placed at each corner and at each change of direction in the boundary line of the subdivisions; one such monument shall be placed at each block corner, one such monument shall be placed at each lot corner and at each point of deflection in the interior lot lines, and one such monument shall be placed at the point of curvature and point of tangency of each curve in a street line on both sides of the street. The monuments for the boundary line of the subdivision must be placed prior to recording the final plat, the monuments for block corners and the points of curvature and tangency of each curve in a street line on both sides of the street must be placed upon completion of roadway and municipal utility improvements, and monuments for lot corners and each point of deflection in the interior

lot lines must be placed prior to obtaining a building permit for that lot.

For plats located in the extraterritorial jurisdiction, one such monument shall be placed at each corner and at each change of direction in the boundary line of the subdivision; one such monument shall be placed at each block corner, one such monument shall be placed at each lot corner and at each point of deflection in the interior lot lines, and one such monument shall be placed at the point of curvature and point of tangency of each curve in a street line on both sides of the street. All monuments must be placed prior to recording the final plat.

l. True angles and distances to the nearest official monuments (which shall be accurately described on the plat and not less than two (2) for subdivisions within the extraterritorial jurisdiction and not less than one (1) for subdivisions within the corporate limits). For the purpose of this requirement, an official monument is defined as a section corner or quarter corner.

m. Ties to a minimum of two (2) accepted State Plane Coordinates based on NAD 83 horizontal datum (adjusted 86), units of measurement international feet, ND south zone 3302.

n. Elevations referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot, with indication of datum uses (NAVD88 required for areas with current floodplain information in that datum).

o. Exact location, width and name of all rights-of-way within and adjoining the subdivision, and the exact location of all alleys and or multi-use trails within the subdivision.

p. Accurate outlines and legal description of any areas (not including streets, alleys or public utility easements) to be dedicated or reserved for public use, with the purposes indicated; and of any areas to be reserved by deed covenant for common use of all property owners within the subdivision.

q. All easements for rights-of-way provided for public services and public utilities.

r. All lot and block numbers and lot lines, with accurate dimensions in feet and hundredths.

s. Square footage or acreage of land within the subdivision, each individual lot, each sublot created by ghost platting, and the total area in streets. If the subdivision crosses a quarter-section line, the acreage within each quarter section must also be noted.

t. Radii, deltas, and lengths of all curves based on arc definitions.

u. Location and dimension of all non-access lines and any access points within a continuous non-access line.

v. 100-year floodplain and floodway elevations and topographic contours with a minimum contour interval of two (2) feet for the portion of the plat lying within a designated floodplain, with an indication of datum used (NAVD88 required for areas with current floodplain information in that datum).

w. For any waterways or bodies of water within or adjacent to the plat, the present shoreline locations (relative to the meander line).

x. Water elevations must be shown and dated (meander line).

y. For subdivisions adjacent to the Missouri River, the 33,000 cfs flowline contour must be shown, which is the ordinary high water mark defined herein for the purposes of measuring setback distances for land abutting the Missouri River.

z. Certification by registered land surveyor to the effect that the plat represents a survey made by him/her, or under the surveyor's direct supervision, and that the monuments shown thereon are accurate, all required monuments have been set, and that all dimensions and elevations are correct.

aa. Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines, streets, public areas and other improvements. If there are multiple owners, the specific lot(s) owned by each owner must be specified.

bb. Proper form for the approval of the Planning Commission.

cc. Proper form for acceptance of plat, and amendment of Master Street Plan by the Board of City Commissioners.

dd. Proper form for the approval of the City Engineer.

ee. Fencing note for fencing shall be shown in accordance with Section 14-09-06.

ff. All restrictive airport noise, clear zone and approach zone elevations as established by the latest available data, where applicable.

gg. All easements for stormwater management facilities shall be shown and dedicated in accordance with Title 14.1.

hh. Border line of one-half (1/2) inch shall be provided on the top, bottom and right sides of the plat, with two (2) inches provided on the left side.

(Ord. 4460, 08-18-92; Ord. 4733, 11-14-95; Ord. 4778, 08-13-96; Ord. 4822, 02-25-97; Ord. 4851, 06-24-97; Ord. 5279, 09-23-03; Ord. 5567, 12-12-06)

14-09-08. Variances.

1. Hardship.

a. Where it can be shown in the case of a particular proposed subdivision, that strict compliance with the requirements of these regulations would result in extraordinary hardship to the subdivider because of unusual topography, soils, or other such conditions which would result in retarding the achievement of the objective of these regulations, then the board of adjustment may vary, modify or waive requirements so substantial justice may be done and the public interest secured; provided that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of these regulations, or of the master plan.

b. In no case shall any variance, modification or waiver be more than a minimum easing of the requirements; in no case shall it have the effect of reducing the traffic capacity of any arterial or collector street; in no case shall it be in conflict with the existing zoning regulations.

c. In granting variances, modifications or waivers, the board of adjustment may require such conditions as will, in its judgment secure substantially the objectives of the standards and regulations so affected.

2. Large-scale development:

a. These regulations may be modified by the planning commission in the case of a plan for a planned unit development which provides such covenants, financial guarantees, and other legal assurance that the plan will be followed and will be achieved.

14-09-09. Fees.

1. In order to cover the costs of examining plans, advertising and holding public hearings, and other expenses incidental to the approval of a subdivision, the subdivider shall pay a fee at the time of application for a lot modification, a minor subdivision plat or tentative approval of a preliminary major subdivision plat. If, because of the failure of the subdivider to submit a final major subdivision plat within twelve (12) months after receiving tentative approval of a preliminary major subdivision plat, it is necessary to resubmit a preliminary major subdivision plat for tentative approval, the subdivider shall be required to pay the fee currently in effect at the time of resubmission.

2. The fees to be charged and collected for consideration of any application for a major subdivision plat, subdivision plat vacation, lot modification or minor subdivision plat shall be established by the Board of City Commissioners and shall be collected at the time of filing of an application.

3. All fees established by this section are in addition to any sums paid to cover the costs of review of improvement plans and field inspection of construction required under the provisions of Section 14-09-06, subsection 2(b) of these regulations.

(Ord. 4386, 07-30-91; Ord. 4635, 09-27-94; Ord. 5028, 02-22-00; Ord. 5146, 12-18-01; Ord. 5214, 11-12-02)

14-09-10. Penalties.

1. After the adoption of these subdivision regulations as provided by law, it shall be unlawful to sell or offer for sale a lot in a subdivision in the area under the jurisdiction of the planning commission, unless that

subdivision has received final approval and been recorded in compliance with these regulations.

2. Whoever, being the owner or agent of the owner of any land located within the territory of a subdivision subject to the approval of the planning commission of the City of Bismarck, transfers or sells, or agrees to sell any land by reference to or exhibition of or by other use of a subdivision plat, before such plat has been approved by said planning commission in accordance with the requirements of these regulations and recorded or filed for record as so approved in the office of the appropriate county register of deeds, shall, in addition to the punishment provided in Title 1 of the Code of Ordinances of the City of Bismarck), forfeit and pay a penalty of one hundred dollars ($100.00) for each lot or parcel so transferred or sold, or agreed to be sold. The description of such lot or parcel by metes and bounds shall not exempt the transaction from such penalties or the remedies herein provided. Such fine and forfeiture shall not act to stop the City of Bismarck from enjoining such transfer or sale or agreement by action from injunction in a court of equity jurisdiction.

(Ord. 4635, 09-27-94)

14-09-11. Vacation of Plats. Any property owner wishing to vacate a previously approved and recorded plat or any part thereof must follow the same procedures as those required for plat approval and outlined in Section 14-09-04.

14-09-12. Change or Correction of Street Names. The Board of City Commissioners may, by resolution, change the name of any street within the city of Bismarck if it finds that such name is confusing, in error, or otherwise inconsistent with the other street names within the city. All property owners on the street being considered for a change of name shall be notified at least 10 days before the Board of City Commissioners considers the resolution changing the name of the street. Upon passage of a resolution changing the name of the street, a copy of the resolution along with a map detailing the change shall be filed with the register of deeds.

(Ord. 4573, 01-04-94)

TITLE 14.1 - STORMWATER MANAGEMENT

CHAPTER 14.1-01 - GENERAL PROVISIONS

14.1-01-01. Purpose and Policy. This Title sets forth uniform requirements for stormwater management systems within the City and its extraterritorial jurisdiction. It is the intent of the Board of City Commissioners that the requirements and standards contained in this Title comply with all applicable state and federal laws. In the event of any conflict between the provisions of this Title and the provisions of an erosion control, shoreland protection, or floodplain ordinance, or other regulations adopted by the City, County, State or Federal authorities, the more restrictive standard prevails.

The objectives of this Title are:

1. To promote, preserve, and enhance the natural resources within the City of Bismarck and its extraterritorial jurisdiction;

2. To protect and promote the health, safety, and welfare of the people and property through effective stormwater management practices;

3. To protect the City and surrounding area's natural resources from adverse impacts caused by development or other activities;

4. To regulate land development, land disturbing, or other activities that may have an adverse and potentially irreversible impact on water quality and environmentally sensitive lands;

5. To minimize conflicts and encourage compatibility between land disturbing and development activities and environmentally sensitive issues (i.e. land, water, habitat, etc.);

6. To require detailed review standards and procedures for land development activities proposed throughout the City, and its extraterritorial jurisdiction, thereby achieving a balance between growth and development, and the protection of water quality;

7. To provide for the protection of surrounding or adjacent properties from water and wind erosion through the use of best management practices that meet the intended use; and

8. To provide for adequate stormwater system analysis and appropriate stormwater system design as necessary to protect public and private property, water

quality, and existing natural resources. This Title establishes and provides for the following stormwater management criteria:

a. The regulation of development through the issuance of stormwater permits and through the enforcement of general stormwater drainage requirements throughout the City and its extraterritorial jurisdiction. It also authorizes monitoring and enforcement activities, and provides for the setting of applicable fees for the equitable distribution of costs associated with the administration of the stormwater management program established herein.

b. The regulation of, and the establishment of criteria for, public underground storm sewers, artificial and natural open channel drainage systems, stormwater detention and retention ponds, and private stormwater drainage systems ultimately discharging into the public system.

c. The regulation of development activities as they relate to managing stormwater volumes, rates of runoff, flow duration, and their subsequent impacts to downstream property, water quality, and stormwater management facilities.

d. Provides for a stormwater management system user charge and the method for calculating charges for each user classification. Procedures for rate adjustments and annual review criteria are established.

e. Penalties for violating the provisions of this Title, and the orders, rules, regulations and permits issued hereunder.

f. Applies in the City of Bismarck, North Dakota, and its extraterritorial jurisdiction, and to persons outside the City who are, by contract or agreement with the City, users of the City stormwater management system. Except as otherwise provided herein, the City Engineer shall administer, implement, and enforce the provisions of this Title.

(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

14.1-01-02. Transfer of Authority. The City may, through the use of a joint powers agreement, transfer the authority for the administration and/or enforcement of this Title in the City's extraterritorial area to another entity. .

(Ord. 5853, 11-22-11)

14.1-01-03. Definitions. For the purpose of this Title, the following terms, phrases, and words, and their derivatives, shall have the meaning as stated in this section. When inconsistent with the context, words used in the present tense include the future tense. Words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and the word "may" is always permissive.

Agricultural Land Use: The use of land for planting, growing, cultivating and harvesting crops for human or livestock consumption and pasturing or yarding of livestock.

Applicant: Any person wishing to obtain a building permit, special use permit, zoning change, subdivision approval, or stormwater permit.

Base Flood or 100-year flood: The flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE): The height of the base flood or 100-year flood, usually in feet above mean sea level, as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by the stormwater management plan prepared for the area in which the property is located.

Board of City Commissioners: The Board of City Commissioners of the City of Bismarck.

City: The City of Bismarck.

City Engineer: The City Engineer of the City of Bismarck or a duly authorized representative of the City Engineer.

Control Measure: A practice or combination of practices to control erosion and attendant pollution.

Conveyance Structure: A pipe, open channel, or other facility that transports runoff from one location to another.

County: The County of Burleigh.

County Engineer: The County Engineer of Burleigh County or a duly authorized representative of the County Engineer.

Design Standards Manual: The Stormwater Design Standards Manual, as originally adopted by the Board of City Commissioners and as subsequently amended by technical amendments by the City Engineer, which contains the

principal standards and design criteria for developing an effective and acceptable stormwater management plan.

Detention Facility: A natural or manmade structure, including wetlands, ponds, parking lots, depressed grassy areas, roof tops, buried underground tanks, or other structures, used for the temporary storage and controlled release of runoff. Such facilities are used to delay or attenuate flow, may contain a pool of water during times of storage, and may be dry during times of no runoff.

Development: Any man-made change to improved or unimproved property, including any land disturbing activity, construction or the subdivision of land.

Development Properties: Lands and properties located within an approved stormwater permit boundary.

Developer: A person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbance and/or land development activity.

E.P.A.: The United States Environmental Protection Agency.

Erosion: Any process that wears away at the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.

Erosion and Sediment Control Plan: A written description of the number, locations, sizes, and other pertinent information about best management practice methods designed to meet the requirements of this Title.

Extraterritorial Jurisdiction: The territorial zoning and subdivision authority of the City which extends to all unincorporated land located within four (4) miles of the corporate limits of the City, or amended by agreement, as authorized by Section 40-47-01.1 of the North Dakota Century Code.

Final Stabilization: Activities following rough grading of the site to permanently make the site steadfast or firm, minimizing soil movement by establishing a perennial vegetative grass cover by mulching and seeding, sodding, landscaping, concrete, gravel, or other permanent best management practices. The density of the vegetative cover shall be as required in the Design Standards Manual.

Floodplain or Flood-prone Area: Any land area susceptible to partial or complete inundation by water from any source.

Floodplain Administrator: The person designated by the City of Bismarck to administer the City's floodplain regulations.

Floodplain Management: The regulation of the nature and location of construction on (or other occupancy of) lands subject to inundation by flood waters, so that foreseeable (probable) flooding damages will have an average annual risk smaller than some preselected amount. Floodplain management consists of technical and nontechnical studies, policies, management strategies, statutes and ordinances that collectively manage floodplains along rivers, streams, major drainageways, outfalls, or other conveyances. The federal government normally plays a major role in floodplain planning and management, whereas in urban stormwater management and design, local governments dominate the decision-making process.

Floodway or Regulatory Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Hydric Soils: Soils that are saturated, flooded, or covered by water long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

Hydrophytic Vegetation: Macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Impervious Area: Impermeable surfaces, such as pavement or rooftops, which prevent the infiltration of water into the soil.

Land Development Activity: The construction or demolition of buildings, roads, parking lots, paved storage areas, and similar facilities.

Land Disturbing Activity: Any manmade change of the land surface including removing vegetative cover, excavating, filling and grading, but not including agricultural land uses such as planting, growing, cultivating and harvesting of crops; growing and tending of gardens; and harvesting trees.

Landowner: Any person holding title to or having an interest in land.

Land User: Any person operating, leasing, renting, or having made other arrangements with a landowner by which the landowner authorizes use of their land.

Local Detention: Detention provided to serve only the developing area in question and no areas outside of the development boundaries. This is also known as on-site detention.

Local Drainage System: The storm drainage system which transports the minor and major stormwater runoff to the major stormwater system serving only the property within the development boundaries. This is also known as the on-site drainage system.

Major Stormwater System: The portion of the total stormwater system that collects, stores, and conveys runoff that exceeds the capacity of the minor system. The major drainageways are readily recognizable as natural or improved channels that convey runoff that exceeds the capacity of the minor drainage system, including emergency overflow facilities. It transports the minor and major stormwater runoff and serves more than the area within the development boundaries. The major system is usually less controlled than the minor system, and will function regardless of whether or not it has been deliberately designed and/or protected from encroachment, including when the minor system is blocked or otherwise inoperable. The major stormwater system is usually evaluated for the one hundred (100) year runoff event.

Management Practice: A practice or combination of practices to control erosion and water quality degradation.

Minor Stormwater System: The portion of the total drainage system that collects, stores and conveys frequently occurring runoff, and provides a relief from nuisance and inconvenience. This system has traditionally been carefully planned and constructed, and normally represents the major portion of the urban drainage infrastructure investment. The degree of inconvenience the public is willing to accept, balanced against the price it is willing to pay, typically establishes the drainage capacity or design recurrence frequency of a minor system. Minor systems include roof gutters and on-site drainage swales, curbed or side-swale streets, stormwater inlets, underground storm sewers, open channels and street culverts. Generally, the minor stormwater system is designed to accommodate the minor (or ordinary) storm recurring at regular intervals, generally from two (2) to ten (10) years.

Multiple-Purpose Facility: An urban stormwater facility that fulfills multiple functions, such as enhancement of runoff quality, erosion control, wildlife

habitat, or public recreation, in addition to its primary purpose of conveying or controlling runoff.

National Pollution Discharge Elimination System (NPDES) Permit: Any permit or requirement enforced by the North Dakota State Department of Health pursuant to the Clean Water Act as amended for the purposes of regulating stormwater discharge.

Notice of Transfer (NOT): Documentation indicating that the responsibilities of the stormwater permit have been transferred along with the transfer of a parcel of land.

On-Site Detention: Detention provided to serve only the developing area in question and no significant areas outside of the development boundaries. This is also referred to as local detention.

Outfall Facility: Any channel, storm sewer, or other conveyance receiving water into which a storm drain or storm drainage system discharges.

Outlet: Any outlet including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or groundwater.

Owner or Occupant: Any person owning or using a lot, parcel of land, or premises connected to and discharging stormwater into the City's stormwater system, and who pays for and is legally responsible for the payment of stormwater rates, special assessments or charges made against the lot, parcel of land, building or premises, if connected to the stormwater system or who would pay or be legally responsible for such payment.

Permanent Development: Any buildings, structures, landscaping and related features constructed as part of a development project approved under a stormwater permit.

Permanent Facilities: Those features of a stormwater management plan which are part of any natural or constructed stormwater system that require periodic or minimal maintenance to retain their operational capabilities. This includes but is not limited to storm sewers, infiltration areas, detention areas, channels, streets, etc.

Permittee: Any person who applies for and receives a stormwater or other permit under this Title.

Person: Any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency - public or private.

Private Drainage Channel: A drainage channel on privately-owned land or easements which eventually discharges into a public drainage channel or public storm sewer.

Private Storm Sewer: A storm sewer on privately-owned land or easements which eventually discharges into a public drainage channel or public storm sewer.

Public Drainage Channel: A drainage channel located entirely within a naturally occurring or constructed watercourse located on public lands or within a dedicated public easement.

Public Storm Sewer: A storm sewer located entirely within publicly owned land or easements.

Regional Detention: Detention facilities provided to serve an area outside the development boundaries. A regional detention site generally receives runoff from multiple stormwater sources.

Regional Drainage System: The storm drainage system which transports the minor and major stormwater runoff to the major stormwater system generally serving multiple sources or developments.

Retention Facility: A natural or manmade structure that provides for the storage of stormwater runoff by means of a pool of stored water. Such facilities are designed to eliminate subsequent surface discharge and, where applicable, provide for the treatment of stormwater runoff. Wet ponds are the most common type of retention facility (although a wet pond may also be used as a detention facility).

Runoff: The rainfall, snowmelt, dewatering or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.

Sediment: Solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice, and deposited at another location.

Site: The entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the permit application.

Stabilize: To make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, concrete, gravel, or other measures.

State: The State of North Dakota.

Storm Sewer: A pipe or conduit for carrying storm waters, surface runoff, street and wash waters, and drainage, excluding sewage and industrial wastes.

Stormwater: The flow of water which results from precipitation and which occurs during or immediately following rainfall or a snowmelt.

Stormwater Easement: An easement dedicated for the purpose of conveying, detaining or retaining stormwater. This may be accommodated by installing storm sewer, or for conveying surface water by means of utilizing natural topography or constructing a drainage channel. Certain uses within this easement are prohibited, including but not limited to, structures, trees, fences, and other elements or uses that may result in any obstruction to flows within this easement, or other incompatible uses, such as any portion of a private sewage disposal system.

Stormwater Management: The planned set of public policies and activities undertaken to regulate runoff under various specified conditions within various portions of the drainage system. It may establish criteria for controlling peak flows or runoff volumes, for runoff detention and retention, or for pollution control, and may specify criteria for the relative elevations among various elements of the drainage system. Stormwater management is primarily concerned with limiting future flood damages and environmental impacts due to development, whereas flood control aims at reducing the extent of flooding that occurs under current conditions.

Stormwater Management Criteria: Specific guidance provided to the engineer/designer in the Design Standards Manual to carry out drainage and stormwater management policies. An example might be the specification of local design hydrology - the design storm.

Stormwater Management Plan (SWMP): A written document detailing stormwater runoff characteristics for a defined area and the management of that runoff.

Stormwater Management System: Physical facilities that collect, store, convey, and treat stormwater runoff in areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.

Stormwater Permit: A permit allowing land development and land disturbing activities so as to protect the public stormwater system.

Stormwater Program Coordinator: The person designated by the City of Bismarck to administer the NDPDES (MS4) permit and oversee the compliance and regulation of stormwater permits issued by the City or a duly authorized representative of the Stormwater Program Coordinator.

Structure: Anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

Urban Area: Land associated with, or part of, a defined municipality.

User: Any person who discharges, causes or permits the discharge of stormwater into the public stormwater management system.

User Fee: A fee levied on users of a stormwater management system for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works.

Watershed Master Plan: The plan that an engineer/designer formulates to manage urban and/or rural stormwater runoff for a particular development project or drainage area. It typically addresses such subjects as the characterization of the site development and grading plan; existing and projected conditions; peak rates of runoff, flow duration, runoff volumes for various return frequencies; locations, criteria and sizes of detention or retention ponds and conveyances; runoff control features; land parcels, easement locations, opinions of probable costs, measures to enhance runoff quality, salient regulations, and how the plan addresses them, and consistency with secondary objectives such as public recreation, aesthetics, public safety, and groundwater recharge. It is usually submitted to the Board of City Commissioners for their review and acceptance or adoption.

Wetlands: Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes.

a. A predominance of hydric soils;

b. Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

c. Under normal circumstances support the prevalence of such vegetation.

(Ord. 4817, 02-25-97; Ord. 5278, 09-23-03; Ord. 5853, 11-22-11)

14.1-01-04. Scope. Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities for an approved development must submit a stormwater management plan including an erosion and sediment control plan to the City Engineer. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until approval of the stormwater management plan or a waiver of the approval requirement has been obtained in strict conformance with the provisions of this Title. In addition, no land disturbing activities shall occur until all initial best management practices (BMPs) have been implemented. A waiver of the stormwater management plan does not relieve the applicant from the stormwater permit requirements, including permit fees and an approved erosion and sediment control plan.

Exemptions to the requirements of this Title include:

1. Any part of a subdivision if a plat of the subdivision has been approved by the Board of City Commissioners and recorded with the County Recorder on or before the effective date of this Title (January 1, 1998). A stormwater permit for land disturbing activities on such properties may still be required in accordance with this Title;

2. Land disturbing activity involving the construction of a single-family or a two-family dwelling;

3. A parcel for which a building permit has been approved on or before the effective date of this Title;

4. Installation of a fence, sign, telephone, and electric poles and other kinds of posts or poles; or

5. Emergency work to protect life, limb, or property.

(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

CHAPTER 14.1-02 - STORMWATER MANAGEMENT PLAN

14.1-02-01. Application.

1. Application Procedure.

a. Written Application. A written application for stormwater management plan approval, along with the proposed stormwater management plan, shall be filed with the City Engineer. The application shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is

permitted in the underlying zoning district, and adequate evidence showing the proposed use will conform to the standards set forth in this Title. Prior to applying for approval of a stormwater management plan, it is recommended that the applicant have the stormwater management plan reviewed by all affected public agencies.

b. Copies. The number of sets of legible copies of the drawings as indicated by the City Engineer and required information shall be submitted to the City Engineer and shall be accompanied by a receipt from the City to document the payment of all required fees for processing and approval as set forth herein. Plans shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed.

c. Waiver. The City Engineer may waive any requirement of this Title upon making a finding that compliance with the requirement will involve an unnecessary non-economic hardship, and the waiver of such requirement will not adversely affect the standards and requirements put forth in Chapter 14.1-05. The City Engineer may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements. At the City Engineer's discretion, a waiver request may, or at the request of a City Commissioner a waiver request shall, be brought before the Board of City Commissioners for consideration, and approval or denial.

2. Contents of Stormwater Management Plan. At a minimum, the stormwater management plan shall contain the following information:

a. Written Report. A written report discussing pre- and post-development hydrology and hydraulic analysis, erosion and sedimentation control during and after construction, protective measures for proposed and existing structures, and water quality concerns. The contents of the report shall be in accordance with the recommended format in the city's Design Standards Manual and shall contain the following additional information:

i. The name and address of the applicant;

ii. The section, township, and range;

iii. The acreage of the development and the acreage of the disturbed area;

iv. A description of the existing soils on the site, if necessary, including a map indicating soil types of the areas to be disturbed, information on the suitability of the soils for the type of development proposed, potential for erosion, the type of stormwater management system proposed, and any remedial steps to be taken by the developer to render the soils suitable; and

v. The current land use of the area in which the site is located.

b. Maps. The following maps shall be included with the written report. Each map shall contain a north point indicator, date, scale of drawing, and the datum.

i. Location Map. The location of the tract at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns, districts or other defining landmarks, and a watershed boundary map illustrating the project site location as a subwatershed within the watershed of the larger or major drainage basin.

ii. Existing Site Conditions Map. A map of existing site conditions showing the site and immediately adjacent areas, including:

1. Existing topography with a contour interval appropriate to the topography of the land, but in no case having a contour interval greater than two (2) feet;

2. A watershed boundary map illustrating the subwatersheds within the site or development;

3. A delineation of streams, rivers, public waters and the presence or absence of wetlands located on and immediately adjacent to the site, including depth of water, a general description of vegetative cover found within the site, a statement of general water quality, and any classification given to the water body by state or federal agencies;

4. Location and dimensions of existing stormwater drain systems and natural drainage patterns on and immediately adjacent to the site delineating in which direction and at what rate stormwater is

conveyed from the site, identifying the receiving stream, river, public ditch, or wetland, and setting forth those areas of the unaltered site where stormwater collects or passes;

5. Current extent of vegetative cover and a clear delineation of any vegetation proposed for removal; and

6. The 100-year flood plain and floodway as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by a site specific analysis.

iii. Final Site Conditions Map. A plan of final site conditions on the same scale as the existing site conditions map showing the proposed site changes shall be provided, including:

1. The proposed final grading plan shown at contours at the same interval as provided above or as required to clearly indicate the relationship of the proposed changes to existing topography and remaining features. This grading plan should also indicate areas of cut and fill activity greater than three (3) feet;

2. A watershed boundary map illustrating the proposed subwatershed(s) within the site or development;

3. A drainage plan of the developed site delineating the direction of stormwater runoff and how it will be conveyed from the site and setting forth the areas of the site where stormwater will be collected along with the method of collection including ponds, storm sewer or channels;

4. The proposed size, alignment, and intended use of any structures to be erected on the site;

5. A clear delineation of all areas which shall be paved or surfaced, including a description of the surfacing material to be used; and

6. Any other information pertinent to the particular project which is necessary for the review of the project.

c. Erosion and Sediment Control Plan. The erosion and sediment control plan shall include a report and map containing information as outlined in the Design Standards Manual and the following information:

i. The locations and dimensions of all proposed land disturbing activities as they relate to the specified phases detailed in the Design Standards Manual;

ii. Approximate locations of all stockpile areas;

iii. Location and detailed description of all construction site best management practices (BMPs) necessary to meet the requirements of this Title;

iv. A schedule of anticipated starting and completion dates for each phase of activity, including the installation of construction site best management practices (BMPs) needed to meet the requirements of this Title; and

v. Provisions for maintaining the construction site best management practices (BMPs) throughout all phases of construction including prior to, during, and after construction. This shall include the installation of permanent control measures and the removal of temporary BMPs.

3. Certification. All stormwater management plans, drawings, specifications, and computations for stormwater management facilities submitted for review shall contain a validated seal and be signed by a Professional Engineer registered in the State of North Dakota. This requirement will be met as part of the properly completed stormwater management plan, as described in the Design Standards Manual.

4. Fees. All applications for stormwater management plan approval shall be accompanied by a processing and approval fee established by the City Engineer. In the case of complex applications or regional stormwater facilities, a secondary fee schedule will be used as established by the City Engineer. All fees under this Title shall be reviewed and approved by the Board of City Commissioners.

(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

14.1-02-02. Review.

1. Process. Stormwater management plans meeting the requirements of Section 14.1-02-01 shall be reviewed by the

City Engineer for compliance with the standards of Section 14.1-02-03. For plans within the City's extraterritorial area, the City Engineer will provide copies of the stormwater management plan to the County Engineer and the Burleigh County Water Resource District for review and comment. After evaluation of the stormwater management plan, the City Engineer shall approve, approve with conditions, or deny the stormwater management plan. For plans within the City's extraterritorial area, the City Engineer will not approve a stormwater management plan without written concurrence of the County Engineer. If a particular stormwater management plan involves a complex application or has the potential for significant controversy, the City Engineer may bring the proposed stormwater management plan before the Board of City Commissioners for consideration and public comment.

2. Conditions. A stormwater management plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this Title are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to insure buffering, require the acquisition of certain lands or easements, and require the conveyance to the City of Bismarck or other public entity of certain lands or interests therein. The City Engineer may specify special requirements for specific watersheds within the City and its extraterritorial jurisdiction. The nature of these requirements will be subject to the unique environmental and natural resource environment of each subwatershed. Approval of a plan shall bind the applicant to perform all of the conditions and requirements of the plan prior to any land disturbing activities.

(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

14.1-02-03. Approval Standards.

1. General. This section describes approval standards against which proposed stormwater management plans will be measured. A stormwater management plan which fails to meet the standards contained in this section shall not be approved by the City Engineer or the Board of City Commissioners. Other standards, such as state and federal standards, shall also apply. If two standards of different agencies conflict, the more restrictive standards shall apply.

It shall be the responsibility of the applicant to obtain any required permits from other governmental agencies having jurisdiction over the work to be performed.

Typically, such agencies could include the Burleigh County Water Resource District, the Burleigh County Engineer's Office, the State Water Commission and State Engineer's Office, the State Department of Transportation, the State Health Department, the State Historical Preservation Officer, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and possibly others.

In addition to this stormwater management ordinance, the applicant is responsible for adhering to the requirements of other ordinances contained within the Code of Ordinances for the City of Bismarck, including:

a. Zoning ordinance regulations contained under Title 14 which are of special interest to new development projects.

b. Conformance with the requirements of the FP-Floodplain District, Title 14, Section 14-04-19.

c. Regulations governing the subdivision of land, Title 14, Chapter 14-09.

d. Conformance with the Landscaping and Screening requirements in Title 14, Section 14-03-11.

The following sections describe routine approval standards to be used in evaluating a proposed stormwater management plan.

2. Stormwater Design Standards Manual. The Stormwater Design Standards Manual, as adopted and amended by the City of Bismarck, contains the principal standards and design criteria for developing an effective and acceptable stormwater management plan. The Manual contains an overview of the City's Stormwater Management Policy and design objectives as well as a detailed discussion of the contents of stormwater management plans submitted to the City Engineer for approval. The Manual contains detailed criteria for hydrologic evaluations, the design of stormwater management system facility components, water quality protection standards, instructions for the development of an erosion and sedimentation control plan, and requirements for easements and rights-of-way. The Manual also contains a discussion of operation and maintenance requirements, standard forms to be used, and standard construction details adopted by the City.

3. Models/Methodologies/Computations. Hydrologic models and design methodologies used to determine runoff conditions and to analyze stormwater management structures and facilities shall be approved in advance by the City Engineer.

4. Construction Plans and Specifications.

a. Construction Plans and Specifications for Public Facilities within the Corporate Limits. The construction plans and specifications prepared for the construction of public stormwater management facilities within the corporate limits or on land that will be annexed prior to development must:

1. Be consistent with the stormwater management plan approved by the City Engineer.

2. Be in conformance with the requirements of the City of Bismarck Construction Specifications for Municipal Public Works Improvements, current special provisions, and any other necessary permits issued by other governmental agencies.

3. Be sealed and signed by a Professional Engineer registered in the State of North Dakota.

4. Be submitted to the City Engineer for approval.

5. Contain a drawing or drawings delineating the erosion and sediment control plan, including details of silt fences, storm drain inlet protection, and other best management practices (BMPs). The construction specifications shall contain technical specifications describing erosion, sedimentation and water control requirements during and after construction operations.

No construction may commence until the construction plans and specifications have been approved by the City Engineer and all other applicable permits and approvals are received from outside agencies.

b. Construction Plans and Specifications for Private Facilities within the Corporate Limits. The construction plans and specifications prepared for the construction of private stormwater management facilities within the corporate limits or on land that will be annexed prior to development must:

1. Be consistent with the stormwater management plan approved by the City Engineer.

2. Be sealed and signed by a Professional Engineer registered in the State of North Dakota.

3. Be submitted to the City Engineer for approval.

4. Contain a drawing or drawings delineating the erosion and sediment control plan, including details of silt fences, storm drain inlet protection, and other best management practices (BMPs). The construction specifications shall contain technical specifications describing erosion, sedimentation and water control requirements during and after construction operations.

No construction may commence until all applicable permits and approvals are received from the City and outside agencies.

c. Construction Plans and Specifications for Public Facilities within the Extraterritorial Area. The construction plans and specifications prepared for the construction of public stormwater management facilities within the extraterritorial areas must:

1. Be consistent with the stormwater management plan approved by the City Engineer.

2. Be in conformance with the requirements of Burleigh County and any other necessary permits issued by other governmental agencies.

3. Be sealed and signed by a Professional Engineer registered in the State of North Dakota.

4. Be submitted to the County Engineer for approval.

5. Contain a drawing or drawings delineating the erosion and sediment control plan, including details of silt fences, storm drain inlet protection, and other best management practices (BMPs). The construction specifications shall contain technical specifications describing erosion, sedimentation and water control requirements during and after construction operations.

No construction may commence until the construction plans and specifications have been approved by the County Engineer and all other applicable permits and approvals are received from outside agencies.

5. Construction Activities. Construction operations must at a minimum comply with the following requirements:

a. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins,

grit chambers, sand filters, upflow chambers, hydro-cyclones, soil concentrators or other appropriate controls as deemed necessary. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site; the receiving channels; or any wetland.

b. Waste and Material Disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff or wind into a receiving channel, storm sewer system, or wetland.

c. Tracking Management. Each site shall have roads, access drives and parking areas of sufficient width, length and surfacing to prevent sediment from being tracked onto public or private roadways prior to any land disturbing activities. Any material reaching or placed on a public or private road shall be removed (not by flushing) before the end of each work day or more frequently as needed.

d. Chemical Contamination. The construction contractor shall be required to control oil and fuel spills, and the discharge of any chemicals to prevent such spills or discharges from entering any water course, sump, sewer system, water body, or wetland.

e. Site Erosion and Sedimentation Control. Construction operations must include erosion and sedimentation control measures meeting accepted design criteria, for wind and water erosion, standards and specifications contained in the Stormwater Design Standards Manual.

f. Concrete Wash out Area. The developer or his construction contractor shall identify and construct a concrete wash out area to standards and specifications contained in the Design Standards Manual. The party responsible for the installation of the concrete wash out area is responsible for maintenance and removal.

6. Stormwater Management Criteria for Permanent Facilities. Stormwater control facilities included as part of the final design for a permanent development shall be addressed in the stormwater management plan and shall meet the following criteria:

a. Pre-versus Post Hydrological Response of Site. An applicant shall install or construct, on or for the proposed land disturbing or development activity, all stormwater management facilities

necessary to manage increased runoff so that the two (2) year, ten (10) year and one hundred (100) year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion will not occur as a result of the proposed land disturbing or development activity.

b. Natural Features of the Site. The applicant shall reduce the need for stormwater management facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity or quality of these natural features.

c. Stormwater Management Strategies. The following stormwater management practices shall be investigated in developing a stormwater management plan:

i. Natural infiltration of precipitation and runoff on-site, if suitable soil and geological conditions are available. The purpose of this strategy is to encourage the development of a stormwater management plan that encourages natural infiltration. This includes providing as much natural or vegetated area on the site as possible, minimizing impervious surfaces, and directing runoff to vegetated areas rather than to adjoining streets, storm sewers and ditches. This shall include the identification of areas with known high water tables, natural springs and other areas with ground water implications.

ii. The flow attenuation by use of open vegetated swales and natural depressions.

iii. Stormwater detention facilities.

iv. Stormwater retention facilities (on a case by case basis).

v. Storm sewer facilities.

A combination of successive practices may be used to achieve the applicable minimum control requirements specified in the above strategies. Justification shall be provided by the applicant for the method selected.

d. Adequacy of Outlets. The adequacy of any outlet used as a discharge point for proposed stormwater management facilities must be assessed and

documented to the satisfaction of the City Engineer. The hydraulic capacities of downstream natural channels, reaches, storm sewer systems, or streets shall be sufficient to receive post-development runoff discharges and volumes without causing increased property damages, an increase in the established base flood elevation (BFE), or a change in the conveyance of the base flood. If a floodplain or floodway has not been established by the Federal Emergency Management Agency, then the applicant shall provide a documented analysis and estimate of the base flood elevation as certified by a Professional Engineer registered in the State of North Dakota. In addition, projected velocities in downstream natural or manmade channels shall not exceed that which is reasonably anticipated to cause erosion unless protective measures acceptable to the City Engineer are approved and installed as part of the stormwater management plan. The assessment of outlet adequacy shall be included in the stormwater management plan and shall be certified by a Professional Engineer registered in the State of North Dakota.

e. Stormwater Detention/Retention Facilities. Stormwater detention or retention facilities proposed to be constructed in the stormwater management plan shall be designed according to the most current technology as reflected in the Design Standards Manual.

7. Operation, Maintenance and Inspection. All stormwater management facilities shall be designed to minimize the need for maintenance, to provide access for maintenance purposes, and to be structurally sound. All stormwater management facilities shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in stormwater runoff. The City Engineer or Stormwater Program Coordinator may inspect all stormwater management facilities at any time. Inspection records will be kept on file with the Stormwater Program Coordinator. It shall be the responsibility of the applicant to obtain any necessary public easements or other property interests to allow access to the stormwater management facilities for inspection and maintenance purposes. The City Engineer shall retain enforcement powers for assuring adequate operation and maintenance activities through permit conditions and penalties for noncompliance orders.

8. Easements and Bonds. Easements or bonds may be required as conditions to the issuance of a permit.

9. Management of Site Vegetation. The applicant shall provide for the installation and maintenance of

vegetation on development property in accordance with the following criteria:

a. Use of Impervious Surfaces. No person shall apply fertilizer to or deposit grass clippings, leaves, or other vegetative materials on impervious surfaces, or within stormwater drainage systems with impervious liners or conduits including streets and gutters.

b. Unimproved Land Areas. Except for driveways, sidewalks, patios, areas occupied by structures or areas which have been improved, all areas shall be covered by plants, or an approved vegetative cover or non-erosive pervious surface.

c. Use of Pervious Surfaces. No person shall deposit grass clippings, leaves, or other vegetative materials, with the exception of normal mowing or weed control, within natural or manmade drainageways, wetlands, or within wetland buffer areas.

10. Plan Applicability. A plan issued under this title runs with the land and is a condition of plat approval. Any owner or subsequent owner of any parcel within the plat must comply with the plan or any approval, revision or modification of the plan. Any owner or subsequent owner shall be aware of and responsible for continued implementation of this plan.

11. Duration. Approval of any plan submitted under the provisions of this Title shall expire one (1) year after the date of approval unless a stormwater permit is issued and construction has commenced in accordance with the plan. However, if prior to the expiration of approval, the applicant makes a written request to the City Engineer for an extension of time to commence construction setting forth the reasons for the requested extension, the City Engineer may grant one extension of not greater than one (1) year. Receipt of any request for an extension shall be acknowledged by the City Engineer within fifteen (15) days. The City Engineer shall make a decision on the extension within thirty (30) days of receipt.

12. Revisions and Resubmittals. Any plan may be revised in the same manner as originally approved and resubmitted. Any denied application may be resubmitted with additional information addressing the concerns contained within the denial. The resubmittal is subject to all applicable fees and shall be considered as a new application.

14.1-02-04. Stormwater Permits.

1. Stormwater Management. It is unlawful to initiate land development, land disturbing, or other activities which result in an increase in stormwater quantities, degradation of stormwater quality, or restriction of flow in any storm sewer system, open ditch or natural channel, stormwater easement, water body, or wetland outlet within the jurisdiction of the City, without having first complied with the terms of this Title.

2. Stormwater Permits.

a. Mandatory Permits. Any person proposing a development or project which involves land development, land disturbing, or other activities as defined in this Title, shall obtain a stormwater permit before initiating those activities. If the stormwater management plan submittal requirement is waived or deemed exempt by the City Engineer, a stormwater permit must be obtained in accordance with this section.

b. Permit Application. All persons subject to meeting the requirements for a mandatory stormwater permit shall complete and file with the City Engineer an application in the form prescribed by the City Engineer and accompanied by a fee established by the City Engineer and adopted by the Board of City Commissioners. The permit application shall be accompanied by the following:

i. A phased erosion and sediment control plan;

ii. A final grading plan;

iii. An approved or revised stormwater management plan as prescribed under Section 14.1-02-01 of this Title or a waiver of this requirement.

iv. Verification that all best management practices (BMPs) have been installed; and

v. The applicable fee.

The City Engineer will evaluate the data furnished as part of the stormwater management plan and may require additional information. For permit applications within the City's extraterritorial area, the City Engineer will provide copies of the permit application to the County Engineer for review and comment. After evaluation and acceptance of the stormwater management plan, the City Engineer may issue a stormwater permit subject to any terms and conditions deemed necessary. For permit applications

within the City's extraterritorial area, the City Engineer will not approve a stormwater permit without written concurrence of the County Engineer.

c. Permit Conditions. Stormwater permits are issued subject to all provisions of this Title and all other applicable regulations, user charges and fees established by the City. Permits may contain any of the following conditions:

i. Limits on the maximum rate of stormwater discharge;

ii. Limits on water quality degradation of stormwater discharge;

iii. Requirements for the installation, operation and maintenance of stormwater detention/retention facilities;

iv. Compliance schedule;

v. Requirements for notification to and acceptance by the City Engineer of any land disturbing activities which have the potential for increasing the rate of stormwater discharge resulting in degradation of stormwater quality; and

vi. Other conditions as deemed appropriate by the City Engineer to insure compliance with this Title.

d. Permit Duration. Permits must be issued for a time period specified by the City Engineer. The applicant shall apply for permit renewal a minimum of thirty (30) days prior to the expiration of the applicant’s existing permit. The terms and conditions of a permit are subject to modification by the City Engineer during the term of the permit as set forth herein. Failure to renew the permit prior to the expiration date will require the permittee to pay a late fee as prescribed by the City Engineer. While the permit may have expired, the permittee remains responsible for the activities and site governed under the permit until the permit is terminated.

e. Permit Modification. Permits may be modified by the City Engineer for just cause upon thirty (30) calendar days’ notice. Just cause shall include but not be limited to:

i. Promulgation of a new applicable nationwide or statewide permit standard;

ii. Changes in the requirements of this Title;

iii. Changes in the process used by the permittee or changes in discharge rate, volume, or character; and

iv. Changes in the design or capability of receiving stormwater facilities.

The applicant must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of the change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

f. Permit Amendments. Stormwater permits may be amended only by a written request submitted by the Permittee to the City Engineer. This request shall contain the reason for the change, documentation related to any additional impacts which may result from amendment approval, and shall include an amendment to the approved stormwater management plan. Amendment requests submitted prior to issuance of a stormwater permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines as used for a new stormwater permit application under this Title.

g. Permit Transfer. A permit runs with the property it covers and is transferable to new owners in its entirety or by parcel, with each parcel being subject to the permit and any conditions which apply to that parcel. A Notice of Transfer is required in conjunction with the transfer of a parcel of land. The current permittee is responsible for submitting the required notice of Transfer to the Stormwater Program Coordinator within ten (10) business days of the transfer of a parcel of land.

h. Monitoring Facilities. The City Engineer may require the applicant to provide and operate at the applicant’s expense a monitoring facility to allow inspection, sampling, and flow measurements of each stormwater facility component. Where at all possible, the monitoring facility shall be located on the property of the applicant as opposed to on public rights-of-way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.

i. Inspection. The City Engineer or Stormwater Program Coordinator may inspect the stormwater

management facilities of any permittee to determine compliance with the requirements of this Title. A permittee shall allow the City Engineer or Stormwater Program Coordinator to enter upon the premises at all reasonable hours for the purposes of inspection, sampling or record examination. The City Engineer or Stormwater Program Coordinator shall be allowed to set up equipment on the permittee's premises as required for the purpose of collecting samples and flow recording.

j. Termination. A stormwater permit shall be terminated after a review by the City Engineer has determined that a development site has been fully constructed and is reasonably protected from erosion based on constructed conditions. A termination review shall be requested by the permittee or may be initiated by the City Engineer after the expiration date of the permit.

Prior to termination of the stormwater permit an amended stormwater management plan must be submitted to the City Engineer documenting any changes to the original stormwater management plan. The amended stormwater management plan shall be certified by a Professional Engineer registered in the State of North Dakota.

(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

CHAPTER 14.1-03 - ENFORCEMENT

14.1-03-01. Remedies and Enforcement Powers. The City shall have the following remedies and enforcement powers:

1. Withhold Permits. The City may deny or withhold all permits, certificates or other forms of authorization as to any applicant for a stormwater permit. Instead of withholding or denying an authorization, the City may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, develops or otherwise causes an uncorrected violation of a provision of this Title or of a condition or qualification of a permit, certificate, approved stormwater management plan or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the stormwater permit or other approval is sought is the property in violation.

2. Revocation of Stormwater Permits. A stormwater permit may be revoked when the City Engineer determines that:

a. There is departure from the plans, specifications, or conditions as required under terms of a stormwater permit or approved stormwater management plan;

b. The plans, specifications, or conditions were obtained by false representation or the stormwater permit was issued by mistake; or

c. Any of the provisions of this Title are being violated as to the project under the stormwater permit.

3. Revocation of Stormwater Management Plan or Other Approval. When a violation of this Title involves a failure to comply with an approved stormwater management plan or conditions to which the approval of such plan was made subject, the City Engineer may, upon giving proper notice, revoke the plan approval or other approval, allow work to continue on condition of strict compliance with all applicable rules and regulations, or impose such other conditions as the City Engineer deems appropriate and necessary.

4. Suspension of Stormwater Management Plan or Stormwater Permit. The City Engineer shall have authority to suspend a stormwater management plan or a stormwater permit upon finding that an actual or threatened discharge exists or when such conditions present an imminent or substantial danger to the health or welfare of persons downstream, environment, natural resources, stormwater quantity, water quality, and/or environmentally sensitive lands. Upon issuance of suspension notice and order, all work in the area covered by the plan and/or permit, shall cease immediately. If any person fails to comply with the suspension order, the City shall commence whatever steps are necessary to obtain compliance. The City Engineer may lift the suspension order upon proof of compliance with all stormwater management plan or stormwater permit conditions.

Whenever the City Engineer orders the suspension of a stormwater management plan or stormwater permit and declares the situation to be an emergency, the City Engineer shall serve a notice and order on the permittee personally, or by registered or certified mail. The permittee has the right to an informal hearing before the City Engineer by making an appointment with the City Engineer. The informal hearing must be held within five (5) days of service of the notice and order. Following the hearing, the City Engineer may affirm, modify or rescind the stop work order.

5. Stop Work Order. The City Engineer shall have authority to issue a stop work order, ordering suspension of all work and activity at the site, upon finding that an actual or threatened discharge exists or when such conditions present an imminent or substantial danger to the health or welfare of persons downstream, the environment, natural resources, stormwater quantity, water quality, and/or environmentally sensitive lands. Upon issuance of a stop work order, all work in the area covered by the stormwater permit, if a permit has been issued, shall cease immediately. If any person notified of such stop work order fails to comply, the City shall commence whatever steps are necessary to obtain compliance. The City Engineer may lift the stop work order upon proof of compliance with all plan or permit requirements and conditions.

Whenever the City Engineer issues a stop work order and declares the situation to be an emergency, the City Engineer shall serve a notice and order on the person performing the work personally, or by registered or certified mail. The person performing the work, owner or permittee has the right to an informal hearing before the City Engineer by making an appointment with the City Engineer. The informal hearing must be held within five (5) days of service of the notice and order. Following the hearing, the City Engineer may affirm, modify or rescind the stop work order.

6. Injunctive Relief. The City may seek an injunction or other equitable relief in court to stop any violation of this Title or of a stormwater permit, stormwater management plan, certificate or other form of authorization granted hereunder.

7. Abatement. The City may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

8. Restitution. The City may seek an order requiring restitution as a condition to be met by a person before the person's stormwater permit is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.

9. Costs of Damage. Any person violating any of the provisions of this Title or who initiates an activity that causes a deposit, obstruction, or damage or other impairment to the City's stormwater management system is liable to the City for any expense, loss, or damage caused by the violation or the discharge. The City may bill the

person violating this Title the costs of any cleaning, repair or replacement work caused by the violation of stormwater discharge, and if unpaid within ninety (90) days may result in assessment of such costs against the violator's property.

10. City Attorney's Fees and Costs. In addition to the fees and penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this Title or the orders, rules, regulations and permits issued hereunder.

11. Other Remedies. The City shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this Chapter or related provisions.

12. Remedies Cumulative. The remedies and enforcement powers established in this Chapter are cumulative.

(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

14.1-03-02. Administrative Search Warrant. Whenever the City Engineer is denied access to a property to inspect for compliance with this Title, he/she may secure an administrative search warrant from the municipal judge in accordance with Chapter 29-29.1, N.D.C.C.

(Ord. 5853, 11-22-11)

14.1-03-03. Notice and Order. Except for emergency orders under Section 14.1-04-01(4) and (5), whenever the City Engineer finds that any person has violated or is violating this Title, a stormwater permit and/or its conditions, an approved stormwater management plan, or any prohibition, limitation or requirement contained herein, the City Engineer shall serve upon such person a written notice and order stating the nature of the violation. Within thirty (30) days of the date of the notice, unless a different time frame is set by the City Engineer due to the nature of the violation, the correction thereof must be completed to the satisfaction of the City Engineer.

(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

14.1-03-04. Appeal. All decisions of the City Engineer dealing with violations of a stormwater permit or this Title or the issuance or non-issuance of the permits required by this Title are subject to appeal to the Board of City Commissioners upon written notice of appeal filed within fifteen (15) days of issuance of the decision. If no appeal is filed within the time period specified, the decision of the City Engineer is final. An appeal stays the City Engineer's decision unless the City Engineer declares the order to be an emergency and certifies to the board that a stay would cause imminent danger to life and property in which case the decision may be stayed only by a

restraining order from the Board of City Commissioners or a court of record.
(Ord. 5853, 11-22-11)

14.1-03-05. Hearing. Upon receiving the notice of appeal the Board of City Commissioners shall set a date for a hearing within thirty (30) days of receipt of the notice of appeal. Notice of the time and place for the hearing must be served upon the appellee by certified mail or in person not less than five (5) days prior to the hearing.
(Ord. 5853, 11-22-11)

CHAPTER 14.1-04 PENALTIES

14.1-04-01. Penalty. Any person who fails to comply with a final or un-stayed decision of City Engineer or a decision of the Board of City Commissioners after a hearing or who has failed to comply with any provision of this Title and the orders, rules, regulations and permits issued hereunder, is guilty of an ordinance violation and subject to the provisions of Chapter 1-02 of the City Code (Penalties). Each day the violation continues constitutes a separate offense.
(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)

14.1-04-02. Abatement. The imposition of a penalty provided by the provisions of this Title shall not preclude the City from instituting proceedings to restrain, correct or abate a continuing violation of this Title. If any person violates any of the provisions of this Title or initiates an activity which causes a deposit, obstruction, or damage or other impairment to the City's stormwater management system and within ten days of a final order issued under this Chapter, fails to obey that order, the City Engineer is hereby authorized to restrain, correct or abate the violation and have the costs incurred assessed against the property.
(Ord.5853, 11-22-11)

14.1-04-03. Falsifying Information. Any person who knowingly makes any false statements, representations, or certification in any applicable record, report, plan, or other document filed or required to be maintained pursuant to this Title, or stormwater permit, or who knowingly falsifies, tampers with, or knowingly renders inaccurate any monitoring devices or method required under this Chapter, shall be guilty of an offense.
(Ord. 4817, 02-25-97; Ord. 5853, 11-22-11)