



**AGENDA
MANDAN PLANNING & ZONING COMMISSION
COMMISSION ROOM 5:30 P.M.
FEBRUARY 25, 2019**

Roll Call, Reading and Approval of the January 28, 2019 minutes.

PUBLIC HEARINGS

1. Consider an ordinance of the Mandan Municipal Code enacting guidelines and regulations regarding murals.

A. Staff report B. Open public hearing C. Close public hearing D. Commission action

2. Consider an ordinance to amend and re-enact portions of Subpart B – Land Development and Public Services of the Mandan Municipal Code related to Telecommunications Facilities (Small Cells).

A. Staff report B. Open public hearing C. Close public hearing D. Commission action

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL BUILDING
JANUARY 28, 2019

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall on January 28, 2019, at 5:30 p.m. CDT.

ROLL CALL

Commissioners Present: Boehm, Klemisch, Klein, Knoll, Helbling, Laber, Liepitz, Frank, Renner, Camisa, Robinson

Commissioners Absent: Leingang

Commissioner Knoll motions to approve the December 19, 2018 minutes. Commissioner Laber seconds. Upon vote, the motion passes unanimously.

PUBLIC HEARINGS

Chair Robinson moves item #5 on the agenda, to the first public hearing.

1. A request from Mitzel Builders, Inc. for approval of a master subdivision plat of the proposed Lakewood 10th Addition. Said addition is an unplatted portion of Outlot A in the east ½ in Section 1, Township 138N, Range 81W, in the City of Mandan, of the 5th Principal Meridian, Morton County, North Dakota. The property is located in the McKenzie Drive SE & Oxbow Trail SE area.

A. Staff report.

John Van Dyke, City Planner, describes the request. The property is south of the wastewater treatment plant and east of the Heart River. The masterplan calls for single-family homes, a manufactured home development and self-storage. It is currently in the 100 year flood plain and in close proximity to the Lower Heart levee system. Several adjacent properties are in opposition to the masterplan. There are concerns complaints will increase because of odors from the wastewater plant.

Commissioner Karl Liepitz arrives at 5:34 p.m.

John says it does not align with the Future Land Use Map. The map shows that area reserved for open space. The land is adjacent to the levee and there are flood concerns. The masterplan does not align with the Mandan Land Use and Transportation Plan map. In addition, there are 2 studies in process that may follow the US Army Corp of Engineers levee recertification and FEMA/ND State Water Commission remapping of the floodplain that affects this property.

Commissioner Deb Klein arrives at 5:37 p.m.

The Engineering & Planning Department recommends denial of the masterplan for the following reasons:

1. The proposed master planned subdivision does not align with the Future Land Use Map, which denotes Open Space (See Exhibit 6).
2. The proposed master planned subdivision does not align with Goal 1, Policy 4, specifically related to protection of sensitive natural features (See Exhibit 7).
3. The proposed master planned area includes property that is subject to remapping efforts in-process by the Federal Emergency Management Agency/North Dakota State Water Commission which may have significant impacts on how the property can or should be developed, if at all.
4. The proposed master planned area includes property that is affected by a United States Army Corps of Engineering levee recertification which may have significant impacts on how the property can or should be developed, if at all.
5. The City of Mandan's construction standards that apply following removal from the floodplain based on fill (LOMR-F) do not adequately address basement construction and create the potential for increased loss of life and property and therefore more intense development is inappropriate until changes to the floodplain ordinance have been adopted.

Commissioner Liepitz asks John to explain how these areas can be removed from the Floodplain when fill is brought in. John says he and Shawn, Building Official, are having discussions about this.

Chair Robinson says FEMA now starts measuring their base flood elevation at the lowest level of a structure, like a basement rather than the main floor. He is on the Lower Heart Water Resource Board and they are working with FEMA on recertification. The CORP of Engineers only deals with structures (levee/dike). FEMA on the mapping. They submitted a plan to FEMA last week. Who knows how long the review will take. He knows there cannot be a permanent removal of dirt within 500' of the levee. He does not know how the CORP looks at it when there is excavation and fill back in. Detention or retention ponds would be an issue within 500' of the levee.

Dot asks John what specifically is the commission tasked with on determining a yes or no on this item. John says what the development should look like.

B. Open public discussion.

Bryan Zuroff, Mountain Plains LLC. They are working for Mitzel on this development. A Future Land Use Plan was put out in 2015. Mitzel has indicated he was not in discussions or approached regarding the Future Land Use Plan. It is government overreach when you start telling people how to develop their land with zero input. Mr. Mitzel is aware a large amount of fill needs to be brought in. It is not in anyone's interest to build below the 100 year base flood elevation. The entire area is over 80 acres and is only 1 or 2 feet below that right now. FEMA does go by the basement or crawl space elevations for flood insurance. They were hoping to have preliminary work done this spring or summer. They know getting through the government regulation side can really slow things down.

Chair Robinson says they will hear back about the FEMA recertification sometime in 2019. There will be permitting and regulation on the federal side.

Mayor Helbling thinks there are too few access points. Bryan says the city requires 2 access points. There is a 3rd in the 10-20 year plan. Bryan says the original Lakewood masterplans has shown this area as residential. Mayor Helbling says he was around when Mitzel purchased this property and Mitzel was made aware that the city did not want this area developed. It was discussed heavily.

Commissioner Liepitz says meetings were held to create the Future Land Use Map. The map is not binding, however he thinks there would have to be good reasons as to why we would deviate from it.

Bryan says the Lakewood development has been in process for the last 20 years. Before the current Future Land Use Map, the area was always planned as residential.

Commissioner Klein says this property is bottom land of the Heart River. It was never meant for development. She lived through the 2011 flood. Her home was never in the 100 year flood plain. She wasn't supposed to flood. She doesn't understand why we would want to put people in jeopardy.

Commissioner Laber says she was involved in the 2015 Future Land Use Study. It was all over the news/tv. Bryan says they are going off information that was given to them.

Chair Robinson says the map in the packet is the current FEMA 100 year flood plain map. There is a new proposed map out there.

Bryan says there is some land in this development that is not in the floodplain with a foot or two above the flood elevation. There is discussion on whether all the property is in the floodplain or not, looking at different maps.

Tony Goetzfried, lives directly across the Dead Heart. He says if they fill that area to bring it out of the flood plain, it will change their property. Will they be assessed for a bridge that would be built across the Heart? Where will water from retention ponds go? Landowners on his side of the Heart would be opposed to a mobile home court across the way.

Bryan says stormwater runoff after development cannot exceed pre-development. Mitzel would pay for 100% of the crossings not counting a possible future McKenzie Drive crossing. The manufactured homes are an idea right now. They would be located more to the south.

Kevin Nelson, Mountain Plains LLC. He says as professional engineers it is their duty to protect the health, safety and welfare of the public. All processes at the federal, state and local level will be followed properly in regards to bringing fill in to elevate out of the 100 year flood plain to ensure safety. If FEMA is remapping, they will find out if something changes when they go to their permits. This development should advance because right now it is open land that if left dormant could become an eyesore. There are wildlife and vector concerns with vacant land in your backyard. The development would also bring in city taxes. The developer is looking for the best possible use of the land. The ownership of the land can be negotiated with the developer, if this development doesn't go through. They have planned the lots in case a bridge doesn't cross the Heart the lots can be configured into residential lots. They are allowing configuration in case right of way is needed for a bridge.

John Van Dyke says the owners' rights of the land are not being hampered. It is currently zoned ag and if the commission were to grant the development to go forward a preliminary plat and zone change would need to be processed. He thinks if the commission allows this land to be developed as proposed, there needs to be a justifiable reason to deviate from the Future Land Use plan that was adopted by the city.

C. Close public discussion.

Commissioner Laber says she is not comfortable approving this before the FEMA determination and vetting the development as proposed.

Commissioner Frank says the map in the packet is deceptive. Mayor Helbling says the map is deceptive to some degree. John says they are the current FEMA maps and there is no intended deception.

D. Commission's action.

Commissioner Laber motions to deny the proposed Lakewood 10th Masterplan for the following reasons: 1. It does not align with the Future Land Use Map. 2. It does not align with Goal 1, Policy 4, specifically related to protection of sensitive natural features. 3. It includes property that is subject to remapping efforts in-process by the Federal Emergency Management Agency/North Dakota State Water Commission which may have significant impacts on how the property can or should be developed, if at all. 4. It includes property that is affected by a United States Army Corps of Engineering levee recertification which may have significant impacts on how the property can or should be developed, if at all. 5. The City of Mandan's construction standards that apply following removal from the floodplain based on fill (LOMR-F) do not adequately address basement construction. Commissioner Camisa seconds. Upon vote, the motion to deny is passed with the following vote: Boehm-aye, Klemisch-aye, Klein-aye, Knoll-aye, Helbling-aye, Laber-aye, Liepitz-aye, Frank-nay, Renner-aye, Camisa-aye, Robinson-aye.

2. Consider Ordinance No. 1291 to amend and re-enact Sec. 101-1-3, 105-1-4 (c) (2), and Sec. 105-4-1 (2) (a) and (b) of the Mandan Municipal Code related to the sale of fireworks and placement of fireworks stands.

A. Staff report.

John Van Dyke, City Planner, describes the item. The only change in the ordinance since the last time this was brought before the commission is the removal of the setback from residential. He included a draft of a temporary use application/permit so the commissioners can see what that would look like. It is similar to the county's. The operator of the stand will need a city temporary use permit and the state license issued by the Morton County Sheriff.

B. Open public discussion.

Andy Zachmeier, Morton County Commissioner and Morton County Planning & Zoning, says the sheriff couldn't be here tonight, but he texted Andy and said he will follow ND Century Code. If it does not follow the Century Code, he will not approve the permit. Andy does not see a problem as long as it is agreeable with the county's regulations. It seems to be ok.

C. Close public discussion.

D. Commission's action.

Commissioner Liepitz motions to approve Ordinance No. 1291. Commissioner Boehm seconds. Upon vote, the motion passes unanimously.

3. Consider Ordinance No. 1299 to amend and re-enact Section 101-1-3 and 105-1-5 (e) of the Mandan Municipal Code related to Cremation Facilities.

A. Staff report.

John Van Dyke, City Planner, describes the item. This came before the commission in November. Since then, John has collected comments from various funeral homes. He altered some of the requirements. Exhibits 1-3 are comments from funeral homes. They asked for a larger setback.

B. Open public discussion.

David Wise, DaWise Perry Funeral Services, says the suggested increase in setback requirements did not come from him. In North Dakota, there have been 10 crematories put in place by a crematory manufacturer called Mathews, based out of Florida. Crematories are not something you want right next to somebody's house. Bismarck's setback is 50' from property lines. Where he is currently located on Memorial Highway he has approximately 70,000 square feet. With a 200' from each property line, he is looking at having to meet not only 200,000 square feet, but an addition 150,000 square feet to be able to put in a piece of equipment to provide a more and more common practice. He agrees with setbacks from a residence, but does not agree with a 300' setback where he would have to purchase 8 acres of land in Mandan, because this is where he wants to stay. He would like to build a new facility with everything in one location, similar to what Bismarck Funeral Home has. There has been all kinds of emissions tests and he contacted a couple crematory manufacturers and all the emissions are well below what the state of ND allows. If they weren't below, the ND Health Department would intervene. There is noise from the machine that would only be heard if there were no walls around it. If he builds a new building, it will be soundproof. He would like to see a 200' setback from residential, not commercial. Fargo's is 50' from each property line. None of the larger cities in North Dakota require a 300' setback.

Commissioner Liepitz asks Mr. Wise to clarify the math in the acreage he would need. Mr. Wise displays a map of property he would like to relocate to. He outlines a 200' circumference with his new building in the middle. A piece of the property he would possibly want to change to residential, but it would not have a 200' setback from his building. He would like to place the building closer to Highway 1806. To meet a 300' setback he would have to purchase additional land. He would have to purchase anywhere from 6.5 to 8 acres to meet the setback from Living Water Church and the residential and may still be impeding. He would like to see 200' from residential. Would it be 200' from his building or from the equipment? John thinks clarifying language would have to be added to probably define the structure.

Commissioner Frank asks John if a 300' setback requirement from a property line would have the same issue in an industrial area as it does in a residential area, not being able to put

it next to anything. John says that is correct. It would be limited. John says there is plenty of industrial and Ag land in the ETA.

Commissioner Laber clarifies with John the setback is onerous on a new crematorium coming in and not what is built close by afterward.

Commissioners discuss how they want to define a crematorium and the setback requirements.

C. Close public discussion.

E. Commission's action.

Commissioner Laber motions to approve Ordinance No. 1299 conditional upon a definition of crematory facilities be added by the time it goes to city commission for consideration and the setback be 100' from a property line except along adjacent public right-of-ways. Commissioner Camisa seconds. Upon vote, the motion passes unanimously.

4. Consider an ordinance to amend and re-enact Sec. 6-1-6 related to possession of animals and enact Sec. 105-1-16 related to possession and care of chickens within city limits.

A. Staff report.

John Van Dyke, City Planner, describes the item. This ordinance is the product of several residents noting interest in housing chickens in town, more specifically a request by Travis Dengel who provided a brief presentation in fall 2018. Additional information was provided to Planning & Zoning including a brief survey of communities in North Dakota that allow chickens.

Presently, the code does not allow chickens unless as a part of a commercial-scale operation. The code as outlined in Exhibit 1 would allow up to four (4) chickens per lot with several restrictions to mitigate negative impacts to neighboring property owners.

A preliminary draft ordinance was constructed and sent to city departments and several other agencies for review as is typical for ordinances and development applications. Minor adjustments were made based on feedback from the Building Department, Public Works, and Morton County Planning and Zoning. Exhibit 1 is the ordinance following these minor adjustments.

Finally, Exhibit 4 provides an acknowledgement of understanding of the requirements and responsibilities which the applicant and owner will be required to sign prior to the issuance of a permit. This will help ensure compliance as permits are issued.

B. Open public discussion.

Commissioner Renner says Section 105-1-16 part E states the planner or his/her designee shall make the determination of what is "close proximity". He thinks it is too vague. He asks John how are you going to determine close proximity. John says this is to avoid those applicants that own multiple adjacent properties. For example, downtown you typically have

25' lot widths with one person owning several lots with one house on it. He wants to make the discretion that is one applicant, one overall lot.

Commissioner Renner points out part F, number 4, that states construction drawings include least one of the following. He says there is not a definition there as well. He asks John if the applicant has to explain how and what they are building with before he issues a permit. John says they are going to have to be prepared to explain what they are building it with. That will give him a chance to discuss it with the building official to make sure they are meeting the requirements.

Chair Robinson asks if there is a follow up plan to ensure they are following the guidelines. John says he can take a look as part of the permitting process. He can record the inspection on the permit.

Commissioner Knoll asks John if he will be the one going out to do the inspections. John says it falls under other duties as assigned.

Commissioner Camisa finds urban chickens to be a problematic concept regardless if other cities are doing it. The neighbors are now going to have to put up with chickens. Twenty feet is not going to stop the odor and other issues. He thinks it should stay in the ETA. Not one resident he talked to was in support of chickens. Enforcement is another issue. Who is going to field the complaints? Is John going to go out every time? It may work on larger lots in newer subdivision that are on the outskirts of town, but what about the smaller lots in the middle of town?

John thinks it should be kept simple. If smaller lots become a concern, the setbacks can be increased. The permit will need to be renewed annually. If there have been issues, the permit can be revoked.

Commissioner Laber says there is a certain amount of ancillary noise living in an urban area. To get away from it and have complete quiet you would probably have to live outside the ETA.

Travis Dengel is present and voices his support for the chicken ordinance. He thinks John did a good job putting it together. He said the chickens are no worse than a dog kennel. If kept up, it causes no problems.

Andy Zachmeier, County Commissioner, "I think this ordinance as presented is a very good start. What I'm concerned about is the science behind it. The constitutional right to freedom to farm basically states that farmers and ranchers have the right to employ modern technologies and modern standards, which means modern science. So, what's the modern science for 4 chickens? Is it just a copy and paste from a different city ordinance? Which is fine, but what did that city use for their modern standard? The modern standard is what is going to be important here. Right now we're talking about chickens. I don't think this goes far enough when ND Administrative Code under Agriculture describes all types of poultry to include pheasants, wild game, turkeys, ducks, water fowl, ostriches, emus. Right now it's chickens what happens when somebody wants to have a turkey and they want to have a certain breed of turkey that gets no larger than your average meat sized chicken? When I read through some of this it does look like there is some basis of science on how the runs must be constructed, how the coops must be constructed. Somebody with a smaller house may still have the square footage enough to have at least one chicken or one piece of poultry. The

other concern I would have is the extraterritorial is that the county is not going to enforce a city ordinance. What Sheriff's Deputy is going to go out at 4 o'clock in the morning because somebody's hen or somebody's rooster is crowing? It isn't going to happen. What's your scientific basis for excluding roosters? Now I work in law enforcement. Let me tell you I've been to plenty barking dog calls. Three o'clock in the morning, 4 o'clock in the morning knock on the door, the owner comes to the door. You got to bring your dog in. It usually takes 4 or 5 violations before you can finally send it to court to have it adjudicated and that's a barking dog. I think the same argument can be made for a crowing rooster. If you don't have it in a soundproof facility, then getting the same number of complaints, eventually there's going to have to be enforcement. The other part is try to call it any type of nuisance, especially in the territorial. There is an ND Attorney General's opinion that the county cannot enforce any type of agricultural as a nuisance and it came out of a Morton County case, north on 1806, by Harmon Lake. That had to do with a large animal feed lot, which at the time never said they couldn't have animals in recreational zoning. It was how many animals per acre. Still supposed to be based on good, solid science. Eventually, the Attorney General's Office said the county has no authority on anything in agriculture calling it a nuisance. I really do feel that this ordinance should include any type of poultry. I don't know how this board would act if somebody came in and said I have a couple geese I would like to raise. I went to NDSU and these are the standards for raising geese and I measured the square footage of my yard, I have enough square footage. That's the kind of doors that are being opened. I also have to remind the committee there is nothing I can find anywhere in state law between the Attorney General's Office and the Association of Counties that has a definition of what a farmer or rancher is. Basically, it's whatever somebody wants to claim as their farming or ranching enterprise. It falls totally to the state to set the rules and regulations. So, one of the things on this ordinance is to exempt the extraterritorial. Because right now the county would have no authority to enforce this rule on behalf of the city and I would question the cities authority to enforce it on the extraterritorial. Another Attorney General's opinion on a zoning violation that's a nuisance on a junk yard that is out on Sunny Road. The city was taking enforcement action to a certain point where someone found the Attorney General's opinion that says the nuisance complaint falls back to the county to enforce. The county doesn't have a proper nuisance ordinance, which we now have a formal complaint to the county to enforce that piece of property, which I know we're going to have to build a nuisance ordinance and then address it at that point. If the city doesn't have the authority to address a nuisance ordinance in the extraterritorial, how are you going to address a nuisance ordinance on any type of livestock in extraterritorial? Attorney Brown should be asked to weigh in on some of these concerns and how this would be enforced in the extraterritorial or the State's Attorney's be asked."

Chair Robinson says the draft ordinance states within city limits. It doesn't reference the ETA at all.

Mayor Helbling thinks the enforcement would be no different than a barking dog.

Commissioner Klemisch says he lives down the street from somebody who occasionally has pheasants, geese, pigeons and hunting dogs. He doesn't know if he has them legally and personally he doesn't care. The only nuisance is a little bit of cooing now and then. Dogs make more noise than that. There is no smell problem. This ordinance is for Mandan residents to have a minimum number of chickens. Roosters can be annoying and that would concern him.

C. Close public discussion.

D. Commission's action.

Commissioner Klemisch motions to approve the ordinance as written. Commissioner Laber seconds. Upon vote, the motion passes with the following vote: Boehm-aye, Klemisch-aye, Klein-aye, Knoll-nay, Helbling-aye, Laber-aye, Liepitz-aye, Frank-aye, Renner-aye, Camisanay, Robinson-aye

5. Consider Ordinance No. 1301 to amend and re-enact portions of Subpart B – Land Development and Public Services of the Mandan Municipal Code related to Telecommunications Facilities (Small Cells).

A. Staff report.

John Van Dyke, City Planner, describes the item. The commission discussed this a couple months ago. John had a meeting with Commissioner Laber and a representative from Verizon. He made the changes suggested by Commissioner Laber. He then resent it to Verizon for their review. Because we are not discussing the fees here, Verizon opted to attend the City Commission meeting when the fees will be discussed.

B. Open public discussion.

Mayor Helbling's concerns are maintenance and possible accidents in the right-of-way. He thinks it should probably go on private land.

Commissioner Frank says the mayor brings up a good point and she asks John what the cell provider's liabilities are. Is the city or public absolved of accidents/damage that may occur to the equipment? John says the ordinance is a skeleton of what would form a master agreement between the city and the provider. A lot of those specifics would be outlined on how those incidents would be handled. There is a part in the ordinance that references this.

Chair Robinson asks if there is a reason they chose the right-of-way. John says it is easier for them to deal with one large property owner than many individual owners.

Commissioner Laber says on page 11, section 9C the provider dedicates the property to the city. The city owns the light poles the fixture will be attached to. So, the city will own the fixture and the light pole. The reason for the fee is in case city staff has to go replace a part. Public Works will have 5 units stored at the shop in case they need to change one out. That is why there is the annual fee. Every 15 years there is a renewal fee where the city can negotiate with the provider, if need be. The entire contract would be reviewed every 15 years. This is new, so there is no way to know the true cost. It is like owning stocks/bonds in utilities, however that utility is in public right-of-way because it has been determined it is a public good. Examples are electricity, natural gas and fiber optics. Cell phones are increasingly becoming important to the public.

Mayor Helbling doesn't agree with the city being responsible. The city isn't responsible for other utilities.

There is discussion on the length of the contract. John can change it to 10 years.

John thinks the master agreement would specify a lot of the details like ownership, liability, etc.

Commissioner Liepitz thinks the ordinance should be tabled because it is large and there are many questions and it is getting late.

C. Close public discussion.

D. Commission's actions.

Commissioner Laber motions to recommend approval of Ordinance 1301 as it pertains to the R3.2 zoning modifications and remove the 5G Telecommunications and Small Cell portion to come back at a later time under a different ordinance. Commissioner Frank seconds. Upon vote, the motion passes unanimously.

Commissioner Laber motions to adjourn. Commissioner Frank seconds. Motion passes unanimously.

Meeting adjourns at 8:26 p.m.

PUBLIC HEARING # 1

PUBLIC HEARING # 1

Mandan Planning and Zoning Commission Agenda Item PH1
 For Meeting on February 25, 2019
 Mandan Engineering and Planning Office Report
Murals
 Requested Action
Ordinance Text/Map Amendment

Application Details				
Applicant N/a	Owner N/a	Subdivision N/a	Legal Description City of Mandan	
Location City of Mandan		Proposed Land Use N/a	Parcel Size N/a	Number of Lots N/a
Existing Land Use N/a	Adjacent Land Uses N/a	Current Zoning N/a	Proposed Zoning N/a	Adjacent Zoning N/a
Fees N/a	Date Paid N/a	Adjacent Property Notification Sent N/a	Legal Notices Published 2/15/2019 & 2/22/2019	

Project Description

An ordinance was requested by both the Community Beautification Committee (CBC) and Mandan Architectural Review Commission (MARC) in recent months. A mural application moratorium was established in the meantime to ensure future murals were placed in appropriate locations within the city.

The ordinance presented in Exhibit 1 outlines application, revocation, and appeal procedures. It also addresses vandalism and establishes standards. The original guidelines are provided in Exhibit 2.

The primary differences between the ordinance and original guidelines are as follows:

- Location is directed to area in downtown (See Exhibit 6)
- Limited to commercial structures
- Text as a dominant theme is removed
- Aligns restrictions on content (freedom of speech) to those allowable by law

Why is the Location Limited?

Many art programs have their origins addressing specific community interests through creative means. A few examples include addressing vacancy by creating vibrancy (Boise’s Artist in Residency program), addressing graffiti (Philadelphia’s Mural Arts Program), or holding unique events to promote downtown revitalization (Providence, RI’s WaterFire; Mandan’s Buggies and Blues and Touch-a-Truck). These programs also share beginning in a specific location whether downtown or urban neighborhood.

However, the prior guidelines are a very good example of “a camel is a horse designed by committee”, where so many ideas have been incorporated into the guidelines that its purpose and direction were difficult to identify and follow by the time it was created.

In contrast, the ordinance is underpinned by the existing guidance provided by way of the Downtown Mandan Subarea Study and Governor Bergum’s Mainstreet Initiative. The Downtown Mandan Subarea Study specifically identifies using murals as a tool to enhance alleyways and draw pedestrian activity into these corridors for the purposes of downtown revitalization. Governor Bergum’s Mainstreet Initiative is heavily oriented on downtowns, where “unique places and spaces become the differentiator...” that will help create the vibrancy that is necessary to attract a 21st century workforce. It’s the creation of a sense of place that is the ultimate goal shared by these two studies. Exhibit 4 provides an illustration of the nuances that together create a sense of place.

Local artists through Melisa Gordon (BearsCat and Air Force-Patriot muralist) was solicited for comment. The ordinance was then shared via Facebook to other artists in the area. The ordinance was amended to incorporate a larger area than originally identified to produce more opportunities for canvas in downtown (See Exhibit 5).

Limited to Commercial Structures

One of the primary reasons for reevaluating the guidelines was the mural that was approved on the side of a residential garage. While beautiful and tasteful it certainly was not anticipated that this would be an application received by the MARC. That mural was approved by split decision, with many Commissioners stating that they felt the guidelines did not provide adequate means to deny despite feeling it may not have been the most appropriate location. These limitations will only allow murals to be placed on commercial structures or those with five (5) dwelling units or more.

Text as a Dominant Theme is Removed

Murals where the text is the primary structure has been removed after comment by Commissioner Larson (MARC and City Commission). Exhibit 3 shows three examples of murals that cities have produced where the dominant feature of the artwork is text itself. The primary concern with text initially was businesses using the mural as a means to advertise. This is addressed with the disallowance of the promotion of a business or product.

Aligns Restrictions on Content (freedom of speech) to Those Allowable by Law

Prior guidelines overstepped the allowable suppression of free speech afforded by law. Obscene material, which are graphic sexual depictions, and inciting violence would need to be “where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” (Brandenburg v. Ohio, 395 U.S. 444, SCOTUS, June 9, 1969 retrieved from <https://www.law.cornell.edu/supremecourt/text/395/444#writing-ZS> on February 20, 2019).

Agency & Other Department Comments

CBC Recommendation:

Approve the ordinance as written, with the understanding that there are concerns over:

- 1) Is the area too restrictive?
- 2) Should we allow them on the street-fronting sides of structures?

If there are problems that arise from these two concerns we can address them in the future.

MARC Recommendation:

Next meeting held February 26, 2019

Comments received thus far have been incorporated into the ordinance in Exhibit 1.

Business Development - Concerns aligned with CBC.

Building Department – Recommend approval as presented in Exhibit 1.

Engineering & Planning Recommendation

Engineering and Planning recommend approval of the zoning ordinance as presented in Exhibit 1.

Proposed Motion

Move to recommend approval of the ordinance related to murals (# yet assigned) as presented in Exhibit 1 contingent on Mandan Architectural Review Commission recommendation of the same.

List of Exhibits:

- Exhibit 1 – Ordinance (# yet to be assigned) – Murals
- Exhibit 2 – Original Mural Guidelines
- Exhibit 3 – Examples of Mural Text
- Exhibit 4 – Mainstreet ND Infographic
- Exhibit 5 – Input from Melissa Gordon (area muralist)
- Exhibit 6 – Mural Area as Proposed in Exhibit 1

EXHIBIT 1 - Mural Ordinance

ORDINANCE NO. 13XX

An Ordinance to Enact Sec. 105-1-17 of the Mandan Municipal Code related to the placement of murals

WHEREAS, Alleyway beautification including, but not limited to, the use of murals is a recommendation stemming from the Mandan Downtown Subarea Study

WHEREAS, Public art is an important tool used in the creation of place and a component of downtown revitalization

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

Section 1. Enacted. Section 105-1-17 related to display of public art:

Sec. 105-1-17 – Public Art

(a) Murals

(1) Purpose. It is the purpose of this section to promote downtown revitalization through the creation of place using murals as an optional and unique aesthetic overlay while preserving significant architectural elements.

(2) Definitions. The established definitions are for purposes of this section only.

Mural means an illustrative artwork applied directly or affixed to a structure for the purposes of public consumption exceeding two square feet in area.

Mural size means the smallest rectangle which encompasses all of the letters, designs, and symbols.

Originally submitted rendering means a color depiction of the mural including its dimensions and location on the structure.

Structure means fence or window, door, or wall of a building, where a mural will be applied directly or affixed.

(3) Permit required. A permit is required for any mural viewable from any public street, trail, park, or other right-of-way. The permit shall be issued by the planner or his/her designee upon approval from the Mandan Architectural Review Commission. A permit shall be tied to the mural for which it is being applied.

(4) Revocation. A permit may be revoked by the planner or his/her designee upon recommendation by the Mandan Architectural Review Commission for deviating from the originally approved rendering, a lack of maintenance resulting in substantial degradation of the original artwork, or vandalism. A mural shall be removed and the structure brought back

into substantial conformity of the original aesthetic of the structure within sixty (60) days of revocation. If it cannot be brought into conformity with the original aesthetic of the structure within sixty (60) days due to weather or other extenuating circumstance an extension may be granted by the planner or his/her designee.

- (5) Vandalism. If the artwork is vandalized, it shall be brought into conformity with the originally submitted rendering within six (6) months from the date of notice by the city. If it cannot be brought into conformity with the originally submitted rendering within six (6) months due to weather, artist availability, or other extenuating circumstance an extension may be granted by the planner or his/her designee.
- (6) Appeal. An applicant may appeal a denial or a permittee may appeal a revocation of a permit by timely request for a hearing before the Board of City Commissioners. The request for hearing must be received by the city planner or his/her designee within ten business days following the date of the notice of revocation or denial. The Board of City Commissioners shall hold a hearing on the applicant or permittee's request for hearing and shall render a final decision on the matter after said hearing. A separate, non-refundable fee may be required as established by the Board of City Commissioners.
- (7) Application. Applications shall be submitted no fewer than twenty-one (21) calendar days prior to the desired Mandan Architectural Review Commission meeting for which a decision is desired. An application for a mural permit shall include:
- a. General form established by staff to capture applicant, property owner, and property information, including necessary signatures.
 - b. Color rendering, including:
 - a. Dimensions of the mural
 - b. Dimensions of the structure
 - c. Location on the structure
 - c. Materials used in the construction of the mural.
 - d. Maintenance plan to address degradation due to time or vandalism.
 - e. Means and materials used to securely affix the mural if the mural is not to be applied directly to a structure.
 - f. A non-refundable application fee as established by the Board of City Commissioners.
- (8) Standards. The following standards shall apply.
- a. Locations shall be limited to:
 - i. alleyways lying between:
 - 1. 1st Street NW and Main St. W. bounded by 4th Ave. NW and Collins Ave.; AND
 - 2. 1st Street NE and Main St. E. bounded by Collins Ave. and 2nd Ave. NE

- ii. The non-street-fronting sides of primary and accessory commercial structures located on properties abutting 1st St. NW, 1st St. NE, Main St. W, and Main St. E bounded by 8th Ave. NW and 6th Ave. NE.
- iii. Site obscuring fencing along the rear property line for properties abutting the railyard bounded between 8th Ave. NW and 6th Ave. NE.
- b. No mural shall be placed on structures located on lots where the primary use is single-family, two-family, three-family, or four-family residential.
- c. The mural shall not promote a business product or transaction.
- d. The mural shall not contain illustrations or text that are obscene or incite violence.
- e. A mural may not be applied directly to significant architectural elements including, but not limited to, marble, granite, and glass block. Any mural affixed to or obscuring such elements shall be done so in accordance with the requirements established by the Mandan Architectural Review Commission, if approved.
- f. Materials shall be appropriate to the environment and surface upon which the mural will be applied to ensure durability and longevity.
- g. Maintenance shall be the responsibility of the structure owner.

Section 3. Sec. 105-1-17 is enacted.

Timothy A. Helbling, President
Board of City Commissioners

Attest:

James Neubauer,
City Administrator

Planning and Zoning Commission:
First Consideration:
Second Consideration and Final Passage:

February 25, 2019
March 19, 2019
April 2, 2019

EXHIBIT 2 - Original Mural Guidelines



Building Mural Guidelines

Section 105.5-1 (j9) of municipal code requires approval by the Mandan Architectural Review Commission for any wall mural prior to it being painted on any building. A rendering of the proposed artwork will be required. Please consult with the City of Mandan Planning Department for application information, phone 667-3225.

These guidelines apply for public murals viewed from the exterior of a building.

1. The mural or art must not be installed on the front of the building as determined by the property's street address. Sides or alleys are most appropriate.
 - a. If the proposed mural is on the side of a building exposed to view from a street or if it faces single-family residential properties, then:
 - i. The Mandan Architectural Review Commission will require two meetings for its consideration.
 - ii. The Planning Department will provide notice by mail within 1 week of its receipt of the application to owners of adjacent properties and properties facing the proposed location within 300 feet.
2. The mural or art may not convey a commercial message. Any words incorporated into the mural must be artistic in nature and not a dominant feature of the art.
3. Murals must not contain illustrations or words that involve nudity, obscenity, political messages, or that are discriminatory in nature.
4. The art may not cover significant historic or architectural elements of the building. This includes but is not limited to marble, granite, and glass block. This restriction does not apply to concrete blocks.
5. Materials used should be appropriate to the environment and surface upon which the mural will be applied to ensure durability and longevity.
6. If the building owner is not the applicant, evidence of owner approval must be provided in the form of a written letter of consent.
7. Maintenance of the artwork will be the responsibility of the building owner.

Adopted by the Mandan City Commission on Aug. 21, 2018

EXHIBIT 3 - Examples of Mural Text



EXHIBIT 4 - Nuances Defining Place



Mainstreet ND Infographic, retrieved from <https://www.mainstreetnd.com/> on February 20, 2019

EXHIBIT 5 - Melissa Gordon (muralist) Comments

John W. Van Dyke

From: Mel Gordon <mel@mel-ink.com>
Sent: Friday, February 01, 2019 9:17 PM
To: John W. Van Dyke
Subject: RE: Mural Ordinance and Proposed Location Map

Hi John-

It looks great! You have every aspect covered and this looks like a solid plan to me. The only thing I would suggest at this point is to add (be) under (8) Standards after "shall not".

I love the idea of a public art district and hope that we can make that come alive. I think Mandan would be a perfect location for something like that especially given the Art in the Park event and the Bandshell to name a few.

I sincerely appreciate your including me in this process! If you need any other input from an artist's point of view, please don't hesitate to ask.

Have a great weekend!
mel

From: John W. Van Dyke <john.vandyke@cityofmandan.com>
Sent: Friday, February 1, 2019 5:04 PM
To: Mel Gordon <mel@mel-ink.com>
Subject: RE: Mural Ordinance and Proposed Location Map

Hi Mel,

I've changed a few things to incorporate the majority of your suggestions. I had to make a few changes based on limits to government regulation on content of the artwork itself so some of the language has been changed for that reason.

I'd really like to keep it to a focused area in an effort to create a sense of place with all of the murals as the first step of a larger public art "district". The purple below opens it up to the sides of all commercial structures and a site obscuring fence along the railyard.



Have a great weekend Mel!

Best,

John

From: Mel Gordon <mel@mel-ink.com>
Sent: Friday, February 01, 2019 9:10 AM
To: John W. Van Dyke <john.vandyke@cityofmandan.com>
Subject: RE: Mural Ordinance and Proposed Location Map

Sounds great John! Thank you so much for including me and being open to suggestions. I agree that downtown is a great focal point for murals – especially with all the new businesses opening there.

I will forward any other feedback I receive from other sources. Everyone who has seen the ordinance on the Facebook page has given it the thumbs up but no comments as yet.

Melissa

From: John W. Van Dyke <john.vandyke@cityofmandan.com>
Sent: Friday, February 1, 2019 8:27 AM
To: Mel Gordon <mel@mel-ink.com>
Subject: RE: Mural Ordinance and Proposed Location Map

Thanks Mel! I will certainly incorporate your comments into this ordinance. My biggest goal is to create a concentration of artwork, with downtown being a perfect focal point for the general public to enjoy. I'll work on broadening the area and resend to you later today (hopefully). I'll also incorporate the other changes as well.

Thanks again,

John

From: Mel Gordon <mel@mel-ink.com>
Sent: Thursday, January 31, 2019 10:45 PM

To: John W. Van Dyke <john.vandyke@cityofmandan.com>

Subject: RE: Mural Ordinance and Proposed Location Map

Hi John-

Thank you so much for the email and documents – you work fast!

My biggest concern is the 6 block section of town that murals will only be permitted to be painted in. I understand the need to limit them in some fashion, but would it be possible to include in the ordinance a description of location allowed instead? The residential issue was addressed in Standards (8)b which will place a great deal of limits on placement right away. If Standards (8) a read: “Murals shall not be installed on structures which directly face a city street.” That could allow, for instance if the Library wanted to have a mural painted on the wall that faces opposite of Main Street. There are so many businesses outside of the Main Street section of town that would have the opportunity to have this sort of work done as well within these guidelines. Since the City has the last word on approval, control still remains with the City but gives more opportunity to local businesses who may be interested.

Marlo Anderson is interested in a mural because he has people stop at his National Day Calendar headquarters to take a picture with his building. Murals add so much to the city and drive tourism. I have people from all over the country who tag me with pictures of my murals and it truly is amazing to see their impact. They really are a bonus to the city they are in. It would be a shame to limit them to just the downtown area of Mandan.

A couple of other thoughts I have on the draft of the new ordinance:

Murals (a)(2) “Originally submitted rendering means a color image (add: depicting subject matter?) outlining dimensions...

(4) Revocation: It may be difficult to comply with the revocation order depending on what time of year it is and the availability of contractors to do work required.

(8) Standards c. The mural shall not contain illustrations or text that involve nudity, obscenity, political messages or that are discriminatory (add: or controversial?) in nature.

I appreciate your sharing this draft with me. I am going to post the documents to a private Facebook page we set up for Art Alley in Bismarck to gather input as well. I forwarded the draft of the ordinance to Eileen Walsh and Paul Noot via email as they are experienced in these matters too.

Have a great weekend and thanks again for including me in your efforts.

Melissa Gordon

From: John W. Van Dyke <john.vandyke@cityofmandan.com>

Sent: Thursday, January 31, 2019 4:34 PM

To: Mel Gordon <mel@mel-ink.com>

Subject: Mural Ordinance and Proposed Location Map

Hi Mel,

Can you look this over and blast this out to other mural artists in the area? I would very much appreciate any input prior to COB February 6. I know this isn't a tremendous amount of time, but if I don't catch Beautification Committee this month then I may have to wait till April to get their approval.

Thank you so much for your help with this! Let me know if you have any questions.

Best Regards,

John Van Dyke, AICP, CFM

Principal Planner

City of Mandan

205 2nd Ave NW

Mandan ND 58554

Office ☎: 701.667.3248

Fax ☎: 701.667-3623

✉: john.vandyke@cityofmandan.com

www.cityofmandan.com

EXHIBIT 6 - Map of Proposed Locations



PUBLIC HEARING #2

PUBLIC HEARING #2

Due to Planning and Zoning Commissioner interest in the telecommunication ordinance and limited availability of some Commissioners for the February and March Planning and Zoning Commission meeting, staff has not made adjustments to the staff report or telecommunications ordinance removing reference to the changes in the R3.2 District.

Staff had already noticed the public hearing per the motion in January and therefore a public hearing must be held regarding the telecommunications ordinance. However, once the public hearing is closed the agenda item may be tabled to a future date to accommodate Planning and Zoning Commissioner attendance.

No changes to the telecommunications component of the ordinance are planned moving forward besides removing reference to the R3.2 Residential District.

John Van Dyke, AICP, CFM

Principal Planner

Notice dates -
02-15-2019/02-22-2019

Mandan Planning and Zoning Commission Agenda Item PH4
 For Meeting on January 28, 2019
 Mandan Engineering and Planning Office Report
City of Mandan – 5G Telecommunications (Small Cell)/R3.2 Modifications
 Requested Action
Ordinance Text/Map Amendment

Application Details				
Applicant	Owner	Subdivision	Legal Description	
N/a	N/a	N/a	City of Mandan	
Location City of Mandan		Proposed Land Use N/a	Parcel Size N/a	Number of Lots N/a
Existing Land Use Mixed	Adjacent Land Uses N/a		Current Zoning N/a	Proposed Zoning N/a
		Adjacent Zoning N/a	Legal Notices Published 1/18/2019 & 1/25/2019	
Fees N/a	Date Paid N/a	Adjacent Property Notification Sent N/a		

Project Description
<p>Ordinance 1301 surrounds two primary topics: 1) 5G Telecommunication facilities (Small Cells); and 2) Modifications to the R3.2 Residential District.</p> <p>5G Telecommunication facilities:</p> <p>The City of Mandan was approached several months ago with regard to placement of infrastructure necessary to provide customers with 5G wireless service. The infrastructure is known as “small cell” technology, which is much smaller than a traditional cellular tower. They are small enough to be attached to other infrastructure that is typically located within the public right-of-way, such as street or traffic light poles, larger street signs, etc. They service a much smaller geography and therefore require a higher concentration than a standard tower.</p> <p>This ordinance outlines the requirements that must be met in order for a small cell to be placed within the public right-of-way, as well as within each zoning district. The ordinance provides standards for small cells attached to existing poles within the right-of-way, city-owned buildings, and privately owned buildings. Fees and process are established by reference to the Wireless Facilities Guidelines (See Exhibit 2). The fees were selected based on what is deemed reasonable by the Federal Communications Commission (FCC). The fees are permitted to be higher, although any amount selected needs to be justified. At this time, the fees shown in the Wireless Facilities Guidelines appear to be reasonable.</p> <p>Staff, including Principal Planner John Van Dyke, Engineering and Planning Director Justin Froseth, Public Works Director Mitch Bitz, City Administrator Jim Neubauer, and City Attorney Brown met to discuss the creation of the ordinance and associated guidelines. The ordinance is largely borrowed from City of Bismarck, ND, with a few necessary modifications in order to embed within City of Mandan code.</p> <p>The modifications also include changes following review and comment by Verizon Wireless staff and Commissioner Laber.</p> <p>Other telecommunication:</p> <p>While working through the ordinance changes related to telecommunications, limitations to the height of telecommunication transmissions towers has also been added. Presently, telecommunications transmission towers are exempt from height limitations and in some districts do not require a conditional use permit. This opens the door to the erection of these structures adjacent to residential development with limitless</p>

height. The proposed changes would require towers exceeding one-hundred-twenty (120) feet to obtain a conditional use permit. The height of one-hundred-twenty feet was determined based on those in Mandan today.

R3.2 Residential District:

Changes to residential districts were carried out in 2016. These changes included limiting the number of single-family residences to 10% of the total number of lots within a subdivision in the R3.2 Residential District; all other residences within this district are required to be twin home construction. Areas, such as Macedonia Hills, were platted prior to the 2016 ordinance change with the intent to allow a combination of single-family and twin home construction. Multiple inquiries from lot owners and real estate agents over the past few months brought attention to this particular restriction in the R3.2 Residential district. Inquirers expressed surprise and anger with the inability to construct residences on lots were not designed to be for twin homes.

The proposed changes remove the 10% clause, add a definition of a twin home, and clarify side setbacks for both twin homes and single-family dwellings. In review of the staff report, minutes to the meetings, and discussion with staff present at the time of the change to the R3.2 District, no reasoning can be found as to why the changes were made in 2016.

Agency & Other Department Comments

5G Telecommunication facilities/Other telecommunication:

As noted above, Engineering and Planning, Public Works, Administrator Neubauer, and Attorney Brown are in favor with the proposed changes.

R3.2 Residential District:

The Building Department has expressed the desire to remove the 10% clause, as they see no value and current computer tracking software does not allow them to track number of residences by subdivision. This means inadvertent issuance of permits is probable.

Engineering & Planning Staff Comments

5G Telecommunication facilities/Other telecommunication:

Engineering and Planning believe this will establish a firm foundation to process these applications and facilitate this technology in the best interest of the residents of the City of Mandan.

R3.2 Residential District:

Ordinance 1301 removes the City from monitoring the 10% maximum number of lots and allows each property within the district the same entitlements.

Engineering & Planning Recommendation

Engineering and Planning recommend approval of the zoning amendment as presented.

Proposed Motion

Move to recommend approval of Ordinance 1301 as presented in Exhibit 1.

List of Exhibits:

Exhibit 1 – Ordinance 1301 – Telecommunication Facilities & R3.2 Residential Districts

Exhibit 2 – Wireless Facilities Guidelines

Exhibit 3 – Pictures of Small Cells Wireless Infrastructure

Exhibit 1 - Ordinance 1301 - Telecommunications Facilities

ORDINANCE NO. 1301

An Ordinance to Amend and Re-enact portions of Subpart B – Land Development and Public Services of the Mandan Municipal Code related to communications facilities within the right-of-way and telecommunication transmission tower height limitations without first securing a conditional use permit

WHEREAS, The City of Mandan is committed to facilitating the provision for residents' wireless service needs

WHEREAS, Infrastructure necessary to provide for future services may require placement within publicly owned right-of-way

WHEREAS, Care must be taken in order to preserve the integrity of the variety of services supplied through the public right-of-way

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

Section 1. Chapter 115 is hereby renamed as follows:

Chapter 115 — STREETSRIGHT-OF-WAY

Section 2. Enacted. Section 115-10-1 relating to Purpose is hereby enacted to read as follows:

115-10-1 Purpose

To ensure that residents, businesses and public safety operations in the city have reliable access to wireless telecommunications network technology and state of the art mobile broadband communications services, the city desires to accommodate the deployment of wireless communications facilities and services within the public right-of-way. The city also desires to minimize potential negative impacts of wireless facility placement within the public right-of-way. This article applies only to installation in the public right-of-way. All other installations are governed by Chapter 105 of this ordinance, and all other applicable laws and regulations. The impact of wireless facilities can be reduced by maintaining standards and objectives for location, visual impact, structural integrity, compatibility, colocation, and the like, which do not unreasonably discriminate among similar users.

Nothing in this chapter affects the city's right to regulate users of the public right-of-way in a neutral and nondiscriminatory manner. The city intends to exercise its authority with respect to the regulation, placement, construction and modification of wireless facilities in the public right-of-way to the fullest extent permitted by applicable law.

Section 3. Enacted. Section 115-10-2 relating to Definitions is hereby enacted to read as follows:

115-10-2 Definitions

For purposes of this article, the following definitions apply. References to "sections" are, unless otherwise specified, references to sections in this article.

Antenna means a device used to transmit and/or receive radio or electromagnetic waves for the provision of communication services including, but not limited to, cellular, paging, personal communications services and microwave communications. Such devices include, but are not limited to small wireless facility antennas, small cell antennas, remote radio heads, directional antennae, such as panel antennas, microwave dishes, and satellite dishes; omnidirectional antennae; and wireless access points (Wi-Fi), including strand-mounted wireless access points.

Applicant means any person who applies for a permit under this article.

Attachment includes any wireless communication facility affixed to, contained in, or placed on or in a structure within the city's public right-of-way.

City means the City of Mandan.

City Engineer means the Mandan City Engineer or his or her designee.

City-Owned Structure means an existing structure owned by the city that is located in the city's public right-of-way. It does not mean State, County or other government entity owned infrastructure within the public right-of-way. It does not mean infrastructure owned by a public utility. It does not mean infrastructure located outside of the public right-of-way or on right-of-way which the city does not control.

Colocation means the mounting or installation of new wireless communication facilities on or within an existing wireless support structure.

Construction Plan means a written plan, and a collection of documents, for construction that:

- (i) demonstrates to the satisfaction of the city engineer that the aesthetic impact and physical structure of the wireless communication facility is comparable to prevailing standards of similar structures in the immediate area;

- (ii) includes the identity and qualifications of each person directly responsible for the design and construction;
- (iii) includes signed and sealed documentation to proportional scale from a professional engineer licensed in North Dakota describing the proposed wireless communication facilities in detail, including
 - a. the proposed location of the wireless support structure and all easements, property boundaries, and existing structures within on the same side of the roadway and within fifty (50) feet of such wireless facility or wireless support structure unless a different distance is specified by the city engineer;
 - b. a structural, loading, and wind-speed analysis for existing, proposed, and reserved loading, and
 - c. a schematic describing the communications properties of the facility, including EMF and RF propagation and off-site data connections; and
- (iv) includes such other information as the city engineer may require.

EMF means electromagnetic frequency.

Equipment means accessory equipment serving or being used in conjunction with an antenna or wireless communication facility. Equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables and conduit, equipment buildings, cabinets, storage sheds, shelters, and vaults.

Existing Height means the height of a structure, including wireless communications facilities, as originally approved or as of the most recent approved modification. Height shall be measured from natural grade to the top of all appurtenances.

Existing structure means a structure located in the public right-of-way and capable of supporting wireless communication facilities, erected prior to the application for colocation or substantial modification under this article. An existing structure includes a replacement of an existing structure that is proposed to accommodate the colocation of a wireless communication facility, as long as the replacement structure is substantially similar in appearance to the existing structure and is no taller than the existing height of the structure to be replaced.

Ground-Mounted Equipment means any equipment that is affixed to the ground and extends above the natural grade.

Guidelines or Wireless Facility Guidelines means any procedure or description from the city engineer, which may be modified and amended from time to time, concerning wireless facility application process and siting requirements. Any such Wireless Facilities Guidelines shall be consistent with this article.

Interference means any material and harmful impairment, physically or electronically of the operation, views, signals or functions of city property or third party property.

Laws means any and all applicable federal and state laws and applicable local ordinances, resolutions, regulations, administrative orders or other legal requirements.

Land Development Code means the Subpart B – Land Development and Public Services of the Code of Ordinances of the City of Mandan, North Dakota.

MAA means a master attachment agreement between the city and a lessee that defines the general terms and conditions which govern their relationship with respect to particular sites at which the city agrees to permit lessee to install, maintain, and operate communications equipment on existing or new city owned infrastructure.

Installation Permit Holder means any person that has obtained permission through the issuance of an installation permit from the city under this article to locate, install or place wireless facilities in the public right-of-way.

Person means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Public Right-of-Way means the area on, below, or above a public roadway, highway, street, cart way, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

RF means radio frequency.

Site or Premises means the area occupied by the wireless support structure, the wireless communications facility, accessory equipment, ground-mounted equipment, and the path of the wire or conduit connecting to an off-site network.

Wireless Communication Facility means any fixed tangible asset usable for the purpose of providing wireless transmission of voice, data, images or other signals or information including, but not limited to, telecommunications, cellular telephone service, personal communications service and paging service. A wireless communications facility includes antennas and accessory equipment. A wireless communications facility does not include an underlying wireless support structure.

Wireless Support Structure means any fixed, above-grade structure in the public right-of-way used to house or support wireless communications facilities and equipment.

Section 4. Enacted. Section 115-10-3 relating to Locating Wireless Communication Facilities is hereby enacted to read as follows:

115-10-3 Locating Wireless Communication Facilities

The location of any new wireless communication facility in the public right-of-way shall be prioritized to locate on existing structures, such as utility poles through agreement with the pole owner, or street lights, or the replacement of an existing structure as provided herein. Installation of wireless support structures for the purpose of supporting a wireless communication facility within the public right-of-way will be permitted only as deemed appropriate by the city engineer and the applicant must have a franchise agreement with the city for the use of the public right-of-way, MAA, or an encroachment agreement for that specific location and an installation permit.

Section 5. Enacted. Section 115-10-4 relating to Installation Permit Required is hereby enacted to read as follows:

115-10-4 Installation Permit Required

a. No person may construct, install or modify a wireless communication facility within the public right-of-way without having first done one of the following:

1. Having entered into an MAA with the city, if the wireless communication facility will be installed on city owned existing or new infrastructure.
2. Having obtained a franchise from the city allowing use of the public right-of-way.
3. Having obtained an encroachment agreement allowing the specific occupation of the public right-of-way.
4. Having entered into an agreement to co-locate with an entity with infrastructure in the right-of-way pursuant to a current franchise. In each case, the person must also obtain an installation permit from the city engineer as set forth in this chapter.

b. Installation Permit Issuance. Before a Site License, if applicable, is agreed upon and an installation permit is issued, a written application for each site must be filed with the city engineer containing such information as may be required by the city engineer. The application shall include the following:

1. Information required to be provided by a registrant for public right-of-way use and occupancy under this chapter.
2. The name and address of any retail communications service provider for which the facilities are intended to be used, if this is different than the applicant.

3. Evidence that the applicant has obtained all state permits and other licenses, as well as insurance, performance and payment bonds as may be required by the city engineer.
4. A detailed map, including a digital shapefile, of the location of all proposed facilities for which the permit is sought.
5. A construction plan and profile, if requested.
6. Other information required by this article.

c. Fees. The city may require payment of a nonrefundable installation permit application fee at the time an installation permit application is submitted, as approved by the Board of City Commission and adopted in the Wireless Facilities Guidelines. Such fees shall be set to recoup some or all of the cost of permit review, processing and issuance, and will be in addition to any other applicable fee or any separate payments that may be required in the event an installation permit is granted for use of the public right-of-way or the use of city-owned structures. The city reserves the right to charge applicants for installation permits and a fee for their use of the public right-of-way to the extent that such charges are allowed under state law. All such fees shall be described in the Wireless Facility Guidelines and may be in addition to any fee charged for or cost associated with attachment to city-owned structures.

d. Where the city determines that it requires expert assistance in evaluating an application, the city may procure technical and other specialized consulting services that may be necessary to promptly and thoroughly review the application. Reasonable fees charged by the consultant, in an amount not to exceed \$500 for up to five sites and \$100 for each additional site thereafter, shall be reimbursed to the city by the applicant regardless of whether the application is, or is not, ultimately approved and a permit issued. The city shall be authorized to require the applicant to deposit a sum equal to the reasonable estimated amount of consultant fees to be paid.

e. Time for Review. The city engineer shall comply with applicable federal, state and local law concerning the time period for review following receipt of a completed application to install or modify a wireless communications facility or wireless support structure in the public right-of-way. Specific timeframes shall be described in Wireless Facility Guidelines.

f. Nondiscrimination. The city shall evaluate, issue, and deny permit applications under this article on a neutral basis, with no unreasonable discrimination among similarly situated applicants and installations.

g. The city engineer may impose additional reasonable conditions on any installation permit issued under this article relating to time, place and manner.

h. The city shall not impose environmental testing, sampling, or monitoring requirements or other compliance measures for RF emissions on wireless communication facilities that are

categorically excluded under the FCC's rules for radiofrequency remissions pursuant to 4 CFR 1.1307(b)(1).

i. Scope and Duration.

1. Any installation permit granted pursuant to such application shall be limited in scope to the description submitted in a completed application, as modified by any further agreed-upon conditions or subsequently approved modification.
2. The installation permit shall be voided by the city unless in the city's determination the work is commenced within one hundred eighty (180) days from the date of issuance of the permit, unless extended by the city engineer. If the facility is not used for its intended use within twelve (12) months from the date of permit issuance, the city shall revoke the permit unless extended by the city engineer.
3. Within sixty (60) days following completion of facility installation as described in the permit application, the permit holder shall submit as-built diagrams in digital format and digital photographs of the Site to the city engineer. A digital shapefile shall also be provided to include such information as deemed necessary by the city engineer.
4. MAAs issued under this article are valid for a period of ten (10) years. To extend the MAA for an additional period of ten (10) years, the permit holder shall provide proof that it continues to have the legal authority to occupy and use the public right-of-way for the purpose set forth in its permit; shall affirm that its site as it exists at the time of the renewal is in full compliance with the applicable city permit or permits issued for the site, and is in compliance with FCC regulations; and shall pay any permit processing fee required for renewal. Failure to submit such proof of legal authority or affirmation of compliance shall be grounds for non-renewal of the permit. The burden is on the permit holder to demonstrate that the site complies with the requirements herein.

j. Conditional Upon Related Agreements. The city engineer may cause a permit under this article to be made temporary or conditional upon the execution of a finalized permit application or attachment agreement further addressing the proposed installation.

k. Proximity to Other Facilities. The city reserves the right to deny, but is not obligated to deny, any siting permit application under this article that proposes to install a new wireless support structure within three hundred (300) feet of any other existing wireless support structure. It is the intent of this provision to encourage the colocation of wireless communication facilities on the same wireless support structure or on existing buildings or other structures, and to sensibly limit the overall visual impact of wireless communications in the public right-of-way.

l. Denial of Permit. Any denial of permit shall be made in writing, supported by substantial evidence that the proposed installation would be inconsistent with one or more of the provisions of the Code of Ordinances of the City of Mandan, North Dakota or with the health, safety and welfare of the city.

Section 6. Enacted. Section 115-10-5 relating to General Conditions is hereby enacted to read as follows:

115-10-5 General Conditions

The city engineer may approve a permit for the installation of a wireless communication facility in the public right-of-way, provided the applicant certifies compliance with the following general conditions, and subject to other use-specific conditions and other requirements set forth in this article and in any Wireless Application Guidelines.

a. General Design Standards.

1. The installation shall be designed with the smallest footprint possible, be harmonious with its surroundings, and streamlined in appearance. The city engineer may require camouflage or concealment efforts. All designs of wireless communication facilities must comply with zoning requirements, including conditional/special use permitting where required, and be approved by the Mandan Architectural Review Committee.
2. The height of any wireless communication facility shall be comparable to nearby structures of similar type and not more than 50 feet above normal grade unless otherwise approved by the city engineer in the installation permit.
3. Antennas shall be as compact as possible. To address the physical and aesthetic impact on the public right-of-way, the city engineer may limit the physical size of the antenna.
4. All riser cabling and wiring must be contained in conduit, affixed directly to the face of the structure, or enclosed within the hollow interior of the pole, for as long as it is technically feasible. No exposed slack or extra cable will be allowed.
5. No signage or advertising will be permitted, except as required by law or as specifically permitted or required by the city engineer.
6. Wireless communication facilities in historic areas shall comply with any special requirements applicable to such areas, and may be subject to additional city review.

b. Minimizing Impacts on Adjacent Property Owners.

1. A permit holder must design and install a wireless communication facility so as to minimize any impact on the adjacent property owners, and must actively mitigate any unreasonably adverse impact relating to visibility from the adjacent property; access to and from the adjacent property; intrusion of light, sound, or smell; in addition to any

other cognizable unreasonable and substantial impact made known by an adjacent property owner. This shall not apply to new developments that were not present at the time of installation; however, this does not mean that specific sites will be included in any renewal agreement between the wireless communication facility permit holder and the city.

2. No Antenna shall be within five (5) feet of a door, balcony or window nor placed in front of any window within 20 feet and located at a similar height to the antenna unit on the adjacent public right-of-way, unless otherwise restricted by the right-of-way width.
3. An installation shall not interfere with city operations, or the operations of preexisting third-party installations in the public right-of-way. The city will reasonably cooperate with the applicant and/or permit holder to permit activities and modifications that may effectively avoid or correct the interference.

Section 7. Enacted. Section 115-10-6 relating to Wireless Communications Facilities Upon Existing Structures is hereby enacted to read as follows:

115-10-6 Wireless Communications Facilities Upon Existing Structures

In addition to the general conditions described in section 115-10-5 and any specification contained in the Wireless Facility Guidelines, any wireless communication facility for which an installation permit is requested under this chapter shall meet the following requirements:

- a. The wireless communication facility shall not increase total existing height, including the wireless support structure, by more than 10% over other public utility poles in the area unless, in the city engineer's discretion, an alternative height is accepted depending on the type and structure of the existing facility and the proposed location.
- b. The wireless communication facility shall not impair nighttime visibility in the area that result from light emanating from a utility structure and shall not otherwise interfere with the original purpose of an existing structure.
- c. Electrical power. Unless otherwise provided in the applicable Site License, franchise, or encroachment agreement the acquisition of electrical power shall be the sole responsibility of the applicant.

Section 8. Enacted. Section 115-10-7 relating to Attachments to City-Owned Structures is hereby enacted to read as follows:

115-10-7 Attachments to City-Owned Structures

In addition to the requirements set forth in this article and the Wireless Facility Guidelines, the following conditions will apply to a wireless communication facility attached to a city-owned structure:

a. The city engineer shall require an applicant for a wireless communication facility attachment to a city-owned structure to execute a separate MAA with the city addressing such attachment.

b. The management of attachments to city-owned structures is governed by the MAA between the city and the applicant. The MAA does not waive any zoning, building code or other public right-of-way management requirements that may also apply.

c. The city may require payment of rental fee, permit fee, application fee or other compensation, as set forth in the Wireless Facility Guidelines.

d. In the event a city-owned wireless support structure is compromised or knocked down, the city and an affected wireless communication facility permit holder will cooperate to reinstall or replace the pole and restore the wireless communication facility. The wireless communication facility permit holder shall be responsible for costs incurred by the repair or reinstallation of the wireless support structure. The MAA shall contain indemnifying language holding the city harmless for damages stemming from third-parties.

e. Training. At the request of the city, the permit holder shall host on-site training for city maintenance staff. The training will be offered semiannually or as otherwise agreed between the parties. The training shall include occupational safety, personal protection, proximity limits, emergency procedures and contact information. This information shall also be provided in writing and submitted electronically to the city.

Section 9. Enacted. Section 115-10-8 relating to Replacement of City-Owned Structures or Addition of City-Owned Structures is hereby enacted to read as follows:

115-10-8 Replacement of City-Owned Structures or Addition of City-Owned Structures

In addition to the general conditions described in this chapter and the Wireless Facility Guidelines, the proposed replacement of an existing city-owned structure or placement of a new city owned structure shall be subject to the following requirements.

a. The replacement of a city-owned structure or the addition of a new city owned structure shall be entirely at the reasonable discretion of the city engineer and at a minimum, must be able to co-locate at least one additional similar facility.

b. Before installing a new structure in the right-of-way or replacing an existing structure, the applicant must demonstrate the following, to the satisfaction of the city engineer:

1. That the facility is not able to be placed on existing infrastructure. The applicant shall provide a map of existing infrastructure in the service area and describe why each such site is not feasible.
2. That city functions for which the original structure was used will be preserved, improved or enhanced, as part of any replacement structure, at the applicant's expense. Replacement of lighting, electrical power, network connectivity, and any other functional purpose of, on or within the original structure shall be done to the satisfaction of the city engineer.
3. In order to place a new city owned facility, the applicant must establish to the satisfaction of the city engineer that there are no existing or replacement structures that would provide the necessary capabilities, that the new facility serves a public purpose other than wireless communication, and that placement of the facility outside of the right-of-way on private property would be unduly burdensome.

c. Ownership. A replacement structure or a new structure under this section shall be dedicated to and owned by the city upon completion, to the satisfaction of the city. Unless otherwise provided in the applicable MAA, Site License, franchise, or encroachment agreement, the permit holder shall provide the city a Bill of Sale, free and clear of all liens and encumbrances.

d. Unless otherwise provided in the applicable Site License, franchise, or encroachment agreement, acquisition and use of electrical power to serve a wireless communication facility on a replacement wireless support structure or facility shall be the sole responsibility of the permit holder.

e. Stocked Poles. To enable prompt replacement in the event of a knockdown or structural compromise, a permit holder shall provide the city with an inventory of poles to be kept by the city. The inventory shall consist of, for each type/style of pole, one pole substantially identical to the initial city owned replacement pole. For each set of five additional replacement poles of any particular type/style, an additional pole of that type/style.

f. Facilities placed in the right-of-way shall be maintained in accordance with the terms of this article and as provided for in the MAA.

g. An applicant may be required to enter into such license and other agreements with the city or third parties as the city may require to effect the replacement, consistent with this section.

Section 10. Enacted. Section 115-10-9 relating to Equipment is hereby enacted to read as follows:

115-10-9 Equipment

a. Equipment other than ground-mounted equipment shall be mounted in one of the manners described below, or as prescribed by the city engineer.

1. Equipment shall be mounted in a base shroud of approved design. The base shroud should be coated or painted an approved color to match the pole.
2. Equipment shall be mounted directly to the pole a minimum of twelve (12) feet above the existing grade and be coated or painted with an approved color to match the pole.
3. Equipment shall be mounted to the pole in an equipment box a minimum of twelve (12) feet above the existing grade. The equipment box shall be coated or painted an approved color to match the pole.
4. Equipment shall be attached to the wireless support structure in a manner as approved by the city engineer.

b. Ground-Mounted Equipment.

1. A permit for a wireless communication facility that involves ground-mounted equipment will be issued if the city engineer finds the following:
 - a. The ground mounted equipment will not disrupt traffic or pedestrian circulation;
 - b. Space exists in the public right-of-way to accommodate the ground mounted equipment;
 - c. The ground mounted equipment will not create a safety hazard;
 - d. The location of the ground mounted equipment minimizes impacts on adjacent property;
 - e. In any historical area, that the ground mounted equipment does not detrimentally affect the historical nature of the area, to the satisfaction of the city engineer;
 - f. That no reasonable alternative exists that is more favorable to adjacent property owners and to effective use and management of the public right-of-way; and
 - g. The ground mounted equipment will not adversely impact the health, safety or welfare of the community.

2. Underground equipment. The city engineer may require, at his or her discretion, that utilities be placed underground, and may prohibit the installation of ground mounted equipment unless technically infeasible or otherwise cost prohibitive.

c. Any excavation required for installation of ground-mounted or underground equipment shall be performed in accordance with all applicable local, state, and federal laws and regulations.

Section 11. Enacted. Section 115-10-10 relating to Attachment to City-Owned Buildings is hereby enacted to read as follows:

115-10-10 Attachment to City-Owned Buildings

The city may permit the attachment of a facility to a city-owned building upon the recommendation of the city engineer and the approval of a lease by the city commission. An installation permit shall be required for such installations. If a city-owned building is sold the permit for the relevant attachment shall be revoked. The city shall work with the permit holder to identify a suitable alternative site for the replacement of the wireless communication facility and credit the permit holder for the fees already incurred toward the application of a new site. The city shall be held harmless for the permit revocation effectuated by the sale of the city-owned building.

Section 12. Amended and Re-enacted. Section 105-1-4 (q) relating the Utility service group is hereby enacted to read as follows:

(q) *Utility service group.* A use in the utility service group is a facility or structure necessary for the safe or efficient operation of a telecommunications, gas, water, electric, refuse, storm sewer or sanitary sewage system that serves more than an individual property or a subdivision. Facilities that provide service to individual properties or a subdivision are not part of the utility service group, are considered permitted uses and do not require any conditional use review by the planning and zoning commission or the city commission.

(1) The distinguishing characteristics of utility service group uses are:

- a. The utility which the structure or use serves is one available to the general public;
- b. The design and location of the premises and structure is in full compliance with all requirements of state and federal regulations governing the operation of the utility;
- c. The design and location of the premise and structure is reasonably necessary to provide service for a reasonable period of time with projected growth considered;
- d. Except for electrical distribution installations, when a side of the lot on which the use is located adjoins a lot in a residential district or adjoins a residentially developed lot in a multi-use district there shall be planted and maintained a landscaped strip no less than five feet in width on that side of the lot;
- e. Proper fencing with lot entrances shall be erected at least six feet high and maintained around all installations and structures in which there is any safety hazard whatsoever

for children, provided that all structures shall be so located that such safety fence shall be so placed as not to encroach on any front yard required in the district in which the use is located; and

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

(2) The following are examples of utility service group uses:

- a. Telecommunication transmission tower;
- b. Electric transformer station;
- c. Regional electric transmission line;
- d. Sewage pumping station;
- e. Water pumping station;
- f. Water reservoir;
- g. Gas pressure regulator station;
- h. Solid waste recycling center;
- i. Stormwater detention facility; and
- j. Stormwater pumping station.

k. Wireless Communications Facility

Section 13. Amended and Re-enacted. Section 101-1-3 adding a new definition following Wholesale group to read as follows:

Wireless communications facility means any fixed tangible asset usable for the purpose of providing wireless transmission of voice, data, images or other signals or information including, but not limited to, telecommunications, cellular telephone service, personal communications service and paging service. A wireless communications facility includes antennas and accessory equipment. A wireless communications facility does not include an underlying wireless support structure.

Section 14. Amended and Re-enacted. Section 101-1-3 adding a new definition following Telecommunication facility to read as follows:

Telecommunication transmission tower means any pole, spire, structure or combination hereof, including supporting lines, cables, wires, braces and mast, designed and constructed primarily for the purpose of supporting one (1) or more antennas, including self-supporting lattice towers, guyed towers or monopole towers. A telecommunication tower may include, but not be limited to, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers and personal communication service towers.

Telecommunication transmission tower and antenna height means the height of a freestanding telecommunication transmission tower and antenna shall be measured as the distance from ground level to the highest point on the tower, including the antenna. The height of a rooftop communication antenna shall be measured as the distance from the point where the base of the tower and antenna is attached to the roof, to the highest point on the supporting structure, including the antenna.

Section 15. Amended and Re-enacted. Section 101-1-3 amending the definition of Twin home to read as follows:

Twin home. ~~See two-family dwelling.~~ means two single-family dwellings in a zero side yard setback configuration resulting in a structure containing two dwelling units bisected by the side property line.

Section 16. Amended and Re-enacted. Section 105-1-2 (1) to read as follows:

- (1) *Structures excluded from height limits.* A building height limit set forth in this chapter shall not apply to belfries, chimneys, domes, flagpoles, flues, monuments, cupolas, ~~broadcast and communication telecommunication transmission~~ towers, spires, tanks, water towers or similar structures, or to bulkheads, elevators, water tanks or similar roof structures and mechanical appurtenances. No such structure located on a roof shall have a total area greater than 25 percent of the roof area of the building; nor shall such structure be used for any residential purpose or any commercial or industrial purpose other than a use incidental to the main use of the building. No such structure shall be located closer to the lot line than a distance greater than 110 percent of the height of the structure above ground level.

Section 17. Enacted. Section 105-1-5 (k) relating to a requirement for telecommunication transmission tower and antennae height in excess of 120' to obtain a conditional use permit to read as follows:

(k) Telecommunication transmission tower and antenna height exceeding one-hundred-twenty (120) feet.

Section 18. Amended and Re-enacted. Section 105-3-4 through 105-3-17 relating to zoning district standards to read as follows:

Sec. 105-3-4. - R12 Residential District.

- (a) *General description.* The purpose of this district is to provide an opportunity to construct single-family housing on large lots that are protected from being further subdivided.

- (b) *Primary uses.* The primary permitted use is a single-family dwelling unit, either site built or modular, with a minimum habitable space of 3,500 square feet.
- (c) *Secondary uses.* A group dwelling for six or fewer individuals with developmental disabilities as defined in NDCC 25-16-14 is a permitted secondary use. This use requires one additional on-site mobility impaired parking space.
- (d) *Conditional uses.* These uses are permitted on a specific site only after review and approval by the planning and zoning commission and ratification by the city commission. ~~A PUD district will be created to document any conditional use approval.~~
 - (1) Accessory dwelling unit.
 - (2) Education group.
 - (3) Public recreation group.
 - (4) Utility service group.
 - (5) Religion group.
 - (6) Bed and breakfast.
 - a. One additional parking space per bedroom.
 - b. One sign no larger than four square feet.
 - c. Must maintain state facility license in good standing.
- (e) *Setbacks.*
 - (1) Lots fronting on an arterial or collector street as designated on road network maps produced by the metropolitan planning organization are discouraged. If lots must front on roads with these designations, the front yard setback is increased.
 - a. The minimum front yard setback for an arterial roadway is 50 feet.
 - b. The minimum front yard setback for a collector street is 45 feet.
 - c. The minimum front yard setback for a local street is 40 feet.
 - d. The required front yard setback for each lot shall be determined during the platting process and shall be documented in a development agreement that is signed and recorded.
 - (2) For a side yard that fronts on a public right-of-way, the minimum setback is the same as the front yard. For all other situations the minimum side yard setback is 12 feet.
 - (3) The minimum rear yard setback is 20 feet.
 - (4) Any portion of a structure containing a garage door facing a public street, alley or private access easement must be set back at least 25 feet.
- (f) *Lot coverage.* The perimeter of the ground or first floor of each structure shall be used when computing lot coverage. Lot coverage for all structures shall not exceed 40 percent of the square foot area of the lot. For water lots the computation shall be made using the portion of the lot that is above the shore line.
- (g) *Lot area.* The minimum lot area shall be 12,000 square feet.

- (h) *Lot frontage.* Each lot shall have a minimum of 20 feet of frontage along a public street or private access easement configured in conformance with fire code emergency access standards.
- (i) *Building height limits.* Principal building height shall be limited to three and one-half stories. Accessory building shall be limited to two stories.
- (j) *Parking.* At least four parking spaces shall be provided per lot. This includes garage spaces and exterior spaces measuring at least 25 feet long.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-5. - R7 Residential District.

- (a) *General description.* The purpose of the R7 Residential District is to provide an opportunity to construct single-family dwellings in an area where few other uses are permitted.
- (b) *Primary uses.* The primary permitted use is a single-family dwelling unit.
- (c) *Secondary uses.* A group dwelling for six or fewer individuals with developmental disabilities as defined in NDCC 25-16-14 is a permitted secondary use. This use requires one additional on-site mobility impaired parking space.
- (d) *Conditional uses.* These uses are permitted on a specific site only after review and approval by the planning and zoning commission and ratification by the city commission. ~~A PUD district will be created to document any conditional use approval.~~
 - (1) Public recreation group.
 - (2) Education group.
 - (3) Utility service group.
 - (4) Religion group.
 - (5) Accessory dwelling unit.
 - (6) Bed and breakfast
 - a. One additional parking space per bedroom.
 - b. One sign no larger than four square feet.
 - c. Must maintain state facility license in good standing.
- (e) *Setbacks.*
 - (1) Lots fronting on an arterial or collector street as designated on road network maps produced by the metropolitan planning organization are discouraged. If lots must front on roads with these designations, the front yard setback is increased.
 - a. The minimum front yard setback for an arterial roadway is 50 feet.
 - b. The minimum front yard setback for a collector street is 35 feet.
 - c. The minimum front yard setback for a local street is 20 feet.

- d. The required front yard setback for each lot shall be determined during the platting process and shall be documented in a development agreement that is signed and recorded.
- (2) For a side yard that fronts on a public right-of-way, the minimum setback is the same as the front yard. For all other situations the minimum side yard setback is six feet.
- (3) The minimum rear yard setback is 20 feet.
- (4) Any portion of a structure containing a garage door facing a public street, alley or private access easement must be set back at least 25 feet.
- (f) *Lot coverage.* The perimeter of the ground or first floor of each structure shall be used when computing lot coverage. Lot coverage for all structures shall not exceed 40 percent of the square foot area of the lot. For water lots the computation shall be made using the portion of the lot that is above the shore line.
- (g) *Lot area.* The minimum lot area shall be 7,000 square feet.
- (h) *Lot frontage.* Each lot shall have a minimum of 20 feet of frontage along a public street or private access easement configured in conformance with fire code emergency access standards.
- (i) *Building height limits.* Principal building height shall be limited to two and one-half stories. Accessory buildings shall be limited to two stories.
- (j) *Parking.* At least three parking spaces shall be provided per lot. This includes garage spaces and exterior spaces measuring at least 25 feet long.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-6. - R4 Residential District.

- (a) *General description.* The purpose of this district is to provide an opportunity to construct single-family dwelling units on reduced size lots and allow a second limited size rental unit.
- (b) *Primary uses.* The primary permitted use is a single-family dwelling unit.
- (c) *Secondary uses.*
 - (1) Accessory dwelling unit.
 - (2) Group dwelling for eight or fewer individuals with developmental disabilities as defined in NDCC 25-16-14. This use requires one additional on-site mobility impaired parking space.
- (d) *Conditional uses.* These uses are permitted on a specific site only after review and approval by the planning and zoning commission and ratification by the city commission. ~~A PUD district will be created to document any conditional use approval.~~
 - (1) Public recreation group.
 - (2) Education group.
 - (3) Utility service group.

- (4) Religion group.
- (e) *Setbacks.*
 - (1) Lots fronting on an arterial or collector street as designated on road network maps produced by the metropolitan planning organization are discouraged. If lots must front on roads with these designations, the front yard setback is increased.
 - a. The minimum front yard setback for an arterial roadway is 50 feet.
 - b. The minimum front yard setback for a collector street is 30 feet.
 - c. The minimum front yard setback for a local street is ten feet.
 - d. The required front yard setback for each lot shall be determined during the platting process and shall be documented in a development agreement that is signed and recorded.
 - (2) For a side yard that fronts on a public right-of-way, the minimum setback is the same as the front yard. For all other situations the minimum side yard setback is five feet.
 - (3) The minimum rear yard setback is 20 feet.
 - (4) Any portion of a structure containing a garage door facing a public street, alley or private access easement must be set back at least 25 feet.
- (f) *Lot coverage.* The perimeter of the ground or first floor of each structure shall be used when computing lot coverage. Lot coverage for all structures shall not exceed 50 percent of the square foot area of the lot. For water lots the computation shall be made using the portion of the lot that is above the shore line.
- (g) *Lot area.* The minimum lot area shall be 4,000 square feet.
- (h) *Lot frontage.* Each lot shall have a minimum of 20 feet of frontage along a public street or private access easement configured in conformance with fire code emergency access standards.
- (i) *Building height limits.* Principal building height shall be limited to three stories. Accessory buildings shall be limited to two stories.
- (j) *Parking.* At least two parking spaces shall be provided per lot. This includes garage spaces and exterior spaces measuring at least 25 feet long.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-7. - R3.2 Residential District.

- (a) *General description.* The purpose of this district is to provide an opportunity to construct single-family dwelling units on reduced size lots in the form of a single-family dwelling or twin home. ~~in a zero side yard setback configuration resulting in structures containing two dwelling units commonly called twin homes that straddle a lot line.~~
- (b) *Primary uses.* The following uses are permitted:
 - (1) ~~Zero side yard setback single family dwelling unit in a structure with two dwelling units located on two adjacent lots~~ Twin home.

- (2) ~~Structures with one s~~Single-family dwelling_ ~~unit located on no more than ten percent of the lots in the subdivision.~~
- a.—~~The minimum side yard setback for lots where the adjacent lot is undeveloped shall be five feet.~~
- b.—~~For lots where the adjacent lot has been developed, the new principal structure must have a sufficient side yard setback to be at least ten feet from the principal structure on the adjacent lot.~~
- e.—~~The minimum setback shall result in the roof overhang being at least one foot back from the property line.~~
- (c) *Secondary uses.* A group dwelling for six or fewer individuals with developmental disabilities as defined in NDCC 25-16-14 is a permitted secondary use. This use requires one additional on-site mobility impaired parking space.
- (d) *Conditional uses.* These uses are permitted on a specific site only after review and approval by the planning and zoning commission and ratification by the city commission. ~~A PUD district will be created to document any conditional use approval.~~
- (1) Public recreation group.
- (2) Education group.
- (3) Utility service group.
- (4) Religion group.
- (e) *Setbacks.*
- (1) Lots fronting on an arterial or collector street as designated on road network maps produced by the metropolitan planning organization are discouraged. If lots must front on roads with these designations, the front yard setback is increased.
- a. The minimum front yard setback for an arterial roadway is 50 feet.
- b. The minimum front yard setback for a collector street is 25 feet.
- c. The minimum front yard setback for a local street is eight feet.
- d. The required front yard setback for each lot shall be determined during the platting process and shall be documented in a development agreement that is signed and recorded.
- (2) For a side yard that fronts on a public right-of-way, the minimum setback is the same as the front yard. For all other situations the minimum side yard setback is five feet. The side yard setback shall apply to both sides for a single-family dwelling and one side for a twin home.
- (3) The minimum rear yard setback is 20 feet.
- (4) Any portion of a structure containing a garage door facing a public street, alley or private access easement must be set back at least 25 feet.
- (f) *Lot coverage.* The perimeter of the ground or first floor of each structure shall be used when computing lot coverage. Lot coverage for all structures shall not exceed 50 percent of the

square foot area of the lot. For water lots the computation shall be made using the portion of the lot that is above the shore line.

- (g) *Lot area.* The minimum lot area shall be 3,200 square feet.
- (h) *Lot frontage.* Each lot shall have a minimum of 20 feet of frontage along a public street or private access easement configured in conformance with fire code emergency access standards.
- (i) *Building height limits.* Principal building height shall be limited to three stories. Accessory buildings shall be limited to two stories.
- (j) *Parking.* At least two parking spaces shall be provided per lot. This includes garage spaces and exterior spaces measuring at least 25 feet long.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-8. - RMH Residential District.

- (a) *General description.* The RMH Residential District is established as a district in which the principal use of land is for single-family manufactured dwelling units.
- (b) *Primary uses.* The primary permitted use is a single-family manufactured dwelling unit.
- (c) *Secondary uses.*
 - (1) Accessory dwelling unit.
 - (2) Group dwelling for eight or fewer individuals with developmental disabilities as defined in NDCC 25-16-14. This use requires one additional on-site mobility impaired parking space.
 - (3) Activity center or recreation facility serving the subdivision.
- (d) *Conditional uses.* These uses are permitted on a specific site only after review and approval by the planning and zoning commission and ratification by the city commission. ~~A PUD district will be created to document any conditional use approval.~~
 - (1) Education group.
 - (2) Religion group.
 - (3) Utility service group.
 - (4) Public recreation group.
 - (5) Site built or modular dwelling unit.
- (e) *Setbacks.*
 - (1) Lots fronting on an arterial or collector street as designated on road network maps produced by the metropolitan planning organization are discouraged. If lots must front on roads with these designations, the front yard setback is increased.
 - a. The minimum front yard setback for an arterial roadway is 50 feet.
 - b. The minimum front yard setback for a collector street is 25 feet.

- c. The minimum front yard setback for a local street is eight feet.
 - d. The required front yard setback for each lot shall be determined during the platting process and shall be documented in a development agreement that is signed and recorded.
- (2) For a side yard that fronts on a public right-of-way, the minimum setback is the same as the front yard. For all other situations the minimum side yard setback is five feet.
 - (3) The minimum rear yard setback is 20 feet.
 - (4) Any portion of a structure containing a garage door facing a public street, alley or private access easement must be set back at least 25 feet..
- (f) *Lot coverage.* The perimeter of the ground or first floor of each structure shall be used when computing lot coverage. Lot coverage for all structures shall not exceed 60 percent of the square foot area of the lot. For water lots the computation shall be made using the portion of the lot that is above the shore line.
 - (g) *Lot area.* The minimum lot area shall be 3,000 square feet.
 - (h) *Lot frontage.* Each lot shall have a minimum of 20 feet of frontage along a public street or private access easement configured in conformance with fire code emergency access standards.
 - (i) *Building height limits.* Principal building height shall be limited to one and one-half stories. Accessory buildings shall be limited to one story.
 - (j) *Parking.* At least two parking spaces shall be provided per lot. This includes garage spaces and exterior spaces measuring at least 25 feet long.
 - (k) *Skirting requirements.* Skirting may be used in lieu of a solid perimeter foundation. Skirting may be constructed of brick, stone, finished metal or other acceptable materials approved by the building inspector. The skirting shall be in place prior to issuance of a certificate of occupancy. The tongue and axle shall be removed if not covered by the skirting.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-9. - RM Residential District.

In any RM Residential District, the following regulations shall apply:

- (1) *General description.* The RM Residential District is established as a district in which the principal use of land is for residences, including multifamily dwellings and similar high-density residential development. For the RM Residential District, in promoting the general purposes of this chapter, the specific intent of this section is:
 - a. To encourage the construction of, and continued use of, the land for residential purposes.
 - b. To prohibit commercial and industrial use of the land and to prohibit any other use that would substantially interfere with the development and continuation of residential structures in the district.

- c. To encourage the discontinuance of existing uses that would not be permitted as new uses in the district.
- d. To discourage any use which, because of its character or size, would generate traffic or require municipal services substantially in excess of traffic and services that would exist if the district was developed solely for multifamily dwellings and similar residential uses.

(2) *Uses permitted.* The following uses are permitted:

- a. Single-family dwelling.
- b. Two-family dwelling.
- c. Multifamily dwelling.
- d. Group dwelling.
- e. Educational group.
- f. Church.
- g. Health-medical group.
- h. Utility service group.
- i. Public recreation group.
- j. Railroad line trackage.
- k. Funeral establishments, provided that the following requirements are met:
 - 1. Each such establishment shall provide an off-street parking area on the premises equal to 35 percent of the lot area and in no case less than 4,900 square feet exclusive of the area needed to park vehicles owned or operated by such establishment. For the purpose of determining such parking area, neither the required side yards nor the area in front of the building setback line shall be included as a part of such parking area.
 - 2. Each parcel upon which a funeral establishment is to be maintained shall have two side yards, one on each side of the building. The sum of the widths of the two side yards shall not be less than 20 percent of the average width of the lot, but in no event shall any side yard be less than ten feet.
 - 3. No parking shall be permitted within ten feet of the side lot lines or in the area ahead of the building setback line.
- l. Office-bank group.
- m. Bed and breakfast facility located in a single-family dwelling, provided that the owner of the dwelling is the holder of a current bed and breakfast facility license for not to exceed four lodging units issued pursuant to the provisions of N.D.C.C. ch. 23-09.1 and that the owner provides one off-street vehicle parking space for each such unit and one off-street parking space for the owner/operator of such facility, and provided, further, that only one sign, not exceeding four square feet in size, advising such facility, may be placed on the premises.

n. Manufactured home.

(3) Conditional uses. These uses are permitted on a specific site only after review and approval by the planning and zoning commission and ratification by the city commission.

a. Utility service group

(43) Density. The maximum allowable density is 30.0 families per net acre.

(54) Lot area.

a. Each building containing dwelling units hereafter erected shall be located on a lot having an area not less than that shown in the following schedule:

Lot Area in Square Feet	Maximum Number of Dwelling Units
4,000 but less than 5,000	1
5,000 but less than 6,000	2
6,000 but less than 7,000	3
7,000 or more	4

b. For each 1,000 square feet, or fraction thereof, in excess of 7,000 square feet contained in a lot, the principal building may contain one dwelling unit in addition to the four dwelling units permitted in a principal building located on a lot having an area of 7,000 square feet. Any other permitted building or structure, together with accessory buildings, shall be located on a lot having an area of not less than 7,000 square feet; provided, however, that if a building designed for efficiency apartment units having not more than one-bedroom units, intended to house not more than two persons per dwelling unit, not exceeding the floor area ratio provided in subsection (6) of this section and meeting all other provisions of this section and the provisions of this Code relating to the minimum standards governing the condition and maintenance of dwelling units, a building containing not more than six such efficiency dwelling units may be erected on a lot having not less than 7,000 square feet in area.

(65) Lot width. Each lot shall have a width of not less than 50 feet measured along the front building line; provided, however, that on a record lot having a width of less than 50 feet at the front building line and corresponding to a record lot shown on a plat or deed recorded prior to the adoption of the ordinance from which this section is derived, the minimum lot width measured along the front building line may be reduced to not less than 40 feet.

- (76) *Floor area ratio.* The floor area ratio of the principal building and all accessory buildings shall not exceed 0.40 for single-story buildings, nor shall it exceed 1.20 for buildings of more than one story. The ground area occupied by the principal and accessory buildings shall not exceed 40 percent of the total area of the lot. In computing floor area ratio and ground coverage, 200 square feet shall be added to the actual area of the building for each car space required by this chapter, if such space is not furnished within a building.
- (87) *Front yard.* Each lot shall have a front yard not less than 15 feet in depth.
- (98) *Side yards.* Each lot shall have two side yards, one on each side of the principal building. The sum of the widths of the two side yards shall be not less than 20 percent of the average width of the lot. On any lot having an average width of 50 feet or less, each side yard shall be not less than ten percent of the width of the lot, and in no case shall a side yard be less than four feet in width. On any lot having an average width greater than 50 feet, neither side yard shall be less than five feet in width. In no event shall any side yard be less than the requirements set forth in this subsection, provided that in computing the side yard width on any lot, the first one foot of any overhang for eaves shall not be counted.
- (109) *Rear yard.* Each lot shall have a rear yard not less than ten feet in depth.
- (110) *Height limits.* Single-family dwellings and two-family dwellings shall not exceed 2.5 stories, nor shall they exceed 35 feet in height. No principal building for any other permitted use shall exceed six stories, nor shall it exceed 60 feet in height. For each one foot or fraction thereof that a building exceeds 35 feet in height, there shall be added two feet to the minimum width of each side yard, two feet to the minimum depth of the front yard and one foot to the minimum depth of the rear yard required by this section. No accessory building shall exceed two stories, nor shall it exceed 25 feet in height.
- (124) *Exception.* Notwithstanding the limitations imposed by any other provision of this chapter, upon due application by the owner and the recommendation thereof by the planning and zoning commission, the board may permit the subdivision of an existing lot and approve the replat thereof to show the lot lines along the centerline of a common wall, and the renumbering of the lot upon which multifamily townhouses or row dwelling units are being or have been constructed so as to permit separate ownership of a lot without side yards and having an area and width smaller than that required for a single-family dwelling, subject to the following:
- a. Each of the lots created by the subdivision shall contain an average of not less than 2,400 square feet of area.
 - b. Each lot shall front on a dedicated street, or access shall be provided by platting a common driveway area and utility easements.
 - c. Except for setbacks along the common property lines, all other setbacks and yard requirements shall be met.
 - d. Each lot shall have separate water and sewer service lines into such lot or an appropriate written agreement between the adjoining property owners establishing the manner in which the cost of maintenance and repair of such lines will be shared.

- e. The subdivision of the lot shall be accomplished by the platting thereof in accordance with subdivision regulations of the city ordinances, including required public hearings for the plat approval.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-10. - RH Residential District.

In any RH Residential District, the following regulations shall apply:

- (1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Mobile home means a mobile structure manufactured upon a chassis or an undercarriage which is an integral part of the structure and which:

- a. Is transported to the site on wheels;
- b. Comes fully equipped with flush toilet, tub or shower and kitchen facilities;
- c. Is ready for immediate occupancy upon its arrival to the site and its connection with utilities; and
- d. Is designed for long-term use as a single-family residence without permanent foundation.

Mobile home park means a plot or parcel of land, under single ownership, which has been improved for purposes of locating mobile homes as dwellings.

Mobile home site means a parcel of land, within a mobile home park, designed and improved for the accommodation of not more than one mobile home as a single-family residence.

Mobile home stand means that part of a mobile home site which has been reserved and improved for the placement of a mobile home, appurtenant structures or additions to a mobile home.

Self-propelled mobile home means a self-propelled vehicle containing living facilities, including the terms "house car" and "motor home," which was designed for temporary dwelling, generally for travel and recreational use, and licensed by a state as a motor vehicle.

Travel trailer means a vehicular portable structure having no foundation other than wheels or jacks, designed to be used as a temporary dwelling for travel and recreational activities, which is not more than eight feet in body width.

Travel trailer park means a plat or parcel of land, under single ownership, which has been improved for the purposes of locating travel trailers.

Travel trailer site means a parcel of land within a travel trailer park designed and improved for the accommodation of not more than one travel trailer.

Unit, dependent, means a mobile home, travel trailer or self-propelled mobile home without bath or shower and toilet facilities.

Unit, nondependent, means a mobile home, travel trailer or self-propelled mobile home with bath, shower and toilet facilities.

- (2) *General description.* The RH Residential District is established as a district in which the principal use of land is for residences, including mobile homes and travel trailers, located within mobile home parks and travel trailer parks.

(3) Permitted Uses:

a. Mobile homes and travel trailers, located within mobile home parks and travel trailer parks.

- (4) Conditional uses. These uses are permitted on a specific site only after review and approval by the planning and zoning commission and ratification by the city commission:

a. Utility service group

- ~~(53)~~ *Location.* All mobile home and travel trailer parks shall be located in approved subdivisions according to the city's subdivision regulations.

~~(64)~~ *Mobile home and travel trailer park locations.*

- a. *Mobile homes.* All mobile homes in the city shall be located in an approved mobile home park or mobile home subdivision before being occupied. Also, no business shall be conducted out of a mobile home, except administrative duties of the court owner or manager of home occupation uses according to the city's zoning ordinances.
- b. *Mobile home parks.* Mobile home parks shall be located in an RH zoning district according to future provisions. Mobile home parks should be considered medium-density residential.
- c. *Travel trailers.* Travel trailers shall be located in an approved travel or mobile home park.
- d. *Travel trailer parks.* Travel trailer parks shall be located in an RH zoning district according to future provisions.
- e. *Self-propelled mobile homes.* Self-propelled mobile homes shall be located in an approved travel trailer or mobile home park.

~~(75)~~ *Licenses and/or permit requirements.*

- a. It is unlawful for any person to maintain, operate, alter or expand any mobile home or travel trailer park within the city's jurisdiction (one mile) without first obtaining a valid license and building permit from the designated officials of the city. Alteration or expansion of an existing mobile home or travel trailer park shall include any addition or reduction of a park site or rearrangement of other service buildings within the park.
- b. All mobile home and park license fees shall be set by resolution of the board.

- c. Application for a mobile home or travel trailer park license shall be filed with and issued by the state department of health and the city. The application shall be reviewed by the state health officer and city departments as deemed necessary by the building inspector. The site plans, specifications and zoning shall be reviewed by the city planning and zoning department. Application for subdivision or site plan approval and zoning changes for a mobile home or travel trailer park shall include payment of a planning review fee. These fees shall parallel the fee schedule of the city for subdivision and zone changes. The purpose of these fees is to offset the cost of publication and review by the planning department. An application for mobile home or trailer court approval shall be submitted to the city planner, along with said fee, and shall include the following:
1. Name and address of the applicant and engineer or surveyor.
 2. Location map and legal description of the proposed or existing trailer or mobile home park.
 3. A complete site plan and specification of the proposed travel trailer or mobile home park or of the alteration or expansion of an existing park indicating:
 - (i) Total acreage and all dimensions of the tract of land.
 - (ii) Date of plan.
 - (iii) Lot and block acreage.
 - (iv) Scale and north arrow.
 - (v) Locations and dimensions of all existing and proposed streets, alleys and walkways, and location and size of all sidewalks.
 - (vi) Locations and dimensions of all proposed mobile home sites.
 - (vii) Locations, plans and specifications of all proposed service buildings.
 - (viii) Contours of the land at one-foot intervals for ground slopes between zero and two percent, two-foot contours between two and five percent, and four-foot contours for over five percent.
 - (ix) Finished grade plan for all streets and developed areas as required by the city engineer.
 - (x) Locations and dimensions of all utility easements.
 - (xi) Locations and sizes of water, sewer and storm sewers or open drainage lines.
 - (xii) Locations of fire hydrants.
 - (xiii) Locations of all recreational areas.
 - (xiv) Locations of lighting stands.
 - (xv) All setback dimensions.
 - (xvi) Location and dimensions of mobile home park buffer.
 - (xvii) Such further information as may be required by the health officer to determine if the proposed mobile home park is in compliance with the applicable health regulations.

4. If the applicant desires to alter or expand an existing mobile home park, an additional site plan shall be submitted indicating the locations and dimensions of existing mobile home sites, streets, walkways and service buildings.
5. A reproducible Mylar and six blue line prints, 24 inches by 36 inches, shall be submitted to the planning and zoning office upon final approval by the board. Said site plan shall have the signatures of the owner, city engineer, planning and zoning commission chairperson and board president.
6. Within two weeks of moving into a mobile home, the owner will be required to have a certificate of occupancy. Before issuing the certificate of occupancy, the building inspector or designate shall inspect all utility connections, stabilizing devices, anchoring equipment and determine that the address has been properly installed. A fee for the certificate of occupancy, as set by the board, shall be required of the mobile home owner.
7. All mobile home and travel trailer parks shall be located in an approved subdivision according to the city's subdivision regulations.

~~(86)~~ *Design requirements for mobile home parks.*

- a. *Minimum size.* Each parcel of land to be used for a mobile home park shall be a minimum of ten acres, and any addition to said park must contain a minimum of four acres and be contiguous to the park with a boundary of at least 100 feet. The ratio of average depth to average width shall not be in excess of 4:1. There shall be a minimum width of 150 feet along any abutting public right-of-way.
- b. *Streets and parking; access to park.* Direct vehicular access to the mobile home park shall be only from an abutting approved public street. Access shall be so located as to provide minimum congestion on the external streets and to provide for good circulation within the park. Private access right-of-way shall intersect public right-of-way no closer than 150 feet from the intersection of two public streets.
- c. *Width of streets.* Streets in a mobile home park shall be private, but shall be constructed and paved in accordance with city street specifications and approved by the city engineer, except as to the paved width, which shall be as follows:
 1. Two-way streets with parking on both sides shall be 40 feet in width.
 2. Two-way streets with parking on one side shall be 32 feet in width.
 3. Two-way streets with no parking on either side shall be 24 feet in width.
 4. No streets shall be less than 24 feet in width.
- d. *Entrance roads; easements and intersections.* All entrance roads into a mobile home park shall have a minimum unobstructed width of 60 feet and a minimum paving width of 36 feet at the point of entry. All streets into the mobile home park shall be designed for two-way traffic. Easements shall be provided on all streets within the mobile home park for the provision of city services, such as police, fire, and refuse collection. Street intersections should be at right angles on all major streets and minor streets, if possible.

- e. *Curb and gutter and street grades.* Curb and gutter or alternatives shall be laid on all streets according to the city engineer. Street grades shall be sufficient to ensure surface drainage.
- f. *Parking.* At least two off-street paved parking spaces per mobile home site shall be provided in the mobile home park. Clustered parking to meet the off-street requirements is allowed, but shall not be on the street right-of-way. Off-street parking for guests should be on the basis of one parking space for each four mobile home lots. Off-street parking shall be provided on the basis of one parking space for each 300 square feet of gross floor space in recreational, service and community buildings.
- g. *Buffer strip.* Mobile homes shall be set back from any public right-of-way 25 feet and not less than 15 feet from any other boundary. Said buffer strip may be platted as part of the mobile home site. The buffer strip may not be designed for streets and utility sites, but may be utilized for drainage structures. No other structures shall be placed within any of the buffer strips.
- h. *Recreation areas.* Mobile home park owners are encouraged to design parks with recreational areas sufficient for park residents.

(97) *Design requirements for mobile home site.*

- a. *Minimum size.* Each mobile home site shall have a minimum of 5,000 square feet of area with a minimum average width of 50 feet and minimum average depth of 100 feet. Mobile home sites located on a cul-de-sac may reduce frontage at the street line to 35 feet, but lot area must contain 5,000 square feet.
- b. *Land coverage.* Total structural coverage of a mobile home site shall not exceed 50 percent of the site area. In computing the ground coverage, 400 square feet shall be added to the area of the mobile home site for the two required off-street parking spaces and all accessory buildings. All nonattached storage sheds must be located in the backyard and not within five feet of the side or rear site line.
- c. *Access.* Each mobile home site shall abut on a street within the mobile home park, and access directly to the site shall only be from such an internal street.
- d. *Setback requirements.* No part of the mobile home or other structure upon a mobile home site shall be closer than five feet to a mobile home site boundary line. Mobile homes shall be set back from each other and accessory buildings by at least 15 feet on adjacent lots. There shall be a minimum of ten feet between an individual mobile home and any abutting pavement of a park street.

(108) *Provisions of services in mobile home park.*

- a. *Service buildings.* Service buildings may include management offices, laundry facilities, repair shops and storage areas, sanitary facilities and indoor recreation facilities and incidental commercial uses.
- b. *Service building requirements.* All service buildings shall comply with the city ordinances and state laws and regulations concerning buildings, electrical installations, plumbing and sanitation systems. They shall, at all times, be operated and maintained in a clean, sightly condition by the park management.

- c. *Building height requirements.* No structure erected in a mobile home park shall exceed 25 feet in height.
- d. *Water supply.* Each mobile home park shall be connected with the city's water supply system and designed, constructed and maintained in accordance with the city's ordinances and state laws and regulations. Each mobile home park shall be provided with at least one above-ground water service connection which shall be capped when a mobile home does not occupy the site.
- e. *Sewage disposal.* All mobile home parks shall be connected to the city central sewer system, and sewer lines shall be designed, constructed and maintained in accordance with the city's ordinances and state laws and regulations and shall be capped when not in use.
- f. *Street lighting.* All entrances, exits and streets in mobile home parks shall be well-lighted. Street lighting may be either overhead or low level, but must be reflected onto the street.
- g. *Electricity and grounding.* Each mobile home and mobile home site shall be provided with electricity and proper grounding in accordance with the city's ordinances. Each mobile home site shall be individually metered by the supplying electrical utility company.
- h. *All service utility lines.* All service utility lines for electrical, telephone, gas and television communication shall be placed underground and designed and constructed in accordance with the city's ordinances.
- i. *Refuse handling.* The storage, collection and disposal of refuse in the mobile home park shall be provided for in accordance with the applicable city ordinances and state laws and regulations.
- j. *Fire protection.* All mobile home parks shall be subject to the regulations stated in the fire protection codes adopted by the city and state. Mobile home parks shall be kept free of litter, rubbish and other flammable materials. Portable fire extinguishers, rated for class B and C, shall be kept in service buildings, readily accessible for use by all occupants and maintained in good operating condition.
- k. *Street signs and mobile home site address and design.* The owner of a mobile home park shall provide street name signs. The individual mobile home owner shall be responsible for displaying on the front of the mobile home the address in letters no smaller than two inches in height before occupancy. All street names shall conform to the city's street plan. All existing and new mobile home parks shall construct street signs, and all sign material shall conform to the city's street sign specifications.
- l. *Register of occupants.*
 - 1. A register of all mobile home occupants and owners of mobile homes in the park shall be maintained with the following information:
 - (i) The name and address of each mobile home occupant.
 - (ii) The name and address of the owner of each mobile home, if different from the occupant.

- (iii) The dates of arrival and departure of each mobile home.
2. An updated register of occupancy shall be provided to the city every three months with the data in subsection (8)l.1 of this section, as required by the county tax equalization department.
- (119) *Temporary parking of travel trailers, camper trailers, cargo trailers and boat trailers.*
- a. *Forty-eight-hour parking limit.* No owner of property within the corporate limits of the city shall permit the parking, maintaining or keeping upon his property, and no person shall park, maintain or keep any travel trailer, camper trailer, cargo trailer or boat trailer for more than 48 hours, unless such trailer is located in a garage. Trailer sales of new and used unoccupied trailers, house cars or camp cars by an individual, firm, or corporation, properly licensed and zoned for trailer sales use shall be located in commercial zoning districts.
 - b. *Parking sites in mobile home parks.* A separate travel trailer park site for travel trailers or camper trailers shall be permitted in any mobile home park, provided that:
 1. Said camp area comprises less than ten percent of the total area of said mobile home park;
 2. A 25-foot buffer strip exists between said camp site and any mobile home site; and
 3. Toilet, water and garbage disposal facilities are available and easily accessible to users of said camp site.
 - c. *Parking of trailers in residential districts.*
 1. Travel trailers, camper trailers and boat trailers not in excess of eight feet in width shall be permitted to park on private property in any residential district, provided that they are:
 - (i) Located behind the front building line and not on the public boulevard;
 - (ii) Located in a storage shed or garage; or
 - (iii) Located in a driveway area permitted for the parking of passenger cars.
 2. Collapsible camping trailers, when stored on a residential lot, shall be stored in a collapsed state.
 - d. *Parking of self-propelled mobile homes.* Self-propelled mobile homes, not exceeding state department of transportation limits in length, shall be permitted to park as a passenger vehicle, but shall not be permitted to be used as a living unit on any public right-of-way.
 - e. *Parking on public property prohibited.* No trailer or mobile home shall be parked upon any public right-of-way, park or other public property within the corporate limits of the city more than 48 hours, and shall not be used for sleeping, housekeeping

or living quarters while so parked, unless located in an area publicly designated for such use.

- f. *Parking of construction trailers.* Trailers used for construction offices on a construction site in a subdivision shall be permitted during the period of construction only after a building permit for the construction job has been issued. Such trailers must be removed from the site or subdivision before a certificate of occupancy is issued for the new construction. Such permitted trailers shall not be used for sales, habitation or promotional purposes and shall be permitted only after receiving a permit from the building inspector for each such trailer.

(120) *Design requirements for travel trailer park.*

- a. *Site plans.* Site plans and specifications for travel trailer parks are required as stated in subsection (10)e of this section.
- b. *Minimum size.* Each parcel of land to be used for a travel trailer park shall be a minimum of 2.5 acres, and the ratio of average depth to average width shall not be in excess of 4:1. If included as part of a mobile home park, a travel trailer park cannot occupy more than ten percent of the area.
- c. *Streets and parking.*
 - 1. *Access to park.* Direct vehicular access to the travel trailer park shall be only from an abutting, approved public street. Access shall be located so as to provide minimum congestion on the external streets and to provide for good circulation within the park.
 - 2. *Width of streets.* Streets in a travel trailer park shall be private and shall be of the following width:
 - (i) Two-way streets with no parking on either side shall be at least 24 feet in width.
 - (ii) Two-way streets with parking on one side shall be at least 32 feet in width.
 - (iii) No roads will be permitted with parking on both sides of the street.
 - (iv) One-way streets are permitted with a minimum width of 24 feet.
 - 3. *Street surfacing.* All streets shall be paved according to specifications set forth by city ordinances.
 - 4. *Parking.* At least one off-street parking space per travel trailer site in each travel trailer park is required.
 - 5. *Travel trailer site.* Each travel trailer site shall be well drained and contain a stabilized vehicular parking pad composed of paving or other suitable material as determined by the city engineer. The remainder of the site shall be grassed and landscaped.
- d. *Buffer strip.* There shall be a well-landscaped buffer strip not less than 25 feet in depth between travel trailer sites and all public streets abutting the travel trailer park and a landscaped buffer strip of not less than 15 feet in depth between travel trailer sites and all other boundaries of the park. Nothing contained in this subsection is to be construed to require a 25-foot buffer strip or 15-foot buffer strip between

individual travel trailer sites. The landscaped buffer shall be separate from travel trailer sites, recreation areas, streets, and the utility sites, but may be utilized for drainage structures and utilities distribution and collection. No other structures shall be placed within any of the buffer strips.

- e. *Recreation areas.* A minimum of ten percent of the total land area of a travel trailer park shall be devoted to one or more common use areas for recreation activity. These recreation areas shall be storage areas, utility sites, and all nonrecreational service buildings. They shall be easily accessible to all park users and shall be owned and maintained by the park management. Although the required space for recreation usage can be met through more than one recreation area in a travel trailer park, minimum size of any area shall be 5,000 square feet.
- f. *Tent camping.* Tent camping shall be permitted in a travel trailer park on individual travel trailer sites or as accessory uses to travel trailers, if occupied by members of the same party.

(131) *Design requirements for travel trailer sites.*

- a. *Minimum size.* Each parking site shall have a minimum of 1,500 square feet of area with a minimum average width of 25 feet and a minimum average depth of 60 feet. There shall be a maximum of 15 travel trailer sites per acre of land within the travel trailer park.
- b. *Access.* Each travel trailer site shall abut on at least one street within the travel trailer park, and access directly to the site shall be only from such an internal street.
- c. *Setback requirements.* No part of a travel trailer placed on a travel trailer site shall be closer than five feet to a site line.
- d. *Appurtenances.* No permanent external appurtenances, such as cabanas or awnings, may be attached to a travel trailer, and the removal of wheels or the placement of the unit on a permanent foundation is prohibited.

(142) *Provisions of services in travel trailer parks.*

- a. *Service buildings.*
 - 1. Service buildings may include management offices, laundry facilities, storage areas and any other such buildings necessary to the proper operation of a travel trailer park.
 - 2. All service buildings shall comply with the city ordinances and state law and regulations concerning buildings, electrical installations, plumbing and sanitation systems. They shall, at all times, be operated and maintained in a clean, sightly condition by the park management.
- b. *Water supply.*
 - 1. An adequate supply of water shall be provided in accordance with the state sanitary codes and city ordinances. Travel trailer parks shall be connected to the city's central water system and with water lines designed, constructed and maintained in accordance with the city's ordinances.

2. A minimum of one water supply outlet shall be provided for every two travel trailer sites.
 - c. *Sewage disposal.*
 1. All sewage disposal facilities shall be designed, constructed and maintained in accordance with the state sanitary codes and city ordinances. All travel trailer parks shall be connected to the central sewer system of the city.
 2. At least one sanitary dumping station shall be provided for every travel trailer park with at least one connection for every 50 travel trailer sites or fractional part.
 3. A complete restroom facility shall be located within a travel trailer site in accordance with the following schedule for 30 travel trailer sites or fractional part:
 - (i) Toilets: Two men, four women.
 - (ii) Urinal: Two men.
 - (iii) Washstand: Three men, three women.
 - (iv) Showers: Two men, two women.
 - d. *Lighting.* All entrances, exits, streets and service buildings shall be well-lighted during the hours of darkness. Street lighting may be either overhead or low-level, but must be reflected into the street.
 - e. *Electricity and grounding.* Each travel trailer site shall contain at least one approved electrical receptacle having a minimum of 100/115 volt alternating current.
 - f. *Service utility lines.* All service utility lines within a travel trailer park shall be placed underground and designed and constructed in accordance with city ordinances.
 - g. *Refuse handling.* Each travel trailer site shall be provided with either a metal can with a tight-fitting metal covering, of a capacity not less than four gallons and not to exceed 30 gallons, or dumpster containers, one to four cubic yards, for 14 travel trailer sites that can be maintained by the city.
 - h. *Fire protection.* All travel trailer parks shall be subject to the regulations stated in the Fire Protection Code adopted by the city. Travel trailer parks shall be kept free of litter, rubbish and other flammable materials.
 - i. *Animal control.* No owner or person in charge of an animal shall permit said animal to run at large or to commit any nuisance within the limits of any travel trailer park.
 - j. *Street names.* The owner of the travel trailer park shall provide for street name signs. All street names shall conform to the city's street plan. All existing and new travel trailer parks shall construct street signs, and all sign material shall conform to the city's street sign specifications.
- (153) *Operation of travel trailer park.*
 - a. *Permitted uses.* A travel trailer park may include travel trailers and any such service buildings or accessory uses necessary for the proper, safe, sanitary operation of the

travel trailer park. One mobile home may be located in any travel trailer park for the exclusive use of the owner or park manager as an office or residence.

- b. *Responsibilities of park management.* The owner of a travel trailer park or the park management shall, at all times, keep the park and its facilities in a clean, orderly and sanitary condition. The park management shall inform all park occupants of the provisions of this article and other related ordinances and state laws and of the responsibilities under this section.
 - c. *Register of occupants.* A register of all travel trailer occupants in the park shall be maintained with the following information:
 1. The name and address of each travel trailer owner or operator making use of the travel trailer park.
 2. The make, model, year and vehicle license number of each travel trailer and motor vehicle.
 3. The state, territory and county in which all vehicles are registered.
 4. The dates of arrival and departure of each travel trailer.
- (164) *Penalty.* Every person violating this section shall, upon conviction thereof, be punished by a fine of not more than \$500.00, by imprisonment for not more than 30 days or by both such fine and imprisonment in the discretion of the court. The court has the power to suspend the sentence or any part and to revoke the suspension thereof.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-11. - CA Commercial District.

In any CA Commercial District, the following regulations shall apply:

- (1) *General description.* The CA Commercial District is established as a district in which the principal use of land is for commercial and service uses to serve the surrounding residential district and in which traffic and parking congestion can be reduced to a minimum in order to preserve residential values and to promote the general welfare of the surrounding residential districts. For the CA Commercial District, in promoting the general purposes of this chapter, the specific intent of this section is:
 - a. To encourage the construction of, and continued use of, the land for neighborhood, commercial and service purposes.
 - b. To prohibit heavy commercial and industrial use of the land and to prohibit any other use that would substantially interfere with the development or continuation of the commercial structures in the district.
 - c. To discourage any use which, because of its character or size, would interfere with the use of the land in the district as a shopping and service center for the surrounding residential districts.
- (2) *Uses permitted.* The following uses are permitted:
 - a. Single-family dwelling.

- b. Two-family dwelling.
- c. Multifamily dwelling.
- d. Group dwelling.
- e. Retail group A.
- f. Service group A.
- g. Filling station.
- h. Office-bank group.
- i. Health-medical group.

j. Utility service group

jk. Bed and breakfast facility located in a single-family dwelling, provided that the owner of the dwelling is the holder of a current bed and breakfast facility license for not to exceed four lodging units issued pursuant to the provisions of N.D.C.C. ch. 23-09.1 and that the owner provides one off-street vehicle parking space for each such unit and one off-street parking space for the owner/operator of such facility, and provided, further, that only one sign, not exceeding four square feet in size, advertising such facility, may be placed on the premises.

- (3) *Dwelling regulations.* Each single-family, two-family, multifamily or group dwelling hereafter erected shall comply with all regulations governing such uses in an RM Residential District as provided under section 105-3-9.
- (4) *Lot area.* No CA Commercial District shall contain less than two acres. No zoning lot on which an individual building is placed shall contain less than 5,000 square feet; provided, however, that a building having one or more party walls and a common roof with one or more similar buildings, but individually owned, may be on a lot of any size as long as all other provisions of this chapter, including all provisions for off-street parking and loading, are fully complied with on that lot.
- (5) *District width.* Each CA Commercial District shall have an average width of not less than 200 feet and shall have no boundary line less than 100 feet in length.
- (6) *Floor area ratio.* The floor area ratio of the principal building and all accessory buildings shall not exceed 0.25 for single-story buildings, nor shall it exceed 0.35 for buildings of more than one story. The ground area occupied by the principal and accessory buildings shall not exceed 25 percent of the total area of the lot.
- (7) *Yards.* No building shall be less than 25 feet distant from the front lot line. Each lot shall have two side yards, one on each side of the building. The sum of two side yards shall not be less than 20 percent of the average width of the lot, but in no event shall any side yard be less than ten feet in width. Each lot shall have a rear yard not less than ten feet in width.
- (8) *Height limits.* No building shall exceed two stories, nor shall it exceed 25 feet in height.
- (9) *Divided district.* For the purpose of calculating the minimum area, lot width, lot dimension, floor area ratio percentage of lot covered by building, and yard requirements established by this section, a single CA Commercial District cannot lie on two sides of a

public street or alley. Any area designated as being zoned CA Commercial and lying on both sides of a public street or alley shall be deemed to be two CA Commercial Districts, and all minimum requirements shall be met by buildings on each side of said public street or alley as separate districts.

- (10) *Nonconforming uses.* It is the intent of this chapter and this section to designate no area as a CA Commercial District in which there is, at the date of the adoption of the ordinance from which this section is derived, any nonconforming use. It is the further intent of this chapter and this section that, insofar as possible, all neighborhood commercial and service areas in newly developed portions of the city shall take place in a CA Commercial District, in order to decrease traffic and parking congestion and to preserve the residential values of the city. The planning and zoning commission shall refuse to approve any requests for an amendment rezoning any portion of the city to a CA Commercial District if there is in that district any use which would be a nonconforming use upon the passage by the board of the proposed amendment.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-12. - CB Commercial District.

In any CB Commercial District, the following regulations shall apply:

- (1) *General description.* The CB Commercial District is established as the Central Business District of the city in which the principal use of the land is for commercial and service uses for the city and its regional market area. For the CB Commercial District, in promoting the general purposes of this chapter, the specific intent of this section is:
- a. To encourage the construction of, and the continued use of, the land for regional, commercial and service uses.
 - b. To provide for the orderly expansion of such uses within the CB Commercial District as designated on the zoning map.
 - c. To prohibit heavier commercial and industrial use of the land and to prohibit uses which would substantially interfere with the continuation of the uses presently in the district or with the orderly growth of the district to meet the needs of increased population in the regional market area.
 - d. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this section.
 - e. To encourage the development of the district with such uses and in such a manner as to minimize traffic and parking congestion and in such manner as to provide for the safety and convenience of shoppers, visitors, and other pedestrians in the district.
 - f. To discourage any use which, because of its character or size, would create abnormal traffic congestion or fire or safety hazards in the district.
- (2) *Uses permitted.* The following uses are permitted:
- a. Single-family dwelling.
 - b. Two-family dwelling.

- c. Multifamily dwelling.
 - d. Group dwelling.
 - e. Hotel.
 - f. Motel.
 - g. Retail group A.
 - h. Service group A.
 - i. Filling station.
 - j. Office-bank group.
 - k. Retail group B.
 - l. Service group B.
 - m. Commercial recreation group.
 - n. Wholesale group.
 - o. Church.
 - p. Health-medical group.
 - q. Education group.
 - r. Public recreation group.
 - s. Fire station.
 - t. Railroad line trackage.
 - u. Railroad spur trackage.
 - v. Railroad or bus passenger station.
 - w. Utility service group.
 - x. Bed and breakfast facility located in a single-family dwelling, provided that the owner of the dwelling is the holder of a current bed and breakfast facility license for not to exceed four lodging units issued pursuant to the provisions of N.D.C.C. ch. 23-09.1 and that the owner provides one off-street vehicle parking space for each such unit and one off-street parking space for the owner/operator of such facility, and provided, further, that only one sign, not exceeding four square feet in size, advertising such facility, may be placed on the premises.
- (3) *Dwelling regulation.* Each single-family, two-family, multifamily or group dwelling hereafter erected shall comply with all regulations governing such uses in an RM Residential District as provided under section 105-3-9.
- (4) *Lot area.* Except as provided in subsection (3) of this section, any permitted principal building or structure, together with its accessory buildings, shall be located on a lot having an area of not less than 2,500 square feet; provided, however, that such principal building and accessory buildings may be erected on a record lot having an area of less than 2,500

square feet, corresponding to a record lot shown on a plat or deed recorded prior to the adoption of the ordinance from which this section is derived.

- (5) *Lot width.* Each lot shall have a width of not less than 20 feet measured along the front line of said lot; provided, however, that said minimum width of 20 feet shall not be required on a record lot corresponding to a record lot shown on a plat or deed recorded prior to the adoption of the ordinance from which this section is derived.
- (6) *Floor area ratio.* The floor area ratio of any principal nonresidential building and its accessory buildings shall not exceed 1.00 for single-story buildings, nor shall it exceed 5.00 for buildings of more than one story.
- (7) *Front yard.* No front yard shall be required of any principal nonresidential building in a CB district.
- (8) *Side yards.* No side yard shall be required of any principal nonresidential building in a CB district.
- (9) *Rear yards.* Each lot shall have a rear yard not less than ten feet in depth; provided, however, that where the rear of a lot adjoins an alley, no rear yard shall be required for a principal nonresidential building.
- (10) *Height limits.* No building shall exceed nine stories nor shall it exceed 85 feet in height.
- (11) *Special conditions for a specified lot.* By ordinance, the board authorized inclusion of Lot 12 of Lot A, Sunview Heights Addition, and that vacated portion of section line street known as Twenty-Seventh Street Northeast between Old Red Trail and Interstate 94 in the Southwest Quarter, Section Sixteen, Township One Hundred Thirty-Nine North, Range Eighty-One West of the Fifth Principal Meridian of the City of Mandan within a CB Commercial District subject to the following zoning conditions:
 - a. Any structure built on Lot 12, Sunview Heights Addition, shall have a side yard setback of at least 100 feet between Lots 11 and 12.
 - b. The owner of said Lot 12 shall erect and maintain a chain-link fence east of the buffer zone near the common boundary between Lots 11 and 12, Sunview Heights Addition.
 - c. Trees shall be planted to the west of the chain-link fence as recommended by the city forester to act as a screen and buffer zone between Lots 11 and 12, Sunview Heights Addition.
- (12) *Off-street parking and loading requirements in CB Commercial District.*
 - a. In that section of the CB Commercial District described as follows:

Commencing at the intersection of the centerline of Main Street at Fourth Avenue NE; thence northerly along centerline of Fourth Avenue NE to the intersection of centerline of the alley in Block 3, Original Town of Mandan; thence westerly along the centerline of alleys in Blocks 3, 4, 5, and 6 to the north-south alley in said Block 6, thence northerly along centerline of First Street NE; thence westerly along centerline of First Street NE to the intersection of centerline of Collins Avenue; thence northerly along centerline of Collins Avenue to the intersection of projected south boundary line of Lot 3 Block 22 of Original Town of Mandan; thence westerly

along south boundary line of Lots 3 and 10, Block 22; Lots 3 and 10, Block 21; Lots 3 and 10, Block 20; and Lots 3 and 10, Block 19 all of the Original Town of Mandan to the intersection of centerline of Fourth Avenue NW; thence southerly along centerline of Fourth Avenue NW to the intersection of centerline of First Street NW; thence westerly along centerline of First Street NW to the intersection of centerline of Sixth Avenue NW; thence southerly along the centerline of Sixth Avenue NW to the intersection of center of east-west alley of Block 13 of Original Town of Mandan; thence westerly along the centerline of east-west alley in Block 13 and 14 of Original Town of Mandan to the intersection of centerline of Eighth Avenue NW; thence southerly along centerline of Eighth Avenue NW to the intersection of centerline of Main Street; thence easterly along centerline of Main Street to intersection of centerline of Fourth Avenue NE the same being the point of beginning.

- b. Provisions of this section regarding off-street parking shall be applied in the following:
 1. For any building replacing a building existing at the date of the ordinance from which this section is derived, a new building being constructed on vacant land or a building in which the floor space is increased by any additions or structural alternations, off-street parking space will not be required under this chapter, but will be provided by the city as the governing body of this city may from time to time provide by eminent domain or other authorized legal means and assessed against the benefited property.
 2. Notwithstanding any other requirements of this section relative to off-street parking, off-street loading shall be provided as designated elsewhere in this section.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-13. - CC Commercial District.

In any CC Commercial District, the following regulations shall apply:

- (1) *Uses permitted.* The following uses are permitted:
 - a. Any use permitted in a CB Commercial District, except residential dwellings.
 - b. Storage building and warehouse.
- (2) *Lot area.* Each principal building hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than 7,000 square feet.
- (3) *Lot width.* Each lot shall have a width of not less than 50 feet measured along the front building line.
- (4) *Floor area ratio.* The floor area ratio shall be as prescribed for CB Commercial Districts as set out in section 105-3-12(6).
- (5) *Front yard.* Each lot shall have a front yard of not less than 35 feet.
- (6) *Side yards.* No side yard shall be required of any building, except on lots which abut on a public street, in which event no building shall be less than 35 feet from any lot line.

- (7) *Rear yards.* Each lot shall have a rear yard not less than ten feet in depth.
- (8) *Height limits.* No building shall exceed nine stories, nor shall it exceed 85 feet in height.
- (9) *Off-street parking and loading space.* Parking and loading spaces shall be as required by section 105-1-6.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-14. - MA Industrial District.

In any MA Industrial District, the following regulations shall apply:

- (1) *General description.* The MA Industrial District is established as a district in which the principal use of land is for heavy commercial establishments and non-nuisance industries. For the MA Industrial District, in promoting the general purposes of this chapter, the specific intent of this section is:
 - a. To encourage the construction of, and the continued use of, the land for commercial and industrial buildings.
 - b. To prohibit use of the land for heavy nuisance industry and to prohibit any other use which would substantially interfere with the development or continuation of commercial and industrial establishments in the district.
 - c. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this chapter.
- (2) *Uses permitted.* The following uses are permitted:
 - a. Retail group A.
 - b. Retail group B.
 - c. Service group A.
 - d. Service group B.
 - e. Filling station.
 - f. Wholesale group.
 - g. Fire station.
 - h. Truck terminal.
 - i. Railroad line trackage.
 - j. Railroad spur trackage.
 - k. Railroad or bus passenger station.
 - l. Railroad freight station.
 - m. Utility service group.
 - n. Industrial group A.
 - o. Animal hospital.

- p. Radio or television transmitting station.
- (3) *Lot area.* Each principal building hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than 5,000 square feet.
 - (4) *Lot width.* Each lot shall have a width of not less than 50 feet measured along the front building line; provided, however, that on a record lot having a width of less than 50 feet at the front building line, and corresponding to a record lot shown on a plat or deed recorded prior to the adoption of the ordinance from which this section is derived, the minimum lot width measured along the front building line may be reduced to not less than 25 feet.
 - (5) *Floor area ratio.* The floor area ratio of the principal building and all accessory buildings shall not exceed 1.0 for single-story buildings, nor shall it exceed 2.0 for buildings of more than one story.
 - (6) *Front yard.* No front yard shall be required, except where the majority of lots in a block have been lawfully occupied with buildings having front yards, in which case the regulations of section 105-1-2 shall apply.
 - (7) *Side yards.* No side yards shall be required, except where a lot adjoins a lot in a residential district, then a building on a lot in the MA Industrial District shall observe the side yard requirements of the adjacent residential district.
 - (8) *Rear yard.* No rear yard shall be required.
 - (9) *Height limits.* No principal building shall exceed four stories, nor shall it exceed 50 feet in height.
 - (10) *Off-street parking and loading spaces.* The intent of this section in reducing the required yards to a minimum is to allow a greater flexibility in locating buildings on a lot. It is not the intent of this section to eliminate or exempt any use permitted in the district from full compliance with all off-street parking and loading requirements of this chapter.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-15. - MB Industrial District.

In any MB Industrial District, the following regulations shall apply:

- (1) *General description.* The MB Industrial District is established as a district in which the principal use of land is for heavy commercial and industrial establishments, which may create some nuisance, and which are not properly associated with, nor compatible with, residential, institutional and neighborhood commercial and service establishments. For the MB Industrial District, in promoting the general purposes of this chapter, the specific intent of this section is:
 - a. To encourage the construction of, and the continued use of, land for heavy commercial and industrial purposes.
 - b. To prohibit any other use that would substantially interfere with the development, continuation or expansion of commercial and industrial uses in the district.

- c. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this chapter.
- (2) *Uses permitted.* The following uses are permitted:
- a. Filling station.
 - b. Retail group B.
 - c. Service group B.
 - d. Wholesale group.
 - e. Fire station.
 - f. Truck terminal.
 - g. Railroad line trackage.
 - h. Railroad spur trackage.
 - i. Railroad freight station.
 - j. Railroad freight classification yard.
 - k. Truck farming group.
 - l. Utility service group.
 - m. Industrial group A.
 - n. Industrial group B.
 - o. Livestock sales pavilion.
 - p. Oil and gas well.
 - q. Radio or television transmitting station.
 - r. Sand and gravel extraction.
 - s. Sewage treatment plant.
 - t. Animal hospital.
 - u. Taxidermy.
- (3) *Lot area.* Each principal building erected, together with its accessory buildings, shall be located on a lot having not less than 10,000 square feet; provided, however, that in an MB Industrial District, and in no other residential, commercial or industrial district, it is permissible to erect more than one principal building on a zoning lot, provided that all other requirements of this section and this chapter are complied with.
- (4) *Lot width.* Each lot shall have a width of not less than 75 feet measured along the front building line; provided, however, that on a record lot having a width of less than 75 feet at the front building line and, corresponding to a record lot shown on a plat or deed recorded prior to the adoption of the ordinance from which this section is derived, the minimum lot width measured along the front building line may be reduced to not less than 50 feet.

- (5) *Floor area ratio.* The floor area ratio of the principal buildings or building and all accessory buildings shall not exceed 0.30 for single-story buildings, nor shall it exceed 0.60 for buildings of more than one story. The ground area occupied by the principal building or buildings and accessory buildings shall not exceed 30 percent of the total area of the lot.
- (6) *Front yard.* Each lot shall have a front yard not less than 50 feet in depth.
- (7) *Side yards.* Each lot shall have two side yards, one on each side of any principal building. The sum of the widths of the two side yards shall not be less than 20 percent of the average width of the lot. On any lot having an average width of 75 feet or less, each side yard shall be not less than ten percent of the width of the lot, and in no case shall a side yard be less than five feet in width. On any lot having an average width greater than 75 feet, no side yard shall be less than 7.5 feet in width and no side yard need be greater than 50 feet in width. On a lot containing two principal buildings located side by side, there are no minimum requirements for side yards between the two buildings.
- (8) *Rear yard.* Each lot shall have a rear yard not less than 25 feet in depth.
- (9) *Height limits.* No principal building shall exceed four stories, nor shall it exceed 50 feet in height. No accessory building shall exceed two stories, nor shall it exceed 25 feet in height.

(Ord. No. 1242, § 5, 12-20-2016)

Sec. 105-3-16. - MC Industrial District.

In any MC Industrial District, the following regulations shall apply:

- (1) *Uses permitted.* Any use permitted in an MA Industrial District, except ~~residential dwellings and~~ an animal hospital.
- (2) *Lot area.* Each principal building hereafter constructed, together with its accessory buildings, shall be located on a lot having an area of not less than 7,000 square feet.
- (3) *Lot width.* Each lot shall have a width of not less than 50 feet measured along the front building line.
- (4) *Floor area ratio.* The floor area ratio shall be as prescribed for MA Industrial District as set out in section 105-3-14(5).
- (5) *Front yard.* Each lot shall have a front yard of not less than 35 feet.
- (6) *Side yards.* No side yard shall be required for any building, except on lots which abut on a public street, in which event no building shall be less than 35 feet from any lot line.
- (7) *Rear yard.* Each lot shall have a rear yard not less than ten feet in depth.
- (8) *Height limits.* No principal building shall exceed four stories, nor shall it exceed 50 feet in height.
- (9) *Off-street parking and loading space.* Parking and loading spaces shall be as required by section 105-1-6.

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(Ord. No. 1242, § 5, 12-20-2016)

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Sec. 105-3-17. - MD Industrial District.

In any MD Industrial District, the following regulations shall apply:

- (1) *Uses permitted.* The following uses are permitted:
 - a. Any use permitted in an MB Industrial District.
 - b. Temporary livestock handling and retention facilities as necessary for the operation of a livestock sales market, and an abattoir.
 - c. Medical marijuana growing facility.
- (2) *Dimensional standards.* The provisions of section 105-3-15 relating to an MB Industrial District concerning lot area, lot width, floor area ratio, front yard, side yard, rear yard, and height limits shall apply to any MD Industrial District.
- (3) *Off-street parking and loading space.* Parking and loading spaces shall be as required by section 105-1-6.

Section 19. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 20. Effective Date. This ordinance shall take effect following final passage, adoption and publication.

Timothy A. Helbling, President
Board of City Commissioners

Attest:

James Neubauer,
City Administrator

First Consideration:

December 18, 2018

Second Consideration and Final Passage:

January 8, 2019

Exhibit 2 - City of Mandan North Dakota Wireless Facility Guidelines

Wireless Facility Guidelines City of Mandan North Dakota Draft 1/11/2019

The following guidelines are in addition to the requirements of Section 115-10 Wireless Telecommunication Facilities in the Public Right-Of-Way

Wireless Communication Facility (WCF):

- All-in-One Principle
 - Equipment submitted shall be of a nature which encompasses multiple technologies, frequency bands, protocols, coverage objectives, and capacity goals. Attached equipment shall be compact and scaled to the public utility structure. Equipment that is customary for normal cell site or tower application may not be approved for installation or operation on a City owned structure.
- Infrastructure Providers
 - Infrastructure providers are Permit Holders that do not have FCC licenses to directly operate a WCF, but lease Equipment (or space) to those companies that have FCC license. Infrastructure providers shall design using “all-in-one” principles as described above. Infrastructure providers shall design facilities to accommodate more than one wireless provider, and combine “all-in-one” principles across technologies, frequency band, protocols, coverage objectives, and capacity goals. Infrastructure providers shall disclose, in construction documents, which equipment is for a specific wireless provider and which equipment is for multiple wireless provider at each WCF.

Permit and Fees:

- Permit and Fees required in accordance with Section 115-10.
- Application:
 - Phase I (\$250 for up to five sites; +\$50 per additional site) (30 days for colocation; 45 days for new pole) (set meeting date and time)
 - Required Information:
 - Map on City Coordinates with locations
 - Max number of sites in application (15)
 - Photo of City owned structure that you wish to attach to
 - Applicant Names, Address and Contact info
 - Provider Names, Address and Contact info
 - Synopsis of Project
 - Meeting if requested by staff, prior to moving to Phase II
 - If new locations are proposed, 30 day calendar review is reset for new locations

Move to Phase II or deny full or partial permit. Incomplete applications will be notified within 30 days

- Phase II (\$250 for up to five sites; +\$50 per additional site) (30 days for colocation; 45 days for new pole)
- Detailed plan set
 - City Coordinate System
 - Include survey of all utilities private and public
 - Location and size of ground equipment

- Stamped by a ND professional Engineer
- Replacement structure or attachment only
- Master Attachment Agreement – No Fee
 - Renewal at 15 years - \$1000
- City Owned Structure in the Right-of-Way Attachment Agreement - \$270 per year per structure
- A complete as-built, in AutoCAD must be submitted to the City at the completion of the project. Failure to do so may result in the forfeiture of the permit.

The City reserves the right to deny any permit due to health, safety or welfare of the community.

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