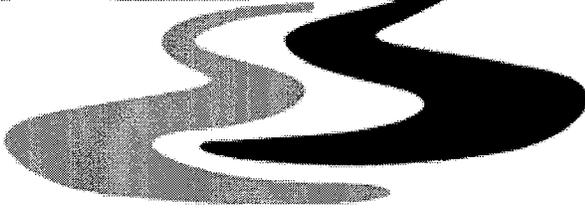


CITY OF
Fargo



**Land
Development
Code**

**Chapter 20 - City Planning and Zoning
Fargo Municipal Code**

*Effective February 17, 1998
Re-published August 2009*

HISTORY OF REVISIONS

Ordinance Number	LDC Amendment	Sections Affected
2985 (1/25/99)	First Major LDC revision	
2997 (4/5/99)	Area Plan Procedures	20-0905(A), 20-0906(A), 20-0907(D)
3007 (4/19/99)	Horses and AG-P2	20-1203
3008 (4/19/99)	Conditional Use Permits	20-0402, 20-0403
3062 (9/07/99)	SR-0 Zoning District	20-0109, 20-0201, 20-0203, 20-0401, 20-0402, 20-0403, 20-0501, 20-0506, 20-0701, 20-1203
4024 (4/3/00)	Development Procedures	20-0905, 20-0906(A) & (F), 20-0907(D)
4039 (5/1/00)	Housekeeping revisions	20-0208, 20-0209, 20-0401, 20-0402, 20-0403, 20-0501, 20-0502, 20-0503, 20-0505, 20-0701, 20-0702, 20-0704, 20-0705, 20-0907, 20-0913, 20-1003, 20-1004, 20-1202
4089 (11/13/00)	Telecommunications	20-0401, 20-0402, 20-1202
4121 (3/5/01)	Day Care	20-0401
4163 (5/29/01)	DMU Standards	20-0212
4164 (5/29/01)	Pet Boarding, Accessory Uses and Temporary Uses	20-0402, 20-0403, 20-0404
4165 (5/29/01)	Residential Dimensional Standards	20-0501
4166 (5/29/01)	Individual Sewage Disposal Systems	20-0608
4167 (5/29/01)	Parking, Access, Residential Protection, Landscaping	20-0701, 20-0702, 20-0704, 20-0705, 20-0706
4168 (5/29/01)	Limits on Successive Applications	20-0906, 20-0909, 20-0914
4169 (5/29/01)	Nonconforming lots	20-1003
4170 (5/29/01)	Definition - All weather surface	20-1202
4177 (7/23/01)	Traffic Impact Studies	20-0701(L)
4178 (7/23/01)	Sidewalk Marketing Area Repealed (Ord. No. 4380, 2004)	20-0707
4179 (7/23/01)	Use Table and Traffic Impact Study	20-0401

Ordinance Number	LDC Amendment	Sections Affected
4180 (7/23/01)	Accessory Uses	20-0403
4222 (3/4/02)	Off premise advertising signs	20-0401, 20-0402
4223 (3/4/02)	Housekeeping	20-0402
4224 (3/4/02)	Building Coverage	20-0403
4225 (3/4/02)	Height Limits in LC	20-0502
4226 (3/4/02)	Setbacks and Renewable energy	20-0504
4227 (3/4/02)	Landscaping - open space & parking	20-0705
4228 (3/4/02)	Use Category - industrial service	20-1203
4239 (5/13/02)	Accessory uses (Ham Radio)	20-0403
4240 (5/13/02)	Use Standards (Ham Radio)	20-0402
4241 (5/13/02)	Use Categories (Ham Radio)	20-1203
4299 (2/3/03)	Land Use (Accessory Uses)	20-0403
4322 (5/12/03)	Use Categories (Conditional Overlay)	20-0303
4323 (5/12/03)	Use Standards (Daycare)	20-0402
4324 (5/12/03)	Use Categories (Religious Institutions)	20-1203
4331 (6/9/03)	Geometric Standards	20-0611
4337 (7/21/03)	Land Use (Table)	20-0401, 20-0403
4338 (7/21/03)	Land Use (Residential District Standards)	20-0501
4367 (1/12/04)	Land Use (Streets)	20-0611
4372 (2/23/04)	Land Use (Schools)	20-0402
4380 (3/15/04)	Repeal Sidewalk Marketing Area	20-0707
4385 (3/29/04)	Use Categories (Dimensional Standards)	20-0304
4386 (3/29/04)	General Development Standards	20-0704
4439 (12/06/04)	Corner Visibility	20-0706
4445 (12/20/04)	Off-Premise Advertising Signs	20-0402
4486 (08/01/05)	Historic Overlay	20-0305, 20-0901, 20-0912

Ordinance Number	LDC Amendment	Sections Affected
4531 (06/19/06)	Attached Commercial Structures and Buildings	20-0507
4558 (10/09/06)	Nonconformities	20-1001
4560 (10/23/06)	Bed and Breakfasts	20-0401, 20-0402, 20-1202
4592 (05/07/07)	Minor Subdivisions	20-0802, 20-0901, 29-0907, 20-1202
4604 (06/18/07)	Use Regulations	20-0402
4608 (07/02/07)	Bonus Density	20-0505
4613 (07/16/07)	Non-Farm Commercial Uses	20-0401, 20-0402, 20-1203
4658 (04/21/08)	Non-Conforming Uses and Non-Conforming Structures	20-1002, 20-1004
4690 (12/15/08)	Eligible Modifications for Planned Unit Development Proposals	20-0302
4695 (02/09/09)	University Mixed-Use District Relating to Base Zoning District, Use Regulations, Dimensional Standards Subdivision Design and Improvement and General Development Standards	20-0201, 20-0216, 20-0401, 20-0403, 20-0501, 20-0504, 20-0611, 20-0701
4697 (02/09/09)	Amend Typographical Errors	20
4700 (02/23/09)	Sidewalks	20-0609
4704 (05/04/09)	Home Occupations	20-0403
4762 (10/04/10)	Agricultural Districts	20-0202
4771 (12/13/10)	Use Regulations	20-0401 and 20-0402
4779 (6/27/11)	Base Zoning Districts	20-0216.D.3.b
4807 (01/30/12)	Use Standards	20-0402.E
4818 (05/14/12)	River Setback Provisions	20-0501, 0502, 0503, 0508 and 0610
4822 (7/23/12)	Historic Overlay Districts	20-0305.J.1
4840 (11/26/12)	Historic Overlay Districts	20-0305.J.1
4881 (09-02-13)	UMU Districts and General Development Review Procedures	20-0216 and 20-0901
4895 (11-25-13)	Off-Premise Advertising Signs	20-0401 and 20-0402.B

Ordinance Number	LDC Amendment	Sections Affected
4919 (7-28-2014)	Historic Overlay Districts	20-0305.J.1
4948 (11-24-14)	Arts and Culture Commission	20-0805
4772 (2010), 4784 (2011), 4798 (2011), 4805 (2012), 4810 (2012), 4819 (2012), 4979 (4-27-2015)	Sign Code	20-1307
4981 (4-27-2015)	Arts and Culture Commission	20-0805
4988 (6-8-2015)	Telecommunication Support Structures	20-0402.N

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Article 20-01

General Provisions

§20-0101 Title

This chapter shall officially be known as the “Land Development Code of the City of Fargo, North Dakota,” and cited as Chapter 20 of the Fargo Municipal Code. It is hereinafter referred to as the “Land Development Code” or “LDC.”

§20-0102 Authority

This Land Development Code is adopted pursuant to the authority granted by Chapters 40-47, 40-48 and 40-50 of the North Dakota Century Code.

§20-0103 Applicability and Jurisdiction

The regulations of this Land Development Code apply to all land within the corporate limits of the City of Fargo and to land within the Extraterritorial Jurisdiction of the City.

§20-0104 Purpose and Intent

This Land Development Code is intended to implement Fargo’s Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo.

§20-0105 Minimum Requirements

The provisions of this Land Development Code are to be interpreted as the minimum requirements necessary to advance the Land Development Code’s stated purposes. No building or structure may be erected, converted, enlarged, reconstructed or altered and no land use may occur except in accordance with all of the regulations established by this Land Development Code for the zoning district in which the building, structure or land use is located.

§20-0106 Conflicting Provisions

A. Conflict with State or Federal Regulations

If the provisions of this Land Development Code are inconsistent with those of the state or federal government, the more restrictive provision will control, to the extent permitted by law.

B. Conflict with Other City Regulations

If the provisions of this Land Development Code are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the City, the more restrictive provision will control.

C. Conflict with Private Restrictions

It is not the intent of this Land Development Code to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this Land Development Code impose a greater restriction than imposed by a private agreement, the provisions of this Land Development Code will control. If the provisions of a valid, enforceable private agreement impose a greater restriction than this Land Development Code, the provisions of the private agreement will control. The City does not enforce private agreements or maintain a record of such agreements.

§20-0107 Zoning Map

The boundaries of the zoning districts established by this Land Development Code are shown on a map or series of maps designated the "Zoning District Map," which is adopted and made a part of this Land Development Code as fully as if it were set out in this Chapter in detail. Original copies of the zoning district map are maintained in the office of the Zoning Administrator. In case of any dispute regarding the zoning classification of property subject to this Land Development Code, the original maps maintained by the Zoning Administrator will control. The Zoning Administrator shall be responsible for producing all updates of the zoning map.

A. Omitted Land

The zoning classification of any land that does not appear to be classified within any of the districts shown on the zoning map shall be AG.

B. District Boundaries

The following rules will govern interpretations regarding the location of zoning district boundaries shown on the zoning map.

1. Streets, Waterways and Railroads

Zoning district boundaries follow the centerlines of streets, alleys, waterways, railroad rights-of-way and other similar features, unless otherwise clearly indicated. When a boundary line shown on the zoning map appears to coincide with a street, alley, waterway or railroad right-of-way, the centerline of that street, alley, waterway or railroad right-of-way will be construed to be the zoning district boundary line.

2. Street Vacations

Whenever any street, alley or public way is vacated by official action of the Board of City Commissioners, the zoning districts adjoining each side of such street, alley, or public way will be automatically extended to the center of such vacation and all area included in the vacation will be subject to all regulations of the extended district.

3. Lot Lines

A zoning district boundary shown as approximately following the boundary line of a lot or separate parcel of land will be construed to be the boundary of the lot or parcel of land. If a lot line cannot be used to determine the boundary, its location will be determined by use of the scale shown on the zoning map.

4. Uncertainties

Where actual on-the-ground conditions contradict those shown on the zoning map, or in cases of any other uncertainties regarding, the location of zoning district boundaries will be determined by the Zoning Administrator.

§20-0108 Zoning of Extra-Territorial Areas

When the City Commission elects to exercise its zoning authority within its ExtraTerritorial Zoning Jurisdiction, it shall have the following three options:

To classify such land in the AG zoning district;

To classify such land in a zoning district that reflects the existing use of the property; or

To classify such land in any other zoning district included in thisLand Development Code, in accordance with the procedures of Sec. 20-0906.

§20-0109 Transitional Provisions

A. Violations Continue

Any violation of the previous zoning or subdivision regulations of the City will continue to be a violation under this Land Development Code and be subject to penalties and enforcement under Article 20-011, unless the use, development, construction or other activity complies with the provisions of this Land Development Code.

B. Nonconformities Under Previous Code

Any nonconformity under the previous zoning regulations of the City will also be a legal nonconformity under this Land Development Code, as long as the situation that resulted in the nonconforming status under the previous regulation continues to exist. If, however, a nonconforming situation under a previous regulation becomes conforming because of the adoption of this Land Development Code, or any subsequent amendment to it, then the situation will no longer be a nonconformity.

C. Completion of Development

1. Permit Issued Before February 17, 1998

Any building or development for which a permit was issued before February 17, 1998, may be completed in conformance with the issued permit and other applicable permits and conditions, even if such building or development does not fully comply with provisions of this Land Development Code. If construction is not commenced or completed according to the applicable permit terms, the Board of City Commissioners may, for good cause shown, grant an extension of up to 6 months for such construction. If the building is not completed within the time allowed under the original permit or any extension granted, then the building may be constructed, completed or occupied only in compliance with this Land Development Code.

2. Subdivision Plats Approved Before February 17, 1998

Any subdivision for which a preliminary or final plat was approved before February 17, 1998, may be completed according to the approved plat and other applicable permits and conditions, even if the subdivision does not fully comply with the provisions of this Land Development Code. If the subdivision is not completed within the time requirements established by prior code or within any schedule included in the approval of the plat, the Board of City Commissioners may grant one extension of time for the completion of the subdivision. If the subdivision is not completed within the time required under the original approval or any extension granted, then the subdivision may be completed only in compliance with this Land Development Code.

D. Zoning District Conversions

The zoning district names in effect before February 17, 1998, are converted as follows:

District Under This Land Development Code	Previous Zoning District
Base Zoning Districts	
AG, Agricultural	A, Agricultural
SR-0, Single-Dwelling	No Equivalent
SR-1, Single-Dwelling	No Equivalent
SR-2, Single-Dwelling	R-1A, One-Family Dwelling
SR-3, Single-Dwelling	R-1, One- and Two-Family Dwelling
SR-4, Single-Dwelling	R-2A, Rowhouse
MR-1, Multi-Dwelling	No Existing Equivalent
MR-2, Multi-Dwelling	R-2, Limited Multiple-Dwelling
MR-3, Multi-Dwelling	R-3, Multiple-Dwelling
No Equivalent District	R-5, Manufactured Home Dwelling
MHP, Mobile Home Park	R-4, Mobile Home Park
NO, Neighborhood Office	No Existing Equivalent
NC, Neighborhood Commercial	No Existing Equivalent
GO, General Office	No Existing Equivalent
LC, Limited Commercial	C-1, Local Commercial C-1A, Limited Local Commercial
DMU, Downtown Mixed-Use	No Existing Equivalent
GC, General Commercial	C-2, General Commercial C-2A, Limited General Commercial C-2B, General Wholesale
LI, Limited Industrial	M-1, Light Industrial M-1A, Industrial Park
GI, General Industrial	M-2, Heavy Industrial
Overlay and Special Purpose Zoning Districts	
PUD, Planned Unit Development	No Equivalent District (standards only)
C-O, Conditional Overlay	No Existing Equivalent
P/I, Public and Institutional	No Existing Equivalent
HIA-O, Hector International Airport Overlay	No Equivalent District (standards only)

Source: 3062 (1999).

§20-0110 Severability

If any Court of competent jurisdiction declares any part of this Land Development Code to be invalid, that ruling will not affect any other provisions of this Land Development Code not expressly included in the ruling.

Article 20-02

Base Zoning Districts

§20-0201 General

A. Districts Established

The following base zoning districts are hereby established:

1. AG, Agricultural
2. SR-0, Single-Dwelling Residential
3. SR-1, Single Dwelling Residential
4. SR-2, Single-Dwelling Residential
5. SR-3, Single-Dwelling Residential
6. SR-4, Single-Dwelling Residential
7. SR-5, Single-Dwelling Residential
8. MR-1, Multi-Dwelling Residential
9. MR-2, Multi-Dwelling Residential
10. MR-3, Multi-Dwelling Residential
11. UMU, University Mixed-Use
12. MHP, Mobile Home Park
13. NO, Neighborhood Office
14. NC, Neighborhood Commercial
15. GO, General Office
16. LC, Limited Commercial
17. DMU, Downtown Mixed-Use
18. GC, General Commercial
19. LI, Limited Industrial
20. GI, General Industrial

B. Zoning District Hierarchy

References in this Land Development Code to less restrictive or more restrictive zoning districts refer to the base zoning districts established by Sec. 20-0201-A and represent a progression from the AG district, the most restrictive base zoning district, to the GI district, the least restrictive base zoning district. Overlay and Special Purpose zoning districts are not included in the zoning district hierarchy.

Source: 3062 (1999), 4695 (2009).

§20-0202 AG, Agricultural District

A. Description

The AG, Agricultural district is intended to accommodate agricultural land uses and provide an interim zoning classification for lands pending a determination of an appropriate permanent zoning designation.

B. Allowed Uses

Uses are allowed in the AG district in accordance with the Use Table of Sec. 20-0401.

C. Additional Uses

Wind generation structures are allowed as a use by right in AG zoning district subject to the following standards:

1. Lot size

The minimum lot size is 10 acres.

2. Height

Wind generation structures shall have a maximum height 90 feet as measured from ground level, at the base of the structure, to the highest vertical extension. Taller structures are allowed with an approved conditional use permit in accordance with Section 20-0909.

3. Setback

Wind generation structures shall have a minimum setback from all property lines of two times the height of the structure.

4. Density

One wind generation structure is allowed for every 10 acres of land.

D. Dimensional Standards

Development within the AG district is subject to the dimensional standards of Article 20-05.

Source: 4762 (2010).

§20-0203 SR, Single-Dwelling Districts

A. Description

SR, Single-Dwelling zoning districts (SR-0, SR-1, SR-2, SR-3, SR-4, and SR-5) are intended to preserve land for housing and to provide housing opportunities for individual households. The regulations are intended to create, maintain and promote single-dwelling neighborhoods. The Single-Dwelling districts allow some other types of uses but not to the extent of sacrificing the overall image and character of Single-Dwelling neighborhoods. The regulations accommodate a variety of single-dwelling housing styles and residential densities. The dimensional standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed.

SR-0 zoning districts are intended to create, maintain and promote larger estate-style neighborhoods which may have sufficient lot sizes to allow, as an accessory use the keeping of horses (or, by conditional use, other animals). Where lot sizes are such that the keeping of horses or other animals may be permitted as an accessory use, approval of such zoning map amendment shall only be considered when the proposed district is a minimum of twenty (20) acres and when there are permanent arrangements in place where such horses may be lawfully ridden or used such as nearby public lands (parks or publicly dedicated lands) or common areas set aside within the district.

B. Allowed Uses

Uses are allowed in Single-Dwelling districts in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within Single Dwelling zoning districts is subject to the dimensional standards of Article 20-05.

Source: 3062 (1999).

§20-0204 MR-1, Multi-Dwelling District

A. Description

The MR-1, Multi-Dwelling district is primarily intended to accommodate household living in detached houses, attached houses, duplexes and small multi-dwelling structures. The district allows up to 16 dwelling units per acre of land. Development within the district will be characterized by one- and two-story buildings with relatively low building coverage. The district is generally appropriate for sites with access to collector and higher classification streets.

B. Allowed Uses

Uses are allowed in the MR-1 district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development in the MR-1 district is subject to the dimensional standards of Article 20-05 and the Residential Protection Standards of Sec. 20-0704.

§20-0205 MR-2, Multi-Dwelling District

A. Description

The MR-2, Multi-Dwelling district is primarily intended to accommodate household living in detached houses, attached houses, duplexes and multi-dwelling structures. The district allows up to 20 dwelling units per acre of land. Development within the district will be characterized by one- to three-story buildings with slightly higher building coverage than in the MR-1 district. The district is generally appropriate for sites with access to collector and higher classification streets.

B. Allowed Uses

Uses are allowed in the MR-2 district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the MR-2 district is subject to the dimensional standards of Article 20-05.

§20-0206 MR-3, Multi-Dwelling District

A. Description

The MR-3, Multi-Dwelling district is primarily intended to accommodate household living in detached houses, attached houses, duplexes and multi-dwelling structures. The district allows up to 24 dwelling units per acre of land. Development within the district will be characterized by one- to five-story buildings with higher building coverage than in the MR-2 district. The district is generally appropriate for sites with access to collector and higher classification streets, particularly when located near arterial streets.

B. Allowed Uses

Uses are allowed in the MR-3 district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the MR-3 district is subject to the dimensional standards of Article 20-05.

§20-0207 MHP, Mobile Home Park District

A. Description

The MHP, Mobile Home Park district is intended to accommodate mobile home park developments.

B. Allowed Uses

Uses are allowed in the MHP district in accordance with the Use Table of Sec. 20-0401.

C. Development Standards

1. Site Area

A mobile home park must have a minimum site area of 8 acres.

2. Number of Spaces

A mobile home park must have at least 50 mobile home spaces, with 25 spaces ready for occupancy before the first space may be occupied.

3. Minimum Space Size

Each mobile home space within the park must have a minimum area of 4,800 square feet, with a minimum width of 40 feet. A maximum of one mobile home dwelling may be placed on a mobile home space.

4. Building Coverage

No more than 35 percent of a mobile home space may be covered by structures.

5. Setbacks

Mobile homes must be set back at least 20 feet from all streets and accessways within the mobile home park and from all other mobile homes.

6. Streets

Each mobile home space must abut and have access to a paved street or other accessway, with a minimum width of 26 feet. Pavement must be constructed in accordance with the specifications of the City Engineer.

7. Drainage

All drainage structures must be designed and installed in accordance with the Subdivision Design and Improvement Standards of Article 20-06 and all other applicable drainage standards of the City.

8. Electrical Service

All mobile home parks or subdivisions must be provided with underground electrical service facilities. No overhead facilities are allowed.

9. Telephone Service

All mobile home parks or subdivisions must be provided with underground telephone service facilities. No overhead distribution systems are allowed.

10. Fuel Distribution

Fuel shall be distributed to mobile home units by an underground piping system. If not available, cooking gas cylinders are allowed up to the 100-pound class. No outside fuel storage tanks will be permitted except for such storage units as are required for the operation of the distribution system.

§20-0208 NO, Neighborhood Office District

A. Description

The NO, Neighborhood Office district is primarily intended to accommodate very low-intensity office uses on small sites in or near residential areas or between residential and commercial areas. The district regulations are intended to ensure that allowed uses do not adversely affect nearby neighborhoods. Development is intended to be of a scale and character similar to nearby residential areas in order to ensure compatibility.

B. Uses

Uses are allowed in the NO district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the NO district is subject to the dimensional standards of Article 20-05.

D. Additional Standards

1. District and Structure Size

The maximum size of an NO district is 43,560 square feet (one acre).

2. Structure Type

Offices in the NO district are allowed only in structures that were formerly used as residences or that have the general scale and appearance of residential structures.

3. Building Materials

Buildings in an NO district shall have a finished appearance and architectural treatment consistent with the style of the surrounding residential development and buildings. Furthermore, all buildings shall be compatible with the scale of nearby residential areas.

4. Signs

Signs in the NO shall be limited to a maximum one (1) square foot of total aggregate sign area per 100 square feet of building coverage. All signage other than wall signs shall be limited to four feet above ground level.

5. Dimensional Standards

The dimensional standards of the adjacent zoning district (See Article 20-05) shall apply to all areas of the NO zoned site located within 150 feet of the adjacent district. Areas of the NO zoned area located more than 150 feet from adjacent zoning districts shall be governed by the approved Site Plan as required under 20-0910.

Source: 4039 (2000).

§20-0209 NC, Neighborhood Commercial District

A. Description

The NC, Neighborhood Commercial district is primarily intended to accommodate small retail sales and service uses on small sites in or near residential neighborhoods. Uses are restricted in size to promote a local orientation and to limit adverse impacts on nearby residential areas. Development is intended to be compatible with the scale of nearby residential areas.

B. Uses

Uses are allowed in the NC district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the NC district is subject to the dimensional standards of Article 20-05.

D. Additional Standards

1. Outdoor Storage and Display

No outdoor storage or display of goods or merchandise is allowed within the NC district.

2. Location and Access

Development within the NC district must have frontage on at least two streets.

3. District and Structure Size

The maximum size of an NC district is 87,120 square feet (two acres).

4. Drive-Through Uses

Drive-up windows and drive-through uses shall be prohibited in the NC district.

5. Building Materials

Buildings in an NC district shall have a finished appearance and architectural treatment consistent with the style of the surrounding residential development and buildings. Furthermore, all buildings shall be compatible with the scale of nearby residential areas.

6. Signs

Signs in the NC shall be limited to a maximum one (1) square foot of total aggregate sign area per 100 square feet of building coverage. All signage other than wall signs shall be limited in height to four (4) feet above ground level.

7. Dimensional Standards

The dimensional standards of the adjacent zoning district (See Article 20-05) shall apply to all areas of the NC zoned site located within 150 feet of the adjacent district. Areas of the NC zoned district located more than 150 feet from the more restrictive adjacent zoning districts shall be governed by the approved Site Plan as required under 20-0910.

Source: 4039 (2000).

§20-0210 GO, General Office District

A. Description

The GO, General Office district is primarily intended to accommodate office development. The GO district regulations help to prevent the appearance of strip commercial development by allowing office uses but not other commercial uses.

B. Uses

Uses are allowed in the GO district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the GO district is subject to the dimensional standards of Article 20-05.

§20-0211 LC, Limited Commercial District

A. Description

The LC, Limited Commercial district is primarily intended to accommodate low-intensity office and retail sales and service uses.

B. Uses

Uses are allowed in the LC district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the LC district is subject to the dimensional standards of Article 20-05.

§20-0212 DMU, Downtown Mixed-Use District

A. Description

The DMU, Downtown Mixed-Use district is intended to preserve and enhance the City's downtown area. The district allows a broad range of uses in order to enhance downtown Fargo's role as a commercial, cultural, governmental and residential center. In recognition of existing public facility capacity and downtown planning goals, very intensive development is allowed, with high building coverage, large buildings, and buildings placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.

B. Uses

Uses are allowed in the DMU district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the DMU district is subject to the dimensional standards of Article 20-05.

D. Design Standards

1. General

a. Intent

The DMU Design Standards are intended to create and maintain a general visual quality and appearance that will be appealing to people who work in the DMU district and to those who come to the downtown area for goods, services, entertainment or leisure. The regulations are also intended to stimulate and protect investment in the DMU district through the establishment of high standards with respect to materials, details, and appearance.

b. Applicability

The DMU Design Standards of this subsection apply throughout the DMU district, unless otherwise expressly stated.

c. Review Procedure

Review for compliance with the Design Standards of this subsection shall be carried out in accordance with the Site Plan Review Procedures of Sec. 20-0910.

2. Demolition

The standards of this subsection apply in the event of building demolition.

a. Exposed Walls

Any building walls left exposed as a result of demolition shall be given a finished architectural appearance that is similar to the front facade of the subject building. At the applicant's option, a false infill facade may be used as an alternative to refinishing the exposed wall. The wall treatment shall be in place within 60 days of the date of demolition, unless a longer time period is approved at the time of approval of the demolition plans. Prior to approval of the demolition plans the applicant shall provide a letter of credit, a paid-in-full receipt from a contractor, a performance bond or escrow deposit adequate to ensure that the proposed wall treatment will be completed. The amount of the financial guarantee must be equal to at least 100 percent of the estimated total cost (labor and materials). The City shall be authorized to use such financial

guarantee to complete the work if the required wall treatment is not in place by the date stated on the approved performance guarantee form.

b. Vacant Lots

Any lots left vacant after demolition shall be paved or landscaped to ensure a dust-free surface. The paving or landscaping shall be in place within 30 days of the date of demolition, unless a longer time period is approved at the time of approval of the demolition plans. Once installed, the landscaping or paving shall be continuously maintained in serviceable condition. Prior to approval of the demolition plans the applicant shall provide a letter of credit, a paid-in-full receipt from a contractor, a performance bond or escrow deposit adequate to ensure that the proposed landscaping or paving will be completed. The amount of the financial guarantee must be equal to at least 100 percent of the estimated total cost (labor and materials). The City shall be authorized to use such financial guarantee to complete the work if the required paving or landscaping is not in place by the date stated on the approved performance guarantee form. Landscaping or paving required by this subsection must be maintained in serviceable condition.

c. Maintenance

Any lots left vacant after demolition shall be continuously maintained and kept free of debris and litter.

d. Screening

A fence, wall or landscape buffer shall be provided to partially screen vacant lots from view of adjacent property, including sidewalks and public rights-of-way. The required screen shall have a minimum height of 2 ½ feet and a maximum height of 3 feet. Screens may exceed 3 feet in height if they are at least 50 percent transparent.

e. Lighting

Vacant lots resulting from demolition shall be illuminated to sidewalk lighting standards.

3. Building Siting and Design

The standards of this subsection apply to all development.

a. Front Setback

No front setback shall be required unless buildings immediately adjacent to the subject site are set back, in which case a setback equal to the average setback of the adjacent buildings shall be required. In no case shall setbacks of greater than 10 feet be required.

b. Materials

(1) Required

All walls visible from the street shall be finished with architectural materials such as brick, glass, stone, ceramic, stucco, precast panels, exterior insulation finish systems (e.g. dryvit), or curtain walls. When the DMU development is detached/attached single family or small scale multi-dwelling in nature, typical residential structure exterior materials may be accepted (e.g. residential grade vinyl siding, composite brick, residential grade steel siding).

(2) Prohibited

The following materials shall not be used on walls that are visible from the street:

metal panels; non-residential grade metal siding; non-residential grade wood-based materials; asphalt; concrete blocks or cinder blocks; provided, that use of architectural metal panels and metal panels for enclosure of mechanical equipment shall be permitted, and use of wood-based materials for architectural treatment shall be permitted. Concrete block may be used only if it is burnished, standing flute or sculptured. Mirrored glass or one-way glass with a reflectance of greater than 40 percent shall be prohibited from covering more than 40 percent of the exterior walls. Residential grade metal siding and wood based materials are prohibited on all DMU development with the exception of attached/detached single family residential development and small scale multi-dwelling residential development.

c. Ground-Floor Transparency

At least 35 percent of the ground-floor facade of buildings along sidewalks shall be comprised of windows, doors and other transparent elements (e.g. glass block) that allow views into buildings, plazas or arcades. Calculations shall be based on the linear footage of the ground floor, and said transparent elements shall be a minimum of four feet in height.

- (1) Existing buildings along sidewalks to which interior renovations or structural improvements are proposed shall be excluded from this requirement only if they do not already meet the 35 percent transparency requirement. In those cases, the transparency requirement shall meet or exceed the percentage of ground floor transparency provided by the existing structure.
- (2) The Zoning Administrator shall have the authority to allow less than 35 percent ground floor transparency adjacent to sidewalks, provided that the subject wall of the structure includes architectural features which offer visual relief from a blank wall through the use of texture, recessed patterns, or other design features that add visual relief. The decision of the Zoning Administrator may be appealed to the Board of Adjustment.
- (3) Residential development, where dwelling units occupy the first floor, shall be excluded from these requirements.

4. Parking

A fence, wall or landscape buffer shall be provided to partially screen surface level parking lots from view of adjacent property, including sidewalks and public rights-of-way. Fences or walls shall be constructed with materials and details similar to or compatible with those of the structures in the surrounding area. The required screen shall have a minimum height of 2 ½ feet and a maximum height of 3 feet. Screens may exceed 3 feet in height if they are at least 50 percent transparent.

5. Lighting

Parking lots and vacant lots resulting from demolition shall be illuminated to sidewalk levels.

6. Parking Structure Screening

Parked vehicles shall be screened from view of adjacent streets by walls at least 2 ½ feet tall.

Source: 2985 (1999), 4163 (2001).

§20-0213 GC, General Commercial District

A. Description

The GC, General Commercial district is primarily intended to accommodate commercial uses. It allows a full range of retail, service, office and commercial uses.

B. Uses

Uses are allowed in the GC district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the GC district is subject to the dimensional standards of Article 20-05.

§20-0214 LI, Limited Industrial District

A. Description

The LI, Limited Industrial district is primarily intended to accommodate manufacturing, wholesale, warehousing and distribution related uses.

B. Uses

Uses are allowed in the LI district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the LI district is subject to the dimensional standards of Article 20-05.

§20-0215 GI, General Industrial District

A. Description

The GI, General Industrial district is intended to serve as an exclusive industrial district and to protect manufacturing and industrial operations from encroachment by lower intensity, incompatible uses.

B. Uses

Uses are allowed in the GI district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

Development within the GI district is subject to the dimensional standards of Article 20-05.

§20-0216 UMU, University Mixed-Use District

A. Description:

1. The UMU district is intended to provide for the location and grouping of compatible uses. The appropriate location for this district will meet three factors. 1) The location will be in close proximity to a university or campus setting. The term campus includes large medical or business settings. 2) The location will have access to public transportation routes and alternative transportation corridors. 3) The location will be in a setting where the neighborhood is in transition from owner-occupied housing to rental housing or where blighted conditions are present.
2. The objective of the zoning district is to encourage high-quality, durable, and long-lasting investments in order to enhance the quality of life and discourage blight. To achieve this objective, the University Mixed-Use zoning district allows higher overall residential density and limited commercial uses while incorporating design standards to achieve quality housing. Development is intended to be pedestrian oriented and neighborhood friendly. Use of pedestrian scale components will be incorporated into architectural details, attractive streetscapes and safe traffic movements. The intent of the district is to promote high quality mixed-use development in certain neighborhoods, while preserving the single-family owner occupied housing within the neighborhood. In order to support neighborhood communication regarding new development, upon submission of development application, the applicant is encouraged to meet with the active neighborhood association.
3. A zoning map amendment to a UMU, University Mixed-Use, District may not be applied to the easterly portion of the Roosevelt Neighborhood until an amendment of the Roosevelt Neighborhood Plan has been approved by the Fargo Board of City Commissioners. For purposes of this subparagraph, the Roosevelt Neighborhood Plan is the plan approved by the Fargo Board of City Commissioners by Resolution enacted and approved September 13, 2004 and the easterly portion of the Roosevelt Neighborhood is that part of the Roosevelt Neighborhood described in said Plan lying east of the easterly boundary of Johnson Park, and the extension to the north and south of said easterly boundary.

B. Uses

1. Uses allowed in the UMU district must be in accordance with the Use Table of Sec. 20-0401.
2. The minimum dwelling unit per acre density as required in Sec. 20-0501 must be met on all lots in the UMU District, except for a commercial parking use.
3. All non-residential uses except the use of commercial parking shall be limited to the ground floor and second floor of a building.

C. Dimensional Standards

Development within the UMU district is subject to the dimensional standards of Article 20-05.

D. Design Standards

1. General

a. Intent

The UMU Design Standards are intended to create and maintain a general visual quality and appearance that will be appealing to people who live and work in the UMU district, enhancing the residential character while respecting the institutional presence. The regulations are also intended to stimulate and protect investment in the UMU district through the establishment of high quality standards with respect to materials, details, and appearance.

b. Applicability

The UMU Design Standards of this subsection D apply throughout the UMU district.

c. Review Procedure

Review for compliance with the Design Standards of this subsection shall be carried out in accordance with the Site Plan Review Procedures of Sec. 20-0910.

2. Demolition

The standards of this subsection apply in the event of building and site demolition.

a. Vacant Lots

Any lots left vacant after demolition must be paved or landscaped to ensure a dust-free surface. The paving or landscaping shall be in place within 30 days of the date of demolition, unless a longer time period is approved at the time of approval of the demolition plans. Once installed, the landscaping or paving shall be continuously maintained in serviceable condition. Prior to approval of the demolition plans the applicant shall provide a letter of credit, a paid-in-full receipt from a contractor, a performance bond or escrow deposit adequate to ensure that the proposed landscaping or paving will be completed. The security provided must be in an amount equal to at least 100 percent of the estimated total cost of labor and materials. The City shall be authorized to use such financial guarantee to complete the work if the required paving or landscaping is not in place by the date stated on the approved performance guarantee form. Landscaping or paving required by this subsection must be maintained in serviceable condition.

b. Maintenance

Any lots left vacant after demolition shall be regularly maintained and kept free of debris and litter.

3. Building Siting and Design

The standards of this subsection apply to all development. The following design

standards apply to all buildings in the UMU district. These standards are intended to promote an attractive and long-lasting investment.

a. Building Orientation

- (1) At least one primary building entry shall face a public street.
- (2) The building shall be designed to have all exterior walls with equal design consideration, to include materials, color, articulation and general aesthetics for the purpose of access and appreciation by the general public.
- (3) Building elevations that face a public street shall have at least 15 percent of the wall facing the street consist of windows or entrance areas.

b. Materials

- (1) All walls shall be finished with architectural materials such as brick, glass, stone, ceramic, stucco, precast panels, exterior insulation finish systems (e.g. dryvit), seamless steel siding with a ceramic hybrid paint finish, fiber cement siding, or curtain walls. Building elevation materials shall be commercial grade, durable, and have a multi-generational life span.
- (2) The following materials may not be used other than for purposes of providing accent: insulated metal panels; wood-based materials; asphalt; and decorated concrete block. When these materials are used, the materials must be of commercial grade.
- (3) The use of architectural metal panels and wood panels for enclosure of mechanical equipment shall be permitted.
- (4) Mirrored glass or one-way glass with a reflectance of greater than 40 percent shall be prohibited from covering more than 40 percent of exterior walls.
- (5) When the UMU development is a detached single-family or duplex residential use, residential structure exterior materials that are commonly used in residential developments (e.g. residential grade vinyl siding, composite brick, residential grade steel siding) may be used upon approval of the Zoning Administrator.

c. Ground-Floor Transparency

At least 25 percent of the ground-floor façade of buildings along public streets must be comprised of windows, doors and other transparent elements (e.g. glass block). Calculations shall be based on the total square feet of the elevation of the ground floor. Existing buildings along sidewalks to which interior renovations or structural improvements are proposed shall be excluded from this requirement; however, in no case shall the existing transparency be reduced.

d. Articulation

(1) Offsets

- i. As to building elevation walls, as visible above ground, that are longer than 100 feet wall plane projections or recesses having a depth of at least two feet and extending for a minimum of 25% of the length of such walls must be incorporated into the building design..
- ii. As to building heights taller than 35 feet a horizontal design features on the building's façade must be incorporated into the building design. Examples of horizontal design features include awnings, canopies, transoms, moldings, balconies, wainscoting or changes in color or texture.

(2) Architectural features

- i. The building design shall include integrated design features to avoid monotony, to create visual interest, and to enhance the pedestrian scale all of which is to be designed to create compatibility with the surrounding neighborhood. Examples of features to be included are:
 - a. Arcades
 - b. Cornices
 - c. Eaves
 - d. Bow, bay, arched, oval, or gable windows
 - e. Shutters
 - f. Arched entries, balconies or breezeway entrances
 - g. Stone or brick accent walls
 - h. Decorative stone or brick banding
 - i. Decorative tiles
 - j. Verandas, porches, balconies or decks
 - k. Projected walls or dormers
 - l. Variation of roof lines
 - m. Decorative caps or chimneys

e. Accessory Uses:

- (1) The accessory use standards set forth in Sec. 20-0403 apply to the UMU district.
- (2) The following additional design standards shall apply to accessory structures for the purpose of design compatibility with the residential neighborhood.
 - i. Accessory building setbacks shall meet the development standards of primary buildings as required in Sec. 20-0501.
 - ii. Accessory building elevation materials shall match the primary building materials.
 - iii. Accessory buildings may be located in rear yards and/or side yards only. Accessory buildings are not permitted in the front or street-side yard.
 - iv. Garage doors on accessory structures may not exceed a width of 20 feet.

- v. Separate garage structures may be no more than 60 feet in length on the longest side of the building.
- vi. Multiple accessory buildings adjacent to each other shall have a building separation of 10 feet.

f. Parking Structure Screening

Parked vehicles shall be screened from view of adjacent streets by walls at least 2 ½ feet tall or opaque screening materials; such as, fences or plants at least 2 ½ feet tall.

D. Alternative Design Standards.

1. An alternative design standard represents a proposal to meet the intent expressed in Sec. 20-0216 D.1.a. by means other than those prescribed in Sec. 20-0216. Applicants who wish to propose a project or development with alternative design components must secure approval of Alternative Design Standards for the project or development by obtaining review, action and approval by the Planning Commission in accordance with the Conditional Use Permit Review procedures of Sec. 20-0906.
2. a. Recordation of Approved Alternative Design.
An attested copy of an approved Alternative Design or Alternative Design Standards must be recorded with the County Recorder on forms made available in the Planning Department. An Alternative Design or Alternative Design Standards may be amended by following the same procedure required for the original approval.
- b. Violations.
Violations of an approved Alternative Design or Alternative Design Standards constitute a violation of the Land Development Code and will be subject to the enforcement and penalty provisions of Article 20-011.

Source: 4695 (2009), 4779 (2011), 4881 (2013).

Article 20-03

Overlay and Special Purpose Districts

§20-0301 Districts Established

The following overlay and special purpose zoning districts are hereby established:

- ◆ PUD, Planned Unit Development
- ◆ C-O, Conditional Overlay
- ◆ P/I, Public and Institutional
- ◆ H-O, Historic Overlay
- ◆ HIA-O, Hector International Airport Overlay

§20-0302 PUD, Planned Unit Development

A. Description

The PUD, Planned Unit Development district is an overlay zoning district that permits greater flexibility of land planning and site design than conventional zoning districts. The PUD regulations:

1. Provide flexibility in architectural design, placement, and clustering of buildings; use of open areas and outdoor living areas; provision of circulation facilities and parking; and related site and design considerations;
2. Encourage the conservation of natural features;
3. Provide for efficient use of public services and improvements;
4. Encourage and preserve opportunities for energy efficient development;
5. Promote attractive and functional business environments in nonresidential zones that are compatible with surrounding development; and
6. Promote an attractive and safe living environment in residential zones.

B. Applicability

A PUD district may be approved only when the applicant demonstrates to the satisfaction of the Board of City Commissioners that a proposed PUD project would result in a greater benefit to the City than would a development under conventional zoning district regulations.

C. Developer's Statement of Intent

Each application for PUD zoning and Master Land Use Plan approval must include a comparison of the proposed development with the standards of underlying zoning district and the otherwise applicable standards of this Land Development Code. Applications must also include a statement by the applicant describing how the proposed development provides greater benefits to the City than would a development carried out in accordance with otherwise applicable land development regulations.

D. Effect of Other Zoning District Standards

Except as expressly authorized by the regulations of this section and approved as part of a PUD plan in accordance with the procedures of Sec. 20-0908, all of the standards of this Land Development Code apply to a development within a PUD.

E. Standards Eligible for Modification

The following otherwise applicable standards may be modified by the Board of City Commissioners during the PUD Master Land Use Plan approval process. Standards not listed are not eligible for modification.

1. Allowed Uses

The Board of City Commissioners shall establish the list of uses allowed in a PUD zoning district during the PUD Master Land Use Plan approval process (See Sec. 20-0908).

2. Lot Size

The minimum lot size standards of the underlying zoning district may be modified by the Board of City Commissioners during the PUD review and approval process.

3. Residential Density

The maximum density standards of the underlying zoning district may be modified by the Board of City Commissioners during the PUD review and approval process.

4. Setbacks

The minimum setback standards of the underlying zoning district may be modified by the Board of City Commissioners during the PUD review and approval process.

5. Height

The maximum height limits of the underlying zoning district may be modified by the Board of City Commissioners during the PUD review and approval process.

6. Building Coverage

The maximum building coverage standards of the underlying zoning district may be modified by the Board of City Commissioners during the PUD review and approval process.

7. Parking

The minimum off-street parking standards of the underlying zoning district may be modified by the Board of City Commissioners during the PUD review and approval process.

8. Landscaping

The minimum landscaping standards, including, without limitation, Street Tree, Ground Cover Planting, Open Space Landscaping and Parking Lot Perimeter standards of the underlying zoning district may be waived and/or altered by the Board of City Commissioners during the PUD review and approval process.

9. Residential Protection Standards

The residential protection standards of the LDC may be modified by the Board of City

Commissioner during the PUD review and approval process and the residential protection standards shall apply to an approved PUD unless they are so modified.

F. Additional Requirements and Standards

1. Approval Procedures

PUDs must be reviewed and approved in accordance with the procedures of Sec. 20-0908. The approved PUD Final Plan shall control development within a PUD.

2. Roadway Access

Unless otherwise expressly approved during the PUD approval process of Sec. 20-0908, principal vehicular access to PUDs must be from Collector and higher classification streets. Any PUD containing over 50 dwelling units or 30,000 square feet of nonresidential floor space must provide at least 2 access points, wherever possible.

3. Open Space

At least 10 percent of the gross land area in PUDs must consist of open space.

4. Preservation of Natural Features

Mature trees, vegetative cover, watercourses and other natural site features must be preserved to the greatest extent possible.

5. Additional Conditions

The Planning Commission shall recommend and the Governing Body shall impose such other conditions as are necessary to accomplish the purposes of this Land Development Code.

Source: 4690 (2008)

§20-0303 C-O, Conditional Overlay

A. Purpose

By providing for flexible use or property development standards tailored to individual projects or specific properties, the C-O, Conditional Overlay district is intended to:

1. Ensure compatibility among incompatible or potentially incompatible land uses;
2. Ease the transition from one zoning district to another;
3. Address sites or land uses with special requirements; and
4. Guide development in unusual situations or unique circumstances.

B. Application

The C-O district, may be applied in combination with any base zoning district.

C. Use and Property Development Standards

The C-O district can be used to modify and restrict the use and property development standards of an underlying base zoning district. All requirements of a C-O district are in addition to and supplement all other applicable standards and requirements of the underlying zoning district. Restrictions and conditions imposed by a C-O district are limited to the following.

1. Prohibiting otherwise permitted or conditional uses and accessory uses or making a permitted use a conditional use;
2. Decreasing the number or average density of dwelling units that may be constructed on the site or limiting the size of nonresidential buildings that may be placed on a site;
3. Increasing minimum lot size or lot width;
4. Increasing minimum yard and setback requirements; and
5. Restricting access to abutting properties and nearby roads.
6. Creating and enhancing design standards, landscaping requirements, and pedestrian and vehicular traffic guidelines and standards for development within the district.

D. Method of Adoption

Restrictions imposed through a C-O district are considered part of this Land Development Code text and official Zoning Map. All property included in a C-O district must be identified on the Zoning Map by adding the letters "C-O" to the base zoning district symbol. The ordinance zoning or rezoning property to the C-O district must specifically state the modifications imposed pursuant to the C-O district. The restrictions imposed will be considered part of the text of this Land Development Code, and a violation of the restrictions shall be considered a violation of this Land Development Code.

Source: 4322 (2003).

§20-0304 P/I, Public and Institutional District

A. Description

The P/I, Public and Institutional district is intended to accommodate uses of a governmental, civic, public service or quasi-public nature, including major public facilities. It offers an alternative (versus

The P/I zoning classification will typically be used for colleges, health care facilities, schools and similar uses. Although the district is geared primarily toward large campus-like settings, it may also be used for smaller, single-use sites.

residential) zoning classification for public and institutional uses, thereby increasing development predictability within residential neighborhoods. Plan review is required for many uses within the P/I district. (See also the Institutional Master Plan review and approval procedures of Sec. 20-0911). The P/I zoning classification is not intended for commercial or industrial developments.

B. Uses

Uses are allowed in the P/I district in accordance with the Use Table of Sec. 20-0401.

C. Dimensional Standards

1. The dimensional standards of the adjacent zoning district (See Article 20-05) shall apply to all areas of the P/I zoned site located within 150 feet of the adjacent district except as otherwise allowed by the Residential Protection standards.
2. Areas of the P/I zoned site located more than 150 feet from adjacent zoning districts shall be governed by the approved Site Plan or Institutional Master Plan, whichever, if any, is applicable.
3. If no Site Plan or Institutional Master Plan is required, no dimensional standards shall apply to that portion of a P/I zoned site located more than 150 feet from adjacent districts.
4. Residential Protection standards shall apply to development in the P/I district when such development occurs on a site located within 150 feet of any SR or MR zoning districts. When the Residential Protection standards are less restrictive than the adjacent zoning district standards within 150 feet of the SR or MR district, the Residential Protection standards shall apply.

D. Project Review

1. Project review shall be required for all development within the P/I district if located within 300 feet of any residential zoning district, provided that the following shall be exempt from Project Review:
 - a. Interior alterations;
 - b. Development that in cumulative total (existing development + proposed):
 - (1) Will not result in the creation of more than 50 parking spaces;

- (2) Will not result in the addition of more than 25,000 square feet of gross floor area;
 - (3) Will not result in building coverage of more than 25,000 square feet.
2. If Project Review is required, the applicant shall have the option of:
- a. Submitting and securing approval of individual Site Plan Review applications for each phase of the project, in accordance with the procedures of Sec. 20-0910; or
 - b. Submitting and securing approval of an Institutional Master Plan in accordance with the procedures of Sec. 20-0910.

Source: 2985 (1999), 4385 (2004).

§20-0305 H-O, Historic Overlay District

A. Applicability

1. The H-O district may be applied in areas of historic or cultural significance that have been designated by the U.S. Department of the Interior, the North Dakota State Historical Society or the Board of City Commissioners.
2. The H-O district may also be extended to include area that is near such areas of historic or cultural significance that is deemed appropriate and necessary to protect the larger area against the intrusion of land uses and development incompatible with the specific area of historic or cultural significance.
3. An area that conforms to the description of subparagraphs 1 or 2, above, shall be deemed to be an "historic resource". Such historic resources deserve special consideration for preservation and enhancement due to the contribution they make to our collective understanding of the historic development and cultural heritage of the city. They enhance the quality of life and the sense of place as amenities for residents and visitors through their craftsmanship, scale, and irreplaceable historic character.

B. Effect of District Designation

Lands classified in the H-O district shall be subject to the standards of the H-O district and the underlying zoning district. In the event of conflict between the standards of the H-O district and the underlying zoning district, the standards of the H-O district shall control.

C. Adoption of special regulations and standards

Upon the adoption of an H-O district, the City Commission may define special development standards or regulations which are to apply to all properties (new and existing) within the H-O District, consistent with the intent, goals, objectives and policies established for each district. If adopted, such standards shall be based on evidence of the historical and architectural aspects of the district which are typical or characteristic of that district, and shall be included within the zoning regulations of the Historic Overlay ordinance.

D. Purposes

The H-O, Historic Overlay district regulations are intended to:

1. Protect and conserve the heritage of the City;
2. Safeguard the character and heritage of historic districts or landmarks that embody important elements of the City's social, economic, political or architectural history;
3. Promote conservation of historic resources for the education, pleasure and cultural enrichment of residents of the City; and
4. Stabilize and enhance property values throughout historic areas, thus contributing to the improvement of the health and welfare of residents and visitors.

The provisions of this section merely authorize the Board of City Commissioners to establish such districts in the future, after notification and public hearings.

E. Procedure for Designation of H-O Districts

1. Areas eligible for inclusion in an H-O District.

Each area for which an H-O district is established must contain at least one site, building, or structure which is an historic resource, as defined in this ordinance.

2. Report and evidence to be provided prior to enactment of H-O Districts.

Prior to a hearing by the Planning Commission on an application for creation or amendment of an H-O District, the Planning Department staff and the Historic Preservation Commission and staff shall provide in a report, the information and evaluation which will serve as the basis for any proposal to establish an H-O district. The following information shall be included in the required report:

- a. Explanation of the reasons that an H-O district should be established for the subject area (with supporting documentation).
- b. A description of the area to be included within the boundaries of the H-O district. Such description must include a narrative description, maps, property addresses and parcel numbers. The narrative description must describe existing land uses, the condition of structures, architectural styles, historic status, environmental features in the area, and other relevant information.
- c. An analysis of the character-defining features within the proposed H-O district. This section will identify the elements within the proposed district that give the district its historic character.
- d. Recommended guidelines, standards and policies to be included in the regulations for the proposed H-O district pertaining to preservation or future development. Examples include signage, architectural character, building height, setbacks, and vehicular and pedestrian circulation patterns.
- e. The recommendation of the Historic Preservation Commission regarding the application shall be reported to the Planning Commission and the Board of City Commissioners.
- f. A recommendation from the staff of the Planning Department regarding the establishment of the proposed H-O district, and the specific recommended wording for the proposed ordinance to facilitate implementation of the ordinance and to ensure clarity and consistency with other historic districts and other provisions of the Land Development Code. The report may also include any other recommended implementation measures deemed necessary to further the goals and objectives of the proposed H-O district.

3. Public Process.

The H-O district is an overlay zoning designation that may be established only in accordance with the Zoning Map Amendment procedures of Sec. 20-0906.

- a. Prior to the Planning Commission's public hearing on the proposed zoning map amendment, the Historic Preservation Commission shall hold a public hearing and issue a recommendation to the Planning Commission.
- b. Written notice of the Historic Preservation Commission's public hearing shall be given in accordance with Sec. 20-0901-F.
- c. In acting to designate local historic districts or landmarks, the Historic Preservation Commission, Planning Commission and Board of City Commissioners shall consider the

purposes set out in this section and the purposes and intent of the Historic Preservation Commission (See Sec. 20-0804).

F. Uses

Development within the H-O district shall be subject to the use regulations of the underlying base zoning district (See Article 20-04), provided that Office and Bed and Breakfast uses may be allowed within any H-O district (regardless of the underlying zoning) if reviewed and approved in accordance with the Conditional Use Permit procedures of Sec. 20-0909.

G. Dimensional Standards

Development within the H-O district shall be subject to the dimensional standards of Article 20-05, unless otherwise noted in the Special Regulations and Standards section of each designated H-O district.

H. Certificates of Appropriateness

1. Building Permits

No building permit for new construction or for alterations to the exterior of existing structures shall be issued for property within an H-O district until a Certificate of Appropriateness has been reviewed and approved in accordance with the procedures of Sec. 20-0912.

2. Demolition Permits

No demolition permit shall be issued for property within an H-O district until a Certificate of Appropriateness has been reviewed and approved in accordance with the procedures of Sec. 20-0912.

3. Sign Permits

No sign permit allowing construction or placement of a new sign (including murals) shall be issued for property within an H-O district until a Certificate of Appropriateness has been reviewed and approved in accordance with the procedures of Sec. 20-0912.

I. Off-Premise Advertising Signs shall be prohibited in the H-O district.

J. Specific Historic Overlay (H-O) Districts

1. Transitional provisions.

The special design standards of any H-O District approved by the Board of City Commissioners prior to August 1, 2005, shall be enforced in accordance with the procedures of this ordinance. Such H-O Districts are as follows:

Ordinance No. 2942	Passed October 5, 1998
Ordinance No. 4283	Passed September 30, 2002
Ordinance No. 4507	Passed December 19, 2005
Ordinance No. 4655	Passed March 24, 2008
Ordinance No. 4821	Passed June 25, 2012
Ordinance No. 4910	Passed April 14, 2014

Source: 2985 (1999), 4486 (2005), 4822 (2012), 4840 (2012), 4919 (2014).

§20-0306 HIA-O, Hector International Airport Overlay

A. Description and Purpose

The HIA-O, Hector International Airport Overlay district is intended to reduce airport hazards that endanger the lives and property of users of the Hector International Airport and of occupants of land in its vicinity. Lands classified in the HIA-O district will be subject to the standards of the HIA-O district and the underlying zoning district. In the event of conflict between the standards of the HIA-O district and the underlying zoning district, the standards of the HIA-O district will control.

B. Airport Zoning Map

The Fargo Municipal (Hector) Airport Zoning Map” is a part of this Land Development Code as fully as if it were set out in this Chapter in detail. Original copies of the airport zoning map are on file with in Municipal Airport Executive Director’s office at Hector International Airport.

C. HIA-O District Surfaces

The HIA-O district consists of the following surfaces, which are hereby established and defined as follows:

1. Precision Instrument Approach Surfaces

A precision instrument approach surface is established at each end of the instrument runway for instrument landings and takeoffs. The instrument approach surface shall have a width of 1,000 feet at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a width of 16,000 feet at a distance of 50,200 feet beyond each end of the runway, its center line being the continuation of the center line of the runway.

2. Nonprecision Instrument Approach Surfaces

A surface longitudinally centered on the extended runway center line and extending outward and upward from each end of the primary surface. This approach surface has a width of 500 feet at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a width of 3,500 feet at a distance of 10,200 feet beyond each end of the runway.

3. Primary Surfaces

A surface longitudinally centered on a runway and extending 200 feet beyond the end of each hard surface runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway center line. The width of the primary is 500 feet for nonprecision instrument runways having visibility minimums greater than 0.75 statute miles and 1,000 feet for precision instrument runways.

4. Transitional Surfaces

These surfaces extend outward and upward at right angles to the runway center line and the runway center line extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extended a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway center line.

5. Horizontal Surfaces

A horizontal plan 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by lines tangent to those arcs.

6. Conical Surfaces

A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

D. Height Limits

Unless otherwise specifically provided in this section, no structure or tree may be erected, altered, allowed to grow, or maintained, in any HIA-O zone to a height in excess of the maximum height limit established for such zone. These provisions shall not be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height of up to 35 feet above the surface of the land.

1. Precision Instrument Approach Surfaces

One foot in height for each 50 feet in horizontal distance beginning at a point 200 feet from and at the center line elevation of the end of the instrument runway and extending to a distance of 10,200 feet from the end of the runway; thence 1 foot in height for each 40 feet in horizontal distance to a point 50,200 feet from the end of the runway.

2. Nonprecision Instrument Approach Surfaces

One foot in height for each 34 feet in horizontal distance beginning at the end of the primary surface of the nonprecision instrument runway and extending to a point 10,200 feet from the end of the runway.

3. Transitional Surfaces

One foot in height for each 7 feet in horizontal distance beginning at the edge and normal to the primary surface, extending to a height of 150 feet above the airport elevation which is 900 feet above mean sea level. In addition, there are established height limits of 1 foot vertical height for each 7 feet of horizontal distance measured from the edges of all approach surfaces for the entire length of the approach surface and extending upward and outward to the points where they intersect the horizontal or conical surfaces. Further, where the precision instrument approach surface projects through and beyond the conical surface, a height limit of 1 foot for each 7 feet of horizontal distance shall be maintained beginning at the edge of the instrument approach surface and extending a distance of 5,000 feet from the edge of the instrument approach surface measured normal to the center line of the runway extended.

4. Horizontal Surfaces

150 feet above the airport elevation or a height of 1,050 feet above mean seal level. A 10,000 foot horizontal arc swung from the center of each end of each primary surface and connecting, the adjacent arcs by lines tangent to these arcs make up the perimeter of the horizontal surface.

5. Conical Surfaces

One foot in height for each 20 feet of horizontal distance beginning at the periphery of the horizontal surface, extending to a height of 350 feet above the airport elevation.

E. Uses

Notwithstanding any other provisions of this section, no use may be made of land within the HIA-O district in such a manner as to create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport or otherwise endanger the landing, taking off or maneuvering of aircraft.

F. Nonconforming Uses

1. Regulations Not Retroactive

The regulations of this section shall not be construed to require the removal, lowering, or other changes or alterations of any structure or tree not conforming to the regulations of this section or otherwise interfere with the continuance of any nonconforming use. Nothing herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of the City's original Airport Zoning Ordinance and is diligently pursued.

2. Marking and Lighting

Notwithstanding the regulations of the preceding paragraph, the owner of any nonconforming structure or tree is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the Municipal Airport Authority of the City of Fargo, North Dakota, to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated and maintained at the expense of the Municipal Airport Authority of the City of Fargo, North Dakota.

G. Permits

1. Future Uses

Except as specifically provided in paragraphs a, b and c hereunder, no material change shall be made in the use of land and no structure or tree shall be erected, altered, planted or otherwise established in the HIA-O district unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

- a. In the area lying within the limits of the horizontal surface and the conical surface, no permit shall be required for any tree or structure less than 75 feet of vertical height above ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such surface.
- b. In the areas lying within the limits of the precision instrument and nonprecision instrument approach surfaces, but at a horizontal distance of not less than 4,200 feet from each end of the runways, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such precision instrument or nonprecision instrument approach surfaces.

- c. In the areas lying within the limits of the transition surfaces beyond the perimeter of the horizontal surface, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour or topographic features, would extend above the height limit prescribed for such transition surfaces.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration, or growth of any structure or tree in excess of any of the height limits established by this section.

2. Existing Uses

No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure or tree to be made or become higher, or become a greater hazard to air navigation than it was on the effective date of the City's Airport Zoning Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

3. Nonconforming Uses Abandoned or Destroyed

Whenever the Joint Airport Zoning Board determines that a nonconforming structure or tree has been abandoned or more than 80 percent demolished, physically deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

4. Variances

Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his or her property not in accordance with the regulations prescribed in this section, may apply to the Board of Adjustments for a variance from such regulations. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but will do substantial justice and be in accordance with the spirit of this section.

5. Hazard Marking and Lighting

Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this section and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the Municipal Airport Authority of the City of Fargo, North Dakota, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

H. Administration and Enforcement

It shall be the duty of the Municipal Airport Executive Director to administer and enforce the HIA-O regulations of this section and any applicable regulations promulgated by the Federal Aviation Administration. Applications for permits and variances shall be made to the Federal Aviation Administration and/or the Municipal Airport Executive Director in a form established by the City. Applications shall be promptly considered and granted or denied. The HIA-O regulations of this section may be subject to the regulations promulgated by the Federal Aviation Administration.

Article 20-04

Use Regulations

§20-0401 Use Table

Table 20-0401 lists the uses allowed within zoning districts.

A. Use Categories

All of the use categories listed in Table 20-0401 are explained in Sec. 20-1203. The second column of the use table contains an abbreviated explanation of the respective use category. If there is a conflict between the abbreviated definition and the full explanation contained in Sec. 20-1203, the provisions of Sec. 20-1203 will control.

B. **P** Uses Permitted By-Right

A “P” indicates that a use category is allowed by-right in the respective zoning district. These permitted uses are subject to all other applicable regulations of this Land Development Code.

C. **C** Conditional Uses

A “C” indicates that a use category is allowed only if reviewed and approved as a Conditional Use, in accordance with the Conditional Use review procedures of Sec. 20-0909. Conditional Uses are subject to all other applicable regulations of this Land Development Code.

D. **/C** Uses Subject to Specific Conditions

A “P” or a “C” that is accompanied by the symbol “/C” indicates that the listed use type is subject to use-specific conditions. The standards are listed alphabetically in Sec. 20-0402.

E. **-** Uses Not Allowed

A “-” indicates that a use type is not allowed in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this Land Development Code.

F. New or Unlisted Uses

If an application is submitted for a use type that is not listed in the use table, the Zoning Administrator shall be authorized to make a similar use interpretation based on the use category descriptions of Sec. 20-1203 and the similar use interpretation criteria of Sec. 20-1203-B. If the Zoning Administrator determines that the proposed use does not fit any of the use category descriptions of Sec. 20-1203, no similar use interpretation shall be made. In the event that a similar use interpretation cannot be made, the Zoning Administrator shall be authorized to allow the proposed use type as a conditional use in the LI district or as a use permitted by-right in the GI district.

Table 20-0401

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																					
			A G	S R 0	S R 1	S R 2	S R 3	S R R 4	S R R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I	
Residential																								
Household Living	residential occupancy of a dwelling unit by a "household"	House, Detached	P	P	P	P	P	P	P	P	P	P	P	P	P	P	C	C	P	C	-	-	-	
		House, Attached	-	-	-	-	P	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Duplex	-	-	-	-	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-		
		Multi-Dwelling Structure	-	-	-	-	-	-	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-		
		Mobile Home Park	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	
Group Living	residential occupancy of a structure by a group of people who do not meet the definition of "Household Living"		C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	P/C [E]	P/C [E]	P/C [E]	P	P/C [E]	C/C [E]	-	-	-							
Bed and Breakfast	A facility of residential character that provides sleeping accommodations and breakfast		C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]													
Group Living Restricted Residency	Residential occupancy of a structure by a group of four or more individuals that have been convicted of a felony		-	-	-	-	-	-	C/C [U]	C/C [U]	C/C [U]	C/C [U]		C/C [U]	-									
Institutional																								
College	colleges and institutions of higher learning		C	C	C	C	C	C	C	C	C	P	C	C	C	P	P	P	P	P	-	P/C [G]		
Community Service	public, nonprofit, or charitable uses, generally providing a local service to the community		C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	P/C [C]	P/C [C]	P/C [C]	C/C [C]	P/C [C]	P/C [C]	P/C [C]	P	P	P/C [C]	P	P	-	P/C [G]		
Day Care	care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day	1-7 children or adults ^[1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	-	P/C [G]	
		8-12 children or adults ^[1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	-	P/C [G]
		13+ children or adults	-	-	-	-	-	-	C/C [D]	C/C [D]	C/C [D]	P/C [D]	C/C [D]	C/C [D]	C/C [D]	P/C [D]	-	P/C [G]						
Detention Facilities	facilities for the detention or incarceration of people		C	-	-	-	-	-	C	C	C	-	-	-	C	C	C	P	P	P	-	P/C [G]		
Health Care Facility	medical or surgical care to patients, with overnight care		C	C	C	C	C	C	C	C	C	C	-	-	P	P	P	P	P	P	-	P/C [G]		
Parks and Open Areas	natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, etc.		P	P	P	P	P	P	P	P	P	-	P	P	P	P	P	P	P	-	-	P/C [G]		

[1] Not including the children or parents of the day care provider.

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
 C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701(L) ■ C/C = Conditional Use And Subject to Use-Specific Standards of Sec. 20-0402

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																				
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	S R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Religious Institution	Meeting area for religious activities	500 seating capacity	C/C [T]	P	P	P	P	P	P	P	P	-	P	P	P	P	P	P	P	P	-	P/C [G]	
		501+ seating capacity	C/C [T]	P/C [H]	P	P	P	-	P	P	P	P	P	P	P	P	-	P/C [G]					
Safety Services	public safety & emergency response services		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P/C [G]
Schools	schools at the primary, elementary, middle, junior high, or high school level		-	P/C [I]	C	-	-	-	C	C	C	C	C	-	P/C [G]								
Utilities, Basic	infrastructure services that need to be located in or near the area where the service is provided		P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]
Commercial																							
Adult Entertainment Center	an adult bookstore, adult cinema or adult entertainment facility		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-	
Office	Activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services		-	-	-	-	-	-	-	-	-	P	-	P	P	P	P	P	P	P	-	P/C [G]	
Off-Premise Advertising Signs	Billboard		-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [B]	-	P/C [B]	P/C [B]	P/C [B]	-	-	
Parking, Commercial	parking that is not accessory to a specific use...fees may or may not be charged		-	-	-	-	-	-	-	-	-	P	-	-	-	P	P	P	P	P	P	P/C [G]	
Recreation and Entertainment, Outdoor	large, generally commercial uses that provide continuous recreation or entertainment oriented activities		-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	-	P/C [G]		
Retail Sales and Service	firms involved in the sale, lease or rental of new or used products to the general public...they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods		-	-	-	-	-	-	-	-	-	P	-	-	P	-	P	P	P	-	-		
Self-Service Storage	uses providing separate storage areas for individual or business uses		-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [J]	-	P	P	-	-		

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701(L) ■ C/C = Conditional Use And Subject to Use-Specific Standards of Sec. 20-0402

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																				
			A G	S R 0	S R 1	S R 2	S R 3	S S R R 4	S S R R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Vehicle Repair	service to passenger vehicles, light & medium trucks & other consumer motor vehicles, generally, the customer does not wait at the site while the service or repair is being performed		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [L]	P/C [L]	P	P	-	-
Vehicle Service, Limited	direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed		-	-	-	-	-	-	-	-	-	P/C [M]	-	-	-	-	-	P	P/C [M]	P	P	-	-
Non-farm Commercial	Commercial Uses defined in Section 20-1203D occurring in AG, Agricultural Districts		C/C [T]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Industrial																							
Industrial Service	firms engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C/C [Q]	C/C [R]	P/C [F]	P/C [F]	P/C [G]	
Manufacturing and Production	firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C/C [R]	P	P	P/C [G]	
Warehouse and Freight Movement	firms involved in the storage, or movement of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C/C [R]	P	P	P/C [G]	
Waste-Related Use	uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P/C [G]	
Wholesale Sales	firms involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C/C [R]	P	P	-	
Other																							
Agriculture	raising, producing or keeping plants or animals	Animal Confinement	C	C [2]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P/C [G]	

[2] In SR-0 districts, animal confinements are either permitted or a conditional use, subject to procedures of Sec. 20-0909, as described in Sec. 20-1203.C.2.b.

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
 C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701(L) ■ C/C = Conditional Use And Subject to Use-Specific Standards of Sec. 20-0402

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																					
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	S R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I	
		ments																						
		Farming/ Crop Production	P	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P/C [G]	
Aviation	facilities for the landing and takeoff of flying vehicles, including loading and unloading areas		C	C	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C	C	P	P	P/C [G]	
Surface Transportation			-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C	C	P	P	P/C [G]	
Entertainment Event, Major	activities & structures that draw large numbers of people to specific events or shows		C	-	-	-	-	-	-	-	-	C	-	-	-	-	-	C	C	C	-	-	P/C [G]	
Mining	mining or extraction of mineral or aggregate resources from the ground for off-site use		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	-	
Telecommunications Facilities	devices and supporting elements necessary to produce non-ionizing electromagnetic radiation... operating...to produce a signal...	125 feet in height or less	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	P/C [N]	P/C [N]	P/C [N]	C/C [N]	
		Greater than 125 ft in height	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C/C [N]	C/C [N]	C/C [N]	-
		Up to building height limit of applicable zoning district	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	C/C [N]
		TSSs supported by Guy wires	C/C [N]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		Attached Telecommunications facilities	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]

Source: 2985 (1999), 3062 (1999), 4039 (2000), 4089 (2000), 4121 (2001), 4179 (2001), 4222 (2002), 4337 (2003), 4560 (2006), 4613 (2007), 4695 (2009), 4771 (2010), 4895 (2013), 4997 (2015).

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
 C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701(L) ■ C/C = Conditional Use And Subject to Use-Specific Standards of Sec. 20-0402

§20-0402 Use Standards

A. Adult Entertainment Center

Adult Entertainment Centers shall be subject to all of the following standards:

1. An adult entertainment center shall not be located within 1,250 feet of any religious institution, school, park or recreation facility (bike paths excluded), SR zoning district, MR zoning district or residential planned unit development.
2. An adult entertainment center shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises and is licensed in accordance with Chapter 25 of the Fargo Municipal Code.
3. An adult entertainment center shall not be located within 1,250 feet of any other adult entertainment center.
4. An adult entertainment center must prohibit entrance by persons less than 18 years of age.
5. An adult entertainment center may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, adult bookstore, adult entertainment facility, adult cinema or combination thereof.
6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of an adult entertainment center.
7. The business premises of an adult entertainment center that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

B. Off-Premise Advertising Signs

Please refer to Section 20-1308 for applicable standards.

Source: 4895 (2013).

C. Community Service

1. No overnight accommodations shall be allowed in conjunction with a Community Service use in AG or SR districts.
2. Community Service uses in MR districts shall be subject to the maximum density standards of the underlying zoning district. For the purpose of interpreting this standard, each 4-person sleeping capacity shall be considered one dwelling unit.
3. Community Service uses shall be subject to the Residential Protection standards of Sec. 20-0704.

4. No Community Service use may be located within 300 feet of another Community Service use, measured from lot line to lot line, unless such location is otherwise reviewed and approved as a Conditional Use, in accordance with the Conditional Use review procedures of Sec. 20-0909.

Source: 4604 (2007).

D. Day Care

1. Signs

Signs must comply with the City's sign ordinance.

2. Employees

With respect to Day Cares that are accessory to a Residential Use, no more than one nonresident employee is allowed (at any one time) in association with an allowed Day Care.

3. AG and SR Districts

Within all AG and SR zoning districts, day care uses shall be allowed only as an accessory use to an allowed principal use in such zoning district. Day Care is not allowed as a principal use in any AG or SR district.

4. Conditional Use Permits Terminate Upon Transfer of Ownership

Unless otherwise expressly stated, Conditional Use Permits for Day Care uses granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of property.

Source: 3008 (1999); 4323 (2003).

E. Household Living/Group Living

1. A Conditional Use Permit shall be required for Group Living Uses in zoning districts other than MR or UMU and in acting upon such Conditional Use Permit requests for Group Living Uses, the Planning Commission shall consider the following factors:
 - a. Whether or not the dwelling unit meets all building, housing, and fire codes of the City;
 - b. Whether or not the property has off-street parking space for every vehicle which is owned, possessed or utilized by occupants of the building. Such parking spaces must meet all applicable standards of the City;
 - c. The general condition of the building and whether or not it is in need of substantial repairs or renovation; and
 - d. Whether or not the requested occupancy is compatible with the neighborhood and will not create undue density and congestion.

Said factors need be considered only when the Planning Commission is considering a request for a Conditional Use Permit.

2. In MR Zoning districts, Group Living uses are permitted by right, provided such uses shall be subject to the maximum density standards of the underlying zoning district. For the

purpose of interpreting this standard, each 4-person sleeping capacity shall be considered one dwelling unit.

F. Industrial Service (Above-Ground Fuel Storage Tanks)

Above-ground fuel tanks used for the storage or dispensing of Class I or Class II petroleum products shall be located at least 300 feet from all non-industrial zoning districts.

G. P/I District Review

1. Project review shall be required for all development within the P/I district if located within 300 feet of any residential zoning district, provided that the following shall be exempt from Project Review:
 - a. Interior alterations to an existing building;
 - b. Development that in cumulative total (existing development + proposed):
 - (1) Will not result in the creation of more than 50 parking spaces;
 - (2) Will not result in the addition of more than 25,000 square feet (gross floor area); and
 - (3) Will not result in building coverage of more than 25,000 square feet.
2. If Project Review is required, the applicant shall have the option of:
 - a. Submitting and securing approval of individual Site Plan Review applications for each phase of the project, in accordance with the procedures of Sec. 20-0910; or
 - b. Submitting and securing approval of an Institutional Master Plan in accordance with the procedures of Sec. 20-0910.

H. Religious Institutions

The following regulations shall apply to Large Religious Institutions (more than 500 seating capacity) in SR districts.

1. Large Religious Institutions in SR districts shall provide off-street parking at a minimum ratio of 0.5 spaces per seat.
2. At least 35 percent of the site area shall be maintained as landscaped open space.
3. Large Religious Institutions in SR districts shall be subject to the Residential Protection Standards of Sec. 20-0704.

I. Schools

The following regulations shall apply to Schools in SR and MR districts. A waiver of one or more of the following regulations may be granted upon review and approval in accordance with Conditional Use Review procedures of Sec. 20-0909.

1. The maximum size shall not exceed 800 students.
2. The base site area for a school shall be 10 acres, plus 1 acre per 100 students.
3. At least 35 percent of the site area shall be maintained as landscaped open space.
4. Schools in SR and MR districts shall be subject to the Residential Protection Standards of Sec. 20-0704.

J. Self-Service Storage

All walls visible from the street shall be finished with architectural materials such as brick, glass, stone, ceramic, stucco, precast panels, exterior insulation finish systems (e.g. dryvit), or curtain walls. The following material shall not be used on walls that are visible from the street: metal panels; non-residential-grade metal siding; non-residential grade wood-based materials; non-residential grade composition materials, such as plastic or asphalt; concrete blocks or cinder blocks. Concrete block may be used only if it is burnished, standing flute or sculptured.

K. Utilities, Basic (Recycling Centers)

Recycling containers must be completely screened from view of residential zoning districts and public rights-of-way by buildings, fences, walls, berms or landscape buffers that are at least as tall as the container.

L. Vehicle Repair

The maximum site area shall not exceed 15,000 square feet and the maximum building size shall not exceed 7,500 square feet.

M. Vehicle Service, Limited

The maximum site area shall not exceed 15,000 square feet and the maximum building size shall not exceed 7,500 square feet.

N. Telecommunications Facilities

1. General

All telecommunications facilities shall comply with the standards of this Land Development Code, all applicable standards of the Federal Telecommunications Act of 1996, and all applicable requirements of the Federal Aviation Administration. Freestanding Non-Commercial Support Structures in AG, SR, MR, UMU, NC, and NO zoning districts are addressed by Section 20-0403.D. Accessory Uses. Freestanding Non-Commercial support structures in any other zoning district shall be considered Telecommunications Support Structures and shall meet the requirements of this section.

2. Attached Telecommunications Facilities

Attached telecommunications facilities shall be allowed by-right in the districts indicated in the Use Table provided that they comply with all applicable standards of the underlying zoning district, including any maximum height standards. If visible from SR, MR or UMU zoning districts, attached telecommunications facilities shall be designed and painted to minimize their visibility from such areas. Any proposed attached telecommunications facility

which does not comply with the foregoing requirements will only be permitted if approved in accordance with the Conditional Use review procedures of Sec. 20-0909.

3. Telecommunications Support Structures

Telecommunications support structures (also referred to herein as "TSS") must comply with the following requirements as approved by the Zoning Administrator, unless otherwise stated.

- a. As provided by Sec. 20-0402, TSSs of no more than 125 feet in height are permitted in GC, LI and GI zoning districts subject to use-specific standards, including:
 - (1) No TSS may be located closer than 200 feet or two times the height of the TSS, whichever is greater, from the base of the TSS to any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zoned property line;
 - (2) The TSS must have co-location capability of at least one other telecommunications provider, unless stealth design considerations make co-location unfeasible as determined by the City Planner; and
 - (3) TSSs shall be either clustered together or spread apart an adequate distance so as to reduce their impact on the overall appearance of the area and the view of the horizon. Therefore, TSSs shall be placed either:
 - (a) No farther than 300 feet from an existing and approved telecommunications TSS, or
 - (b) A minimum distance of $\frac{1}{4}$ mile between existing and approved TSSs of 125 feet in height or less, and a minimum distance of $\frac{1}{2}$ mile from telecommunications TSSs of over 125 feet in height, as measured from the base of one TSS to the base of another.
- b. As provided by Sec. 20-0401, TSSs of more than 125 feet in height are Conditional Uses in GC, LI and GI zoning districts and are therefore subject to the Conditional Use review process of Sec. 20-0909:
 - (1) No TSS may be located closer than 500 feet or three times the height of the TSS, whichever is greater, from any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zoned property line;
 - (2) The TSS must have co-location capability of at least two other telecommunications providers, unless stealth design considerations make co-location unfeasible as determined by the City Planner; and
 - (3) TSSs shall be either clustered together or spread apart an adequate distance so as to reduce their impact on the overall appearance of the area and the view of the horizon. Therefore, TSSs shall be placed either no farther than 300 feet from an existing and approved telecommunications TSS, or a minimum distance of $\frac{1}{4}$ mile

between existing and approved telecommunications TSSs of 125 feet in height or less, and a minimum distance of ½ mile from telecommunications TSSs of over 125 feet in height, as measured from the base of one TSS to the base of another TSS.

- c. As provided by Sec. 20-0401, TSSs of no more than the maximum building height for the applicable zoning district are permitted by right in AG, SR-0-SR-4, MR-1-MR-3, UMU, NC, NO, LC, and GO zoning districts subject to use-specific standards, including:
- (1) No TSS located in any non-residential zoning district may be located closer than 200 feet from any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zoned property line; and
 - (2) No TSSs located in any MR zoning district may be located closer than 100 feet or two times the height of the TSS, whichever is greater, from any SR zoning districts, as measured from the base of the TSS to the nearest point of such SR zoning district.
- d. As provided by Sec. 20-0401, TSSs in DMU and P/I zoning districts and TSSs which exceed the maximum building height for the applicable zoning district, but are not more than 125 feet in height in AG, SR-0-SR-4, MR-1-MR-3, UMU, NC, NO, LC and GO zoning districts are Conditional Uses and are therefore subject to the Conditional Use review process of Sec. 20-0909:
- (1) No TSS may be located closer than ½ mile from any existing and/or approved TSSs of over 125 feet in height, and ¼ mile from any existing and/or approved TSSs of 125 feet or less, as measured from the base of one TSS to the base of another;
 - (2) The TSS must have co-location capability of at least one other telecommunications provider, unless stealth design considerations make co-location unfeasible as determined by the City Planner;
 - (3) TSSs shall comply with such other conditions as determined by the Planning Commission;
 - (4) No TSS located in any non-residential zoning district may be located closer than 200 feet or two times the height of the TSS, whichever is greater, from any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zone property line; and
 - (5) No TSSs located in any MR zoning district may be located closer than 200 feet or two times the height of the TSS, whichever is greater, from any SR zoning districts, as measured from the base of the TSS to the nearest point of such SR zoning district.
- e. TSSs supported by Guy Wires - As provided by Sec. 20-0401, TSSs in AG zoning districts of any height are Conditional Uses and are therefore subject to the Conditional Use review process of Sec. 20-0909. Guy TSSs of any height are prohibited in all other zoning districts.

- f. In addition to any of the foregoing requirements, all TSSs must comply with the following requirements, unless approval is otherwise obtained through the Conditional Use review process of Sec. 20-0909.
- (1) The use of any portion of a TSS for signs other than warning or equipment information signs is prohibited.
 - (2) TSSs must be set back from public street, park, or bikeway right-of-way a minimum distance equal to one half of the height of the TSS, including all antennas and attachments.
 - (3) Unless the City Planner determines that stealth design considerations suggest otherwise, TSSs may not be located between a primary building structure and a public street within a front or side yard, except in LI and GI zoning districts, where TSSs may be placed within a side yard abutting an internal/local street. If a site in a GI or LI zoning district is surrounded by public streets, a TSS may be placed within a side yard abutting a local street.
 - (4) Except as otherwise approved as provided in this section, TSSs must not be illuminated by artificial means and not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular TSS.
- g. Before a building permit may be issued for a TSS, the City Planner must provide approval of the standards as follows. In such cases when the Conditional Use review process of Sec. 20-0909 is required for a TSS, the Planning Commission shall be the decision maker and must provide approval of the standards as follows:
- (1) The design and construction of the TSS, antenna support structures, equipment buildings, fences, and other structures must be compatible with the architectural style of the surrounding built environment, considering colors, exterior building materials, roof form, scale, mass, color, and character.
 - (2) The base of the TSS must be enclosed by an opaque fence or wall of at least 6 feet in height and of a character necessary to provide adequate visual screening and to limit access to the TSS. Such requirements may be waived by the City Planner if the TSS is of a stealth design.
 - (3) The City Planner may require, as a condition of approval of a TSS, that the lot upon which the TSS is located be brought into conformance with the residential protection standards and/or landscaping requirements set forth in Sections 20-0704 and 20-0705.
 - (4) Commercial wireless TSSs must be a monopole design unless stealth design considerations are made and the City Planner determines that the stealth design would be more fitting with the surrounding environment.

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- (5) When incorporated into the approved design of the TSS, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the TSS.
- h. The applicant shall submit such information as required by the Zoning Administrator including the following:
- (1) Description of the TSS height and design including a cross section (site plan) showing the proposed location of the TSS and the equipment building and an elevation showing the proposed height of the TSS including the maximum tip-height (maximum height of any attached antennas),
 - (2) Documentation of the proposed height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas, and
 - (3) Descriptions of the TSS's capacity for both the primary user and co-location users, including the number and type of antennas or other equipment that can be accommodated.
 - (4) Applicant shall be responsible for changing frequencies of the installed equipment if it interferes with any then-existing police, fire or other public or private emergency service system or public signal system.
 - (5) Other information necessary to evaluate the application as determined during the review process.
- i. The following definitions and general provisions shall apply to this Land Development Code:
- (1) All TSSs shall be dismantled and removed by the owner when they are no longer in use or upon abandonment. Abandonment shall be deemed to have occurred when a TSS has not been continuously in use by a telecommunications user for a period of at least 12 consecutive months. An abandoned TSS shall be considered a nuisance. Upon abandonment of a TSS, upon 30 days' notice to the record owner of the property upon which the TSS is constructed, exists or rests, if the TSS is not removed within a period of 60 days from said notice, the TSS and associated facilities may be removed by the City and the costs of removal assessed against the property, in accordance with the provisions of Section 11-0103 of the Fargo Municipal Code.
 - (2) The height of TSSs shall be measured from the TSS's center point of contact with the ground to the highest point of the TSS, including all antennas or other attachments.
 - (3) The term "Co-Location" shall mean the location of more than one antenna or transmitter on a single TSS.

- (4) The term "stealth" as used in this section shall mean, in referring to freestanding telecommunications TSSs, the ability to blend into the context of the surrounding environment at a given location or to use a TSS design that is as inconspicuous as possible under the existing or planned circumstances by screening, disguising, concealing, or otherwise camouflaging the TSS as a natural feature, as part of the structure, or as an accessory structure consistent with the overall function of the property on which the TSS is located. For antenna support structures, stealth is the ability to camouflage, conceal, or reduce the conspicuousness of the presence of wireless communication facilities.
- j. Through a Conditional Use Permit, the Planning Commission may reduce the TSS spacing and setback requirements of this section (§20-0402.N) by up to 50 percent. Spacing requirements that are eligible for reduction include: 1) spacing distances between existing and proposed TSSs and 2) setback distances from SR and other residential zoning districts. Any such request for reduction of these spacing and/or setback requirements shall be considered in accordance with the Conditional Use Permit review procedures of Section 20-0909, and shall comply with the following standards:
 - (1) The TSS shall be of a stealth design;
 - (2) If applicable, the applicant already has telecommunication facilities on the existing TSS from which separation would otherwise be required; and
 - (3) If applicable, the applicant shall submit verification that the communication equipment planned for the proposed TSS cannot be installed on an existing TSS within the area (if any).

O. Temporary Use of Residential Home as Sales and Construction Office.

In a subdivision of at least 10 lots in number, one residential dwelling may be used on a temporary basis as a sales office and/or construction office for other lots and/or new homes within the subdivision. A permit for such temporary use must be obtained from the Zoning Administrator. The temporary use as such sales office and/or construction office shall be permitted until such time as ninety percent (90%) of the lots in the subdivision have been sold to persons, firms or entities other than the permittee, upon which event said temporary use must be terminated within ninety (90) days of such event. In no event, however, shall such temporary use be allowed for more than three (3) years from the date of approval of the subdivision unless an extension of the permit is granted as a Conditional Use, in accordance with the Conditional Use review procedures of Sec. 20-0909.

P. Pet Boarding

Within GC, LI and GI zoning districts, animal daycare shall be an allowed use under the following conditions:

1. The proposed facility may not be within 300 feet of any residentially zoned property, measured from the pet enclosure to the property line of the residentially zoned property.

Q. Industrial Service in DMU zoning district

1. In acting upon Conditional Use Permit requests for Industrial Service uses in the Downtown Mixed Use zoning district, the Planning Commission shall consider the following:
 - a. Is the proposed use compatible with the surrounding land uses?
 - b. Does the proposed development plan meet all Land Development Code requirements for the Downtown Mixed Use Zoning district?
2. Any outdoor storage associated with an Industrial Service use in the DMU district shall be fenced with a six-foot opaque fence, which may not include chain link with slats.
3. Industrial Service vehicles and/or construction equipment larger than pick-up trucks and one ton delivery vans shall be stored off-site or within a building.

R. Industrial Uses in General Commercial Zoning

1. Within GC zoning districts, Industrial Service, Manufacturing and Production, Warehouse and Freight Movement, and Wholesale Sales shall be allowed uses under the following conditions:
 - a. The proposed facility may not be within 300 feet of any residentially zoned property, measured from proposed industrial development to the property line of the residentially zoned property.
 - b. All outdoor storage areas must be fenced with a 6 foot high opaque fence.
 - (1) Outdoor storage areas shall not cover more than 50 percent of the open space of the development.
 - (2) Outdoor storage areas shall not be located within the front setback area of the development.
 - c. No truck parking will be allowed in the front setback area, or on any side of the development directly visible from residentially zoned property. Truck parking areas directly visible from rights-of-way shall be buffered with an opaque fence or continuous hedge and large tree species placed 35 feet on center. Trees shall be a minimum of 1.5 inch caliper at the time of installation and do not count toward open space or parking lot buffer requirements.
 - d. No truck docks or unloading areas will be allowed in the front, or any side of the development directly visible from residentially zoned property or street rights-of-way. Unloading and docking areas visible from rights-of-way shall be buffered with an opaque fence or continuous hedge and large tree species placed 35 feet on center. Trees shall be a minimum of 1.5 inch caliper at the time of installation and do not count toward open space or parking lot buffer requirements.

- e. Residential protection standards for landscaping buffers shall apply to any side of the development within 600 feet of residential zoning districts, or within 600 feet of vacant land illustrated as residential in the Growth Plan.
- f. These standards do not apply to aggregate or soil and/or construction debris storage, concrete batching, or asphalt mixing uses listed under industrial service. Therefore, aggregate storage, concrete batching, and asphalt mixing are prohibited in the GC zoning district.

S. Bed and Breakfast – All bed and breakfast uses shall be subject to the following standards:

1. Bed and breakfast uses shall be subject to a Conditional Use Permit in accordance with Section 20-0909.
2. Structures shall not be altered in a way that changes their general residential appearance.
3. A minimum of one off-street parking space shall be provided for each guest bedroom, plus spaces required for the principal residence in accordance with Section 20-0701.B. Additional parking shall be required if reception or party space is available. If four or more off-street parking spaces are provided, visual screening from adjacent residential uses shall be required.
4. One sign shall be allowed, with a size limit of two square feet. Internally illuminated signs are not allowed.
5. Receptions, private parties, or similar activities shall not be permitted unless expressly approved as part of the Conditional Use Permit.
6. No long-term rental shall be permitted. The maximum length of stay shall be 30 days.
7. All guest rooms shall be located within the principal structure.
8. Other than registered guests, no meals shall be served to the general public unless expressly approved as part of the Conditional Use Permit.
9. No cooking facilities shall be allowed in the guest rooms.
10. All bed and breakfast establishments must comply with the Fargo Health Department Regulations.
11. All bed and breakfast establishments shall comply with Fire Code Requirements.

T. Non-farm Commercial Uses

1. A Non-farm Commercial Use shall not be allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. In acting upon

Conditional Use Permit requests for such use, the Planning Commission shall consider the following factors:

- a. The factors identified in Section 20-0909 (Conditional Use Permits).
 - b. Whether adequate facilities and services including, but not limited to, sewage and waste disposal, domestic water, building construction and inspection, flood protection, gas, electricity, police and fire protection, and roads, as may be applicable are adequate under the circumstances. As part of the application for the Conditional Use Permit, the Zoning Administrator may require the applicant to obtain written comment from such facility and service providers as may be applicable.
2. The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Section 20-0901-F except that the written notice shall be mailed to property owners within one (1) mile of the subject property. Notice of the Planning Commission's public hearing shall be published in accordance with Section 20-0901-F.
 3. **Prohibited Uses.** Dispatch Centers, Firearms and Ammunition Sales and Adult Entertainment Centers Uses as defined in Section 20-0403.C.5 are prohibited uses.
 4. Unless otherwise expressly stated, Conditional Use Permits for Non-farm Commercial uses granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

U. Group Living

1. Purpose and Intent

The city finds and declares that group living of convicted felons is a serious threat to public safety. The city finds that measures should be taken to reduce temptation and opportunity to better protect its citizens; especially children, the elderly and other "at risk" populations. The city contends that without the benefit of a behavioral program intended to reduce the rate of recidivism, the tendency of a convicted felon to relapse into a previous mode of behavior, especially criminal behavior, is amplified by cohabitation with groups of other convicted felons. This regulation is aimed at protecting the health and safety of citizens in the City of Fargo from the risk of convicted felons by establishing a minimum distance at which a group living facility housing convicted felons can be established where children, the elderly, at other at risk populations tend to congregate or be regularly present. It is not the intent of this article to impose a criminal penalty but rather to serve the city's compelling interest to promote, protect and improve the health, safety, and welfare of the citizens of the city by maintaining safety zones around locations where "at risk" populations regularly congregate in concentrated numbers wherein convicted felons are prohibited from establishing a permanent group living situation.

2. Characteristics

Group Living Restricted Residency is characterized by the residential occupancy of a structure by a group of people, who have been individually convicted of a felony, that do not meet the definition of Household. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories). Generally, group living structures have a common eating area for residents.

3. Accessory Uses

Accessory uses commonly associated with Group Living Restricted Residency are group treatment and/or training, offices, recreational activities, and parking of vehicles for occupants and staff.

4. Examples

Examples of Group Living Restricted Residency include residential programs for drug and alcohol treatment, treatment of sex offenders; and alternative or post incarceration facilities.

5. Exceptions

- a. Lodging where tenancy may be arranged for periods of less than 30 days is to be considered a hotel or motel use and classified in the Retail Sales and Service category.
- b. Lodging where the residents meet the definition of Household and where tenancy is arranged on a month-to-month basis or for a longer period is classified as Household Living.
- c. Facilities for people who are under judicial detainment and under the supervision of sworn officers are included in the Detention Facilities category.
- d. The person was a minor when he/she committed the offense and was not convicted as an adult.
- e. The person is a minor or ward under guardianship.

6. Applicability

Group Living Restricted Residency uses subject to a conditional use permit as determined in Table 20-0401 of Article 20-04 of this code, are allowed, if reviewed and approved as a Conditional Use, in accordance with the Conditional Use review procedures of Sec. 20-0909.

7. Conditions of Approval

In acting upon Conditional Use Permit requests for Group Living Restricted Residency uses in any conditionally permitted zoning district, the Planning Commission shall also consider the following factors:

- a. Whether or not the dwelling unit meets all building, housing, and fire codes of the City;
- b. Whether or not the property has offstreet parking space for every vehicle which is owned, possessed or utilized by occupants of the building. Such parking spaces must meet all applicable standards of the City;
- c. The general condition of the building and whether or not it is in need of substantial repairs or renovation; and
- d. Whether or not the requested occupancy is compatible with the neighborhood and will not create undue density and/or congestion.

The establishment of a Group Living Restricted Residency Behavioral Program. The program must include a list of the facility's goals and objectives intended to prevent recidivism along with procedures to ensure its successful implementation.

Source: 2985 (1999), 3008 (1999), 3062 (1999), 4039 (2000), 4089 (2000), 4164 (2001), 4222 (2002), 4223 (2002), 4240 (2002), 4323 (2003), 4372 (2003), 4445 (2004), 4560 (2006), 4604 (2007), 4613 (2007), 4771 (2010), 4807 (2012), 4895 (2013), 4988 (2015).

§20-0403 Accessory Uses

A. General

Permitted uses and approved conditional uses shall be deemed to include accessory uses and accessory structures. Accessory uses and structures will be subject to the same regulations as apply to principal uses and structures in each district, unless otherwise stated in this Land Development Code. Examples of customary accessory uses can be found in use category descriptions of Sec. 20-1203. Interpretations regarding allowed accessory uses shall be made by the Zoning Administrator.

B. Development Standards

The following standards apply to all accessory uses and structures unless otherwise expressly provided.

1. Timing of Construction

Accessory structures must be constructed in conjunction with or after the principal building. They may not be built prior to the construction of the principal structure.

2. Front and Street Side Setbacks and Yards

No accessory structure, other than a fence, wall or hedge may be located within a required front or street side setback. The location of fences and walls within parking lot buffers are regulated by §20-0705.

3. Rear Setback

- a. In zoning districts other than UMU, when located within the rear yard area, accessory structures shall be exempt from rear setback requirements, provided that they shall be set back at least 3 feet from rear and side lot lines. This 3-foot setback shall not apply to fences or walls.
- b. In a UMU district, accessory structures, other than fences or walls shall meet the rear setback requirements of Sec. 20-0501. As in districts other than UMU zoning districts, said setback requirements do not apply to fences or walls.

4. Interior Side Setback

- a. In zoning districts other than UMU, no accessory structure, other than a fence or wall, may be located within a required interior side setback, except that garages and parking structures accessory to multi-dwelling development in all MR districts shall only require a 3-foot minimum setback on lots platted after February 17, 1998. On MR lots that share a common interior side-yard, no setback is required to accessory structures provided there is a recorded cross-access agreement between the record owners of the respective properties, and provided the structures meet all applicable building codes for such a structure.
- b. In a UMU zoning district, accessory structures, other than fences or walls, shall meet the interior side setback requirements of Sec. 20-0501.

5. Setbacks from Public Easements

No accessory structure, other than a fence or wall, may be located within any recorded public

easement or over any known public utility.

6. Height of accessory structures/fences, walls, hedges.

a. Residential Districts

In SR-1 through SR-5 and MR and UMU zoning districts accessory structures shall not exceed 15 feet in height.

b. AG, SR-0 and Nonresidential Districts

In the AG, SR-0 districts and the NO and more intensive zoning districts, accessory structures shall not exceed the maximum height limit of the underlying district, unless expressly authorized by this Land Development Code.

c. Fences, Walls and Closely Grown Hedges.

(1) Within SR, MR, UMU, NC and NO zoning districts, restrictions on the height of fences, walls and closely grown hedges shall be as follows:

- (a) in any front yard no fence, wall or hedge shall exceed 3 feet in height, provided however, that fences that are at least 75% light-permeable may exceed 3 feet, but may not exceed 4 feet in height;
- (b) in any street side yard or interior sideyard from the front property line extending the length of the front-yard setback distance or to the front of any existing house or other principal building, whichever length is greater, no fence, wall or hedge shall exceed 3 feet in height, provided however, that fences that are at least 75% light-permeable may exceed 3 feet, but may not exceed 4 feet in height;
- (c) in any street side yard or interior side yard from the point identified in subparagraph (b) hereof to the rear property boundary or in any rear yard no fence, wall or hedge shall exceed 6.5 feet in height; and,
- (d) in any rear yard, any fence, wall, or hedge located at least three feet from the property line may exceed 6.5 feet, but may not exceed 8.5 feet.

(2) Within LC, GC, DMU, LI and GI zoning districts, restrictions on the height of fences, walls and closely grown hedges shall be as follows:

- (a) No fence, wall or hedge shall exceed 8.5 feet in height.
- (b) In the event the property is adjacent to residentially-zoned property, no fence, wall or hedge may exceed 6.5 feet in height along, or within three feet of, the property line abutting residentially-zoned property.

(3) Sight Distance - Within any zoning district, the following restrictions shall apply: (a) On corner lots, no fence, wall or hedge located within 20 feet of a street intersection (right-of-way line) shall exceed 3 feet in height, measured from curb level; and (b) The height of fences, walls and closely grown hedges shall be measured from the elevation of the sidewalk or curb of the adjacent street.

- (4) Notwithstanding any other provisions of this section, any fence located completely within the required building setback for the zoning district is subject only to the height limitations as are buildings within that zoning district.

7. Building Coverage

Building coverage of detached accessory structures may not exceed that of the principal building; provided, however, that in MR zoning districts, garages accessory to multi-dwelling structures may not exceed 130 percent of the building coverage of the principal building, and in a UMU zoning district building coverage of detached accessory structures may not exceed 50 percent of the building coverage of the principal building, and in the SR-0 district, building coverage of detached accessory structures may not exceed 150 percent of the building coverage of the principal building and in SR-0, SR-1 and SR-2 districts when lot sizes are equal to or greater than 40,000 square feet in size, building coverage of detached accessory structures may not exceed the size as shown on Table 20-0403 below. Accessory buildings and structures shall be included in the calculation of total building coverage. In MR zoning districts, as to multi-dwelling structures with garages as accessory buildings, building coverage may be allowed up to 37.5 percent, provided there is a significant shared site amenity to be shared among the tenants included on the landscaping plan submitted during the building permit process. Examples of such amenities: gazebo with barbeque pit, volleyball court, basketball court, tot-lot/playground, swimming pool, or such other shared amenities as approved by the Zoning Administrator.

Table 20-0403

Lot Size	Maximum size of Accessory Structure
40,000 sq. ft. to 2 Ac.	4,000 sq. ft.
+ 2 Ac. to 3 Ac.	4,500 sq. ft.
+ 3 Ac. to 4 Ac.	5,000 sq. ft.
+ 4 Ac. to 5 Ac.	5,500 sq. ft.
+ 5 Ac. to 10 Ac.	6,000 sq. ft.

C. Home Occupations

Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations (an accessory use) remain subordinate to the allowed principal use (household living) and that the residential viability of the dwelling unit is maintained.

1. Types of Home Occupations

There are two types of home occupations - Major Home Occupations and Minor Home Occupations. Both types are considered an accessory use to an allowed household living use. Unless otherwise expressly stated, the regulations of this Land Development Code apply to both types of home occupations.

2. Minor Home Occupations - Defined

A Minor Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work, but in which no employees come to the site. Minor Home Occupations allow up to four customers per day, with a maximum of 12 customers per week, only between the hours of 7:00 a.m. and 9:00 p.m. No more than one customer is permitted on the site at any given time. Examples include, but are not limited to, artists, crafts people, writers, professional consultants personal care and grooming services, and employees of off-site businesses who work from their home. In addition, tutors, such as piano or other music teachers, who provide lessons to no more than 60 students per week and do not have non-resident employees coming to the site, shall be deemed minor home occupations. In addition, dog grooming services that would qualify as a Minor Home Occupation as a result of percentage of floor area of the home, customer activity and hours of operation may be allowed after it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such dog grooming service granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

3. Major Home Occupations - Defined

A Major Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work and that has a nonresident employee and/or customers coming to the site. Examples are counseling, tutoring, and hair cutting and styling.

4. Allowed Uses

The home occupation regulations of this Land Development Code establish performance standards for accessory home occupations rather than defining a list of allowed home occupations. Uses that comply with all of the standards of this section will be allowed as home occupations unless they are specifically prohibited.

5. Prohibited Uses

a. Vehicle and Large Equipment Repair

Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

b. Dispatch Centers

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

c. Mortuaries

Mortuaries are not allowed as home occupations.

d. Animal Care, Grooming, or Boarding Facilities

Animal care or boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities. Dog grooming services are also included as prohibited animal care or boarding facilities; however, to the extent such services would otherwise qualify as a Minor Home Occupation, dog grooming services may be allowed upon application as provided in

paragraph 2, regarding Minor Home Occupations, above. In no event may dog grooming be allowed as a Major Home Occupation.

e. Firearms and Ammunition Sales

The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

f. Adult Entertainment Center Uses

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed as a home occupation.

6. Signs

No more than one sign shall be allowed on the site of a home occupation. The maximum size of the sign shall be one square foot. It may not be illuminated, and it must be attached to the dwelling unit.

7. Outdoor Activities

All activities and storage areas must be conducted in completely enclosed structures.

8. Exterior Appearance

There may be no change in the exterior appearance of the dwelling unit that houses the home occupation or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, paving of required setbacks, or adding commercial-like exterior lighting. There may be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot.

9. Operational Impacts

No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

10. Trucks and Vehicles

No truck or van with a payload rating of more than 1 ton may be parked at the site of a home occupation, and no more than one truck or van with a payload rating of less than 1 ton is allowed at the site of a home occupation.

11. Deliveries

Deliveries or pick-ups of supplies or products associated with business activities are allowed only between 8 a.m. and 6 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.

12. Major Home Occupations

The following regulations apply only to Major Home Occupations.

a. Conditional Use Permits

No Major Home Occupation is allowed unless it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such Major Home Occupation granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

b. Employees

A maximum of one nonresident employee is allowed with a Major Home Occupation provided no customers come to the site. Major Home Occupations that have customers coming to the site are not allowed to have nonresident employees. For the purpose of this provision, the term “nonresident employee” includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.

c. Customers

Customers may visit the site only during the hours of 7 a.m. to 9 p.m., and no more than 12 customers or clients may visit the site in any single day.

d. Number

No more than one Major Home Occupation may be conducted on a single site. A Minor Home Occupation may be conducted on the site of a Major Home Occupation.

D. Freestanding Non-Commercial Telecommunications Support Structures

Telecommunications Support Structures ("TSS") for the purpose of elevating non-commercial antennas are permitted as accessory uses in AG, SR, MR, UMU, NC, and NO zoning districts, pursuant to the requirements listed below.

1. The maximum permitted height of a TSS for non-commercial antennas in an AG, SR, MR, UMU, NC, or NO zoning district or on a site with residential land use is a total of 50 feet, as measured from the ground to the top of the TSS. The maximum height of masts and/or antennas mounted on the TSS is 30 feet, for a total maximum height of 80 feet.
2. In an AG, SR, MR, UMU, NC, or NO zoning district, or on a site with residential land use, a TSS of greater than 50 feet, up to a maximum of 70 feet, as measured from the ground to the top of the TSS is a conditional use. The maximum height of masts and/or antennas mounted on the TSS is 30 feet, for a total maximum height of 100 feet. Factors for considering approval of a conditional use for TSSs exceeding 50 feet in height include:
 - a. Existence of a structure within 300 feet of the TSS, which will create interference with antenna operations.
 - b. Tree heights in the yard where the TSS is to be located or in immediately adjacent yards are such that they will interfere with ham radio operations.
 - c. The orientation of the trees, yard, TSS, and neighboring homes is such that the increased height will not make the TSS more noticeable or more intrusive to properties within 300 feet.
3. In all other zoning districts, the provisions of Section 20-0402.N. shall apply.
4. Non-commercial antenna TSS shall be permitted only in the rear yard of the property. If the yard is configured in a manner such that there is essentially no rear yard available for the TSS, the Zoning Administrator may approve placement of the TSS within the sideyard. In addition, if the Zoning Administrator determines that locating the TSS in the sideyard would result in reduced visibility of the TSS by neighboring properties, a sideyard location may be approved.
5. Setbacks of the TSS shall meet the dimensional standards of the zoning district in which they are located. Antennas mounted upon such TSS shall not project beyond the property lines.
6. Guy wires, if used, may be anchored within the side or rear yard setbacks of the property. They shall not project into or be anchored into the front yard.
7. The application for a Building Permit and/or Conditional Use Permit for a freestanding non-commercial antenna TSS shall include:
 - a. A site plan showing the exact proposed location of the TSS,
 - b. Installation plans demonstrating the adequacy of the structural design,

- c. Documentation showing the proposed height of the TSS and the materials from which it will be constructed, and
 - d. Any other information as deemed necessary by the Inspections Administrator or the Zoning Administrator.
8. One freestanding non-commercial antenna TSS shall be permitted per residential unit. Additional TSSs, up to a maximum of three, require approval of a Conditional Use Permit, subject to the review criteria stated above and the criteria listed in Section 20-0909.

Source: 2985 (1999), 3008 (1999), 3062 (1999), 4039 (2000), 4164 (2001), 4180 (2001), 4224 (2002), 4239 (2002), 4299 (2003), 4337 (2003), 4695 (2009), 4704 (2009).

§20-0404 Temporary Uses

A. Purpose

Provisions authorizing temporary uses are intended to permit occasional, temporary uses and activities when consistent with the purposes of this Land Development Code and when compatible with other nearby uses.

B. Exemptions

The following shall be permitted as temporary uses without complying with the permit requirements of this section:

1. Garage sales conducted in residential areas by the owner of such premises for no more than 3 days total in any 180-day period; and
2. Christmas tree sales.

C. Authority to Approve

Temporary uses are prohibited, except that the Zoning Administrator shall have the authority and responsibility to grant permits for certain temporary uses as provided in this section.

D. Definition

A temporary use is a use of property conducted from an area, structure or facility that does not require a building permit from the City of Fargo and which may not comply with the use or dimensional standards of this Land Development Code. Such area, facility, or structure may include parking lots, lawns, trucks, tents, or other temporary structures.

E. Time Limit

Temporary uses will be permitted for a maximum of 15 days, provided, however, the Zoning Administrator should be authorized to allow such temporary use to extend for as long as 8 months. Upon expiration of a temporary use permit, another permit for the same premises may not be obtained for at least 30 days. The applicant shall submit a written explanation of the length of time needed for the temporary use.

Examples of uses that require temporary use permits include, but are not limited to the following:

1. Greenhouses,
2. Fireworks sales (permitted outside City limits only),
3. Outdoor seating and serving area at a restaurant (must include an alternative parking plan if on-site parking area is affected),
4. On-site storage tents, trailers, or other shelter to house inventory during construction or other unusual business interruptions.

F. Permit Required

A permit must be obtained from the Zoning Administrator before establishing a temporary use.

G. Procedure

A complete application for Temporary Use Permit must be submitted to the Zoning Administrator in a form established by the Zoning Administrator along with a non-refundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid. The application shall be reviewed for its likely effects and surrounding properties and its compliance with the purpose of this section. The Zoning Administrator shall impose such conditions of approval as are necessary to ensure compliance with the purposes of this Land Development Code. If the permit complies with all applicable provisions of this Land Development Code it will be approved.

Source: 4164 (2001).

Article 20-05

Dimensional Standards

§20-0501 Residential District Standards

The dimensional standards of Table 20-0501 apply to all development in MR-3 and more restrictive zoning districts.

Table 20-0501

Dimensional Standard	Zoning District										UMU
	AG	SR-0	SR-1	SR-2	SR-3	SR-4	SR-5 ^[9]	MR-1	MR-2	MR-3	
Maximum/Minimum Density (UPA - Units per Acre)	0.1 Max.	1.0 Max.	2.9 Max.	5.4 Max.	8.7 Max.	12.1 Max.	14.5 Max.	16.0 Max.	20.0 Max.	24.0 ^[1] Max.	18.0 Min.
Minimum Lot Size											
Area (Sq. Ft.)	10 Ac	1 Ac ^[2]	15,000	8,000	5,000	3,600	3,000	5,000	5,000	5,000	2,420
Width (Ft.)	200	120	80	60	50 ^[3]	34 ^[3]	25	50 ^[3]	50 ^[3]	50 ^[3]	50 ^[3]
Minimum Setbacks (Ft.)											
Front	50 ^[4]	50	35	30	20	15 ^[5]	15 ^[5]	25	25	25	10
Interior Side ^[6]	25	25	15%/15	10%/10	10%/10	4	4	15%/25	15%/25	10	5
Street Side	25 ^[7]	25	17.5	15	12.5	10	10	12.5	12.5	12.5	10
Rear	50	50	25	25	15	15	15	20	20	20	15
Watercourse Setback	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]
Max. Building Coverage (Pct. of Lot)	NA	25	25	30	35	45	50	35 ^[8]	35 ^[8]	35 ^[8]	75
Minimum Open Space (Pct. of Lot)	NA	NA	NA	NA	NA	NA	NA	35	35	35	NA
Maximum Height (Ft.)	35	35	35	35	35	35	35	35	45	60	60

Source: 2985 (1999), 3062 (1999), 4039 (2000), 4165 (2001), 4338(2003), 4695 (2009), 4818 (2012).

[1] Higher densities may be allowed in accordance with the Bonus Density provisions of Sec. 20-0505.

[2] SR-0 minimum district size is 20 acres. See Sec.20-0203-A.

[3] Minimum lot width subject to limitation of access as provided in Sec.20-0702.

[4] Minimum 100 feet from right-of-way on Arterial or section line road.

[5] Minimum 20-foot setback shall be provided between front-entry garages and nearest edge of sidewalk crossing plate.

[6] #/# = Percent of Lot Width/Feet (whichever is less).

[7] Minimum 75 feet from right-of-way on Arterial or section line road.

[8] Maximum of 37.5 percent of building coverage shall be allowed if site amenity is provided in accordance with Sec. 20-0403.B.7. If the amenity is contained within the footprint of one primary structure, the floor area of that amenity is counted as open space, but is not subtracted from the area of the building.

[9] The SR-5 zoning district is limited to a maximum size of 21,000 square feet, but may exceed 21,000 square feet, up to a maximum of two acres provided the district is within 600 feet of a private or public dedicated open space feature, such as a public park, private park, school yard or playground that is accessible to residents of the SR-5 district, any of which shall be a minimum of two acres or more in size. For purposes of identifying a single SR-5 zoning district, parcels adjacent to one another that are, or will be, the same zoning classification shall be deemed to be within the same zoning district and, therefore, shall be subject to the maximum size limitation.

[10] Watercourse setbacks for all residential, nonresidential and overlay/special zoning districts are as set forth in Section 20-0508.

Source: 4039 (2000), 4165 (2001), 4338 (2003), 4818 (2012).

§20-0502 Nonresidential District Standards

The dimensional standards of Table 20-0502 apply to all development in nonresidential zoning districts.

Table 20-0502

Dimensional Standard						
	GO	LC	DMU	GC	LI	GI
Minimum Lot Size						
Minimum Setbacks (Ft.)						
Front	20	10	0	20	20	50
Interior Side	5	5	0	5 ^[3]	10 ^[1]	20 ^[1]
Street Side	20	10	0	20	20	50
Rear	15	15	0	15	20	20
Watercourse Setback	[3]	[3]	[3]	[3]	[3]	[3]
Maximum Building Coverage (Pct. of Lot)	65	55	100	85	85	85
Maximum Height (Ft.)	60	35/60 ^[4]	None	None	None	None

[1] No setback required when adjacent to DMU.

[2] The 35 foot height restriction applies whenever residential protection standards apply, or when the Limited Commercial parcel is within 300 feet of SR zoning. Otherwise, the height limit shall be 60 feet in Limited Commercial zoning districts.

[3] Watercourse setbacks for all residential, nonresidential and overlay/special purpose zoning districts are as set forth in Section 20-0508.

Source: 4039 (2000), 4225 (2002), 4818 (2012).

§20-0503 Overlay/Special Purpose Zoning District Standards

The dimensional standards that apply within overlay and special purpose zoning districts can be found in the following sections:

PUD, Planned Unit Development	Sec. 20-0302 ^[3]
C-O, Conditional Overlay	Sec. 20-0303 (no set standards) ^[3]
P/I, Public and Institutional	Sec. 20-0304 ^[3]
H-O, Historic Overlay	Sec. 20-0305 (no dimensional standards) ^[3]
HIA-O, Hector International Airport Overlay	Sec. 20-0306 ^[3]
NO, Neighborhood Office	Sec. 20-0208 ^[3]
NC, Neighborhood Commercial	Sec. 20-0209 ^[3]

Source: 2985 (1999), 4039 (2000), 4818 (2012).

§20-0504 Measurements and Exemptions

A. Density

Density refers to the number of dwelling units for each acre of land. Density is calculated by dividing the number of dwelling units on a lot by the area (in acres) of the lot on which the dwelling unit is located. The number of dwelling units allowed on a site is based on the presumption that all other applicable standards will be met. The maximum density established for a district is not a guarantee that such densities may be obtained, nor a justification for adjusting other dimensional or development standards.

B. Lot Area

Lot area refers to the horizontal land area within lot lines. No building permit or development approval may be issued for a lot that does not meet the minimum lot area requirements of this Land Development Code except in the following cases.

1. Reduction of Public Purpose

When an existing lot is reduced because of conveyance to a federal, state or local government for a public purpose and the remaining area is at least 75 percent of the required minimum lot size for the district in which it is located, then that remaining lot will be deemed to comply with the minimum lot area standards of this Land Development Code.

2. Utilities

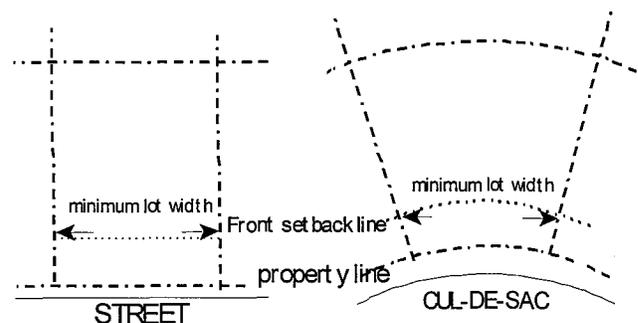
Utilities using land or an unoccupied building covering less than 1,000 square feet of site area are exempt from the minimum lot area standards.

3. Detached House Exemption

The minimum lot area standards of this Land Development Code shall not be interpreted as prohibiting the construction of a detached house on a Legal Lot, provided that the house is constructed in compliance with all applicable setback standards.

C. Lot Width

Lot width is measured between side lot lines along a line that is parallel to the front lot line or its chord and located the minimum front setback distance from the front lot line.



D. Setbacks

Setbacks refer to the unobstructed, unoccupied open area between the furthestmost projection of a structure and the property line of the lot on which the structure is located, except as modified by the standards of this section. Setbacks must be unobstructed from the ground to the sky except as specified in this section.

1. Exceptions to Setbacks

Every part of a required setback must be open and unobstructed from the ground to the sky except as set out in this subsection:

- a. Trees, shrubbery or other landscape features may be located within any required setback;
- b. Fences and walls may be located within any required setback, subject to Sec. 20-0403-B.2;
- c. Driveways and sidewalks may be located within any required setback;
- d. Utility lines, wires and associated structures, such as power poles, may be located within any required setback;
- e. Signs, where permitted, may be located within any required setback;
- f. Uncovered porches, uncovered steps to building entrances, uncovered patio decks and uncovered balconies may extend up to 10 feet into any required front, rear or street side setback and up to 3 feet into any required interior side setback;
- g. Openwork fire balconies and fire escapes may extend up to 3 ½ feet into any required setback;
- h. Sills, belt courses, cornices, buttresses, eaves and other architectural features may extend up to 3 feet into any required setback;
- i. Off-street parking and loading areas, subject to Sec. 20-0704, may be located within any required setback;
- j. Chimneys and flues may extend up to 2 feet into any required setback;
- k. Accessory structures may be located within rear setbacks in accordance with Sec. 0403-B.3. (See also Sec. 0403-B.4);
- l. Solar panels and other apparatus needed for the operation of active and passive solar energy systems and all other forms of renewable passive energy, including but not limited to, overhangs, movable insulating walls and roofs, detached solar collectors, reflectors, and piping may project into a required rear setback by up to 10 feet and into a side setback by up to 3 feet. In all cases, however, they must be located at least 3 feet from all lot lines; and
- m. Satellite dish antennas may be placed in required rear setbacks and on roofs.

2. Setback Averaging

In a block where the average front setback of existing buildings within 100 feet of the subject lot is not more than 6 feet greater or 6 feet less than the front setback requirement for the zoning district in which such block is located, the front setback for the proposed building shall be set at such average depth. Where such average depth is more than 6 feet greater or 6 feet less than the front setback required for such district, this average setback requirement may be waived by the Board of Adjustment and a different requirement established by the Board of Adjustment. When a block is zoned in different zoning districts, the front setback requirements of the district that requires the greater front setback shall apply along its entire length. Setback averaging is not required in a UMU, University Mixed-Use District.

3. Reverse Corner Lots

The minimum street side setback on a reverse corner lot shall equal at least 50 percent of the required front setback of the lots located to the rear of the reverse corner lot. No principal or accessory building on the reverse corner lot shall project beyond this minimum street side setback line. This provision shall not be construed to reduce the buildable lot width of a corner lot to less than 25 feet.

4. Reduction for Public Purpose

When an existing setback is reduced because of conveyance to a federal, state or local government for a public purpose and the remaining setback is at least 75 percent of the required minimum setback for the district in which it is located, then that remaining setback will be deemed to satisfy the minimum setback standards of this Land Development Code.

E. Building Coverage

Building coverage refers to the area of a lot covered by buildings (principal and accessory) or roofed areas, as measured along the outside wall at ground level, and including all projections, other than open porches, fire escapes, canopies and the first three feet of a roof overhang.

F. Open Space

Open Space refers to outdoor, unenclosed areas, located on the ground or on a roof, balcony, deck, porch or terrace designed and accessible for outdoor living, recreation, pedestrian access or landscaping, but not including roads, parking areas, driveways, or other areas intended for vehicular travel. If approved by the Planning Commission, the open space standards of this Article may be satisfied by funding or otherwise providing an equivalent amount of off-site open space within a 1-mile radius of the proposed development site.

G. Height

Building height refers to the vertical distance between the average finished grade at the base of the building along the side of the building being measured and: 1) the average height level between the eaves and ridge line of a gable, hip or gambrel roof; 2) the highest point of a mansard roof; or 3) the highest point of the coping of a flat roof.



1. Fences or Walls

In the case of fences or walls, height shall be measured from ground level on the higher side of the fence or wall.

2. Exceptions to Height Limits

Zoning district height limits do not apply to belfries, cupolas, spires, domes, monuments, airway beacons, radio/communication towers, structures for essential services, windmills, flagpoles, chimneys, radio/television receiving antennas or chimney flues. Height limits also do not apply to any bulkhead, elevator, water tank, or to any similar structure or necessary mechanical appurtenance extending above the roof of any building if such structure does not occupy more than 33 1/3 percent of the area of the roof.

Source: 2985 (1999), 4226 (2002), 4695 (2009).

§20-0505 Bonus Density

- A. A maximum density of 30 dwelling units per acre shall be allowed for projects that comply with the following 3 standards, provided that:
1. Parking area constructed within the building structure (i.e. underground or “tuck under” parking) shall be provided, with an area equal to at least 70 percent of the principal building footprint;
 2. Minimum Open Space shall be 40 percent; and
 3. Building height shall comply with maximum height described in Sec. 20-0501.
- B. A maximum density of up to 30 dwelling units per acre in MR-3 district may be granted for projects located within 600 feet of the DMU zoning district if, after review under the Conditional Use review procedures of Sec. 20-0909, the Planning Commission determines that one or more of the following conditions have been met:
1. The proposed project will allow for the development of underground parking and substantially more open space and landscaping than otherwise would be achieved;
 2. The proposed project is to be designed, constructed and managed for persons with special needs (e.g. physically disabled or older persons), with van service, on-site meals, care-givers and other services available to residents; or
 3. The proposal will ensure the preservation of a designated local, state or federally designated historic landmark.

Source: 2985 (1999), 4039 (2000), 4608 (2007).

§20-0506 Alternative Residential Development Options

A. General

1. Purpose

The alternative development options of this section allow for variety in development standards while maintaining the overall character of a single-dwelling neighborhood. These options have several public benefits:

- a. They allow for development which is more sensitive to the environment, especially in hilly areas and areas with water features and natural drainageways;
- b. They allow for the preservation of open and natural areas;
- c. They promote better site layout and opportunities for private recreational areas;
- d. They promote opportunities for affordable housing; and
- e. They promote energy-efficient development.

2. General

The alternative development options listed in this section are allowed by-right unless otherwise expressly stated. The project must comply with all of the applicable development standards of this section. The project must also comply with all other development standards of the base zoning district unless those standards are superceded by the standards in this section. The alternative development options listed in this section are not applicable to SR-0 zoning districts.

B. Attached Housing

1. Lot Width, Lot Area, Building Coverage and Density

Attached housing is exempt from the lot width, lot area and building coverage standards of the underlying zoning district, but shall not be exempt from the maximum density standards.

2. Setbacks

No interior side setback is required on the “attached” side of a lot containing an attached house. The front, side, and rear setback standards shall apply around the perimeter of an attached housing development.

3. Number of Attached Units

In the SR-3 district, no single structure may contain more than 8 units.

C. Zero Lot Line

1. Description

A zero lot line development is where houses in a development on a common street frontage are shifted to one side of their lot. This provides for greater usable yard space on each lot. These developments require that planning for all of the house locations be done at the same time. Because the exact location of each house is predetermined, greater flexibility in site development standards are possible while assuring that single-dwelling character is maintained.

2. Applicability

Zero lot line developments are allowed for houses in the SR-1 through MR-3 zoning districts.

3. Procedure

Zero lot line developments are allowed by-right. Review for compliance with the standards of this section shall occur during the subdivision platting process. Restrictions that assure the minimum distance between houses and any required easements must be recorded on the plats of the applicable lots. Proof of such recordation must be submitted as part of the building permit application.

4. Setbacks

The side building setback on one side of the house may be reduced to zero. This reduction does not apply to the street side setback or to the interior side setback adjacent to lots that are not part of the zero lot line project.

5. Additional Standards**a. Distance Between Houses**

The minimum distance between all buildings in the development must be equal to twice the required side setback required by the underlying zoning district. A deed restriction must be recorded on the deed of each applicable lot to ensure continued compliance with this setback.

b. Eaves

The eaves on the side of a house with a reduced setback may project a maximum of 18 inches over the adjacent property line. In this case, an easement for the eave projection must be recorded on the deed for the lot where the projection occurs.

c. Maintenance Easement

An easement between the two property owners to allow for maintenance or repair of the house is required when the eaves or side wall of the house are within 4 feet of the adjacent property line. The easement on the adjacent property must provide at least 5 feet of unobstructed space between the furthestmost project of the structure and the edge of the easement.

d. Privacy

If the side wall of the house is on the property line, or within 3 feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot are not allowed. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, are allowed.

D. Cluster Development

A cluster development is a residential subdivision in which the lots are allowed to be smaller (in area and width) than otherwise required for the underlying, base zoning district, but in which the overall density cannot exceed the maximum density limit for the underlying zoning district. Under the cluster development option, a subdivision can contain no more lots than would otherwise be allowed for a conventional subdivision in the same zoning district, but the individual lots within the development could be smaller than required in a conventional subdivision. Smaller lot sizes within a cluster development are required to be offset by a

corresponding increase in open space.

1. Conflict with Other Regulations

If there is a conflict between the cluster development standards of this chapter and any other requirement of this Land Development Code, the standards of this chapter control. Otherwise, a cluster development is subject to all other applicable requirements of this Land Development Code.

2. Where Allowed

Cluster developments are allowed in all SR zoning districts.

3. Approval Procedure

Cluster Developments are subject to the Subdivision procedures of Sec. 20-0907.

4. Density

A cluster development is subject to the maximum density requirements of the base zoning district.

5. Lot Size

There is no set minimum lot size (area or width) requirement within a cluster development. Individual lot sizes must be adequate to meet all required density and development standards. Minimum lot sizes may be established by the Planning Commission or Board of City Commissioners during the Subdivision process.

6. Setbacks and Building Separations

The minimum setback standards of the base zoning district apply along the perimeter of a cluster development. All detached structures within a cluster development must be separated by a minimum distance of 10 feet.

7. Open Space

a. On-Site Open Space

Cluster developments shall be subject to the minimum on-site open space standards of the base zoning district, if applicable.

b. Common Open Space

(1) Minimum Requirement

Common open space is required within a cluster development to ensure that the overall density within the development does not exceed the maximum density allowed by the underlying zoning district. Common open space must be provided in an amount at least equal to the difference between (1) the actual, average lot area per dwelling unit within the cluster development and (2) the required lot area per dwelling unit for conventional development within the underlying base zoning district.

(2) Use of Common Open Space

Common open space must be set aside and designated as an area where no development will occur, other than project-related recreational amenities or passive open space areas. The Planning Commission may require that up to 50 percent of required common open space be useable open space, if deemed necessary by the

Planning Commission or Board of City Commissioners to ensure adequate recreational amenities for residents of the development.

Source: 3062 (2000).

§20-0507 Attached Development.

The alternative development options of this section allow for variety in development standards while maintaining the overall character of a commercial or industrial area. These options have several public benefits including the potential preservation of open land areas and more efficient use of commercial and industrial space.

a. In a PI (Public and Institutional), LC (Limited Commercial), GC (General Commercial), LI (Limited Industrial), GI (General Industrial), GO (General Office), NC (Neighborhood Commercial) and NO (Neighborhood Office) zoning district, attached structures and buildings shall be exempt from the interior side yard setback requirement of Section 20-0502; provided that owners of all property in the attached development shall have delivered to the zoning administrator written approval of the proposed attached structures or buildings and provided the zoning administrator consents to the proposed attached development. Written approval must be on a form acceptable for recording with the office of the recorder for the county.

(1) Lot Width

In any attached structure, allowed under the foregoing sentence, must comply with minimum building coverage requirements, parking requirements and landscaping requirements as provided in the LDC.

(2) Setbacks

No interior side setback is required on the Attached side of a lot containing an attached building. The front, side, and rear setback standards shall apply around the perimeter of an attached development.

Source: 4531 (2006).

§20-0508 Watercourse Setbacks- Restrictions and Exceptions.

A. No building or structure may be erected, constructed, enlarged or altered within the Minimal Disturbance Zone Setback or within the Limited Disturbance Zone Setback unless such building or structure conforms to the regulations in this section

1. a. **MDZS—Red River and Wild Rice Rivers.** The Minimal Disturbance Zone Setback (“MDZS”) for properties near the Red River or the Wild Rice River shall be the greater distance of (a) 350 feet from the center line of the river and (b) the floodway whichever distance creates the greater amount of setback from the center line of the river.
- b. **MDZS—Sheyenne River.** For parcels that are near the Sheyenne River, the Minimal Disturbance Zone Setback (“MDZS”) shall be the greater distance of (a) 175 feet from the center line of the river and (b) the floodway whichever distance creates the greater amount of setback from the center line of the river.
2. **LDZS.** The Limited Disturbance Zone Setback (“LDZS”) shall begin at the outer edge of the Minimal Disturbance Zone Setback and extend an additional one hundred (100) feet on the same line as for the MDZS.

For purposes of determining of the disturbance zone setbacks, distances shall be measured horizontally and perpendicular from the tangent of the center line of the applicable water course. For purposes of this ordinance, “floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a stated amount, as the same has been formally adopted either by the board of city commissioners, by the Federal Emergency Management Agency (FEMA) on a Flood Insurance Rate Map (FIRM), or by both the board of city commissioners and FEMA. To the extent the board of city commissioners and FEMA have adopted different floodways, the floodway most recently adopted shall be deemed to be the floodway for purposes of this ordinance.

B. **Disturbing Land Prohibited.** No person, firm, corporation or other entity shall engage in any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving excavation or drilling operations within the MDZS or the LDZS unless such development conforms to the regulations in this section. Such man made changes shall include, without limitation, any development as the same is described in Fargo Municipal Code Article 21-06.

C. **Minimal Disturbance Zone Setback.** All property within the MDZS calculated in accordance with this section shall conform to the following regulations:

1. No permanent structures shall be allowed except the following:
 - (a) Stairways, Lifts and Landings - Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down steep slopes to watercourses. Stairways and lifts must meet the following design

requirements:

- (i) Stairways and lifts shall not exceed four (4) feet in width on residential lots and eight (8) feet in width for commercial properties or public open-space recreational properties. Residential lots are permitted one stairway or lift and one facility to provide watercourse access for the physically challenged. The number of accesses for commercial or public open-space shall be determined on a case-by-case basis by the board of city commissioners.
 - (ii) Landings for stairways and lifts on residential lots shall not exceed thirty-six (36) square feet in area. Landings no larger than sixty-four (64) square feet shall be used for commercial properties, public open-space recreational properties.
 - (iii) Canopies or roofs shall not be allowed on stairways, lifts, or landings.
 - (iv) Where reasonably possible, stairways, lifts and landings shall be constructed above the ground on posts or pilings. Stairways, lifts and landing may be placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.
 - (v) Facilities such as ramps, lifts or mobility paths for the physically challenged to achieve watercourse access shall not exceed four (4) feet in width for residential lots and eight (8) feet in width for commercial properties or public open-space recreational properties.
 - (vi) Stairways, lifts and landings shall not prevent or limit the use of public paths or public or private non-motorized vehicle lanes or any other easements.
- (b) Roads, bridges, trails, storm drainage, stormwater management facilities and utilities are permitted within the minimal disturbance zone provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists and that minimal disturbance will take place. These structures shall be located, designed, constructed and maintained to provide maximum erosion protection, to have the least adverse effects on wildlife, aquatic life and their habitats and to maintain hydrologic processes and water quality. Following any disturbance, the impacted area shall be restored.
 - (c) Bike paths, walking trails, or other multi-use paths.
 - (d) A public rest room or a public facility that is open on all sides and functionally related to a designated open space or recreational use.

2. No additional fill shall be allowed.

3. No grading shall be allowed, except grading for bank restoration in areas experiencing bank slumping.
 4. No excavating shall be allowed.
 5. On-site septic systems and drain fields shall not be permitted.
 6. Irrigation systems shall not be permitted.
 7. Notwithstanding the foregoing restrictions or prohibitions, permanent flood protection levees or walls may be constructed within the MDZS or LDZS provided the soil is determined, in the opinion of the city engineer, to be sufficiently stable to support the proposed flood protection structure without slumping or shifting.
- D. **Limited Disturbance Zone Setback.** With respect to all property within the LDZS calculated in accordance with this section, the regulations with respect to the said 100-foot setback of the LDZS shall be the same as the regulations for the MDZS (Subsection C), except as follows:
1. In the Limited Disturbance Zone Setback, one accessory building not to exceed One Hundred Twenty (120) square feet shall be allowed.
- E. **Transitional Provisions to Watercourse Setback Restrictions.** To the extent that land within either the MDZS or LDZS was platted prior to the effective date of this ordinance, the following additional regulations shall apply:
1. **Exemptions--existing parks and golf courses; lots across street from river.** Golf courses that exist as of the effective date of this ordinance and park land of the city or of the Park District of the City of Fargo shall be exempt from the provisions of this ordinance except with respect to permits that would otherwise be required by law other than this ordinance and that are related to buildings or structures within the MDZS or the LDZS. With respect to parcels that have been platted prior to the effective date of this ordinance that are within the MDZS or LDZS, to the extent that a permanent flood protection structure is able to be constructed on the side of the street nearest the river to the elevation established by city policy by motion, resolution or ordinance of the board of city commissioners said parcels shall be exempt from the provisions of this section and building permits may be issued for said parcels.
 2. **Previously Platted Lands (and not built upon).**

Building permits may not be issued for new buildings or structures within either the MDZS or LDZS for parcels that have been platted prior to the effective date of this ordinance and have not been previously built upon unless a waiver is obtained from the board of city commissioners. A parcel shall be considered built upon if a valid building

permit has been issued prior to the effective date of this ordinance or if a bona fide application for a building permit has been received by the Building Official prior to the effective date of this ordinance. An applicant shall only be eligible to receive such a waiver if the requested building permit is for a proposed building or structure that will be located no nearer than 100 feet from the nearest floodway. In reviewing an application for a waiver of this prohibition, the board of city commission shall consider the following factors:

- (a) The extent to which the subject property is already protected from the risk of flooding.
 - (b) The extent to which the soil is sufficiently stable to support the proposed building or structure without slumping or shifting of soil.
 - (c) The extent to which the proposed building or structure may be elevated to such a level as to mitigate against the risk of flooding.
 - (d) The adequacy of area available to install emergency flood protection if the proposed building or structure were in place.
 - (e) If the proposed building or structure is accessory to a principal building or structure, the extent to which the accessory building or structure to either be constructed to an elevation to appropriately minimize risks of flooding or, in the alternative, or be designed and constructed so as to tolerate being flooded.
3. Previously Platted Lands (and built upon). With respect to applications in which a permit is requested related to a parcel within either the MDZS or LDZS that has been platted prior to the effective date of this ordinance but has already been built upon, such building permit may be issued for a building or structure as follows:
- (a) Enlargement or alteration of existing principal buildings or structures shall be allowed so long as the proposed enlargement or alteration does not extend the building or structure closer to the river; and,
 - (b) Interior remodeling of an existing building or structure is allowed.
 - (c) To the extent said parcel contains one or more principal buildings or structures lying, in whole or in part, within the MDZS, the LDZS, or both, and in the event of such buildings or structures is damaged or destroyed by any means, to the extent of more than 50 percent of its structural value prior to the damage, that building or structure may be restored, repaired or rebuilt in its entirety in accordance with the provisions in the Land Development Code regarding non-conforming structures (See generally LDC §20-1004).

F. **Conflict with Other Regulations.**

1. Where the standards and management requirements of this setback are in conflict with other laws, regulations, ordinances or policies regarding streams, steep slopes, erodible soils, wetlands, floodplains, timber harvesting, land disturbance activities or other environmental protective measures, the more

restrictive requirements shall apply.

2. Nothing herein shall be interpreted to abrogate or limit the applicability of any other local, state or federal law, including without limitation the floodplain management regulations of the Federal Emergency Management Agency of the United States of America.
3. Nothing herein shall be interpreted to abrogate or limit the applicability of any substantial improvement provisions of the floodplain management regulations as identified in article 21-06 of the Fargo Municipal Code, as the same may be amended from time to time.

Source: 4818 (2012).

Article 20-06

Subdivision Design and Improvements

§20-0601 General

Improvements within subdivisions must be installed and designed in accordance with the standards of this Article, all other applicable requirements of this Land Development Code and the following, as applicable:

- A. All applicable provisions of the North Dakota Century Code;
- B. The City's Building and Housing Codes;
- C. The intent of the Comprehensive Plan, Official Map, and Capital Improvements Program, including all streets, drainage systems, and parks shown on the Official Map or Comprehensive Plan, as adopted;
- D. Rules of the Health Department and other local and state agencies responsible for providing facilities and services;
- E. The rules of the North Dakota Department of Transportation;
- F. The standards and regulations adopted by the Planning Commission and all boards, commissions and agencies of the City;
- G. Requirements of the Flood Plain Management Ordinance of the City of Fargo including any necessary permits required from other governmental agencies.

§20-0602 Land Unsuitable for Development

The Planning Commission shall not allow the subdivision of land that is unsuitable for development due to flooding, improper drainage, steep slopes, soil types, adverse earth formations or topography, utility easements or other features that will be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision or its surrounding area. If adequate methods to overcome this unsuitability are formulated by the developer and approved by the Planning Commission, the Planning Commission may approve the development on the condition that these measures are carried out.

§20-0603 Subdivision Names

Subdivision names may not duplicate or be phonetically similar to the names of other subdivisions or developments except in cases of additions to existing subdivisions. The Planning Commission shall have final authority over subdivision names.

§20-0604 Street Names and Numbering

Street names may not duplicate names of any existing street in the City or in adjacent communities except where the street is a continuation of an existing street. Streets must be numbered in accordance with the City of Fargo street and property numbering system approved by the Board of City Commissioners.

§20-0605 Monuments

A. Location

Developers shall place permanent reference monuments at block corners, control points, and lot corners.

B. Material Specifications

1. Corner and control point monuments must be iron pins set in concrete.
2. Lot corner monuments must be iron pins set in the ground.

§20-0606 Lots

A. Arrangement

The lot arrangement must be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits to build on all lots in compliance with this Land Development Code and all other applicable ordinances and standards.

B. Dimensions

Lots must comply with the minimum lot size, lot width and other dimensional standards of this Land Development Code.

C. Double-Frontage and Reverse Frontage Lots

Double frontage and reverse frontage lots shall be avoided except where necessary to provide separation of residential development from arterials streets or to overcome specific disadvantages of topography and orientation.

§20-0607 Blocks

A. Width

Blocks must have sufficient width to provide for two tiers of lots, except where single tier lots are required to separate residential development from through vehicular traffic, to separate the lots from another type of use, to allow for unusual topographic conditions or when adjacent to the outer perimeter of the subdivision

B. Length

Block lengths may not exceed 1,320 feet, and when blocks longer than 800 feet are proposed, pedestrian crossings may be required to be provided near the center of the block.

§20-0608 Utilities

A. General

Developers must provide utility improvements in each new subdivision in accordance with the standards and requirements of the City Engineer.

B. Underground Location Required

All utility facilities intended only for distribution within a subdivision including electrical, telephone, and cable television facilities must be placed underground. Area distribution facilities may be placed above ground if approved by the City Engineer.

C. Connection to Public Sewer, Water and Stormwater Systems

Developers of subdivisions are required to connect subdivisions to the public sewer, water and stormwater systems. Individual or other private facilities will be allowed only if public facilities are not available and will not be available for over 15 years, as determined by the City Engineer. The owner of a parcel of land within 200 feet of a public sewer system shall be required to connect to the public sewer system, in accordance with Section 11 or the City of Fargo Revised Ordinances of 1965. It shall be unlawful for any owner or occupant of land within 200 feet of a public sewer system to utilize an individual sewage disposal system on their property unless approved by the City Engineer.

Source: 4166 (2001).

§20-0609 Sidewalks

Sidewalks must be installed in accordance with this section and the standards of Article 18-02, unless an Alternative Sidewalk Plan is approved by the City Commission after recommendation of the Planning Commission, at the time of approval of a subdivision approval as provided in §200907. All sidewalks shall be located at least 6 feet from the street edge along which such sidewalk is parallel.

A. **Planning Commission Policy**

The Planning Commission shall make its recommendation on a sidewalk waiver request based on the guidelines of this subsection and the facts surrounding the waiver request. Based on such factors, the Planning Commission may recommend denial of a sidewalk waiver request even though the request may be technically eligible for such a waiver. The Planning Commission has established the following statement of principles as a foundation for reviewing requests for sidewalk waivers:

- (1) Sidewalks are a shared amenity and asset of the community. As such, the public interest in sidewalks transcend specific individuals, lots, subdivisions, or periods of time.
- (2) Sidewalks represent an important element of the transportation system, and as such, they provide an element of safety for both the automobile user and the pedestrian, including children on bikes.
- (3) Sidewalks are an important element in the inventory of recreational assets of the community.
- (4) To meet their potential as elements of the transportation and recreational components of the community, accessibility and convenience are factors of real importance.
- (5) Sidewalks, both as a transportation facility and as a recreational asset, must also consider and assume that vulnerable populations should be and will be found in most areas of the City. Availability and functionality are particularly important to children under 14, persons with disabilities and senior citizens.
- (6) Sidewalks that are not built can create an uneven or unfair burden of cost, maintenance, and use.
- (7) Sidewalk plans that offer creative solutions but that are substantially equal substitutes to the traditional sidewalk should be encouraged.

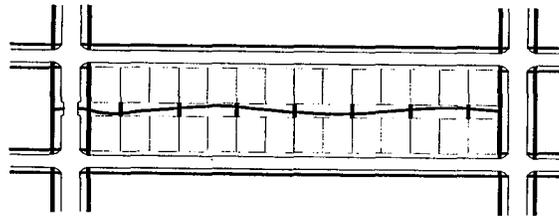
B. **Industrial**

No maximum sidewalk waiver will apply to industrial subdivisions.

C. **Alternative Sidewalk Plan**

Sidewalk waivers may be granted at the time of approval of a subdivision if a substitute pedestrian way or trail is incorporated that provides substantially equal service to a sidewalk on a block face (even when there are more than 12 dwelling units per block). An example would be a mid-block trail, pedestrian way or bike path. Pedestrian ways or trails that tend to force mid-block pedestrian crossings should be avoided or be given special design consideration.

Figure 20-0609-5
Sidewalk Alternative



D. Rural Subdivisions and City Consolidations

If the City annexes a rural subdivision or consolidates with an incorporated community a temporary waiver for the entire subdivision may be granted for up to 10 years, after which the subdivision will be subject to the same regulations that apply in the rest of the City. This guideline may be superseded by the applicable annexation or consolidation agreement.

E. Timing of Sidewalk Construction

Sidewalk installation will not be ordered until street improvements such as paving, curb and gutter are constructed.

F. Missing or Conflicting Guidelines

When conditions arise that are not covered by the Sidewalk Waiver Guidelines of this section, or where guidelines suggest contradictory solutions, the Planning Commission will make a determination that best reflects the general intent of the guidelines. Such determination will be kept on file and used in similar cases.

G. Effect of Existing Sidewalks

The construction and existence of sidewalks that would have been eligible for consideration for a waiver do not create by their existence the automatic requirement for a sidewalk that would also be eligible for a waiver. The City may evaluate such requests as though all the eligible sidewalks had been waived on the condition that reasonable continuity and consistency of pedestrian service is provided.

Source: 4700 (2009).

§20-0610 River Easements and Watercourse Setbacks

- A. Maintenance easements shall be established on all land within 40 feet of the Mean High Water Line of all rivers and legal drains. Improvements shall be allowed within such maintenance easements, provided that the City shall be granted authority to temporarily occupy such easements when necessary to conduct maintenance work on the adjacent river or drain.
- B. All Final Plats prepared for recording shall:
1. Show the extent of any minimal or limited disturbance zone setbacks on the subject property by metes and bounds and be labeled as "Minimal Disturbance Zone Setback" or "Limited Disturbance Zone Setback"
 2. Provide a note to reference the minimal or limited disturbance zone setbacks stating, "There shall be no clearing, grading, construction or disturbance of soil and/or native vegetation except as permitted by the ordinances of the city of Fargo"
 3. Provide a note to reference any protective covenants governing all minimal or limited disturbance zone setbacks, "Any minimum or limited disturbance zone setbacks shown hereon are subject to protective covenants which may be recorded in the Office of the Recorder for Cass County and which restrict disturbance and use of these areas."
- C. All minimal or limited disturbance zone setbacks must be protected during development activities. Prior to the initiation of development activities, the minimal and limited disturbance zone setbacks shall be surveyed and iron pins set in the ground on side lot lines and adequate visibility of the minimal or limited disturbance zone setbacks shall be provided by staking and flagging.
- D. Minimal or limited disturbance zone setbacks shall be established and maintained through a declaration of protective or restrictive covenant, which must be submitted for approval by the board of city commissioners. The covenant shall be recorded in the Office of the Recorder for Cass County and shall run with the land and continue in perpetuity and may not be amended or terminated without approval of the city.
- E. All lease agreements pertaining to parcels with MDZS areas, LDZS areas, or both areas, must contain a notation regarding the presence and location of protective covenants for minimal or limited disturbance zone setbacks, and must contain information on the management and maintenance requirements for the minimal or limited disturbance zone setbacks for the tenant.
- F. No subdivision may be approved without a notation and delineation of an area One Hundred Seventy-Five (175) feet from the centerline of any legal drain and the applicant for subdivision approval will be required to dedicate such areas to the public for purposes of such drain.

Source: 4818 (2012).

§20-0611 Streets

A. General

Streets must be graded and improved in accordance with the standards of this section and the design and construction standards of the City Engineer.

1. All streets must be properly integrated with the existing and proposed system of thoroughfares and dedicated right-of-ways as established on the Official Map, Comprehensive Plan, or as determined by the Board of City Commissioners.
2. All thoroughfare capacity must be properly related to special traffic generators such as industries, business districts, schools, churches, shopping centers, population densities, and to the pattern of existing and proposed land uses.
3. Local streets must be laid out to conform as much as possible to the topography, to discourage use by through traffic, to permit efficient drainage and utility systems, and to require the minimum number of streets necessary to provide convenient, safe access to property.
4. Streets must be extended to the boundary lines of the subdivision, unless prevented by topography or other physical conditions.
5. In business and industrial developments, the streets and other access ways must be planned in connection with the grouping of buildings, location of rail facilities, and the provision of alleys, truck loading and maneuvering areas, and walks and parking areas so as to minimize conflict of movement between the various types of traffic, including pedestrians.

B. Rural and Urban Standards

The City Engineer will provide separate street standards for rural and urban subdivisions.

C. Frontage on and Access to Streets

No subdivision may be approved unless the area to be subdivided has frontage on and access to a street shown on the Official Map, or unless such street is:

1. An existing state, county, or township highway; or
2. A street designed and constructed in accordance with the standards of this Article and shown on a plat approved and recorded in accordance with the procedures of Sec. 20-0907.

D. Access to Arterials

Where a subdivision borders on or contains an existing or proposed arterial, the Board of City Commissioners may require that access to such streets be limited by one of the following means (See also Sec. 20-0702):

1. The subdivision of lots so as to back onto the arterial and front onto a parallel street of a lower functional classification. In such cases, direct access to the arterial may be prohibited, and screening must be provided in a strip of land along the real property line of such lots.
2. A series of cul-de-sacs, U-shaped streets, or short loops entered from and designed generally at right angles to such a parallel street, with the rear lines of their terminal lots backing onto the arterial.
3. A marginal access or service road that is separated from the arterial by a planting or grass strip and having access thereto at suitable points.

E. Reserve Strips

Reserve strips are not permitted adjacent to a proposed street in such a manner as to deny access from adjacent property to such street.

F. Construction of Streets and Dead-End Streets

1. Streets must be arranged to provide for the continuation of principal streets between adjacent properties. If the adjacent property is undeveloped and the street must be a dead-end street temporarily, the right-of-way shall be extended to the property line. A temporary circular turnabout must be provided on all temporary dead-end streets, with the notation on the subdivision plat that land outside the normal street right-of-way shall revert to abutting property owners whenever the street is continued. The Board of City Commissioners may limit the length of temporary dead-end streets in accordance with the design and construction standards of the City Engineer.
2. Where a street does not extend to the boundary of the subdivision and its continuation is not required by the City Engineer for access to adjoining property, its terminus shall not be nearer to such boundary than 50 feet. However, the Board of City Commissioners may require the reservation of an appropriate easement to accommodate drainage facilities, pedestrian traffic, or utilities. A cul-de-sac turnaround shall be provided at the end of a permanent dead-end street in accordance with the City Engineer's construction standards. For greater convenience to traffic and more effective police and fire protection, permanent dead-end streets shall be limited in length in accordance with the design standards of the City

Engineer.

G. Geometric Standards

The geometric design standards of this section apply to all streets.

1. Right-of-Way and Pavement Widths

The right-of-way and pavement width standards of Table 20-0611-1 apply to all streets.

Table 20-0611-1

Functional Classification	Category	Lanes	Zoning Classifications	Parking	Paving Width ^[1] Face of Curb (FOC) (Ft)	Urban Street Standards			R/W (FT)	Notes
						Sidewalks				
						Right (FT)	Left (FT)	Location		
Local	L-1	2	SR-0 thru 3 SR-4 > 42' wide	Both Sides	32	4.5	4.5	2' off R/W	70	Sidewalk plan required per LDC
				Both Sides	30	4.5	4.5	2' off R/W	66	
				One Side	28	4.5	4.5	2' off R/W	62	
				None	24	4.5	4.5	2' off R/W	50	
				None	24	4.5	None	On R/W	50	
L-2	2	SR-4 < 42' wide MR-1, UMU	Both Sides	32	4.5	4.5	2' off R/W	70		
			One Side	28	4.5	4.5	2' off R/W	62		
			None	24	4.5	4.5	2' off R/W	60		
L-3	2	MR-2 & MR-3	Both Sides	40	4.5	4.5	2' off R/W	80		
			One Side	32	4.5	4.5	2' off R/W	70		
L-4	2	GO Tech Park	Both Sides	40	4.5	4.5	2' off R/W	80		
			One Side	32	4.5	4.5	2' off R/W	70		
			None	28	4.5	4.5	2' off R/W	70		
L-5	2	LC, GC, GI, LI	Both Sides	40	4.5	4.5	2' off R/W	80	Wider Streets as warranted by traffic Parking restrictions as needed for traffic	
Collector	C-1	2	All SR & MR-1, UMU	Both Sides	40	4.5	4.5	2' off R/W	80	Parking restrictions at major intersections Widen to 3 lanes (36') at major intersections Widen to 3 lanes (36') at major intersections
				One Side	32	4.5	4.5	2' off R/W	80	
				None	30	4.5	4.5	2' off R/W	80	
	C-2	2	MR-2 & MR-3	Both Sides	44	4.5	4.5	2' off R/W	80	Parking restrictions at major intersections Parking restrictions at major intersections Widen to 3 lanes (36') at major intersections
				One Side	36	4.5	4.5	2' off R/W	80	
				None	30	4.5	4.5	2' off R/W	80	
C-3	2	All Others	Both Sides	44	4.5	4.5	2' off R/W	80	Parking restrictions at major intersections Parking restrictions at major intersections Widen to 3 lanes (36') at major intersections	
			One Side	36	4.5	4.5	2' off R/W	80		
			None	32	4.5	4.5	2' off R/W	80		
C-4	3	All SR & MR	None	36	4.5	8	2' off R/W	80	Wider streets as warranted by traffic	
C-5	3	All others	None	40	4.5	8	2' off R/W	80	Wider streets as warranted by traffic	
Parkway	PW-1	2	All SR & MR-1	Both Sides	40	4.5	8	2' off R/W	110	Parking restrictions at major intersections Widen to 3 lanes (36') at major intersections Widen to 3 lanes (36') at major intersections
				One Side	32	4.5	8	2' off R/W	100	
				None	30	4.5	8	2' off R/W	100	

Urban Street Standards										
Functional Classification	Category	Lanes	Zoning Classifications	Parking	Paving Width ^[1] Face of Curb (FOC) (Ft)	Sidewalks			R/W (FT)	Notes
						Right (FT)	Left (FT)	Location		
	PW-2	2	MR-2 & MR-3	Both Sides	44	4.5	8	2' off R/W	110	Parking restrictions at major intersections Parking restrictions at major intersections Widen to 3 lanes (36') at major intersections
				One Side	36	4.5	8	2' off R/W	100	
				None	30	4.5	8	2' off R/W	100	
	PW-3	2	All others	Both Sides	44	4.5	8	2' off R/W	110	Parking restrictions at major intersections Parking restrictions at major intersections Widen to 3 lanes (36') at major intersections
				One Side	36	4.5	8	2' off R/W	100	
				None	32	4.5	8	2' off R/W	100	
	PW-4	2	All Zones	Both Sides	60	4.5	8	2' off R/W	120	City to pay for tree planting
	PW-5	3	All SR & MR	None	36	4.5	8	2' off R/W	100	City to pay for tree planting

- Notes:**
1. Street and R/W widths for PI zones will be determined by type of land use.
 2. Street and R/W widths for NO and NC will be based on zoning of the adjacent larger tracts.
 3. R/W widths may be reduced if sidewalks are removed as part of an LDC approved sidewalk plan. R/W widths may be reduced by 6' by elimination of sidewalk on one side or 12' by elimination of sidewalks on both sides.
 4. Minimum R/W shall be 50'.
 5. Over width city funding does not apply to street widening required for parking purposes.

Rural Street Standards										
Type	Lanes	Zoning Classifications	Parking	Width	Ditches	R/W (FT)	Notes			
	PW-6	3	All others	None	40	4.5	8	2' off R/W	100	City to pay for tree planting
Arterial			All zones	None	As required					
					Paved	Width	Inslope	Backslope		
Local	2	SR & MR	None	26	8	5 to 1	4 to 1	100		
	2	All others	None	26	10	5 to 1	4 to 1	100		
Arterial	2	All Others	None	30	10	5 to 1	4 to 1	100		

2. Backing onto Arterial Streets

Driveways must be designed and arranged so as to avoid requiring vehicles to back on to arterial streets.

Source: 4331 (2003), 4367 (2003), 4695 (2009).

3. Grades, Curve Radii and Other Standards

The street grade, curve radii and other standards of Table 20-0611-1 apply to all streets.

Table 20-0611-2

Improvement	Residential (UMU, MR-3 and more restrictive)	Nonresidential (NO and less restrictive)
Maximum Grade (pct)		
Local	5	5
Collector	5	5
Arterial	5	5
Minimum Grade (pct)		
All streets	0.4	0.4
Minimum Centerline Radius of Curve (feet)		
Local	100	200
Collector	275	275
Arterial	550	550
Minimum Tangent Length Between Reverse Curves (feet)		
Local	100	200
Collector	100	200
Arterial	300	400
Minimum Sight Distance (feet)		
Local	200	250
Collector	240	250
Arterial	300	400
Intersection	Across corners-25 ft back	Across corners-25 ft back
Minimum Turnaround (feet)		
Right-of-Way Diameter	140	160
Pavement	100	140
Design Speed (miles per hour)		
Local	30	30
Collector	35	35
Arterial	40	50
Maximum Length of Cul-de-Sac		
Permanent	600 feet, measured from the nearest street right-of-way line to the end of the nearest turnaround radius.	
Temporary	800 feet, measured from the nearest street right-of-way line to the end of the nearest turnaround radius.[1] A double entry cul-de-sac may exceed the stated maximum, if approved by the City Engineer.	

[1] The Planning Commission may approve waivers from the cul-de-sac length standards with it finds (1) that extraordinary hardships or practical difficulties will result from strict compliance with the cul-de-sac length standards and (2) that the purposes of these regulations will be served to a greater extent by an alternative proposal. Waiver requests shall be considered during the Subdivision Plat review process.

H. Surfacing

Curbs, gutters and streets must be installed as prescribed by the regulations of this Article. The surfacing shall be of such character as is suitable for the expected traffic and in harmony with similar improvements in the surrounding areas. Types of pavement shall be as determined by the City Engineer. Adequate provision shall be made for culverts, drains, and bridges. The cost and benefit allocation to be determined by Special Assessment Commission.

I. Curbs

The curb standards of Table 20-0611-3 apply to all streets.

Table 20-0611-3

Functional Classification	Volume (ADT)	Zoning Districts	
		AG - MR-3, UMU	NO - GI
Required Curb Type			
Local	0-2,499	Mountable	Standard
Local Collector	2,500-4,999	Mountable	Standard
Collector	5,000-9,999	Standard	Standard
Minor Arterial	10,000-19,999	Standard	Standard
Principal Arterial	20,000-29,999	Standard	Standard

J. Railroads and Limited Access Highways

Subdivisions adjacent to railroad rights-of-way or limited access highways shall be treated as follows:

1. Residential Districts

In UMU, MR-3 and more restrictive districts a buffer strip at least 15 feet in depth in addition to the normal depth of the lot required in the district must be provided adjacent to the railroad right-of-way or limited access highway. This buffer must be included in the lot area owned and maintained by the owner.

2. Nonresidential Districts

In NO and less restrictive districts, the nearest street extending parallel or approximately parallel to the right-of-way shall be located a sufficient distance therefrom to ensure suitable lot depth.

3. Parallel Streets

Streets parallel to the right-of-way, when intersecting a street that crosses the railroad or limited access highway, shall be located a sufficient distance from the right-of-way to provide for adequate future grade separation from the right-of-way. The minimum distance shall be established by the Traffic Engineer.

K. Intersections

- Streets must be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two new streets at an angle of less than 75 degrees is not acceptable. An oblique street should be curved approaching an intersection and should be approximately at

right angles for at least 100 feet therefrom. No more than 2 streets may intersect at any one point unless specifically approved by the City Engineer.

2. Proposed new intersections along one side of an existing street must coincide with existing intersections on the opposite side of such street. Street jogs with center-line offsets of less than 300 feet will not be permitted, except where the intersected street has separated dual drives without median breaks at either intersection. Where streets intersect major streets, their alignment must be continuous. Intersections of major streets must be at least 660 feet apart.
3. The minimum curb radius at the intersection of two local streets shall be at least 25 feet and minimum curb radius at an intersection involving a collector street shall be at least 35 feet. Alley intersections and abrupt changes in alignment within a block shall have the corners cut off in accordance with standard engineering practice to permit safe vehicular movement.
4. Intersections must be designed with a flat grade consistent with good engineering practice. In hilly or rolling areas, at the approach to an intersection, a level area must be provided having not greater than a 2 percent grade at a distance of 60 feet, measured from the nearest curb line of the intersecting street.
5. Where any street intersection will involve earth banks or existing vegetation inside any lot corner that would create a traffic hazard by limiting visibility, the developer must cut such ground or vegetation (including trees) in connection with the grading of the public right-of-way to the extent deemed necessary by the City Engineer to provide an adequate sight distance.
6. The cross-slopes on all streets, including intersections, shall be 3 percent or less.
7. These standards shall not be construed so as to require a street design inconsistent with good engineering practice as determined by the City Engineer.

L. Street Dedications and Reservations

1. New Perimeter Streets

Street systems in new subdivisions must be laid out so as to eliminate or avoid new perimeter half streets. Where an existing half-street is adjacent to a new subdivision, the other half of the street must be dedicated by the subdivider. The Board of City Commissioners may authorize a new perimeter street if the subdivider dedicates the entire required street right-of-way within the subdivision boundaries.

2. Widening and Realignment of Existing Streets

Where a subdivision borders an existing street of substandard width or when the Comprehensive Plan, Official Map, or zoning setback regulations indicate plans for realignment or widening a street that would require use of some of the land in the subdivision, the applicant will be required to dedicate such areas for widening or realignment of such streets. Land reserved for any street purposes may not be counted in satisfying zoning district setback or lot area requirements.

Source: 4695 (2009).

§20-0612 Waivers

The Planning Commission shall be authorized to recommend and the Board of City Commissioners shall be authorized to approve Modifications or Waivers of the Subdivision Design and Improvement Standards of this article in accordance with the Subdivision Waiver provisions of Sec. 20-0907-E.

Source: 2985 (1999).

Article 20-07

General Development Standards

§20-0701 Parking and Loading

A. General

1. Applicability

a. New Development

The off-street parking and loading standards of this section apply to any new building constructed and to any new use established.

b. Expansions and Alterations

The off-street parking and loading standards of this section apply when an existing structure or use is expanded or enlarged. Additional off-street parking and loading spaces will be required only to serve the enlarged or expanded area, not the entire building or use, provided that in all cases the number of off-street parking and loading spaces provided for the entire use (preexisting + expansion) must equal at least 75 percent of minimum ratio established in Off-Street Parking Schedule "A" of this section.

c. Change of Use

Off-street parking and loading must be provided for any change of use or manner of operation that would, based on the Off-Street Parking Schedule "A" or the Off-street Loading Schedule of this section, result in a requirement for more parking or loading spaces than the existing use. Additional parking or loading spaces will be required only in proportion to the extent of the change, not for the entire building or use.

2. DMU Exemption

All residential and nonresidential development in the DMU district shall be exempt from the off-street parking and loading standards of this section.

3. No Reduction Below Minimums

Existing parking and loading spaces may not be reduced below the minimum requirements established in this section. Any change in use that increases applicable off-street parking or loading requirements will be deemed a violation of the Land Development Code unless parking and loading spaces are provided in accordance with the provisions of this section.

4. UMU Exemption for Nonresidential and UMU Reduction for Residential

While no regulatory intent is implied herein, the responsibility clearly falls upon the applicant to review and understand, using professional consultation as appropriate, the parking needs of the development and to provide for the availability of sufficient parking, either onsite or offsite, which meets the minimum demands of the intended use. However, the minimum parking standards for properties in a UMU zoning district are indicated below.

a. All nonresidential uses in a UMU zoning district shall be exempt from the off-street parking and loading standards of this section.

b. All residential development within a UMU zoning district, shall be required 1.25 parking stalls per dwelling unit. One stall per dwelling unit shall be reserved full time.

Source: 4695 (2009).

B. Off-Street Parking Schedules

1. Off-Street Parking Schedule “A”

Off-Street Parking Schedule “A” lists the minimum off-street parking requirement for each use category defined in this Land Development Code. These requirements apply unless an Alternative Access Plan is reviewed and approved in accordance with the procedures of this section. For some uses, the schedule of requirements contains a reference to off-street parking schedules “B” or “C.” Those schedules can be found following Schedule “A.”

Off-Street Parking Schedule "A"

Use Categories	Specific Uses	Minimum Number of Spaces Required
Residential		
Group Living		1 per 100 square feet of sleeping area
Household Living	Multi-Dwelling Structures	1.25 per efficiency dwelling unit 2.0 per 1-bedroom and larger unit plus 0.25 guest spaces per unit for structures containing 7 or more units and 0.33 guest spaces per unit for structures containing 6 or fewer units
	All Other Household Living	2 per dwelling unit
Institutional		
College		Schedule C
Community Services		Schedule B or Schedule C
Day Care		1 per 500 square feet
Health Care Facility		1.5 per patient bed, plus 1 per 300 square feet of administrative office, plus 1 per 200 square feet of outpatient clinic space
Parks and Open Areas		Schedule C
Religious Institutions		0.4 per seat
Safety Service		1 per employee or Schedule C
Schools	Elementary Middle/Junior High	1 per teacher/employee + 10 visitor spaces or Schedule C
	Senior High	1 per teacher/employee + 1 per 5 students or Schedule C
Utilities, Basic		None
Commercial		
Office	Medical	1 per 200 square feet
	All Other Office	1 per 300 square feet
Parking, Commercial		N/A
Recreation and Entertainment, Outdoor		Schedule B
Retail Sales and Service	Bank or Financial Service	1 per 250 square feet, plus stacking spaces per this section
	Car Wash	Stacking spaces per this section
	Health Club	1 per 200 square feet
	Hotel, motel or other temporary lodging	1 per guest room, plus required spaces for associated uses
	Restaurant, General, Bars, Taverns and Lounges	1 per 75 square feet

Use Categories	Specific Uses	Minimum Number of Spaces Required
	Restaurant, Fast-Food	1 per 75 square feet of customer service and dining area or 1 per 150 square feet of gross floor area, whichever is greater, plus stacking spaces per this section
	Theater	1 per 4 seats
	Outdoor seating areas-Taverns, Bars, Restaurants, and Lounges	1 per 150 square feet of outdoor seating area
	Vehicle and Equipment Sales	Schedule B
	All other Retail Sales & Service uses not specifically listed	1 per 250 square feet
Self-Service Storage		1 plus 1 per 2,500 square feet of storage space
Vehicle Repair		5 per service bay
Vehicle Service, Limited		6 per service bay
Industrial		
Industrial Service		Schedule B
Manufacturing and Production		Schedule B
Warehouse and Freight Movement		Schedule B
Waste-Related Use		Schedule B
Wholesale Sales		Schedule B
Other		
Agriculture		None
Aviation, Surface Passenger Terminals		Schedule C
Detention Facilities		Schedule C
Mining		Schedule C
Telecommunications Facilities		Schedule B or C

Source: 2985 (1999), 4167 (2001).

2. Off-Street Parking Schedule “B”

Off-street parking spaces for Schedule “B” uses must be provided for all components of the use, as follows:

Activity	Number of Spaces Required
Office or administrative area	1 per 300 square feet
Indoor sales, service or display area	1 per 500 square feet
Outdoor sales, service or display area	1 per 750 square feet
Indoor storage, warehousing, equipment service, or manufacturing area	1 per 2,500 square feet

3. Off-Street Parking Schedule “C”

Schedule “C” uses have widely varying parking demand characteristics, making it impossible to specify a single off-street parking standard.

a. Parking Study

A developer proposing to develop or expand a Schedule “C” use must submit a parking study that provides justification for the number of off-street parking spaces proposed. A parking study must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the City Engineer and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations.

b. Review by City Engineer

The City Engineer shall review the parking study and any other traffic engineering and planning data relevant to the establishment of an appropriate off-street parking standard for the proposed use. After reviewing the parking study, the City Engineer shall establish a minimum off-street parking standard for the proposed use.

c. Appeals

Appeals of the City Engineer’s decision may be taken to the Board of Adjustment in accordance with the procedures of Sec. 20-0916.

C. Rules for Computing Requirements

The following rules apply when computing off-street parking and loading requirements.

1. Multiple Uses

Lots containing more than one use must provide parking and loading in an amount equal to the total of the requirements for all uses.

2. Fractions

When measurements of the number of required spaces result in a fractional number, any fraction of 2 or less will be rounded down to the next lower whole number and any fraction of more than 2 will be rounded up to the next higher whole number.

3. Area Measurements

Unless otherwise expressly stated, all square-footage-based parking and loading standards must be computed on the basis of gross floor area.

4. Occupancy-Based Standards

For the purpose of computing parking requirements based on employees, students, residents or occupants, calculations shall be based on the largest number of persons working on any single shift, the maximum enrollment or the maximum fire-rated capacity, whichever is applicable and whichever results in the greater number of spaces.

5. Unlisted Uses

Upon receiving a development application for a use not specifically listed in an off-street parking schedule, the Zoning Administrator shall apply the off-street parking standard specified for the listed use that is deemed most similar to the proposed use or require a parking study in accordance with Off-Street Parking Schedule "C."

D. Location of Required Parking

1. General

Except as expressly stated in this section, all required off-street parking spaces must be located on the same lot as the principal use.

2. Single-Family Districts

- a. Within single-family (SR) zoning districts, a maximum of one off-street parking space shall be permitted on a front yard residential driveway. Within single-family (SR) zoning districts, front yard residential driveways shall not exceed 24 feet in width or the width of the driveway approach, whichever is greater, provided that in no event shall any such driveway allow less than 8 feet of non-paved surface to exist alongside one or both sides of such driveway ^[1]. All other off-street parking spaces must be located in a covered garage or in side or rear yards.
- b. All off-street parking spaces in front or side yard areas shall have an all-weather surface. Rear yard parking spaces may be surfaced with gravel.

E. Alternative Access Plans

An Alternative Access Plan represents a proposal to meet vehicle parking and transportation access needs by means other than providing parking spaces on-site in accordance with the Off-Street Parking Schedule of Sec. 20-0701-B. Applicants who wish to provide fewer off-street parking spaces than required pursuant to Sec. 20-0701-B must secure approval of an Alternative Access Plan, in accordance with the standards and procedures of this section.

1. Procedures

a. Plan Contents

Alternative Access Plans must be submitted in a form established by the Zoning Administrator and made available to the public. At a minimum, such plans must detail the type of alternative proposed and the rationale for such a proposal.

b. Review and Approval Authority

(1) Small Facilities

The Zoning Administrator is authorized to review and act on Alternative Access Plans if the plan proposes a reduction of no more than 25 percent or 25 parking spaces. The Zoning Administrator shall mail written notice of the request to all property owners within 150 feet of the subject property at least 10 days before the Zoning Administrator takes action on the plan.

(2) Large Facilities

Alternative Access Plans that propose a reduction of more than 25 percent or more than 25 off-street parking spaces require review and action by the Planning Commission, in accordance with the Conditional Use Permit Review procedures of Sec. 20-0909.

[1] Driveway approach width is governed by 18-0216 of the Fargo Municipal Code.

c. Recordation of Approved Plans

An attested copy of an approved Alternative Access Plan must be recorded with the County Register of Deeds on forms made available in the Planning Department. An Alternative Access Plan may be amended by following the same procedure required for the original approval.

d. Violations

Violations of an approved Alternative Access Plan constitute a violation of the Land Development Code and will be subject to the enforcement and penalty provisions of Article 20-011.

2. Eligible Alternatives

A number of specific access alternatives are described in this subsection. Decision-makers are, however, authorized to consider and approve *any* alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates to the satisfaction of the decision-making body that the proposed plan will do at least as good of a job protecting surrounding neighborhoods, maintaining traffic circulation patterns and promoting quality urban design than would strict compliance with otherwise applicable off-street parking standards.

a. Bicycle Parking

Decision-makers may authorize a reduction in the number of required off-street parking spaces for developments or uses that provide bicycle parking or that make special provisions to accommodate bicyclists. Examples of accommodations include bicycle lockers, employee shower facilities and dressing areas for employees.

b. Valet Parking

Decision-makers may authorize valet parking as a means of satisfying otherwise applicable off-street parking standards, provided that the following conditions are met:

- (1) An automobile shall be retrievable from its parking space with the movement of a maximum of two additional vehicles; and
- (2) The decision-maker determines that the valet parking will not cause interference with the public use of streets or ways or imperil the public safety.

3. Transportation Demand Management

Decision-makers may authorize a reduction in the number of required off-street parking spaces for developments or uses that institute and commit to maintain a transportation management program, in accordance with the standards of this section.

a. Required Study

The applicant must submit a study that clearly indicates the types of transportation management activities and measures proposed.

b. Transportation Management Activities

The following measures serve as a guide to eligible transportation management activities. There is, however, no limitation on the types of transportation management activities for

which reductions may be granted from otherwise required off-street parking ratios.

(1) Posting and Distribution of Information

The distribution and posting of information from transit agencies and other sources of alternative transportation may be cause for a reduction in otherwise applicable off-street parking requirements.

(2) Transportation Coordinator

The appointment of a Transportation Coordinator with responsibility for disseminating information on ride-sharing and other transportation options may be cause for a reduction in otherwise applicable off-street parking requirements. In addition to acting as liaisons, Transportation Coordinators shall be available to attend meetings and training sessions with the City or transit providers.

(3) Off-Peak Work Hours

Employers that institute off-peak work schedules, allowing employees to arrive at times other than the peak morning commute period, may be eligible for a reduction in otherwise applicable off-street parking requirements. The peak morning commute period is defined as 7:30-9:00 a.m.

(4) Preferential Parking

The provision of specially marked spaces for each registered car pool and van pool may be cause for a reduction in otherwise applicable off-street parking requirements.

(5) Financial Incentives

The provision of cash or in-kind financial incentives for employees commuting by car pool, van pool and transit may be cause for a reduction in otherwise applicable parking requirements.

4. Off-Site Parking

Off-street parking spaces may be located on a separate lot from the lot on which the principal use is located if approved as part of an Alternative Access Plan and if the off-site parking complies with the all of following standards.

a. Ineligible Activities

Off-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking), restaurants, convenience stores or other convenience-oriented uses. Required parking spaces reserved for persons with disabilities may not be located off-site.

b. Location

No off-site parking space may be located more than 600 feet from the primary entrance of the use served unless shuttle bus service is provided to the remote parking area. Off-site parking spaces may not be separated from the use served by a street right-of-way with a width of more than 80 feet, unless a grade-separated pedestrian walkway is provided, or other traffic control or shuttle bus service is provided to the remote parking area.

c. Zoning Classification

Off-site parking areas serving uses located in nonresidential zoning districts must be

located in nonresidential zoning districts. Off-site parking areas serving uses located in residential zoning districts may be located in residential or nonresidential zoning districts.

d. Agreement for Off-Site Parking

In the event that an off-site parking area is not under the same ownership as the principal use served, a written agreement will be required. An attested copy of the agreement between the owners of record must be submitted to the Zoning Administrator for recordation on forms made available in the Planning Department. Recordation of the agreement with the Register of Deeds must take place before issuance of a building permit for any use to be served by the off-site parking area. An off-site parking agreement may be revoked only if all required off-street parking spaces will be provided, in accordance with Sec. 20-0701-B.

5. Shared Parking

Developments or uses with different operating hours or peak business periods may share off-street parking spaces if approved as part of an Alternative Access and Parking Plan and if the shared parking complies with the all of following standards.

a. Location

Shared parking spaces must be located within 600 feet of the primary entrance of all uses served, unless remote parking shuttle bus service is provided.

b. Zoning Classification

Shared parking areas serving uses located in nonresidential zoning districts must be located in nonresidential zoning districts. Shared parking areas serving uses located in residential zoning districts may be located in residential or nonresidential zoning districts.

c. Shared Parking Study

Those wishing to use shared parking as a means of satisfying off-street parking requirements must submit a shared parking analysis to the Zoning Administrator that clearly demonstrates the feasibility of shared parking. The study must be provided in a form established by the Zoning Administrator and made available to the public. It must address, at a minimum, the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.

d. Agreement for Shared Parking

A shared parking plan will be enforced through written agreement among all owners of record. An attested copy of the agreement between the owners of record must be submitted to the Zoning Administrator for recordation on forms made available in the Planning Department. Recordation of the agreement with the Register of Deeds must take place before issuance of a building permit for any use to be served by the off-site parking area. A shared parking agreement may be revoked only if all required off-street parking spaces will be provided, in accordance with Sec. 20-0701-B.

F. Parking for Persons with Disabilities

Off-street parking for persons with disabilities must be provided in accordance with the International Building Code.

G. Parking and Loading Area Design

Off-street parking and loading areas must be designed and constructed to accepted construction standards in the industry. Unless otherwise expressly stated in this Land Development Code or approved by the City, all required off-street parking spaces shall have an all-weather surface. In LI or GI zoning districts only, rear yard vehicular circulation area, not including parking spaces, may be crushed concrete or similar material as approved by the Zoning Administrator.

H. Use of Required Parking Spaces

Required off-street parking areas are to be used solely for the parking of licensed, motor vehicles in operating condition. Required spaces may not be used for the display of goods for sale or lease or for long-term storage of vehicles, boats, motor homes, campers, mobile homes, or building materials.

I. Vehicle Stacking Areas

1. Minimum Number of Spaces

Off-street stacking spaces shall be provided as follows:

Activity Type	Minimum Spaces	Measured From
Bank teller lane	4	Teller or Window
Automated teller machine	3	Teller
Restaurant drive-through	6	Order Box
Restaurant drive-through	4	Order Box to Pick-Up Window
Car wash stall, automatic	6	Entrance
Car wash stall, self-service	3	Entrance
Gasoline pump island	2	Pump Island
Other	Determined by City Engineer based on Traffic Study	

2. Design and Layout

Required stacking spaces are subject to the following design and layout standards.

a. Size

Stacking spaces must be a minimum of 8 feet by 20 feet in size.

b. Location

Stacking spaces may not impede on- or off-site traffic movements or movements into or out of off-street parking spaces.

c. Design

Stacking spaces must be separated from other internal driveways by raised medians if deemed necessary by the City Engineer for traffic movement and safety.

J. Off-Street Loading Schedule

Off-street loading spaces for trucks and delivery vehicles shall be provided as follows:

Gross Floor Area	Off-Street Loading Spaces Required
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	Retail Sales and Service, Industrial Service, Manufacturing and Production, Warehousing and Freight Movement, and Wholesale Sales
5,000 to 25,000	1
25,001 to 85,000	2
85,001 to 150,000	3
Over 150,000	4 + 1 per 100,000 sq. ft.
	Offices, Community Service, Group Living
8,000 to 100,000	1
Over 100,000	2 + 1 per 100,000 sq. ft.

K. Off-Street Loading Space Dimensions

Off-street loading spaces shall be at least 10 feet wide and 25 feet long unless the Zoning Administrator determines that off-street loading will involve the use of semi-tractor trailer combinations or other vehicles in excess of 25 feet in length, in which case the minimum size of a space shall be 12 feet by 65 feet. All circulation areas leading to and from such spaces shall be provided on site. Under no circumstance shall vehicles be permitted to utilize public streets and rights-of-way as their circulation or parking area, unless otherwise allowed by the City Engineer.

L. Traffic Impact Studies

1. A traffic impact study is required under any one of the following circumstances:
 - a. The proposed use consists of one of the following land uses:
 - (1) Truck stop,
 - (2) Hospital,
 - (3) High schools,
 - (4) Elementary or middle schools of over 600 students,
 - (5) Major recreation and entertainment facilities, indoor or outdoor,
 - (6) Medical office building of 100,000 square feet or greater at build-out of all phases
 - (7) General or corporate office building of 100,000 square feet or greater at build-out of all phases, and
 - (8) Retail building or shopping center of 100,000 square feet or greater at build-out of all phases.
 - b) At the discretion of the City Engineer, based on one or more of the following considerations:
 - (1) Proposed land use is more intense than that shown on the Growth Plan,
 - (2) The proposed development (proposed plus future phases) is determined to generate peak hour peak directional trips that are equal to or greater than 250,
 - (3) Sensitivity of adjacent neighborhoods or other areas that may be perceived as impacted, such as the potential for cut-through traffic,
 - (4) Anticipated need for additional capacity in an area where widening may be infeasible or undesirable, and
 - (5) Other conditions as identified by the City Engineer.

2. The City Engineer shall also have the authority to waive the requirement for a traffic impact study even if one of the above criteria is met.
3. The stage at which a traffic impact study may be required shall be one of the following:
 - a. **Category 1**
 - (1) Application for change to land use plan
 - (2) Application for rezoning
 - (3) Application for subdivision
 - (4) Planned Unit Development

The review of a Category 1 traffic impact study and the associated recommendations as a result of that study shall follow the same review and approval process as required in Sections 20-0905, 20-0906, 20-0907, and 20-0908. The assignment of financial responsibility for required improvements shall be reviewed and approved by the Board of City Commissioners.

- b. **Category 2**
 - (1) Application for building permit

The review of a Category 2 traffic impact study and the associated recommendations as a result of that study shall follow the same review and approval process as required in Sec. 20-0913 and as carried out during established site plan review practices. The assignment of financial responsibility for required improvements shall be reviewed and approved by the Board of City Commissioners.

4. The following shall be the process for conducting a traffic impact study when required:
 - a. The cost of the traffic impact study shall be the responsibility of the applicant unless conditions exist whereby a form of cost sharing is appropriate, as determined by the City Engineer.
 - b. The City shall be the contracting agent (client) with the consultant(s) from whom cost estimates are received, and with the consultant hired to carry out the study unless otherwise approved by the City Engineer.
 - c. Appeals regarding the determination that a traffic impact study is needed shall be made to the Planning Commission.

Source: 2985 (1999), 3062 (1999), 4039 (2000), 4167 (2001), 4177 (2001).

§20-0702 Roadway Access and Driveways

A. Access to Streets

Access to streets shall be allowed as follows, unless otherwise restricted by negative access easements or other limitations as indicated on the plat.

Functional Classification	Typical Volume Range (ADT)	Zoning Districts ^[7]	
		AG-Through MR-3	NO Through P/I
Local	0-2,499	Allowed ^[1]	Allowed ^[1]
Local Collector	2,500-4,999	Limited ^[2]	Limited ^[2]
Collector	5,000-9,999	Limited ^[3]	Limited ^[4]
Minor Arterial	10,000-19,999	Limited ^[5]	Shared ^{[5][6]}
Principal Arterial	20,000 or more	Limited ^[5]	Limited ^{[5][6]}

B. Backing onto Arterial Streets

Driveways must be designed and arranged so as to avoid requiring vehicles to back on to arterial streets.

Source: 4039 (2000), 4167 (2001), 4697 (2009).

§20-0703 Number of Principal Buildings and Uses Per Lot

A single lot may be occupied by more than one principal nonresidential use and more than one principal nonresidential structure. A single lot may also be occupied by more than one multidwelling residential structure. In all cases, principal structures must be separated by a minimum distance of 10 feet and development on the lot must comply with all applicable standards of this Land Development Code.

- [1] Access allowed provided that at corner lots in SR zoning districts access is at least 15 feet from block corner and at corner lots in UMU, MR and nonresidential zoning districts access is at least 75 feet from block corner. Driveway spacing in NO-GI districts shall be a minimum of 50 feet.
- [2] Access allowed provided that at corner lots in SR zoning districts access is at least 40 feet from block corner and in MR and nonresidential zoning districts access is at least 75 feet from block corner. Driveway spacing in UMU, MR and NO-GI districts shall be a minimum of 50 feet.
- [3] Guideline = Minimum spacing of 150 feet between driveways.
- [4] Minimum spacing of 300 feet between driveways and intersections.
- [5] Shared driveways required wherever possible.
- [6] Minimum spacing of 600 feet between driveways and intersections.
- [7] Existing lot sizes and access locations do not always allow for the practical enforcement of footnotes [3], [4], [5], and [6]. In these areas, the City Engineer shall have the authority to review driveway and intersection spacing on a case-by-case basis, taking into consideration the necessity of the access, the relative location of other access points along the same and opposite sides of the street, opportunities for shared access, and opportunities for on-site modifications that will optimize the location of the driveway or intersection. Using these considerations, the City Engineer shall have the authority to approve driveway and intersection spacing that does not meet footnotes [3], [4], [5], and [6]. This footnote shall not apply to corridors where subdivision accounted for access control or where access control has been applied through a street reconstruction project.

Source: 4695 (2009).

§20-0704 Residential Protection Standards

A. General

1. Purpose

The Residential Protection Standards of this section are intended to protect residential properties and neighborhoods from the adverse impacts sometimes associated with adjacent multi-dwelling development and nonresidential development, whether public or private.

2. Applicability

The standards of this section apply to:

- a. All multi-dwelling development when such development occurs on a site located within 150 feet of any SR or MHP zoning districts; and
- b. All nonresidential development when such development occurs on a site located within 150 feet of any SR, MR or MHP zoning districts.

3. Exemptions

Notwithstanding the applicability provisions of this section, the following are specifically exempt from compliance with Residential Protection Standards to the extent indicated.

- a. Structural alteration of an existing building when such alteration does not increase the building's square footage by more than 1,000 square feet;
- b. Structural alteration of an existing building when such alteration does not increase the building's height by more than 10 percent; or
- c. A change in use that does not increase the number of required off-street parking spaces.

B. Setback

1. From Abutting Side and Rear Lot Lines

Development on lots adjacent to the side or rear lot lines of lots in any SR or MR zoning district must observe the following minimum setbacks.

Development Feature	Minimum Setback from Abutting Side or Rear Lot Line of Protected District (feet)
Off-Street Parking Spaces	10
Driveways	10
Off-Street Loading Spaces	10
Accessory Buildings	10
Principal Buildings	15
Active Recreational Area (e.g. swimming pool, tennis court, playground area, etc.)	20
Dumpsters	20

Note: "Protected Lot" is one located in any SR or MR zoning district.

2. Front Setbacks

When new multi-family or nonresidential development occurs on lots adjacent to the side lot line of a lot in any SR or MHP zoning district, the new development shall observe the same

minimum front setback that applies to the SR-zoned lot for a distance of 50 feet from the SR-zoned lot. When new nonresidential development occurs on lots adjacent to the side lot line of a lot in MR zoning district, the new development shall observe the same minimum front setback that applies to the MR-zoned lot for a distance of 50 feet from the MR-zoned lot. In all such cases, no buildings, parking spaces, loading spaces or dumpsters may be located within the required setback.

C. Visual Screening of Dumpsters and Outdoor Storage Areas

Dumpsters and outdoor storage areas located on property subject to the residential protection standards of this section must be completely screened from view of property in any SR, MR or MHP zoning district by buildings, fences, walls, berms or landscape buffers that are at least as tall as the dumpster. This provision shall apply to all dumpsters and outdoor storage areas, including public or private facilities used for collection and storage of recyclable materials.

D. Building Height

1. 75 Feet from Residential

Structures or portions of structures may not exceed 35 feet in height within 75 feet of any SR or MHP zoning district. Structures or portions of structures may not exceed the maximum height allowed in any MR zoning district located within 150 feet of said structure.

2. 76 to 100 Feet from Residential

Structures or portions of structures may not exceed 45 feet in height when located 76 to 100 feet from any SR or MHP zoning district. Structures or portions of structures may not exceed the maximum height allowed in any MR zoning district located within 150 feet of said structure.

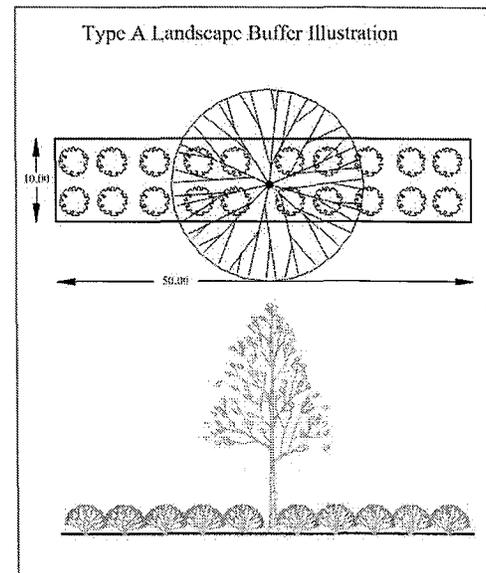
3. 101 to 150 Feet from Residential

Structures or portions of structures may not exceed 55 feet in height when located 101 to 150 feet from any SR or MHP zoning district. Structures or portions of structures may not exceed the maximum height allowed in any MR zoning district located within 150 feet of said structure.

E. Residential Protection Buffers

1. Where Required ^[1]

Residential Protection Landscape Buffers must be installed or preserved along lot lines adjacent to any SR-, MR-, or MHP-zoned property. Plantings in Residential Protection Landscape Buffers are not counted toward the plant unit requirements of the Open Space Landscaping Requirements of Section 20-0705C.



[1] For purposes of the residential protection buffers, property zoned AG-Agricultural that is identified as being future residentially-zoned property on any growth plan approved under §20-0905 shall be deemed to be SR-, MR-, or MHP-zoned property.

2. Types of Buffers Required

Any of the following types of landscape buffers may be used to satisfy the Residential Protection Buffer standards of this section.

a. Type A

A "Type A" landscape buffer has a minimum width of 10 feet, with a minimum of 1 tree and 20 shrubs per 50 linear feet of buffer.

b. Type B

A "Type B" landscape buffer has a minimum width of 20 feet. It requires a minimum of 1 tree and 10 shrubs per 50 linear feet of buffer.

3. Use of Landscape Buffers

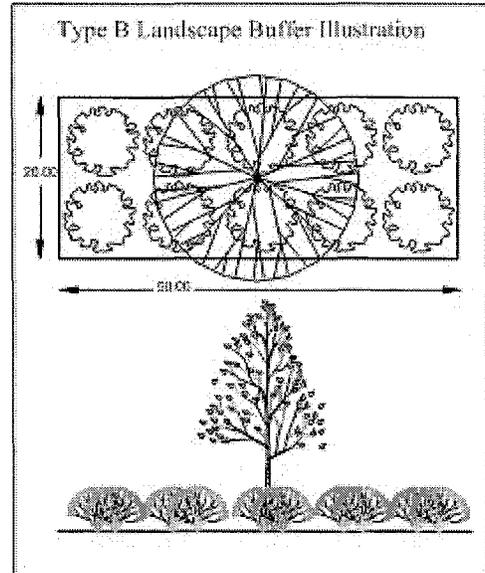
Required landscape buffers may be used solely for open space and landscaping. No proposed building addition, parking area or any other type of physical land improvement, (other than walls, walkways or other landscape features) may be located in a required landscape buffers.

4. Waiver for Small Sites

The area of required Residential Protection Buffers shall not be required to exceed 10 percent of the site area or 10 percent of the width of the site.

5. Trees and Shrubs

Deciduous trees planted to satisfy the standards of this section must have a minimum size of 2-inch caliper. Evergreen trees must have a minimum height of 5 feet. Shrubs must be at least 1 gallon size.



F. Operating Hours

The following operating hour restrictions apply to all development that is subject to Residential Protection Standards.

1. Collection of Garbage and Recyclables

No use subject to Residential Protection Standards may be served by garbage or recycling collection services between the hours of 10:00 p.m. and 6:00 a.m.

2. Loading Operations

No use subject to Residential Protection Standards may conduct loading or unloading operations between the hours of 10:00 p.m. and 6:00 a.m.

G. Lighting ^[1]

All lights used by development that is subject to Residential Protection Standards must be arranged and controlled so as to deflect light away from any SR-, MR-, or MHP-zoned property. Any light or combination of lights that cast light on any SR-, MR-, or MHP-zoned lot may not exceed 0.4 foot-candles (meter reading), as measured one foot inside the lot line of an SR-, MR-, or MHP-zoned lot.

H. Odor ^[1]

No use that is subject to Residential Protection Standards may be operated in a manner that causes odors that are detectable after the air has been diluted with 4 or more volumes of odor-free air, as measured within the lot lines of an SR-, MR-, or MHP-zoned lot. No violation of this odor standard will be deemed to have occurred if the person or business causing the emission of odorous air contaminants is employing the best available treatment, maintenance, and odor emission control techniques currently available.

I. Waivers

The City Planner may reduce or waive one or more of the Residential Protection Standards imposed by this section if they the City Planner finds find that reduction or waiver is appropriate and will not harm the surrounding area. An application for a reduction or waiver of one or more of the Residential Protection Standards shall be submitted in writing in a form established by the City Planner. Prior to issuing a decision by the City Planner to approve a reduction or waiver of the Residential Protection Standards, the City Planner shall provide written notice of the City Planner's decision by first class mail to all owners of the subject property, all property owners within 300 feet of the subject property and all members of the Planning Commission. The notice of decision shall describe the requested reduction or waiver, the intended decision of the City Planner and shall inform the recipient that an appeal of the City Planner's decision may be appealed within 10 days of the date of the City Planner's notice of decision by filing an appeal with the City Planner.

1. Appeal of City Planner's Decision

a. Appeals to Planning Commission; Timing

Appeals from the action of the City Planner on an application for waiver of the residential protection standards required by Sec. 20-0704 may be taken to the Planning Commission by filing an appeal with the City Planner.

b. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Planning Commission on an application for waiver of the residential protection standards required by Sec. 20-0704 may be taken to the City Commission by filing an appeal with the City Planner.

c. Right to Appeal

The following persons and entities shall have standing to appeal the action of the City Planner or Planning Commission on an application for waiver of the residential protection required by Sec. 20-0704:

[1] For purposes of the residential protection buffers, property zoned AG-Agricultural that is identified as being future residentially-zoned property on any growth plan approved under §20-0905 shall be deemed to be SR-, MR-, or MHP-zoned property.

- (1) The applicant;
- (2) The Planning Commission or any member of the Planning Commission;
- (3) The Board of City Commissioners or any member of the Board of City Commissioners;
- (4) Any person that the Planning Commission or Board of City Commissioners determine to be actually or potentially aggrieved by the appealed action; and

- (5) Any person given the right of appeal by law.

d. Action on Appeal

The Planning Commission or Board of City Commissioners shall consider the appealed decision on the request for waiver of residential protection standards required by Sec. 20-0704 as a new matter. After considering the matter, the Planning Commission or Board of City Commissioners shall act to approve or deny the original application.

J. Installation Maintenance and Replacement

All trees and landscaping must be installed according to sound nursery practices in a manner designed to encourage vigorous growth. All landscaping and buffers required by this Land Development Code must be healthy and in-place within one (1) year of the date that the building permit was approved. The Zoning Administrator shall be authorized to extend this deadline.

1. Maintenance and Replacement

Trees, shrubs, fences, walls, and other landscape features depicted on plans approved by the City will be considered as elements of the project in the same manner as parking, building materials, and other details are elements of the plan. The land owner, or successors in interest, or agent, if any, will be jointly and severally responsible for the following:

- a. Regular maintenance of all landscaping in good condition and in a way that presents a healthy, neat, and orderly appearance. All landscaping must be maintained free from disease, pests, weeds, and litter. This maintenance must include weeding, watering, fertilizing, pruning, mowing, edging, mulching or other maintenance, as needed and in accordance with acceptable horticultural practices;
- b. The repair or replacement of required landscape structures (e.g. walls, fences) to a structurally sound condition;
- c. The regular maintenance, repair, or replacement, where necessary, or any landscaping required by this section; and
- d. Continuous maintenance of the site as a whole.
- e. Survival rate levels of less than 90 percent of the original landscaping requirements after expiration of four years from issuance of the building permit shall be corrected upon notification submitted to the owner of the property by the Zoning Administrator. Any person, firm or company, having received such notification from the Zoning Administrator, shall be required to correct survival rate levels of less than 90 percent of the original landscaping requirements by replacing trees, shrubs or other landscaping elements within one year of such notification or in such other manner as approved by the Zoning Administrator.

2. Notification of Noncompliance

If the Zoning Administrator determined that required landscaping has not been installed or maintained in compliance with this section, the Zoning Administrator shall notify the applicant immediately (by mail or personal service to the same person and to the same address as is designated to receive the real estate tax notice for the property). The notice shall state:

- a. The work that must be done or the improvement that must be made to comply with the requirements of this Land Development Code;
- b. The amount of time the owner has to commence and complete the required landscape work or improvements; and
- c. That, if the work or improvements are not commenced and completed within the time specified, the work will be performed by the City and the cost thereof will be assessed against the real property described in the notice.

Source: 2985 (1999), 4039 (2000), 4167 (2001), 4386 (2004).

§20-0705 Trees and Landscaping

A. Exemptions

The following are exempt from all of the standards of this section.

1. Agriculture in the AG district;
2. Construction, repair or remodeling of single-family or duplex dwelling units; provided, however, that street tree requirements shall be required in SR zoning districts within the City limits;
3. Development in the DMU district; and
4. Improvements or repairs to existing development that do not increase the existing floor area by more than 1,000 square feet or 10 percent, whichever is greater, and changes in use that do not require more parking spaces or a more intensive zoning than the previous use.

B. Street Trees and Ground Cover of Boulevard

The Street Tree and Ground Cover Planting standards of this subsection apply to all nonexempt development. Review for compliance with these standards shall occur as part of the Subdivision process, Conditional Use Permit, Site Plan Review or Building Permit process, whichever occurs first.

1. Number

a. Local Streets

At least one (1) street tree is required for every 35 linear feet of local street frontage unless the City Forester determines that additional space between trees is necessary to address specific siting or other conditions. All areas of right-of-way for streets and utilities not covered by concrete, asphalt or such other material for vehicular, bicycle or pedestrian travel shall be covered by grass, unless otherwise approved by the Zoning Administrator.

b. Collector and Arterial Streets

At least one (1) street tree is required for every 50 linear feet of collector and arterial street frontage unless the City Forester determines that additional space between trees is necessary to address specific siting or other conditions. All areas of right-of-way for streets and utilities not covered by concrete, asphalt or such other material for vehicular, bicycle or pedestrian travel shall be covered by grass, unless otherwise approved by the Zoning Administrator.

2. Location

Required street trees shall be installed within the street right-of-way or within 10 feet of the street right-of-way. If street trees are to be located outside of the right-of-way, the City shall be authorized to require the establishment of a 15-foot landscape easement. The proposed location of street trees must be shown on the Amenities Plan that accompanies the subdivision plat.

3. Spacing

Street trees need not be placed exactly at 35- or 50-foot intervals, but they must be placed fairly evenly along the street frontage. The City Forester shall have the authority to determine the final location of street trees, based on site factors such as the location of utilities and driveways, intersection visibility requirements and other factors.

4. Size

Street trees must comply with the following minimum size standards (all sizes to be measured in accordance with *American Standards for Nursery Stock* published by the American Association of Nurserymen).

a. Local Streets

Street trees planted adjacent to local streets must be a minimum size of 1 ½-inch caliper.

b. Collector Streets

Street trees planted adjacent to collector streets must be a minimum size of 2-inch caliper.

c. Arterial Streets

Street trees planted adjacent to arterial streets must be a minimum size of 3-inch caliper.

5. Planting Requirement

Organic mulch (woodchips) shall be installed to a minimum coverage thickness of 2 inches around street tree plantings within a radius of 3 feet of the trunk base.

C. Open Space Landscaping**1. Applicability**

The Open Space Landscaping standards of this subsection shall apply to all development in SR-3 or SR-4 developments containing three or more attached dwelling units and in all MR-1 and more intensive zoning districts.

2. Relationship to Other Landscaping Standards

Landscaping provided to meet the Street Tree or Parking Lot Perimeter Landscaping standards of this section may not be counted towards meeting a project's Open Space Landscaping requirements. Open Space Landscaping may be placed within the interior of off-street parking areas, in which case the landscaping shall be counted toward meeting the project's Open Space Landscaping requirements.

3. Plant Units Required**a. Residential Districts and UMU zoning district**

Within residential and institutional zoning districts and a UMU zoning district, at least three (3) plant units shall be provided for each 1,000 square feet of lot area or fraction thereof, and eight (8) square feet per plant unit shall be provided.

b. Commercial and P/I Districts

Within commercial and public/institutional zoning districts (NO, NC, GO, LC, GC, P/I), at least three (3) plant units shall be provided for each 1,000 square feet of lot area or fraction thereof, and eight (8) square feet per plant unit shall be provided.

c. Industrial Districts

Within industrial zoning districts (LI and GI), at least one (1) plant unit shall be provided for each 1,000 square feet of lot area or fraction thereof, and eight (8) square feet per plant unit shall be provided.

The following table provides a breakdown of plant unit equivalencies.

Type of Plant Material	Size	Equivalent Plant Units
Large, Mature Deciduous Tree ^[1]	1.5 to 3-inch caliper - >30 foot mature height	10
Large, Mature Evergreen Tree ^{[1][2]}	5/6 foot height - >30 foot mature height	10
Small, Mature Deciduous Tree ^[1]	1.5 to 3-inch caliper - 12 to 30 foot mature height	5
Small, Mature Evergreen Tree ^{[1][3]}	3 to 4 foot height - 12 to 30 foot mature height	5
Mature Shrub	2 gallon	1
Perennial Plants ^[4]	1 gallon	0.5
	2 gallon	1

Sizes to be measured in accordance with *American Standards for Nursery Stock* published by the American Association of Nurserymen.

4. Location of Plant Units

A minimum of 70 percent of the plant units required pursuant to this subsection shall be installed in required front or street side setback areas. In a UMU zoning district, said 70 percent requirement shall not apply.

5. P/I Zoning District Calculation

The City Planner shall have authority to exclude playing fields or ball fields from the square footage value used to calculate required plant units in P/I zoning districts.

D. Parking Lot Perimeter Landscaping

1. Applicability

All off-street parking areas shall be subject to the Parking Lot Perimeter Landscaping standards of this subsection. The standards do not apply to areas used for storing vehicles or equipment in conjunction with a vehicle sales or rental establishment.

2. Relationship to Other Landscaping Standards

Landscaping provided to meet Street Tree or Open Space Landscaping standards shall not be counted towards meeting the Parking Lot Perimeter Landscaping requirements.

[1] Smaller caliper trees for certain species may be acceptable upon approval of the Zoning Administrator.

[2] Type 3 cone types ANSI standard including spruce and pine varieties.

[3] Type 6 columnar evergreens including upright junipers and pyramidal arborvitae.

[4] Perennial plant materials shall not exceed 20 percent of the open space requirement

3. Buffer Standards

Parking lot perimeter buffers shall be located between adjacent street rights-of-way and off-street parking areas and all vehicular circulation areas within the front setback in accordance with the following table:

Parking Area Size Number of Spaces	Buffer Width Minimum (feet)	Minimum Planting Requirements
1-50	4	Hedgerow (continuous shrubs)
	6	Berm with maximum slope of 3:1 + 1 small tree per 25 linear feet
51-250	9	1 small tree + 6 shrubs per 25 linear feet
251+	20	1 medium tree per 25 linear feet

Notes:

1. Buffer Width measured from property line

2. Minimum sizes:

- Shrubs = 1 gallon,
 - Small deciduous tree = 1 1/2-inch DBH,
 - Small evergreen tree = 4 1/2-foot height,
 - Medium deciduous tree = 2 1/2-inch DBH,
 - Medium evergreen tree = 5 1/2-foot height
- (DBH=Diameter at Breast Height)

4. Paving setbacks.

For the purpose of providing space for pedestrian and bicycle circulation, and creating opportunities for planting buffers, parking lots and vehicular circulation areas shall provide a paving setback in accordance with the following table:

UMU Zoning District	
Location	Setback Minimum (feet)
Street side	15
Interior Side	8
Rear side	6

E. Landscape Quality

Plants installed to satisfy the requirements of this must meet or exceed the plant quality standards of the most recent edition of *American Standard for Nursery Stock*, published by the American Association of Nurserymen. Plants must be nursery-grown and adapted to the local area.

F. Use of Existing Plant Material

Vegetation and plant material that exists on a site prior to its development may be used to satisfy the landscaping standards of this section provided that it meets all size, variety and locational requirements of this section.

G. Installation Maintenance and Replacement

All trees and landscaping must be installed according to sound nursery practices in a manner designed to encourage vigorous growth.

1. Installation of Street Trees

The Forester shall determine the time for installation of Street Trees by a written order.

Required Street Trees within subdivisions must be healthy and in-place within six (6) months of the order of the Forester. In no event, however, shall Street Trees required by this section be installed, healthy and in-place later than five (5) years after approval of the plat.

2. Installation of other Required Landscaping

All other landscaping and buffers (other than street trees) required by this Land Development Code must be healthy and in-place within one (1) year of the date that the building permit was approved.

3. Maintenance and Replacement

Trees, shrubs, fences, walls and other landscape features depicted on plans approved by the City will be considered as elements of the project in the same manner as parking, building materials and other details are elements of the plan. The land owner, or successors in interest, or agent, if any, will be jointly and severally responsible for the following:

- a. Regular maintenance of all landscaping in good condition and in a way that presents a healthy, neat, and orderly appearance. All landscaping must be maintained free from disease, pests, weeds and litter. This maintenance must include weeding, watering, fertilizing, pruning, mowing, edging, mulching or other maintenance, as needed and in accordance with acceptable horticultural practices;
- b. The repair or replacement of required landscape structures (e.g. walls, fences) to a structurally sound condition;
- c. The regular maintenance, repair, or replacement, where necessary, of any landscaping required by this section; and
- d. Continuous maintenance of the site as a whole.
- e. Survival rate levels of less than 90 percent of the original landscaping requirements after expiration of four years from issuance of the building permit shall be corrected upon notification submitted to the owner of the property by the Zoning Administrator. Any person, firm, or company, having received such notification from the Zoning Administrator, shall be required to correct survival rate levels of less than 90 percent of the original landscaping requirements by replacing trees, shrubs or other landscaping elements within one year of such notification or in such other manner as approved by the Zoning Administrator.

4. Notification of Noncompliance

If the Zoning Administrator determines that required landscaping has not been installed or maintained in compliance with this section, the Zoning Administrator shall notify the applicant immediately (by mail or personal service to the same person and to the same address as is designated to receive the real estate tax notice for the property). The notice shall

state:

- a. The work that must be done or the improvement that must be made to comply with the requirements of this Land Development Code;
- b. The amount of time the owner has to commence and complete the required landscape work or improvements; and
- c. That, if the work or improvements are not commenced and completed within the time specified, the work will be performed by the City and the cost thereof will be assessed against the real property described in the notice.

Source: 2985 (1999), 4039 (2000), 4167 (2001), 4227 (2002), 4695 (2009).

§20-0706 Corner Visibility

Notwithstanding any other provision of this Land Development Code, neither buildings, permanent or portable signs, parking spaces, fences, landscaping nor any other object may be erected, placed, planted, or allowed to grow in such a manner as to impede vision between a height of 2 feet and 8 feet above curb grade within the required corner visibility area of a street intersection or driveway intersection with a street

Required Corner Visibility	
Speed Limit (miles per hour)	Size of Corner Visibility Triangle
25	25 feet measured from curb
30	25 feet measured from curb
35	30 feet measured from curb
40	25 feet measured from property line
45	33 feet measured from property line
50	43 feet measured from property line
55	60 feet measured from property line

At intersections of two streets, the corner visibility triangle for the street with the higher speed limit applies. The size of the triangle may be increased by the Zoning Administrator when deemed necessary for traffic safety alignment or other factors that require increased corner visibility. This Corner Visibility Standard shall not apply within the portion of the DMU district where development follows the zero lot line dimensional standard. A “portable sign”, as defined in the Fargo Sign Code, that is located within a parking space on an all-weather-surface parking lot that is striped for parking shall be permitted even though such sign may be within said corner visibility area. For purposes of this section, that “distance measured from curb” at an intersection of two streets or roads shall be determined from a point where the extension of the curb from the two streets or roads meet and, at an intersection of a street or road and a driveway, the distance shall be measured from the point of the curb cut for the driveway.

Source: 4167 (2001), 4439 (2004), 4697 (2009).

Article 20-08

Review and Decision-Making Bodies

§20-0801 Board of City Commissioners

A. Powers and Duties

The Board of City Commissioner's powers and duties under this Land development code are set out in this subsection.

1. Land Development Code Text Amendments

The Board of City Commissioners shall be responsible for reviewing Land Development Code text amendment applications and for taking the final local action to approve or deny such applications.

2. Area Plans

The Board of City Commissioners shall be responsible for reviewing Area Plan applications and for taking the final local action to approve, approve with conditions or deny such applications.

3. Zoning Map Amendments

The Board of City Commissioners shall be responsible for reviewing zoning map amendment (rezoning) applications and for taking the final local action to approve, approve with conditions or deny such applications.

4. Major Subdivisions

The Board of City Commissioners shall be responsible for reviewing and taking the final local action to approve or deny Major Subdivision Plat applications.

5. Planned Unit Developments

a. PUD Master Land Use Plan and PUD Rezoning

The Board of City Commissioners shall be responsible for reviewing PUD Master Land Use Plan and PUD Rezoning applications and for taking the final local action to approve, approve with conditions or deny such applications.

b. PUD Final Development Plan

The Board of City Commissioners shall be responsible for hearing appeals of the Planning Commission's decision on PUD Final Development Plans and for taking the final local action on such appeals.

6. Conditional Use Permits

The Board of City Commissioners shall be responsible for hearing appeals of the Planning Commission's decision on Conditional Use Permits and for taking the final local action on such appeals.

7. Site Plan Review

The Board of City Commissioners shall be responsible for hearing appeals of the Planning Commission's decision on Site Plan Review matters and for taking the final local action on such appeals.

8. Institutional Master Plans

The Board of City Commissioners shall be responsible for hearing appeals of the Planning Commission's decision on Institutional Master Plans and for taking the final local action on such appeals.

9. Certificates of Appropriateness

The Board of City Commissioners shall be responsible for hearing appeals of the Planning Commission's decision on Certificates of Appropriateness and for taking the final local action on such appeals.

10. Variances

The Board of City Commissioners shall be responsible for hearing appeals of the Board of Adjustment's decision on Variance matters and for taking the final local action on such appeals.

11. Appeals of Administrative Decisions

The Board of City Commissioners shall be responsible for hearing appeals of the Board of Adjustment's decision on Appeals of Administrative Decisions and for taking the final local action on such appeals.

§20-0802 Planning Commission

A. Appointment

1. The Planning Commission shall consist of 11 members, 8 of whom shall be appointed by the Board of City Commissioners for 3-year terms and 3 of whom shall be appointed by the Cass County Board of Commissioners for 5-year terms, in accordance with Sections 40-47-06 and 40-48-03 of the North Dakota Century Code. If a vacancy occurs by means other than expiration of a term, the vacancy shall be filled by appointment for the unexpired portion of the term. Planning Commissioners appointed by the Board of City Commissioners must be residents of the City of Fargo.
2. The President of the Board of City Commissioners shall appoint the members of the Planning Commission on or before the second regular meeting of the Board of City Commissioners in June of each year and shall submit the names of the persons appointed and the lengths of their terms to the Board of City Commissioners at the second meeting in June of each year. The Board of City Commissioners shall, by a majority vote, confirm or reject such appointments. If such appointments are rejected, the President of the Board of City Commissioners shall make other appointments, which shall be approved or rejected in the same manner. The provisions of this section shall not apply to the 3 rural members of the Planning Commission who shall be appointed and confirmed by the Cass County Board of Commissioners.

B. Removal

Any member of the Planning Commission may be removed by the President of the Board of City Commissioners, subject to the concurrence of a majority of the qualified and existing members of the Board of City Commissioners as defined in section 1-0203 of the Revised Ordinances of 1965 of the City of Fargo; provided, however, that no member of the Planning Commission may be removed until they have been afforded an opportunity of a hearing before the Board of City Commissioners and shall have been given at least 10 days written notice of such hearing by certified or registered mail.

C. Rules

The Planning Commission shall elect a chair and vice-chair at its regularly scheduled June meeting each year. The Planning Commission shall adopt rules and by-laws for the transaction of business.

D. Powers and Duties

The Planning Commission shall have such powers and shall perform such duties as may now or hereinafter be provided by law for any Planning or Zoning Commission, and, in addition thereto, shall act in an advisory capacity to the Board of City Commissioners in any matter which may be assigned to the Planning Commission for consideration and recommendation. Members of the Planning Commission shall receive no compensation, except that they may be allowed actual expenses for traveling as provided by law. The Planning Commission's powers and duties under this Land Development Code are set out in this subsection (below).

1. Land Development Code Text Amendments

The Planning Commission shall be responsible for reviewing Land Development Code text amendment applications and for recommending that the Board of City Commissioners approve or deny such applications.

2. Area Plans

The Planning Commission shall be responsible for reviewing Area Plan applications and for recommending that the Board of City Commissioners approve, approve with conditions or deny such applications.

3. Zoning Map Amendments

The Planning Commission shall be responsible for reviewing zoning map amendment (rezoning) applications and for recommending that the Board of City Commissioners approve, approve with conditions or deny such applications.

4. Minor Subdivisions

The Planning Commission shall be responsible for recommending that the Board of City Commissioners, approve, approve with conditions or deny Minor Subdivision Plat applications.

5. Major Subdivisions

The Planning Commission shall be responsible for recommending that the Board of City Commissioners approve, approve with conditions or deny Major Subdivision Plat applications.

6. Planned Unit Developments

a. PUD Master Land Use Plan and PUD Rezoning

The Planning Commission shall be responsible for reviewing PUD Master Land Use Plan and PUD Rezoning applications and for recommending that the Board of City Commissioners approve, approve with conditions or deny such applications.

b. PUD Final Development Plan

The Planning Commission shall be responsible for reviewing PUD Final Development Plans and for acting to approve, approve with conditions or deny such applications.

7. Conditional Use Permits

The Planning Commission shall be responsible for hearing and reviewing Conditional Use Permit applications and for acting to approve, approve with conditions or deny such applications.

8. Site Plan Review

The Planning Commission shall be responsible for hearing appeals of the Zoning Administrator's decision on Site Plan Review matters and for acting to approve, approve with conditions or deny the application.

9. Institutional Master Plans

The Planning Commission shall be responsible for reviewing Institutional Master Plans and for acting to approve, approve with conditions or deny such applications.

10. Certificates of Appropriateness

The Planning Commission shall be responsible for hearing appeals of the Historic Preservation Commission's decision on Certificates of Appropriateness and for acting to approve, approve with conditions or deny the application.

11. Other Matters

The Planning Commission shall have such other duties as determined from time-to-time by the Board of City Commissioners and as provided by law.

Source 4592 (2007).

§20-0803 Board of Adjustment

A. Appointment

The Board of Adjustment shall consist of 5 members who shall be appointed by the Board of City Commissioners for 3-year terms. If a vacancy occurs by means other than expiration of a term, the vacancy shall be filled by appointment for the unexpired portion of the term.

B. Rules

The Board of Adjustment shall elect a chair and vice-chair. The Zoning Administrator shall serve as Secretary. The Board of Adjustment shall adopt rules and by-laws for the transaction of business.

C. Powers and Duties

The Board of Adjustment's powers and duties under this Land Development Code are set out in this subsection.

1. Zoning Variances

The Board of Adjustment shall be responsible for reviewing and taking final local action to approve, approve with conditions or deny zoning variance applications.

2. Appeals of Administrative Decisions

In all matters where appeal powers have not been specifically assigned to the Planning Commission or Board of City Commissioners, the Board of Adjustment shall be responsible for hearing appeals of administrative decisions and for taking the final local action to uphold or overturn the administrative official's decision.

§20-0804 Historic Preservation Commission

A. Purposes and Intent

1. The purpose of this section is to establish a program for the preservation, protection and regulation of historic properties within the City of Fargo for the educational, cultural, economic, and general welfare of the public; to safeguard the heritage of the City by preserving and regulating historic properties that reflect elements of its cultural, social, economic, political and architectural history; to preserve the City's economic base by the stimulation of the tourist industry; to establish and improve property values; to foster economic development; to manage growth; to foster civic pride in the beauty and noble accomplishments of the past; and to promote the use of historic properties for the education, pleasure and welfare of the people of the City of Fargo.
2. It is intended that the Historic Preservation Commission will cooperate with and assist various local, state and federal entities and agencies in the enforcement of federal and state legislation to identify, evaluate, designate, and protect properties significant in the pre-history, history, architecture, engineering and culture of the community, state and nation.
3. It is further declared that the purposes of this article are to:
 - a. Retain and enhance historic properties within the City of Fargo while allowing their adaption for current use by assuring that alterations are compatible with their historic character; and
 - b. Assure that new construction and subdivision of lots in designated historic districts complies with the standards of this Land Development Code.

B. Creation of Historic Preservation Commission

There is hereby created a body to be known as the Historic Preservation Commission of the City of Fargo, which shall have powers and duties as hereinafter provided.

C. Appointment and Terms

The Historic Preservation Commission shall consist of 7 members who shall be residents of the City of Fargo. At least a majority of the membership shall be comprised of persons from among professionals in the disciplines of architecture, history, architectural history, planning, archeology, or other historic preservation related disciplines, such as urban planning, American studies, American civilization, cultural geography or cultural anthropology, to the extent that such professionals are available in the community. Members shall be appointed by the Mayor, subject to ratification and approval by the Board of City Commissioners. The appointments shall be made as follows, to-wit: 2 members who shall serve for a term of 1 year; two members who shall serve for a term of 2 years; and 3 members who shall serve for a term of 3 years. All terms shall commence on November 1, 1990. At the expiration of the terms of the members as aforesaid, members shall be appointed for 3-year terms. If a vacancy occurs for reasons other than expiration of a term, it shall be filled by appointment for the unexpired portion of the term. Notwithstanding the expiration of a member's term, such member may serve until his successor has been appointed and qualified. No member of the Historic Preservation Commission shall be entitled to any compensation, except that reasonable expenses may be paid if budgeted and approved in advance.

D. Rules

The Historic Preservation Commission shall prepare and adopt by-laws and rules governing its own operation and, at its first meeting following November 1 each year, it shall elect a chair and vice-chair to serve until their successors are elected and qualified. The majority of the existing and qualified members of the Historic Preservation Commission shall constitute a quorum for the conduct of business.

E. Meetings

The Historic Preservation Commission shall conduct at least 4 public meetings annually at the Fargo City Hall. All meetings shall be open to the public and advance notice shall be posted in the City Hall. Appropriate minutes of all meetings shall be maintained and kept in the office of the Planning Department and shall be provided to the State Historical Society within 60 days following each Historic Preservation Commission meeting, or at such other times as may be directed.

F. Employment of Staff

The Historic Preservation Commission, if authorized by the Board of City Commissioners, may employ such persons and obtain such services as may be necessary to direct, advise, and assist the Historic Preservation Commission and obtain equipment, supplies, services and other material which may be necessary to its effective operation.

G. Funding

The Board of City Commissioners may annually appropriate funds, within budget limitations, for the operation of the Historic Preservation Commission. The Historic Preservation Commission, in addition to the appropriations made by the City of Fargo, shall have the right to receive, hold and spend funds which it may legally receive from any and every source, both in and out of the state of North Dakota, for the purpose of carrying out the provisions of this article.

H. Powers and Duties

The Historic Preservation Commission shall have the powers and duties as hereinafter provided and in addition thereto, shall act in an advisory capacity to the Board of City Commissioners and the Fargo Planning Commission in any manner which may be assigned to said Historic Preservation Commission for consideration and recommendation. The following general powers and duties are specifically conferred upon the Historic Preservation Commission.

1. To promulgate criteria for classifying properties within the City as having historic significance.
2. To prepare, or have prepared on its behalf, a comprehensive inventory of historically significant properties within the City.
3. To make recommendations to the Board of City Commissioners concerning the acquisition of fee simple and less than fee simple rights in properties within the City for purposes of historic preservation.
4. To make recommendations to the Board of City Commissioners for any additional ordinances or administrative procedures required to implement the stated purpose and intent of this section.

5. To develop and participate in educational programs to increase public awareness of the value of historic preservation and of the preservation program established by this ordinance.
6. To make recommendations to the Board of City Commissioners:
 - a. Regarding application for and acceptance and utilization of grants from federal, state and local agencies or other entities, private groups, and individuals, and
 - b. For budgetary appropriations to promote and advance the preservation of historic properties in the City and to otherwise implement the stated purpose and intent of this section.
 - c. To evaluate and comment upon plans, proposals, permits and applications which are developed or required by other public agencies -- including those developed by other commissions, offices, and departments of the City -- which may, in the opinion of the Historic Preservation Commission, either directly or indirectly affect any property or properties deemed by the Historic Preservation Commission to have historic value.
7. To prepare and submit, in accordance with all applicable federal laws and regulations, nominations to the National Register of Historic Places for properties deemed by the Historic Preservation Commission to be significant in local, state or national history.
8. To review and comment upon all certifications of significance and certifications of rehabilitation as requested by the North Dakota State Historic Preservation Officer.
9. To accept such gifts or grants as may be appropriate for fulfilling the purposes of this ordinance.
10. To identify and recommend, for historic preservation purposes, such organization or organizations to which fee titles or lesser interest in property should be granted.
11. To submit and file such information, findings and resolutions deemed necessary and appropriate by the Historic Preservation Commission with the State Historical Society of North Dakota.
12. To review and comment to all local, state or federal agencies or entities deemed necessary with regard to governmental funded, assisted or licensed projects with emphasis as to the presence of historically significant properties within the project's impact area, the extent of the project's effect on historically significant properties and proposed means of mitigating any adverse effect.
13. To review and comment on any building permits which are pending or which have been issued by the City of Fargo which may, in the opinion of the Historic Preservation Commission, either directly or indirectly have an effect on property or properties having historic significance. Unless otherwise expressly provided in this Land Development Code, the Historic Preservation Commission shall have no power to delay or prohibit the issuance of any building permit.
14. Perform any other functions which may be assigned or delegated to it by the Board of City Commissioners.
15. Review each Certificate of Appropriateness application and act to approve or deny the application. (See Sec. 20-0912)

§20-0805. – Arts and Culture Commission**A. Purposes and Intent**

1. The purpose of this section is to establish a commission to ensure that public art continues to be a valuable part of Fargo to encourage the display of public art by citizens, developers, property owners, architects and builders to provide a process for review and recommendation to the city commission of the commissioning and placement of public art by the city; to ensure that existing public art is properly displayed and maintained and that it is accessible to the general public.
2. The Arts and Culture Commission is not a municipal arts council as provided by N.D.C.C Chapter 40-38.1. As a result, the Arts and Culture Commission is not authorized to levy city property taxes; however, the Arts and Culture Commission is authorized to receive and expend funds as provided by N.D.C.C. § 40-05-01(73).

B. Creation of Arts and Culture Commission

There is hereby created an Arts and Culture Commission of the city of Fargo, which shall have powers and duties as hereinafter provided.

C. Appointment and Terms

The Arts and Culture Commission shall consist of nine (9) members who shall be residents of the city of Fargo. One member shall be a representative of the Downtown Community Partnership if available. One member shall be a representative of an established neighborhood association if available. Four members shall have a background in arts and humanities or shall have experience participating in the arts and culture activities in the community. The rest of the members shall be at large. Members shall be appointed by the mayor, subject to ratification and approval by the board of city commissioners. The appointments shall be made as follows, to-wit: three (3) members, who shall serve for a term of one (1) year; three (3) members, who shall serve for a term of two (2) years; and three (3) members, who shall serve for a term of three (3) years. All terms shall commence 2015. June 1 of each year, beginning in 2016, shall be considered the expiration date. Upon the expiration of the initial term of a member as aforesaid, thereafter members shall be appointed for 3-year terms. If a vacancy occurs for reasons other than expiration of a term, it shall be filled by appointment for the unexpired portion of the term. Notwithstanding the expiration of a member's term, such member may serve until his successor has been appointed and qualified. No member of the Arts and Culture Commission shall be entitled to any compensation, except that reasonable expenses may be paid if budgeted and approved in advance.

D. Rules

The Arts and Culture Commission shall prepare and adopt by-laws and rules governing its own operation and, at its first meeting following January 1st each year, it shall elect a chair and vice-chair to serve until their successors are elected and qualified. The majority of the existing and qualified members of the Arts and Culture Commission shall constitute a quorum for the conduct of business.

E. Meetings

All meetings of the Arts and Culture Commission shall be governed by North Dakota open meeting law. Minutes of meetings shall be kept in the office of the Planning Department.

F. Funding

The board of city commissioners may annually appropriate funds, within budget limitations, for the operation of the Arts and Culture Commission. As provided by state law, the Arts and Culture Commission, in addition to the appropriations made by the city of Fargo, is authorized to receive, hold and spend funds which it may legally receive from any and every source, both in and out of the state of North Dakota, for the purpose of carrying out the provisions of this article.

G. Powers and Duties

The Arts and Culture Commission shall have the powers and duties as hereinafter provided and in addition thereto, shall act in an advisory capacity to the board of city commissioners in any manner which may be assigned to said Arts and Culture Commission for consideration and recommendation. The following general powers and duties are specifically conferred upon the Arts and Culture Commission.

1. Managing and facilitating new public art commissions or works of art gifted to the city.
2. Managing available funds and engaging in active pursuit of public art grants and other relevant funding opportunities.
3. Reporting to city commission annually the status of donations, monies received and expended, and the purpose of all expenditures.
4. Guiding the development of a public art master plan and maintaining said master plan.
5. Identifying opportunities for public art within current and future capital improvement projects.
6. Managing a public art collection.

7. Promoting public art through education.
8. Employing qualified city staff to support the activities of the council.
9. To make recommendations to the board of city commissioners for any additional ordinances or administrative procedures required to implement the stated purpose and intent of this section.
10. To accept such gifts or grants as may be appropriate for fulfilling the purposes of this ordinance.
11. Maintain public art as needed.
12. Perform any other functions which may be assigned or delegated to it by the board of city commissioners.

Source: 4948 (2014), 4981 (2015).

Article 20-09

Development Review Procedures

§20-0901 General

The requirements of this section apply to all applications under this Land Development Code.

A. Authority to File Applications

An application for development review or approval under this Land Development Code must be filed by the person having legal authority to take action in accordance with the approval sought. Unless otherwise expressly stated, that person is presumed to be the record owner, purchaser under a sale from the record owner, or the duly authorized agent of the record owner in the absence of satisfactory proof to the contrary. City officials are authorized to require proof of legal authority to take the action sought. The Board of City Commissioners, Planning Commission, Board of Adjustment and City department heads may initiate any action under this Land Development Code with or without an application from the property owner.

B. Form of Application

Applications required under this Article must be submitted on forms and in such numbers as required by the official responsible for accepting the application.

C. Filing Fees

Applications must be accompanied by the non-refundable fee established by Board of City Commissioners. Fees shall not be required with applications initiated by the Board of City Commissioners, Planning Commission, Board of Adjustment or City department heads.

D. Complete Applications

Applications that do not include required information or that are not accompanied by required fees will be returned to the applicant as incomplete, and no further processing of the application will occur until the deficiencies are corrected. Applications will be reviewed for completeness within 5 days of filing. If the official determines that the application is complete, the application will be processed. If the official determines that the application is incomplete, the application will be returned to the applicant along with an explanation of the application's deficiencies.

E. Establishment of Processing Cycles

Officials responsible for accepting applications, after consulting with review and decision-making bodies, may promulgate processing cycles for applications. Processing cycles may establish:

1. Deadlines for receipt of complete applications;
2. Dates of regular meetings;
3. The scheduling of staff reviews and staff reports on complete applications;
4. All required steps in the application process (including public hearings, and reviews by other agencies); and

5. Required time-frames for action by review and decision-making bodies.

F. Notices

All notices required under this Land Development Code must: (1) indicate the time and place of all scheduled public hearings; (2) describe the property involved in the application by street address, legal description or map; (3) describe the nature, scope and purpose of the proposal; and (4) indicate the location and source of additional information on the proposal.

1. Written Notice

Unless otherwise expressly stated, when the provisions of this Land Development Code require that written notice be provided, the official responsible for accepting the application shall provide written notice by first class mail to all owners of the subject property and all property owners within 300 feet of the subject property. The notice shall be deposited in the U.S. mail at least 15 days before the first scheduled public hearing. Ownership information shall be obtained from the Cass County Assessor's Office.

2. Published Notice

When the provisions of this Land Development Code require that notice be published in the newspaper, the official responsible for accepting the application shall ensure that notice is published in a newspaper of general circulation within the City at least once each week for 2 successive weeks preceding the date of the first scheduled public hearing.

3. Constructive Notice

Minor technical deviations from specified notice requirements shall not be deemed to impair notice where there is actual notice. When required written notices have been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date and place of a hearing and the general location of the subject property shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the body hearing the matter shall make a finding regarding whether there was compliance with the notice requirements of this article.

G. Neighborhood Associations

Established neighborhood associations may request that written notice be mailed to a designated representative and city planning staff shall send to said designated representative a copy of any legally required written notice; however, failure on the part of said planning staff or the city to send such notice shall not invalidate any proceedings nor shall it constitute grounds for delay of any proceedings, said notification to the representative of the neighborhood association being a courtesy and not a legal requirement.

H. Action by Review and Decision-Making Bodies

Review and decision-making bodies may take any action on an application that is consistent with the notice given, including, but not limited to, approving the application, approving the application with conditions or denying the application. Review bodies may recommend and decision-making bodies may impose conditions on the application or allow amendments to the application if the

Commentary

Review and decision-making bodies are authorized to postpone action or continue hearings in order to allow for presentation of additional facts or otherwise provide adequate time for consideration of issues.

effect of the conditions or amendments is to allow a less intensive use or zoning district than indicated in the application, to reduce the impact of the development or to reduce the amount of land area included in the application. Decision-making bodies may not approve an application for a greater density of development, a more intensive use, a more intensive zoning district, reduced setbacks, more dwelling units, greater height, more access points or fewer improvements than indicated in the notice.

I. Inaction By Review and Decision-Making Bodies

1. Review Bodies

When a review body fails to take action on an application, the application will be forwarded to the decision-making body with no recommendation.

2. Decision-Making Bodies

When a decision-making body fails to take action on an application within a required time-frame, that inaction will be deemed a denial of the application.

J. Continuation of Public Hearings

A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements, provided that the continuance is set for a date and time certain and announced at the original public hearing.

K. Compliance with North Dakota Century Code

The development review procedures of this Article are intended to implement the procedural requirements of the North Dakota Century Code. In the event of conflict between the procedures of this article and those required by the Century Code, the North Dakota Century Code shall control.

Procedure	Sec. No.	Review (R), Decision-Making (DM) and Appeal (A) Bodies				
		Staff	HPC	BOA	PC	BCC
LDC Text Amendments	20-0904	R			R	DM
Area Plan	20-0905	R			R	DM
Zoning Map Amendments	20-0201	R	R ^[1]		R	DM
Subdivision						
Minor					R	DM
Major	20-0907	R			R	DM
Planned Unit Developments						
Master Land Use Plan		R			R	DM
PUD Rezoning		R			R	DM
Final Development Plan	20-0908	R			DM	A
Conditional Use Permits	20-0909	R			DM	A
Site Plan Review	20-0910	DM			A	A ^[2]
Institutional Master Plan	20-0911	R			DM	A
Certificates of Appropriateness	20-0912	R & DM ^[3]	DM & A ^[3]			A ^[2]
Building Permits/Certificates of Occupancy	20-0913	DM		A		

Variances	20-0914			DM		A
Written Interpretations	20-0915	DM		A		
Appeals of Administrative Decisions	20-0916			DM		A

■ BOA = Board of Adjustment ■ PC = Planning Commission
 ■ BCC = Board of City Commissioners ■ HPC = Historic Preservation Commission

Source: 2985 (1999), 4486 (2005), 4592 (2007), 4881 (2013).

- [1] HPC is involved only on H-O District application, pursuant to §20-0305.
- [2] Appeals are not required to go to Planning Commission and Board of City Commissioners. Board of City Commissioners acts as appellate body only if the Planning Commission's decision is appealed.
- [3] Review, Decision Making and Appeals process is different depending on nature of request. See §20-0912.

§20-0902 Burden of Proof or Persuasion

The burden of demonstrating that an application complies with applicable review and approval criteria is on the applicant. The burden is not on the City or other parties to show that the criteria have not been met.

Source: 2985 (1999).

§20-0903 Date of Decision; Time Period for Appeals

- A. For all matters requiring a public hearing, the date of the decision shall be the date on which the decision-making body votes to take final action on the matter. For matters that do not require a public hearing, the date of the decision shall be the date indicated on the notice that is mailed to the applicant by the City Planner or Zoning Administrator.
- B. Appeals of final decisions made pursuant to the procedures of this article must be filed within 10 days of the date of the decision.

Source: 2985 (1999).

§20-0904 LDC Text Amendments

This section sets out the required review and approval procedures for Land Development Code text amendments.

A. Application

A complete application for a Land Development Code text amendment must be submitted to the Planning Department in a form established by the City Planner, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

B. City Planner Review and Recommendation

The City Planner must review each proposed Land Development Code text amendment and provide a report to the Planning Commission describing the purpose and effect of the amendment.

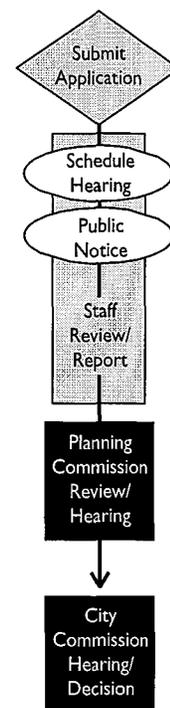
C. Planning Commission Review

The Planning Commission must hold a public hearing on the proposed Land Development Code text amendment and, at the close of the public hearing, make a recommendation to the Board of City Commissioners.

D. Board of City Commissioners Action

The Board of City Commissioners must hold a public hearing on the proposed Land Development Code text amendment. At the close of the public hearing, the Board of City Commissioners shall act to approve or deny the Land Development Code text amendment.

LDC Text Amendments



E. Review Criteria

The Planning Commission and Board of City Commissioners shall consider the following criteria in reviewing Land Development Code text amendments. Proposed text amendments that satisfy all of the criteria may be approved.

1. The amendment must be consistent with the purpose of this Land Development Code;
2. The amendment must not adversely affect the public health, safety, or general welfare; and
3. The amendment is necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected.

F. Notice of Public Hearings

Notice of the Planning Commission and Board of City Commissioners' public hearings on Land Development Code text amendments shall be published in accordance with Sec. 20-0901-F.

G. Notice of Amendment Adoption

Within 30 days after the Board of City Commissioners approves a Land Development Code text amendment, the City Planner shall ensure that notice of the approved amendment is published in accordance with Sec. 20-0901-F.

§20-0905 Growth Plans

A. Applicability

Effective April 1, 2000, an approved Growth Plan is a prerequisite for the approval of a Zoning Map Amendment or Subdivision Plat in portions of the City that have been annexed to the City after February 17, 1998, in Sections 33 and 34 of Reed Township (T140N, R49W), and in the extraterritorial jurisdiction of the City. This section sets out the required review and approval process for Growth Plans. The requirement of an approved Growth Plan shall not take effect until July 1, 2000, provided, however, that as to proposals for zoning map amendments for areas currently zoned Agricultural (AG) in which an approved Growth Plan is not in place, the Planning Commission shall be provided with the following:

1. The opportunity for preliminary review to occur prior to a public hearing;
2. The Planning Department shall provide analysis of the compatibility of the proposed development with existing development, the Comprehensive Policy Plan, physical features of the land and infrastructure availability; and
3. The written notice requirements of 20-0901 shall be extended to landowners within 500 feet of the subject property.
4. The requirements of subparagraphs 1 through 3, above, shall not apply to development applications submitted prior to March 23, 1999.

B. Plan Definition

As used in this section a Growth Plan, or Plan, shall be deemed to be a land use map and street plan.

C. Application

A complete Growth Plan application must be submitted to the City Planner in a form established by the City Planner, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

D. Preparation of Growth Plan.

The City Planner shall prepare the proposed Growth Plan.

E. Plan Review

After preparing the Growth Plan, the City Planner shall schedule a meeting for the purpose of allowing area residents and property owners in the area to review and comment on the proposed Growth Plan. Notice of meeting shall be published in accordance with Section 20-0901-F.

F. Planning Commission Review

The Planning Commission shall hold a public hearing on the proposed Growth Plan and, at the close of the public hearing, make a recommendation to the Board of City Commissioners.

G. Board of City Commissioners Action

Growth Plan



The Board of City Commissioners shall hold a public hearing on the proposed Growth Plan. At the close of the public hearing, the Board of City Commissioners shall act to approve, approve with modifications or deny the Growth Plan.

H. Approval Criteria

In acting on Growth Plans, the Planning Commission and Board of City Commissioners shall consider whether the Growth Plan is consistent with and serves to implement adopted plans and policies of the City.

I. Notice of Public Hearings

Notice of the Planning Commission and Board of City Commissioners' public hearings shall be published in accordance with Section 20-0901-F.

J. Amendments to Growth Plans

Growth Plans may be amended, in part or in total, in the same manner as set forth in this section.

Source: 2997 (1999), 4024 (2000).

§20-0906 Zoning Map Amendments

This section sets out the required review and approval procedures for amendments to the official zoning map (zoning changes).

A. Growth Plan Prerequisite

No zoning map amendment application will be accepted for land that is not covered by an approved Growth Plan. If the subject property is not included in an approved Growth Plan, a Growth Plan must be submitted for review and approval before or concurrently with the zoning map amendment application. This provision shall not be interpreted as requiring an approved Growth Plan prior to initial zoning of land brought into the City's Extra-Territorial Zoning Jurisdiction (See also Sec. 20-0108). The requirement of an approved Growth Plan shall not take effect until April 1, 2000, provided, however, that as to proposals for zoning map amendments for areas currently zoned Agricultural (AG) in which an approved Growth Plan is not in place, the Planning Commission shall be provided with the following:

**Zoning Map
Amendments**

1. The opportunity for preliminary review to occur prior to a public hearing;
2. The Planning Department shall provide analysis of the compatibility of the proposed development with existing development, the Comprehensive Policy Plan, physical features of the land and infrastructure availability; and
3. The written notice requirements of Sec. 20-0901 shall be extended to landowners within 500 feet of the subject property.
4. The requirements of subparagraphs 1 through 3, above, shall not apply to development applications submitted prior to March 23, 1999.



B. Application

A complete application for a zoning map amendment must be submitted by the applicant or the applicant’s agent to the City Planner. The application shall be in a form established by the City Planner, and be accompanied by a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

C. City Planner Review and Recommendation

The City Planner must review each proposed zoning map amendment and provide a report to the Planning Commission describing the purpose and effect of the amendment.

D. Planning Commission Review

The Planning Commission must hold a public hearing on the proposed zoning map amendment and, at the close of the public hearing, make a recommendation to the Board of City Commissioners.

E. Board of City Commissioners Action

The Board of City Commissioners must hold a public hearing on the proposed zoning map amendment. At the close of the public hearing, the Board of City Commissioners shall act to approve or deny the zoning map amendment.

F. Review Criteria

The Planning Commission and Board of City Commissioners shall consider the following criteria in their review of zoning map amendment requests. Proposed zoning map amendments that satisfy all of the criteria may be approved.

1. The requested zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
2. The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development allowed by the new zoning classification at the time the

property is developed;

3. The approval will not adversely affect the condition or value of property in the vicinity; and
4. The proposed amendment is consistent with the purpose of this Land Development Code, the applicable Growth Plan and other adopted policies of the City.

G. Protest Petitions

1. Definition of “Valid” Protest Petition

In order to be deemed “valid,” a protest petition must be signed by the owners of 20 percent or more: (a) of the area of the lots included in the area proposed to be changed, or (b) of the area adjacent and extending 300 feet from the land area proposed to be changed, excluding the width of streets. “Valid” protest petitions must contain the signature and address of each protesting property owner, and the location of property owned by each protestor shall be shown on a map attached to the written petition.

2. Super-Majority Vote Required

If a valid protest petition is submitted to City Planner before the scheduled public hearing of the Board of City Commissioners, approval of a zoning map amendment shall require a favorable vote of $\frac{3}{4}$ of all the members of the Board of City Commissioners.

H. Notice of Public Hearings

1. Written Notice

The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Sec. 20-0901-F.

2. Published Notice

Notice of the Planning Commission and Board of City Commissioners’ public hearings shall be published in accordance with Sec. 20-0901-F.

I. Limit on Successive Applications

If the Board of City Commissioners denies an application for a zoning map amendment, an application for the same zoning district on any portion of the subject tract may not be refiled by the original applicant for three months from the date of the Board of City Commissioners' public hearing on the proposed amendment.

Source: 2985 (1999), 2997 (1999), 4024 (2000), 4168 (2001).

§20-0907 Subdivision

A. General

1. Applicability

Subdivision of land shall be required before any of the following activities occur:

- a. The division of land (for any purpose) into 2 or more parcels; or
- b. Development that involves the construction of any public improvements that are to be dedicated to the City.

2. Exemptions

The “Applicability” provision of Sec. 20-0907-A notwithstanding, the following shall be exempt from the subdivision procedures of this section.

a. Boundary Line Adjustments

An adjustment in the boundary between adjoining lots if the adjustment does not create a substandard lot, exceed the maximum density allowed by the underlying zoning district or necessitate new roadway construction or right-of-way dedication. In such cases, a Boundary Line Adjustment survey must be submitted to the Zoning Administrator for review and approval, based on whether the reconfigured lots comply with the standards of this Land Development Code. Upon approval, the Boundary Line Adjustment survey shall be recorded with County Register of Deeds. A Boundary Line Adjustment shall not be required when 2 or more lots are combined into a single lot whose boundaries coincide with lot lines shown on the recorded plat of the subdivision.

b. Tax Lots

The division of ownership interests solely for the purpose of assigning tax liability among multiple owners (tax lots), provided that a tax lot survey must be submitted to the City Assessor, who shall inform the applicant of the effect of the tax lot division and record the tax lot survey with the County Register of Deeds.

c. Rail Rights-of-Way, Drainage Easements and Utilities

Land used for street or railroad right-of-way, a drainage easement or other public utilities subject to local, state or federal regulations, where no new street, right-of-way or easement is involved, or for a cemetery.

d. Agricultural

The division of a parcel or tract of land when the smallest parcel created is greater than 10 acres and the land is to be used solely for agriculture and living unit purposes.

3. Proper Designation

Notwithstanding the references in this section to subdivisions, minor subdivisions and major subdivisions, the subdivided land shall be considered an “addition” if the land is within the corporate limits of the City and shall be considered a “subdivision” if the land is outside the corporate limits of the City and the same shall be reflected in the proper name for the subdivision. A failure to properly identify the subdivision as either an “addition” or “subdivision” shall not invalidate a subdivision which was otherwise approved in accordance with the Land Development Code.

Source: 4039 (2000)

B. Minor Subdivisions

The expedited review and approval procedures of this subsection apply only to “Minor Subdivisions.”

1. Application

A complete application for Minor Subdivision Plat approval must be submitted to the City Planner in a form established by the City Planner, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

2. Review and Report - City Planner

The City Planner shall prepare a staff report that reviews the application in light of the Comprehensive Plan, the zoning standards of Article 20-06 and all other applicable requirements of this Land Development Code.

3. Review and Recommendation - Planning Commission

The Planning Commission shall hold a public hearing on the Minor Subdivision application and, after the close of the public hearing, shall recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of this Land Development Code.

4. Review and Action – Board of City Commissioners

After receiving the recommendation of the Planning commission, the Board of City Commissioners shall act to approve or deny the application. A public hearing before the City Commission is not required. A Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development (uses and density/dimensional standards) and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of this Land Development Code.

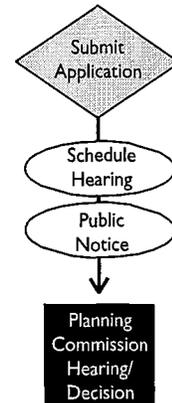
5. Notices

Notices of the Planning Commission public hearings on Minor Subdivisin Plat applications shall be published in accordance with Sec. 20-0901-F.

6. Recordation

After approval of a Final Plat, the City Planner shall be responsible for recording the Final Plat with the County Recorder.

Minor Subdivisions



C. Major Subdivisions

The procedures of this subsection apply to all “Major Subdivisions.”

1. Growth Plan and Zoning Prerequisite

No Major Subdivision plat application will be accepted for land that is not consistent with an approved Growth Plan or zoned to accommodate the proposed development. If the subject property is not consistent with an approved Growth Plan, a new or revised Growth Plan

must be submitted for review and approval before or concurrently with the major plat application. The requirement of an approved Growth Plan shall not take effect until July 1, 2000.

2. Preapplication Meeting

Before submitting a plat for a proposed Major Subdivision, the applicant shall confer with the City Planner to discuss the proposal and applicable regulations. The purpose of the Preapplication Meeting is for the applicant to become familiar with applicable subdivision procedures and standards. The City Planner may waive the preapplication meeting requirement.

3. Preliminary Review

a. Application

A complete application for preliminary review of major subdivision plats must be submitted to the City Planner in a form established by the City Planner, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

b. Review and Report - City Planner

The City Planner shall prepare a staff report that reviews the application in light of the applicable Area Plan, the Comprehensive Plan, the standards of Article 20-06 and all other applicable requirements of this Land Development Code.

c. Review By Planning Commission

The Planning Commission shall review the plat application to determine if it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of this Land Development Code. After making its determination, the Planning Commission shall schedule a public hearing date for review of the finalized plat documents. After the preliminary review, the applicant may proceed with the preparation of Construction Plans and submit the required plat documents for review and approval.

4. Final Review and Action

a. Prerequisites for Planning Commission Hearing

The Planning Commission shall not hold a public hearing on a proposed Major Subdivision Plat until all of the following documents and information have been submitted to the City Planner in a form established by the City Planner:

- (1) A complete Amenities Plan;
- (2) A Clear Title Opinion;
- (3) A Departmental Review Checklist; and
- (4) Mylar Plat Document signed by the applicant, property owner and land surveyor.

Commentary

An Amenities Plan provides a description and inventory of the amenities to be included within the subdivision, including:

Trees	Sidewalks and Medians
Fences and Walls	Entrance Monuments and Signs
Street Signs (Addressing)	Structure in Rights-of-Way
Common Area Improvements	

The Amenities Plan must outline the location, type, quantity, size, materials and other relevant details about the amenities. It must also describe plans for implementation, such as:

Special Assessments	Covenants
Property Owner Association	Developer Funding

b. Review and Report -- City Planner

The City Planner shall prepare a staff report that reviews the application in light of the approved Preliminary Plat, the applicable Area Plan, the Comprehensive Plan, the standards of Article 20-06 and all other applicable requirements of this Land Development Code.

c. Review and Recommendation -- Planning Commission

The Planning Commission shall hold a public hearing on the Major Subdivision Plat and, after the close of the public hearing, recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of this Land Development Code.

d. Review and Action -- Board of City Commissioners

The Board of City Commissioners shall hold a public hearing on the Major Subdivision Plat and, after the close of the public hearing, act to approve or deny the application. A Major Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development (uses and density/dimensional standards) and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of this Land Development Code.

**Major Subdivision Plats
(Final Review)**



e. Notices

Notice of the Planning Commission and Board of City Commissioners' public hearings on Major Subdivision Plat applications shall be published in accordance with Sec. 20-0901-F.

f. Public Improvements

In taking action on Final Plat applications, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision. In doing so, the Board of Commissioners may:

- (1) Require that the developer install required subdivision improvements in accordance with the approved Final Plat and all other applicable public facility design standards, including the subdivision and improvement and design standards of Article 20-06;
- (2) Require that the developer post a financial guarantee for the improvements, in accordance with applicable law; or
- (3) Agree that the City will install public facilities and improvements and then assess the costs of those improvements against the benefited properties.

5. Recordation

After approval of a Final Plat, the City Planner shall be responsible for recording the Final Plat with the County Register of Deeds.

D. Subdivision Waivers**1. Application Filing**

Subdivision Waiver requests shall be submitted to the City Planner in a form established by the City Planner at the time that the subdivision plat application is submitted. At a minimum, the Subdivision Waiver request shall include: (1) a description of the subdivision design or improvement standards to be waived or modified, and (2) the reasons and justifications for the requested Subdivision Waiver.

2. Staff Recommendation

Upon receipt of a Subdivision Waiver application, the City Planner shall distribute copies of the application to all affected departments and agencies. Reviewing departments and agencies shall have 10 days to review the request and submit a recommendation to the City Planner. The staff recommendation shall state the reasons for the recommendation and any suggested conditions of approval. Upon receipt of the staff recommendation, the City Planner shall prepare a report and recommendation for presentation to the Planning Commission.

3. Approval Criteria

The Subdivision Waiver request shall be considered by the Planning Commission and Board of City Commissioners during their review of the subject subdivision. In recommending action and in acting upon the Subdivision Waiver request, the Planning Commission and Board of City Commissioners shall be bound by all of the following criteria:

- a. A Subdivision Waiver must not be detrimental to the public safety, health or welfare, or injurious to other property or improvements in the area in which the property is located;
- b. The Subdivision Waiver must represent the least deviation from this Land Development Code that will mitigate the hardship or practical difficulty that exists on the subject

property; and

- c. The Subdivision Waiver shall not have the effect of waiving any provisions of this development code other than the Subdivision Design and Improvement Standards of Article 20-06.

Source: 2985 (1999), 2997 (1999), 4024 (2000), 4592 (2007).

§20-0908 Planned Unit Developments

A. Description and Overview

1. General Description

A “planned unit development” (PUD) is a type of overlay zoning district and a type of development plan. PUD zoning districts are inextricably linked to PUD plans in that no rights of development apply to a PUD zoning designation other than those of the approved PUD plan.

2. Overview of Procedure

PUDs shall be processed in three stages: Master Land Use Plan; Rezoning to PUD district and Final Plan. Master Land Use Plans and Rezoning may be processed concurrently, provided that no rezoning to the PUD district may occur until approval of a PUD Master Land Use Plan.

- a. The PUD Master Land Use Plan application is reviewed with respect to such issues as density, including the number, type, and location of dwelling units and other uses; impacts on surrounding areas; and the adequacy of facilities and services. The result of this review is the establishment of the basic parameters for development of the PUD. PUD Master Land Use Plan approval establishes the maximum development “envelope” with regard to density, lot sizes, overall scale, open space, environmental protection, and other land development and service provision issues.
- b. After approval of a PUD Master Land Use Plan, a PUD zoning map amendment may be approved, or a PUD zoning map amendment may be processed concurrently with the PUD Master Land Use Plan.
- c. The PUD Final Plan is the document upon which building permits and other applicable approvals are issued. The PUD Final Plan review stage is the point at which developers bring forward detailed plans for carrying out the type of project conceptually approved during PUD Concept Plan review. The applicant must submit the detailed and technical information necessary to demonstrate that all applicable standards, requirements, and conditions have been met.

B. PUD Master Land Use Plan

A PUD Master Land Use Plan is a generalized land use plan for the entire area proposed to be included within a PUD. The purpose of a PUD Master Land Use Plan is to allow early review of a proposed PUD before substantial technical planning work has been undertaken.

1. Preapplication Conference

Before submitting a PUD Master Land Use Plan, the applicant shall confer with the City Planner and other officials designated by the City Planner. The purpose of this preapplication conference is to discuss the proposal and the applicable development review and approval procedures.

2. Application

A complete application for PUD Master Land Use Plan approval shall be submitted to the City Planner in a form established by the City Planner along with a nonrefundable fee that

has been established by the Board of City Commissioners. No application shall be processed until the application is complete and the required fee has been paid.

3. Review and Report -- City Planner

The City Planner shall prepare a staff report that reviews the PUD Master Land Use Plan application in light of the PUD zoning standards of Sec. 20-0302 and all other applicable development standards and planning policies. The City Planner shall provide a copy of the report to the Planning Commission and the applicant.

4. Review and Recommendation -- Planning Commission

The Planning Commission shall hold a public hearing on the PUD Master Land Use. At the close of the public hearing, the Planning Commission shall recommend approval or denial of the PUD Master Land Use Plan application and transmit a written summary of its action and proceedings to the Board of City Commissioners.

5. Review and Action -- Board of City Commissioners

After the close of the Planning Commission public hearing, the Board of City Commissioners shall hold a public hearing on the PUD Master Land Use Plan application. After the close of the hearing, the Board of City Commissioners shall act to approve, approve with conditions or deny the proposed PUD Master Land Use Plan. If the Board of City Commissioners acts to approve the PUD Master Land Use Plan, it shall establish required time-frames for development of the entire PUD and its individual phases, if any.

6. Notice of Public Hearings

a. Written Notice

The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Sec. 20-0901-F.

b. Newspaper Notice

Notice of the Planning Commission and Board of City Commissioners' public hearing on PUD Master Land Use Plans shall be published in accordance with Sec. 20-0901-F.

7. PUD Master Land Use Plan Review Criteria

Applications for PUD Master Land Use Plan approval shall be approved if the following criteria are met:

- a. The plan represents an improvement over what could have been accomplished through strict application of otherwise applicable base zoning district standards, based on the purpose and intent of this Land Development Code;
- b. The PUD Master Land Use Plan complies with the PUD standards of Sec. 20-0302;
- c. The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development proposed, at the time the property is developed;

PUD Master Land Use Plans



- d. The development is consistent with and implements the planning goals and objectives contained in the Area Plan, the Comprehensive Plan and other adopted policy documents; and
- e. The PUD Master Land Use Plan is consistent with sound planning practice and the development will promote the general welfare of the community.

8. Effect of PUD Master Land Use Plan Approval

Approval of a PUD Master Land Use Plan shall constitute acceptance of the overall general planning concepts for the proposed PUD development and is a prerequisite for the filing of a PUD Final Plan and approval of a PUD zoning classification.

9. Lapse of PUD Master Land Use Plan Approval

An approved PUD Master Land Use Plan shall lapse and be of no further force and effect if a PUD Final Plan for the PUD (or a phase of the PUD) has not been approved within 2 years of the date of approval of the PUD Master Land Use Plan. In the event of such lapse, the PUD zoning classification shall be of no effect, and the property shall be developed solely in accordance with the underlying zoning classification. In the event of lapse of approval pursuant to this section, the Planning Commission shall initiate action to remove the land from the PUD overlay zoning district and may initiate action to rezone the property to its former base zoning district classification.

C. PUD Zoning Map Amendment

After approval of a PUD Master Land Use Plan, or concurrently with the processing of a PUD Master Land Use Plan, a zoning map amendment request for PUD zoning may be reviewed and approved. PUD zoning requests shall be processed in accordance with the zoning map amendment procedures of Sec. 20-0906.

D. PUD Final Plan

1. Application

After approval of a PUD zoning classification and before lapse of a PUD Master Land Use Plan, a complete application for PUD Final Plan approval must be submitted to the City Planner in a form established by the City Planner along with a non-refundable fee that has been established by the Board of City Commissioners. No application shall be processed until the application is complete and the required fee has been paid. A PUD Final Plan application may include the entire area covered in the PUD Master Land Use Plan or it may include one or more phases of the approved PUD Master Land Use Plan.

2. Review and Report - City Planner

The City Planner shall prepare a staff report that reviews the PUD Final Plan application in light of the approved PUD Master Land Use Plan and all other applicable development standards and planning policies.

3. Review and Action - Planning Commission

The Planning Commission shall consider the PUD Final Plan application and act to approve or deny the PUD Final Plan application.

4. PUD Final Plan Review Criteria

A PUD Final Plan shall be approved by the Planning Commission if it is determined by the Planning Commission to be in substantial compliance with the approved PUD Master Land Use Plan. The PUD Final Plan shall be deemed to be in substantial compliance with the PUD Master Land Use Plan so long as, when compared with the PUD Master Land Use Plan, it does not result in:

- a. An increase in project density or intensity, including the number of housing units per acre or the amount of nonresidential floor area per acre;
- b. A change in the mix of housing types or the amount of land area devoted to nonresidential uses;
- c. A reduction in the amount of open space;
- d. Any change to the vehicular system that results in a significant change in the amount or location of streets, common parking areas, and access to the PUD;
- e. Any change within 50 feet of any SR or MR zoning district;
- f. Any change determined by the Planning Commission to represent an increase in development intensity; or
- g. A substantial change in the layout of buildings.

PUD Final Plans



5. Effect of Approval; Lapse of Approval

Approval of a PUD Final Plan shall confer upon the applicant the right to develop the subject property in accordance with the approved PUD Final Plan. The right to develop in accordance with an approved PUD Final Plan shall lapse and be of no further effect if all development shown on the PUD Final Plan is not complete within the time-frame established by the Board of City Commissioners during review of the Master Land Use Plan. In the event of such lapse of approval, the PUD Final Plan and PUD zoning classification shall be of no effect, and the property shall be developed solely in accordance with the underlying zoning classification. In the event of lapse of approval pursuant to this subsection, the Planning Commission shall initiate action to remove the land from the PUD overlay zoning district.

6. Appeal of Planning Commission Decision

a. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Planning Commission on an application for PUD Final Plan approval may be taken to the Board of City Commissioners by filing an appeal with the City Planner.

b. Right to Appeal

The following persons and entities shall have standing to appeal the action of the Planning Commission on an application for a PUD Final Plan approval:

- (1) The applicant;

- (2) The Planning Commission or any member of the Planning Commission;
- (3) The Board of City Commissioners or any member of the Board of City Commissioners;
- (4) Any person who received mailed notice of the public hearing;
- (5) Any person that the Board of City Commissioners determines to be actually or potentially aggrieved by the appealed action; and
- (6) Any person given the right of appeal by law.

c. Action on Appeal

The Board of City Commissioners shall consider the appealed PUD Final Plan decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application for PUD Final Plan approval. The procedure and required notice shall be the same as required of the original action before the Planning Commission.

Source: 2985 (1999).

§20-0909 Conditional Use Permits

This section sets out the required review and approval procedures for Conditional Use Permits.

A. Application

A complete application for a Conditional Use Permit shall be submitted to the City Planner in a form established by the City Planner, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

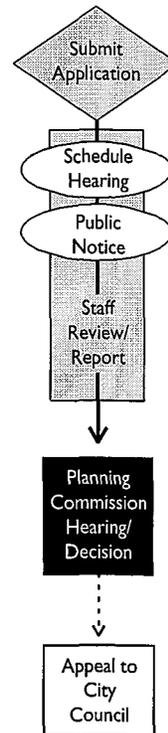
B. Review and Recommendation -- City Planner

The City Planner must review each proposed Conditional Use Permit and prepare a report that reviews the application in light of the Comprehensive Plan, the Area Plan, the general requirements of this Land Development Code and the applicable review criteria set forth in this section.

C. Review and Action -- Planning Commission

The Planning Commission must hold a public hearing on the proposed Conditional Use Permit and, at the close of the public hearing, act to approve or deny the Conditional Use Permit request. In acting on Conditional Use Permit requests, the Planning Commission shall be authorized to impose such conditions, safeguards or restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize any potentially injurious effect upon other property in the area, or to carry out the general purpose and intent of this Land Development Code, so long as the condition, safeguard or restriction relates to a situation created or aggravated by the proposed use.

Conditional Use Permit



D. Review and Approval Criteria

In reviewing any application for a Conditional Use Permit, the Planning Commission shall identify and evaluate all factors relevant to the application. A Conditional Use Permit may not be approved unless the Planning Commission finds that all of the following criteria, as applicable, have been satisfied:

1. The proposed conditional use complies with all applicable provisions of this Land Development Code and will conform to the general intent and purpose of this Land Development Code;
2. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public;

Commentary

Not all of the Conditional Use Permit Approval Criteria will apply in every case. Only the applicable criteria will be used in determining whether to approve or deny a Conditional Use Permit. A development that does not involve the use or extension of utilities, for example, will not be evaluated pursuant to the criteria of paragraph D.5.

3. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;
4. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will dominate the immediate neighborhood, consideration shall be given to:
 - a. The location, nature and height of buildings, structures, walls, and fences on the site; and
 - b. The nature and extent of proposed landscaping and buffering on the site.
5. Adequate utility, drainage, and other such necessary facilities and services have been or will be provided at the time of development; and
6. Adequate access roads or entrance and exit drives will be provided and be so designed to prevent traffic hazards and to minimize traffic congestion in public streets.

E. Notice of Public Hearings

1. Written Notice

The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Sec. 20-0901-F.

2. Newspaper Notice

Notice of the Planning Commission's public hearing on Conditional Use Permits shall be published in accordance with Sec. 20-0901-F.

F. Appeal of Planning Commission Decision

1. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Planning Commission on an application for Conditional Use Permit approval may be taken to the Board of City Commissioners by filing an appeal with the City Planner.

2. Right to Appeal

The following persons and entities shall have standing to appeal the action of the Planning Commission on an application for a Conditional Use Permit approval:

- a. The applicant;
- b. The Planning Commission or any member of the Planning Commission;
- c. The Board of City Commissioners or any member of the Board of City Commissioners;
- d. Any person who received mailed notice of the public hearing;
- e. Any person that the Board of City Commissioners determines to be actually or

potentially aggrieved by the appealed action; and

- f. Any person given the right of appeal by law.

3. Action on Appeal

The Board of City Commissioners shall consider the appealed Conditional Use decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application for Conditional Use Permit approval. The procedure and required notice shall be the same as required of the original action before the Planning Commission.

G. Limit on Successive Applications

If the Board of City Commissioners denies an application for a Conditional Use Permit, an application for the same use on any portion of the subject tract may not be refiled by the original applicant for three months from the date of the Board of City Commissioners' public hearing.

H. Amendments

The procedure for amending a Conditional Use Permit shall be the same as required for the original approval.

Source: 2985 (1999), 4168 (2001).

§20-0910 Site Plan Review

A. Applicability

The Site Plan review procedures of this section shall apply to:

1. Any development that is subject to the Residential Protection Standards of Sec. 20-0704 if it will result in the addition of more than 50,000 square feet of gross floor area, whether through new construction or building enlargement;
2. Any development involving the addition of more than 100,000 square feet of gross floor area, whether through new construction or building enlargement;
3. Any development involving the addition of more than 250 off-street parking spaces;
4. Any development on a site with an area of 200,000 square feet or more;
5. Any development involving more than one principal building on a single site if the total floor area of all of the buildings on the site exceeds 50,000 square feet;
6. Any development in a DMU zoning district;
7. Any development in a UMU zoning district; and
8. Any other use or development expressly requiring Site Plan Review by other provisions of this Land Development Code.

Commentary

Although Site Plans may be required with applications for other forms of development approval (e.g. Conditional Use Permits), those plans shall be reviewed in accordance with the respective development review procedure. When Site Plans are reviewed in conjunction with other forms of development approval, separate Site Plan Review under the procedures of this section will not be required.

B. Application

A complete application for Site Plan Review shall be submitted to the Zoning Administrator in a form established by the Zoning Administrator, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

C. Review and Action - Zoning Administrator

The Zoning Administrator must review each Site Plan application in light of the applicable review criteria set forth in this section and act to approve or deny the Site Plan application.

D. Review and Approval Criteria

A Site Plan application may not be approved unless the Zoning Administrator finds that the proposed project complies with all applicable provisions of this Land Development Code and with all adopted plans and policy documents of the City. The Zoning Administrator may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this Land Development Code and adopted plans and policy documents.

E. Appeal of Zoning Administrator's Decision

1. Appeals to Planning Commission; Timing

Appeals from the action of the Zoning Administrator on an application for Site Plan approval may be taken to the Planning Commission by filing an appeal with the Zoning Administrator.

2. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Planning Commission on an application for Site Plan approval may be taken to the Board of City Commissioners by filing an appeal with the Zoning Administrator.

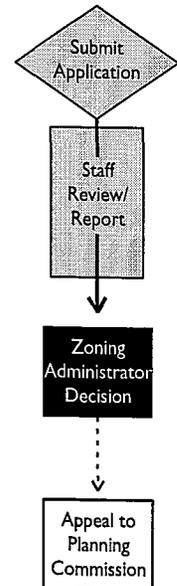
3. Right to Appeal

The following persons and entities shall have standing to appeal the action of the Zoning Administrator or Planning Commission on an application for Site Plan approval:

- a. The applicant;
- b. The Planning Commission or any member of the Planning Commission;
- c. The Board of City Commissioners or any member of the Board of City Commissioners;
- d. Any person that the Planning Commission or Board of City Commissioners determines to be actually or potentially aggrieved by the appealed action; and
- e. Any person given the right of appeal by law.

4. Action on Appeal

Site Plan Review



The Planning Commission or Board of City Commissioners shall consider the appealed Site Plan decision as a new matter without a requirement for a public hearing. After considering the matter, the Planning Commission or Board of City Commissioners shall act to approve or deny the original application. The procedure shall be the same as required of the original action before the Zoning Administrator.

F. Amendments

The procedure for amending a Site Plan application shall be the same as required for the original approval.

G. Expiration and Lapse of Approval

Property owners shall have 12 months from the date of approval of a Site Plan to secure a Building Permit to carry out the proposed improvements. If a Building Permit has not been obtained within 12 months of the date of Site Plan approval, the approved Site Plan shall lapse and be of no further effect.

Source: 2985 (1999), 4695 (2009).

§20-0911 Institutional Master Plans

A. Applicability

Institutional Master Plans (or site plan review) may be used to satisfy the Project Review requirements of the P/I zoning district (See Sec. 20-0304-D).

B. Applications

A complete application for Institutional Master Plan approval shall be submitted to the City Planner in a form established by the City Planner, along with a non-refundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

C. Review and Recommendation -- City Planner

The City Planner must review each proposed Institutional Master Plan and prepare a report that reviews the application in light of the Comprehensive Plan, any applicable Area Plan, the general requirements of this Land Development Code and the applicable review criteria set forth in this section.

D. Review and Action -- Planning Commission

The Planning Commission must hold a public hearing on the proposed Institutional Master Plan and, at the close of the public hearing, act to approve or deny the Institutional Master Plan request. In acting on Institutional Master Plan requests, the Planning Commission shall be authorized to impose such conditions, safeguards or restrictions as may be necessary to reduce or minimize any potentially injurious effect upon other property in the area, or to carry out the general purpose and intent of this Land Development Code, so long as the condition, safeguard or restriction relates to a situation created or aggravated by the proposed use.

E. Review and Approval Criteria

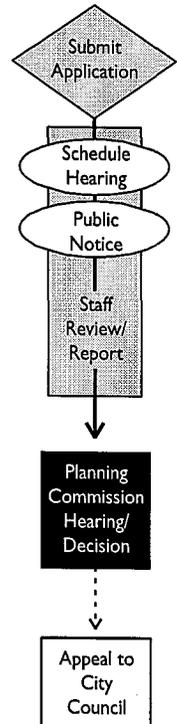
In reviewing any application for a Institutional Master Plan, the Planning Commission shall identify and evaluate all factors relevant to the application. An Institutional Master Plan may not be approved unless the Planning Commission finds that all of the following criteria have been satisfied:

1. The plan complies with all applicable provisions of this Land Development Code and will conform to the general intent and purpose of this Land Development Code;
2. The plan is consistent with all adopted plans and policies of the City; and
3. The proposed plan will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

F. Notice of Public Hearings

1. Written Notice

Institutional Master Plans



The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Sec. 20-0901-F.

2. Newspaper Notice

Notice of the Planning Commission's public hearing on Institutional Master Plans shall be published in accordance with Sec. 20-0901-F.

G. Appeal of Planning Commission Decision

1. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Planning Commission on an application for Institutional Master Plan approval may be taken to the Board of City Commissioners by filing an appeal with the City Planner.

2. Right to Appeal

The following persons and entities shall have standing to appeal the action of the Planning Commission on an application for an Institutional Master Plan approval:

- a. The applicant;
- b. The Planning Commission or any member of the Planning Commission;
- c. The Board of City Commissioners or any member of the Board of City Commissioners;
- d. Any person who received mailed notice of the public hearing;
- e. Any other person that the Board of City Commissioners determines to be actually or potentially aggrieved by the appealed action; and
- f. Any person given the right of appeal by law.

3. Action on Appeal

The Board of City Commissioners shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application for Institutional Master Plan approval. The procedure and required notice shall be the same as required of the original action before the Planning Commission.

H. Amendments

The procedure for amending an Institutional Master Plan shall be the same as required for the original approval.

I. Effect of Approval

Once approved, building permits may be issued for development within the P/I district if the proposed development is consistent with the approved Institutional Master Plan. An Institutional Master Plan shall remain in effect for a period of 10 years, unless the Planning Commission establishes a shorter time period as part of its approval of the Institutional Master Plan.

J. Application Submittal Requirements

1. Institutional Master Planning Area

An Institutional Master Plan must include the lot upon which subject development is to be located, all commonly owned land within 1,000 feet and a detailed description of land uses within 200 feet of the lot to be occupied by the proposed development, regardless of ownership.

2. Planning Requirements

An Institutional Master Plan must, at a minimum, include all of the information required with a Conditional Use Permit application plus the following, unless the Planning Commission determines that such information is not necessary to evaluate the proposed Institutional Master Plan its impacts on surrounding neighborhoods.

a. Planning Horizon

The Institutional Master Plan must cover a period of at least 10 years, commencing from the date of submission of the Institutional Master Plan.

b. Existing Property and Uses

The Institutional Master Plan must include a description of land, buildings, and other structures that occupy land areas included in the Institutional Master Plan, as of the date of submission of the Institutional Master Plan. The following information must be included:

- (1) Illustrative site plans showing the footprints of each building and structure, together with roads, sidewalks, parking, landscape features and other significant site improvements;
- (2) Land and building uses;
- (3) Gross floor area in square feet;
- (4) Building height in stories and feet; and
- (5) A description of off-street parking and loading areas and facilities, including a description of the approximate number of parking spaces in each area or facility.

c. Needs of the Institution

The Institutional Master Plan must include a summary and projection of current and future plans for the following facilities:

- (1) Academic;
- (2) Service;
- (3) Research;
- (4) Office;
- (5) Housing;
- (6) Patient care;
- (7) Public assembly;
- (8) Parking; and
- (9) Other facilities related to the use.

d. Development Envelope

The Institutional Master Plan must include a description of the amount and type of development proposed to take place over the horizon of the Institutional Master Plan. This description must include the following information:

- (1) Gross floor area;
- (2) Average daily and peak-hour traffic;
- (3) Building heights;
- (4) Setbacks; and
- (5) Total open space.

e. Neighborhood Protection Strategy

The Institutional Master Plan must identify standards and programs that will be put in place to ensure that the quality of the surrounding neighborhoods is maintained or enhanced.

Source: 2985 (1999).

§20-0912 Certificates of Appropriateness

A. Applicability

The procedures of this section shall apply to all work requiring a Certificate of Appropriateness in the H-O district.

B. Application

A complete application for a Certificate of Appropriateness shall be submitted to the City Planner in a form established by the City Planner, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

C. Review and Recommendation

1. Review by City Planner

All Certificate of Appropriateness applications involving exterior renovation of a structure shall be reviewed by the City Planner in light of the applicable review criteria set forth in this section.

The City Planner may approve or deny the application for a Certificate of Appropriateness based on the standards imposed by this section. If the City Planner finds that the proposed renovation is inconsistent with the relevant special regulations and standards as described in §20-0305.C., the City Planner shall refer the application to the Historic Preservation Commission for review. The applicant has the right to appeal the City Planner's decision to the Historic Preservation Commission.

2. Review by Historic Preservation Commission

The Historic Preservation Commission must review each Certificate of Appropriateness application that involves the creation of a mural, or the demolition or new construction of a structure, in light of the applicable review criteria set forth in this section and act to approve or deny the Certificate of Appropriateness application.

D. Review and Approval Criteria

A Certificate of Appropriateness application shall be reviewed in accordance with the Special Development Standards that are established for each designated H-O District in Section 20-0305, the standards of this Land Development Code and the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties.

E. Exception to Special Development Standards

1. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Historic Preservation Commission on a Certificate of Appropriateness application may be taken to the Board of City Commissioners by filing an appeal with the City Planner.

2. Right to Appeal

The following persons and entities shall have standing to appeal decisions on a Certificate of Appropriateness:

- a. The applicant;

- b. The Historic Preservation Commission or any member of the Historic Preservation Commission;
- c. The Board of City Commissioners or any member of the Board of City Commissioners;
- d. Any person that the Historic Preservation Commission or Board of City Commissioners determines to be actually or potentially aggrieved by the appealed action; and
- e. Any person given the right of appeal by law.

3. Action on Appeal

The Board of City Commissioners shall consider the appealed decision as a new matter without a requirement for a public hearing. After considering the matter, the Board of City Commissioners shall act to approve or deny the original application. The procedure shall be the same as required of the original action before the Historic Preservation Commission.

F. Expiration and Lapse of Approval

Property owners shall have 12 months from the date of approval of a Certificate of Appropriateness to secure a Building Permit or Demolition Permit to carry out the proposed work. If a Building Permit or Demolition Permit has not been obtained within 12 months of the date of approval, the approved Certificate of Appropriateness shall lapse and be of no further effect.

Source: 2985 (1999), 4486 (2005).

§20-0913 Building Permits

Building Permits shall be required in accordance with applicable provisions of the Municipal Code (See Sec. 21-01). This section sets out the required review and approval procedures for Building Permits.

A. Application Submittal

A complete application for a Building Permit shall be submitted to the Building Official in a form established by the Building Official along with a non-refundable fee that has been established by the Board of City Commissioners. No Building Permit application shall be processed until the application is complete, all applicable development approvals have been secured and the required fee has been paid. Building Permits may be issued only for development on Legal Lots provided, however, that as to lots outside the corporate City limits and within the area where the City has exercised its extraterritorial zoning jurisdiction, the Zoning Administrator is authorized to waive the requirement that the lot be shown on a Subdivision plat that has been recorded in the office of the County Register of Deeds when the Zoning Administrator is satisfied that roadway access and driveway issues as identified in Sec. 20-0702 and subdivision design and improvement issues as identified in Sec. 20-0611 can be properly addressed without a platting or subdivision approval process.

B. Review and Action - Building Official

The Building Official shall be responsible for conducting reviews to determine if intended uses, buildings or structures comply with all applicable regulations and standards, including the building code. The Building Official shall not issue a building permit unless the plans, specifications and intended use of such building or structures or part thereof conform in all respects to the provisions of this Land Development Code and the building code.

Source: 4039 (2000).

§20-0914 Variances

This section sets out the required review and approval procedures for variances.

A. Types of Variances Allowed

The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and off-street parking and loading standards of this Land Development Code that will not be contrary to the public interest or the spirit of this Land Development Code, where, owing to special conditions, a literal enforcement of the provisions of this Land Development Code would result in unnecessary physical (not economic) hardship to the property owner.

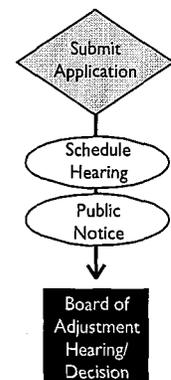
B. Application Submittal

A complete application for a variance shall be submitted to the Zoning Administrator in a form established by the Zoning Administrator, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application shall be processed until the application is complete and the required fee has been paid.

C. Review and Action - Board of Adjustment

The Board of Adjustment shall hold a public hearing on the variance request, and, at the close of the public hearing act to approve, approve with conditions or deny the application based on the review criteria set out in this section. A concurring vote of at least four members of the Board of Adjustment shall be required to approve any variance request.

Variances



D. Notice of Public Hearings

1. Written Notice

The Zoning Administrator shall provide written notice of the Board of Adjustment public hearing in accordance with Sec. 20-0901-F.

2. Newspaper Notice

Notice of the Board of Adjustment's public hearing on Variance requests shall be published in accordance with Sec. 20-0901-F.

E. Review Criteria; Findings of Fact

1. Criteria for Approval

A variance may be granted by the Board of Adjustment upon an affirmative finding that all of the following conditions exist.

- a. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;
- b. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- c. The strict application of the applicable standards will constitute an unnecessary physical

hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

- d. The variance desired will not adversely affect the public health, safety or general welfare; and
- e. The variance is the minimum variance that will overcome the hardship.

2. Findings of Fact

The Board of Adjustment shall make a determination on each approval criterion and enter its findings in the official record. Findings of fact shall be based on evidence presented at the public hearing on the variance request.

F. Use Variances Prohibited

The Board of Adjustment may not grant use variances, which are variances that have the effect of allowing a use type that is not allowed by the Use Table of Sec. 20-0401.

G. Conditions of Approval

In granting a variance, the Board of Adjustment may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of the variance upon other property in the area.

H. Expiration and Lapse of Approval

Property owners shall have 12 months from the date of approval of a Variance to secure a Building Permit to carry out the proposed improvements. If a Building Permit has not been obtained within 12 months of the date of Variance approval, the approved Variance shall lapse and be of no further effect.

I. Appeal of Board of Adjustment Decisions

1. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Board of Adjustment on an application for a Variance may be taken to the Board of City Commissioners by filing an appeal with the Zoning Administrator.

2. Right to Appeal

The following persons and entities shall have standing to appeal the action of the Board of Adjustment on an application for a Variance:

- a. The applicant;
- b. The Board of City Commissioners or any member of the Board of City Commissioners;
- c. Any person who received mailed notice of the public hearing;
- d. Any other person that the Board of City Commissioners determines to be actually or potentially aggrieved by the appealed action; and
- e. Any person given the right of appeal by law.

3. Action on Appeal

The Board of City Commissioners shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application for a Variance. The procedure and required notice shall be the same as required of the original action before the Board of Adjustment.

J. Limit on Successive Applications

If the Board of Adjustment denies an application for a variance, an application for the same variance may not be re-filed for three months from the date of the Board of Adjustment's public hearing on the proposed variance.

Source: 2985 (1999), 4168 (2001).

§20-0915 Written Interpretations

This section sets out the required review and approval procedures for Written Interpretations of the provisions of this Land Development Code.

A. Application Submittal

A complete application for a Written Interpretation shall be submitted to the Zoning Administrator in a form established by the Zoning Administrator along with a non-refundable fee that has been established by the Board of City Commissioners. No application shall be processed until the application is complete and the required fee has been paid.

B. Review and Action - Zoning Administrator

Within 20 days after a complete application for a Written Interpretation has been submitted, the Zoning Administrator shall: (1) review and evaluate the request in light of the text of this Land Development Code, the Official Zoning Maps, the Comprehensive Plan and any other relevant documents; (2) consult with other staff; and (3) render a Written Interpretation.

C. Form

The interpretation shall be provided to the applicant in writing and shall be filed in the official record of interpretations.

D. Official Record of Interpretations

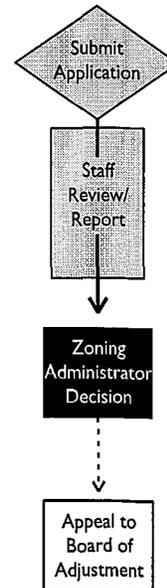
The Zoning Administrator shall maintain an official record of interpretations. The record of interpretations shall be available for public inspection in the Planning Department offices during normal business hours.

E. Appeal of Interpretation

Appeals of the Zoning Administrator's Written Interpretation may be taken to the Board of Adjustment, in accordance with the procedures of Sec. 20-0916. Appeals of Written Interpretations shall be filed with the Zoning Administrator.

Source: 2985 (1999).

Written Appeal



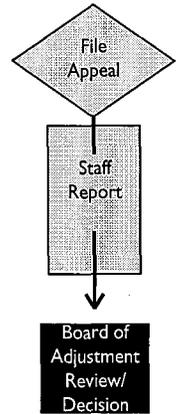
§20-0916 Appeals of Administrative Decisions

This section sets out the required review and approval procedures for Appeals of Administrative Decisions.

A. Applicability

Appeals of Administrative Decisions

The Board of Adjustment shall be authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official of the City in the administration or enforcement of this Land Development Code.



B. Right to Appeal

Appeals of Administrative Decisions may be filed by any person aggrieved or by any officer, department, board or agency affected by any decision of the administrative officer.

C. Application Submittal

Applications for Appeals of Administrative Decisions shall be submitted to the Zoning Administrator in a form established by the Zoning Administrator along with a nonrefundable fee that has been established by the Board of City Commissioners. No application shall be processed until the application is complete and the required fee has been paid.

D. Time of Filing Appeal

Appeals of Administrative Decisions shall be filed with the Zoning Administrator.

E. Effect of Filing

The filing of a complete application for appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Adjustment, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment, or by a court of record.

F. Transmittal of Papers

The Zoning Administrator or the official whose decision is being appealed shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken.

G. Review and Action--Board of Adjustment

Appeals of Administrative Decisions shall be taken to the Board of Adjustment. The Board of Adjustment shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed. If the Board of Adjustment determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence. A concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official.

H. Review Criteria; Findings of Fact

An appeal shall be sustained only if the Board of Adjustment finds that the administrative official erred. Every decision of the Board of Adjustment shall be accompanied by written findings of fact specifying the reason for the decision. These findings shall be filed in the office of the Board

of Adjustment within 15 days after the date of the final action.

I. Appeal of Board of Adjustment Decisions

1. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Board of Adjustment may be taken to the Board of City Commissioners by filing an appeal with the Zoning Administrator.

2. Right to Appeal

The following persons and entities shall have standing to appeal the action of the Board of Adjustment:

- a. The applicant;
- b. The Board of Adjustment or any member of the Board of Adjustment;
- c. The Board of City Commissioners or any member of the Board of City Commissioners;
- d. Any person who received mailed notice of the public hearing;
- e. Any other person that the Board of City Commissioners determines to be actually or potentially aggrieved by the appealed action; and
- f. Any person given the right of appeal by law.

3. Action on Appeal

The Board of City Commissioners shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application. The procedure and required notice shall be the same as required of the original action before the Board of Adjustment.

Source: 2985 (1999), 4592 (2007).

Article 20-10

Nonconformities

§20-1001 General

A. Overview

The regulations of this article establish regulations that govern uses, structures, lots and other current circumstances that came into being lawfully but that do not conform to one or more requirements of this Land Development Code. The regulations address the following types of nonconformities:

1. Nonconforming Uses

Nonconforming uses are uses that were established in accordance with zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the use regulations of the underlying zoning district. A use that was legally established without a Conditional Use Permit shall be deemed to have a Conditional Use Permit and shall not be deemed nonconforming solely because a Conditional Use Permit is now required for the use.

2. Nonconforming Structures

Nonconforming structures are buildings or structures that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district.

3. Nonconforming Lots

Nonconforming lots are lots that were legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of their creation, but which, because of amendments to the zoning regulations, no longer comply with the minimum lot size or other dimensional standards of the zoning district.

B. Policy

It is the general policy of the City to allow uses, structures or lots that came into existence legally and in conformance with then-applicable requirements but that do not conform to all of the applicable requirements of this Land Development Code to continue to exist and be put to productive use, but to bring as many aspects of such use into conformance with current Land Development Code as is reasonably practicable, all subject to the limitations of this Article. The limitations of this Article are intended to recognize the interests of the property owner in continuing to use the property but to control the expansion of the nonconformity and to control re-establishment of abandoned uses and limit re-establishment of buildings and structures that have been substantially destroyed.

C. Authority to Continue

Nonconformities shall be allowed to continue in accordance with the regulations of this Article.

D. Determination of Nonconformity Status

The burden of establishing that a nonconformity lawfully exists is the owner's burden, not the City's.

E. Repairs and Maintenance

Repairs and normal maintenance required to keep nonconforming uses, structures and lots in a safe condition are permitted, provided that no alterations may be made except those allowed by this Article or required by law or ordinance.

F. Change of Tenancy or Ownership

Changes of tenancy, ownership or management of an existing nonconformity are permitted, provided that no changes in the nature or character, extent or intensity of such nonconformity may occur except those allowed by this Article.

Source: 4558 (2006).

§20-1002 Nonconforming Uses

Nonconforming uses shall be subject to the following standards.

A. Enlargement

No nonconforming use may be enlarged, expanded or extended to occupy a greater area of land or floor area than was occupied on February 17, 1998, and no additional accessory use, building or structure may be established on the site of a nonconforming use. This provision notwithstanding, uses may be extended throughout any part of a building or other structure that was lawfully and manifestly designed or arranged for such use on February 17, 1998.

B. Relocation

No nonconforming use may be moved in whole or in part to any other portion of such parcel nor to another lot unless the use will be in conformance with the use regulations of the district into which it is moved.

C. Discontinuance and Abandonment

If a nonconforming use ceases for any reason for a period of more than 12 consecutive months (except where Government action causes such cessation), the subsequent use of such parcel or lot must conform to the regulations and provisions set by this Land Development Code for the district in which such parcel or lot is located.

D. Damage or Destruction

If a structure devoted in whole or in part to a nonconforming use is damaged or destroyed by any means, to the extent of more than 50 percent of its structural value prior to the damage, that structure may not be restored unless the structure and the use thereof thereafter complies with all regulations of the zoning district in which it is located. The determination of reduced structural valuation shall be made by the City. If the damage or destruction represents 50 percent or less of the structure's value prior to the damage, repair and restoration is allowed, provided that a building permit must be obtained within 6 months of the damage and restoration must begin within 1 year of the date of damage.

1. Existing, off-premise advertising signs located along interstate highways that become legal, nonconforming signs with the adoption of this Land Development Code may be replaced or repaired even though damaged beyond 50 percent of their value, and such signs may also be relocated, even if not damaged or destroyed, so long as they remain on the same property; provided, that any such replacement sign shall be limited to a sign of no greater size than the original.
2. Existing off-premise advertising signs located within the DMU zoning district, but outside of the downtown historic district, that become legal, nonconforming signs with the adoption of this Land Development Code may be replaced or repaired even though damaged beyond 50 percent of their value, and such signs may also be relocated, even if not damaged or destroyed, so long as they remain on the same property, provided that any such replacement sign shall be limited to a sign of no greater size than the original.
3. Notwithstanding the foregoing provisions of this section, if a structure devoted in whole or in part to a nonconforming use that is residential in nature is damaged or destroyed by any

means, to the extent of more than 50 percent of its structural value prior to the damage, that structure may be restored, repaired or rebuilt in its entirety if all of the following conditions are met:

- a. The building or structure will not occupy any portion of the lot that was not occupied by the destroyed structure
- b. The building or structure will not have a greater floor area than the destroyed structure,
- c. The building or structure will not exceed the height or number of stories contained in the destroyed structure
- d. The number of off-street parking spaces located on the property will not be reduced from the number available before the damage; and,
- e. The building permit for the repair or restoration must be obtained within 6 months of the damage and restoration must begin within 1 year of the date of the damage.

E. Change in Use

A nonconforming use may be changed to a new use, provided that the new use must be of the same general character or of a less intensive character (and thus more closely conforming) than the existing, nonconforming use. The determination of whether a proposed use is a conforming use or is less intensive shall be made by the Zoning Administrator. A nonconforming use, if changed to a conforming use or less intensive nonconforming use, may not thereafter be changed back to a less conforming use.

F. Residential Uses in Nonresidential Districts

The other provisions of this section notwithstanding, any structure that is devoted to a nonconforming residential use and located in an NO or more intensive zoning district may be remodeled, extended, expanded, and enlarged, provided that after the remodeling, extension, expansion or enlargement, the structure may not be used to accommodate a greater number of dwelling units than the structure accommodated prior to the work.

G. Accessory Uses

No use that is accessory to a principal nonconforming use may continue after the principal use ceases or terminates.

Source: 4658 (2008), 4697 (2009).

§20-1003 Nonconforming Lots

A lot shown on an approved and recorded subdivision plat on February 17, 1998 or a parcel shown on the assessor's records as a separate parcel on February 17, 1998 may be occupied and used although it may not conform in every respect with the lot size and width standards of this Land Development Code, subject to the provisions of this section.

A. Vacant Lot

If the lot or parcel was vacant on February 17, 1998, then the owner may use the property for any uses allowed in the underlying zoning district, provided that the use must comply with applicable dimensional requirements to the maximum extent practicable. If the applicable zoning district permits a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable dimensional requirements while others would not, then only the uses or intensities that would comply with the applicable dimensional standards shall be permitted.

B. Lot with Building or Structure

If the lot or parcel contains a building or structure on February 17, 1998, then the owner may continue the use of that building or structure and may expand the structure provided that the expansion is in compliance with all applicable Land Development Code standards. The determination of whether a proposed expansion is in compliance with all applicable Land Development Code standards shall be made by the Zoning Administrator. If the structure is removed or destroyed, any structure that is reconstructed must comply with all applicable land use and dimensional requirements.

C. Lot Merger

If the lot or parcel is smaller than would otherwise be required by this Land Development Code and such lot or parcel is at any time on or after February 17, 1998, under common control with an adjacent lot or parcel, then the two lots shall be considered merged for purposes of this Land Development Code and shall in the future be considered together for purposes of determining compliance with the Land Development Code. If the merged lots or parcels contain sufficient area for the actual or proposed use, then they shall be deemed fully conforming. If the merged lots or parcels together do not contain sufficient area for the actual or proposed use, they shall nonetheless be considered together for purposes of reducing the degree of nonconformity.

Source: 4039 (2000), 4169 (2001).

§20-1004 Nonconforming Structures

Nonconforming structures shall be subject to the following standards.

A. Enlargement and Expansion

Any expansion of a nonconforming structure shall be prohibited unless such expansion is in compliance with all applicable Land Development Code standards. The determination of whether a proposed expansion is in compliance with all applicable Land Development Code standards shall be made by the Zoning Administrator.

B. Damage or Destruction

In the event that any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural value prior to such destruction, such structure may not be restored except in conformance with the regulations of the zoning district in which it is located. When a structure is damaged to the extent of 50 percent or less of its pre-destruction value, repairs or restoration may be made, provided that a building permit is obtained within 6 months and restoration begins within one year after the date of destruction. The determination of reduced structural valuation shall be made by the Zoning Administrator.

1. Notwithstanding the foregoing paragraph, any existing structure that is devoted to a legal nonconforming residential use may be repaired or rebuilt even though damaged beyond 50 percent of its value, provided that the structure may be repaired or rebuilt in its entirety so long as the new structure will not: occupy any portion of the lot that was not occupied by the destroyed structure, have a greater floor area than the destroyed structure, exceed the height or number of stories contained in the destroyed structure, or diminish the number of off-street parking spaces located on the property from the number existing before the damage; and so long as a building permit is obtained within 6 months of the date the damage occurs and so long as restoration begins within 1 year of the date the damage occurs.

C. Relocation

Nonconforming structures may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning district regulations.

Source: 4039 (2000), 4658 (2008), 4697 (2009).

§20-1005 Nonconformities Created by Public Action

When lot area or setbacks are reduced as a result of conveyance to a federal, state or local government for a public purpose and the remaining area is at least 75 percent of the required minimum standard for the district in which it is located, then that lot shall be deemed to be in compliance with the minimum lot size and setback standards of this Land Development Code.

Article 20-11

Violations and Enforcement

§20-1101 Responsibility for Enforcement

This Land Development Code shall be enforced by the Zoning Administrator.

§20-1102 Types of Violations

All of the following represent violations of the Land Development Code and of law and will be subject to the remedies and penalties provided in the Land Development Code, the City Code and state law.

A. Subdivision, Development or Use Without Required Permits or Approvals

It is a violation of the Land Development Code to engage in any subdividing, development, use, construction, remodeling or other activity of any nature without obtaining all the permits, approvals, certificates and other forms of authorization required by this Land Development Code.

B. Subdivision, Development or Use Inconsistent with Permit

It is a violation of the Land Development Code to engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, certificate or other form of authorization required in order to engage in such activity.

C. Subdivision, Development or Use Inconsistent with Conditions

It is a violation of the Land Development Code to violate, by act or omission, any term, condition, or qualification imposed by a decision-making body upon a required permit, certificate, or other form of authorization.

D. Subdivision, Development or Use Inconsistent with Land Development Code

It is a violation of the Land Development Code to erect, construct, reconstruct, remodel, alter, maintain, move, or use any building or structure or to use any land in violation or contravention of any zoning, subdivision, or other regulation of the Land Development Code, or any amendment thereof.

E. Making Lots or Setbacks Nonconforming

It is a violation of the Land Development Code to reduce or diminish any lot area so that the setbacks or open spaces are smaller than prescribed by the Land Development Code.

F. Increasing Intensity of Use

It is a violation of the Land Development Code to increase the intensity of use of any land or structure, except in accordance with the procedural and substantive requirements of the Land Development Code.

G. Continuing Violations

It is a violation of the Land Development Code to continue any of the violations specified in this Article. Each day that a violation continues shall be considered a separate offense.

§20-1103 Remedies and Enforcement Powers

The City shall have the following remedies and enforcement powers.

A. Withhold Permits

The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements thereon upon which there is an uncorrected violation of the Land Development Code or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. Instead of withholding or denying an authorization, the City may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of the Land Development Code or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.

B. Revoke Permits

A permit may be revoked when the Building Official determines that:

1. There is departure from the plans, specifications, or conditions as required under terms of the permit;
2. The plans, specifications, or conditions were obtained by false representation or were issued by mistake; or
3. Any of the provisions of the Land Development Code are being violated.

C. Stop Work

With or without revoking permits, the City may stop work on any building or structure, on any land on which there is an uncorrected violation of a provision of the Land Development Code or of a permit or other form of authorization issued hereunder, in accordance with its power to stop work under the building code.

D. Revoke Plan or Other Approval

When a violation of the Land Development Code involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Board of City Commissioners may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance, the provision of security or such other conditions as the Board of City Commissioners may reasonably impose.

E. Injunctive Relief

The City may seek an injunction or other equitable relief in court to stop any violation of the Land Development Code or of a permit, certificate or other form of authorization granted hereunder.

F. Abatement

The City may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

G. Penalties

The penalty for a violation of this Land Development Code shall be governed by the penalty provisions of the Municipal Code, and the City may also seek such criminal or civil penalties provided by North Dakota law.

H. Other Remedies

The City shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of zoning, subdivision or related Land Development Code provisions.

I. Remedies Cumulative

The remedies and enforcement powers established in this Article are cumulative.

§20-1104 Enforcement Procedures

A. Non-Emergency Matters

In the case of violations of the Land Development Code that do not constitute an emergency, the Building Official shall give notice of the nature of the violation to the property owner and to any other person who is party to the agreement and to any applicant for any relevant permit, after which the persons receiving notice shall have 10 days, or such longer period as the Building Official allows, to correct the violation. If the violation is not corrected within the required time-frame, the Building Official and City Attorney shall use all penalties, remedies and enforcement powers available under this Article. Notice must be given in-person, by United States Mail, or by posting notice on the premises. Notices of violation must state the nature of the violation, the time period allowed for coming into compliance, the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

B. Emergency Matters

In the case of violations of the Land Development Code that do constitute an emergency situation, the City shall use all remedies, penalties and enforcement powers available under this Article without prior notice, but the Building Official must send notice simultaneously with beginning enforcement action to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit.

§20-1105 Other Enforcement Matters

A. Other Powers

In addition to the enforcement powers specified in this Article, the City may exercise any and all enforcement powers granted to them by North Dakota law.

B. Continuation

Nothing in the Land Development Code shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid ordinances and laws.

Article 20-12

Definitions

§20-1201 Construction of Land Development Code

A. Meanings and Intent

All provisions, terms, phrases and expressions contained in the Land Development Code shall be construed according to the LDC's stated purpose and intent.

B. Headings, Illustrations and Text

In case of any difference of meaning or implication between the LDC's text and any heading, drawing, table or figure, the text will control.

C. Commentary

When a provision of this Land Development Code requires additional explanation to clarify its intent, a "Commentary" is included. These Commentaries are intended as a guide for administrative officials and the public to use in interpreting the Land Development Code.

D. Computation of Time

The time within which an act is to be completed will be computed by including the first day and excluding the last day. If the last day is a Saturday, Sunday or legal holiday, that day will be excluded. In the computation of time for public hearing notice, the day of the advertisement will be counted and the day of the hearing will be excluded.

E. References to Other Regulations, Publications and Documents

Whenever reference is made to another regulation, document or publication, it will be construed as a reference to the most recent edition of such regulation (as amended), document or publication, unless otherwise expressly stated.

F. Delegation of Authority

Whenever a provision appears requiring the head of a department or another officer or employee of the City to perform an act or duty, that provision will be construed as authorizing the department head or officer to delegate the responsibility to subordinates.

G. Technical and Nontechnical Terms

Words and phrases will be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law will be construed and understood according to such meaning.

H. Public Officials and Agencies

All public officials, bodies, and agencies to which references are made are those of the City of Fargo, unless otherwise indicated.

I. Mandatory and Discretionary Terms

The words "shall," "will," and "must" are always mandatory. The words "may" and "should" are discretionary terms.

J. Conjunctions

Unless the context clearly suggests the contrary, conjunctions will be interpreted as follows:

“**And**” indicates that all connected items, conditions, provisions or events apply; and

“**Or**” indicates that one or more of the connected items, conditions, provisions or events may apply.

K. Tenses and Usage

Words used in one tense (past, present or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.

§20-1202 Words Defined

The following terms shall have the meanings ascribed to them:

1. **Accessory Use:** a use or structure that:
 - a. Is clearly incidental to and customarily found in connection with a principal structure or use;
 - b. Is subordinate in area, extent and purpose to the principal building or use;
 - c. Contributes to the comfort, convenience or necessity of occupants of the principal use; and
 - d. Is located on the same lot and in the same zoning district as the principal use.
2. **Adult Bookstore:** An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.
3. **Adult Cinema:** An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.
4. **Adult Entertainment Facility:** An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.
5. **Adult Entertainment Center:** An Adult Bookstore, Adult Cinema, Adult Entertainment Facility or any combination thereof.
6. **Airport:** Hector International Airport..
7. **Airport Elevation:** The established elevation of the highest point on the usable landing area.
8. **Airport Hazard:** Any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to such landing or taking-off of aircraft.
9. **All Weather Surface:** Any surface that is durable and reasonably free of dust or mud. Such surfaces shall include, but not be limited to concrete, asphalt, paving blocks, brick, and other similar materials intended for outdoor motor vehicle use. They shall not include dirt, grass, or gravel. Crushed concrete, asphalt millings, or approved similar materials are acceptable in LI or GI zoning districts in areas used for rear-yard circulation and/or loading, but not used for required parking.
10. **Animal Confinement:** Any lot or building or combination of lots or buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that vegetative cover cannot be maintained within the enclosure.

11. **Antenna Array:** One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). It does not include a “telecommunications support structure.”
12. **Block:** An area of land bounded entirely by streets.
13. **Boundary Line Adjustment:** An adjustment in the boundary between adjoining lots if the adjustment does not create an additional or substandard lot or necessitate new roadway construction or right-of-way dedication.
14. **Building:** A structure having a roof supported by columns or walls.
15. **Building Coverage:** The area of a lot covered by buildings (principal and accessory) or roofed areas, as measured along the outside wall at ground level, and including all projections, other than open porches, fire escapes, canopies and the first three feet of a roof overhang.
16. **Decision-Making Body:** A person or group authorized in this Land Development Code to conduct land use reviews and take action on the matter under review.
17. **Density:** The number of dwelling units for each acre of land. See also Sec. 20-0504. Density may also be expressed as the amount of land area per dwelling unit.
18. **Developer.** The person proposing to develop land, either as an owner of said land or as an agent of the owner.
19. **Dwelling Unit:** A building or portion of it designed and used for residential occupancy by a single household and that includes exclusive sleeping, cooking, eating and sanitation facilities. Buildings with more than one set of cooking facilities are considered to be multi-dwelling structures unless the additional cooking facilities are clearly accessory, such as an outdoor grill.
20. **Essential Services:** The erection, construction, alteration, maintenance by public utilities or by governmental departments or commissions of such underground or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply or disposal systems, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, street lights, traffic signals, hydrants, and other similar equipment, and accessories in connection therewith, but not including buildings, as are reasonably necessary for the furnishing of adequate service by such public utilities or governmental departments or commissions or as are required for protection of the public health, safety, or general welfare.
21. **Floor Area (Gross):** The total square footage within a structure calculated by using the measurements from the exterior walls.
22. **Garage:** An accessory building or portion of a main building used for the storage of motor vehicles.
23. **Height, Building:** The vertical distance between the average finished grade at the base of the building and: 1) the highest point of the coping of a flat roof; 2) the highest point of a mansard roof; or 3) the average height level between the eaves and ridge line of a gable, hip or gambrel roof. For the purpose of the HIA-O, Hector International Airport Overlay district regulations the datum shall be mean sea level elevation unless otherwise specified.

24. **Home Occupation:** A business, profession, occupation or trade conducted for gain, conducted within a dwelling unit for gain or support by a resident of the dwelling unit.
25. **Household:** Any one of the following:
- a. One or more persons related by blood, marriage, adoption, or legal guardianship, including foster children, living together in a dwelling unit; or
 - b. A group of not more than 3 persons not related by blood, marriage, adoption, or legal guardianship living together in a dwelling unit;
 - c. Two unrelated persons and their children living together in a dwelling unit; or
 - d. Any group of people living together that meets the definition of “protected class,” as that term is defined in the North Dakota law.
26. **Landing Area:** the area of the airport used for the landing, taking off or taxiing of aircraft.
27. **Lot:** The entire parcel of land occupied or intended to be occupied by a principal building and its accessory buildings, or by a group such as a dwelling group or automobile court and accessory buildings, including the yards, setbacks and open spaces required by this Land Development Code and other applicable law. When a lot is used together with 1 or more contiguous lots for a single use or unified development, all of the lots so used, including any lots used for off-street parking, shall be considered a single lot.
28. **Lot, Legal:**
- a. A lot that is shown on a Subdivision plat that has been recorded in the office of the County Register of Deeds; or
 - b. A lot created through a Boundary Line Adjustment.
29. **Lot, Corner:** A lot abutting two or more streets at their intersection.
30. **Lot, Interior:** A lot other than a corner lot.
31. **Lot Lines:** The property lines along the edge of a lot or site.
- a. **Front Lot Line:** A lot line that abuts a street. A through lot has 2 front lot lines.
 - b. **Side Lot Line:** Any lot line except a front or rear lot line.
 - c. **Rear Lot Line:** A lot line that is opposite a front lot line. A triangular lot has two side lot lines but no rear lot line. For other irregularly shaped lots, the rear lot line is all lot lines that are most nearly opposite the front lot line.
 - d. **Interior Side Line:** A side lot line that does not abut a street.
 - e. **Street Side Lot Line:** A lot line that is both a side lot line and a street lot line.
 - f. **Lot Line, Street:** Any lot lines that abut a street. Street lot line does not include lot lines that abut an alley. On a corner lot, there are two (or more) street lot lines. Street lot line can include front lot lines and side lot lines.

32. **Lot, Reverse Corner:** A corner lot whose front does not face the same street as the adjacent lot.
33. **Lot, Through:** A lot having its front and rear lines on different streets.
34. **Lot Width:** The horizontal distance between side lines measured along a line that is parallel to the front lot line and located the minimum exterior setback distance from the front lot line.
35. **Mobile Home Space:** That part of a Mobile Home Park that has been reserved for the placement of the mobile home, appurtenant structures, or additions.
36. **Mobile Home Park:** A parcel of land under single ownership that has been planned and improved for the placement of mobile homes for nontransient use.
37. **Negative Access Easement:** An easement, usually designated on a plat, which operates to deny direct access to a street or public way from the lot or lots adjacent to such street or way.
38. **Nonconforming Lot:** Lots that were legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of their creation, but which, because of amendments to the zoning regulations, no longer comply with the minimum lot size or other dimensional standards of the zoning district.
39. **Nonconforming Structure:** Buildings or structures that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district.
40. **Nonconforming Use:** Uses that were established in accordance with zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the use regulations of the underlying zoning district.
41. **Nonprecision Instrument Runway:** a runway equipped or to be equipped with an instrument approach procedure utilizing air navigation facilities with only horizontal guidance or area-type navigation equipment.
42. **Official Map:** A map established by the Board of City Commissioners showing the streets, highways and drainage systems theretofore laid out, adopted and established by law, including new subdivision plats approved by the Board of City Commissioners and the subsequent filing of such approved subdivision plats.
43. **Open Space:** an outdoor, unenclosed area, located on the ground or on a roof, balcony, deck, porch or terrace designed and accessible for outdoor living, recreation, pedestrian access or landscaping, but not including roads, parking areas, driveways, or other areas intended for vehicular travel.
44. **Open Space, Common:** open space within a development, not in individually owned lots or dedicated for public use, but which is designed and intended for the common use or enjoyment of the residents or occupants of the development. Common Open Space does not include areas used for streets, alleys, driveways, or off-street parking or loading areas. However, the area of recreational activities such as swimming pools, tennis courts, shuffleboard courts, etc., may be counted as common open space.
45. **Parcel:** A contiguous area of land in the possession of, owned by, or recorded as the property of the same person or persons.

46. **Perimeter Street:** Any street or road which is on the perimeter of the parcel of land to be subdivided and which abuts said parcel on only one side.
47. **Precision Instrument Runway:** a runway equipped or to be equipped with an Instrument Landing System (ILS), or a Precision Approach Radar (PAR).
48. **Principal Building:** A building occupied by the principal use of the lot on which it is situated.
49. **Property Owner:** The person who is shown by the County Register of Deeds as the record owner of a lot or parcel.
50. **Public Improvement:** Any improvement for use by the general public and for which a governmental unit may ultimately assume the responsibility for maintenance and operation.
51. **Public Utility:** Any person, firm, corporation, municipal department, or board duly authorized to furnish, and furnishing, under public regulation, to the public, electricity, gas, heat, power, steam, telephone, telegraph, transportation, or water.
52. **Registered Engineer:** An individual licensed and registered as a professional engineer under the laws of the state of North Dakota.
53. **Registered Land Surveyor:** An individual licensed and registered as a professional land surveyor under the laws of the state of North Dakota.
54. **Residential Structure Types:**
 - a. **House, Attached:** A dwelling unit that shares one or more common or abutting walls with one or more dwelling units. An attached house does not share common floor/ceilings with other dwelling units. An attached house is also called a townhouse.
 - b. **House, Detached:** A dwelling unit located on its own lot that is not attached to any other dwelling unit, including a residential-design manufactured housing unit.
 - c. **Duplex:** A single structure that contains 2 primary dwelling units on one lot. The units may share common walls or common floor/ceilings.
 - d. **Group Living Structure:** A structure that contains sleeping areas and at least one set of cooking and sanitary facilities that is used as a residence for Group Living uses.
 - e. **Manufactured Housing Unit:** A dwelling unit constructed in accordance with Federal Manufactured Housing Construction and Safety Standards (HUD code) in effect after June 15, 1976. For the purpose of this Land Development Code, the term “manufactured housing unit,” when used by itself, shall not include a “residential-design manufactured housing unit” as defined in this section.
 - f. **Mobile Home:** A transportable, factory-built structure that was manufactured prior to enactment of or otherwise does not comply with the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401) and that is designed to be used as a single dwelling unit.
 - g. **Multi-Dwelling Structure:** A structure that contains 3 or more dwelling units that share common walls or floor/ceilings with one or more units. The land underneath the structure is not

divided into separate lots. Multi-dwelling includes structures commonly called garden apartments, apartments and condominiums.

h. Residential-Design Manufactured Housing Unit: A manufactured housing unit that meets the following criteria:

- (1) Is constructed on a permanent foundation that complies with the Uniform Building Code and the City's Building Code;
- (2) Has a minimum front width of 24 feet and a minimum depth of 20 feet;
- (3) Has a predominantly double-pitched roof with a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run and a minimum eave projection and roof overhang of 10 inches on at least 2 sides. Gutters shall be counted in calculating roof overhang.
- (4) Uses siding and roofing materials customarily used on site-built homes within the City of Fargo;
- (5) Has a minimum gross floor area of 960 square feet; and
- (6) Has a minimum ceiling height of 7 feet.

55. **Review Body:** A person or group authorized in this Land Development Code to conduct land use reviews and offer recommendations but not to take final action on the matter under review.

56. **Runway:** the paved surface of an airport landing strip.

57. **Setback:** The distance that is required by this Land Development Code to be maintained in an unobstructed state between a structure and the lot line of the lot on which the structure is located. Note: The term "setback" refers to a *required* minimum area, while the term "yard" refers to the actual open area.

- a. **Front Setback:** A setback that is to extend across the full width of a lot, the required depth of which is measured as the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.
- b. **Interior Side Setback:** A setback that is to extend from the front lot line to the rear lot line along the side of a lot that is adjacent to another lot, the required depth of which is measured as the minimum horizontal distance between the side lot line and a line parallel thereto on the lot.
- c. **Rear Setback:** A setback that is to extend across the full width of a lot, the required depth of which is measured as the minimum horizontal distance between the rear lot line and a line parallel thereto on the lot.
- d. **Street Side Setback:** A setback that is to extend from the front lot line to the rear lot line along the street side of a corner lot, the required depth of which is measured as the minimum horizontal distance between the street side lot line and a line parallel thereto on the lot.

58. **Solar Energy Collector:** A device or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.

59. Specified Anatomical Areas:

- a. Less than completely and opaquely covered:
 - (1) Human genitals, pubic region;
 - (2) Buttocks;
 - (3) Female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

60. Specified Sexual Activities:

- a. Human genitals in a state of sexual stimulations or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy; and
- c. Fondling of human genitals, pubic region, buttock or female breast.

61. **Street:** A public or private way used or intended to be used for passage or travel by motor vehicles. Streets are further classified according to their design and the function they perform. The hierarchy of streets is as follows:

- a. **Local Street:** A street intended to provide direct access to abutting property and access to higher classification streets.
- b. **Local Collector Street:** A street that connects traffic from local streets and higher classification streets and that may provide direct access to abutting property.
- c. **Collector Street:** A street that connects traffic from lower classification streets and higher classification streets and that does not provide direct access to abutting property.
- d. **Minor Arterial Street:** A street with signals at major intersections and stop signs at side streets and that collects and distributes traffic to and from collector streets.
- e. **Principal Arterial Street:** A street with access control, channelized intersections, restricted parking, and that collects and distributes traffic to and from minor arterial streets.

62. **Structural Alteration:** Any change, addition or modification in construction in the supporting members of a building, such as exterior walls, bearing walls, beams, columns, foundations, girders, floor joists, roof joists, rafters or trusses.

63. **Structure:** Anything constructed or erected having location on or under the ground or attached to something having location on or under the ground.

64. **Subdivision:** The division of a tract or parcel of land into lots for the purpose of, whether immediate or future, sale or of development.

65. **Subdivision, Major:** Any subdivision that does not meet the definition of a "Minor Subdivision."

66. **Subdivision, Minor:** A subdivision that meets all of the following criteria:

- a. Does not require the dedication of rights-of-way or construction of new streets;
 - b. Does not create any public improvements other than sidewalks;
 - c. Does not land-lock or otherwise impair convenient ingress and egress to or from the rear or side of the subject tract or any adjacent property;
 - d. Does not fall within the corridors of any planned or proposed street as shown upon the Official Map or approved Area Plans; and
 - e. Does not violate any local, state or federally adopted law, ordinance, regulation, plan or policy.
67. **Telecommunication Facility, Attached:** An antenna array that is attached to an existing building or structure, including utility poles, signs, water towers, and similar structures with any associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.
68. **Telecommunications Support Structure:** A structure designed and constructed specifically to support an antenna array, and may include a monopole, self supporting (lattice) tower, guy-wire support tower and other similar structures. Any device used solely to attach an attached telecommunications facility to an existing building or structure shall be excluded from this definition. A monopole, self-supporting (lattice) tower, Guy-wire support tower and other similar structures which are erected or constructed on a building, water tower, or other structure for the purpose of elevating an attached telecommunications facility shall be included in this definition.
69. **Use:** The purpose for which land or a building or structure thereon is designed, arranged, intended, or maintained or for which it is or may be used or occupied.
70. **Yard:** The actual unobstructed open space that exists or that is proposed between a structure and the lot lines of the lot on which the structure is located. See "Setback."
71. **Zoning District:** The separate geographic areas to which a specific zoning district is assigned.
- a. **Base Zoning District:** A zoning district that establishes the primary permitted uses, conditional uses, and dimensional standards.
 - b. **Overlay Zoning District:** A zoning district that is applied to a parcel of land to add special or additional development requirements in addition to or in place of the requirements of the Base Zoning District requirements.
72. **Bed and Breakfast:** A facility of residential character that provides sleeping accommodations and breakfast for hire on a day-to-day basis in which the proprietor resides.

Source: 2985 (1999), 4039 (2000), 4089 (2000), 4170 (2001), 4560 (2006), 4592 (2007).

§20-1203 Use Categories

A. Basis for Classifications

Use categories classify land uses and activities into use categories based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions. The use categories provide a systematic basis for assigning present and future land uses into appropriate zoning districts.

1. Principal Uses

Principal uses are assigned to the category that most closely describes the nature of the principal use. The “Characteristics” subsection of each use category describes the common characteristics of each principal use.

a. Developments with Multiple Principal Uses

When all principal uses of a development fall within one use category, the entire development is assigned to that use category. A development that contains a coffee shop, bookstore and bakery, for example, would be classified in the Retail Sales and Service category because all of the development’s principal uses are in that category. When the principal uses of a development fall within different use categories, each principal use is classified in the applicable category and each use is subject to all applicable regulations for that category.

b. Accessory Uses

Accessory uses are allowed by-right in conjunction with a principal use unless otherwise stated in the regulations. Also, unless otherwise stated, accessory uses are subject to the same regulations as the principal use. Common accessory uses are listed as examples in the use category descriptions.

c. Use of Examples

The “Examples” subsection of each use category lists common examples of uses included in the respective use category. The names of these sample uses are generic. They are based on common meanings and not on what a specific use may call itself. For example, a use that calls itself “Wholesale Warehouse” but that sells mostly to consumers, is included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description of the Retail Sales and Service category.

B. Similar Use Interpretation Criteria

The following considerations shall be used in making similar use interpretations (See also Sec. 20-0401-F):

1. The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;
2. The relative amount of site area or floor space and equipment devoted to the activity;
3. Relative amounts of sales from each activity;

4. The customer type for each activity (retail or wholesale);
5. The relative number of employees in each activity;
6. Hours of operation;
7. Building and site arrangement;
8. Vehicles used with the activity;
9. The relative number of vehicle trips generated by the use; and
10. How the use advertises itself.

C. Residential Use Categories

1. Group Living

a. Characteristics

Group Living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Household Living. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories). Generally, Group Living structures have a common eating area for residents. The residents may receive care, training, or treatment, as long as the care givers also reside at the site.

b. Accessory Uses

Accessory uses commonly associated with Group Living are recreational facilities and parking of vehicles for occupants and staff.

c. Examples

Examples of Group Living include dormitories; fraternities and sororities; monasteries and convents; nursing and convalescent homes; some group homes for the physically disabled, mentally retarded, or emotionally disturbed; some residential programs for drug and alcohol treatment; and alternative or post incarceration facilities.

d. Exceptions

- (1) Lodging where tenancy may be arranged for periods of less than 30 days is to be considered a hotel or motel use and classified in the Retail Sales and Service category.
- (2) Lodging where the residents meet the definition of Household and where tenancy is arranged on a month-to-month basis, or for a longer period is classified as Household Living.
- (3) Facilities for people who are under judicial detainment and under the supervision of sworn officers are included in the Detention Facilities category.

2. Household Living

a. Characteristics

Household Living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories).

b. Accessory Uses

Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies and parking of the occupants' vehicles. Home occupations are accessory uses that are subject to additional regulations (See Sec. 20-0403). In SR-0 districts, the keeping of one or more horses shall be an acceptable use provided it is accessory to household living and provided that the following criteria are met:

- (1) There shall be a minimum of two (2) acres for one horse, and an additional acre for every additional horse kept on the property;
- (2) The number of horses permitted shall be based on the size of the portion of the lot to be used as an animal enclosure;
- (3) In subdivisions created prior to January 1, 2000, no structure intended for housing said animals shall be closer than 100 feet from any lot line; otherwise, no structure intended for housing said animals shall be closer than 200 feet from any lot line;
- (4) All manure and other animal wastes shall be removed and disposed of properly on a regular basis; and
- (5) The residential use area shall be separated from the area to be used as an animal enclosure by a fence, and the entire animal enclosure area shall be fenced to prevent escape and subsequent damage to adjacent property.

Furthermore, in SR-0 districts, the keeping of one or more animals other than horses shall be a Conditional Use, subject to the procedures of Sec 20-0909. In evaluating such a Conditional Use, in addition to any other appropriate factors, the decision-maker shall consider the detrimental impact of keeping of such animals in comparison to the impact of the keeping of one or more horses.

c. Examples

Uses include living in houses, duplexes, triplexes, fourplexes and other multi-dwelling structures, retirement center apartments, manufactured housing and other structures with self-contained dwelling units.

d. Exceptions

Lodging in a dwelling unit or where less than two thirds of the units are rented on a monthly or longer basis is considered a hotel or motel use and is classified in the Retail Sales and Service category.

D. Commercial Use Categories

1. Entertainment Event, Major

a. Characteristics

Major Entertainment Event uses are characterized by activities and structures that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature.

b. Accessory Uses

Accessory uses may include restaurants, bars, concessions, parking and maintenance facilities.

c. Examples

Examples include stadiums, sports arenas, coliseums, auditoriums, exhibition and meeting areas and fairgrounds.

d. Exceptions

- (1) Exhibition and meeting areas with less than 20,000 square feet of total event area are classified as Retail Sales and Service.
- (2) Banquet halls that are part of hotels or restaurants are accessory to those uses, which are included in the Retail Sales and Service category.
- (3) Theaters, including drive-in theaters, are classified as Retail Sales and Service.
- (4) Recreation or entertainment uses conducted on a continuous basis are classified as Outdoor Recreation and Entertainment or Retail Sales and Service uses.

2. Office

a. Characteristics

Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services.

b. Accessory Uses

Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building.

c. Examples

Examples include professional services such as lawyers, accountants, engineers, or architects; financial businesses such as lenders, brokerage houses, bank headquarters, or real estate agents; data processing; sales offices; government offices and public utility offices; TV and radio studios; medical and dental clinics, medical and dental labs; and blood-collection facilities.

d. Exceptions

- (1) Offices that are part of and located with a principal use in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a principal use in another category, are considered part of the other category.

- (2) Contractors and others who perform services off-site are included in the Office category if equipment and materials are not stored on the site and fabrication, services, or similar work is not carried on at the site.

3. Off-Premise Advertising Sign

Any sign that directs attention to a business, profession, product, service, activity or entertainment not conducted, sold or offered on the premises upon which the sign is located.

4. Parking, Commercial

a. Characteristics

Commercial Parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a Commercial Parking facility.

b. Accessory Use

In a parking structure only, accessory uses may include gasoline sales, car washing and vehicle repair activities if these uses provide service only to vehicles parked in the garage.

c. Examples

Examples include short- and long-term fee parking facilities and mixed parking lots (partially accessory to a specific use, partly for rent to others).

d. Exceptions

- (1) Parking facilities that are accessory to a use, but that charge the public to park for occasional events nearby, are not considered Commercial Parking facilities.
- (2) Parking facilities that are accessory to a principal use are not considered Commercial Parking uses, even if the operator leases the facility to the principal use or charges a fee to the individuals who park in the facility.
- (3) Public transit park-and-ride facilities are classified as Basic Utilities.

5. Recreation and Entertainment, Outdoor

a. Characteristics

Outdoor Recreation and Entertainment uses are large, generally commercial uses that provide continuous recreation or entertainment-oriented activities. They primarily take place outdoors. They may take place in a number of structures that are arranged together in an outdoor setting.

b. Accessory Uses

Accessory uses may include concessions, restaurants, parking, caretaker's quarters and maintenance facilities.

c. Examples

Examples include amusement parks, theme parks, golf driving ranges, miniature golf facilities and zoos.

d. Exceptions

- (1) Golf courses are classified as Parks and Open Space.
- (2) Uses that draw large numbers of people to periodic events, rather than on a continuous basis, are classified as Major Entertainment Events.

6. Retail Sales and Service**a. Characteristics**

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c. Examples

Examples include uses from the four following groups:

(1) Sales-Oriented:

Stores selling, leasing, or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.

(2) Personal Service-Oriented:

Branch banks; emergency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning and personal care services; business, martial arts and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; and animal grooming.

(3) Entertainment-Oriented:

Restaurants, cafes, delicatessens, bars and taverns; indoor continuous entertainment activities such as bowling alleys, ice rinks and game arcades; pool halls; dance halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs and lodges; hotels, motels, recreational vehicle parks and other temporary lodging with an average length of stay of less than 30 days.

(4) Repair-Oriented:

Repair of televisions, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; tailor; locksmith; and upholsterer.

d. Exceptions

- (1) Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are classified as Wholesale Sales.
- (2) Repair and service of consumer motor vehicles, motorcycles and light and medium trucks is classified as Vehicle Repair. Repair and service of industrial vehicles and

equipment and heavy trucks is classified as Industrial Service.

- (3) Sales, rental, or leasing of heavy trucks and equipment or manufactured housing units are classified as Wholesale Sales.
- (4) Hotels, restaurants and other services that are part of a truck stop are considered accessory to the truck stop which is classified as Industrial Service.
- (5) In certain situations, hotels and motels may be classified as a Community Service use, such as short-term housing or mass shelter. See "Community Services."

7. Self-Service Storage

a. Characteristics

Self-Service Storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.

b. Accessory Uses

Accessory uses may include living quarters for a resident manager or security and leasing offices. Use of the storage areas for sales, service and repair operations, or manufacturing is not considered accessory to the Self-Service Storage use. The rental of trucks or equipment is also not considered accessory to a Self-Service Storage use.

c. Examples

Examples include facilities that provide individual storage areas for rent. These uses are also called mini-warehouses.

d. Exceptions

A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the Warehouse and Freight Movement category.

8. Vehicle Repair

a. Characteristics

Vehicle Repair firms service passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed.

b. Accessory Uses

Accessory uses may include offices, sales of parts and vehicle storage.

c. Examples

Examples include vehicle repair, transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing and tire sales and mounting.

d. Exceptions

Repair and service of industrial vehicles and equipment and of heavy trucks; towing and vehicle storage; and vehicle wrecking and salvage are classified as Industrial Service.

9. Vehicle Service, Limited**a. Characteristics**

Limited Vehicle Service uses provide direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed.

b. Accessory Uses

Accessory uses may include auto repair and tire sales.

c. Examples

Examples include full-service, mini-service and self-service gas stations; car washes; and quick lubrication services.

d. Exceptions

(1) Truck stops are classified as Industrial Service.

(2) Refueling facilities for vehicles that belong to a specific use (fleet vehicles) are considered accessory uses if they are located on the site of the principal use.

10. Non-farm Commercial**a. Characteristics**

Non-farm Commercial uses are those commercial uses identified in subparagraphs (D)(1) through (D)(9), hereof, but which occur in an AG, Agricultural District.

b. Accessory Uses

Accessory activities described in subparagraphs (D)(1) through (D)(9), hereof, is also a Conditional Use, permitted only after approval pursuant to Section 20-0909.

c. Examples

Examples include any of those examples listed under the particular uses described in subparagraphs (D)(1) through (D)(9), hereof.

d. Exceptions

Any of the exceptions listed under the particular uses described in subparagraphs (D)(1) through (D)(9), hereof, shall also be exceptions for purposes of a Non-farm Commercial use.

E. Industrial Use Categories**1. Industrial Service****a. Characteristics**

Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

b. Accessory Uses

Accessory activities may include offices, parking and storage.

c. Examples

Examples include welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire retreading or recapping; truck stops; building, heating, plumbing or electrical contractors; exterminators; recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; above-ground tanks used for the storage or dispensing of Class I or Class II petroleum products (as defined in the Fargo Fire Code); research and development laboratories; laundry, dry-cleaning and carpet cleaning plants; and photofinishing laboratories; and the stockpiling of sand, gravel, or other aggregate materials.

d. Exceptions

- (1) Contractors and others who perform services off-site are included in the Office category, if major equipment and materials are not stored at the site and fabrication, or similar work is not carried on at the site.
- (2) Hotels, restaurants and other services that are part of a truck stop are considered accessory to the truck stop.

2. Manufacturing and Production**a. Characteristics**

Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site.

b. Accessory Uses

Accessory activities may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets and caretaker's quarters.

c. Examples

Examples include processing of food and related products; catering establishments; slaughter houses and meat packing; weaving or production of textiles or apparel; lumber mills, pulp and paper mills and other wood products manufacturing; woodworking, including cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; printing, publishing and lithography; movie production facilities; production or fabrication of metals or metal products including enameling and galvanizing; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items and other electrical items; production of artwork and toys; sign making; and production of prefabricated structures, including mobile homes.

d. Exceptions

- (1) Manufacturing of goods to be sold primarily on-site and to the general public are classified as Retail Sales and Service.
- (2) Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

3. Warehouse and Freight Movement

a. Characteristics

Warehouse and Freight Movement firms are involved in the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.

b. Accessory Uses

Accessory uses may include offices, truck fleet parking and maintenance areas.

c. Examples

Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck, or air freight terminals; bus barns; parcel services; major post offices; and grain terminals.

d. Exceptions

(1) Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste-Related uses.

(2) Mini-warehouses are classified as Self-Service Storage uses.

4. Waste-Related

a. Characteristics

Characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material.

b. Accessory Uses

Accessory uses may include recycling of materials, offices and repackaging and transshipment of by-products.

c. Examples

Examples include sanitary landfills, waste composting, energy recovery plants, sewage plants and hazardous-waste-collection sites.

d. Exceptions

(1) Disposal of dirt, concrete, asphalt and similar non-decomposable materials is considered fill.

(2) Recycling collection centers are considered Basic Utilities.

5. Wholesale Sales

a. Characteristics

Wholesale Sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize

on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on-site or delivered to the customer.

b. Accessory Uses

Accessory uses may include offices, product repair, warehouses, parking, minor fabrication services and repackaging of goods.

c. Examples

Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware.

d. Exceptions

- (1) Firms that engage primarily in sales to the general public or on a membership basis are classified as Retail Sales and Service.
- (2) Firms that are primarily storing goods with little on-site business activity are classified as Warehouse and Freight Movement.

F. Institutional and Civic Use Categories

1. Colleges

a. Characteristics

This category includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree. Colleges tend to be in campus-like settings or on multiple blocks.

b. Accessory Uses

Accessory uses include offices, housing for students, food service, laboratories, health and sports facilities, theaters, meeting areas, parking, maintenance facilities and support commercial.

c. Examples

Examples include universities, liberal arts colleges, community colleges, nursing and medical schools not accessory to health care facilities and seminaries.

d. Exceptions

Business and trade schools are classified as Retail Sales and Service.

2. Community Services

a. Characteristics

Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide special counseling, education, or training of a public, nonprofit or charitable nature.

b. Accessory Uses

Accessory uses may include offices; meeting areas; food preparation areas; parking, health and therapy areas; and athletic facilities.

c. Examples

Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, social service facilities, temporary shelters, vocational training for persons with physical or mental disabilities, crematoriums, columbariums and mausoleums.

d. Exceptions

- (1) Private lodges, clubs and private or commercial athletic or health clubs are classified as Retail Sales and Service. Commercial museums are classified as Retail Sales and Service.
- (2) Parks are classified as Parks and Open Areas.
- (3) Uses where tenancy is arranged on a month-to-month basis, or for a longer period are residential and are classified as Household or Group Living.

3. Day Care**a. Characteristics**

Day Care uses provide care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day.

b. Accessory Uses

Accessory uses include offices, recreation areas and parking.

c. Examples

Examples include preschools, child care centers, nursery schools, latch key programs and adult day care programs.

d. Exceptions

Day Care does not include public or private schools or facilities operated in connection with an employment use, shopping center or other principal use, where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity.

4. Health Care Facilities**a. Characteristics**

Health Care Facilities include uses providing medical or surgical care to patients and offering overnight care.

b. Accessory Uses

Accessory uses include out-patient clinics, offices, laboratories, teaching facilities, meeting areas, cafeterias, parking, maintenance facilities and housing facilities for staff or trainees.

c. Examples

Examples include medical centers and hospitals.

d. Exceptions

- (1) Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are classified in the Group Living category.
- (2) Medical clinics or offices that provide care where patients are generally not kept overnight are classified as Offices.
- (3) Emergency medical clinics are classified as Retail Sales and Service.

5. Parks and Open Areas

a. Characteristics

Parks and Open Areas are uses of land focusing on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares. Lands tend to have few structures.

b. Accessory Uses

Accessory uses may include club houses, maintenance facilities, concessions, caretaker's quarters and parking.

c. Examples

Examples include parks, golf courses, cemeteries, public squares, plazas, recreational trails, botanical gardens, nature preserves and land used for grazing that is not part of a farm or ranch.

6. Religious Institutions

a. Characteristics

Religious Institutions primarily provide meeting areas for religious activities.

b. Accessory Uses

Accessory uses include Sunday school facilities, preschools, day cares, parking, caretaker's housing and group living facilities such as convents.

c. Examples

Examples include churches, temples, synagogues and mosques.

d. Exceptions

Schools are classified as Schools.

7. Safety Services

a. Characteristics

Safety Services are uses that provide public safety and emergency response services. They often need to be located in or near the area where the service is provided. Employees are regularly present on-site.

b. Accessory Uses

Accessory uses include offices and parking.

c. Examples

Examples include fire stations, police stations and emergency medical and ambulance stations.

8. Schools

a. Characteristics

This category includes public and private schools at the primary, elementary, middle, junior high, or high school level that provide state-mandated basic education.

b. Accessory Uses

Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums and before- or after-school day care.

c. Examples

Examples include public and private daytime schools, boarding schools and military academies.

d. Exceptions

(1) Preschools are classified as Day Care uses.

(2) Business and trade schools are classified as Retail Sales and Service.

9. Utilities, Basic

a. Characteristics

Basic Utilities are infrastructure services that need to be located in or near the area where the service is provided. Basic Utility uses generally do not regularly have employees at the site. Services may be public or privately provided.

b. Accessory Uses

Accessory uses may include parking and control, monitoring, data or transmission equipment.

c. Examples

Examples include water and sewage pump stations; electrical substations; water towers and reservoirs; stormwater retention and detention facilities; telephone exchanges; recycling collection centers; and park-and-ride facilities for mass transit.

d. Exceptions

(1) Services where people are generally present are classified as Community Services, Offices, or Safety Services.

(2) Utility offices where employees or customers are generally present are classified as Offices.

(3) Bus barns are classified as Warehouse and Freight Movement.

G. Other Use Categories

1. Agriculture

a. Characteristics

Agriculture includes activities that primarily involve raising, producing or keeping plants or animals.

b. Accessory Uses

Accessory uses include dwellings for proprietors and employees of the use and animal training.

c. Examples

Examples include breeding or raising of fowl or other animals; dairy farms; stables; riding academies; kennels or other animal boarding places; farming, truck gardening, forestry, tree farming; and wholesale plant nurseries.

d. Exceptions

- (1) Uses involved in the processing of animal or plant products are classified as Manufacturing and Production.
- (2) Livestock auctions are classified as Wholesale Sales.
- (3) Plant nurseries that are oriented to retail sales are classified as Retail Sales and Service.
- (4) Uses that meet the definition “animal confinement” shall not be considered “agriculture” for the purpose of determining required zoning.
- (5) Residential uses that include the keeping of up to one horse per two (2) acres of lot shall not be considered “agriculture” for the purpose of determining required zoning and will be an acceptable accessory use in SR zoning districts which were zoned Ag-P2 (as defined by the Stanley Township’s zoning ordinance, or similar township or county zoning), prior to the extension of the City’s extraterritorial zoning jurisdiction to the subject property.

2. Aviation and Surface Passenger Terminals**a. Characteristics**

Aviation and Surface Passenger Terminals includes facilities for the landing and takeoff of flying vehicles, including loading and unloading areas. Aviation facilities may be improved or unimproved. Aviation and Surface Passenger Terminals also includes passenger terminals for aircraft, regional bus service and regional rail service.

b. Accessory Uses

Accessory uses include freight handling areas, concessions, offices, parking and maintenance and fueling facilities.

c. Examples

Examples include airports, bus passenger terminals for regional bus service, railroad passenger stations for regional rail service and helicopter landing facilities.

d. Exceptions

- (1) Bus and rail passenger stations for subregional service such as mass transit stops and park-and-ride facilities are classified as Basic Utilities.
- (2) Private helicopter landing facilities that are accessory to another use are considered accessory uses. However, they are subject to all the regulations and approval criteria for helicopter landing facilities.

3. Detention Facilities

a. Characteristics

Detention Facilities includes facilities for the judicially required detention or incarceration of people. Inmates and detainees are under 24 hour supervision by sworn officers, except when on an approved leave.

b. Accessory Uses

Accessory uses include offices, recreational and health facilities, therapy facilities, maintenance facilities and hobby and manufacturing activities.

c. Examples

Examples include prisons, jails, probation centers and juvenile detention homes.

d. Exceptions

Programs that provide care and training or treatment for psychiatric, alcohol, or drug problems, where patients are residents of the program, but where patients are not supervised by sworn officers are classified as Group Living. Programs that provide transitional living experience for former offenders, such as halfway houses, where residents are not supervised by sworn officers, are also classified as Group Living.

4. Mining

a. Characteristics

Mining includes mining or extraction of mineral or aggregate resources from the ground for off-site use.

b. Accessory Uses

Accessory uses include storage, sorting, stockpiling, or transfer off-site of the mined material.

c. Examples

Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil, gas, or geothermal drilling.

5. Telecommunications Facilities

a. Characteristics

Telecommunications facilities includes all devices, equipment, machinery, structures or supporting elements necessary to produce nonionizing electromagnetic radiation within the range of frequencies from 100 KHz to 300 GHz and operating as a discrete unit to produce a signal or message. Facilities may be self supporting, guyed, mounted on poles, other structures, light posts, power poles, or buildings. Facilities shall also include intertie and interconnection translators, connections from over-the-air to cable, fiber optic, or other landline transmission system.

b. Accessory Uses

Accessory uses may include transmitter facility buildings.

c. Examples

Examples include broadcast towers, attached telecommunications facilities,

telecommunications support towers, point-to-point microwave towers and amateur radio facilities that are owned and operated by a federally-licensed amateur radio station operator.

d. Exceptions

- (1) Radio and television studios are classified in the Office category.
- (2) Radio and television broadcast facilities that are public safety facilities are classified as Basic Utilities.
- (3) Ground-mounted telephone switch boxes not exceeding 6 feet in height are classified as Basic Utilities.
- (4) Amateur radio facilities that are owned and operated by a federally licensed amateur radio station operator are not included in this category.

Source: 2985 (1999), 3007 (1999), 3062 (1999), 4228 (2002), 4241 (2002), 4324 (2003), 4613 (2007).

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