



# Zoning Ordinance

## Latest Revision Date

Comprehensive Plan: August 20, 2019  
Zoning Ordinance: September 17, 2019

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## Comprehensive Plan

In accordance with North Dakota Century Code 11-33-03 Ward County has adopted a Comprehensive Plan. All development within the boundary of this ordinance shall be consistent with and accomplish the goals and policies of the effective Ward County Comprehensive Plan and any amendments thereto.

# Chapter 1

## RESOLUTION ESTABLISHING ZONING DISTRICT #1

Date Established: March 17, 1955, ... the foregoing is a true, correct and complete copy of a resolution adopted by the Board of County Commissioners of said County at its regular meeting held on the 9th day of June, 1955 and which resolution is part of the minutes of said Board and as amended on the 27th day of July 1977, 24th day of August 1977, 26th day of September 1984, 21st day of December 1989, and the 1st day of June 1993, and the 5th day of August 2003.

WHEREAS, the Board of County Commissioners by resolution, dated March 17, 1955, did establish the Ward County Zoning Commission, and

WHEREAS, for the purpose of promoting the Health, Safety, Morals, Public Convenience, General Prosperity and Public Welfare of the County; and

WHEREAS, the United States Air Force has indicated its intention to establish an Airbase in Ward County and in order to permit the orderly development of the County in and around said Airbase, so as to prevent large congestions of population and as to prevent undesirable buildings, structures, businesses or the conduct of undesirable activities around said Airbase and in order to meet the requirements as set forth by the United States Air Force regarding heights of buildings and types of obstructions which would interfere with the operations of said Airbase.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Ward County that there be established Ward County Zoning District #1 which shall include the following described lands:

All of Waterford Township, (Township 157 N., Rge. 83 W); The West half (W 1/2) of Tatman Twp., (Twp. 157 N, Rge. 82 W); Section 4,5,6,7,8,9,10,11,13,14,15,16,23, and 24 in McKinley Twp. (Twp. 156 N.; Range 82 W.); Section 1, St. Mary's Twp., (Twp. 157 N., Rge. 84 W.)

BE IT FURTHER RESOLVED that in said Zoning District #1 there shall be established the following regulations:

- I. LAND USAGE AND PLAT APPROVAL - There shall be no subdivision or sub-divisions or outlots in said Zoning District #1 except those incident to farming and except that property containing a habitable residential structure, such structure having been completed and existing for a least five years prior to the date of application, may be separated by plat from adjacent property. There shall be no usage of land or buildings for other than farming or single-family residential purposes other than as exists as of January 01, 1990.

Final plats of outlots and subdivisions of land located within the boundaries of the district(s) covered by this Resolution shall be approved by the Board of Ward County Commissioners in accordance with the procedures described in North Dakota Century Code Section 11-33.2-12 and/or as it may be amended. The Ward County Planning Commission is hereby empowered to investigate and to conduct public hearings into the public use and interest proposed to be served by the proposed plat and to consider the public health, safety and welfare elements of NDCC 11-33.2-12 paragraph 3 and, if relevant, the potential effect on the value of adjoining property in making a recommendation for approval or disapproval to the Board of Ward County Commissioners. No outlot or subdivision plat of land included within the boundaries of the zoning district (s) covered by this Resolution shall be recorded in the office of the Ward County Register of Deeds until approved by the Board of Ward County Commissioners.

- II. STRUCTURAL OCCUPANCY There shall be no buildings, structures, or other edifice erected in said Zoning District #1 which could be used for mass meetings such as Clubs, Churches, Dance Halls, Schools, Night Clubs, Restaurants, Recreational Centers, Bowling Alleys or Roller Skating Rinks or any Hotels, Motels, Apartment Houses, Trailer Courts, or other housing not incident to farming; or any other buildings or structures where human lives may be jeopardized by operation of the said Air Field except that residential structures, existing and habitable on the date of application for a building permit, may be replaced in their entirety provided the existing structure is demolished or removed from the property within 90 days of occupancy of the replacement dwelling, and further, that construction of garages, sheds, stables and other non-residential and non-commercial buildings of less than 1, 000 square feet may be constructed on property containing a habitable residential structure. Additions may be made to existing and habitable residential structures and they may also be replaced if demolished or destroyed by weather or fire or other cause.
- III. TYPES OF STRUCTURES - All structures or buildings other than those prohibited by Section II shall conform to the requirements of the State Building Code as identified in Section 54- 21.3-03 of the North Dakota Century Code and amendments thereto; said Building Code with amendments thereto, being incorporated by reference as a part of this resolution.
- IV. PERMITS - As a prerequisite to construction, erection, reconstruction, alteration, repair or enlargement of any building or structure in said Zoning District No. 1 there shall be secured from the Board of County Commissioners a permit, which will be known as a building permit. A fee shall be collected for the issuance of said building permit in the amount to be determined by the County Commissioners, which fee shall be credited to the general fund of the County.
- V. LIMITATION - The foregoing requirements in their entirety shall not apply to any farm buildings.
- VI. FEES - There shall be fees payable to the County for applications for plat approval, building permits and other services provided by the County in administering this resolution. Such fees shall be established by the Board of Ward County Commissioners and may be amended from time to time as deemed necessary.
- VII. DEFINITIONS - For the purposes of interpreting and administering this zoning resolution, the following definitions shall apply:

FARM: Is a zoned area of Ward County containing at least forty (40) acres, which is used for the growing of the usual farm products such as vegetables, fruit trees, and grain, and their storage on the area, as well as for raising thereon the usual farm poultry and farm animals, such as horses, cattle, sheep, and swine. The term farming includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal farming activities, and provided further that farming does not include the commercial feeding of garbage or offal to swine or other animals.

HABITABLE: Shall mean the condition of a building constructed or altered by intent to provide for the living quarters of people and which shall have fully functioning plumbing, electrical

wiring, and sewage facilities; which shall have an operational heating plant i which shall be secure from inclement weather, and which in all ways provides a safe and usable living environment. A dwelling or building which is deficient of any of the aforementioned conditions shall be deemed uninhabitable.

## Chapter 2

### RESOLUTION ESTABLISHING ZONING DISTRICT NO. 2

Date Established: June 9 1955, ...the foregoing is a true, correct and complete copy of a resolution adopted by the Board of County Commissioners of said County on the 9th day of June, 1955, and amended February 2, 1965, November 13, 1990, July 2, 1991, June 1, 1993, November 19, 2002, August 5, 2003, June 21, 2005, which resolutions are a part of the minutes of said Board.”

WHEREAS, the Board of County Commissioners by resolution, dated March 17, 1955, did establish the Ward County Zoning Commission, and

WHEREAS, for the purpose of promoting the Health, Safety, Morals, Public Convenience, General Prosperity, and Public Welfare of the County; and

WHEREAS, the United States Air Force has indicated its intention to establish an Air Base in Ward County and in order to permit the orderly development of the County in and around said Air Base, so as to prevent large congestions of population and as to prevent undesirable buildings, structures, businesses, or the conduct of undesirable activities around said Air Base, and in order to meet the requirements as set forth by the United States Air Force regarding heights of buildings and types of obstructions which would interfere with the operations of said Air Base,

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Ward County that there be established Ward County Zoning District No. 2, which shall include all the following described lands:

Kirkelie Township (T156N, R84W); Sections 1, 2, 3, 12, 17, 20, 21, 22, 25, 26, 27, 28, 29, 32, 33, 34,

35, 36 of McKinley Township (T156N, R82W);

St. Mary's Township (T157N R84W) except section 1;

the East half (E 1/2) of Tatman Township (T157N,R82W);

Vang Township (T153N, R85W), and Hilton Township (T152N, R84W).

Township 151-81	(Greely Township)	Township153-82	(Willis Township)
Township 151-82	(Iota Flat Township)	<del>Township153-84</del>	<del>(Torning Township)</del>
Township 151-83	(Rushville Township)	Township 153-86	(Linton Township)
Township 151-84	(Spring Lake Township)	Township 153-87	(Lund Township)
Township 151-85	(Cameron Township)	Township 154-81	(New Prairie Township)
Township 151-86	(Ryder Township)	<del>Township 154-84</del>	<del>(Burt Township)</del>
<del>Township 151-87</del>	<del>(Hiddenwood Township)</del>	Township 154-85	(Rolling Green Township)
<del>Township 152-81</del>	<del>(Brilliant Township)</del>	<del>Township 154-86</del>	<del>(Tolgen Township)</del>
<del>Township 152-82</del>	<del>(Newman Township)</del>	<del>Township 154-87</del>	<del>(Shealy Township)</del>
<del>Township 152-83</del>	<del>(Gasman Township)</del>	<del>Township 155-81</del>	<del>(Surrey Township)</del>
Township 152-84	(Rice Lake Township)	Township 155-85	(Des Lacs Township)

Township 152-86	(Anna Township)	Township 155-86	(Mandan Township)
Township 152-87	(Orlien Township)	Township 155-87	(Evergreen Township)
<del>Township 156-81</del>	<del>(Maryland Township)</del>	<del>Township 158-87</del>	<del>(Carbondale Township)</del>
Township 156-85	(Foxholm Township)	Township 159-87	(Greenbush Township)
Township 153-81	(Sawyer Township)	Township 159-88	(Baden Township)
<del>Township 156-86</del>	<del>(Berthold Township)</del>	Township 159-89	(Spencer Township)
<del>Township 156-87</del>	<del>(Passport Township)</del>	Township 160-87	(Sauk Prairie Township)
Township 157-81	(Margaret Township)	Township 160-88	(Kenmare Township)
Township 157-85	(Mayland Township)	Township 160-89	(Elmdale Township)
Township 157-86	(Carpio Township)	Township 161-88	(Denmark Township)
Township 157-87	(Ree Township)		

BE IT FURTHER RESOLVED that in said Zoning District No. 2 there shall be established the following regulations:

**SECTION I. - LAND USAGE**

- A. Rural Zone - All lands described as included in this Resolution shall be classified as a "Rural Zone". Land within the Rural Zone may be used for agricultural, single-family residential purposes as defined and described in Ward County Zoning Resolution No. 6 under "A-1, Agricultural District"; "R-1 and R-2, Single Family Residence District". All other uses are prohibited except as may be allowed by Special Use Permit or as a pre-existing, non-conforming use as provided for in this Resolution.
  
- B. Special Use Permits - All uses of land and structures not provided for in the definition of a Rural Zone may be considered for a Special Use Permit. Upon receipt of an application for a Special Use Permit, the County Planning Commission shall schedule and conduct a public hearing on the special use applied for. Notice of the public hearing shall be published as required when amending County zoning resolutions, and direct notice shall be mailed to the applicable township board(s) and to all adjacent land owners. Following said public hearing, recommendation for approval or denial of the permit shall be made by the Planning Commission, and such Special Use Permit shall be subsequently issued or denied by the Board of Ward County Commissioners. Special Use Permits shall be denied by the County Commissioners if significant impact is or can reasonably be expected to adversely affect the Township, the roads, therein, its people, its schools, its resources, and any other factors deemed relevant by the County Commissioners, the Township Board(s), the Planning Commission, or the adjacent land owners. All special uses must be compatible with current, neighboring land uses and be expected to remain so for the foreseeable future. The Board of County Commissioners is authorized to impose any conditions or restrictions on the granting of a Special Use Permit that may be recommended by the County Planning Commission or that it deems necessary or appropriate for protection of the health, safety or general welfare of the public.

- C. Terms and Revocations of Special Use Permits - Special Use Permits shall be issued for an indefinite period, so long as the land and/or structures covered by the permit continue to be used as provided for in the permit except that, upon submission to the Board of Ward County Commissioners evidence that the land and/or structures are being used for purposes not covered, allowed, provided for or reasonably expected under provisions of any special use permit, evidence that such special use as covered by the permit has ceased for a period of at least 36 consecutive months, or evidence that the reasonable requests of neighboring land owners or tenants to cease or moderate unusually offensive aspects of the permitted operations have been ignored, the County Commissioners shall within 30 days of the presentation of such evidence hold a public hearing on continuation of the Special Use Permit. Notices shall be distributed as required for initial consideration of a Special Use Permit (See Section C). Upon completion of the public hearing and within eight days, the Commissioners shall allow such Special Use Permit to continue or shall revoke it. Revocation may be temporary until any requirements deemed appropriate by the Board of Commissioners are met, or revocation may be permanent as determined by the Commissioners. Revocation shall be for good cause including, but not limited to use of property or buildings for purposes not provided for in the Special Use Permit; substantial and adverse effects on the Township, the roads therein, its people, its schools, its resources, or any other factors deemed relevant by the County Commissioners; cessation of the uses provided for in the Special Use Permit for a period of 36 consecutive months or longer, or failure to respond to the reasonable requests of neighboring land owners or tenants to cease or moderate any aspect of the operation of the permitted use which exceeds that which is considered normal or customary for similar operations at other sites or locations in North Dakota.
- D. Adult Entertainment Center - Adult Entertainment Center is defined as: an "Adult Bookstore" or "Adult Mini-Motion Picture Theater", or both, as defined herein. Definitions applicable to this Section are:
1. "Adult Bookstore" means a bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this subsection.
  2. "Adult establishment" means an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater or a massage business, all as defined in this subsection.
  3. "Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
  4. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection for observation by patrons of the theater.
  5. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping by hand or mechanical device.
  6. "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios or massage parlors.

7. "Sexually oriented devices" means without limitation, any artificial or stimulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.
8. "Specified anatomical areas" means:
  - a. Less than complete and opaquely covered human genitals and pubic regions, buttocks or female breasts below a point immediately above the top of the areola.
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
9. "Specified sexual activities" means:
  - a. Human genitals in a state of sexual stimulation or arousal;
  - b. Acts of human masturbation, sexual intercourse or sodomy; or
  - c. Fondling or other erotic touching of human genitals and pubic regions, buttocks or female breasts.

An adult entertainment center shall be permitted only by Special Use Permit as provided for in this Resolution and then only if the center meets the following conditions:

1. No building, premises, structure or other facility that contains any adult establishment as defined in subsection 1, shall contain any other kind of adult establishment.
  2. No building, premises, structure or other facility in which sexually oriented devices as defined in subsection 1, are sold, distributed, exhibited or contained shall contain any adult establishment, as defined in subsection 1.
  3. The center is located no closer than 1,250 feet from any pre-existing church, school or property zoned A-1, R-1, R-2, R-3, C-1, C-2 or C-3.
  4. The center excludes from its premises those persons less than 18 years of age.
  5. The center displays no signs visible from the exterior of the center, except for signs identifying the center as an adult bookstore or adult cinema.
  6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center.
  7. The manager and the owners of the center are registered with the Sheriff of Ward County and have provided him with such information as he reasonably may require with respect to their identities, including finger prints and prior criminal records, if any.
  8. The business premises of the center which is generally open to its patrons is open equally at the same time without charge to the Ward County Sheriff and his deputies who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.
- E. Adult Cabaret - Adult Cabaret is defined as: a nightclub or similar commercial establishment that features go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers, regardless of whether liquor is served or provided.
1. Definitions applicable to this section are:
    - a. APPLICANT: The individual or entity seeking a sexually oriented business operator's or employee license in the county.
    - b. EMPLOYEE: Managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of the sexually oriented business, including any person functioning and/or dispatched as an escort. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

- c. ENTERTAINER: Any go-go dancer, exotic dancer, stripper, male or female impersonator and other similar person.
- d. ESCORT: Any person who, for a salary, fee, tip, commission, hire, profit or other consideration, makes oneself available to the public for the purpose of accompanying another person for companionship, or agreeing or offering to privately model lingerie or to privately perform erotic dancing for another person.
- e. ESCORT SERVICE: Any business, agency, or person who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish, or arranges for persons to accompany other persons for companionship, or who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish or arranges for persons to privately model lingerie or privately perform erotic dancing for another person.
- f. MANAGER: An individual who is employed by a sexually oriented business to act as a manager or supervisor or is otherwise responsible for the operation of the business.
- g. NUDITY OR STATE OF NUDITY: The appearance of a human anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva with less than a fully opaque covering; or a female breast with less than a fully opaque covering of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered.
- h. OPERATOR: Any person owning, operating, conducting or maintaining a sexually oriented business.
- i. PERSON: Any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity or other entity or group of persons, however organized.
- j. SEXUALLY ORIENTED BUSINESS: An adult cabaret or an escort service.
- k. SPECIFIED CRIMINAL ACTIVITY: Any of the following offenses:
  - 1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states or other countries.
  - 2) Other felony convictions in this state, other state or countries.
  - 3) For which:
    - a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
    - b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense;
    - c. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period;
    - d. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

1. SPECIFIED SEXUAL ACTIVITIES: Includes any of the following:
  - a . The fondling or other erotic touching or similar touching of human genitals, pubic region, buttocks, anus or female breasts, whether covered or uncovered;
  - b . Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
  - c . Masturbation, actual or simulated; or
  - d . Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.
2. Licensing requirements:
  - a . It shall be unlawful:
    - 1)For any person to operate a sexually oriented business without a valid operator's license ("operator's license") issued by the county.
    - 2)For any person who operates a sexually oriented business to employ an employee, if such employee is not in possession of a valid employee license ("employee license") issued to such employee by the county pursuant to this division; or
    - 3)For any person (including an operator) to be an employee of a sexually oriented business if such person is not in possession of a valid sexually oriented employee license issued to such person by the county pursuant to this division.
3. Application process for a sexually oriented business operator's license includes:
  - a . All applications for a sexually oriented business operator's license shall be submitted to the county sheriff in the name of the person or entity proposing to conduct a sexually oriented business on the business premises and shall be signed by such person and certified as true under penalty of perjury.
  - b . An application for a sexually oriented business operator's license must be made on a form provided by the county. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Prior to issuance of an operator's license, the premises must be inspected by the sheriff's department and the fire department.
  - c . All applicants for a license must be qualified according to the provisions of this division. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the county to determine whether the applicant meets the qualifications established under this division. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.
  - d . If a person who wishes to own or operate a sexually oriented business as an individual, he or she must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) per cent or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that

wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.

e . Applications for an operator's license, whether original or renewal, shall contain the following information:

- 1) The name, street address (and mailing address if different) of the applicant(s);
- 2) The applicant's social security number and/or his/her state or federally issued tax identification number;
- 3) The name under which the establishment is to be operated and a general description of the services to be provided;
- 4) Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in this division and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each;
- 5) Whether the applicant has had a previous license under this division or other similar ordinance from another city or county denied, suspended or revoked, including the name and location of the business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a similar ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
- 6) Whether the applicant holds any other licenses under this division or other similar business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;
- 7) The telephone number of the establishment;
- 8) The address and legal description of the tract of land on which the establishment is to be located;
- 9) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;
- 10) If the establishment is not in operation, the expected startup date. If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.

f . Each application for an operator's license shall be accompanied by the following:

- 1) Payment of the application fee in full;
- 2) A recent color photograph taken by the Ward County Sheriff's Department of the applicant clearly showing the applicant's face and the applicant's fingerprints (if so requested) on a form provided by the

sheriff's department. The sheriff's department may request finger printing at the time of application. Any fees for photographs and fingerprints shall be paid by the applicant.

- 3) If the establishment is a state of North Dakota corporation, a copy of the articles of incorporation, together with all amendments thereto;
  - 4) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
  - 5) If the establishment is a limited partnership formed under the laws of the state of North Dakota, a certified copy of the certificate of limited partnership, together with all amendments thereto;
  - 6) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;
  - 7) Proof of the current fee ownership of the property on which the establishment is to be situated in the form of a copy of the recorded deed;
  - 8) If the persons identified as the fee owner(s) of the property is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the property thereof that is to be used for the business.
4. Application process for a sexually oriented business employee license includes:
- a. Applications for an employee license to work for and/or perform services in a sexually oriented business, whether original or renewal, must be made to the sheriff by the business owner or manager on behalf of the employee to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the county. Each applicant shall be required to provide the following information on or with the application form:
    - 1) The applicant's given name and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
    - 2) Age, and date and place of birth;
    - 3) Height, weight, hair color, and eye color;
    - 4) Present residence address and telephone number, including cell phone number;
    - 5) Present business address and telephone number;
    - 6) Copy of driver's license or other state issued photo identification card;
    - 7) Social security number; and
    - 8) Proof that the individual is at least twenty-one (21) years of age.The personal information provided in this subsection a shall be confidential and shall not be disclosed to the public except to the extent required by state or federal law.

- b. Attached to the application form shall be the following:
  - 1) A recent color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints (if so requested) on a form provided by the sheriff's department. The sheriff's department may request finger printing at the time of application. Any fees for photographs and fingerprints shall be paid by the applicant.
  - 2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state or country, has ever had any license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction and description in full of the reason(s) for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.
  - 3) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in this ordinance and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.

c. Every application for an employee license shall contain a statement under oath, signed by the employee, that the employee has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct.

5. Issuance process of employee license:

- a. Upon the filing of an application for a sexually oriented business employee license, the county shall issue a temporary license to said applicant. The application shall then be referred to the appropriate departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of filing of the completed application. After the investigation, the county shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
  - 1) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  - 2) The applicant is under the age of twenty-one (21) years.
  - 3) The applicant has been convicted of a "specified criminal activity" as defined in this division; or
  - 4) The applicant has had a sexually oriented business employee license revoked by the county within two (2) years of the date of the current application.
- b. In the event that the county determines that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the

completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division.

- c . If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as hereinafter set forth.
  - 1) An employee license shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.
  - 2) An employee license shall be subject to annual renewal upon the written application of the applicant and a finding by the county that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the filing of the completed application. The renewal of a license shall be subject to the same fee as the original license. Non-renewal of a license shall be subject to appeal as hereinafter set forth.
  - 3) Upon application for a sexually oriented business operator's license, the county shall approve or deny issuance of the license within thirty (30) days of filing of the completed application. The county shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
    - a . An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
    - b . An applicant is under the age of twenty-one (21) years.
    - c . An applicant has been denied a license by the county to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
    - d . An applicant is overdue in payment to the county for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or taxes or special assessments are overdue for the property on which the sexually oriented business is located or will be located;
    - e . An applicant has been convicted of a "specified criminal activity" as defined in this division;

- f. The premises to be used for the sexually oriented business have not been approved as being in compliance with applicable laws and ordinances;
  - g. The license fee required under this division has not been paid;
  - h. An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this division.
- 4) An operator's license shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
  - 5) If so required under other sections of this division, the sheriff's department shall complete their certification that the premises are in compliance or not in compliance within thirty (30) days of receipt of the completed application.
  - 6) In the event that the county determines that an applicant is not eligible for a sexually oriented business operator's license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division. Denial of a license shall be subject to appeal as hereinafter set forth.
  - 7) An operator's license shall be subject to annual renewal upon the written application of the applicant and a finding by the county that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section E. Non-renewal shall be subject to appeal as hereinafter set forth.
  - 8) An applicant may appeal the denial or non-renewal of a license by filing a written notice of appeal with the sheriff within ten (10) days after service of the notice of the denial or non-renewal. The county shall provide the applicant(s) with written notice of the date, time, and place of the hearing. The notice shall inform the applicant(s) of the factual allegations which form the basis for denial or non-renewal. The sheriff may provide notice by mailing a copy thereof to the applicant's last known address as indicated in the applicant's application. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.  
If the applicant does not appear at the hearing, or if he does not dispute the factual allegations, the factual allegations shall be deemed to be

admitted. Otherwise, the county shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.

If the applicant requests that the originally scheduled hearing date be continued, the sheriff shall grant a continuance to a mutually convenient time. The decision of the sheriff shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, and there shall be no right of appeal.

6. Fees.
  - a. The annual fee for a sexually oriented business operator's license, whether new or renewal, is one hundred (\$100.00) dollars. The annual fee for a sexually oriented business employee license, whether new or renewal, is thirty (\$30.00) dollars. These fees are to be used to pay for the cost of the administration and enforcement of this division.
7. License term.
  - a. The term of a license issued pursuant to this division shall commence at 12:00 a.m. of July 1, if the license is a renewal license, or at the date and time of its issuance, if the license is an initial license, and shall expire 12:00 p.m. of the following thirtieth of June. Notwithstanding the fact that an initial license may be issued for a term of less than one (1) year the license fee shall not be reduced or pro-rated.
  - b. When the county denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.
8. Suspension or revocation of a license.
  - a. The sheriff shall have the power to suspend or revoke any license issued under the authority of this division for any of the following reasons:
    - 1) The licensee violates the laws of this state or of any of the provisions of this division;
    - 2) The licensee willfully makes a false statement or a misrepresentation as to a material fact in the application for the issuance of the license;
    - 3) The licensee knowingly engages in or permits the occurrence of a pattern or practice of disorderly or immoral acts upon the licensed premises;
    - 4) The licensee is convicted of a "specified criminal activity";
    - 5) A licensee has, with knowledge, engaged in or permitted prostitution on the premises;
    - 6) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
    - 7) A licensee is delinquent in payment to the county or state for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;
    - 8) A licensee has, with knowledge, permitted a person less than twenty-one (21) years of age to enter or remain in the establishment;
    - 9) A licensee has attempted to sell his business license, or has sold, assigned or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;

- 10) A licensee has, with knowledge, engaged in or permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business;
  - 11) A licensee has, with knowledge, consumed or permitted the consumption of alcoholic beverages on the premises.
  - 12) The licensee does not hold a necessary permit or license issued by another governmental entity, which license or permit is required by that governmental entity as a precondition to the carrying on by the licensee of the activity authorized by the sheriff.
- b. No license shall be suspended or revoked without providing the licensee with notice and an opportunity for hearing before the Ward County Commissioners with regard to the suspension or revocation of the license. The sheriff shall provide the licensee with written notice of the date, time, and place of the hearing. The notice shall inform the licensee that the license may be suspended or revoked and it shall set forth the factual allegations which form the basis for doing so under this section. The sheriff may provide notice by mailing a copy thereof to the licensee's last known address as indicated in the licensee's most recent application filed with the sheriff under this division. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.
  - c. If the licensee does not appear at the hearing provided for in Subsection 2, or if the licensee does not dispute them, the factual allegations in the complaint shall be deemed to be admitted. Otherwise the county shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.
  - d. If the licensee requests that the originally scheduled hearing date be continued, the Ward County Commissioners shall grant a continuance to a time mutually convenient to the licensee and the commission, but the committee shall have the discretion to suspend the license from the date for which the hearing was originally scheduled to the date of the continued hearing.
  - e. The decision of the Ward County Commissioners shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, and there shall be no right of appeal from the decision.
  - f. When a license is revoked, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date revocation became effective.
9. Judicial review.
- a. Within thirty (30) days of a decision denying an initial or renewal application, or suspending or revoking a license by the sheriff, the applicant or licensee may seek judicial review of such administrative action in the district court. The administrative action shall then be reviewed by the court for a prompt judicial determination. Pending the completion of the appeal process, the county shall issue a temporary license unless the licensing decision is based in whole or in part upon a finding that a condition exists upon the premises which constitutes a threat of immediate serious injury or damage to persons or property.

10. No transfer of license.
  - a. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application and set forth in the operator's license.
  - b. An operator's license shall not be transferable from one location to another.
11. Conduct and operation.
  - a. No person shall appear in a state of nudity in a sexually oriented business, except in areas to which customers or patrons are not allowed to be present.
  - b. No patron or employee may erotically touch, caress or fondle a patron or employee or the clothing of a patron or employee, nor may an employee encourage or permit a patron or employee to erotically touch, caress or fondle any patron or employee.
  - c. No employee shall perform actual or simulated acts of specified sexual activities as defined in this ordinance or any act which constitutes a violation of NDCC Chapters 12.1-27.1 or 12.1-27.2.
  - d. It shall be unlawful for an owner or operator of a sexually oriented business to allow the activities of the establishment to be visible from a point outside the establishment or to allow an employee to violate subsections 1, 2 and 3 of this section.
  - e. The county may regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this division.

Representatives of the sheriff's department shall be permitted to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this division; and to requests for identification of those individuals who reasonably appear to be under the age of twenty-one (21).
  - f. This division shall not be construed to prohibit:
    - 1) Plays, operas, musicals, or other dramatic works that are not obscene;
    - 2) Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or
    - 3) Exhibitions, performances, expressions or dances that are not obscene.

These exemptions shall not apply to specified sexual activities as defined in this division.
12. Persons prohibited from entry.
  - a. It shall be unlawful to allow a person who is younger than twenty-one (21) years of age to enter or be on the premises of a sexually oriented business at any time the business is open for business.
  - b. It shall be the duty of the operator of each sexually oriented business to prohibit any underage person from entering.
13. Hours of operation. No sexually oriented business may be open:
  - a. After 6:00 p.m. on Christmas Eve;
  - b. Any time on Christmas Day, or Easter Day;
  - c. After 1:00 a.m. on Thanksgiving Day;
  - d. After 1:00 a.m. and before 8:00 a.m. Monday through Saturday;
  - e. After 1:00 a.m. and before noon on Sunday.

14. Location.

- a . Sexually oriented business may only be located in areas of Ward County zoned as C-2, C-3, M-1 or M-2 as defined in Zoning Resolution #6 and then only if the business meets the following conditions:
  - 1) May be located no closer than one thousand two hundred fifty (1,250) feet from any pre-existing church, school, daycare, park, playground or property zoned or used as residential property.
  - 2) Must be located at least 1,250 feet from any establishment holding a liquor license.

15. Escort service.

- a . It shall be unlawful for an employee of an escort service to knowingly or intentionally commit, or for an operator of an escort service to knowingly or intentionally allow an employee of an escort service to commit any of the following acts:
  - 1) Enter a hotel or motel for the purpose of meeting a customer, without immediately notifying the front desk, presenting a copy of their sexually oriented employee license, identifying the escort service that sent them, the name of the customer they are meeting, the location of the meeting and notifying the front desk upon leaving safely;
  - 2) Distribute or post any unsolicited business cards, advertisement, or promotional material on or within the premises of any business;
  - 3) Begin a meeting or service with a customer between the hours of 12:00 a.m. and 7:00 a.m. in any day;
  - 4) Begin a meeting or service with a customer without first meeting said customer in a public place such as a bar or restaurant before accompanying the customer to any place which is not open and occupied by the public, such as a hotel room or residence;
  - 5) To knowingly or intentionally appear in a state of nudity with a customer;
  - 6) To knowingly or intentionally solicit a customer to appear in a state of nudity; or
  - 7) Engage in a specified sexual activity with a customer for money or other consideration.

16. Notices.

- a . Any notice required or permitted to be given to any applicant or licensee may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the county. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the county shall cause it to be posted at the principal entrance to the establishment.
- b . Any notice required or permitted to be given to the county by any person under this article shall not be deemed given until and unless it is received in the office of the County Sheriff.
- c . It shall be the duty of each owner who is designated on the license application and each operator and employee to furnish notice to the county in writing of any change of residence or mailing address.

17. Penalties/remedies/relief.

- a . Any person who knowingly violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this division shall, upon conviction, be punished as

provided by North Dakota law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. In addition to the penalties provided under this section, violators of this division shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief. Nothing in this section shall be held to exclude prosecution or actions by any other provisions of applicable law or to exempt anyone violating this division or any other law from any penalty which may be prescribed for said violation.

F. Nelson Carlson Lakes

All lots bordering the Nelson-Carlson Lakes shall be 1 acre in size minimum and be accessed by a public road. Minimum setback for all structures shall be 50 feet from road right of way line, 10% of lot width from side lot lines and 40 feet from the lakeshore line. The lakeshore line shall be defined as 2036.36 mean sea level for the North Lake. Only total containment tanks or municipal designed system will be allowed for sewage disposal and shall be setback 200 feet from the lakeshore line. All structures shall comply with the North Dakota State Building Code.

G. Rice Lake

All lots adjoining the lake shall have a minimum set-back, for all new or moved on structures, of 18 feet from the road right-of-way line.

## **SECTION II. - SUBDIVISION AND OUTLOT APPROVAL**

Final plats of outlots and subdivisions of land located within the boundaries of the district(s) covered by this Resolution shall be approved by the Board of Ward County Commissioners in accordance with the procedures described in North Dakota Century

Code Section 11-33.2-12 and/or as it may be amended. The Ward County Planning Commission is hereby empowered to investigate and to conduct public hearings into the public use and interest proposed to be served by proposed plats and to consider the public health, safety and welfare elements of NDCC 11-33.2-12 paragraph 3 and, if relevant, the potential effect on the value of adjoining property in making a recommendation for approval or disapproval to the Board of Ward County Commissioners. No outlot or subdivision plat of land included within the boundaries of the zoning district(s) covered by this Resolution shall be recorded in the office of the Ward County Register of Deeds until approved by the Board of Ward County Commissioners.

All subdivision and outlot plats shall meet the requirements for platting provided for in article 24 of the Ward County Resolution No. 6.

A parcel of land of 40 acres or more or land to be used for farming shall not require a plat so long as it is not irregularly shaped, can easily be described, and has access to a public road.

## **SECTION III. - TYPES OF STRUCTURES**

All structures or buildings in Zoning District No. 2 shall conform to the requirements of the State Building Code as identified in Section 54-21.3-03 of the North Dakota Century Code

and amendments thereto; said Building Code with amendments thereto; incorporated by reference as a part of this resolution. The height and area and parking regulations for each use specified in Articles 6 through 14

of Ward County Zoning Resolution No. 6 shall be applicable to this Resolution and shall be determined and limited as described by Articles 15, 16 and 17 of Ward County Zoning Resolution No. 6.

#### **SECTION IV. - BUILDING PERMITS**

As a prerequisite to construction, erection, reconstruction, alteration, repair or enlargement of any building or structure in said Zoning District No. 2, there shall be secured from the Board of County Commissioners a permit which will be known as a building permit.

#### **SECTION V. - APPLICATION FEES**

Fees shall be collected from applicants for review of subdivisions of land and outlots, Special Use Permits, and building permits. Such fees will be established by the County Commissioners and may be amended from time to time as the Board deems necessary. Zoning

Such fees shall be deposited and credited to the general fund of the County.

#### **SECTION VI. - LIMITATIONS**

The provisions of this resolution regarding "types of structures" and "building permits" shall not apply to farm buildings including farm residential structures. A "farm" is as described and defined in Article 3 of Ward County Zoning Resolution No. 6.

#### **SECTION VII. - PRE-EXISTING, NON-CONFORMING USES**

Pre-existing, non-conforming uses are hereby defined as uses of land other than as allowed in the "Rural Zone" (see Section 1, Subdivision A) which precede by more than sixty days the adoption of this section. A pre-existing, non-conforming use may continue indefinitely unless said non-conforming use is discontinued for a period of 36 consecutive months in which case the land use shall automatically and only become as allowed in the "Rural Zone".

It is the intention of this section to automatically discontinue otherwise allowable pre-existing, non-conforming uses when the non-conforming use or uses have not been operational for 36 consecutive months. In the event a pre-existing, non-conforming use is no longer allowed, resumption of that non-conforming use shall require a Special Use Permit as provided for in this Resolution. Pre-existing, non-conforming land uses shall be considered to hold a Special Use Permit for the use in operation at the time this section is adopted. Only for that use and under similar conditions shall the special use be permitted to continue. The "Special Use Permit" under which pre-existing, non-conforming uses are permitted to continue may be revoked under circumstances and by procedures provided for in this resolution. This section was adopted November 13, 1990.

## Chapter 3

### WARD COUNTY ZONING RESOLUTION NO. 6

#### Date Established:

A resolution providing county zoning, and empowering the board of county commissioners to establish certain zoning districts; to establish a county planning commission; to secure the orderly development of the county as provided by chapter 11-33 of the North Dakota Century Code; to regulate and restrict therein in the location, erection, construction, reconstruction, alteration, and use of buildings, structures and land, for industry, business, trade, residence and other uses, (excepting no provisions of the resolution shall in any way effect the use of land or buildings used for farming or any normal incident thereto), to regulate and restrict the height, number of stories, and size of all buildings, and the size of yards, courts and other open spaces surrounding buildings, to regulate and restrict the density of population; to provide for the change and boundaries of districts; and to provide references to zoning maps and provide regulations for the subdivision of land; to provide minimum specifications for construction of buildings and sanitary facilities; to provide for enforcement of the provision hereof; to repeal zoning resolutions no. 3 dated June 9, 1955, no. 4 dated January 3, 1957, no. 5 dated April 20, 1961, and amendments thereto.

Be it resolved by the board of county commissioners, Ward County, North Dakota, ... foregoing is a true and correct complete copy of a resolution adopted by the Board of County Commissioners of Ward County at its meeting held on the 6th day of April, 2010, which Resolution is a part of the minutes of said Board;...

Amendment Dates: 1-7-64, 2-5-64, 2-1-66, 7-9-71, 9-22-77, 10-19-78, 2-3-82, 6-17-82, 8-26-82, 9-26-84, 9-17-91, 6-4-93, 6-7-94, 8-20-96, 12-7-99, 8-6-03, 9-7-04, 11-5-05, 12-6-05, 2-9-07, 2-5-08, 4-6-10, 7-17-18, 10-2-18.

#### **ARTICLE 1**

For the purpose of promoting the public health, safety, morals, comfort, and general welfare, conserving the value of property throughout the County and lessen and avoid congestion in the public streets and highways it is hereby provided as follows.

#### **ARTICLE 2**

This resolution shall be known and may be cited and referred to as the "ZONING RESOLUTION NO. 6" to the same effect.

## ARTICLE 3

### DEFINITIONS

For the purpose of this resolution certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and plural shall include the singular; the word "building" shall include the word "structure" and "premises" and word "shall" is mandatory and not directory.

1. ACCESSORY BUILDINGS: A subordinate building. The use of which is customarily incidental to that of principal building or the same lot.
2. ALLEY: A public way which affords only a secondary access to abutting property.
3. AGRICULTURE DISTRICT: Shall include any lands or areas so designed by the Board of County Commissioners under authority of this resolution.
4. APARTMENT: A room or suite of rooms in a multiple dwelling intended to be designed for use as a residence by a single family.
5. AUTO WRECKING: See "junk yard."
6. BASEMENT: A story having part but not more than one-half (1/2) its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for business or dwelling purposes other than by a janitor employed on the premises.
7. BILLBOARD: See "sign, outdoor advertising."
8. BLOCK: The property abutting one side of a street and lying between the two nearest intersecting streets, or between the nearest such street and railroad right-of-way, undivided acreage, river, or live stream; or between any of the foregoing and any other barrier to the continuity of development.
9. BOARDINGHOUSES: A building other than a hotel where for compensation and by arrangement meals, lodging, or both are provided for three (3) or more persons. This includes lodging and rooming houses.
10. BUILDING: Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, or property.
11. BUILDING, HEIGHT OF: The vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the mean height level between eaves and ridge of gable, hip, and gambrel roofs.
12. BUILDING INSPECTOR: The building inspector of the County of Ward, North Dakota or his authorized representative.
13. BUILDING LINE: A line established, in general, parallel to the front street line beyond which no part of a building shall project, except as otherwise provided by this resolution.
14. CELLAR: That portion of a building between floor and ceiling which is wholly or partly below grade, and having more than one-half (1/2) of its height below grade.
15. CLINIC: An establishment where patients, who are not lodged overnight are admitted for examination and treatment by a group of physicians practicing medicine together.
16. CLUB: A building or portion thereof or premises owned or operated by a corporation, association, person or persons for a social, educational, or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business.
17. COMMERCIAL DISTRICT: Any neighborhood commercial or highway commercial district.
18. COUNTY ROADS: Roads designated and selected by the boards of county commissioners, as outlined in section 24-05-16 of the North Dakota Century Code.

19. DISTRICT: A section or sections of the unincorporated area of Ward County, North Dakota, for which the zoning regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.
20. DWELLING: Any building, or portion thereof, which is designed or used for residential purposes.
21. DWELLING, MULTIPLE: A building or portion thereof designed for or occupied by more than two families.
22. DWELLING, SINGLE-FAMILY: A building designed for or occupied exclusively by one family.
23. DWELLING, TWO-FAMILY: A building designed for or occupied exclusively by two (2) families.
24. EASEMENT: A grant by the property owner of the use of a strip of land by the public, or by one or more persons or corporations for a specific purpose or purposes.
25. FAMILY: A group of one or more persons occupying a premise and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house or hotel, as herein defined.
26. FARM: Is a zoned area of Ward County containing at least forty (40) acres, which is used for the growing of the usual farm products such as vegetables, fruit trees, and grain, and their storage on the area, as well as for raising thereon the usual farm poultry and farm animals, such as horses, cattle, sheep, and swine. The term farming includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal farming activities, and provided further that farming does not include the commercial feeding of garbage or offal to swine or other animals.
27. FRONTAGE ROADS AND RURAL SUBDIVISION ROADS: Roads that service a subdivision or series of lots, and are used to access county, state, or federal highways.
28. FILLING STATION: Any building, structure, or land used for the dispensing, sale or offering for sale at retail of any automobile fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories but not including major repair work such as motor replacement, body and fender repair or spray painting.
29. FLOOR AREA RATIO: The floor area of the building or buildings on a zoning lot, divided by the area of that zoning lot. A floor area of a building or buildings is the sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls, or from the center line of walls separating two buildings. Floor area shall include the area of basements when used for residential, commercial, or industrial purposes, but need not include a basement or portion of a basement used for storage or the housing of mechanical or central heating or the basement apartment of a custodian in a multi-family dwelling, except that portion of said custodian's dwelling unit which is in excess of fifty (50) per cent of the total basement floor area. In calculating floor area, the following need not be included:
  - A. Attic space providing structural head room of less than seven (7) feet, six (6) inches;
  - B. Uncovered steps;
  - C. Terraces, breezeways and open porches;
  - D. Automobile parking space in basement or private garage, but not to exceed 600 square feet for a single-family dwelling, 800 square feet for a two-family dwelling, and 200 square feet per car space required by the provision of this resolution for any other use.
30. FRONTAGE: All the property on one side of a street or highway between two intersecting streets or highways (crossing or terminating) measured along the line of the street or highway, or if the street or highway is dead ended, then all property abutting on one side between an intersecting street or highway and the dead end of the street or highway.
31. GARAGE, PRIVATE: An accessory building housing not to exceed three (3) motor-driven vehicles, the property of and for the use of the occupants of the lot of which the private garage is located.

32. GARAGE, PUBLIC: A building or portion thereof, other than a private or storage garage designed or used for equipping, servicing, repairing, hiring, selling or storing motor-driven vehicles.
33. GARAGE, STORAGE OR PARKING: A building or portion thereof designed or used exclusively for term storage by prearrangement of motor-driven vehicles, as distinguished from daily storage furnished transients, and within which motor fuels and oils may be sold, but no motor-driven vehicles are equipped, repaired, hired or sold.
34. GRADE: Shall be the average level of the finished surface of the ground adjacent to the exterior walls of the building, as approved by the County Engineer.
35. HEIGHT OF BUILDING: The vertical distance measured from the highest of the following three levels:
  - A. The mean street curb level;
  - B. The established or mean street grade in case the curb has not been constructed.
36. HIGHWAY PRIMARY: A street or highway used primarily for fast or heavy traffic, including expressways, freeways and boulevards.
37. HOME OCCUPATION: Any occupation or profession carried on by a member of the immediate family, residing on the premises; in connection with which there is used no sign other than a name plate not more than one square foot in area or no display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than of a dwelling; in which no person is employed other than a domestic service; and in which no mechanical equipment is used except such as is permissible for purely domestic or household purposes. Home occupation shall include the use of premises by a physician, surgeon, dentist, lawyer, clergyman or other professional person for consultation or emergency treatment, but not for the general practice of his profession.
38. HOTEL: A building in which lodging or boarding and lodging are provided and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradistinction to a boardinghouse, a lodging house, or an apartment which are herein separately defined.
39. IMPROVEMENTS: Street grading and surfacing with or without curbs and gutters, sidewalks, water mains, crosswalks, sanitary and storm sewers, culverts, bridges, street, and trees.
40. INDUSTRIAL DISTRICT: Any industrial district.
41. INSTITUTION: A building occupied by a non-profit corporation or a non-profit establishment for public use.
42. JUNK YARD: The use of more than 200 square feet of the area of any lot whether inside or outside a building, or the use of any portion of that half of any lot that adjoins any street, for the storage, keeping, or abandonment of junk, including scrap metals, rags, paper or other scrap materials, used lumber, salvaged house wrecking and structural steel materials and equipment, or for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.
43. LAUNDROMAT: An establishment providing home type washing, drying, or ironing machines for hire to be used by customers on the premises.
44. LOADING SPACE: A space within the main building or on the same lot therewith, providing for the standing, loading or unloading of trucks, and having a minimum dimension of 12 by 35 feet and a vertical clearance of at least 14 feet.
45. LOT: A parcel of land occupied or intended for occupancy by one main building together with its accessory buildings, including the open space required by this resolution and having its principal frontage upon a street or upon an officially approved place.
46. LOT, CORNER: A lot abutting upon two or more streets at their intersection.
47. LOT, DEPTH: The mean horizontal distance between the front and rear lot lines.
48. LOT, DOUBLE FRONTAGE: A lot having a frontage on two non- intersecting streets, as distinguished from a corner lot.

49. LOT LINE, REAR: The lot line generally opposite or parallel to the front street line.
50. LOT OF RECORD: A lot which is part of a subdivision, the map of which has been recorded in the office of the Register of Deeds of Ward County, or a parcel of land, the deed to which was recorded in the office of the Register of Deeds prior to the adoption of this resolution.
51. 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 resolution, having not less than the minimum area required by this resolution for a zoning lot in the district in which such land is situated, and having its principal frontage on a street or a permanent, exclusive, non-obstructed easement of access of right-of-way to a street, not less than 20 feet wide. A "zoning lot" need not necessarily coincide with a "record lot" as herein defined.
52. MASTER PLAN: The comprehensive plan, or any portion thereof, made and adopted by the Planning Commission in accordance with the laws of the State of North Dakota and regulations of the County of Ward indicating the general or specific locations recommended for streets, parks, public buildings, zoning district and all other public improvements.
53. MOTOR COURT OR MOTEL: A building or group of buildings used for the temporary residence of motorists or travelers.
54. NON-CONFORMING USE: Any building or land lawfully occupied by use at the time of passage of this resolution or amendments thereto, which does not conform after the passage of this resolution or amendments thereto with the use regulations of the district in which it is situated.
55. OUTLOT: A plot of land other than a subdivision.
56. PARKING AREA OR LOT: An open, unoccupied space used or required for use for parking of automobiles exclusively and in which no gasoline or automobile accessories are sold or no other business is conducted and no fees are charged.
57. PARKING SPACE: A surfaced area, enclosed in the main building or in an accessory building, or unenclosed, having an area of not less than one hundred and eighty (180) square feet exclusive of driveways, permanently reserved for the temporary storage of one automobile and connected with a street or alley by a surfaced driveway which affords satisfactory ingress and egress for automobiles.
58. PLACE: An open unoccupied space or a public or private thoroughfare other than a street or alley permanently reserved as the principal means of access to abutting property.
59. PLANNING COMMISSION: The Planning Commission of the County of Ward.
60. RESIDENTIAL DISTRICT: Any residential district designated as such under authority of this resolution.
61. SALVAGE YARD: A place where used parts of automobiles or other equipment are collected and processed for resale.
62. 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, badge, or insignia of any governmental agency or of any civic, charitable, religious, patriotic, fraternal or similar organization.
63. SIGN, OUTDOOR ADVERTISING: Sign, including billboard, which directs attention to a business, commodity, service, entertainment or other activity conducted, sold or offered elsewhere than on the premises upon which the sign is located.
64. STABLE, PRIVATE: A detached accessory building for the housing of horses, ponies or mules owned by the occupants of the premises and not kept for remuneration, exhibition, hire.
65. STABLE, RIDING: A structure in which horses, mules or ponies used exclusively for pleasure riding or driving are housed, boarded, or kept for hire, including riding tracks or academies.
66. STREET LINE: A dividing line between a lot, tract or parcel of land and a contiguous street.
67. STREET, MINOR: A street intended primarily to provide pedestrian and vehicular access to the abutting properties.

68. STREET, SECONDARY: A street or highway which is intended to carry traffic from minor streets to the major streets. Secondary streets are usually the principal entrance streets to residential developments and the streets for circulation within the developments.
69. STORY: That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.
70. STORY, HALF: A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level, and in which space not more than two-thirds of the floor area is finished off for use. A half-story containing independent apartment or living quarters shall be counted as a full story.
71. STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.
72. STRUCTURAL ALTERATIONS: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any substantial change in the roof or in the exterior walls.
73. SUBDIVISION: The division of a tract or parcel of land into lots or parcels of land 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 or parcels of land, and/or including the creation of new or enlarged parks, playgrounds, plaza or open spaces. "Re-subdivision" includes the division of one or more lots as parcels of land in a subdivision made and recorded prior to or after the date these resolutions are adopted. However, the division of land for agricultural purposes into parcels of 40 or more acres, not involving any new street or easement of access, shall be exempted from these resolutions.
74. TEMPORARY STRUCTURE: A structure such as a tent or a building of sectional construction whose design and construction is such that it will be used only for a short period of time or that it can be readily moved to another location.
75. TOURIST CAMP: An area containing one or more tents, auto trailers or other portable or mobile shelters for use as temporary living facilities of one or more families, and intended primarily for automobile transients.
76. TOURIST HOME: A building other than a hotel where lodging is provided and offered to the public for compensation for not more than twenty individuals and open to transient guests, with which there is used only one sign not more than two square feet in area, and the lighting of which is regulated by the Building Inspector.
77. TOWNSHIP ROAD: Roads designated and selected by the township board and certified to the state as outlined in Section 24-07 of the North Dakota Century Code. These roads are not designated as part of a County, State or Federal Highway and are not located in an incorporated city.
78. TRAILER: Any vehicle or structure, including but not limited to an automobile trailer and trailer coach, mounted on wheels for use on highways and streets; propelled or drawn by its own or other motor power; and designed and constructed to provide for living or sleeping quarters for one or more persons or for the conduct of a business, profession, trade, or occupation, or use as a selling or advertising device.
79. TRAILER CAMP: A tract of land, together with open spaces required by this or any other regulation, used, designed, maintained, or held out to accommodate three or more trailers, including all buildings, structures, tents, vehicles, accessories, appurtenances used or intended as equipment for such trailer camp, whether or not a charge is made for the use of the camp or its facilities. A trailer camp does not include automobile or trailer sales lots on which unoccupied trailers are parked for inspection and sale.
80. USE: The term referring to:

- A. Any purpose for which buildings, other structures or land may be arranged, designed, intended, maintained or occupied.
  - B. Any occupation, business, activity or operation carried on (or intended to be carried on) in a building or other structure or on land.
  - 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.
81. USE GROUP: Two or more uses similar in physical characteristics, traffic generation, locational, utility, or governmental 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 resolution.
82. YARD: An open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for a purpose of determining the width of a side yard, the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.
83. YARD, FRONT: A yard extending across the front of a lot between the side yard lines and being the minimum horizontal distance between the street line and the main building or any projection thereof, other than the projection of the usual steps or entrance-way.
84. YARD, REAR: A yard extending across the rear lot between the side lot lines and being the minimum horizontal distance between the rear lot and the rear of the main building or any projections other than steps. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.
85. YARD, SIDE: A yard extending from the front lot line to the rear yard line, and being the minimum horizontal distance between the side lot and the side of the main building or any projections thereof.
86. Compassion Centers: Establishments licensed by the State of North Dakota Department of Health for one of two purposes; 1) growing, processing and manufacturing medical marijuana to supply the product to dispensaries, 2) dispensaries for distribution of medical marijuana to qualified patients or designated care givers. (Applicants must comply with any and all North Dakota Health Department regulations as per North Dakota Century Code 19-24).

## ARTICLE 4

### DISTRICTS AND BOUNDARIES THEREOF

#### Section 1. Classes of Districts.

In order to classify, regulate and restrict the location of business, trades, industries and residences, and other land uses and the location of buildings designed for specific uses to regulate and limit the height and bulk of buildings hereafter erected, reconstructed or altered; to regulate and limit the intensity of the use of lot areas, and to regulate and determine the areas of yards, courts, and other open spaces within and surrounding such buildings, certain unincorporated areas of Ward County may be divided into any of the following classes of district. The use, height, and area regulations are uniform in each class of district and said districts shall be known as:

- A. "A-1" Agriculture District
- B. "C-1" Neighborhood Commercial District
- C. "C-2" Highway Commercial District
- D. "C-3" Central Business District
- E. "M-1" Light Industrial District
- F. "M-2" Heavy Industrial District
- G. "R-1" Single - Family Residence District
- H. "R-2" Single - Family Residence District
- I. "R-3" General Residence District

#### Section 2. Areas Included.

The areas to be included under Zoning Resolution No. 6 shall be as follows:

- A. Burlington Township (Twp. 155, Rge. 84)
- B. Harrison Township (Twp. 155, Rge. 83)
- C. Nedrose Township (Twp. 155, Rge. 82)
- D. ~~Sundre Township (Twp. 154, Rge. 82)~~ REMOVED
- E. ~~Freedom Township (Twp. 153, Rge. 83)~~ REMOVED
- F. McKinley Township, Sections 18, 19, 30 and 31 (Twp. 156, Rge. 82)
- G. ~~Afton Township (Twp. 154, Rge. 83)~~ REMOVED
- H. ~~Eureka Township (Twp. 156, Rge. 83)~~ REMOVED
- I. Berthold Township (Twp. 156-86)

#### Section 3. Boundaries.

The boundaries of these districts are hereby established as shown on the maps accompanying and made part of this resolution which maps are designated as the "Zoning District Maps." The Zoning District Maps and all the notations, references and other information shown thereon are a part of this resolution and shall have the same force and effect as if such maps and all the notations, references, and other information shown thereon were fully set forth or described herein, which Zoning District Maps are properly attested and on file with the Auditor of Ward County.

**Section 4. Boundaries of Unsubdivided Property.**

In the case of unsubdivided property, the district boundary lines shall be determined by the use of the scale appearing on the Zoning District Maps or by dimensions. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located midway between the main tracks of said railroad line.

**Section 5. Vacation of Property.**

Whenever any street, alley, or other public way is vacated by official action as provided by law, the zoning district, adjoining each side of such street, alley or public way shall be automatically extended to the center of such vacation, and all area included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts.

**Section 6. Water Areas.**

All areas within said zoning area which are under water and not shown as included within any district, shall be subject to all of the regulations of the district which immediately adjoins the water area. Where said water area adjoins two or more districts, the boundaries of each district shall be construed to extend to the center of the water area.

## ARTICLE 5

### COMPLIANCE WITH THE REGULATIONS

#### Section 1. Exceptions.

Except as hereinafter specifically provided:

- A. No land shall be used except for a purpose permitted in the district in which it is located.
- B. No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building be used, except for a use permitted in the district in which such building is located.
- C. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit herein established for the district in which such building is located.
- D. No building shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area regulations of the district in which such building is located.
- E. No building shall be erected, or structurally altered to the extent specifically provided hereinafter except in conformity with the off-street parking and loading regulations of the district in which such building is located.
- F. The minimum yards, parking spaces, and open spaces, including lot area per family, required by this resolution for each and every building existing at the time of passage of this resolution or for any building hereafter erected, shall not be encroached upon or considered as part of the yard or parking space or open space required for any other building, nor shall any lot area be reduced below the requirements of this resolution for the district in which such lot is located.
- G. Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one main building on one lot except as specifically provided hereinafter, except where lot has double frontage. Where lot has double frontage, buildings may be erected to front on each street provided the side yards and front yards are at least minimum size, and each structure has a rear yard of at least minimum size, and the building area does not exceed the requirements for interior lots.

**Section 2. Room Sizes.**

- A. Each living unit shall have at least two habi rooms and one bathroom.
- B. Each living unit shall have adequate space for living, sleeping, cooking, storage, laundry and sanitary facilities.
- C. Measurements are based upon dimensions between walls or inside measurements.
- D. Stairs or closets are not included in required room size.
- E. Basement rooms, except recreation rooms, intended for continuous occupancy shall comply with the requirements for habitable rooms; a habitable room being defined as follows:
  - 1. A space used for living, sleeping, eating, or cooking, or combinations thereof, but not including bathrooms, toilet compartments, closets, halls, storage rooms, laundry and utility rooms, basement recreation rooms and similar spaces.

	Living Room (Sq. Ft.)	Dining Room (Sq. Ft.)	Kitchen (Sq. Ft.)	Total Bedroom (Sq. Ft.)	Total Living Min. Bedroom (Sq. Ft.)
Living Unit With 1 Bedrooms	160	80	60	120	120
Living Unit With 2 Bedrooms	160	80	60	200	80
Living Unit With 3 Bedrooms	170	95	70	280	80
Living Unit With 4 Bedrooms	180	110	80	380	80
Least Dimension	11 feet	8 feet	3' 4" (Passage Space Between Cabinets and Walls)		

- F. The following minimum room sizes shall be required:
  - 1. Separate Rooms:
    - a. Least Dimension
      - i. Living Room – 11 feet.
      - ii. Dining Room – 8 feet (only eating space in living unit).
      - iii. Kitchen – 3 feet 4 inches (passage space between cabinets and walls).
  - 2. Combined Rooms:

	Living Room (Sq. Ft.)	Kitchen Dining (Sq. Ft.)	Kitchen/ Dining (Sq. Ft.)
Living Unit With 1 Bedrooms	180	100	220
Living Unit With 2 Bedrooms	180	100	220
Living Unit With 3 Bedrooms	200	110	250
Living Unit With 4 Bedrooms	220	120	280

- a. Least Dimension
  - i. Living Room – 11 feet.

- ii. Dining Room – 6 feet (only eating space in living unit).
- iii. Kitchen – 3 feet 4 inches (passage space between cabinets and walls).
- iv. Dining Space – 6 feet (only eating space in living unit).
- v. Other habitable rooms – 80 square feet.
- vi. Adequate space for water closet, lavatory and tub or shower; door must open 90 degrees.
- vii. Halls and Vestibules – 3 feet in width.
- viii. Closets – 5 square feet per bedroom; 5 foot clear hanging height.

## ARTICLE 6

### "A-1" AGRICULTURE DISTRICT REGULATIONS

#### Section 1. A-1 Agriculture District.

The regulations set forth in this article or set forth elsewhere in this order, when referred to in this article, are the district regulations in an "A-1" Agriculture District.

#### Section 2. Use Regulations.

A building or premises shall be used only for the following purposes:

- A. Farming, including the usual farm buildings and structures.
- B. Truck and flower gardening, nurseries, orchards, and greenhouses, excluding Compassion Centers with the sole purpose of operating as a manufacturing facility.
- C. Public elementary, and high schools, or private schools with a curriculum the same as ordinarily given in public elementary or high schools.
- D. Public or private forest and wildlife reservations or similar conservation projects.
- E. Public parks, parkways and playgrounds.
- F. Quarries for the excavation of stone, gravel, sand, clay or similar minerals.
- G. Roadside stands offering for sale only farm products which are produced on the premises.
- H. Grain elevators and the usual accessory structures including buildings for seasonal temporary storage of grain whenever such elevator and temporary storage are located upon or adjacent to a railroad right-of-way.
- I. Pumping or booster stations along a pipe line or substation along an electrical transmission line.
- J. Sanitary land-fill operations as approved by the County Building Inspector and State Health Department.

#### Section 2.1 SPECIAL USES:

Must comply with Article 18 Sections 1 & 2

- A. Communication towers.
- B. Electrical wind generator towers.

With an application for a Special Use Permit, the applicant shall submit plans stamped by a licensed professional engineer.

#### Section 3. Height Regulations.

No non-agriculture building shall exceed two and one half stories (2 1/2) or thirty-five (35) feet in height except as in Article 16.

**Section 4. Area Regulations.**

No non-agriculture building shall be erected within fifty (50) feet of any property or street line; provided, however, that temporary roadside stands may be located within the front yards. Off-street parking requirements for all non-agriculture buildings shall comply with Article 17.

**Section 5. Exemptions.**

The uses permitted in Section 2.1 shall be exempt from the height regulations in Section 3. These uses shall be set back from the road right of way, farmsteads and electrical transmission lines a minimum of the height of the structure plus 10 percent. A permit shall be obtained from the County Building Inspector with a fee on a wind farm project and the developer must submit a site plan before a permit is issued.

INTENSITY OF USE: Every lot or tract of land of the unincorporated areas of Ward County, zoned as agricultural use under authority of this resolution, shall contain at least forty (40) acres.

## ARTICLE 7

### "R-1" SINGLE-FAMILY RESIDENCE DISTRICT

#### **Section 1. "R-1" Single-Family Residence District.**

The regulations set forth in this article or set forth elsewhere in this resolution when referred to in this article are the regulations in the "R-1" Single-Family Residence District.

#### **Section 2. Use Regulations.**

A building or premise shall be used only for the following purposes:

- A. Single-family dwelling.
- B. Parks, playgrounds, museums, libraries, and community buildings owned and operated by public agencies.
- C. Public school, elementary or high or a private school having a curriculum the same as ordinarily given in a public school.
- D. Country club or golf course, except miniature course or practice driving tee operated for commercial purposes.
- E. Churches or other places of worship or Sunday school.
- F. Home occupations.
- G. Accessory building or use, including a private garage customarily incident to the above uses but not involving the conduct of a business, and including a private stable.
- H. A church or public bulletin board or temporary sign appertaining to the lease, hire or sale of a building or premise; which sign or bulletin board shall not exceed 10 square feet in area.

#### **Section 3. Height and Area Regulations.**

The height and area regulations set forth in Article 15 and 16 shall be observed.

#### **Section 4. Parking Regulations.**

Off-street parking spaces shall be provided in accordance with the requirements for specific uses set forth in Article 16.

## ARTICLE 8

### "R-2" SINGLE-FAMILY RESIDENCE DISTRICT

#### **Section 1. "R-2" Single-Family Residence District.**

The regulations set forth in this article or set forth elsewhere in this resolution, when referred to in this article are the regulations in the "R-2" Single-Family Residence District. A variance will be required for any lot less than two acres in size for areas not included in Article 4, Section 2.

#### **Section 2. Use Regulations.**

The use regulations are the same as those in the "R-1" Single-Family, Residence District.

#### **Section 3. Height and Area Regulations.**

The height and area regulations set forth in Articles 15 and 16 shall be observed.

#### **Section 4. Parking Regulations.**

Off-street parking spaces shall be provided in accordance with the requirements for specific uses set forth in Article 17.

#### **Section 5. Building Area.**

No building with its accessories shall occupy in excess of 26% of an inside lot nor in excess of 45% of a corner lot. Where there is an alley to the rear of the lot, one-half of said alley area shall be added to the lot area for the purpose of determining the above percentages.

## ARTICLE 9

### "R-3" GENERAL RESIDENCE DISTRICT

#### **Section 1. "R-3" General Residence District.**

The regulations set forth in this article or set forth elsewhere in this resolution, when referred to in this article, are the regulations in the "R-3" General Residence District. A variance will be required for any lot less than two acres in size for areas not included in Article 4, Section 2.

#### **Section 2. Use Regulations.**

A building or premise shall be used only for the following purposes:

- A. Any use permitted in the "R-1" Single-Family Residence District.
- B. Two-family dwelling.
- C. Multiple dwelling.
- D. Institution of a religious, educational, eleemosynary, or philanthropic nature, but not a penal or mental institution.
- E. Hospital or sanatorium, except a criminal, mental or animal hospital.
- F. Nursing, convalescent, or rest home.
- G. Fraternity or sorority house.
- H. Accessory building or use customarily incidental to any of the above uses, including a storage garage on a lot occupied by a multiple dwelling, hospital, or institution.

#### **Section 3. Height and Area Regulations.**

The height and area requirements set forth in Articles 15 and 16 shall be observed.

#### **Section 4. Parking Regulations.**

Off-street parking space shall be provided in accordance with the requirements for specific uses set forth in Article 17.

#### **Section 5. Building Area.**

No building with its accessories shall occupy in excess of 50% of an inside lot nor in excess of 60% of a corner lot. Where there is an alley to the rear of the lot, one-half of said alley area shall be added to the lot area for the purpose of determining the above percentages.

## ARTICLE 10

### "C-1" NEIGHBORHOOD COMMERCIAL DISTRICT

#### Section 1. "C-1" Neighborhood Commercial District.

The regulations set forth in this article or set forth elsewhere in this resolution, when referred to in this article, are the regulations in the "C-1" Neighborhood Commercial District.

#### Section 2. Use Regulations.

A building or premise shall be used only for the following purposes:

- A. Any use permitted in the "R-3" General Residence District.
- B. Automobile parking area or lot.
- C. Clinic.
- D. Filling Station.
- E. Florist shop or greenhouse., excluding Compassion Centers with the sole purpose of operating as a manufacturing facility.
- F. Laundromat.
- G. Offices and Office Building.
- H. Retail store, provided that in connection with such store, there shall be no slaughtering of animals or poultry on the premises.
- I. Tailoring, dressmaking, shoe repairing, repair of household appliances and bicycles, catering, dry cleaning, and pressing, and bakery with sale of bakery products on the premises, and other uses of a similar character.
- J. Personal service uses including barber shops, banks, beauty parlors, photographic or artist studios, messengers, taxi-cab, newspaper or telegraphic service stations, dry cleaning receiving stations, restaurants, and other personal service uses of a similar character.
- K. Accessory building and use.

#### Section 3. Height and Area Regulations.

The height and area regulations set forth in Articles 15 and 16 shall be observed, and in addition every building or portion thereof used for dwelling purposes shall comply with the side and rear yard and lot area per family requirements of the "R-3" General Residence District.

#### Section 4. Parking and Loading Regulations.

Off-street parking and loading spaces shall be provided in accordance with the requirements for specific uses set forth in Article 17.

## ARTICLE 11

### "C-2" HIGHWAY COMMERCIAL DISTRICT

#### Section 1. "C-2" Highway Commercial District.

The regulations set forth in this article or set forth elsewhere in this resolution when referred to in this article are the regulations in the "C-2" Highway Commercial District.

#### Section 2. Use Regulations.

A building or premise shall be used only for the following purposes:

- A. Any use permitted in the "C-1" Neighborhood Commercial District.
- B. Automobile or trailer display and salesroom.
- C. Business and commercial school, or dancing or music academy.
- D. Farm implement display and sales room.
- E. Frozen food locker.
- F. Hotel.
- G. Milk distributing station.
- H. Motel or tourist home.
- I. Parking or public garage.
- J. Radio or television broadcasting station or studio.
- K. Theater.
- L. Undertaking establishment.
- M. Advertising sign or billboard, when located at least 50 feet from any residential district.
- N. Veterinarian or animal hospital provided that no such building, kennel, or exercise runway shall be closer than 50 feet to any residential district.
- O. Used car sales or storage lot when located at least 50 feet from any residential district.
- P. When located not less than 100 feet from any residential district; bowling alley, drive-in restaurant, truck or transfer terminal.
- Q. Dyeing and cleaning establishment or laundry, painting, plumbing or tinsmithing shop, printing shop, tire sales, and service, including vulcanizing, upholstering shop, not involving furniture manufacturing, and any other general service or repair establishment of similar character.
- R. Accessory building and use customarily incidental to any of the above uses.
- S. Apartment hotel, apartment house, or hotel.
- T. Laboratory, experimental, film or testing.
- U. Truck or bus garage and repair shop.
- V. Wholesale or distributing establishment or warehouse or wholesale market.
- W. Printing, publishing or engraving.
- X. Service industry such as a laundry, cleaning or dyeing establishment or similar use.
- Y. The manufacture, compounding, processing, packaging or treatment of such goods, materials and products as the following:
  - 1. Bakery goods, candy, cosmetics, pharmaceuticals (excluding Compassion Centers with the sole purpose of operating as a dispensary.), toiletries, food products excepting fish and meat products, sauerkraut, vinegar, yeast, and the rendering of fats and oils.

2. Articles made from previously prepared materials such as: bone, canvas, cellophane, cloth, cork, feather, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semi-precious metals or stone, shell, textiles, wax, wire, yarns, and the likes.
  3. Musical instruments, toys, novelties, rubber, or metal stamps, and other small molded rubber products.
  4. Fabrication and repair of electric or neon signs or other commercial advertising structures, light sheet metal products, and the like.
- Z. Any other use of similar character which is not objectionable by reason of the emission of odor, dust, smoke, gas fumes, noise or vibration or which is not specifically prohibited or regulated in Article 14.
- AA. Bottling works.
- BB. Sporting and athletic equipment manufacture.
- CC. Assembly and manufacture from pre-fabricated parts of household appliances, electronic products and similar products or the processing or assembling of parts for production of finished equipment.
- DD. Rooming, lodging, or boardinghouse.
- EE. Compassion Center operating as a dispensary shall be permitted as a Special Use. Applicants must comply with any and all North Dakota Health Department regulations as per North Dakota Century Code 19-24.

### **Section 3. Height and Area Regulations.**

The height and area regulations set forth in Articles 15 and 16 shall be observed and in addition every building or portion thereof used for dwelling purposes shall comply with the side and rear yard and lot area per family requirements of the "R-3" General Residence District.

### **Section 4. Parking and Loading Regulations.**

Off-street parking and loading spaces shall be provided in accordance with the requirements for specific uses set forth in Article 17.

## ARTICLE 12

### "C-3" CENTRAL BUSINESS DISTRICT

#### **Section 1. "C-3" Central Business District.**

The regulations set forth in this article or set forth elsewhere in this resolution when referred to in this article are the requirements in the "C-3" Central Business District.

#### **Section 2. Use Regulations.**

A building or premise shall be used only for the following purposes:

- A. Any use permitted in the "C-2" Highway Commercial District and without restriction as to the number of employees on the premises.

#### **Section 3. Height and Area Regulations.**

The height and area regulations set forth in Sections 15 and 16 shall be observed and in addition every building or portion thereof used for dwelling purposes shall comply with the side and rear yard requirements of the "R-3" General Residence District.

#### **Section 4. Parking and Loading Regulations.**

Off-street loading spaces shall be provided in accordance with the requirements of Article 17.

## ARTICLE 13

### "M-1" LIGHT INDUSTRIAL DISTRICT

#### Section 1. "M-1" Light Industrial District.

The regulations set forth in this article or set forth elsewhere in this resolution when referred to in this article are the regulations in the "M-1" Light Industrial District.

#### Section 2. Use Regulations.

A building or premise shall be used only for the following purposes:

- A. Any use permitted in the "C-3" Central Business District except, however, that whenever ninety (90) percent or more of a block or tract or land in the "M-1" Light Industrial District is vacant or occupied by structures that are of a non-residential use, then no new residential units may be permitted within that block or tract.
- B. Carting, express, hauling or storage yard.
- C. Contractor's yard.
- D. Coal, coke or wood yard.
- E. Auto wrecking yards and junk yards but only when the premises upon which such activities are conducted are wholly enclosed within a building or by a wooden fence not less than eight (8) feet in height and in which the openings or cracks are less than fifteen (15) percent of the total area.
- F. Petroleum storage, but only after the location and treatment of the premises has been approved by the Building Inspector, with a letter of approval from the State Fire Marshal.
- G. Industrial and manufacturing plants where the process of manufacturing or the treatment of materials is such that only a nominal amount of dust, odor, gas, smoke or noise is emitted.
- H. Compassion center operating as a manufacturing facility shall be permitted as a Special Use. Applicants must comply with any and all North Dakota Health Department regulations as per North Dakota Century Code 19-24.

#### Section 3. Height and Area Regulations.

The height and area regulations set forth in Articles 15 and 16 shall be observed and in addition any building that may be used for dwelling purposes shall comply with the side and rear yard and lot area per family regulations of the "R-3" General Residence District.

#### Section 4. Parking and Loading Regulations.

Off-street parking and loading spaces shall be provided in accordance with the requirements for specific uses set forth in Article 17.

## ARTICLE 14

### "M-2" HEAVY INDUSTRIAL DISTRICT

#### **Section 1. "M-2" Heavy Industrial District.**

The regulations set forth in this article or set forth elsewhere in this resolution when referred to in this article are the regulations in the "M-2" Heavy Industrial District.

#### **Section 2. Use Regulations.**

Any building or premise may be used for any purpose not in conflict with any laws of the State of North Dakota regulating nuisances; provided, however, that no building shall be erected, reconstructed, or structurally altered for residential purposes, except for resident watchmen and caretakers employed on the premises; and provided further that no building permit shall be issued for any of the following uses until and unless the location of such use shall have been approved by the County Planning Commission:

- A. Acid manufacture.
- B. Cement, lime, gypsum, or plaster of paris manufacture.
- C. Distillation of bones and glue manufacture.
- D. Explosives manufacture or storage.
- E. Fat rendering and fertilizer manufacture.
- F. Garbage, offal, or dead animals, reduction or dumping.
- G. Refining of petroleum or its products.
- H. Smelting of tin, copper, zinc or iron ores.
- I. Stockyards or the slaughter of animals.

#### **Section 3. Height and Area Regulation.**

The height and area regulations set forth in Articles 15 and 16 shall be observed.

#### **Section 4. Parking and Loading Regulations.**

Off-street parking and loading spaces shall be provided in accordance with the requirements for specific uses set forth in Article 17.

**ARTICLE 15**

**TABLE OF HEIGHT AND AREA REQUIREMENTS**

The required height and area regulations are established and shown on the accompanying table which is Article 15.

District	Max Bldg Height (Stories)	Max Bldg Height (Feet)	Min Front Yard Depth (Feet)	Min Width of Either Side Yard (Feet)	Aggregate Side Yards (Feet)	Min Rear Yard Depth (Feet)	Min Lot Area Per Family (Sq.Ft.)	Min Lot Width (Feet)
"R-1" Single Fam. Res.	2 ½	35	30	10 % of Lot Width	20% of Lot Width	40	81,120	150
"R-2" Single Fam. Res.	2 ½	35	25	10 % of Lot Width	20% of Lot Width	35	7,500	65
"R-3" General Residence 1 Family	3	45 (1)	25	10 % of Lot Width	20% of Lot Width	25	5,000	50
"R-3" General Residence 2 Family	3	45 (1)	25	10 % of Lot Width	20% of Lot Width	25	3,000	50
"R-3" General Residence Multiple Dwelling	3	45 (1)	25	10 % of Lot Width	20% of Lot Width	25	2,000	50
"C-1" Neighborhood Commercial	2	35	25	None (3)		None (4)	Same as R-3 District	
"C-2" Highway Commercial	3	45	25	None (3)		None (4)	Same as R-3 District	
"C-3" Central Business 1 Family	12	150 (5)	None	None		None	5,000	
"C-3" Central Business 2 Family							3,000	
"C-3" Central Business Multiple Dwelling							1,000	
"M-1" Light Indust. Dist.	6	90 (6)	25	None (3)		None (4)	Same as R-3 District	
"M-2" Heavy Industrial	None	None (6)	25	None (3)		None (4)	Residences Not Permitted	

- A. A building may be erected to a height of 6 stories and 75 feet if set back from all required yard lines a distance of one foot for each foot of additional height above 45 feet.

- B. Buildings less than 3 stories in height. For 3-story buildings, side yards of 8 feet each shall be required.
- C. No side yard required except on the side of a lot adjoining an "R" District, in which case a side yard of not less than 5 feet shall be provided in any "C" District and of not less than 10 feet in any "M" District.
- D. No rear yard required except on the rear of a lot adjoining an "R" District, in which case a rear yard of not less than 25 feet shall be provided.
- E. A building may exceed 12 stories or 150 feet if set back one foot for each two feet of height above 150 feet but no building shall exceed the cubical contents of a prism having a base equal to the area of the lot and a height of 2 times the width of the street upon which said building fronts.
- F. Whenever a building in an "M" District adjoins or abuts an "R" District within 100 feet there from, such building shall not exceed 3 stories or 45 feet in height unless it is set back one foot from the required side and rear yard lines for each foot of additional height above 45 feet.
- G. In the case of corner lots the side yards on the interior lot line shall be at least 10% of the lot width.

## ARTICLE 16

### HEIGHT AND AREA EXCEPTIONS AND MODIFICATIONS

#### Section 1. Height.

- A. The height regulations prescribed herein shall not apply to television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers or scenery lofts, cooling towers, ornamental towers and spires, chimneys, elevator bulkheads, smokestacks, conveyors, flag poles, and grain storage elevators.
- B. Public, semi-public or public service buildings, hospitals, institutions or schools, where permitted, may be erected to a height not exceeding 60 feet and churches and temples may be erected to a height not exceeding 75 feet when the required side and rear yards are each increased by one foot for each foot of additional building height above the height regulations for the district in which the building is located.
- C. The limitation on number of stories shall not apply to buildings used exclusively for storage purposes, provided such buildings do not exceed the height in feet permitted in the district in which they are located.

#### Section 2. Front Yards.

- A. When 40 percent or more of the frontage on one side of the street between two intersecting streets is improved with buildings that have a front yard which is greater or less than the required front yard in the district, no building shall project beyond the average front yard so established; provided, however, that a front yard depth shall not be required to exceed 50 percent in excess of the front yard otherwise required in the district in which the lot is located.
- B. On lots having double frontage the required front yard shall be provided on both streets.
- C. In a residential district no fence, structure or planting higher than three and one-half feet above the established street grades, which obstructs vision of the intersection, shall be maintained within 20 feet of any street intersection.
- D. An open, uncovered porch or paved terrace may project into a required front yard for a distance of not more than 10 feet, but this shall not be interpreted to include or permit fixed canopies.
- E. Filling station pumps and pump islands may be located within a required yard provided they are not less than 15 feet from any street line and not less than 100 feet from the boundary of any residential district.
- F. Off-street parking facilities may be located within the required front yard of any "C" or "M" District but shall not be nearer than 50 feet to any "R" District and no off-street public parking shall be permitted in the required front yard of any "R" District.

**Section 3. Side Yards.**

- A. On a corner lot the width of the yard along the side street shall not be less than any required front yard on such street, provided, however, that the buildable width of a lot of record shall not be reduced to less than 32 feet.
- B. Accessory buildings may be within the required side yards but no nearer than 2 1/2 feet to the side lot line. Accessory buildings must also be at least 10 feet away from the main building on the same lot or the main building on the adjoining lot nearest the lot line.
- C. Where dwelling units are erected above a commercial establishment no side yard is required except when required for the commercial building on the side of a lot adjoining a residence district.
- D. A porte-cochere or canopy may project into a required side yard provided every part of such porte-cochere or canopy is unenclosed and not less than five feet from any side lot.
- E. For the purpose of side yard regulations, a two-family dwelling or multiple dwelling shall be considered as one building occupying one lot.
- F. Where a lot of record at the time of the effective date of this resolution is less than 50 feet in width, the required side yard may be reduced to 10 percent of the width of the lot, provided, however, that no side yard shall be less than three feet.

**Section 4. Rear Yards.**

- A. Where a lot abuts upon an alley, one-half the alley width may be considered as part of the required rear yard.
- B. Where the accessory building is a garage, and entry to the garage is from the alley, at the rear, the garage must then be a minimum of 20 feet from the alley line.
- C. The ordinary projections of sills, belt courses, cornices and ornamental features may extend to a distance not to exceed 18 inches into a required line.
- D. Open or lattice-enclosed fire escapes, outside stairways and balconies opening upon fire towers and the ordinary projections of chimneys and flues into a rear yard may be permitted by the Building Inspector for a distance not to exceed five feet when these are so placed as not to obstruct light and ventilation.

**Section 5. Lot Area Per Family.**

Where a lot of record at the time of the effective date of this resolution has less area or width than herein required in the district in which it is located, and the owner of such lot does not own any other parcel or tract adjacent thereto, said lot may nonetheless be used for a one-family dwelling or for any non-dwelling use permitted in the district in which it is located.

## ARTICLE 17

### OFF-STREET PARKING AND LOADING REQUIREMENTS

#### Section 1. Requirements.

In all districts there shall be provided at the time any building or structure is erected or structurally altered (except as specified in Section 2 of this Article), off-street parking spaces in accordance with the following requirements, provided, however, that no off-street parking need be provided for any of these uses when they are located in the "C-3" Central Business District:

- A. Dwelling, including single, two and multiple family; one-parking space for each dwelling unit.
- B. Rooming or boarding house; one parking space for every two sleeping rooms.
- C. Fraternity or Sorority; one parking space for every four beds.
- D. Private club or lodge; one parking space for every ten members.
- E. Church or temple; one parking space for each eight seats in the main auditorium.
- F. School (except high school or college); one parking space for each ten seats in the auditorium or main assembly room, or one space for each classroom, whichever is greater.
- G. College or high schools; one parking space for each eight seats in the main auditorium or three spaces for each classroom, whichever is greater.
- H. Country club or golf club; one parking space for each five members.
- I. Community center, library, museum or art gallery; ten parking spaces plus one additional space for each 300 square feet of floor area in excess of 2,000 square feet.
- J. Hospital; one parking space for every four beds.
- K. Sanitarium, convalescent home, home for the aged or similar institution; one parking space for every six beds.
- L. Theater or auditorium (except school); one parking space for every five seats or bench seating spaces.
- M. Sports arena, stadium, or gymnasium; one parking space for every five seats or seating spaces.
- N. Hotel; one parking space for every three sleeping rooms or suites plus one space for every 200 square feet of commercial floor area contained therein.
- O. Tourist home, cabin or motel; one parking space for each sleeping room or suite.
- P. Dance hall, assembly or exhibition hall without fixed seats; one parking space for every 100 square feet of floor area used therefore.
- Q. Business or professional office, studio, bank, medical clinic or dental clinic; three parking spaces plus one additional parking space for each 400 square feet of floor area over 1,000.
- R. Bowling alley; five parking spaces for each alley.
- S. Mortuary or funeral home; one parking space for each 50 feet of floor space in slumber rooms, parlors, or individual funeral service rooms.
- T. Restaurant, night club, cafe or similar recreation or amusement establishment; one parking space for every 100 square feet of floor area.
- U. Retail store or personal service establishment, except as otherwise specified herein; one parking space for every 200 square feet of floor area.
- V. Furniture, appliance, or hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop; two parking spaces plus one additional parking space for every 300 square feet of floor area over 1,000.

- W. Printing or plumbing shop or similar service establishment; one parking space for every three persons employed therein.
- X. Manufacturing or industrial establishment, research or testing laboratory, creamery, bottling plant, warehouse, or similar establishment; one parking space for each two employees on the maximum working shift plus space to accommodate all trucks and other vehicles used in connection therewith.

## **Section 2. Number of Parking Spaces.**

In computing the number of such parking spaces required, the following rules shall govern:

- A. "Floor area" shall mean the gross floor area of a specific use.
- B. Where fractional spaces result, the parking spaces required shall be construed to the nearest whole number.
- C. The parking space requirement for a use not specifically mentioned herein shall be the same as required for a use of similar nature.
- D. Whenever a building or use constructed or established after the effective date of this resolution is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise, to create a need for an increase of ten percent or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. Whenever a building or use existing prior to the effective date of this resolution is enlarged to the extent of 50 percent or more in floor area or in the area used, said building or use shall then and thereafter comply with the parking requirements set forth herein.
- E. In the case of mixed uses, the parking spaces required shall equal the sum of the requirements of the various uses computed separately.

## **Section 3. Location of Parking Spaces.**

All parking spaces required herein shall be located on the same lot with the building or use served, except that where an increase in the number of spaces is required by a change or enlargement of use or where such spaces are provided collectively or used jointly by two or more buildings or establishments, the required spaces may be located not to exceed 300 feet from an institutional building served and not to exceed 500 feet from any other non-residential building served.

- A. Not more than 50 percent of the parking spaces required for theatres, bowling alleys, dance halls, night clubs or cafes, and up to 100 percent of the parking spaces required for a church or school auditorium may be provided and used jointly by banks, offices, retail stores, repair shops, service establishments and similar uses not normally open, used or operated during the same hours; provided, however, that written agreement thereto is properly executed and filed as specified below.
- B. In any case where the required parking spaces are not located on the same lot with the building or use served, or where such spaces are collectively or jointly provided and used, a written agreement to assure their retention for such purposes shall be properly drawn and executed by the parties concerned, approved as to form and executed by the States Attorney and shall be filed with the application for a building permit.

**Section 4. Loading Spaces.**

Every building or part thereof erected or occupied for retail business, service, manufacturing storage, warehousing, hotel, mortuary or any other use similarly involving the receipt or distribution by vehicles of materials or merchandise, shall provide and maintain on the same premises loading space in accordance with the following requirements:

- A. In the "C-1" and "C-2" Commercial Districts and in the "M- 1" and "M-2" Industrial Districts, one loading space for each 10,000 square feet or fraction thereof, of floor area in the building.
- B. In the "C-3" Central Business District, one loading space on the first 15,000 square feet or fraction thereof of floor area in the building and one additional loading space for each 15,000 square feet or fraction thereof, of floor area in excess of 15,000 square feet.

## ARTICLE 18

### SPECIAL USE

In order to carry out the purposes of this regulation, the Board of County Commissioners may require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by such board prior to the granting of a building permit or certificate of occupancy therefore; and that the Board of County Commissioners be, and is hereby given limited discretionary powers relating to the granting of such permit or certificate as special uses.

#### Section 1. General Provisions.

- A. The uses listed in this section are designated as special use, and no building permit or certificate of occupancy shall be issued by the building inspector until the application for such permit or certificate has been reviewed and authorized by the Board of County Commissioners.
- B. The Board of County Commissioners shall not authorize the issuance of a building permit or certificate of occupancy until the applicant therefore has appeared at a public hearing on such application, notice of the time and place of which hearing has been given in the official county newspaper and a newspaper in the area involved at least ten days prior to the date of such hearing.
- C. Before approving the issuance of a building permit or certificate of occupancy for a special use, the Board of County Commissioners shall find:
  - 1. The proposed use is in harmony with the purpose of this regulation and of portion of the master plan of the City of Minot for the district.
  - 2. The proposed use will not adversely affect the health and safety of the public and the workers and residents, or farming 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 appropriate regulations for the district in which it will be located.
  - 4. The proposed use will comply with all special regulations established by this section, and all special conditions necessary for the sanitation, safety, lighting and general welfare of the public.
- D. The Board of County Commissioners is authorized to impose any conditions on the granting 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 Board of County Commissioners shall not authorize the location of a special use in any district from which it is prohibited.
- F. The Board of County Commissioners shall refuse to authorize the issuance of a building permit or certificate of occupancy for any special use if the Board finds that such special use would fail to comply with any of the requirements of this regulation in this section.
- G. The Board of County Commissioners 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. The Board of Ward County Commissioners may impose limitations, restrictions and/or conditions on the issuance of any special use permitted by this Resolution. If any such limitations, restrictions, and/or conditions which have been included as conditions of the issuance of a Special Use Permit are

violated, a written warning will be issued to comply with the provisions of the permit. If the warning does not result in full compliance, the Board of County Commissioners shall hold a hearing on such alleged violations which shall be open to the public and for which the holder of the Special Use Permit shall be given written notice at least 10 days in advance. Should the violation(s) of conditions of issuance of the Special Use Permit be found by the Board to have occurred even after written warning was served upon the permit holder, the Board of County Commissioners may suspend or revoke the Special Use Permit or place further conditions on the Special Use Permit either temporary or permanent as the Board deems appropriate, prudent or necessary for the health, safety or welfare of neighboring persons or property or the County as a whole.

- I. The holder of a Special Use Permit granted by the Board of Ward County Commissioners shall be the present operator of the special use on the property described in the permit. A Special Use Permit shall automatically be extended to the future operator or operators of the special use on the same property provided, however, that any and all limitations, restrictions or conditions imposed by the Board of County Commissioners at any time on a given permit shall continue unaffected and undiminished under a new or different operator. A Special Use Permit shall be deemed to have expired if the special use is not conducted on the property named in the permit for a period of 36 consecutive months.

## **Section 2. Airports.**

An airport or heliport may be permitted in an Agriculture District as a special use, provided:

- A. The area shall be sufficient to meet the Federal Aviation Agency requirements for the class of airport proposed.
- B. There is no existing flight obstruction 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 airport runways or landing strips.
- C. There is sufficient distance between the end of each usable landing strip and the airport boundary to satisfy the requirements of the Federal Aviation Agency 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.
- D. Any buildings, hangars, or other structures shall be at least 100 feet from any street or lot line.
- E. Adequate space for off-street parking of at least 50 vehicles has been provided. If, in the opinion of the Board of County Commissioners, off-street parking space for more than 50 vehicles will be required, the Board shall increase this requirement.
- F. 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 the 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 500 feet distant from the boundary lines of the airport, other pertinent data such as topography and grading plan, drainage, water, and sewage, etc.
- G. The plans for the proposed airport have been reviewed by the County Planning Commission. In its approval of the proposed airport, the County Planning Commission shall make at least the following two finds:
  1. The airport is not in conflict with any existing element of a master plan.

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

### **Section 3. Cemetery.**

A cemetery, mausoleum, columbarium or crematory may be permitted as a special use.

### **Section 4. Drive-In Theater.**

A drive-in theater may be permitted in "A-1", "C-2", "M-1" or "M-2" District as a special use, provided:

- A. No part of such theater shall be located closer to the boundary of any residential district than 1,000 feet, or closer to any highway or adjoining property line than 100 feet.
- B. The area accessible to patrons' vehicles shall be treated with a suitable material to prevent dust.
- C. Reservoir parking space off the street shall be provided for patrons awaiting admission in an amount not less than 10 percent of the vehicular capacity of the theater.
- D. The vehicular circulation shall be so designed and constructed as to permit only one way traffic within the boundaries of the tract on which the theater is to be located.
- E. Ingress and egress from the highway shall be so designed and constructed as to provide for safe traffic movement.
- F. A structure for the sale and service of food and non- alcoholic beverages may be permitted as an accessory use for a drive-in-theater when approved by the governing health authority.

### **Section 5. Golf Driving Range, Miniature Golf Course.**

- A. A golf driving range or miniature golf course, go-cart track, race track or other commercial recreational facilities of a similar nature, may be permitted as a special use provided: The area within 500 feet of all boundaries of the lot is not developed in residence to a greater density than one family per acre.
- B. Any flood lights used to illuminate the premises are so directed and shielded as not to be an annoyance to any developed residential property, highways and streets.
- C. The Board of County Commissioners shall grant only a temporary certificate of occupancy for a period not to exceed one year. Said certificate may be renewed at the expiration of each temporary certificate of occupancy for an additional year, and other standards established by this resolution or special conditions imposed by the Board of County Commissioners have been fully complied with.

### **Section 6. Temporary Uses.**

The Board of County Commissioners is authorized to grant the certificate of occupancy for temporary uses as follows:

- A. For a carnival or circus in "A-1", "M-1", or "M-2" District or other areas approved by the Board of County Commissioners, for period not to exceed 21 days.
- B. For a religious meeting in a tent or other temporary structure in "A-1", "C-2", "M-1" or "M-2" District for a period not to exceed 60 days.

- C. Contractor's office and equipment sheds in any district for a period not to exceed two years; provided further, that such temporary certificate may be renewed for additional periods of one year.

#### **Section 7. Trailer Camp.**

A trailer camp may be permitted in a "C-2", "M-1" or "M-2" District as a special use, provided:

- A. The minimum total area of the premises shall be 90,000 square feet.
- B. The minimum unit area of premises used or occupied by each trailer shall be 2,000 square feet, clearly defined on the ground by stakes, posts or other markers.
- C. The minimum lane or driveway on which each individual trailer front shall be 20 feet in width surfaced with an all-weather surface and giving an unobstructed access to public street or highway.
- D. No trailer shall be placed within 20 feet of any other trailer, or within 30 feet of the right-of-way line of any street, or within 10 feet of any other boundary of the trailer camp.
- E. All entrances, exits, lanes and driveways between rows of trailers used or occupied in any trailer camp shall be lighted by electricity; at least one 150 watt light shall be provided for each 50 lineal feet of lane or driveway.
- F. No business shall be conducted in any trailer in any trailer camp.
- G. Every trailer camp, if in the opinion of the Planning Commission it is necessary, shall have erected around its border suitable woven wire or open metal fence not less than five feet, nor more than six feet in height, having only necessary openings for ingress and egress to public street, highway or alley. Barbed wire shall not be used in the construction of any fence.
- H. All provisions for water supply, laundry, sewage, and fire protection to be provided in any trailer camp shall have been approved by the appropriate county, or state officer or agency.
- I. Space shall be reserved for playground area in an amount not less 100 square feet for each trailer space.

#### **Section 8. Taverns, Saloons, Etc.**

Taverns, saloons, or other places where alcoholic beverages, as defined by law, are sold or consumed shall be in "C-2" and "C-3" Districts only and after approval by the Board of County Commissioners.

#### **Section 9. Roadside Stands.**

Roadside stands for the sale of agricultural products shall be located in areas only approved by the Board of County Commissioners.

#### **Section 10. Slaughter Houses or Meat Packing Facilities.**

Slaughter House or meat packing facilities shall be located in an Industrial District only approved by the Board of County Commissioners.

## **Section 11. Commercial Feed Lots or Others**

Any commercial feed lots or other industry which may produce an obnoxious odor. Such facilities shall be located only in the area approved by the Board of Ward County Commissioners.

## **Section 12. Adult Entertainment Center.**

Adult Entertainment Center is defined as: an "Adult Bookstore", "Adult Mini-Motion Picture Theater", or both, as defined herein.

### **A. Definitions applicable to this section:**

1. **ADULT BOOKSTORE:** A bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection.
2. **ADULT ESTABLISHMENT:** An adult bookstore, an adult motion picture theater, an adult mini-motion picture theater, or a massage business, all as defined in this subsection.
3. **ADULT MINI-MOTION PICTURE THEATER:** An enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
4. **ADULT MOTION PICTURE THEATER:** An enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
5. **MASSAGE:** The manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
6. **MASSAGE BUSINESS:** Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.
7. **SEXUALLY ORIENTED DEVICES:** Without limitation any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.
8. **SPECIFIED ANATOMICAL AREAS:**
  - a. Less than complete and opaquely covered human genitals and pubic regions, buttocks, or female breasts below a point immediately above the top of the areola.
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
9. **SPECIFIED SEXUAL ACTIVITIES:**
  - a. Human genitals in a state of sexual stimulation or arousal.
  - b. Acts of human masturbation, sexual intercourse, or sodomy.
  - c. Fondling or other erotic touching of human genitals and pubic regions, buttocks, or female breasts.

- B. An adult entertainment center shall be permitted only in an "M-2" District (heavy industrial district) and in no other district, and then only if the center meets the following conditions:
1. No building, premises, structure, or other facility that contains any adult establishment, as defined in subsection 1, shall contain any other kind of adult establishment.
  2. No building, premises, structure, or other facility in which sexually oriented devices, as defined in subsection 1, are sold, distributed, exhibited, or contained shall contain any adult establishment, as defined in subsection 1.
  3. The center is located no closer than 1,250 feet from any pre-existing church, school, or property zoned A-1, R-1, R-2, R-3, C-1, C-2, or C-3.
  4. The center excludes from its premises those persons less than 18 years of age.
  5. The center displays no signs visible from the exterior of the center, except for signs identifying the center as an adult bookstore or adult cinema.
  6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center.
  7. The manager and the owners of the center are registered with the Sheriff of Ward County 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.
  8. The business premises of the center which is generally open to its patrons is open equally at the same time without charge to the Ward County Sheriff, and his deputies who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

### **Section 13. Adult Cabaret.**

Adult Cabaret is defined as: a nightclub or similar commercial establishment that features go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers, regardless of whether liquor is served or provided.

- A. Definitions applicable to this section:
1. **APPLICANT:** The individual or entity seeking a sexually oriented business operator's or employee license in the county.
  2. **EMPLOYEE:** Managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of the sexually oriented business, including any person functioning and/or dispatched as an escort. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
  3. **ENTERTAINER:** Any go-go dancer, exotic dancer, stripper, male or female impersonator and other similar person.
  4. **ESCORT:** Any person who, for a salary, fee, tip, commission, hire, profit or other consideration makes oneself available to the public for the purpose of accompanying another person for companionship, or agreeing or offering to privately model lingerie or to privately perform erotic dancing for another person.
  5. **ESCORT SERVICE:** Any business, agency, or person who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish, or arranges for persons to accompany other persons for companionship, or who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to

- furnish or arranges for persons to privately model lingerie or privately perform erotic dancing for another person.
6. **MANAGER:** An individual who is employed by a sexually oriented business to act as a manager or supervisor or is otherwise responsible for the operation of the business.
  7. **NUDITY OR STATE OF NUDITY:** The appearance of a human anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva with less than a fully opaque covering; or a female breast with less than a fully opaque covering of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered.
  8. **OPERATOR:** Any person owning, operating, conducting or maintaining a sexually oriented business.
  9. **PERSON:** Any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity or other entity or group of persons, however organized.
  10. **SEXUALLY ORIENTED BUSINESS:** An adult cabaret or an escort service.
  11. **SPECIFIED CRIMINAL ACTIVITY:** Any of the following offenses:
    - a . Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states or other countries.
    - b . Other felony convictions in this state, other state or countries.
    - c . For which:
      - 1) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
      - 2) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense;
      - 3) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period;
      - 4) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
  12. **SPECIFIED SEXUAL ACTIVITIES:** Includes any of the following:
    - a . The fondling or other erotic touching or similar touching of human genitals, pubic region, buttocks, anus or female breasts, whether covered or uncovered;
    - b . Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
    - c . Masturbation, actual or simulated; or
    - d . Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

B. Licensing requirements:

1. It shall be unlawful:

- a. For any person to operate a sexually oriented business without a valid operator's license ("operator's license") issued by the county.
- b. For any person who operates a sexually oriented business to employ an employee, if such employee is not in possession of a valid employee license ("employee license") issued to such employee by the county pursuant to this division; or
- c. For any person (including an operator) to be an employee of a sexually oriented business if such person is not in possession of a valid sexually oriented employee license issued to such person by the county pursuant to this division.

C. Application process for a sexually oriented business operator's license includes:

1. All applications for a sexually oriented business operator's license shall be submitted to the county sheriff in the name of the person or entity proposing to conduct a sexually oriented business on the business premises and shall be signed by such person and certified as true under penalty of perjury.
2. An application for a sexually oriented business operator's license must be made on a form provided by the county. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Prior to issuance of an operator's license, the premises must be inspected by the sheriff's department and the fire department.
3. All applicants for a license must be qualified according to the provisions of this division. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the county to determine whether the applicant meets the qualifications established under this division. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.
4. If a person who wishes to own or operate a sexually oriented business as an individual, he or she must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) per cent or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.
5. Applications for an operator's license, whether original or renewal, shall contain the following information:
  - a. The name, street address (and mailing address if different) of the applicant(s);
  - b. The applicant's social security number and/or his/her state or federally issued tax identification number;
  - c. The name under which the establishment is to be operated and a general description of the services to be provided;
  - d. Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in this division and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each;

- e. Whether the applicant has had a previous license under this division or other similar ordinance from another city or county denied, suspended or revoked, including the name and location of the business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a similar ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
  - f. Whether the applicant holds any other licenses under this division or other similar business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;
  - g. The telephone number of the establishment;
  - h. The address and legal description of the tract of land on which the establishment is to be located;
  - i. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;
  - j. If the establishment is not in operation, the expected startup date. If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.
6. Each application for an operator's license shall be accompanied by the following:
- a. Payment of the application fee in full;
  - b. A recent color photograph taken by the Ward County Sheriff's Department of the applicant clearly showing the applicant's face and the applicant's fingerprints (if so requested) on a form provided by the sheriff's department. The sheriff's department may request finger printing at the time of application. Any fees for photographs and fingerprints shall be paid by the applicant.
  - c. If the establishment is a state of North Dakota corporation, a copy of the articles of incorporation, together with all amendments thereto;
  - d. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
  - e. If the establishment is a limited partnership formed under the laws of the state of North Dakota, a certified copy of the certificate of limited partnership, together with all amendments thereto;
  - f. If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;
  - g. Proof of the current fee ownership of the property on which the establishment is to be situated in the form of a copy of the recorded deed; If the persons identified as the fee owner(s) of the property is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed

owner(s) of the sexually oriented business to have or obtain the use and possession of the property thereof that is to be used for the business.

D. Application process for a sexually oriented business employee license includes:

1. Applications for an employee license to work for and/or perform services in a sexually oriented business, whether original or renewal, must be made to the sheriff by the business owner or manager on behalf of the employee to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the county. Each applicant shall be required to provide the following information on or with the application form:
  - a. The applicant's given name and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
  - b. Age, and date and place of birth;
  - c. Height, weight, hair color, and eye color;
  - d. Present residence address and telephone number, including cell phone number;
  - e. Present business address and telephone number;
  - f. Copy of driver's license or other state issued photo identification card;
  - g. Social security number; and
  - h. Proof that the individual is at least twenty- one (21) years of age.

The personal information provided in this subsection (1) shall be confidential and shall not be disclosed to the public except to the extent required by state or federal law.

2. Attached to the application form shall be the following:

- a. A recent color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints (if so requested) on a form provided by the sheriff's department. The sheriff's department may request finger printing at the time of application. Any fees for photographs and fingerprints shall be paid by the applicant.
- b. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state or country, has ever had any license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction and description in full of the reason(s) for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.
- c. A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in this ordinance and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.
- d. Every application for an employee license shall contain a statement under oath, signed by the employee, that the employee has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct.

E. Issuance process of employee license:

1. Upon the filing of an application for a sexually oriented business employee license, the county shall issue a temporary license to said applicant. The application shall then be referred to the appropriate departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date

of filing of the completed application. After the investigation, the county shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- a . The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  - b . The applicant is under the age of twenty-one (21) years.
  - c . The applicant has been convicted of a "specified criminal activity" as defined in this division; or
  - d . The applicant has had a sexually oriented business employee license revoked by the county within two (2) years of the date of the current application.
2. In the event that the county determines that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division.
3. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as hereinafter set forth.
- a . An employee license shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.
  - b . An employee license shall be subject to annual renewal upon the written application of the applicant and a finding by the county that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the filing of the completed application. The renewal of a license shall be subject to the same fee as the original license. Non- renewal of a license shall be subject to appeal as hereinafter set forth.
  - c . Upon application for a sexually oriented business operator's license, the county shall approve or deny issuance of the license within thirty (30) days of filing of the completed application. The county shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
    - 1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
    - 2) An applicant is under the age of twenty- one (21) years.
    - 3) An applicant has been denied a license by the county to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;

- 4) An applicant is overdue in payment to the county for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or taxes or special assessments are overdue for the property on which the sexually oriented business is located or will be located;
  - 5) An applicant has been convicted of a "specified criminal activity" as defined in this division;
  - 6) The premises to be used for the sexually oriented business have not been approved as being in compliance with applicable laws and ordinances;
  - 7) The license fee required under this division has not been paid;
  - 8) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this division.
- d. An operator's license shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- e. If so required under other sections of this division, the sheriff's department shall complete their certification that the premises are in compliance or not in compliance within thirty (30) days of receipt of the completed application.
- f. In the event that the county determines that an applicant is not eligible for a sexually oriented business operator's license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division. Denial of a license shall be subject to appeal as hereinafter set forth.
- g. An operator's license shall be subject to annual renewal upon the written application of the applicant and a finding by the county that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section E. Non-renewal shall be subject to appeal as hereinafter set forth.
- h. An applicant may appeal the denial or non-renewal of a license by filing a written notice of appeal with the sheriff within ten (10) days after service of the notice of the denial or non-renewal. The county shall provide the applicant(s) with written notice of the date, time, and place of the hearing. The notice shall inform the applicant(s) of the factual allegations which form the basis for denial or non-renewal. The sheriff may provide notice by mailing a copy thereof to the applicant's last known address as indicated in the applicant's application. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing. If the applicant does not appear at the hearing, or if he does not dispute the factual allegations, the factual allegations shall be deemed to be admitted. Otherwise, the county shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.

If the applicant requests that the originally scheduled hearing date be continued, the sheriff shall grant a continuance to a mutually convenient time. The decision of the sheriff shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, and there shall be no right of appeal.

F. Fees.

1. The annual fee for a sexually oriented business operator's license, whether new or renewal, is one hundred (\$100.00) dollars. The annual fee for a sexually oriented business employee license, whether new or renewal, is thirty (\$30.00) dollars. These fees are to be used to pay for the cost of the administration and enforcement of this division.

G. License term.

1. The term of a license issued pursuant to this division shall commence at 12:00 a.m. of July 1, if the license is a renewal license, or at the date and time of its issuance, if the license is an initial license, and shall expire 12:00 p.m. of the following thirtieth of June. Notwithstanding the fact that an initial license may be issued for a term of less than one (1) year the license fee shall not be reduced or pro-rated.
2. When the county denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

H. Suspension or revocation of a license.

1. The sheriff shall have the power to suspend or revoke any license issued under the authority of this division for any of the following reasons:
  - a. The licensee violates the laws of this state or of any of the provisions of this division;
  - b. The licensee willfully makes a false statement or a misrepresentation as to a material fact in the application for the issuance of the license;
  - c. The licensee knowingly engages in or permits the occurrence of a pattern or practice of disorderly or immoral acts upon the licensed premises;
  - d. The licensee is convicted of a "specified criminal activity";
  - e. A licensee has, with knowledge, engaged in or permitted prostitution on the premises;
  - f. A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
  - g. A licensee is delinquent in payment to the county or state for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;
  - h. A licensee has, with knowledge, permitted a person less than twenty-one (21) years of age to enter or remain in the establishment;
  - i. A licensee has attempted to sell his business license, or has sold, assigned or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;
  - j. A licensee has, with knowledge, engaged in or permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business;
  - k. A licensee has, with knowledge, consumed or permitted the consumption of alcoholic beverages on the premises.
  - l. The licensee does not hold a necessary permit or license issued by another governmental entity, which license or permit is required by that governmental entity as a precondition to the carrying on by the license of the activity authorized by the sheriff.

2. No license shall be suspended or revoked without providing the licensee with notice and an opportunity for hearing before the Ward County Commissioners with regard to the suspension or revocation of the license. The sheriff shall provide the licensee with written notice of the date, time, and place of the hearing. The notice shall inform the licensee that the license may be suspended or revoked and it shall set forth the factual allegations which form the basis for doing so under this section. The sheriff may provide notice by mailing a copy thereof to the licensee's last known address as indicated in the licensee's most recent application filed with the sheriff under this division. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.
  3. If the licensee does not appear at the hearing provided for in Subsection 2, or if the licensee does not dispute them, the factual allegations in the complaint shall be deemed to be admitted. Otherwise the county shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.
  4. If the licensee requests that the originally scheduled hearing date be continued, the Ward County Commissioners shall grant a continuance to a time mutually convenient to the licensee and the commission, but the committee shall have the discretion to suspend the license from the date for which the hearing was originally scheduled to the date of the continued hearing.
  5. The decision of the Ward County Commissioners shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, and there shall be no right of appeal from the decision.
  6. When a license is revoked, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date revocation became effective.
- I. Judicial review.
1. Within thirty (30) days of a decision denying an initial or renewal application, or suspending or revoking a license by the sheriff, the applicant or licensee may seek judicial review of such administrative action in the district court. The administrative action shall then be reviewed by the court for a prompt judicial determination. Pending the completion of the appeal process, the county shall issue a temporary license unless the licensing decision is based in whole or in part upon a finding that a condition exists upon the premises which constitutes a threat of immediate serious injury or damage to persons or property.
- J. No transfer of license.
1. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application and set forth in the operator's license.
  2. An operator's license shall not be transferable from one location to another.
- K. Conduct and operation.
1. No person shall appear in a state of nudity in a sexually oriented business, except in areas to which customers or patrons are not allowed to be present.
  2. No patron or employee may erotically touch, caress or fondle a patron or employee or the clothing of a patron or employee, nor may an employee encourage or permit a patron or employee to erotically touch, caress or fondle any patron or employee.
  3. No employee shall perform actual or simulated acts of specified sexual activities as defined in this ordinance or any act which constitutes a violation of NDCC Chapters 12.1-27.1 or 12.1-27.2.

4. It shall be unlawful for an owner or operator of a sexually oriented business to allow the activities of the establishment to be visible from a point outside the establishment or to allow an employee to violate subsections 1, 2 and 3 of this section.
  5. The county may regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this division.  
Representatives of the sheriff's department shall be permitted to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this division; and to requests for identification of those individuals who reasonably appear to be under the age of twenty-one (21).
  6. This division shall not be construed to prohibit:
    - a . Plays, operas, musicals, or other dramatic works that are not obscene;
    - b . Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or
    - c . Exhibitions, performances, expressions or dances that are not obscene.

These exemptions shall not apply to specified sexual activities as defined in this division.
- L. Persons prohibited from entry.
1. It shall be unlawful to allow a person who is younger than twenty-one (21) years of age to enter or be on the premises of a sexually oriented business at any time the business is open for business.
  2. It shall be the duty of the operator of each sexually oriented business to prohibit any underage person from entering.
- M. Hours of operation.
- No sexually oriented business may be open:
- a . After 6:00 p.m. on Christmas Eve;
  - b . Any time on Christmas Day, or Easter Day;
  - c . After 1:00 a.m. on Thanksgiving Day;
  - d . After 1:00 a.m. and before 8:00 a.m. Monday through Saturday;
  - e . After 1:00 a.m. and before noon on Sunday.
- N. Location.
1. Sexually oriented business may only be located in areas of Ward County zoned as C-2, C-3, M-1 or M-2 as defined in Zoning Resolution #6 and then only if the business meets the following conditions:
    - a . May be located no closer than one thousand two hundred fifty (1,250) feet from any pre- existing church, school, daycare, park, playground or property zoned or used as residential property.
    - b . Must be located at least 1,250 feet from any establishment holding a liquor license.
- O. Escort service.
1. It shall be unlawful for an employee of an escort service to knowingly or intentionally commit, or for an operator of an escort service to knowingly or intentionally allow an employee of an escort service to commit any of the following acts:
    - a . Enter a hotel or motel for the purpose of meeting a customer, without immediately notifying the front desk, presenting a copy of their sexually oriented employee license, identifying the escort service that sent them, the name of the customer they are meeting, the location of the meeting and notifying the front desk upon leaving safely;

- b. Distribute or post any unsolicited business cards, advertisement, or promotional material on or within the premises of any business;
- c. Begin a meeting or service with a customer between the hours of 12:00 a.m. and 7:00 a.m. in any day;
- d. Begin a meeting or service with a customer without first meeting said customer in a public place such as a bar or restaurant before accompanying the customer to any place which is not open and occupied by the public, such as a hotel room or residence;
- e. To knowingly or intentionally appear in a state of nudity with a customer;
- f. To knowingly or intentionally solicit a customer to appear in a state of nudity; or
- g. Engage in a specified sexual activity with a customer for money or other consideration.

P. Notices.

1. Any notice required or permitted to be given to any applicant or licensee may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the county. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the county shall cause it to be posted at the principal entrance to the establishment.
2. Any notice required or permitted to be given to the county by any person under this article shall not be deemed given until and unless it is received in the office of the county sheriff.
3. It shall be the duty of each owner who is designated on the license application and each operator and employee to furnish notice to the county in writing of any change of residence or mailing address.

Q. Penalties/remedies/relief.

1. Any person who knowingly violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this division shall, upon conviction, be punished as provided by North Dakota law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. In addition to the penalties provided under this section, violators of this division shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief. Nothing in this section shall be held to exclude prosecution or actions by any other provisions of applicable law or to exempt anyone violating this division or any other law from any penalty which may be prescribed for said violation.

**Section 14. Other Uses.**

Other uses not specifically provided for in a particular zoning district identified in this resolution or any other provision of this article.

**Section 15. Compassion Centers**

Compassion Centers cannot be located within one thousand feet of a property line of a pre-existing public or private school and applicants must comply with any and all North Dakota Health Department regulations as per North Dakota Century Code 19-24.

- A. A manufacturing facility for the purpose of growing, processing and manufacturing medical marijuana to supply the product to dispensaries will be permitted as a special use to locate with in M-1 and M-2 zoning districts.
- B. A dispensary for the for purpose of distribution of medical marijuana to qualified patients or designated care givers will be permitted as a special use to locate within C-2 zoning districts.

## ARTICLE 19

### NON-CONFORMING USES

Existing Uses: Any lawful use of the land or buildings existing at the date of passage of this resolution, and located in a district in which it would not be permitted as a new use under the provisions of this regulation, is hereby declared to be a non-conforming use, and not in violation of this regulation at the date of adoption of such regulation. Provided, however, a non-conforming use shall be subject to, and the owner shall comply with the following regulations:

#### **Section 1. Complete Use.**

Board of County Commissioners shall make complete list of nonconforming uses.

- A. After the adoption of this resolution, the owners of a nonconforming use shall be notified by the Board of County Commissioners of the provision of this article. Within 60 days after the receipt of said notice, the owner shall apply for and be issued a certificate of occupancy for the non-conforming use. The application for such certificate shall be filed with the Board of County Commissioners by the owner of such property, and shall include location, nature and extent of the nonconforming use, and such other details as may be necessary for the insurance of the certificate of occupancy.
- B. After issuing the certificate of occupancy for all nonconforming uses within the zoned area of the County, a complete list of the nonconforming uses shall be filed in the office of the Register of Deeds and the office of the County Auditor and shall be corrected from time to time as the Board of County Commissioners may prescribe.
- C. After the filing of the list, the County Auditor shall furnish each Township Assessor a record of non-conforming uses or occupancies existing within his assessment district. At the time of each assessment thereafter each assessor shall prepare a list of all nonconforming uses or occupancies, which list shall be given to the Board of County Commissioners. The Board of County Commissioners shall thereupon amend the previous list and file a certified copy of the same in the office of the Register of Deeds of the County.

#### **Section 2. Non-Conforming Use: Extension.**

The non-conforming 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 the regulation. No non-conforming use may be extended to occupy land outside the building or any additional building not used for such non-conforming use at the date of adoption of this regulation. The non-conforming use of land shall not be extended, to any additional land not so used at the date of the adoption of this regulation.

### **Section 3. Non-Conforming Use: Additions, Repair, Alteration.**

No building used for a non-conforming use shall be enlarged, extended, reconstructed or structurally altered unless the use is changed to one which complies with the provisions of this regulation. Provided, however, repairs and maintenance work may be carried out each year in an amount not to exceed 25 percent of assessed value of the building for that year but such repairs and maintenance work shall not increase the cubical content of the building nor the floor area devoted to the non-conforming use, nor shall it increase the number of dwelling units provided in a building. Nothing in this regulation shall be deemed to either prevent the strengthening nor the 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.

### **Section 4. Non-Conforming Uses: Destruction.**

If any building in which there is a non-conforming use is damaged by fire, flood, explosion, wind, war, or other catastrophe, in an amount equal to or greater than 50 percent 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 regulation for the district in which it is located.

### **Section 5. Non-Conforming Use: Moving Buildings.**

Any building in which there is a non-conforming 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 regulation. If any building in which there is a non-conforming use is moved any distance whatsoever, the building shall thereafter be used only in compliance with the provisions of this regulation for the district in which it is located.

### **Section 6. Non-Conforming Use: Change.**

A non-conforming 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.

### **Section 7. Non-Conforming Use: Discontinuance.**

- A. If, for any reason, a non-conforming use of land ceases for a continuous period of more than two years, the land shall thereafter not be used except in compliance with the provisions of this regulation for the district in which the land is located.
- B. If, for any reason, a non-conforming use of a building ceases for a continuous period of more than two years, the building shall thereafter not be used except in compliance with the provisions of this regulation for the district in which the building is located.

### **Section 8. Non-Conforming Use: Continuance.**

Any legal non-conforming use may be continued. The certificate of occupancy issued by the building inspector for a non-conforming use shall state that the use may be continued indefinitely.

## ARTICLE 20

### ADDITIONAL BUILDING SET-BACK REQUIREMENTS WHEN ABUTTING HIGHWAYS

All land subdivided under the provisions of this resolution, and all non-farm structures constructed, reconstructed or moved within the zoned area of the unincorporated part of Ward County shall provide at least the following building set-backs when abutting on any of the following:

- A. Residential Buildings:
  - 1. All Roads: Minimum of 50 feet from right-of-way line.
  - 2. Township Roads and Section Lines (excluding subdivision roads): Minimum of 90 feet from center line.
  - 3. County Roads: Minimum of 125 feet from center line.
  - 4. Secondary Roads: Minimum of 150 feet from center line.
  - 5. Major Highways: Minimum of 200 feet from center line.
- B. Commercial and/or Industrial Buildings:
  - 1. All Roads: Minimum of 70 feet from right-of-way line.
  - 2. Township Roads & Section Lines: Minimum of 110 feet from center line.
  - 3. County Roads: Minimum of 145 feet from center line.
  - 4. Secondary Highways: Minimum of 170 feet from center line.
  - 5. Major Highways: Minimum of 220 feet from center line.

The measurements to be used will be determined by whichever is the greater distance; from right-of-way line or center line.

For building set-back requirements when abutting subdivision roads, see Article 15.

- C. Trees:
  - 1. All Roads: Minimum of 25 feet from right-of-way line.
  - 2. Township Roads & Section Lines (excluding subdivision roads): Minimum of 75 feet from centerline.
  - 3. County Roads: Minimum of 100 feet from centerline.

The measurements to be used will be determined by whichever is the greater distance; from right-of-way or centerline.

For building set-back requirements when abutting subdivision roads, see Article 15.

**ARTICLE 21**  
**BOUNDARIES OF DISTRICTS**

**Section 1. Rules Where Uncertainties May Arise.**

Where uncertainties exist, with respect to the boundaries of the various districts as shown on the official zoning map and made a part of this resolution, the following shall apply:

- A. The district boundaries are either streets or alleys, unless otherwise shown, and where the districts designated on the official map made a part of this resolution are bounded approximately by streets or alley lines, the streets or alley lines shall be construed as being the boundaries of the district.

## ARTICLE 22

### ISSUANCE OF BUILDING AND OCCUPANCY PERMITS

#### Section 1. Enforcement, Building Permits, Approval of Plans.

A building inspector shall be appointed by the Board of County Commissioners to enforce the provisions of this regulation.

- A. PERMITS: No structure of any kind used for residential, commercial or industrial purposes, including accessories thereto, shall hereafter be built, altered, or moved within the zoned area of Ward County until a building, alteration, or moving permit has been obtained from the office of the building inspector. Such permit shall be good only for one year from date of issuance and any construction beyond said date shall be with the approval of the Board of County Commissioners. No permit is required for maintenance or repair of existing residences, commercial structures, or accessory structures which do not alter the strength or plan of said structure or its mechanical installations, but such maintenance or repair shall comply with all requirements of this regulation. The Building Inspector shall have the authority to designate upon the alteration permit a specific time, not to exceed nine months, in which time remodeling of a structure must be completed. The Board of County Commissioners, prior to the granting of a moving permit, shall hold a public hearing, due notice of which shall have been published once, at least ten days before the date of such hearing, in the official newspaper of the County of Ward. The cost of publication of such notice of hearing is to be paid by the party requesting the moving permit.
- B. FEES: There shall be fees payable to the County for applications for plat approval, building permits and other services provided by the County in administering this resolution. Such fees shall be established by the Board of Ward County Commissioners and may be amended from time to time as deemed necessary.
  - a. All fees collected under provisions of this article shall be credited to the general fund of the county.
  - b. If construction is not begun within said six(6)months after the date of issuance of the permit, said permit shall be canceled, unless the Board of County Commissioners grant an extension of the same as per the adopted International Building Code. In case of cancellation, the application and 50% of the inspection fee shall be returned to the applicant.
  - c. All structures hereinafter built, altered, or moved within the zoned areas of Ward County are subject to inspection by the Board of County Commissioners or any authorized official appointed by such board.
  - d. It shall be unlawful for any association, company, person, firm, cooperative, or corporation to use, or permit to use, or to supply electric current for electrical wiring for lights, heat, or power in any building or structure within the zoned area of Ward County, unless the required permits and a Certificate of Inspection and approval of such building, structure, and electrical circuits have been issued by the Board of County Commissioners of the County of Ward, Ward County Building Inspector, or by an authorized representative thereof. The Certificate of Approval shall be attached to the electrical meter.

**Section 2. Construction Requirements, Single-Family and Multiple-Family Living Units and Accessory.**

All structures or parts of structures used for single-family dwelling units, multiple-family units, commercial structures and accessory structures thereto shall be designed and constructed in such a manner as to comply with the following requirements:

- A. For the purpose of establishing rules and regulations for the construction, alteration, equipment and maintenance of all residential structures and accessory buildings, constructed or reconstructed within the zoned area of Ward County, that certain building code shall be the same as the North Dakota State Building Code as identified in Section 54-21.3-03 of the North Dakota Century Code and amendments thereto and on file in the office of the Ward County Building Inspector and the same is hereby made a part of this resolution and incorporated therein fully as if set out at length herein, and from the date of this resolution takes effect the provisions thereof shall be controlling in the construction of all residential buildings accessory thereto.

**Section 3. Construction Requirements, Commercial Structures and Accessories Therein.**

For the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, and maintenance of commercial and industrial structures and accessories thereto within the zoned areas of Ward County, that certain building code shall be the same as the North Dakota State Building Code as identified in Section 54-21.3-03 of the North Dakota Century Code and amendments thereto and on file in the office of the Ward County Building Inspector and the same are hereby adopted and incorporated as fully as if set out at length herein; and, from this date on which this regulation shall take effect, the provisions thereof shall be controlling in the construction of all commercial and industrial structures or accessories thereto constructed, reconstructed, altered, or moved within the zoned areas of Ward County.

**Section 4. Bond Requirements.**

No structure of any kind used for residential, commercial, or industrial purposes, shall be moved into the zoned area or within the zoned area covered by this resolution until a bond has been posted with the County of Ward in an amount sufficient to construct such improvements, the amount to be determined by the County Building Inspector and the form and surety of the bond to be approved by the appropriate county legal office. Until a bond has been posted with the Building Inspector, no permit shall be issued by the Building Inspector.

**ARTICLE 23**  
**SANITARY**  
**REQUIREMENTS**

**Section 1. Inspection.**

After the adoption of this resolution, no building other than those used for farming in the zoned areas of Ward County shall hereafter be erected, reconstructed, moved, or any work started upon same until proper permits have been obtained from the Building Inspector as provided by this resolution. The building inspector shall not issue a permit until the following has been determined:

- A. Source of Water Supply: Whenever a building is to be and not connected to an approved water supply, evidence shall be submitted showing that the system to be provided is considered as being safe and satisfactory by the State Health Department or other designated agency.
- B. Sewage Disposal: Whenever a building to be erected is not connected to an approved sanitary sewer system, evidence shall be submitted showing that the system and the method of disposal are considered satisfactory by the State Health Department or other designated agency. Such information shall include leaching capabilities of the particular soil in question.

## ARTICLE 24

### REGULATIONS GOVERNING THE SUBDIVISION OF LAND WITHIN THE ZONED AREAS OF CERTAIN PARTS OF THE UNINCORPORATED PORTION OF WARD COUNTY

#### Section 1. Purpose.

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 Minot; 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 provide for and improve the public health, safety and general welfare of the County of Ward, the following rules and regulations for the plating and subdivision of zoned land within the County of Ward are made part of this regulation in accordance with the laws of the State of North Dakota:

- A. All subdivisions of lands within six miles of the City of Minot shall be subdivided according to the master plan of the City of Minot as provided by Chapter 40-48 of the North Dakota Century Code.

#### Section 2. Procedure.

Before preparing the general plan of a subdivision, the subdivider should consult informally with the County Planning Commission and the County Engineer concerning the relation of his property to existing conditions, future plans, community facilities, utilities and services.

#### Section 3. Tentative Approval.

- A. The subdivider shall apply to the Planning Commission for tentative approval of a subdivision plat.
- B. Three prints of the preliminary plan of the subdivision shall be filed with the Planning Commission at the time application for tentative approval is made. The plat shall comply with the provisions of Section 5, Item A, of this section. Fees charged for the filing of a subdivision plat shall be paid in full, on the basis of estimated number of lots created, at the time of application for tentative approval.
- C. The Planning Commission shall approve, approve conditionally or disapprove such preliminary 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 stated. In any conditional approval, the Planning Commission may require the subdivider to submit a revised preliminary 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.
- D. 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 plat. The approval or disapproval of the Planning Commission shall be noted on two prints of the preliminary plat, one of which prints shall be returned to the subdivider and the other retained by the Planning Commission.
- E. Tentative approval of a preliminary plat by the Planning Commission is not an acceptance of the subdivision plat for record, but is rather an expression of approval of a general plat as a guide to

preparation of a subdivision plat for final approval and recording upon fulfillment of all requirements of these regulations.

- F. Tentative approval shall be effective for a maximum period of twelve months, unless, upon application by the developer, the Planning Commission grants an extension. If the final plat has not been submitted for final approval within this time limit, a preliminary plat must again be submitted to the Planning Commission for tentative approval.

#### **Section 4. Design Standards.**

##### **A. Streets and Alleys.**

1. 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.
2. Where it is now shown on the Master Plan of the City of Minot, the arrangement of streets in a subdivision shall either:
  - a. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
  - b. 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.
3. Minor streets shall be so laid out that their use by through traffic is discouraged.
4. Where a subdivision abuts or contains an existing or proposed major street, the Planning Commission may, at its discretion, require marginal access streets, reverse frontage of lots with a screen planting contained in a no-access reservation along the rear property lines, deep lots with rear service alleys, or other treatment that it deems advisable to give adequate protection to residential properties and afford separation of through and local traffic.
5. Private streets shall be prohibited.
6. Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed with the county under conditions approved by the Planning Commission.
7. Street jogs shall be avoided.
8. A tangent at least 100 feet long shall be introduced between reverse curves on major and secondary streets.
9. When connecting street lines deflect from each other by more than ten degrees, they shall be connected by a curve of adequate radius to insure clear visibility for all vehicles.
10. Intersecting streets shall be laid out at as nearly right angles as possible, and no such angle of intersection shall be less than 60 degrees.
11. Property lines at street intersections shall be rounded with a radius of ten feet, or of a greater radius where the Planning Commission may deem necessary. The Planning Commission may permit chords or cut-offs in place of rounded corners.

12. Unless otherwise shown on the Master Plan, right-of-way and roadway widths shall be not less than as follows:

Class of Road	Right of Way
County Roads:	150 ft. (75' from each side of centerline)
Section Lines	(statutory right-of-way remains in place)
Non Section Line Township Roads	80 ft. (40' from each side of centerline)
Frontage Roads:	80 ft. (40' from each side of centerline)
Rural Subdivision Roads:	80 ft. (40' from each side of centerline)

Plats proposed along roads shall donate and dedicate to the public for public use sufficient right-of-way to meet these requirements.

13. Subdivisions shall be of a design as to provide building setbacks from the center line of such highways as to conform to Article 20.
14. 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 when the adjoining property is subdivided. Wherever there exists a half-street adjacent to a tract to be subdivided, the other half shall be platted within such tract.
15. Dead-end streets designed to be permanently without outlet shall be no longer than 500 feet, and shall be provided at the closed end with a turn-around having an outside roadway diameter of at least 100 feet.
16. 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.
17. All streets shall have a grade of not less than 0.5 percent. No major street shall have a grade in excess of 8 percent and no other street shall have a grade in excess of 10 percent, or as the Planning Commission shall approve.
18. The width of all residential alleys shall be 20 feet; all other alleys shall be 30 feet.
19. Dead-end alleys should be avoided, but if unavoidable, shall be provided with 50 feet in diameter turn-around facilities at the closed end.
20. Minimum road standards for township subdivision roads:
- a. Culvert design frequency            25 years
  - Culvert diameter minimum        18 inches
  - b. Graded roadbed width                30 feet
  - c. Right-of-way width                    80 feet
  - d. Slopes (in, out and back)            4' to 1'
  - e. Base of ditch width                    5 feet
  - f. Road bed elevation \*                  1 foot above side terrain\*
  - g. Depth of roadbed gravel               6 inches
  - h. Maximum gradient                    7 percent and up to 10 percent if not longer than 300'
  - i. Cul-de-sac radium                      60' of road surface plus additional 15' of boulevard to equal 75'
  - j. Finished road surface width        24 feet
  - k. Ditch depth shall be a minimum of two feet below shoulder of new road. If curb and gutter is used, the ditch requirements will be eliminated.

\* Or 13 feet minimum from shoulder to a point level with roadbed when 3 to 1 slopes and 4 foot ditch are inclusive.

21. The platting of land for a rural subdivision that includes public access roads shall have the roads built to the minimum design standards (definition found in paragraph 20). The building of the public access roads is a condition precedent to the recording of the plat. The submitter proposing the rural subdivision shall be required to provide an estimate of the costs to build said road along with a preliminary plan and profile drawing with the preliminary plat for review by the county Engineer. Upon approval of the estimate and preliminary plan by the County Engineer, the submitter will be allowed to post a bond with the submission of the final plat for recording, to assure building of the road. The road will be required to be designed and inspected by a professional engineer so that a certification can be provided at the completion of the road construction. The certification shall provide language that the road was built to generally accepted construction standards including the minimum design standards contained herein.

B. Easements.

1. Easement across lots or centered on rear or side lot lines shall be provided at least ten feet wide where necessary for overhead or underground utilities.
2. Where a subdivision is traversed by a water course, coulee, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, and such further width or construction or both that will be adequate for such purpose. Parallel streets or parkways may be required in connection with such drainage easement.

C. Blocks.

1. Residential block length should usually not exceed 1,000 feet nor be less than 300 feet.
2. Pedestrian crosswalks not less than 15 feet wide may be required in blocks longer than 600 feet where such crosswalks are deemed by the Planning to schools, playgrounds, shopping centers, transportation, or other community facilities.
3. The width of blocks shall generally be sufficient to allow two tiers of lots.
4. Blocks intended for business and industrial use should specifically be designated for such purposes with adequate space set aside for off-street parking and delivery facilities.
5. Where frontage is on a major or secondary street, the long dimension of the block should front thereon.

D. Lots.

1. Lot dimensions and areas shall be no less than two acres in size (87,120 sq. ft.), unless a variance is granted in accordance with Section 8 of this article.
2. Lots served by public water supply and sanitary sewers:

Minimum Width at	
Building Line	65 feet
Minimum Depth	120 feet
3. Lots served by only public water supply or sanitary sewers:

Minimum Width at	
Building Line	85 feet
Minimum Depth	150 feet
4. Lots served by neither public water supply nor sanitary sewers:

Minimum Width at	
Building Line	100 feet

Minimum Depth            200 feet

5. Platting of lots for commercial purposes should be avoided in favor of the comprehensive design of a balanced shopping center providing for off-street parking and loading space.
  6. All lots shall abut on a street or other public right-of-way.
  7. Double frontage and reverse frontage lots shall be avoided.
  8. Corner lots shall be of extra width sufficient to maintain building lines on both streets.
  9. Side lot lines shall be approximately at right angles or radial to street lines.
  10. A screen planting easement may be required between residential and commercial or industrial lots.
- E. Public Sites and Open Spaces.
1. Where a park, playground, school or other site for public use shown on the Master Plan is located in whole or in part in the applicant's subdivision, the Planning Commission may request the dedication or reservation of such area within the subdivision.
  2. Where deemed essential by the Planning Commission upon consideration of the type of development proposed in the subdivision, and especially in large-scale neighborhood unit developments not anticipated in the Master Plan, the Planning Commission may request the dedication or reservation of such other areas or sites of a character, extent, or location suitable to the needs created by such development for schools, parks and other neighborhood purposes.
- F. Outlots and Outlot Plats.
1. In addition to all applicable design standards described in Article 24, outlots and outlot plats shall meet the following requirements:
    - a. An outlot plat shall contain no more than two lots. Plats including more than two lots shall be prepared as subdivision plats.
    - b. In accordance with other provisions of this resolution, all outlots and lots resulting from subdivisions of outlots shall be a minimum of two acres in size (87,120 sq. ft.).
    - c. All lots shall border and be tangent to a publicly maintained road as a means of access to the lot. Primary access to any lot by easement is not allowed. If a lot does not access a publicly maintained roadway, then the roadway shall be improved to meet the minimum standards in Article 24, Section 4, A, (20).
    - d. Where a strip of land included in a platted outlot or lot is intended as access to the lot (for a driveway), such strip shall be a minimum of 30 ft. wide unless the length of the strip of land is greater than 150 feet in which case the strip shall be a minimum of 40 ft. wide.
    - e. Road right-of-way shall be clearly shown on plats and including widths required in Article 24, Section 4, A, (12).

## Section 5. Specifications for Plats.

- A. The preliminary plat shall contain the following:
1. Proposed name of subdivision.
  2. Location by section, township and range, or by other legal description.
  3. Names and addresses of developer and surveyor who made the plat.
  4. Scale of plat, which shall be one inch equals 100 feet.
  5. Date.
  6. North point indication.
  7. Boundary line of proposed subdivision indicated by a solid heavy line.
  8. Total acreage within subdivision.
  9. Name, location and width of all existing or prior platted streets, indication of type and width of surfacing thereon; name, dimensions and location of railroad and other utility right-of-way, parks and other public open spaces, permanent buildings or structures, corporation boundaries and section lines within or adjacent to the subdivision.
  10. Existing water mains, storm sewers, sanitary sewers, culverts, bridges and other utility structures within the tract, indicating pipe sizes, grades and exact locations, as obtained from public records.
  11. Existing zoning of proposed subdivisions and adjacent tracts, in zoned areas.
  12. Boundary lines of adjacent tracts of subdivided and unsubdivided land, showing owners.
  13. Contours with a minimum contour of five feet.
  14. Layout of proposed streets, alleys, crosswalks, and easements, showing all widths and proposed street names.
  15. Layout, numbers and dimensions of lots.
  16. Parcels of land intended to be dedicated or reserved for public use, or set aside for use of property owners of subdivisions.
  17. Building setback lines, showing dimensions.
  18. A key map at a scale of 1 inch equals 400 feet or less, showing the boundary of the proposed subdivision and covering the area within a half-mile radius thereof.
  19. One hundred year flood zone, flood way and recorded flowage easements.
- B. Final Plat.
1. The final plat shall be submitted on 18 x 24 mylar provided that when more than one sheet is required, the number of sheets in the set shall be shown on each sheet. The final plat shall contain the following:
    - a. Name of subdivision.
    - b. Location by section, township and range, or other legal description.
    - c. Names of owners and surveyor.
    - d. Scale, which shall be 1 inch equals 100 feet and shall be shown graphically.
    - e. Date.
    - f. North point indication.
    - g. Boundary line of subdivision based on an accurate traverse with angular and lineal dimensions indicated.
    - h. Exact location, width and name of all streets within and adjoining the subdivision and the exact location of all alleys and crosswalks.
    - i. True angles and distances to the nearest established street lines or official monuments (not less than 3) which shall be accurately described on the plat.

- j . City, township, county or section lines accurately tied to the boundary lines of the subdivision by distance and angles.
- k . Radii internal angles, points of curvature; tangent bearings and lengths of all arcs.
- l . All easements for right-of-way provided for public services and public utilities.
- m . All lot numbers and lot lines, with accurate dimensions in feet and hundredths.
- n . Accurate location of all monuments, which shall be of concrete, 6 inches by 6 inches by 30 inches, with an iron pipe cast in the center. One such monument shall be placed at each corner and in each change of direction in the boundary line of the subdivision; one such monument shall be placed at each block corner; and one such monument shall be placed at the point of curvature and point of tangency of each curve in a street line on one side of the street.
- o . Accurate outlines and legal descriptions of any areas (not including streets, alleys, or public utility easements) to be dedicated or reserved for public use, with purposes indicated thereon; and any area to be reserved by deed covenant for common use of all property owners.
- p . Building setback lines, accurately shown with dimensions.
- q . Certification by registered surveyor to the effect that the plat represents survey made by him, and that the monuments shown thereon exist as located and that all dimensional and geodetic details are correct.
- r . Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines and other improvements and of streets and other public areas.
- s . Proper form for the approval of the Planning Commission.
- t . Proper form for acceptance of plat, and amendment of Master Plan by Board of County Commissioners.
- u . One hundred year flood zone, floodway and recorded flowage easements.

C. Protective Covenants.

1. Any proposed protective covenants that are to run with the land will be submitted with the final plat. These covenants may be shown upon the final plat but if they are not so shown, they shall be submitted with the final plat in form for recording, and shall be recorded in the Office of the Register of Deeds at the same time the final plat is recorded.
2. Additional requirements for all subdivision and outlot plats:
  - a . State Plane Coordinates for a minimum of two corners of the platted parcel shall be indicated on the plat within six (6) inches. Whenever possible, the State Plane Coordinates indicated on the plat shall include the end points of the longest baseline on the plat.
  - b . The coordinate basis shall be the North American Datum of 1983 Zone 3301 (North Dakota – North). Units used in State Plane Coordinates shall be U.S. Survey Feet (1m=39.37 inches).
  - c . The name of the National Geodetic Survey Station used to establish State Plane Coordinates for the platted parcel, along with the Station’s State Plane Coordinate, shall be indicated on the plat.
  - d . An Appropriate scale factor for converting distances shown on the plat to distances consistent with the State Plane Coordinate System shall be indicated on the plat to a minimum of eight (8) decimal places.

- e . An electronic copy of the plat in SutoCAD format shall be submitted with the hard copies of all plats to be supplied to the County Engineer by the Planning Commission Secretary. The coordinate basis of the electronic drawing file shall be the North American Datum of 1983 Zone 3301 (North Dakota – North).

**Section 6. Outlot and Subdivision Plat Approval.**

- A. Final plats of outlots and subdivisions of land located within the boundaries of the district(s) covered by this Resolution shall be approved by the Board of Ward County Commissioners in accordance with the procedures described in North Dakota Century Code Section 11-33.2-12 and/or as it may be amended. The Ward County Planning Commission is hereby empowered to investigate and to conduct public hearings into the public use and interest proposed to be served by proposed plats and to consider the public health, safety and welfare elements of NDCC11-33.2-12 paragraph 3 and, if relevant, the potential effect on the value of adjoining property in making a recommendation for approval or disapproval to the Board of Ward County Commissioners. No outlot or subdivision plat of land included within the boundaries of the zoning districts covered by this Resolution shall be recorded in the office of the Ward County Register of Deeds until approved by the Board of Ward County Commissioners.
- B. A parcel of land of 40 acres or more, or land to be used for farming shall not require a plat so long as it is not irregularly shaped, can easily be described, and has access from a public road.

**Section 7. Vacation.**

Vacation of subdivisions, plats, outlots, streets or alleys or any part thereof, shall be with the approval of the Ward County Planning Commission and shall conform to the rules as the Planning Commission may set forth.

**Section 8. Variances.**

- A. Hardship.
  - 1. 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, or other such conditions would result in retarding the achievement of the objective of these regulations, then the Planning Commission may vary, modify or waive requirements so that 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.
  - 2. 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 major or secondary street; in no case shall it be in conflict with existing zoning regulations.
  - 3. In granting variances, modification or waivers, the Planning Commission may require such conditions as will in its judgment; secure substantially the objectives of the standards and regulations so affected.
- B. Large Scale Developments.

1. These regulations may be modified by the Planning Commission in the case of a plan for a new town or a complete community or neighborhood unit, with a building and development program which, in the judgment of the Planning Commission, provides and dedicates adequate public open spaces and improvements for the circulation, recreation, education, light, air and service needs of the tract when fully developed and which provides such covenants, financial guaranties, and other legal assurances that the plan will be followed and will be achieved.

**Section 9. Fees.**

- A. 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 tentative approval of a preliminary plat. Such fee will be based upon the estimated number of lots created. At the time of application for final approval of the subdivision the required fee will be re-calculated on the basis of the actual number of lots created, and an adjustment of the fee will be made, the subdivider to pay an additional amount or to receive a refund of any portion of the fee if the subdivider fails to apply for final approval of the subdivision. If, because of the failure of the subdivider to submit a final plat within 12 months after receiving tentative approval of a preliminary plat, it is necessary to re-submit a preliminary plat for tentative approval, the subdivider shall be required to pay the fee currently in effect at the time of resubmission.
- B. The fees for approval of a subdivision or outlot plat shall be charged and collected at the following rates:

<u>Number of Lots in Subdivision</u>	<u>Fee</u>
1 to 25	\$50.00
26 to 50	\$75.00
50 or more	\$100.00

- C. All fees and penalties collected shall be credited to the general fund of the County of Ward.
- D. All fees established by this section are in addition to any sums paid to cover the costs of review of improvement plans and filed inspection of construction required under the provisions of Section 5, Item 2, of these regulations.

**Section 10. Effective Date.**

This resolution shall be in full force and effect from and after its passage, publication and recordation as provided by law.

**Section 11. Amendments.**

- A. The Planning Commission may, from time to time, adopt and amend rules and instructions for the administration of these subdivision regulations to the end that approval of plats will be expedited.
- B. These subdivision regulations may be changed or amended by the Planning Commission after a public hearing, due notice of which shall have been given in the official newspaper of the County of Ward and such other newspaper as the Planning Commission shall designate, at least ten days before the date of such hearing.
- C. These subdivision regulations, and any amendments thereto, shall be published, and shall be recorded with the Register of Deeds in the appropriate county or counties, as provided by law.

**Section 12. Severability.**

If any section, paragraph, clause, phrase or part of these subdivision regulations is for any reason held invalid, such decision shall not affect the validity of the remaining provisions of these regulations; and the application of those provisions to any persons or circumstances shall not be affected thereby.

**Section 13. Board of County Commissioners to Act as Board of Appeal.**

- A. Separate Hearings.
  - 1. Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto, may, within sixty (60) days after the taking effect of such provision, petition for a separate hearing thereon before the Board of County Commissioners. The petition shall be in writing and shall specify in detail the ground of the objections. The petition shall be filed with the County Auditor. A hearing thereon shall be held by the Board no sooner than ten (10) days, nor longer than forty (40) days, after the filing of the petition with the County Auditor who shall notify the petitioner of the time and place of the hearing. At this hearing the Board of County Commissioners shall consider the matter complained of and shall notify the petitioner, by registered mail, what action, if any, it proposes to take thereon. The provisions of this action shall not operate to curtail or exclude the exercise of any rights or powers of the Board of County Commissioners or any citizen.
- B. May Adjust Enforcement.
  - 1. The Board of County Commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any specific case where literal enforcement of such provision would result in great practical difficulties, unnecessary hardships, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes hereof.
- C. Appeals to District Court.
  - 1. Any person or persons jointly or severally aggrieved by a decision of the Board of County Commissioners, under this act, may appeal to the district court in the manner provided in Chapter 11-11 of the North Dakota Century Code, as amended.

**Section 14. Amendments.**

The Board of County Commissioners may, from time to time, amend this regulation by supplementing, changing, modifying, or repealing any of the regulations, restrictions, or other provisions thereof, or of district map, or the districts on said map, or of the boundaries of such districts. A proposed amendment may be initiated by proceedings as established by Chapter 11-33 of the North Dakota Century Code.

**Section 15. Enforcement and Legal Procedure.**

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this resolution, the proper authorities of the County, or any person the value or use of whose property is or may be affected by such violation, in addition to other remedies, may institute any appropriate action or proceedings in equity to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land or to prevent any illegal act, conducted business, or use in or about such premises.

**Section 16. This Regulation Not to Affect Farming.**

No part of this regulation shall be construed as prohibiting or restricting the use of land or buildings for farming or any normal incidents of farming.

**Section 17. Severability.**

If any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the regulation. The Board of County Commissioners of the County of Ward hereby declare that it would have passed this regulation and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

**Section 18. Repeal of Conflicting Resolutions.**

The resolution establishing Zoning District No. 3 dated June 9, 1955, the resolution establishing Zoning District No. 4 dated January 3, 1957, and the resolution establishing Zoning District No. 5 dated April 20, 1961, with all amendments thereto, are hereby repealed, as are all regulations or parts of regulations in conflict with this resolution.

## ARTICLE 25

### REGULATIONS FOR OPENING AND EXCAVATING OF GROUND AND STREETS; REQUIRING A PERMIT THEREFORE AND PAYMENT OF A FEE; IMPOSING REQUIREMENTS FOR THE PROTECTION OF LIFE AND PROPERTY IN CONNECTION WITH EXCAVATION WORK, INCLUDING TRAFFIC AND PEDESTRIAN SAFEGUARDS AND THE PROTECTION OF UTILITIES AND OTHER PROPERTY; REGULATING THE BACK- FILLING AND RESURFACING OF EXCAVATIONS; PRESCRIBING SURETY BOND; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS.

#### **Section 1. Excavation Permit.**

It shall be unlawful for any person to dig up, break, excavate, tunnel, undermine or in any manner break up any ground area in excess of 5,000 square feet, unless such person shall first have obtained an excavation permit therefore from the County Building Inspector as herein provided.

#### **Section 2. Application.**

No excavation permit shall be issued unless a written application for the issuance of an excavation permit is submitted to the County Building Inspector. The written application shall state the name and address of the applicant, the nature, location and purpose of the excavation, the date of commencement and the date of completion of the excavation, and other data as may reasonably be required by the County Engineer. The application shall be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground, prior to said excavation, and of the proposed excavated surfaces, the location of the excavation work, and other such information as may be prescribed by the County Engineer. There shall also be submitted sufficient detail to show the protective measures to be employed on any slopes upon which any excavation is to be performed.

#### **Section 3. Excavation Permit Fees.**

- A. A permit fee shall be charged by the County Building Inspector for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in an amount varying with the type of surface to be opened, dug, or excavated under the permit issued, as follows:
  1. The sum of \$0.50 per 1,000 square feet, not to exceed \$25.00.

#### **Section 4. Protection of Adjoining Property.**

The permittee shall at all times, and at his own expense, preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where, in the protection of such property, it is necessary to enter upon private property for the purpose of taking appropriate measures, the permittee shall obtain a license from the owner of such private property for such purposes. The permittee shall, at his own expense, shore up and protect all buildings, walls, fences or other

property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work.

**Section 5. Protective Measures.**

The permittee shall erect such fence, railing or barriers about the site of the excavation work as shall prevent danger to persons using any street or road, if any exist adjacent to such construction, and such protective barriers shall be maintained until the work shall be completed or the danger removed. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public.

**Section 6. Care of Excavated Material.**

All material excavated and stored in piles upon the site covered by the permit shall be stored in such fashion and manner so that such material shall not, in the event of rain or storm, be washed or cast upon any property other than that of the permittee.

**Section 7. Property Lines and Easements.**

Property lines and limits of easements shall be indicated on the plan of excavation submitted with the application for the excavation permit and it shall be the permittee's responsibility to confine excavation work within these limits.

**Section 8. Protective Measures Required on Slopes.**

- A. Slope protection measures are required to be performed by the permittee at any time when either of the following situations exist:
  - 1. Any portion of the area being excavated is a natural drain area.
  - 2. When finished grades are in excess of three percent or where natural cover has been disturbed.

**Section 9. Protective Measures Required.**

- A. For any excavation provided under this ordinance where protective slope measures are required, the following shall be used according to the specific excavation being performed:
  - 1. Retaining walls of sufficient size and strength to securely retain the soil which such walls are holding, where the slope exceeds 2:1. Loose laid rip-rap shall not be acceptable.
  - 2. Staked sod where the slopes are between 2:1 and 4:1.
  - 3. Seeding with quick germinating seed where slopes are 4:1 or less.
  - 4. Seeding with quick germination seed over entire area which has been disturbed in addition to the actual slopes or banks.

5. Storm sewer, culverts or other specific drainage facility to be installed where, in the opinion of the County Building Inspector, the same is required for protection of property. Engineer design information shall be provided by the permittee.

**Section 10. Requirements for Seeding.**

- A. Quick germination seed, as referred to herein, shall be a uniform mixture of approved first quality seed, certified as to purity and germination, and shall be proportioned by weight according to the following formula:

Percent		Percent	Germination
<u>By Weight</u>	<u>Type of Grass</u>	<u>Purity</u>	<u>Minimum Percent</u>
50%	Crested Wheat Grass	93%	85%
25%	Slender Wheat Grass	90%	85%
25%	Western Wheat Grass	90%	85%

- B. It shall be sown at the rate of sixteen pounds per acre and sixty pounds of ammonium (33.5% Nitrogen) per acre shall be spread on the soil prior to seeding or by means of fertilizer attachments on the drill. Ammonium nitrate shall not be mixed with the seed. If seeding is performed before July 15, twenty pounds of oat seed per acre shall be added to the above mixture and if seeding is performed after July 15, thirty pounds of rye seed shall be added to the above mixture per acre.
- C. If seed of the specified germination cannot be obtained, additional seed shall be used to bring the amount of live seed up to the amount required by specified germination.

**Section 11. Responsibility for Germination.**

It shall be the responsibility of the permittee to maintain and water such planted seed as is specified herein until such time as the minimum percent germination has been accomplished. In addition, it shall be the responsibility of the permittee to maintain and water all sodded surfaces until such time as 85% of the sodded area has successfully resumed growth. The permittee shall be required to re-seed or re-sod any areas in excess of ten square feet which do not successfully germinate or resume growth.

**Section 12. Performance of Work.**

The seeding, sodding, construction of retaining walls, or construction of culverts, storm sewer or other facilities for drainage, must be completed within 45 days after work is commenced. It shall be unlawful for any person, firm, or corporation to leave any excavated area uncompleted beyond the expiration of the time provided in the preceding section.

## ARTICLE 26

### ENFORCEMENT AND PENALTIES

The Zoning Administrator, Building Inspector, or other designated person shall inspect for violations of these Ordinances or Codes, including without limitation, failure to comply with any of its requirements and violations of conditions and safeguards established in connection with grants of variances, and shall investigate reports of such violations. When the Zoning Administrator, Building Inspector, or other designated person determines that a violation has occurred, the Zoning Administrator, Building Inspector, or other designated person, shall give written notice to the owner or occupant of the property that a violation has occurred and order the violation be abated and the property, structure or use be brought into compliance with these Ordinances, Codes or granted variances.

A reasonable amount of time, but no less than five (5) days nor more than forty-five (45) days must be allowed for compliance, unless such violation is deemed to have created emergent conditions that cause threat to human safety and welfare, then such abatement may be immediate.

It shall be a violation for any person or organization, whether as owner, lessor, agent, manager, employee, tenant or occupant, to violate any provision of these Ordinances or Codes. In addition, it shall be a violation for any person or organization to cause or, with knowledge, permit such violations. A violation of any provision of these Ordinances or Codes shall constitute the maintenance of a public nuisance.

Any person or organization shall be deemed to have committed a separate violation for each and every day during any portion of which a violation of any provision of these Ordinances or Codes is committed, caused, with the knowledge permitted, or continued by such person or organization and shall be subject to the remedies as provided by this section and North Dakota law.

The Zoning Administrator, Building Inspector, State's Attorney or other designated person may institute appropriate action or proceedings for the purpose of:

- i. Prosecuting any violation
- ii. Restraining, correcting, or abating such violation.
- iii. Preventing any illegal act, conduct, business or use in or about any building, structure or land use in violation of these Ordinances or Codes.

The Ward County Planning Commission, and approved by the board of the Ward County Commissioners may establish a schedule for permit fees and violations of pertaining to these Ordinances and Codes as set out in SCHEDULE A and SCHEDULE B of Ward County Planning and Zoning Ordinances. Any person or organization which violates any provision of these Ordinances or Codes, or, caused or with the knowledge permitted, the violation or fails to comply with any of its requirements including the conditions or modification of use, building or structure shall, upon a finding of the violation thereof forfeit the fee established by the Ward County Planning Commission and approved by the board of the Ward County Commissioners. The schedule of fees shall be posted in the offices of the Ward County Auditor, Ward County Engineer and the Ward County Treasurer, and may be altered or amended by the Ward County Planning Commission and the board of the Ward County Commissioners.

Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation, including pursuing criminal prosecution. A person that violates these Ordinances and Codes or causes or with knowledge allows the violation may be found to have committed a class B misdemeanor, and can be punished by a fine or penalty not to exceed

\$1,000 or by imprisonment not to exceed 30 days, or both such fine and imprisonment. An organization found to have violated these Ordinances or Codes, or causes or with knowledge allows the violation may be subject to a fine not to exceed \$10,000. Such fines and imprisonment may be altered or amended for a class B misdemeanor by the North Dakota Legislature.

Any fines and fees assessed for violations of these Ordinances or Codes during a particular fiscal year, and not paid by October 1 of the year assessed, shall be certified as a levy against the affected property and be included on the property tax bill and continue until paid.

STATE OF NORTH DAKOTA )

) ss.

COUNTY OF WARD )

I, Devra Smestad, the County Auditor of Ward County, North Dakota, do hereby certify that the foregoing is a true and correct complete copy of a resolution adopted by the Board of County Commissioners of Ward County at its meeting held on the 6th day of April, 2010, which Resolution is a part of the minutes of said Board; and that a copy thereof has been filed with the office of the Recorders and will be available to the public for inspection and copying thereat from and after this date.

Auditor, Ward County, North Dakota

Witness my hand and the official seal of said County, this 6th day of April, 2010.

Amendment Dates:

(1-7-64, 2-5-64, 2-1-66, 7-9-71, 9-22-77, 10-19-78, 2-3-82, 6-17-82, 8-26-82, 9-26-84, 9-17-91, 6-4-93, 6-7-94, 8-20-96, 12-7-99, 8-6-03, 9-7-04, 11-5-05, 12-6-05, 2-9-07, 2-5-08, 4-6-10, 7-17-18, 10-2-18)

## Chapter 4

### WARD COUNTY FLOODPLAIN ZONING ORDINANCE

Date Established: January 15, 2013

## Chapter 1

STATUTORY AUTHORITY, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE

### SECTION 1.1 STATUTORY AUTHORITY

This ordinance for the floodplain protection is adopted pursuant to the authorization contained in Section 11-33-03, Subparagraph 2 and Section 61-16-11 of the North Dakota Century Code.

### SECTION 1.2 FINDING OF FACT

The uncontrolled use of the floodplains of Ward County, North Dakota, adversely affects the public health, safety, convenience and general welfare, and impairs the tax base of that county. In addition, extraordinary public expenditures are required for the protection of persons and property and for the relief of distress in areas subject to periodic flooding. Piling, construction, and certain other land use practices have been determined to be major causes of such effects. The effects of a single fill or other project upon flood heights, velocities, of floodplain storage areas may be relatively insignificant compared to the combined effects of a number of such projects which, over a long period of time, may drastically increase the flood hazard. Without a competent analysis of such projects, it is not possible to adequately ascertain the effects of each floodplain use upon subsequent development or the compatibility thereof with the long-range needs of the community. The legislature of the State of North Dakota has delegated authority to the Board of Ward County Commissioners to adopt ordinances and regulations, which will control or eliminate the practices leading to such adverse effects and this authority is hereby recognized.

### SECTION 1.3 STATEMENT OF PURPOSE

It is the purpose of the ordinance to promote the public health, safety, and general welfare of Ward County and to minimize flood losses in the floodplain. This floodplain zoning ordinance is hereby established with the following purposes intended:

Section 1.3.1 To protect the storage capacity of the floodplains and to assure retention of sufficient floodway areas to convey flood flows, which can reasonably be expected to occur through:

- (A) Regulating filling, dumping, dredging, and alteration of channels by deepening, widening, or relocating.
- (B) Prohibiting unreasonable encroachments on the floodway.
- (C) Encouraging open space uses such as agriculture, recreation, and parking facilities.

Section 1.3.2 The objectives of this ordinance are:

- (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 and generally undertaken at the expense of the general public;
- (D) To minimize prolonged business interruptions;
- (E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (F) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (G) To insure that potential home buyers are notified that property is in a flood area.

## Chapter 2

### DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have at common law and to give this ordinance its most reasonable application.

1. "A ZONE" or "ZONE A": An area of special flood hazard without water surface elevations determined.
2. "A1-A30 ZONE" or "ZONE A1-A30": An area of special flood hazard with water surface elevations determined.
3. ADMINISTRATOR: The Federal Emergency Management Agency to whom the secretary has delegated the administration of the program.
4. BASE FLOOD: The flood having a one percent (1%) chance of being equaled or exceeded in any given year.
5. BASEMENT: See LOWEST FLOOR
6. BUILDING: See STRUCTURE
7. BULKHEAD: A wall, partition or other device attached either permanently or temporarily to a structure or embankment and designed to hold back water.
8. CHANNEL: A natural or artificial water course of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow thus is that water which is flowing within the limits of the defined channel.
9. COMMUNITY: The area of land within Ward County subject to this flood zoning ordinance which includes all of the unincorporated territories located within the boundaries of Ward County, and the territories located within the boundaries of the townships that have relinquished their zoning rights to Ward County.
10. COUNTY FLOODPLAIN MANAGEMENT AREA (CFMA): The inundation area associated with the County Floodplain Management Flow and as shown in the County Floodplain Management Map.
11. COUNTY FLOODPLAIN MANAGEMENT ELEVATION (CFME): The water surface elevation at a given location, which is derived from the County Floodplain Management Flow.
12. COUNTY FLOODPLAIN MANAGEMENT FLOW: The flowrate, adopted by the Ward County Commission, whose area of inundation will be managed by the Floodplain Zoning Ordinance.
13. COUNTY FLOODPLAIN MANAGEMENT MAP (CFMM): An adopted map of the community, on which the administrator has delineated both the County Floodplain Management Area applicable to the community. Said map is on file with the Ward County Auditor and said map is incorporated herein by reference.
14. DEPTH NUMBER: The highest "water surface elevation" as expressed in number of feet which is attained for a particular area or zone during the base flood.
15. DEVELOPMENT: Any man-made change to improve or diminish real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
16. ENCROACHMENT: Any fill, structure, equipment, building, use or development in the floodway
17. FLOOD (OR FLOODING): A general and temporary condition or partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or run off of surface waters from any source.
18. FLOOD INSURANCE RATE MAP (FIRM): An official map of the community on which the administrator has delineated both the special hazard area and the risk premium zones applicable to the community. Said map is on file with the Ward County Auditor and said map is incorporated herein by reference.

19. FLOODPLAIN or FLOOD-PRONE AREA: Any land area susceptible to being inundated by water from any source (see definition of FLOOD). The flood-prone area is more extensive than the “special flood hazard area” for it includes not only the special flood hazard area but also those adjoining areas in which any flooding might occur during the base flood which would be less than one foot in depth.
20. FLOOD-PROOFING: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
21. FLOODWAY: The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot.
22. LOWEST FLOOR: The lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable flood-proofing design requirements of this ordinance.
23. MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
24. MANUFACTURED HOME: A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It includes recreational vehicles or travel trailers placed on a site for more than 180 consecutive days.
25. MEAN SEA LEVEL: the average height of the sea for all stages of the tide.
26. NEW CONSTRUCTION: Structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the community. It also means the erection of an entirely new and independent structure (as opposed to an alteration or repair of or addition to an existing structure).
27. NONCONFORMING STRUCTURE: An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies.
28. PERSON: Any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.
29. PLANNING/ ZONING ADMINISTRATOR: The Ward County Planning/ Zoning Administrator and staff that may be authorized to issue a building or moving permit.
30. PRINCIPALLY ABOVE GROUND: That at least 51% of the actual cash value of the structure, less land value, is above the ground.
31. REACH: A hydraulic engineering term to describe longitudinal segments of a stream or river. A reach will generally include the segment of the floodplain where flood heights are primarily controlled by man-made or natural floodplain obstructions or restrictions. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most likely be a reach.
32. SPECIAL FLOOD HAZARD AREA (SFHA): An area having special flood hazards and is shown on a FIRM or Flood Hazard Boundary Map (FHBM) as Zone A, , A1-A30, AE, AH, AO, Shaded Zone X and Zone X.
33. SPECIAL FLOOD HAZARD AREA (SFHA): The land in the flood-prone area subject to one percent (1%) or greater chance of flooding in any given year. This area as shown on the FIRM is usually defined to show Zones A, A1-A30, and A1-99.
34. START OF CONSTRUCTION: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 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; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

35. **STRUCTURE:** A walled and roofed building, manufactured home, or a gas or liquid storage tank that is principally above ground.
36. **SUBDIVISION PROPOSAL:** (a) an application for a zone change, (b) an application or request for a special use permit, or (c) a request for approval of a plot pursuant to the provision of the land subdivision laws of the State of North Dakota.
37. **SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either, (a) before the improvement or repair is started, or (b) 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 (1) 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 (2) any alteration of a structure listed on a National Register of Historic Places or a State Inventory of Historic Places.
38. **VARIANCE:** A grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.
39. **WATER SURFACE ELEVATION:** The projected heights in relation to Mean Sea Level reached by floods of various magnitudes and frequencies and the floodplains of coastal or riverine areas.

## Chapter 3

### CHANNEL PROVISIONS

#### **SECTION 3.1 JURISDICTION**

The jurisdiction of this ordinance includes all lands adjacent to each reach of rivers or streams within the community that would be inundated by the base flood for that river or stream as defined in the definitions, Chapter 2 of this ordinance.

#### **SECTION 3.2 DISTRICT BOUNDARIES**

The boundaries of the base floodplain district shall be the areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) through a scientific and engineering report entitled "The Flood Insurance Study for Ward County, North Dakota" dated January 19, 2000 with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway maps and any revision thereto are hereby adopted by reference and declared to be a part of this ordinance. The boundaries shall include areas shown on the County Floodplain Management Map as County Floodplain Management Areas. Said maps are kept on file in the office of the Ward County Auditor at the time of the adoption of this ordinance, and shall be available for public inspection during the established County office hours. Said flood hazard areas may be changed periodically through additional floodplain maps derived from studies by federal, state and local officials. This new information for updating the flood insurance study and supplementary documents shall be forwarded to FEMA immediately. The area subject to the authority of the Ward County Floodplain Zoning Ordinance will be comprised of all unorganized areas located within the boundaries of Ward County, and those townships which have filed written relinquishments of their zoning authority to Ward County at the Ward County Auditor's office. The townships which have filed their written relinquishments of zoning authority to Ward County pursuant to North Dakota Century Code, Chapter 11-33, are: Baden, Carbondale, Carpio, Harrison, Foxholm, Freedom, Kirkelie, Nedrose, New Prairie, Sawyer, Sundre, and Willis.

Section 3.2.1 The floodplain boundary lines on the maps shall be determined by the use of the scale appearing on the map. Where there is a conflict between the floodplain boundary illustrated on the map and the actual field conditions, the dispute shall be settled according to Section 14.4.2 entitled Mapping Disputes.

#### **SECTION 3.3 COMPLIANCE AND ENFORCEMENT IN PENALTIES**

No structure, land or water shall hereafter be used and no structure shall be located, extended, converted or structurally altered without fill compliance with the terms of this ordinance and other applicable regulations. Every structure, building, fill or development placed or maintained within any floodplain in violation of this ordinance is a public nuisance and the creation thereof may be enjoined and maintenance thereof may be abated through the action at suit of the county, state, or any citizen thereof pursuant to authority granted in Chapter 11-33 of the North Dakota Century Code.

#### **SECTION 3.4 ABROGATION AND GREATER RESTRICTIONS**

Section 3.4.1 This ordinance supersedes provisions of any zoning regulations relating to the floodplain covered by the ordinance.

Section 3.4.2 It is not otherwise intended by this ordinance to repeal, abrogate, or impair any existing deed restrictions; however, where this ordinance imposed greater restrictions the provisions of this ordinance shall prevail.

### **SECTION 3.5 INTERPRETATION**

In the interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by the North Dakota statutes.

### **SECTION 3.6 WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection intended to be provided by this ordinance is considered reasonable for the regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodplain zoning district boundaries or land use permitted within such districts will always be totally free from flooding or flood damages. Nor shall this ordinance create a liability on the part of or a cause of action against Ward County or any officer or employee thereof for any flood damages that may result from reliance on this ordinance.

### **SECTION 3.7 SEVERABILITY**

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

## Chapter 4

### GENERAL FLOODPLAIN DISTRICT

#### SECTION 4.1 DESCRIPTION OF DISTRICT

The general floodplain district shall include the land stated in SECTION 3.2 of this ordinance.

#### SECTION 4.2 SPECIAL PROVISIONS

The following regulations shall apply to all uses within the general floodplain district, notwithstanding that such uses may be specifically permitted under the terms of this ordinance.

Section 4.2.1 The flood protection elevation or height shall correspond to three feet above the elevation of the base flood profile or one foot above the County Floodplain Management Elevation whichever is greater.

Section 4.2.2 No floodplain shall unduly interfere with the efficiency of or unduly restrict the capacity of the channels or floodways of the main stream or any tributaries to the main stream, drainage ditches, or any drainage facilities or systems.

Section 4.2.3 No new construction, substantial improvements, or other development shall be permitted unless the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any one point within the county.

#### SECTION 4.3 DESCRIPTION OF USES

Permitted uses: The following open spaces shall be permitted within the general flood district to the extent that they are not prohibited in a particular area by any underlying zoning ordinance.

Section 4.3.1 Agricultural uses such as: general farming, including farmsteads, pasture land, grazing, truck farming, sod farming, wild crop harvesting, outdoor plant nurseries, horticulture, and viticulture.

Section 4.3.2 Industrial-Commercial uses such as: loading areas, parking areas, airport landing strips, and storage yards for equipment or machinery easily moved or not subject to flood damage.

Section 4.3.3 Public and private recreational uses not requiring "permanent or temporary structures" designed for human habitation such as: parks, swimming areas, golf courses, driving ranges, picnic grounds, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges and hunting, fishing, and hiking areas.

Section 4.3.4 Utility facilities such as: dams, power plants, flowage areas, transmission lines, pipelines, and water monitoring devices. Permission for the construction of transmission lines in the flood hazard area must be obtained from the Board of Ward County Commissioners, upon a finding that this is the most feasible and less burdensome route for the transmission line.

Section 4.3.5 Other water related uses such as: docks, piers, wharves, bridges, culverts and river crossings of transmission lines.

## Chapter 5

### RESTRICTIONS ON LAND USE AND CONSTRUCTION, APPLICABLE TO ALL PORTIONS OF THE SPECIAL FLOOD HAZARD AREA

#### SECTION 5.1

The provisions of this chapter shall be applicable to all of the land within the community which is shown on the FIRM as being in the special flood hazard area. This shall include all areas shown thereon which bear the designation "A" or which bear an "A" prefix, such as "A16", "A18", etc.

#### SECTION 5.2

All new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) on which work is commenced on or after May 25, 1977, shall (a) be designed (or modified) and anchored so as to prevent flotation, collapse, or lateral movement of the structure, (b) be constructed with materials and utility equipment resistant to flood damage, and (c) be constructed by methods and practices that minimize flood damage.

#### SECTION 5.3

All public utilities and facilities such as sewer, gas, electrical and water systems constructed or substantially reconstructed on or after May 25, 1977, shall be located, designed and constructed so as to minimize or eliminate flood damage to such systems.

#### SECTION 5.4

New and replacement water supply systems on which work is commenced on or after May 25, 1977, shall be designed to minimize or eliminate infiltration of flood waters into the systems.

#### SECTION 5.5

Substantial alteration of the topography which is commenced on or after May 25, 1977, will be permitted only upon a demonstration that the alteration will not increase the base flood a height of more than one foot in the community either through direct drainage into the river or as a result of increased pressure upon the internal drainage system of the district or otherwise.

#### SECTION 5.6

On or after May 25, 1977, no person or persons may perform any fill or land fill operations or place materials associated with other development activities within the geographical area to which this chapter applies unless they shall first have obtained a permit from the Ward County Engineer.

New and replacement sanitary sewage systems on which work is commenced on or after May 25, 1977, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. On site waste disposal systems on which work is commenced on or after May 25, 1977, shall be located so as to avoid impairment to them or contamination from them in the event of flooding.

#### SECTION 5.7

All new construction and substantial improvements (including additions and replacements) shall be anchored to prevent flotation, collapse, or lateral movement of the structure. All manufactured homes must be elevated so that the lowest floor is at least one foot above the Base Flood Elevation and anchored to

resist flotation, collapse or lateral movement. Methods or anchoring may include but are not limited to use of over-the-top or frame ties secured to ground anchors. This requirement is in addition to applicable state and local requirements for resisting wind forces. Although minimum elevation for manufactured homes may be satisfied with properly compacted fill, regulations of the National Flood Insurance Program eligibility may require placement on a permanent foundation. Interpreting the requirements of or conformity with the eligibility requirements of the National Flood Insurance Program shall not be the responsibility of Ward County nor elected or appointed County Officials. Notwithstanding the foregoing, this paragraph shall not apply to a manufactured home which is removed from its ordinary location as part of an official emergency evacuation of manufactured homes, and which manufactured home is returned to such location if the manufactured home was not subject to the tie-down requirements of this paragraph prior to the evacuation.

#### **SECTION 5.8**

On or after May 25, 1977, no manufactured home shall be (a) moved into or within the geographical area to which this chapter applies and (b) placed at a site or location therein for more than five days unless a permit shall first have been obtained from the Ward County Planning/ Zoning Administrator.

## Chapter 6

### RESTRICTIONS ON LAND USE AND CONSTRUCTION, APPLICABLE TO ALL PORTIONS OF THE COUNTY FLOODPLAIN MANAGEMENT AREA

#### SECTION 6.1

The provisions of this chapter shall be applicable to all of the land within the community which is shown on the County Floodplain Management Map as being in the County Floodplain Management Area. All new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) on which work is commenced on or after the date this ordinance is approved, shall (a) be designed (or modified) and anchored so as to prevent flotation, collapse, or lateral movement of the structure, (b) be constructed with materials and utility equipment resistant to flood damage, and (c) be constructed by methods and practices that minimize flood damage.

#### SECTION 6.2

On or after the date this ordinance is approved, no person or persons may perform any fill or land fill operations or place materials associated with other development activities within the geographical area to which this chapter applies unless they shall first have obtained a permit from the Ward County Engineer.

New and replacement sanitary sewage systems on which work is commenced on or after the date this ordinance is approved, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. On site waste disposal systems on which work is commenced on or after the date this ordinance is approved, shall be located so as to avoid impairment to them or contamination from them in the event of flooding.

#### SECTION 6.3

All new construction and substantial improvements (including additions and replacements) shall be anchored to prevent flotation, collapse, or lateral movement of the structure. All manufactured homes must be elevated so that the lowest floor is at least one foot above the County Floodplain Management Elevation and anchored to resist flotation, collapse or lateral movement. Methods or anchoring may include but are not limited to use of over-the-top or frame ties secured to ground anchors. This requirement is in addition to applicable state and local requirements for resisting wind forces. Notwithstanding the foregoing, this paragraph shall not apply to a manufactured home which is removed from its ordinary location as part of an official emergency evacuation of manufactured homes, and which manufactured home is returned to such location if the manufactured home was not subject to the tie-down requirements of this paragraph prior to the evacuation.

#### SECTION 6.4

On or after the date this ordinance is approved, no manufactured home shall be (a) moved into or within the geographical area to which this chapter applies and (b) placed at a site or location therein for more than five days unless a permit shall first have been obtained from the Ward County Planning/ Zoning Administrator.

## **Chapter 7**

### RESTRICTIONS APPLICABLE TO ZONE “A” OR “A1-A30”

#### **SECTION 7.1**

The provisions of this chapter shall be applicable to all of the land within the community, which is shown on the FIRM as being in a zone bearing the designation “A” or “A1-A30”.

#### **SECTION 7.2**

The restrictions imposed by Chapter 5 are incorporated herein by reference and shall be considered as part of this chapter as though set forth fully herein.

#### **SECTION 7.3**

The Board of Ward County Commissioners shall obtain, review, and reasonably utilize any Base Flood Elevation data available from a Federal, State, or other source, until such other data has been provided by the Administrator, as criteria for requiring that (a) all new construction and substantial improvements of residential structures have the lowest floor including basement elevated to three feet above the Base Flood Elevation and (b) all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or flood proofed to a level of three feet above the Base Flood Elevation.

## Chapter 8

### RESTRICTIONS APPLICABLE TO ZONE “AE”, “AH”, OR “AO”

#### SECTION 8.1

The provisions of this chapter shall be applicable to all of the land within the community, which is shown on the FIRM as being in the zone designated “AE”, “AH”, or “AO”.

#### SECTION 8.2

The restrictions imposed by Chapter 5 are incorporated herein by reference and shall be considered as part of this chapter as though set forth fully herein.

#### SECTION 8.3

All new construction and substantial improvements or residential structures on which work is commenced on or after May 25, 1977, shall have the lowest floor (including basement and excluding garage) elevated to three feet above the Base Flood Elevation.

#### SECTION 8.4

All new construction and substantial improvements of nonresidential structures on which work is commenced on or after May 25, 1977, shall have the lowest floor (including basement) elevated to three feet above the Base Flood Elevation, provided that, however, such elevation shall not be required if the new structure or substantial improvement of the structure, together with attendant utility and sanitary facilities, is designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. These fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (A) A minimum of two openings having a total net area of not less than one square foot of enclosed area subject to flooding shall be provided;
- (B) The bottom of all openings shall be no lower than one foot above grade;
- (C) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

All elevations or flood proofing shall be certified by a registered professional engineer, architect or land surveyor (as is applicable), so that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Chapter 15.

## Chapter 9

### RESTRICTIONS APPLICABLE TO THE COUNTY FLOODPLAIN MANAGEMENT AREAS DESIGNATED ON THE COUNTY FLOODPLAIN MANAGEMENT MAP

#### SECTION 9.1

The provisions of this chapter shall be applicable to all of the land within the community, which is shown in the County Floodplain Management Areas as shown on the County Floodplain Management Map.

#### SECTION 9.2

All new construction and substantial improvements or residential structures on which work is commenced on or after the date this ordinance is approved, shall have the lowest floor (including basement and excluding garage) elevated to one foot above the County Floodplain Management Elevation.

#### SECTION 9.3

All new construction and substantial improvements of nonresidential structures on which work is commenced on or after the date this ordinance is approved, shall have the lowest floor (including basement) elevated to one foot above the County Floodplain Management Elevation, provided that, however, such elevation shall not be required if the new structure or substantial improvement of the structure, together with attendant utility and sanitary facilities, is designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. These fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (A) A minimum of two openings having a total net area of not less than one square foot of enclosed area subject to flooding shall be provided;
- (B) The bottom of all openings shall be no lower than one foot above grade;
- (C) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

All elevations or flood proofing shall be certified by a registered professional engineer, architect or land surveyor (as is applicable), so that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Chapter 15.

## Chapter 10

### RESTRICTIONS APPLICABLE TO THE DESIGNATED REGULATORY FLOODWAY

#### SECTION 10.1

The provisions of this chapter shall be applicable to all of the land within the community, which is shown on the maps provided by the Federal Emergency Management Agency as being located within the designated regulatory floodway.

#### SECTION 10.2

The restrictions imposed by the chapter are in addition to those restrictions which may be imposed by the operation of any other chapter. This chapter shall become effective upon (a) the recommendation by the Ward County Engineer of the perimeters or boundaries of the designated regulatory floodway, (b) the confirmation of such boundaries by ordinance by the Board of Ward County Commissioners, and (c) the entry of such perimeters on the Ward County Zoning Map. Before confirming such boundaries the Board of Ward County Commissioners shall conduct a public hearing on the question of the appropriate location of the perimeters. At such public hearing all persons aggrieved by the proposed location of the perimeters as recommended by the Ward County Engineer may present technical engineering data and other information in support of a change of the location of all or any portion of the perimeter of the designated regulatory floodway. Notice of such public hearing shall be published once a week for three weeks in a newspaper of general circulation within Ward County with the last publication to be no less than two days prior to the date of the public hearing. Such notice shall include a brief description of the date, time, place, and purpose of the public hearing and a brief recital of the restrictions which shall be imposed upon the property lying within the floodway as a result of this chapter, and shall also include a map showing the proposed perimeter of the floodway in sufficient detail to permit property owners to determine the location of their property to the designated regulatory floodway.

#### SECTION 10.3

The Board of Ward County Commissioners shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point.

#### SECTION 10.4

Any encroachments, including fill, new construction, substantial improvements or other development which would result in any increase in flood levels are prohibited. However, a development or improvement which consists of the repair or reconstruction of a damaged

structure and which does not alter the external dimensions of the structure as they existed prior to the occurrence of the damage shall be excluded from the operation of this section. For residential and agricultural structures and churches only, additions and garages attached to such structures and newly constructed free standing agricultural structures are permitted provided (1) a registered, professional engineer determines that such construction will not result in any measurable increase in flood levels during the occurrence of the base flood, and (2) such residential, agricultural or church construction does not constitute more than 50% of the fair market value of the existing structure before such construction was started.

## Chapter 11

### DUTIES OF THE WARD COUNTY PLANNING COMMISSION

#### **SECTION 11.1**

The Ward County Planning Commission shall apply the provisions of this chapter to subdivision proposals made on or after May 25, 1977, if it shall determine that the premises affected by the subdivision proposal are within the Special Flood Hazard Area as shown on the FIRM or within the County Floodplain Management Area as shown on the County Floodplain Management Map. The provisions of this chapter are in addition to all other provisions of law relating to subdivision proposals.

#### **SECTION 11.2**

Subdivision proposals subject to the provisions of this chapter shall be reviewed to determine that (1) the proposal is consistent with the need to minimize flood damage, (2) proposed or projected easements for public utilities and facilities, such as sewer, gas, electrical, and water systems, are so located as to minimize or eliminate flood damage, and (3) adequate drainage is provided to reduce exposure to flood hazards. To facilitate such review the Planning Commission may prescribe the type of information it requires and the form in which the information is to be provided as part of the subdivision proposal.

#### **SECTION 11.3**

Subdivision proposals within the community subject to this chapter, shall include Base Flood Elevation and County Floodplain Management Elevation data as to the premises involved. The Planning Commission may prescribe the type of information it requires in the form in which the information is provided as part of the subdivision proposal.

## Chapter 12

### DUTIES OF THE WARD COUNTY PLANNING/ ZONING ADMINISTRATOR

#### SECTION 12.1

The Ward County Planning/ Zoning Administrator is hereby appointed as the official with the primary responsibility and authority to implement such commitments, file such reports and take such actions as may be required by the Federal Emergency Management Agency pursuant to authority of Sections 60.3 and 60.6 of Title 44 of the Code of Federal Regulations (1976).

#### SECTION 12.2

Ward County Planning/ Zoning Administrator is designated as the official with the responsibility and authority to submit an annual report to the Federal Emergency Management Agency concerning the participation of Ward County in the national flood insurance program authorized by 42 USC Sections 4001-4128, which report shall describe the development and implementation of flood-prone area management regulations. The Administrator shall also perform on behalf of Ward County all other actions required of the County pursuant to Sections 60.3 and 60.6 of Title 44 of the Code of Federal Regulations referred to in the preceding paragraph including, generally speaking, filing biennial report FEMA Form 81-29, Nov. 84.

#### SECTION 12.3

The responsibility of the reports and recordings of data lies with the Ward County Planning/ Zoning Administrator. The approval of the Board of Ward County Commissioners is required before any reports are to be sent to their respective destinations.

#### SECTION 12.4

The provisions of this chapter shall be considered as supplementary to and not as superseding other provisions in state law concerning the form of such application for a building permit, the showing or demonstration which must be made before a permit may be granted, and the method or procedure by which a permit is granted or denied.

#### SECTION 12.5

Before a building permit is granted, the Ward County Planning/ Zoning Administrator shall determine that all necessary permits relating to the proposed development have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33, USC 1334. Such determination may be made by (a) requiring that copies of the state or federal permits be included as part of the application for the building permit, or (b) by the applicant

displaying the original or the state or federal permit to the Planning/ Zoning Administrator with the Planning/ Zoning Administrator certifying the existence of the same on the application.

#### SECTION 12.6

The Planning/ Zoning Administrator shall review all permit applications to determine whether the proposed development or building sites are reasonably free from flooding and complies with the requirements of this ordinance, and other applicable state law.

**SECTION 12.7**

When the Planning/ Zoning Administrator has issued a building permit for a building which is to be flood-proof pursuant to the regulations of this zoning ordinance, the Planning/ Zoning Administrator shall require that a written flood-proofing certificate from a registered professional engineer or architect to the effect that the flood-proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood be received. The flood-proofing certificate shall indicate thereon the specific elevation (in relation to Mean Sea level) to which the structure is flood-proofed. The original of the flood-proofing certificate shall be retained by the Planning/ Zoning Administrator as a permanent record open for public inspection. Provisions of this paragraph shall apply only to developments, structures or substantial improvements wholly or partially within the SFHA as shown on the FIRM or within the County Floodplain Management Area (CFMA) as shown on the County Floodplain Management Map (CFMM) on which work is commenced on or after May 25, 1977.

**SECTION 12.8**

The Ward County Planning/ Zoning Administrator shall, as to all new or substantially improved structures within the SFHA as shown on the FIRM or within the CFMA as shown on the CFMM on which work is commenced on or after May 25, 1977, obtain and maintain as a permanent record open for public inspection the following information:

- (A) The elevation (in relation to Mean Sea Level) of the lowest floor (including basement and excluding garage),
- (B) Whether or not such structure contains a basement and/or a garage, and
- (C) If applicable, the elevation (in relation to Mean Sea Level) to which the structure has been flood-proofed.

## Chapter 13

### DUTIES OF THE WARD COUNTY ENGINEER

#### SECTION 13.1

Ward County Engineer shall notify in writing adjacent communities and the North Dakota State Water Commission prior to the alteration or relocation of a water course within the community and the Engineer shall submit copies of these notifications to the Federal Emergency Management Agency. The Ward County Engineer shall provide documentation that the flood carrying capacity within the altered or relocated portion of the water course is maintained at no less than the capacity prior to such alteration or relocation. To achieve the purposes set forth herein, the Ward County Engineer with approval of the Board of Ward County Commissioners is permitted on behalf of Ward County to bring appropriate court proceedings to enjoin acts by private persons which, to a reasonable degree of certainty, would diminish the capacity of a water course within the community. The Ward County Engineer is further authorized to issue cease and desist orders to any persons acting under the authority of Ward County if it is determined such person is engaging in activities which, to a reasonable degree of certainty, would have the tendency to diminish the capacity of a water course within the community.

#### SECTION 13.2

The Ward County Emergency Manager shall prepare an evacuation plan for all manufactured home parks located within the SFHA on the FIRM or within the CFMA as shown on the CFMM, which shall indicate alternate vehicular access and escape routes, and update as often as changed circumstances make necessary. The Ward County Emergency Manager shall file the plan and amendments thereto with the office of the Ward County Auditor upon completion.

## Chapter 14

### ADMINISTRATION

#### SECTION 14.1

The Board of Ward County Commissioners shall provide for whatever assistance and approval may be necessary in the office of the County Planning/ Zoning Administrator to carry out the provisions of this ordinance.

#### SECTION 14.2 ZONING CHANGES

Land use zone changes in the floodplain or the County Floodplain Management Area shall be made by the procedure specified in any Zoning Ordinance applicable to the land area

concerned. Changes to the FIRM shall only be made by FEMA and shall be considered and handled as amendments to this ordinance.

#### SECTION 14.3 BOARD OF WARD COUNTY COMMISSIONERS-POWERS

Section 14.3.1 The Board of Ward County Commissioners shall have all powers vested in it by the North Dakota Century Code to adopt rules for the conduct of business and may exercise all of the powers conferred on the Commissioners by the North Dakota Century Code.

Section 14.3.2 The Board of Ward County Commissioners shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.

Section 14.3.3 It shall hear and decide variances and exceptions to the terms of this ordinance upon which the Board of Ward County Commissioners are required to pass under this ordinance.

#### SECTION 14.4 APPEALS TO THE BOARD OF WARD COUNTY COMMISSIONERS

Appeals to the Board of Ward County Commissioners may be taken by a person aggrieved or by an officer, department, board or bureau of the political subdivision affected by any decision of the County Commissioners.

##### Section 14.4.1 Hearing Appeals

Separate Hearings. Any person aggrieved by any provision of a ordinance adopted hereunder, or any amendment thereto, may within sixty (60) days after the taking effect of such provision petition for a separate hearing thereon before the County Commissioners. The petition shall be in writing and shall specify in detail the ground of the objections. The petition shall be filed with the Ward County Auditor. A hearing thereon shall be held by the County Commissioners no sooner than ten (10) days, nor longer than forty (40) days, after the filing of the petition with the County Auditor who shall notify the petitioner of the time and place of the hearing. At this hearing the County Commissioners shall consider the matter complained of and shall notify the petitioner, by registered mail, what action, if any, it proposes to take thereon. The provisions of this action shall not operate to curtail or exclude the exercise of any rights or powers of the County Commissioners or any citizen.

Appeals to the District Court. Any person or persons jointly or severally aggrieved by a decision of the County Commissioners under this ordinance may appeal to the District Court in the manner provided in Chapter (A) Such variance shall only be issued upon:

- (i) A showing of good sufficient cause,
  - (ii) A determination that the failure to grant the variance would result in exceptional hardship to the applicant,
  - (iii) A determination that the granting of the variance will not result in increase in the Base Flood Elevation or County Floodplain Management Elevation, additional threats to public safety, extraordinary public expense, or create nuisances, or cause fraud on or victimization of the public, or conflict with existing ordinances other than this zoning ordinance, and
  - (iv) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (B) No variance shall be granted within the floodway if any increase in flood levels in the community during the Base Flood or the County Floodplain Management Flow would result from the grant of such variance.
- (C) Variances may be issued by the Board of Ward County Commissioners for new construction and substantial improvement to be erected on a lot contiguous to and surrounded by lots and existing structures constructed below the Base Flood Elevation or the County Floodplain Management Elevation.
- (D) If a variance is granted as requested, the Commissioners shall notify the applicant in writing over the signature of one of the members of the Commission that:
- (i) The application is granted or modified and as modified is granted,
  - (ii) The issuance of a variance to construct the structure below the Base Flood Elevation will result in increased premium rates for flood insurance, and
  - (iii) Such construction below the Base Flood Elevation or the County Floodplain Management Elevation increases the risk to life and property.
- (E) The Ward County Planning/ Zoning Administrator shall maintain as a public record open for inspection all variance applications. If an application was granted or modified and as modified granted, the Planning/ Zoning Administrator shall prepare a written memorandum setting forth the reasons or justifications for the issuance of the variance which shall be annexed to the application. In addition, there shall be attached to the application a photocopy of the notice sent to the applicant pursuant to Section 14.4.1(D)(iii) above and an affidavit of service by mail establishing that the notice was mailed to the applicant at the address provided by the applicant as part of the application.
- (F) The Ward County Planning/ Zoning Administrator shall report such variances issued along with the reason therefore to FEMA in a biennial report.

#### Section 14.4.2 Mapping Disputes

The following procedure shall be used by the County Commissioners in deciding contested cases in which the location of a floodplain zoning district boundary is disputed. The County Commissioners may, at its discretion, refer any dispute to the Ward County Planning Commission for study and to FEMA. In all cases the person contesting the location of the district boundary shall be given a reasonable opportunity to present their case to the Board of Ward County Commissioners and to submit their own technical evidence if they so desire. The County Commission shall not allow deviations from the boundary lines and zones as established by the maps provided by the Federal Emergency Management Agency unless the evidence presented clearly and conclusively establishes that the maps are incorrect. The maps provided by the Corps of Engineers, and other federal, state and local studies, may be used for technical assistance. Conclusive evidence will be forwarded to FEMA for review and FIRM amendment approval.

## Chapter 15

### CERTIFICATE OF COMPLIANCE

No vacant land shall be occupied or used and no building hereafter erected, altered, or moved on the floodplain of any river or stream or shall be occupied until a certificate of compliance shall have been issued by the office of the Ward County Planning/ Zoning Administrator. The Planning/ Zoning Administrator shall require the applicant to submit a certification by a registered professional engineer, land surveyor, or architect that the finished fill and building flood elevations, flood-proofing measures are in compliance. The Planning/ Zoning Administrator shall within ten (10) days after receipt of such certification from the applicant issue a certificate of compliance only if the building or premises and the proposed use thereof conform to all the requirements of this ordinance.

## Chapter 16

### AMENDMENTS

The Board of Ward County Commissioners may, from time to time, amend this regulation by supplementing, change, modifying, or repealing any of the regulations, restrictions, or other provisions of this ordinance. A proposed amendment may be initiated by proceedings as established in Chapter 11-33 of the North Dakota Century Code.

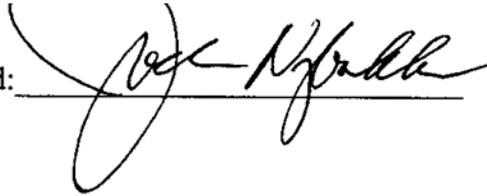
## Chapter 17

### VARIANCES

If the variance requested relates to a restriction or requirement imposed by this zoning ordinance, the Board of Ward County Commissioners shall apply the following additional criteria and procedures to such request:

- (A) Such variance shall only be issued upon
  - (i) A showing of good sufficient cause,
  - (ii) A determination that the failure to grant the variance would result in exceptional hardship to the applicant,
  - (iii) a determination that the granting of the variance will not result in increased Base Flood Elevation or the County Floodplain Management Elevation, additional threats to public safety, extraordinary public expense, or create nuisances, or cause fraud on or victimization of the public, or conflict with existing ordinances other than this zoning ordinance, and
  - (iv) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (B) No variance shall be granted within the floodway if any increase in flood levels in the community during the Base Flood Elevation or the County Floodplain Management Elevation would result from the grant of such variance.
- (C) Variances may be issued by the Board of Ward County Commissioners for new construction and substantial improvement to be erected on a lot contiguous to and surrounded by lots and existing structures constructed below the Base Flood Elevation or the County Floodplain Management Elevation.
- (D) If a variance is granted as requested, the Commissioners shall notify the applicant in writing over the signature of one of the members of the Commission that:
  - (i) The application is granted or modified and as modified is granted,
  - (ii) The issuance of a variance to construct the structure below the Base Flood Elevation will result in increased premium rates for flood insurance, and
  - (iii) Such construction below the Base Flood Elevation or County Floodplain Management Elevation increases the risk to life and property.
- (E) The Ward County Planning/ Zoning Administrator shall maintain as a public record open for inspection all variance applications. If an application was granted or modified and as modified granted, the Planning/ Zoning Administrator shall prepare a written memorandum setting forth the reasons or justifications for the issuance of the variance which shall be annexed to the application. In addition, there shall be attached to the application a photocopy of the notice sent to the applicant pursuant to Chapter 17(D)(iii) above and an affidavit of service by mail establishing that the notice was mailed to the applicant at the address provided by the applicant as part of the application.
- (F) The Ward County Planning/ Zoning Administrator shall report such variances issued along with the reason therefore to FEMA in a biennial report.

First Reading: 18 December, 2012  
Publication Date: 24 December, 2012  
Second Reading: 15 January, 2013  
Adopted this 15th day of January, 2013

Signed: 

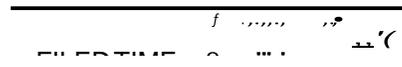
Attest: 



## Fee Schedule Floodplain Zoning

Fill Permit ..... \$50.00

Building Permit..... \$4.50 per \$1,000 of Structure Value

  
J. N 17 201i  
COUNTY RECORDER  
WARD COUNTY N. OAK.

*BB*