

**FINAL
WORDING
VERSION**

ORDINANCE NO. 1235

An Ordinance to Amend and Reenact Portions of Subpart B Land Development and Public Services, Chapter 105 District Regulations (Zoning) of the Code of Ordinances of the City of Mandan Related to Automobile Parking, Sidewalks, Delivery of Goods in Public Places, Building Permits and Approval of Plans, Certificate of Occupancy, Fees, Board of Adjustment and Amendments.

Be it ordained by the Board of City Commissioners as follows:

Section 1. Sec. 105-1-6 is amended to read:

Sec. 105-1-6. - Off-street parking and loading.

- (a) Off-street parking. Off-street parking for each building, improvement or use shall be provided on the basis of the following minimum requirements:
 - (1) Dwellings.
 - a. Single-family, two-family and multifamily dwellings with individual garages provided for dwelling units.
 - 1. A minimum of two off-street parking spaces are required for each dwelling unit. Driveways or parking aprons must have an unobstructed length of at least 20 feet between the garage door and any sidewalk in order to be counted as a required parking space.
 - 2. If there is insufficient space to park at least one guest vehicle per unit along the curb in front of the property, sufficient additional off-street parking spaces must be provided in order to provide at least one guest space per unit.
 - b. Multi-family structures with common underground or ground floor parking garages and common above ground parking areas.
 - 1. Each unit having a living area containing two or more bedrooms shall have at least two parking spaces.
 - 2. One bedroom or efficiency units shall have at least one parking space.
 - 3. The complex must provide at least one guest parking space per each two dwelling units. Available parking along the

street in front of the complex may be counted when computing guest parking.

4. If parking garage spaces may be used for storage, an additional space per dwelling unit must be provided.
- c. Exceptions to the requirements contained in a. and b. above may be granted for projects catering to a designated group that does not own private vehicles or use privately owned vehicles for transportation that require parking spaces on-site. Alternative site configurations involving provision of vehicle loading areas and parking areas for busses or other group transport vehicles may be considered. The applicant must present written documentation justifying the exception and the building official may grant the exception in writing after consulting with the city planner.
- (2) Hotels. Hotels require one space for each guest room plus one space for each employee per shift. If, in addition to sleeping rooms, patrons or residents are provided with assembly halls, bars, restaurants, nightclubs, retail shops, service establishments or other businesses, additional off-street parking spaces will be required for such other uses in accordance with the regulations of this section. Parking available along the curb in front of the property may be counted as part of the required parking. A recorded shared parking agreement with another facility may be used for up to 25% of the required parking spaces.
 - (3) Tourist homes, motels, trailer courts. Tourist homes, motels and trailer courts require one space for each guest room, cabin or trailer parking space. Off-street parking for auxiliary uses in the same building or on the same lot shall be provided in accordance with the regulations set forth in this section. For tourist homes there must be provided in addition to off-street parking spaces for guests, one additional space for each family permanently residing in the building.
 - (4) Hospitals. Hospitals, including sanitariums, nursing homes, treatment facilities and similar institutions require one space for each four patient beds, one space for each doctor on duty per shift and one space for each employee per shift.
 - (5) Restaurants. Restaurants, including bars, taverns, nightclubs, lunch counters, diners and all other similar dining or drinking establishments require one space for each four seats provided for patron use and one parking space for each employee per shift.
 - (6) Theaters. Theaters require one space for each five seats provided for patron use plus one space for each employee per shift.

- (7) Places of public assembly. Places of public assembly, including private clubs, lodges, fraternal buildings not providing overnight accommodations, assembly halls, exhibition halls, convention halls, auditoriums, skating rinks, dancehalls, bowling alleys, sports arenas, stadiums, gymnasiums, amusement parks, racetracks, fairgrounds, circus grounds, funeral homes and mortuaries, community centers, libraries, museums and all other similar places of relatively infrequent public assembly require one space for each ten seats provided for patron use or one space for each 400 square feet of gross floor area used or intended to be used for service to the public as customers, patrons or clients, whichever requires the greater number of parking spaces plus one space for each employee per shift.
- (8) Medical clinics. Medical clinics, including offices of doctors, dentists and other licensed medical professionals, require three spaces for each primary medical professional using the office or clinic plus one additional space for each medical assistant or regular employee per shift.
- (9) Retail establishments. Retail establishments, including personal service shops and equipment or repair shops, require one space for each 400 square feet of patron access area and one space for each 800 square feet of service, storage or employee area.
- (10) Office buildings. Office buildings, including commercial, governmental and professional buildings, except as otherwise provided for in this section, require one space for each 400 square feet of floor area.
- (11) Wholesale, manufacturing and industrial plants. Wholesale, manufacturing and industrial plants, including warehouses and storage buildings and yards, public utility buildings, contractor equipment and lumber yards, research laboratories, business service establishments, such as blueprinting, printing and engraving, soft drink bottling establishments, fabricating plants, and all other structures devoted to similar mercantile or industrial pursuits, require one space for each employee per shift, plus sufficient space to park all company owned or leased vehicles, including passenger automobiles, trucks, trailers, construction equipment and similar vehicles.
- (12) Terminal facilities. Terminal facilities, including airports, railroad passenger and freight stations, bus depots, truck terminals and all other similar personal or material terminal facilities, require off-street parking spaces in an amount determined by the planning and zoning commission to be adequate to serve the public as customers, patrons and visitors, plus one space for each regular employee per shift and space for all owned,

leased or operated commercial vehicles, buses, construction equipment and similar vehicles.

(13) Schools.

- a. Pre-schools, elementary schools and middle schools require one space for each administrative and support staff member or employee other than teachers, one space for each daily use classroom, one space for every three special purpose rooms, one visitor space for every ten classrooms and additional spaces for any places of public assembly that are used during the school day in accordance with the requirements set forth in this section. On-street parking may be used for visitor spaces.
- b. High schools and colleges require one space for each staff member or employee other than teaching faculty, one space for each daily use classroom, one space for every ten special purpose rooms, one space for every five enrolled students per class period, one visitor space for every fifteen daily use classrooms and additional spaces for any places of public assembly that are used during the school day in accordance with the requirements set forth in this section. On-street parking may be used for visitor spaces.

(14) Correctional facilities. Correctional facilities and similar institutions require one space for each employee per shift plus one additional space for each eight inmates. On-street parking may be used for visitor parking.

(b) Off-street loading. Off-street loading space shall be provided for each building, improvement or use in accordance with the following minimum requirements:

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

Square Feet of Aggregate Gross Floor Area Devoted to Such Use	Required Number of Berths
25,000 but less than 40,000	1
40,000 but less than 100,000	2
100,000 but less than 160,000	3
160,000 but less than 240,000	4
240,000 up to and including 321,000	5

For each additional 90,000	1 additional
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- (2) Each multifamily structure having ten or more dwelling units shall provide one off-street loading space for up to the first 30 dwelling units, plus one additional off-street loading space for each additional 30 dwelling units.
- (3) Each auditorium, convention hall, exhibition hall, funeral home, hotel, office building, restaurant, sports arena, hospital or welfare institution which has an aggregate gross floor area of 50,000 square feet or more arranged, intended or designed for such use shall provide one off-street loading berth for up to and including 250,000 square feet and one additional berth for each additional 200,000 square feet of floor space.
- (c) Uses not specifically mentioned. For each use not specifically mentioned in this section, the requirements for off-street parking and off-street loading facilities for a use determined to be similar in function, shall apply. In such case, either the building official or the applicant for the certificate of occupancy or building permit may apply to the city planner for an interpretation of the provision of this chapter for such off-street parking and off-street loading requirements.
- (d) Continuing character of obligation. The schedule or requirements for off-street parking space and off-street loading space shall be a continuing obligation of the owner of the real estate on which any such structure is located as long as the use requiring vehicle parking or vehicle loading facilities continues. Any change to the required parking or loading facilities must be approved in writing by the building official. The building official may refer the request to the city planner for review and recommendation, who in turn may refer the request to the planning and zoning commission for review and recommendation.
- (e) Fractional measurements. When units or measurements determining the number of required off-street parking and off-street loading spaces result in the requirement of a fractional space, any fraction up to and including one-fourth shall be disregarded, and fractions over one-fourth shall require one additional off-street parking or off-street loading space.
- (f) Location of required parking and loading facilities. The off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve or on private property within 400 feet of the premises to which they are appurtenant as documented by a recorded shared use agreement. The off-street loading facilities required by this section shall, in all cases, be on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be part of the area used to satisfy the off-street parking requirements of this chapter.
- (g) Plan of required off-street parking or loading area. Plans must be submitted to the building official to show how the required parking or loading space shall be

arranged and to indicate sufficient space for parking maneuvers, as well as adequate ingress and egress to the parking or loading area for emergency vehicles. For each parking space not under roof, there shall be provided 200 square feet in addition to all lanes, alleys, aisles and drives necessary for safe and adequate parking maneuvering. For each off-street loading space required by this section, there shall be provided space clear and free of all obstruction, at least ten feet in width, 75 feet in length and 14 feet in height. Off-street parking and off-street loading space shall be provided with methods of ingress and egress such that it will be unnecessary for trucks or tractor trailer combinations to back into them from a street or out of them into a street.

- (h) Use of required off-street parking by another building. No part of an off-street parking area required for any building or used for the purpose of complying with the provisions of this section shall be included as a part of an off-street parking area similarly required for another building or use unless the type of structure indicates that the periods of usage of such structure will not be simultaneous with each other, as determined by the city planner.
- (i) Maintenance of public off-street parking places provided. All off-street parking facilities for the use of the public, required pursuant to the provisions of this section, shall be paved, drained, lighted and periodically maintained by the owner in accordance with specifications of the city engineer. Such facilities shall be arranged for convenient access and safety of pedestrians and vehicles. No open area in an off-street parking area shall be encroached upon by buildings, storage, or any other use; nor shall the number of parking spaces be reduced except upon the approval of the planning and zoning commission and then only after proof that, by reason of diminution in floor area, seating capacity, number of employees, or change in other factors controlling the regulation of the number of parking spaces, the proposed reduction is reasonable and consistent with the intent of this section.
- (j) Collective action relative to off-street parking and loading. Nothing in this chapter shall be construed to prevent the joint use of off-street parking or off-street loading space for two or more buildings or uses if the total of such space, when used together, shall not be less than the sum of the requirements of the various individual uses computed separately in accordance with this section.
- (k) Mixed uses. In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections (a) and (b) of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.
- (l) Nonconforming uses. In the case of nonconforming uses, where major repairs, substantial alterations, or extensions are made, no such major repairs, substantial

alterations or extensions shall be permitted unless and until the off-street parking and off-street loading facilities requirements of this section, so far as they apply to the use to which such building is devoted, shall be fully provided for.

Section 2. Sec. 105-1-7 is amended to read:

Sec. 105-1-7. - Sidewalks.

- (a) Duty of developer. Unless other written arrangements have been made with the city, prior to the sale of lots within the subdivision, it shall be the duty of the developer of a new subdivision to construct or arrange for the construction of all required sidewalks and multi-use paths within the limits of the subdivision and within any areas outside the subdivision so designated during the review and approval process.
- (b) Property owners in established subdivisions. Property owners or occupants of lots in established subdivisions shall construct a sidewalk within the right-of-way adjacent to their property unless the city engineer has waived in writing the requirement for a sidewalk.
- (c) Construction of sidewalk prior to occupancy permit. Unless the city engineer has granted a waiver in writing for good cause to allow a specified time delay in installing a sidewalk or specified in writing that a sidewalk is not required, the sidewalk shall be completed to the satisfaction of the city engineer prior to issuance of an occupancy permit.

Section 3. Sec. 105-1-8 and Sec. 105-1-9 are amended to read:

Sec. 105-1-8. - Building permits and approval of plans.

The building official shall in no case grant any permit for the construction, moving or alteration of any building if the building, as proposed to be constructed, moved or altered, would be in violation of any of the provisions of this chapter. The building official shall consult with the city engineer and/or city planner to determine compliance with this chapter. The building official shall establish requirements for the submittal of plans documenting compliance with the requirements of this chapter. Plans may be submitted electronically with approval of the building official.

Section 4. Sec. 105-1-10 is amended to read:

Sec. 105-1-9. - Certificate of occupancy.

It is unlawful to use or permit the use of any building or premises or part, hereafter created, erected, changed, converted, moved, altered or enlarged wholly, or partly in its use or structure, until a certificate of occupancy shall have been issued therefor by the building official. Such certificate shall show that such building or

premises or part and the proposed use thereof are in conformity with the provisions of this code.

Section 5. Sec. 105-1-11 is amended to read:

Sec. 105-1-10. - Fees.

The board of city commissioners shall establish, by resolution, fees for processing applications or other actions or proceedings conducted under this chapter. Before accepting for processing any application for an activity for which a fee has been established, the designated city official shall charge and collect the required fees. No fee shall be required for any appeal filed by an agency of government.

Section 6. Sec. 105-1-12 is amended to read:

Sec. 105-1-11. - Board of Adjustment.

- (a) The board of city commissioners shall exercise the powers and duties of a board of adjustment as authorized by N.D.C.C. §40-47-01 and §40-47-07 through §40-47-11. The board may, at its discretion, refer requests to the planning and zoning commission for review and recommendation prior to taking action.
- (b) The board of city commissioners acting as the board of adjustment shall have the following powers and duties:
 - (1) Variances.
 - a. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this chapter in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the chapter would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved.
 - b. No adjustment in the strict application of any provisions of this chapter shall be granted by the board of adjustment unless it finds that:
 - 1. There are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in

the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this chapter, whether in violation of the provisions of the chapter, or not;

2. For reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant; and
 3. The grant of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- c. In granting any variance, the board of adjustment shall prescribe any conditions applying thereto that it may deem necessary or desirable to carry out the general purposes of this chapter or preserve the neighborhood or general welfare from injury.
- (2) Renewal of certificate of occupancy for nonconforming use. The board of adjustment shall have the power to renew a certificate of occupancy for nonconforming use in accordance with the provisions of section 105-1-1. In granting such renewal, the board of adjustment shall determine that the temporary continuation will not be injurious to the neighborhood, nor to the public welfare, and that there are unusual circumstances or conditions which would create an unnecessary hardship on the applicant for extension if such extension were refused. The board of adjustment may refuse to grant an extension to the certificate of occupancy for a nonconforming use if application for such extension is received by the board of adjustment less than 15 days prior to the expiration of the original certificate of occupancy.
 - (3) Special uses. The board of adjustment shall, on application, hear a request for a special use in accordance with the provisions of section 105-1-5. The board of adjustment shall grant approval for such special use if and only if it finds that such use is in full conformity with all standards relating thereto as specified in section 105-1-5, and with any other conditions, regulations and standards specified elsewhere in this chapter and applicable to said special use.
 - (4) Recommendations to planning and zoning commission. The board of adjustment is authorized to recommend to the city planning and zoning

commission, for study or action, any changes or amendments to the text or district zoning maps that the board finds desirable. The planning and zoning commission shall consider such recommendations and may prepare appropriate amendments for the consideration of the board of city commissioners to carry out said recommendation.

- (5) Miscellaneous powers and duties. The board of adjustment shall have such other powers and duties as may be authorized by this chapter.
- (6) Rules. The board of adjustment is authorized to establish such rules of procedure, not in conflict with any provisions of the laws of this state, this chapter, or any other ordinance of the city, as it may deem necessary to carry out the provisions of this chapter.

Section 7. Sec. 105-1-13 is amended to read:

Sec. 105-1-12. - Amendments.

Whenever the public necessity, convenience, general welfare or good zoning practice requires, the board of city commissioners may amend, supplement or change the regulations in the zoning ordinance, or the zoning boundaries or classification of property on the zoning map, as set forth in this chapter.

- (a) Initiation of amendments. A proposed amendment may be initiated by the board of city commissioners upon its own motion, or upon receipt of a request therefor from the planning and zoning commission, or upon receipt of a petition therefor from any interested person or their agents.
- (b) Report by planning and zoning commission; public hearing. The board shall require a report from the planning and zoning commission on a proposed amendment before taking final action thereon. The planning and zoning commission shall make a tentative report and hold a public hearing thereon with notice the same as required for a public hearing by the board of city commissioners, before submitting its final report. Such final report shall be submitted within 90 days of the referral of the proposed amendment to the planning and zoning commission unless the board is agreeable to an extension of time.
- (c) Action by board of city commissioners; public hearing. After receipt of the required final report on any amendment from the planning and zoning commission, or in the event of the failure of the planning and zoning commission to so report, the board shall hold a public hearing, after which the board may make a final determination on the proposed amendment. A hearing shall be granted to any person interested at the time and place specified.

Section 8. Effective Date. This ordinance shall take effect when adopted.

By: _____
President, Board of City Commissioners

Attest:

James Neubauer, City Administrator

First Consideration:

Second Consideration and Final Passage:

