Bismarck Planning and Zoning Commission

MEETING
March 25, 2026

Tom Baker Meeting Room City-County Office Building 5:00 PM

The City of Bismarck is encouraging citizens to provide their comments for public hearing items on the Planning & Zoning Commission agenda via email to planning@bismarcknd.gov. The comments will be sent to the Planning and Zoning Commissioners prior to the meeting and included in the minutes of the meeting. To ensure that comments are compiled and forwarded to the Planning and Zoning Commissioners with enough time to review all comments, please submit your comments no later than 8am the day of the meeting. Comments received after 8am the day of the meeting will not be included for consideration by the Planning and Zoning Commission. Comments should also include which agenda item number your comment references and your name (anonymous comments will not be forwarded to the Planning & Zoning Commissioners or included in the minutes of the meeting). If you would like to appear via video or audio link for a 3-5-minute comment on a public hearing item, please provide your e-mail address and contact information to planning@bismarcknd.gov at least one business day before the meeting.

As always, live meeting coverage is available on Government Access Channels 2 & 602HD, Radio Access 102.5 FM, FreeTV.org, RadioAccess.org, ROKU, Apple TV and Fire TV.

1. **APPROVAL OF MEETING MINUTES**

   A. Consider approval of minutes

   B. Guide to Public Participation

   C. Map of all items on the agenda

2. **PUBLIC COMMENT**

3. **CONSENT AGENDA**

   A. **Land Development Code** (DN)

      Zoning Ordinance Text Amendment | ZOTA2026-002 | Consideration
      Staff recommends: Call for Public Hearing

      Zoning Map Amendment | ZC2026-004 | Consideration
      Staff recommends: Call for Public Hearing

4. **REGULAR AGENDA**

A. **Cruz Subdivision** (LO)

Major Subdivision Final Plat | FPLT2025-004 | Public Hearing
Staff recommends: Approve

Zoning Map Amendment | ZC2025-009 | Public Hearing
Staff recommends: Approve

B. **FP - Floodplain District** (JW)

Zoning Ordinance Text Amendment | ZOTA2026-001 | Public Hearing
Staff recommends: Approve

5. **OTHER BUSINESS**

6. **ADJOURN**

A. The next meeting of the Planning & Zoning Commission is scheduled for April 22, 2026.

B. Building Permit Data: **Month to Date** or **Year to Date**

BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
February 25, 2026

The Bismarck Planning & Zoning Commission met on February 25, 2026, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. The meeting was held in person and via Zoom. Dakota Media Access was present to record the meeting and archive on freetv.org for public viewing. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Robert Field, Cole Johnson, Gabe Schell, Mike Schmitz, Mike Schwartz, Conner Swanson, Trent Wangen, and Al Wangler.

Commissioners Brian Bitner, Sheldon Sivak, and Kendra Taylor were absent.

Staff members present were Sarah Fricke – Senior Administrative Assistant, Isak Johnson – Planner, Daniel Nairn – Planning Director, Lauren Oster – Planner, and Jenny Wollmuth – Senior Planner.

MINUTES

Chair Schwartz stated the minutes of the January 28, 2026 meeting will be considered at the March 25, 2026 meeting.

PUBLIC COMMENT

Chair Schwartz opened the public comment period.

There being no comments, Chair Schwartz closed the public comment period.

CONSIDERATION

3A. COTTAGE GROVE ADDITION
ZONING MAP AMENDMENT, and MAJOR SUBDIVISION PRELIMINARY PLAT

3B. JMAC INDUSTRIAL SECOND ADDITION
ZONING MAP AMENDMENT and MAJOR SUBDIVISION PRELIMINARY PLAT

3C. SLEEPY WILLOW ADDITION
ZONING MAP AMENDMENT and MAJOR SUBDIVISION PRELIMINARY PLAT

3D. FP – FLOODPLAIN DISTRICT
ZONING ORDINANCE TEXT AMENDMENT

Commissioner Wangler asked if the 20-foot setbacks in Cottage Grove Addition would affect driveways. Mr. Johnson responded that 20-foot setbacks are the minimum required setback and will not affect driveways.

MOTION: Based on the findings contained in the staff reports, Commissioner Wangen made a motion to approve consent agenda items 3A, 3B, 3C, and 3D calling for public hearings as recommended by staff. Commissioner Schmitz

seconded the motion, and it was unanimously approved with Commissioners Field, Johnson, Schell, Schmitz, Schwartz, Swanson, Wangen, and Wangler voting in favor of the motion.

PUBLIC HEARING – JFP FOXHAVEN SUBDIVISION
MAJOR STREET PLAN AMENDMENT, ZONING MAP AMENDMENT, and
MAJOR SUBDIVISION FINAL PLAT

Chair Schwartz called for the public hearing on a major subdivision final plat for JFP Foxhaven Subdivision as well as an accompanying zoning map amendment from the A – Agricultural zoning district to the RR – Residential zoning district and major street plan amendment (MSPA) for a segment of a future alignment of 76th Avenue NE. The property is located northeast of Bismarck, between 73rd Avenue NE and Arcata Drive, along the west side of 41st Street NE.

Mr. Johnson provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the major street plan amendment, zoning map amendment, and major subdivision final plat would not adversely impact public health, safety, and general welfare.

Mr. Johnson said, based on the findings contained in the staff report, staff recommends approval of the zoning map amendment from the A – Agricultural zoning district to the RR – Residential zoning district, major street plan amendment (MSPA) for a segment of a future alignment of 76th Avenue NE and major subdivision final plat for JFP Foxhaven Subdivision

Commissioner Schmitz asked what the impact of the major street plan amendment would be on the adjacent property owner to the east of the proposal. Mr. Johnson replied that the major street plan provides guidance on potential future roadways but does not require the road to be built at any specific time or by any specific party.

Commissioner Field said that the property will be split between the City of Bismarck and Burleigh County jurisdiction as of March 1 and asked why the owner is making this request now. Mr. Johnson said staff did communicate the change in jurisdiction with the applicant and the applicant chose to have the request completed prior to the deadline by City staff.

Commissioner Schell asked whether city staff had communicated to the adjacent property owner to the east that whether the road is built or not depends on future development which is their choice to make. Mr. Johnson said a letter was mailed with an explanation and phone conversations had occurred as well.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson Hagen & Co., explained that staff wants to allow 76th Avenue NE to continue through eventually, so a temporary cul-de-sac was added within the subdivision and the future alignment was shifted to the east. Mr. Niemiller said the property owner to the west does not intend to develop their five-acre property in the near future.

Bernie and Mona Heid, the property owners to the east of the proposal, spoke in opposition to the request noting concerns of a road being built on top of their drainfield and a reduction in water pressure due to new development. Commissioner Schell explained that if they

choose to develop in the future, municipal water and sanitary sewer would be available in this area, and if they choose not to develop, the property will remain as it is.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Swanson made a motion to approve the zoning map amendment from the A – Agricultural zoning district to the RR – Residential zoning district, the major street plan amendment (MSPA) for a segment of a future alignment of 76th Avenue NE, and the major subdivision final plat for JFP Foxhaven Subdivision. Commissioner Schell seconded the motion.

Commissioners Johnson, Field, and Wangen noted concerns primarily with the major street plan amendment portion of the request. Commissioner Wangen and Field said they feel approval will negatively impact the adjacent property owner to the east.

Commissioner Wangler asked if this is denied, could it be appealed to the City Commission or would it then be Burleigh County's jurisdiction.

Mr. Nairn explained that city staff will see the project through to completion, including any appeal proceedings before the City Commission.

The motion was denied with Commissioners Field, Johnson, Schwartz, Wangen and Wangler voting against. Commissioners Schmitz, Schell, and Swanson voted in favor of the motion

PUBLIC HEARING – DAYBREAK THIRD ADDITION
MINOR SUBDIVISION FINAL PLAT

Chair Schwartz called for the public hearing on the minor subdivision final plat titled Daybreak Third Addition. The property is located in northwest Bismarck, north of 57th Avenue NE between North Washington Street and State Street, in the southeast quadrant of the intersection of Ridgeland Drive and 64th Avenue NE.

Ms. Wollmuth provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the minor plat would not adversely impact public health, safety, and general welfare.

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends approval of the minor subdivision final plat titled Daybreak Third Addition.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson Hagen & Co., came forward to explain the purpose of the three proposed lots.

Commissioner Schell asked Mr. Niemiller to explain the buildable area of Lot 3 as it is significantly encumbered by easements. Mr. Niemiller explained the language in the WAPA easement does not allow development within the easement, but WAPA does allow for parking to be located within their easement boundary on a case by case basis after reviewing proposed site plans.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Wangen made a motion to approve the minor subdivision final plat titled Daybreak Third Addition. Commissioner Johnson seconded the motion. The motion was unanimously approved with Commissioners Field, Johnson, Schell, Schmitz, Schwartz, Swanson, Wangen, and Wangler voting in favor.

PUBLIC HEARING – PRAIRIE HILLS SEVENTH ADDITION
MINOR SUBDIVISION FINAL PLAT

Chair Schwartz called for the public hearing on minor subdivision final plat titled Prairie Hills Seventh Addition. The property is located in west, central Bismarck along the north side of West Turnpike Avenue, between West Divide Avenue and Xavier Street.

Commissioner Johnson recused himself from the hearing due to a professional relationship with the project and left the table for the duration of the agenda item.

Mr. Johnson provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the minor plat would not adversely impact public health, safety, and general welfare.

Mr. Johnson said, based on the findings contained in the staff report, staff recommends approval of the minor plat titled Prairie Hills Seventh Addition.

Chair Schwartz opened the public hearing.

There being no comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Wangen made a motion to approve the minor subdivision final plat titled Prairie Hills Seventh Addition. Commissioner Schmitz seconded the motion. The motion was unanimously approved with Commissioners Field, Schell, Schmitz, Schwartz, Swanson, Wangen, and Wangler voting in favor.

FINAL CONSIDERATION – HAY CREEK TWP, PART OF SECTIONS 19 & 20
ANNEXATION

Chair Schwartz opened the final consideration of the annexation of part of the South ½ of Section 19, T139N-R80W/Hay Creek Township pursuant to Document #975320 and Auditor's Lot B1 of the West ½ of Section 20, T139N-R80W/Hay Creek Township pursuant to Document #727447. The property is located northwest Bismarck, east of Clairmont Road, north of Valley Drive and East Valley Drive.

Ms. Oster provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the annexation would not adversely impact public health, safety, and general welfare.

Ms. Oster said, based on the findings, staff recommends approval of the annexation of annexation of part of the South ½ of Section 19, T139N-R80W/Hay Creek Township pursuant

to Document #975320 and Auditor's Lot B1 of the West ½ of Section 20, T139N-R80W/Hay Creek Township pursuant to Document #727447.

MOTION: Commissioner Schmitz made a motion to approve the annexation of part of the South ½ of Section 19, T139N-R80W/Hay Creek Township pursuant to Document #975320 and Auditor's Lot B1 of the West ½ of Section 20, T139N-R80W/Hay Creek Township pursuant to Document #727447. Commissioner Wangen seconded the motion and it was unanimously approved with Commissioners Field, Johnson, Schell, Schmitz, Schwartz, Swanson, Wangen, and Wangler voting in favor.

OTHER BUSINESS

Mr. Nairn provided an update on the Land Development Code and invited the Planning and Zoning Commission to an upcoming public open house. Mr. Nairn stated that the full draft would be submitted to the Planning and Zoning Commission for consideration next month.

Commissioner Schmitz asked for more information to be shared about materials currently available for review.

Mr. Nairn referenced the drafts and map already available online at bismarckldc.org and provided the times of the open houses.

Commissioner Schwartz reminded Planning and Zoning Commissioners of the upcoming training opportunity that has been scheduled.

Chair Schwartz read a Resolution of Recognition of David Blackstead, who served the City of Bismarck for over 40 years.

MOTION: Commissioner Schmitz made a motion to adopt the Resolution. Commissioner Wangen seconded the motion. The motion was unanimously approved with Commissioners Field, Johnson, Schell, Schmitz, Schwartz, Swanson, Wangen, and Wangler voting in favor.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 6:08 p.m. to meet again on March 25, 2026.

Respectfully submitted,

_____
Sarah S. Fricke
Recording Secretary

_____
Mike Schwartz
Chair

DRAFT

BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
January 28, 2026

The Bismarck Planning & Zoning Commission met on January 28, 2026, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. The meeting was held in person and via Zoom. Dakota Media Access was present to record the meeting and archive on freetv.org for public viewing. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Brian Bitner (via Zoom), Cole Johnson, Gabe Schell, Mike Schmitz (via Zoom), Conner Swanson, Kendra Taylor, and Al Wangler.

Commissioners Robert Field, Trent Wangen, and Sheldon Sivak were absent.

Staff members present were Sarah Fricke – Senior Administrative Assistant, Isak Johnson – Planner, Daniel Nairn – Planning Director, Lauren Oster – Planner, and Jenny Wollmuth – Senior Planner.

MINUTES

Chair Schwartz called for consideration of the minutes of the December 17, 2025 meeting.

MOTION: Commissioner Johnson made a motion to approve the minutes of the December 17, 2025 meeting. Commissioner Schell seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Schell, Schwartz, Schmitz, Swanson, Taylor, and Wangler voting in favor of the motion.

PUBLIC COMMENT

Chair Schwartz opened the public comment period.

There being no comments, Chair Schwartz closed the public comment period.

CONSIDERATION

3A. JFP FOXHAVEN SUBDIVISION
MAJOR STREET PLAN AMENDMENT, ZONING MAP AMENDMENT, and MAJOR SUBDIVISION PRELIMINARY PLAT

3B. BOULDER RIDGE EIGHTH ADDITION
ZONING MAP AMENDMENT and MAJOR SUBDIVISION PRELIMINARY PLAT

3C. CLEAR SKY SECOND ADDITION
ZONING MAP AMENDMENT and MAJOR SUBDIVISION PRELIMINARY PLAT

MOTION: Based on the findings contained in the staff reports, Commissioner Bitner made a motion to approve consent agenda items 3A, 3B, and 3C calling for public hearings as recommended by staff. Commissioner Johnson seconded

the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Schell, Schwartz, Schmitz, Swanson, Taylor, and Wangler voting in favor of the motion.

PUBLIC HEARING – BOULDER RIDGE SEVENTH ADDITION SECOND REPLAT MINOR SUBDIVISION FINAL PLAT

Chair Schwartz called for the public hearing on the minor subdivision final plat titled Boulder Ridge Seventh Addition Second Replat. The property is located in north Bismarck, east of North Washington Street, south of 57th Avenue NE, between Flint Drive and Calvert Drive.

Ms. Oster provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the minor subdivision final plat would not adversely impact the public health, safety, and general welfare.

Ms. Oster said, based on the findings contained in the staff report, staff recommends approval of the minor subdivision final plat titled Boulder Ridge Seventh Addition Second Replat with the following conditions:

1. A signed private drive private utility agreement be submitted prior to recordation of the plat.
2. The Title 14 requirement for a certified letter sent at least 10 days prior to the hearing is waived, with the understanding that it was sent at least 5 days prior to the hearing in accordance with the North Dakota Century Code.

Commissioner Schell asked if Planning staff are comfortable with the building permits already issued for this property relating to a shared property line. Ms. Oster said the agenda packet includes an item that shows a general location of the proposed building layout. Commissioner Schell asked whether the property line adjustment will cause any issues with the setbacks. Ms. Oster explained that the line has moved slightly to the east and will not have any effect on setbacks.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson Hagen & Co., explained that the developer is platting after the construction has begun due to pouring the foundation before winter. Commissioner Schell and Mr. Niemiller discussed addressing, lot numbering, and plans for the west lots.

Mr. Nairn said staff will support the change in lot numbering.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Schell made a motion to approve the minor subdivision final plat titled Boulder Ridge Seventh Addition Second Replat with the conditions and change to the lot numbering. Commissioner Swanson seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Johnson, Schell, Schwartz, Schmitz, Swanson, Taylor, and Wangler voting in favor of the motion.

PUBLIC HEARING – COTTONWOOD PARKVIEW ADDITION FIRST REPLAT, BLOCK 1, LOTS 2-9
ZONING MAP AMENDMENT

Chair Schwartz called for the public hearing on the zoning map amendment from the Conditional R10 – Residential zoning district to the RM10 – Residential zoning district on Lots 2-9, Block 1, Cottonwood Parkview Addition First Replat. The property is located in south Bismarck, south of Sante Fe Avenue, north of Rutland Drive, on the west side of Kamrose Drive.

Mr. Johnson provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that zoning map amendment would not adversely impact public health, safety, and general welfare.

Mr. Johnson said, based on the findings contained in the staff report, staff recommends approval of the zoning map amendment for Cottonwood Parkview Addition First Replat.

Commissioner Schell asked about landscaping requirements. Mr. Johnson said no additional landscaping will be required.

Chair Schwartz opened the public hearing.

Nic Cullen, Houston Engineering, came forward to answer commissioners' questions.

Commissioner Schell asked whether the existing building would be demolished. Mr. Cullen indicated nothing would be demolished.

Chair Schwartz asked why the applicant is making this request. Mr. Cullen responded that it will provide tax savings.

Commissioner Schell asked if this area would be similar to the property across the street with several two-unit buildings. Mr. Cullen said this property will mimic the property across the street.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Johnson made a motion to approve the zoning map amendment for Cottonwood Parkview Addition First Replat. Commissioner Schmitz seconded the motion. The motion was unanimously approved with Commissioners Bitner, Johnson, Schell, Schwartz, Schmitz, Swanson, Taylor, and Wangler voting in favor.

PUBLIC HEARING – EDGEWOOD VILLAGE SEVENTH ADDITION SECOND REPLAT ZONING MAP AMENDMENT and MINOR SUBDIVISION FINAL PLAT

Chair Schwartz called for the public hearing on a zoning map amendment from the R10 – Residential zoning district to the RM10 – Residential zoning district and a minor subdivision final plat titled Edgewood Village Seventh Addition Second Replat. The property is located in northeast Bismarck, east of Nebraska Drive and west of Oklahoma Lane, on the north side of Knudsen Avenue.

Mr. Johnson provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the zoning map amendment and minor plat would not adversely impact public health, safety, and general welfare.

Mr. Johnson said, based on the findings contained in the staff report, staff recommends approval of the zoning map amendment and minor plat titled Edgewood Village Seventh Addition Second Replat with the following condition:

1. The Title 14 requirement for a certified letter sent at least 10 days prior to the hearing is waived, with the understanding that it was sent at least 5 days prior to the hearing in accordance with the North Dakota Century Code.

Commissioner Schell suggested the watermain easement be removed from the face of the plat and the owner's certificate of dedication.

Chair Schwartz opened the public hearing.

Nic Cullen said he agrees with Commissioner Schell's suggestion to remove the easement.

Commissioner Schell asked whether the existing building would be demolished. Mr. Cullen indicated nothing would be demolished.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Wangler made a motion to approve the zoning map amendment and minor subdivision final plat title Edgewood Village Seventh Addition Second Replat with the conditions. Commissioner Schmitz seconded the motion. The motion was unanimously approved with Commissioners Bitner, Johnson, Schell, Schwartz, Schmitz, Swanson, Taylor, and Wangler voting in favor.

PUBLIC HEARING – PRAIRIE PLACE SUBDIVISION
BLOCK 2, LOT 4 LESS THE WEST 240'
RURAL RESIDENTIAL LOT SPLIT

Chair Schwartz called for the public hearing on a rural residential lot split on Lot 4 less the west 240 feet, Block 2, Prairie Place Subdivision into two lots. The property is located northeast of Bismarck, north of 43rd Avenue NE, between 26th Street NE and Centennial Road, along the north and west side of Wildrose Crescent.

Ms. Wollmuth provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the rural residential lot split would not adversely impact public health, safety, and general welfare.

Ms. Wollmuth said, based on the findings, staff recommends approval of the rural residential lot split on Lot 4 less the west 240 feet, Block 2, Prairie Place Subdivision, with the following condition: A deed transferring the ownership of the eastern parcel is recorded with the Burleigh County Recorder prior to the issuance of a building permit.

Commissioner Schell asked if the Burleigh County Highway department had any concerns with the additional access points and if there are any restrictions in the covenants. Ms. Wollmuth stated Burleigh County is always part of the review process and they typically express concerns during that review prior to public hearing if concerns exist and the applicant is available to answer questions regarding covenants.

Commissioner Schmitz asked if the resulting lots would match the typical lot size in the development. Mr. Wollmuth said the proposed lot sizes are similar to the others in the area.

Commissioner Wangler asked whether the existing buildings will be in compliance after the lot split. Ms. Wollmuth said both resulting lots will remain complaint to ordinance.

Chair Schwartz opened the public hearing.

Jordan Williams, the applicant, reaffirmed that the lot coverage will be under the allowed amount after the lot is split.

Schell asked about covenants. Mr. Williams said there are no covenants prohibiting the split.

John Paczkowski, an adjacent property owner, said that covenants exist for the subdivision, but does not believe anything excludes this request.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Commissioner Schmitz made a motion to approve the rural residential lot split on Lot 4 less the west 240', Block 2, Prairie Place Subdivision into two parcels with the condition that a deed transferring the ownership of the eastern parcel is recorded with the Burleigh County Recorder prior to the issuance of a buildng perm. Commissioner Johnson seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Schell, Schwartz, Schmitz, Swanson, Taylor, and Wangler voting in favor of the motion.

OTHER BUSINESS

Mr. Nairn provided an update on the special use permit for a drive-through that was approved with conditions at the December meeting. An easement was reviewed by staff and recorded. Staff is currently awaiting a site plan submittal and a building permit application for the structural alterations.

ELECTION OF OFFICERS

Chair Schwartz was unanimously reelected as Chair and Commissioner Johnson was unanimously reelected as Vice-Chair.

Mr. Nairn said he will be providing a training this Spring that will include a presentation and an opportunity for questions and will take approximately an hour and a half. Staff will send out poll with meeting options.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 5:50 p.m. to meet again on February 25, 2026.

Respectfully submitted,

_____
Sarah S. Fricke
Recording Secretary

_____
Mike Schwartz
Chair

DRAFT

BISMARCK PLANNING AND ZONING COMMISSION
GUIDE TO PUBLIC PARTICIPATION

The Planning and Zoning Commission welcomes and values public input during its meetings. The following procedures for public comment are to ensure that all individuals have a fair opportunity to be heard while maintaining an orderly, transparent, and efficient meeting environment. There are two opportunities available:

Public Hearings

All public hearing items are shown on the regular agenda, which is when comments on these items should be given.

1. **Introduction**. The Chair of the Planning and Zoning Commission introduces the item on the agenda and asks staff to present a report.
2. **Staff Report**: A planner presents the staff report. The presentation will be an overview of the written staff report included in the agenda packet with a visual presentation of materials.
3. **Commission Questions**. Commissioners may ask staff questions, but they will not discuss the request or share an opinion prior to obtaining input from the public.
4. **Open Public Hearing**. The Chair will then open the public hearing on the request and ask if anyone would like to speak to the commission.
5. **Applicant Statement**. The applicant is traditionally given the courtesy to present their proposal or any additional information first.
6. **Public Statements**. The hearing is then opened to the public to voice their support, opposition, or give any comments regarding the item. This is the opportunity to approach the podium.
7. **Close Hearing**. The Chair closes the hearing for the item once all interested people have spoken, and no more public comments are allowed.
8. **Commission Discussion**. Commissioners discuss the proposal. They may ask staff or the applicant questions or for clarification of items stated during the public hearing.
9. **Commission Action**. The Planning and Zoning Commission makes its decision on that item.

Other Public Comments

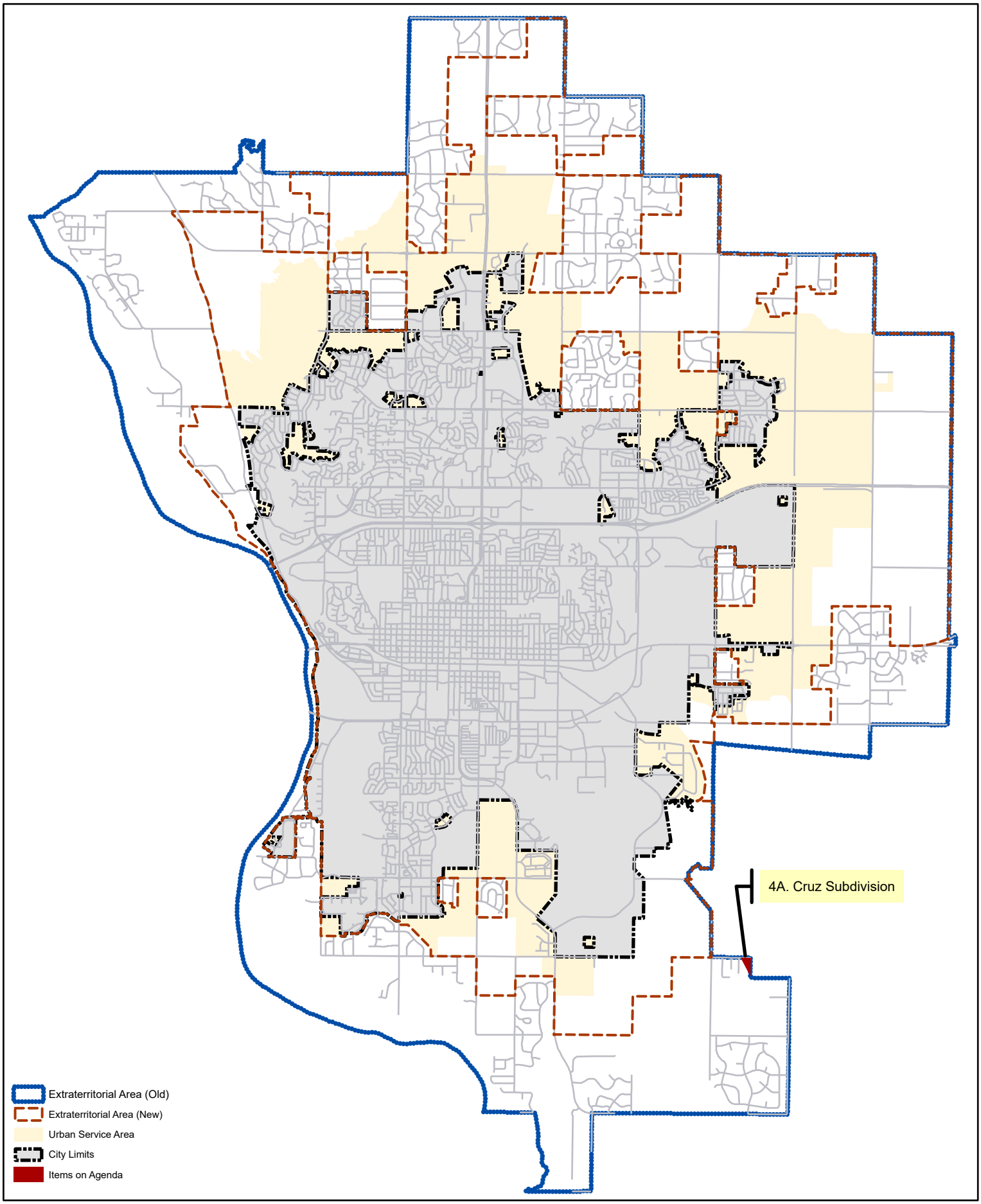
Any comments addressing an item on the current agenda, other than a public hearing, or an agenda item from the preceding meeting.

1. **Public Comment**. General public comments are received toward the beginning of the meeting.
2. **Time Limits**. Each person may comment for five minutes, unless extended by the Chair. An individual may not yield their time to another. The total comment period is limited to 30 minutes, unless extended by the Chair.

General Instructions

The following guidance applies to both public hearings and other public comments:

- Write your first and last name and address on the sign-in sheet at the podium.
- Adjust the microphone, if necessary, state your name, then provide comments. Traditionally, comments are addressed to the Chair and Planning and Zoning Commission.
- Comments may not be defamatory, abusive, harassing, or unlawful; include information that is exempt or confidential under North Dakota open records law; or interfere with the orderly conduct of the meeting.
- Commenters may only address the Commission, not staff, applicants, or other meeting attendees. Commissioners may question any person. The Chair may ask speakers to limit their time, not repeat previous testimony, and speak only once.
- Written materials may be distributed to the Commissioners or displayed visually on screens. Staff are available to assist.
- Reasonable accommodations will be made upon request, pursuant to the City's Title VI policy.



This map is for reference purpose only and is not intended as a survey or accurate representation of all map features.

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Agenda Item # 3A
March 25, 2026

STAFF REPORT

Application for: **Zoning Ordinance Text Amendment** Project ID: **ZOTA2026-002**

Zoning Map Amendment **ZC2026-004**

Project Summary

Title:	Land Development Code
Status:	Planning and Zoning Commission – Consideration
Project Contact:	Daniel Nairn, AICP, Planning Director
Request:	Enact new Land Development Code as repeal and replacement to Title 14 Zoning and Subdivision ordinance
Staff Recommendation:	Call for public hearing

Project Narrative

The Bismarck Planning Department proposes a new Land Development Code, as a repeal and replacement of Title 14 Zoning and Subdivision ordinance in the City Code of Ordinances, and a new zoning map corresponding to the districts of the Land Development Code.

Land Development Code Text

The primary goals for the Land Development Code update have been to:

1. Establish a simpler and more consistent set of development procedures.
2. Implement goals of the City Comprehensive Plan, in particular related to housing and complete neighborhoods.
3. Make the ordinance more user-friendly, searchable, and easy to understand.
4. Create more predictable development outcomes.

Bismarck has adopted a new zoning code on four occasions: 1924, 1936, 1953, and 1982. The adoption of the Land Development Code in 2026 would represent this generation's expression of how Bismarck should grow as a community.

A zoning code is always a living document, and Title 14 has been amended over a hundred times by the City Commission since the last comprehensive review in the 1980s. From a purely practical standpoint, this update process is an opportunity to structurally reorganize, resolve any inconsistencies, and generally clean up an ordinance that has succumbed to entropy over the years.

Looking forward, the Land Development Code is also an opportunity to implement goals and objectives set by Together 2045 Bismarck's Comprehensive Plan. Changes to the zoning and subdivision ordinance were a major component of this plan. A detailed analysis of conformance to the Comprehensive Plan is contained in the Findings of Fact in this staff report.

New Official Zoning Map

The zoning map for Bismarck and the Extraterritorial Area (ETA) is proposed to be amended in its entirety. A comprehensive approach is necessary because most zoning districts have changed names and meanings in

(continued)

the Land Development Code. The following principles were used to select the appropriate district for each parcel:

1. Boundaries of zoning districts should be aligned with lot lines.
2. Larger contiguous districts are favored. Spot zones should be eliminated and only used when no alternative is available.
3. Zoning should be based on existing conditions. A zoning district should be selected to resolve existing non-conformities and avoid creating new non-conformities, to the greatest extend possible.
4. Streets should have the same district on both sides for the entire block, with boundaries between districts set through centers of blocks rather than street centerlines (with caution for buffers between districts).
5. A new zoning district should have at least the same entitlements as the previous. Down-zonings should be avoided, wherever possible.
6. Zoning only relates to land use permissions and not ownership. In the LDC, no district denotes public ownership. Lots that were zoned for ownership reasons should be reassigned to the appropriate district based on land use.
7. Special civic uses should be included with the surrounding zoning district if they are small and generally serve the neighborhood or zoned as Public, Civic, Institutional if they are larger-scale having a broad service area.

Changes to the zoning map were not necessarily selected to implement the Future Land Use Plan, which may be premature given interests of property owners. Any future zoning map amendments initiated by property owners should comply with this Plan. However, this zoning map amendment is intended only to align with existing conditions and zoning entitlements.

In a few areas, zoning districts were previously established in advance of development, known as “pre-zoning.” This occurred before the City actively utilized a Future Land Use Plan for this purpose. The proposed zoning map retains these existing zoning permissions, despite the fact that the boundaries do not meet all standards of the code. Future development of these areas will almost certainly require a new zoning map amendment to align these boundaries with new platted lots.

The new zoning map implements changes to the Extraterritorial Area (ETA) that resulted from a revised agreement between the City of Bismarck and Burleigh County which went into effect on March 1, 2026. Areas removed from the ETA with this agreement are not shown on the zoning map. These areas will be assigned a zoning district within Burleigh County jurisdiction or an organized township, by the respective authority.

Conditional and PUD Zoning Districts

Over the course of time, 132 zoning districts with special conditions have been created. This typically occurs when the zoning ordinance is not well aligned with the desires of developers and the Planning and Zoning Commission, resulting in special conditions negotiated during hearings or proposed by staff. A large number of these conditions may no longer be necessary to meet the original intent, given the new districts available in the LDC. The PUDs and conditional districts proposed by staff to be retained are shown on the attached draft zoning map. In the future, many of these may be converted in the POD - Plan Overlay Districts. Overlay districts for the floodplain and airport contours do not change and are not shown on the draft map for readability purposes.

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Public Engagement

The scale of the Land Development Code warrants extensive public engagement. In many ways, the public input of the Land Development Code builds upon the already robust process of the Together 2045 Comprehensive Plan, which guided the development of this code. A summary of public engagement for Together 2045 from 2021 through 2022 is available on the Planning Department webpage.

This section of the staff report details the engagement that has occurred since the beginning of the Land Development Code in March 2024 through the present.

LDC Steering Committee

A Steering Committee of stakeholders was assembled at the project initiation, with guidance from the Planning portfolio-holder on the City Commission. Stakeholders included the Mayor, Chair of Planning and Zoning Commission, Bismarck-Mandan Chamber-EDC, Bismarck-Mandan Homebuilders Association, Downtowners, major land developers, and consulting engineers. The committee met regularly to establish a framework for the document, digest public feedback, review drafts, and address challenging questions.

Steering Committee Meetings

- May 20, 2024
- September 24, 2024
- February 11, 2025
- June 17, 2025
- June 30, 2025
- September 25, 2025
- February 4, 2026
- February 17, 2026
- March 10, 2026

LDC Technical Committee

A committee of city staff, along with counterparts in Burleigh County and the Parks District, were selected to provide technical guidance on practical implementation of the Code and alignment with other requirements and practices of the City and County.

Technical Advisory Committee Meetings

- May 21, 2024
- September 24, 2024
- February 11, 2025
- June 30, 2025
- September 23, 2025
- February 5, 2026
- February 18, 2026
- March 12, 2026

Board and Commission Updates

The project team appeared on the regular agenda of scheduled public meetings to keep the board apprised of progress. The updates were also intended to inform the attending and viewing public.

Regular Agenda Meetings

- September 24, 2024 | Board of City Commissioners
- September 25, 2024 | Planning & Zoning Commission
- February 11, 2025 | Board of City Commissioners
- July 1, 2025 | Bismarck-Burleigh Commissions Committee
- September 23, 2025 | Board of City Commissioners
- September 24, 2025 | Planning & Zoning Commission
- March 10, 2026 | Board of City Commissioners
- March 12, 2026 | Renaissance Zoning Authority

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Stakeholder Meetings/Focus Groups

Throughout the LDC process, the project team joined various community groups with an interest in the LDC to discuss relevant topics.

Stakeholder Meetings/Focus Groups

- May 21, 2024 | Bismarck Parks and Recreation District
- May 21, 2024 | Downtown Focus Group
- September 24, 2024 | AARP
- February 12, 2025 | Developers Roundtable
- February 12, 2025 | Development Financing Focus Group
- April 2, 2025 | Bismarck-Mandan Home Builders Association Contractor Engagement
- September 24, 2025 | Historic Preservation Focus Group
- September 24, 2025 | Major Medical Provider Discussion
- October 29, 2025 | Bismarck Mandan Board of REALTORS®

Additionally, the Bismarck-Mandan Homebuilders Association was provided quarterly updates on the LDC with opportunity for discussion and input throughout the LDC process.

Community Open Houses

Traditional open house-style events were held for the public in various locations around the community. Open houses were coordinated with major releases of project documents. Poster and maps and digital imagery were on display and team members were available to discuss the project with attendees.

Issues Assessment Open Houses

- September 23, 2024 | 6:30-8:00 PM
- September 25, 2025 | 2:30-4:00 PM

Public Review Draft Open Houses

- March 11, 2026 | 4:00-7:00 PM
- April 15, 2026 | 3:00-6:00 PM (Upcoming)

LDC Booth at Fairs

A booth with information about the LDC was set-up at various fairs throughout the process to allow the public to engage project team members on the project and provide input.

Downtowners Street Fair

- September 13-14, 2024
- September 12-13, 2025

BisMarket

- September 20, 2025 | 10:00 AM-1:00 PM

Career Fair
(for high-school students at the BPS Career Academy and Tech Center)

- October 1, 2024

Bismarck-Mandan Home Show

- March 20-21, 2026

Coffee with a Planner

Project team members cooperated with local coffee shops to have scheduled events to meet with planners to discuss the LDC. Available drafts were shared with any interested members of the public.

Anima Cucina Events (2025)

- October 21 | 1:30-3:00 PM
- October 23 | 8:30-10:00 AM
- November 4 | 1:30-3:00 PM
- November 6 | 8:30-10:00 AM
- November 18 | 1:30-3:00 PM
- November 20 | 8:30-10:00 AM

Boneshaker Coffee Events (2025)

- October 27 | 1:30-3:00 PM
- October 29 | 8:30-10:00 AM
- November 10 | 1:30-3:00 PM
- November 12 | 8:30-10:00 AM

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- November 24 | 1:30-3:00 PM
- November 26 | 8:30-10:00 AM

Online LDC Content

The following content has been made available online to members of the public:

- The website bismarckldc.org was created early in the process as a clearinghouse for updates on the LDC.
- The City Planning Department page also provides basic information and links to the project page.
- The Proposed LDC Zoning Map was shared online in an interactive format starting in the Summer of 2025.
- Social media content, including videos, imagery, and meeting promotions were run at key benchmarks.
- A "Zoning in Bismarck – 100 Years" storymap was created to show the long history leading up to the LDC in the present.
- A "Bismarck Land Development Code" storymap was created to provide a basic background on zoning and show changes to the zoning map.

The formal public hearing process will commence if the Planning and Zoning Commission calls for a public hearing on this request.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

Zoning Text Amendment (Land Development Code)

The goals and objectives of Together 2045 Bismarck's Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment (Comprehensive Plan)

Yes. The Land Development Code (LDC) was identified as the critical tool to implement the goals and objectives of the comprehensive plan. The following objectives have been addressed.

***S1a** "Support a mix of uses to create vibrant neighborhoods where necessities and amenities of daily life are easily accessible to all residents"*

The LDC includes three new mixed-used districts, RX, CX, and IX, that are intended to match the scale and intensity of the appropriate districts. Certain urban neighborhoods will permit small-scale retail and services, where none are currently allowed. On the opposite end of the spectrum, the IX – Industrial areas will allow multifamily residential uses where they are currently prohibited. Extra requirements and procedures are still in place to ensure public review and refinement of any potentially sensitive collocations of uses.

***S1d** "Modify existing zoning districts or create new districts that match the character of existing older neighborhoods in Bismarck"*

The new RU and RX districts were created to align with existing conditions of the core neighborhoods of Bismarck, developed prior to 1953. This will considerably reduce the number of nonconformities in these neighborhoods and allow property owners to utilize their properties within the historical design patterns.

***S2d** "Encourage excellence and innovation in local architecture, particularly in areas of high visibility such as downtown, and along major corridors."*

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The LDC includes a form-based code for the downtown zoning districts that provides design parameters to ensure high-quality of architecture. The design review process is still in place with review by a committee, but the Code will provide more objective guidance to new development than the existing downtown design guidelines. The LDC will also differentiated between smaller-scale changes to be reviewed administratively, and larger-scale project that warrant review by the design review committee.

S3d *"Continue to balance the business interest for commercial signs with public safety and the overall visual impact of signs along roadways"*

The Signs chapter of the LDC continues to provide reasonable requirements for signs along public rights-of-way, which vary by zoning district. Other than changes for readability and consistency with the remainder of the LDC, changes to the Sign ordinance are minimal.

S3f *"Shield outdoor lighting sources, both public and private, throughout Bismarck and its rural areas to prevent excessive light trespass into adjoining properties or the night sky"*

A new Outdoor Lighting chapter is included in the LDC to enhance safety, preserve the city's nighttime character, and improve the ability to view the nighttime sky from within city limits. This chapter determines when lighting plans are required, how lights should be shielded, required levels of light trespass, and hours of illumination.

S4a *"Increase efficiency of urban land use to maximize public investment in infrastructure and services thereby reducing cost for tax and ratepayers"*

The LDC allows more compact development to occur than the current ordinance through a variety of means. Minimum lot sizes, setbacks, and other dimensional standards are reduced. A greater range of housing types are permitted in most districts. Finally, multifamily residential uses, if in the appropriate zoning districts, have reduced restrictions.

S4b *"Mitigate the impact of off-street parking by locating parking behind buildings whenever feasible and limiting the size of lots to reasonable needs on the site"*

Parking is required to be behind buildings in the downtown area, to the greatest extent possible. This requirement has not been applied to areas outside of downtown, but may be applied in the future to certain corridors through a design overlay district which is left as a placeholder. The table of required off-street parking has been changed to include a baseline range, with both a minimum and a maximum, with a method for adjusting outside of that range for good cause.

S4c *"Cooperate with land developers to generate creative solutions for building desirable homes, walkable districts, and commercial buildings on smaller lots"*

As noted above, smaller lots are permissible across the board. The development community has been consulted throughout the LDC, and they will have the option to pursue more compact urban development or larger lot development. The intent of the LDC is to provide a range of options, recognizing that our community has diverse housing demands and needs.

S4e *"Allow the use of alleys to provide direct access and services in new urban subdivisions with design standards intended to protect the City from undue maintenance liability"*

Alleys are permitted in the LDC, although only in certain circumstances and with consent from City Engineering and Public Works Service Operations.

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***S5a** "Allow continued rural residential development of conventional densities only within areas designated as such within the Future Land Use Plan"*

A majority of rural residential districts have been removed from the City's jurisdiction through recent changes to the ETA agreement with Burleigh County. The LDC's few remaining RR districts in the ETA will be unchanged. The LDC creates a new zoning district, RRE – Rural Residential Estates, for the large lot residential development that may be allowed in the urban reserve areas of the Future Land Use Plan in the interim until urban development is available.

***S5c** "Preserve the ability for rural residents to keep animals, gardens, and other agricultural practices appropriate to the scale of the lot"*

All current allowances for animal husbandry (chickens and horses) and agricultural recreation uses are retained in the LDC.

***S6a** "Allow house-scale building types with more than one residential unit in all or most residential zoning districts. This would include an accessory dwelling unit within or behind a home."*

All urban residential zoning districts will allow housing types with up to three attached dwelling units. This is the case for the RS – Residential Suburban district, which is the most extensive in terms of land area. Two-family dwellings and townhouses with three units are regarded as comparable in scale and intensity to single-family dwellings. In addition, any single-family dwelling is also permitted to install an accessory dwelling unit by-right. The current requirement to obtain a special use permit has been removed.

***S6c** "Enhance housing choice by removing regulatory barriers against attached housing configurations that have demonstrated success in other markets yet are less common locally"*

Attached townhouses, when on individual lots or on a single lot, are allowed more broadly in the LDC than the current ordinance. Existing complex distinctions between a "townhouse" and a "rowhouse" have been removed, and all attached dwellings are treated the same regardless of configuration.

***S7a** "Create a framework that establishes urban design, architectural, site design and sign guidelines that reinforce the unique, positive aspects of Bismarck's history and architecture"*

Design standards remain mostly applicable only to the downtown area, although the option is available to create design overlay districts to capture other unique areas around Bismarck.

***S7c** "Include ground-level active uses and ample visual interest adjacent to sidewalks in all new construction in specifically-defined high-activity areas, including parking structures"*

Parking structures downtown must have active ground-floor uses and, in some cases, include liner buildings to visually screen the parking structure from the public street. Outside of downtown, these limits on parking structures do not apply.

***S9a** "Design new places and structures to allow physical changes to meet future conditions without significant waste of resources"*

Allowing adaptability to future conditions is an important rationale for providing a reasonable amount of flexibility in the LDC. For example, the new RS – Residential Suburban district allows a range of lower-intensity housing types. Under the current ordinance, a property owner may need to change zoning between R5 or R10 or RM15 if the market changes and there is a greater demand for twinhomes, townhouses, or single-family homes. Under the LDC, these decision can be made more easily.

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S9c *"Review and develop reasonable policies to guide informal or temporary activities, such as food trucks, short-term rentals, and home occupations to encourage entrepreneurship while protecting the public interest"*

The LDC includes new standards for food trucks. Recent ordinances for home occupations and short-term rentals are retained in the LDC.

S9d *"Clarify the distinction between commercial and non-commercial uses in zoning and assessing to accommodate personal use of buildings for non-income producing activities"*

The LDC includes a new category of "personal flex" uses which are intended to capture a growing demand for private use of non-residential properties for hobbies, storage, or gathering. These are limited in residential zoning districts and clusters of attached units, with other design and operational requirements to ensure they do not create nuisances within residential areas in the future.

S10a *"Use zoning and other tools to require new development and redevelopments to be harmonious with existing uses in the area and support the health, safety, and public welfare of the community"*

The traditional role of zoning to ensure compatible land uses is retained in the LDC. Although a broader range of housing types and land uses are permitted in many districts, new standards have been added to assure they remain compatible. Transitional height limits are applied if a multifamily structure abuts lower-intensity residential units, and landscape buffers are still utilized between uses of differing intensity. The LDC takes greater efforts to separate heavy industrial uses from commercial areas, but utilizing the IG zoning district.

S10b *"Examine the existing landscape ordinance to ensure adequate buffers minimize adjacent nuisances, while considering matters of implementation in central and industrial areas"*

Buffer yards are retained in the LDC and provided additional clarification. There are options for reduced buffers in areas were differences between intensities of uses are minimal, especially in the central areas of the community. Overall, landscape requirements in industrial areas are reduced, while streets trees will be required in residential areas for the first time.

S10c *"Protect the use and federal compliance of Bismarck's airport by limiting development that could interfere with airport operations"*

Three airport overlay districts are included with the LDC, including height restrictions, areas with noise impacts, and protecting against attracting wildlife near the airport that can create hazardous conditions. Administration and enforcement is assigned to the Airport Director, in collaboration with other processes administered by the Planning and Building Inspections departments.

C1c *"Ensure that adequate transportation access is available or planned to support expected trip generation from all new development"*

A lots are required to have legal and physical access to the transportation network, and various access standards, as well as traffic impact studies, assure that level of access is appropriate for the intensity of the proposed development.

C3b *"Improve safety by reducing potential points of conflict, including pedestrian/vehicular conflict, by consolidating and/or limiting direct access to major roadways"*

The Access Standards section incorporates the existing access management policy, guides the placement of non-access lines, and provides

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necessary limits to direct access onto arterial roadways. This is a new section of the LDC.

C3c *"Utilize traffic impact studies for proposed developments with high expected trip generation and require implementation of identified mitigation measure at the developer's expense as a condition of development permission"*

The LDC includes new language on when Traffic Impacts are required, what the content of a study entails, and how mitigation measures recommended by the study would be implemented.

C3d *"Design local streets in residential areas to limit speeds and reduce impervious surface and maintenance costs"*

Reduced widths of residential streets adopted in recent years are retained with the LDC. The narrowest street permitted is a 26' wide street with parking limited on one side.

C4b *"Enhance the existing secondary access policy to ensure at least two reasonably direct and reliable means of access to all developed areas for emergency services and general travel"*

The existing secondary access policy is incorporated directly into the LDC and provided additional procedural clarification. Temporary secondary access is provided for under certain circumstances.

C4c *"Provide for sufficient street and pathway connectivity and shortened block lengths on new development during the subdivision review process, including to undeveloped areas outside of the development with use of temporary stub-outs as necessary"*

Street spacing distances are shortened in the urban districts of RU and RX, although an allowance for lengthy blocks remains in place for suburban and rural districts. Additionally, cross-access between abutting commercial sites may be required to provide an access in certain cases.

C4e *"Limit cul-de-sacs to areas where preexisting constraints prevent access by any other means"*

Existing limitations and restrictions on the uses of cul-de-sacs are retained in the LDC.

C4f *"Avoid vacating existing or platted right-of-way that provides any transportation function unless public benefit that exceeds the loss of function is provided"*

This language has been written into the required review criteria applied to all vacations of public right-of-way.

C6a *"Increase the number of bicycling and walking trips made by people in Bismarck through implementation of the Active Mobility Plan, Bismarck-Mandan Bicycle and Pedestrian Master Plan, and related plans"*

The Active Mobility Plan is incorporated into the LDC so that bicycle and pedestrian connections are made as areas are developed. In many cases, the shared use trails will be owned and operated by the Bismarck Parks and Recreation District.

C7a *"Ensure sufficient sidewalk coverage with all new development and systematically prioritize and install sidewalk connections in existing neighborhoods where not currently present"*

Sidewalks on both sides of each street remain a requirement in the LDC. The existing process determining the timing of sidewalk installation is included, along with a requirement to install sidewalks within 10 years of plat recordation even if a lot is not developed.

C7c *"Require reasonably direct and safe pedestrian access to the primary public entrance of all new commercial buildings.*

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The LDC includes new standards for commercial development above a certain scale for safe pedestrian walkways through parking lots to the main entrance of buildings.

C9b *"Encourage new electric vehicle charging stations to be conveniently sited and designed for all residents of and travelers to Bismarck"*

Electric vehicle charging stations are an allowable use in more zoning districts, subject to the site plan process.

C10b *"Include the creation and retention of easements for utilities during the subdivision process and facilitate the removal of unnecessary easements"*

Easements may be dedicated on subdivision plats for a variety of reasons. The LDC also includes new easement release procedures to allow the City Commission to release easements that are no longer necessary.

C10c *"Prevent obstructions within utility easements that may hamper the installation, operation, or maintenance of facilities that have rights to the easement"*

The LDC expands protections for easements beyond only disallowing accessory buildings in utility easements. Requirements for different types of easements are provided. At the same time, there is an expanded ability to seek encroachments with consent of the easement holder.

C11d *"Differentiate between driveways serving three or fewer properties and private roads in all design standards and requirements"*

The LDC makes this distinction explicit and sets different standards for each.

I1a *"Ensure neighborhood parks are included within newly developed residential subdivisions so that all residents have a small park within a half-mile walk from home"*

The existing neighborhood park policy is incorporated into the LDC. The developer, city staff, and the Parks and Recreation District all collaborate on dedicating and designing park to meet neighborhood needs. The LDC includes basic park standards, with the ability to provide adjustments for unique aspects of a neighborhood.

I2a *"Preserve the natural landscape within coulees, steep slopes, and low-lying areas identified as Parks and Open Space in this plan during the process of development review through either dedication of separate unbuildable lots or easements"*

Lands with natural constraints are identified through this subdivision process and assigned as unbuildable lots or easements on the property, indicating either a drainage or slope protection function. The LDC includes a rational process for identifying and protecting such environmentally-sensitive lands.

I2c *"Coordinate stormwater management with passive recreational use in the design and management of greenway corridors and ponds"*

The LDC allows shared-use trails to coincided with stormwater and drainage easements. Planting of trees and other landscaping is permitted if accounted for within a stormwater management plan.

I3b *"Encourage planting new street trees in developing urban subdivisions through a systematic and coordinated public process during initial development"*

The LDC will require street trees with new residential development, with flexibility in the timing and implementation to assure that trees are not damaged during the construction

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process and nurtured to maturity by property owners.

I6b *"Participate actively in the National Flood Insurance Program and the Community Rating System to manage designated floodplains"*

The LDC remains fully compliant with FEMA standards to uphold Bismarck's status in the National Flood Insurance Program and the Community Rating System.

I6c *"Limit development and retain natural vegetation on steep slopes susceptible to landslides and subsidence, with use of geotechnical studies, as necessary, to determine level of risk"*

The LDC includes a new section on steep slopes. Areas with 15% grade or more will be studied for slope stability and easements may be placed to limited development if safety issues are identified. There are options available to mitigate against and subsidence as well.

I7d *"Exempt use of lands or buildings for farming and ranching from all land use and zoning restrictions, in accordance with state law"*

The LDC remains compliant with this provision of the North Dakota Constitution.

I7e *"Encourage agritourism that combines retail of local produce with unique experiences, such as vineyards, pumpkin patches, Christmas tree groves, community-supported agriculture, and farm-based event venues"*

Agricultural recreation uses, both major and minor, are permitted in the Agricultural districts in Bismarck's ETA, subject to certain restrictions.

I9d *"Facilitate distributed energy generation to meet needs of individual households and businesses through solar, wind, or other sources"*

Both personal solar energy and wind energy collection are included as allowable accessory uses in all zoning districts, subject to certain restrictions.

G1b *"Monitor actual off-street parking utilization and adjust requirements as necessary to provide redevelopment potential to existing parking lots with demonstrable lack of use"*

Required off-street parking has been revised based on uses and presented in the form of a baseline range, with both a minimum and maximum allowed parking. Overall parking requirements are reduced, which may allow certain undevelopable sites to be utilized.

G3b *"Assure, prior to annexation, that adequate public facilities to support a proposed development are available or will be provided concurrently with development as service demands occur"*

The review criteria for annexation continues to include an evaluation of utilities and public facilities prior to any approval.

G3d *"Provide within all subdivision plats sufficient easements and rights-of-way to allow for orderly development and provision of municipal services beyond the boundaries of the subdivision."*

The Subdivision of Land section includes standards for when and where easements are applied, and the dedications need to allow continued development beyond the tract of land being subdivided.

G3f *"Cooperate with the South-Central Regional Water District to seamlessly transition urbanizing areas from a rural to a municipal water system"*

The LDC retains and streamlines the process of adhering to the service agreement between Bismarck and the South-Central Regional Water

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District for all properties within two miles of city limits.

G4a *"Ensure sufficient access and fire apparatus vehicle maneuverability to all developed areas, including each phase of occupied development sites under construction"*

Fire access is considered throughout the LDC, including secondary access where warranted.

G5b *"Allow large-lot rural residential development with a minimum lot size of eight and a half acres in areas identified as Urban Reserve in the Growth Phasing Plan, with the expectation that lots would redevelop with urban services upon annexation"*

The LDC creates a new district entitled RRE – Rural Residential Estate to provide an option for interim rural development within the Urban Reserve areas of the Future Land Use Plan.

G7a *"Review and modify City ordinances and practices that discourage modest, small-scale improvements to existing neighborhoods. This includes procedural requirements that are appropriate for new larger-scale development but are unnecessary or burdensome for incremental rehabilitation and rebuilding"*

Under the current ordinance, much of the infill and redevelopment requires a Planned Unit Development (PUD), which can be a long and unpredictable process for a property owner, especially for a small site. The LDC is intended to allow a greater degree of flexibility to avoid the need for a special zoning district, in most cases. PUDs are no longer utilized, but a Plan Overlay District (POD) may still be available for unusual situations.

G10a *"Completely restructure and readopt Bismarck's zoning and subdivision ordinance in alignment with this plan and significant input from the public"*

Adoption of the Land Development Code meets this objective directly.

G10b *"Promote a zoning and subdivision ordinance that is complementary with that of Burleigh County in the areas designated for rural residential development"*

Zoning provisions within the A, RR, and RRE district have been intentionally aligned with the counterparts in the Burleigh County zoning ordinance. The primary different relating to size of accessory buildings has recently been amended and will be retained in the LDC.

G10d *"Inform interested parties about upcoming public hearings with the Planning and Zoning Commission through a variety of communication tools, including letters, online maps, and on-site signs"*

In addition to existing methods of communication, the LDC formalizes use of signs for public hearings and allows online notice to suffice in case of accidents in newspaper publishing. Public hearing signs have been implemented as a pilot project, and would be formalized through the LDC.

G10f *"Utilize the variance process for extraordinary circumstances applying to the land or building that create a hardship for the property owner and prevent the reasonable use of the property"*

The LDC retains the variance process and includes a definition of hardship. Additionally, a new type of variance may be requested for historic properties to protect their integrity.

G10g *"Review and update plans, ordinances, and policies on a regular basis to reflect changing conditions and public will"*

The LDC includes an efficient process for amending the zoning map and zoning ordinance

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text that is more timely than the current ordinance without sacrificing any public notice and involvement.

The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance (Goal S9-e, G10-g)

Yes. Title 14 was more recently amended in its entirety on March 30, 1982. Conditions have changed since this time period. The goals and values of the community have changed, as represented by the Comprehensive Plan. Numerous amendments have been made to the zoning code and a comprehensive review is necessary to ensure internal consistency and compliance with state and federal law.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment (Section 14-02-01; NDCC 40-27-03)

Yes. The general intent and purpose of the zoning ordinance has been rewritten with the Land Development Code, although changes are mostly a difference in emphasis rather than a complete departure from previous values. Certain goals of the previous zoning ordinance were more relevant to previous contexts. For example, the current ordinance goal of “providing adequate light and air” was very important for early 20th century tenement construction in New York City, where it originated, but not as high a concern for Bismarck in the 21st century.

The Land Development Code simply defers to the Comprehensive Plan for its overall intent, but individual sections do provide an intent to orient the user and explain the purpose behind any regulation.

The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance (Goal G10)

Yes. One of the primary purposes of the Land Development is to not only preserve, but enhance, the overall integrity and coherence of the ordinance.

Proper administrative procedures related to the request are being followed (Section 14-07-02, NDCC Chapter 40-47)

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning ordinance text amendment has been initiated by staff from the Planning Department, on behalf of the Planning and Zoning Commission. A preliminary draft is attached to this report for consideration by the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment (Goal S10-a)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning text amendment would not adversely impact the public health, safety, and general welfare.

Zoning Map Amendment

The Future Land Use Plan is adhered to with the proposed zoning map amendment (Future Land Use Plan)

No. Generally, the Future Land Use Plan was not considered for this particular zoning map amendment because of its unique purpose. As described in the project narrative, the new zoning map is intended to assign new district based on existing conditions and existing zoning entitlements – without resulting in any substantive changes in entitlement. Because no particular development actions are being proposed with this amendment, changes to the zoning map to enable this development may be premature. The Future

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Land Use Plan remains in effect, and future changes to the zoning initiated by a property owner would be expected to comply with the Plan.

The proposed amendment is compatible with adjacent land uses and zoning (Goal S10-a, S5-a)

Yes. In most cases, the zoning districts have been assigned in a compatible manner. However, historically-occurring areas of potential conflict, for the most part, remain the same. As stated above, the intent of this zoning map is to translate the existing conditions and entitlements into the new categories of the LDC. Making substantive changes to "correct" historical situations could result in making existing land uses non-conforming. The Future Land Use Plan remains in effect to, over time, guide redevelopment in a more harmonious manner.

A change in conditions or by an error in the zoning map has occurred since the previous zoning classification was established (Goal S9-e)

Yes. The last comprehensive amendment of the zoning map occurred in the 1980s, in response to new zoning classifications created by the Code.

Undue restriction of housing options or access to neighborhood amenities would not result from the proposed zoning map amendment (Goal S1-a, Goal T1-c)

Yes. The proposed zoning map amendment would enhance the diversity of housing types available to Bismarck residents and would support a mix of uses to create vibrant neighborhoods where necessities and amenities of daily life are easily accessible to all residents.

The goals and objectives of Together 2045 Bismarck's Comprehensive Plan would be advanced by the proposed zoning ordinance map amendment (Comprehensive Plan)

Yes. A detailed evaluation of objectives of the comprehensive plan may be found in the finding above for the Zoning Ordinance Text Amendment.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed zoning map amendment (Section 14-02-01; NDCC 40-27-03)

Yes. As noted in the finding above, the zoning ordinance text amendment alters the stated intent and purpose of the zoning ordinance. This zoning map amendment meets the new intent of the Land Development Code.

Proper administrative procedures related to the request are being followed (Section 14-07-02, NDCC Chapter 40-47)

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The City has initiated the zoning map amendment, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning map amendment (Goal S10-a)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning map amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends calling for a public hearing on the Land Development Code, replacing the entirety of Title 14, and corresponding new zoning map.

Attachments

1. Draft Land Development Code

(continued)

2. Draft Zoning map (interactive version is available: Proposed Zoning).

Staff report prepared by: Daniel Nairn, AICP, Planning Director

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Land Development Code Zoning Map

DRAFT

Arnold
Hay Creek
Gibbs
Captain's Landing
Bismarck
Hillcrest Acres
Pierce
On-a-Slant Village
Lincoln
Apple Creek

83
71ST
43RD
CENTENNIAL
WASHINGTON
CENTURY
STATE
94
TYLER
MAIN
9TH
10
BISMARCK
UNIVERSITY

City of Bismarck GIS Department & Community Development, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Legend

Zoning
- A - Agricultural
- RRE - Rural Residential Estates
- RR - Rural Residential
- RS - Residential Suburban
- RU - Residential Urban
- RM - Residential Multifamily
- RX - Residential Mixed-Use
- CX - Commercial Mixed-Use
- CG - Commercial General
- IX - Industrial Mixed-Use
- IG - Industrial General
- OS - Open Space
- PCI - Public, Civic, Institutional
- PUD - Planned Unit Development
- DT - Downtown
- OX - Office Mixed Use
- RMH - Residential Manufactured Housing
- City Limits
- ETA
- Conditional Districts Retained

0.75 1.5 3 Miles

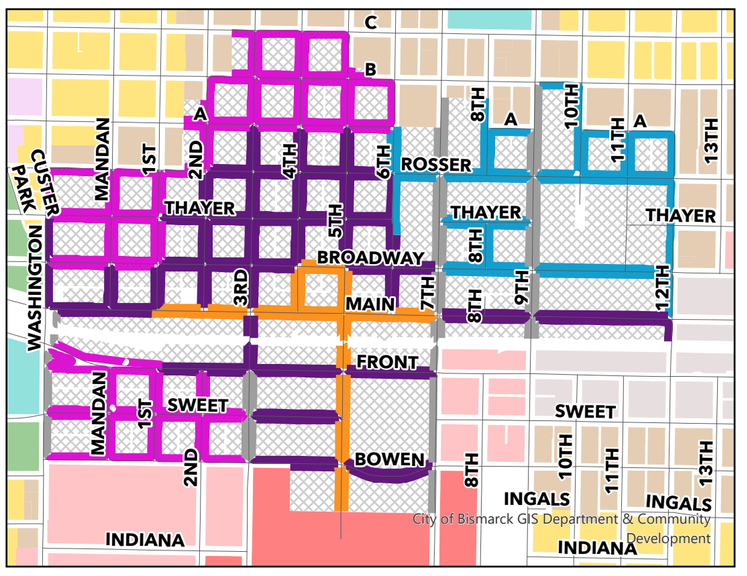
N

City of Bismarck
Community Development
Planning Division
March 20, 2026

Legend

- Downtown Fringe
- Downtown General
- Downtown Medical
- Downtown Signature
- Downtown Corridor

Downtown Subdistricts



Bismarck, North Dakota

LAND DEVELOPMENT CODE

PLANNING COMMISSION FIRST DRAFT

BISMARCK
Land Development Code

Planning and Zoning Commission Consideration
March 2026

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Chapter 14-01 General Provisions

COMMENTARY

Comments related to the draft of this Land Development Code are provided throughout this document using this format as well as in footnotes. All of this content will be removed before final adoption of the ordinance.

14-01-01. TITLE

This document is Chapter 14 of the Municipal Code of Ordinances of the City of Bismarck, North Dakota. It may be cited and referred to as the "Land Development Code"," "this Code," or "this Title."

14-01-02. AUTHORITY[1]

1. This Code is adopted pursuant to the authority in the Home Rule Charter of the City of Bismarck, Appendix B of the Code of Ordinances, Article 3, Section 11, as amended and adopted on _____ [adoption date] and enacted pursuant to the powers granted and limitations imposed by provisions of the State of North Dakota, including the statutory authority granted in Chapter 40 of the North Dakota Century Code (NDCC), and all other relevant provisions of the State of North Dakota.
2. Whenever any provision of this Code refers to or cites a section of the NDCC and that section is later amended or superseded, this Code shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.
3. Whenever a provision of this Code requires or authorizes an official, agent, or employee of the City to take some action or perform some duty, it shall be construed to authorize the official, agent, or employee to designate, delegate, and authorize subordinates to perform the act or duty, unless the terms of the provision designate otherwise.

14-01-03. PURPOSE[2]

The purpose of this Code is to implement the adopted Comprehensive Plan.

14-01-04. APPLICABILITY

1. Generally

a. This Code applies to all land, buildings, structures, and uses located within city limits, and to the extent allowed by law or by agreement, Bismarck's extraterritorial area (ETA), unless otherwise stated.[3]

[1] Replaces 14-02-02, Application.

[2] Replaces 14-02-01, Intent.

[3] Replaces 14-02-02, Application, first sentence.

b. Bismarck's ETA, authorized by NDCC Section 40-47-01.1 is the area outside of city limits in which the City is responsible for the administration of this Code and Title 14.1 Stormwater Management, as identified on the Bismarck Zoning Map.

2. Applicability to Public Agencies

The provisions of this Code shall apply to all land, buildings, structures, and uses owned, leased, or otherwise controlled by any district, county, state, city, or federal government agencies in the City of Bismarck, to the extent allowed by law. Where the provisions of this Code do not legally control land, buildings, structures, and uses, government agencies are encouraged to meet the provisions of this Code.

14-01-05. Rules of Construction[4]

1. Meanings and Intent

The language of Land Development Code shall be read literally. Regulations are no more or less strict than stated. Words used in Land Development Code have the standard dictionary definition unless they are defined in this chapter. Words defined in this chapter have the specific meaning assigned, unless the context expressly indicates another meaning. If a specific section provides a different meaning of a term defined for general purposes in this Code, the specific section's meaning and application shall control.

2. Headings, Illustrations, and Text

In case of any difference of meaning or implication between the text of this Code and any heading, caption, figure, illustration, table, or map, the text shall control.

3. Lists and Examples

Unless otherwise indicated, lists of items or examples that use terms such as "for example," "including," and "such as," or similar are intended to provide examples, but are not intended to be an all-inclusive or exhaustive list of all possibilities.

4. Mandatory and Discretionary Terms

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation to comply. The words "may" and "should" are permissive in nature.

5. Term Inclusions

a. The term "person" includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

b. The term "used" or "occupied" includes the words "designed, intended, designated, or arranged to be used or occupied."

c. The term "lot" includes the words "tract," or "parcel" unless otherwise specified.

d. The term "building" includes the term "structure."

e. The term County means Burleigh County, North Dakota.

f. The term City means the City of Bismarck, North Dakota.

[4] New. Relocated from Chapter 14-17.

g. The term Director means the director of the Planning Department.

6. Conjunctions

Unless the context clearly suggests otherwise, conjunctions shall be interpreted as follows:

a. “And” indicates that all connected items apply; and

b. “Or” indicates that one or more of the connected items apply.

7. Tenses and Plurals

a. Words used in the singular include the plural. The reverse is also true.

b. Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary.

c. When used with numbers, for example, "Up to 50 percent," "Not more than five days" and "a maximum of ten feet", the number cited is included.

8. Delegation of Authority

a. Whenever a provision requires the Director, City Engineer, City Building Official, the head of any city department, or other city official to perform an act or duty, that provision shall be construed to confer the same authority to any person or employee acting on behalf of the City to whom the Director, department head, or city official has delegated that responsibility. Delegation of authority is not allowed when the provisions of this Code expressly prohibit the delegation.

b. Whenever a provision that assigns authority to the Director, City Engineer, City Building Official, the head of any city department applies within the extraterritorial area, that person may delegate some or all of this authority to an official within the County or Township, as applicable.

9. References to Other Regulations

All references in the Land Development Code to other City, county, state, or federal regulations are for informational purposes only, and do not constitute a complete list of those regulations. These references do not imply any responsibility by the City for enforcement of county, state, or federal regulations.

10. Current Versions and Citations

When reference is made to this chapter or any other municipal code chapter, ordinance, statute, regulation, or document, it shall be construed to reference the most recent edition of the chapter, ordinance, statute, regulation, or document, and as amended, unless otherwise specifically stated.

11. Technical and Non-Technical Terms

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law or professional practice shall be construed and understood according to the legal meaning or meaning generally attributed by the American Planning Association (APA). Notwithstanding, definitions applied in the Definitions section of this Code supersede any external definition of a particular word.

12. Term Not Defined

In the event there is a term used in this chapter that is not defined, the Director shall have the authority to provide a definition based upon the context, and drawing on definitions provided in accepted sources.

14-01-06. Compliance Required[5]

1. Generally

No structure, or use of any structure or land, shall be established, enlarged, extended, altered, moved, divided, or maintained, and no lot shall be created, except as authorized by and in compliance with this Code, and all other applicable regulations.

a. Following approval of any application, applicants are required to comply with all other applicable codes, permits, and licenses required to establish the use or structure. Nothing in this Code, including the approval of an application, shall be interpreted to replace those requirements.

b. The requirement for strict compliance with the Code may be altered through any of the following:

   i. A variance issued according to the procedure in Section 14-20-05.9, Variance;

   ii. An adjustment to specific provisions following established criteria according to the procedure in Section 14-20-04.2, Adjustment; or

   iii. Waivers to certain provisions where explicitly authorized by the Code.

c. Any waivers to standards within this Code do not waive the obligation to comply with the requirements of any other chapter in the Code of Ordinances, or other applicable regulations.

2. Minimum Requirements

The standards of this Code shall be held to be minimum requirements. More restrictive standards, or standards exceeding those required, are permissible.

3. Relationship to Comprehensive Plan

This Code is intended to support implementation of the goals, objectives, and programs of the Comprehensive Plan, as adopted and subject to amendment from time to time.

14-01-07. Conflicting Provisions

1. Where the requirements of this Code conflict with any other legally adopted rule, regulation, or ordinance, the most restrictive standard shall govern, to the extent permitted by law.
2. Where two imposed conditions conflict, any condition imposed by the City Commission shall supersede the conflicting condition. In instances where a condition of approval conflicts with federal or state regulation(s), the federal or state regulation(s) shall supersede the imposed condition.

[5] New.

3. It is not the intent of this Code to interfere with, abrogate, annul, or prevent the private enforcement of any easement, covenant, deed restriction, or other agreement between private parties. The regulations in this Code are in addition to, and not in lieu of, any arrangement between private parties, including but not limited to those listed above. The City of Bismarck is not responsible for monitoring or enforcing private agreements or restrictions.

4. Violations Continue

a. Any violation of the previous ordinances and regulations will continue to be a violation under this Code and will be subject to penalties and enforcement described in Chapter 14-22 Enforcement, unless the use, development, construction, or other activity complies with the provisions of this Code.

b. The enactment of this Chapter shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of a previously existing ordinance occurring before the effective date of this Code.

14-01-08. Application to Building Construction

1. Issuance of Building Permit

a. The Building Official is authorized to review all applications for a building permit for compliance with requirements of this Code, request sufficient information to make a determination on compliance, and only issue building permits upon a finding of compliance.

b. No building permit may be issued for any structure unless situated on:

i. A lot within a subdivision platted pursuant to this Code;

ii. A legally nonconforming lot; or

iii. A tract of land not less than 40 acres in size, or the aliquot part of a corrective section intended to comprise a quarter-quarter section provided such aliquot part is not less than 35 acres.

2. Certificates of Occupancy

a. The Building Official is authorized to issue a certificate of occupancy for a building only if the building and site, or phase of a site if a phasing plan was included in the site plan approved by the City, fully complies with this Code and other applicable ordinances of the City in effect at the date of issuance of the building permit, except as permitted in accordance with Chapter 14-21 Nonconformities.

14-01-09. Severability[6]

Should any chapter, section, subsection, provision, paragraph, clause, word, regulation or ordinance amending this Code be declared unconstitutional or invalid by a court of competent jurisdiction, the decision shall not affect the validity of this Code as a whole, or in part. The part declared to be unconstitutional or invalid shall be considered severed from the rest of this Code.

[6] New.

14-01-10. TRANSITIONAL PROVISIONS[7]

1. Continuity of Provisions

Where the provisions of this Code are substantially the same as previously existing regulations relating to the same subject matter, these provisions shall be construed as restatements of regulations, not new enactments. Any actions, proceedings, permits, or approvals commenced or issued pursuant to any previously existing zoning and subdivision ordinance shall not be affected by the enactment of this Code.

2. Interim between Adoption and Effective Date

a. Any person submitting a development application after the date this Land Development Code is adopted by the City Commission but before the effective date of this Code may choose one of the following:

   i. Utilize all provisions of Title 14 currently in effect regarding review and approval of the development application, and none of the provision of this Land Development Code in its state once effective.

   ii. Utilize all provisions of the Land Development Code in its state once effective and none of the provisions of Title 14 currently in effect.

b. All aspects of enforcement and administration of Title 14 initiated by the City shall follow the version in effect at the time.

3. Stormwater Management Plan Continuity

Any Post-Construction Stormwater Management Plan (PCSMP) or Stormwater Management Plan (SWMP) approved prior to the effective date of this Code shall remain in effect unless amended. In such cases where the maximum lot coverage imposed by a PCSMP or SWMP for any development is more restrictive than the maximum lot coverage allowed in the zoning district of this Code, the more restrictive maximum in the stormwater management plan shall be applied.

4. Existing Development Approvals

a. Any development that received valid final approvals under prior zoning and subdivision regulations may be carried out under the terms and conditions of the approval provided the approval has not expired and the development complies with any applicable standards of this Code regarding ongoing operations and maintenance.

b. If a prior approval expires based on an expiration established in the prior zoning and subdivision regulations or the project approval is revoked or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this Code.

c. The Director may renew or extend the time of a previous approval per Section 14-20-03.7.c.ii, Extension of Approval, if the required standards or criteria for approval remain valid.

[7] New.

d. Any re-application for an expired, lapsed, or terminated project approval shall meet the standards in effect at the time of re-application.

e. Unless otherwise provided in the initial approval, any proposed revision to an existing application or approval shall be reviewed based on the code in effect at the time of submission of a complete application for the revision.

5. Planned Unit Development and Conditional Zoning District Continuity

a. Zoning districts established as a Planned Unit Development, or any zoning district approved with conditions by the City Commission, prior to the effective date of this Code shall remain in effect, as written, if shown on the official zoning map.

b. Where any ambiguity exists in terms of an applicable base zoning district, the Director shall determine a base zoning district based on the greatest degree of similarity with the character of the district.

c. After the effective date of this Code, only Plan Overlay Districts (POD) may be used for the purposes of modifying the terms of a base zoning district.

6. Existing Conditions of Approval

This Code adopts and incorporates by reference the stipulations and conditions from development plans, use permits, variances, stipulations, and conditions that currently apply to any parcel prior to the date of adoption of this Code.

7. Pending Applications

a. A complete application for any approval, submitted prior to the Effective Date and pending approval at the time of adoption of this Code may be decided under the regulations in effect when the application was determined to be complete, or may be reviewed and decided under this Code at the request of the applicant.

b. Applications shall not be processed under a combination of prior zoning and subdivision regulations and this Code. Any re-application after the effective date shall comply with the requirements of this Code.

c. Complete applications for a preliminary plat submitted prior to the effective date shall continue to be processed pursuant to the prior zoning and subdivision regulations. The associated final plat shall also be processed pursuant to Title 14, or may be reviewed and decided under this Code at the request of the applicant.

Chapter 14-02 General Zoning Standards

14-02-01. Zoning Districts Established

Commentary

This table shows both current districts (left) and proposed new districts (right). The current districts are shown with the most approximate new district, although the boundary lines between districts may be changed and the correspondence between existing and proposed is not intended to be exact, merely the most similar.

The final adopted code will show only the new contents in the right column. To view the proposed zoning map, click here.

The zoning districts shown in Table 14-02-1: Summary Table of Zoning Districts are hereby established.

Table 14-02-1: Summary Table of Zoning Districts

Approximate Current Zoning District Name	Proposed Zoning District Name
Residential Districts	
--	RRE Residential Rural Estate
RR Residential (rural single-family) RR5 Residential (rural single-family)	RR Residential Rural
R5 Residential (single-family) R10 Residential (two-family) in areas platted after 1953	RS Residential Suburban
RM Residential (multi-family) with density of units	RM Residential Multi-Family
R5 Residential (single-family) R10 Residential (two-family) RM in areas platted before 1953	RU Residential Urban
RMH Residential (manufactured home park)	RMH Residential Manufactured Housing
Mixed-Use and Non-Residential Districts	
RM Residential (multi-family) RT Residential (office - multi-family) in more urban form	RX Residential Mixed-Use
RT Residential (office - multi-family) in more suburban form	OX Office Mixed-Use
CA Commercial (neighborhood) CG Commercial (heavy commercial) with mixed or residential uses	CX Commercial Mixed-Use
CG Commercial (heavy commercial) without residential uses	CG Commercial General
MA Industrial (light industrial) with existing commercial uses	IX Industrial Mixed-Use
MA Industrial (light industrial) MB Industrial (heavy industrial)	IG Industrial General
Downtown District	
DC Downtown Core DF Downtown Fringe HM Health-Medical	DT Downtown

Approximate Current Zoning District Name	Proposed Zoning District Name
Agricultural District	
A Agricultural	A Agricultural
Special Districts	
P Public	PCI Public, Civic, and Institutional
P Public	OS Open Space
Overlay Zoning Districts	
AN Airport Noise	AO Airport Overlay
--	DO Design Overlay
FP Floodplain	FO Floodplain Overlay
PUD Planned Unit Development	POD Plan Overlay

14-02-02. Official Zoning Map

1. Official Zoning Map[8]

The location and boundaries of the zoning districts established in this Code are shown on the Official Zoning Map of the City of Bismarck, which has been adopted by the City Commission and is incorporated as part of this Code. The Official Zoning Map is maintained by the Planning Department and made publicly available, incorporating all zoning map amendments approved through this Code to date.

2. Boundaries of Districts[9]

a. Base Zoning Districts

Base zoning district boundaries shall correspond to the boundaries of lots, such that each lot within a platted subdivision is within one and only one base zoning district. Where land is not subdivided, the base zoning district boundary lines shall be determined in reference to parcel boundaries and by the scale shown on the Official Zoning Map.

b. Overlay Zoning Districts

Overlay zoning district boundaries are established independently for each district and not constrained by reference to any other surveyed boundaries. Boundaries of an overlay district may be determined by scientific study relevant to the intent of the district or with reference to underlying base zoning districts.

3. Correction of Zoning Map Errors

If the zoning map does not accurately reflect the legal description of an adopted zoning map amendment ordinance or has been inadvertently changed from the adopted zoning map without approval of a zoning map amendment, the Director is authorized to issue a correction to the zoning map.

[8] Replaces 14-03-02.

[9] Carries forward Section 14-03-03, with edits to allow the Director to determine zoning district boundary disputes. It would still be possible to appeal the decision of the Director to the Planning and Zoning Commission, as needed.

4. Interpretation of District Boundaries

Where uncertainty exists about the boundary of a zoning district, the Director is authorized to establish the location of the zoning district boundary, with reference to the legal descriptions of any adopted zoning map amendment ordinances or, if not available in ordinance, the zoning map digitally available on the City's Geographic Information System. The Director's interpretation may be appealed to the Planning and Zoning Commission in accordance with Section 14-20-07.1, Appeal of Administrative Decision.

14-02-03. General Zoning Provisions[10]

1. Principal Use

Each lot may contain one principal use, together with any accessory or secondary uses. More than one principal use may be allowed per lot only when specifically allowed by this Code and where the additional principal use can meet all applicable standards of this Code and other related requirements.

2. Occupancy[11]

Occupancy means residing or sleeping at a dwelling unit the majority of a person's time. Unless otherwise expressly stated in this Code, all household living uses shall be limited to one household per dwelling unit, as defined in Section 14-23-02.

3. Permitted Uses

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

4. Fire Separation

Structures located less than five feet from the side or rear property line may require fire separation precautions in accordance with the City of Bismarck Building Code, even if permitted within the setback of this Code.

5. Building Height[12]

No building or structure shall be erected, reconstructed, or structurally altered to exceed the designated height limit of the zoning district in which the building or structure is located, as measured in Section 14-23-01.1, Building Height Measurement, unless otherwise allowed by an exception described below.

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[10] 14-03-04 unless otherwise designated

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

[12] Carries forward 14-03-05.1, with edits. This proposes limits to allowance for exceeding height, and does not specifically carry forward "monuments."

a. Certain architectural features and improvements may exceed maximum building heights as shown in Table 14-02-3: Exceptions to Height Requirements with approval by the Director.

b. The height exceptions established in this section shall not authorize the encroachment of any development into any zones or areas identified in Section 14-07-01, Airport Overlay District.

c. No rooftop structure is permitted to have a total area greater than one third of the roof area of the building.

Table 14-02-2: Exceptions to Height Requirements

Type of Exception	Extent of Exception Above Maximum Height
Chimneys and other ornamental architectural features1	Up to 10 feet
Parapet walls	Up to 36 inches
Rooftop mechanical equipment2	Up to 15 feet, provided equipment complies with screening requirements in Chapter 14-15, Landscaping and Screening
Turret, spire, cupola, or tower	Up to 15 feet
Flagpole	No limit, provided the flag is not used for commercial signage, in accordance with Chapter 14-18, Signs
Public safety devices and supporting structures3	No limit, if operated by a government agency
Wireless communications facilities	No limit

Notes

[1] Examples of rooftop architectural features include, but are not limited to, belfry, dome, flue, skylight.
[2] Examples of rooftop mechanical equipment include, but are not limited to, ventilator, water tank, elevator housing, bulkhead, solar collection equipment, air conditioners, and similar mechanical equipment.
[3] Examples of public safety devices include, but are not limited to, emergency warning sirens and communication antennae.

6. Setbacks

a. Generally Applicable Standards

i. No building or structure shall be erected; nor shall any existing building or structure be altered, enlarged, or rebuilt; nor shall any required setback surrounding any building be encroached upon or reduced in any manner except in conformity with the applicable setback regulations of the zoning district in which the building or structure is located, or the contextual setbacks, as applicable, unless otherwise specifically permitted by this Code.

ii. For the purpose of complying with these regulations, no required setback surrounding a building on one lot shall be considered as the required setback for a building on any other lot.

iii. All setbacks required by these regulations shall be measured as described in Section 14-23-01.10, Setbacks.

b. Accessory Building Setbacks

i. Accessory buildings shall meet setbacks as listed by zoning district in Table 14-03-1: Residential District Dimensional Summary or Table 14-04-1: Mixed or Non-Residential District Dimensional Summary, unless the accessory building is located less than five feet from the principal structure on the lot, in which case the accessory building shall follow the setback listed for principal structures.

ii. Any minimum setback of five feet from a side or rear lot line may be reduced to three feet if fire-rated walls are provided in accordance with the Residential Building Code.

c. Certain Arterial Street Setbacks

In order to mitigate impacts from high-volume arterial streets and protect the public's ability to improve roadway and utility corridors as needed in the future, additional setbacks shall be applied. Notwithstanding standard minimum setbacks, a minimum setback of 50 feet is required in all zoning districts from the property line adjacent to the following segments of street:

i. US Highway 83/State Street Corridor, north of the intersection with Calgary Avenue;

ii. Centennial Road/71st Avenue Corridor, entirety of corridor; and

iii. East Main Avenue/County Highway 10 corridor, east of the intersection with 26th Street.

d. Attached Dwelling Unit Setbacks

The minimum required interior side setback on the side of the dwelling unit containing a common wall is reduced to zero.

e. Contextual Setbacks[13]

Front and street side setbacks for infill, redevelopment, and existing structure additions in developed neighborhoods shall be determined using a sample of reference lots in the vicinity of the subject lot(s).

i. Applicability

Contextual setbacks shall be used instead of standard setbacks of the zoning district if more than 80 percent of lots on the same block face as the subject lot are developed and the subject lot was initially platted at least ten years prior to the submittal of a building permit on the subject lot.

(1). Contextual setbacks apply to RS, RU, RMH, and any portions of other zoning districts containing dwelling units in the household living category.

[13] Current 14-04-04.7.a, revised and made generally applicable

(2). On corner lots, contextual setbacks from each street are determined independently and the distinction between front and street-side setbacks is disregarded.

(3). A replat or modification of a property boundary shall not be considered in determining the length of ten years since a subject lot was initially platted.

ii. Reference Lots

Reference lots are the three closest lots on either side of the subject lot, for a total of six reference lots, that meet the following criteria:

(1). Reference lots must be on the same side of the street as the subject lot.

(2). Reference lots must be in the same zoning district as the subject lot.

(3). Reference lots may be selected across local streets but may not be selected across collector or arterial streets.

(4). Reference lots that are vacant shall be included and deemed to have the minimum setback required by the zoning district.

(5). If three lots that comply with the rules of this section are not available on any side of the same block face as the subject lot, a corresponding number of lots or parcels shall be selected on the opposite side of the proposed activity, so that a total number of six reference lots are selected.

(6). The Director may adjust the number of reference lots or include lots of similar use in a different zoning district or across a collector or arterial street, if needed, to determine a sample representative of the context.

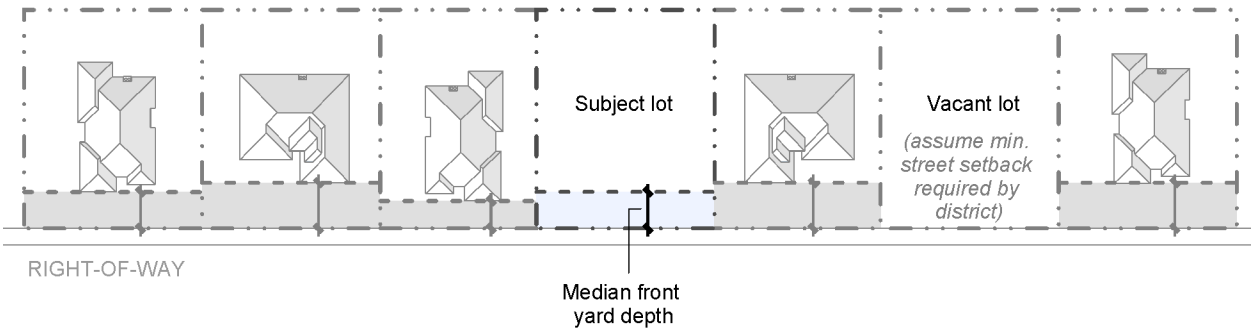


Figure 02-1: Example Reference Lots

iii. Calculation of Setback

The required front or side street setback for principal or accessory structures shall be the median of all existing setbacks measured from reference lots, plus or minus three feet, but no less than the shortest setback or more than the longest setback measured from all reference lots.

f. Minimum Garage Setback

i. Notwithstanding any required setback including contextual, the front face of any garage or vehicle storage unit shall not be closer than 20 feet from the adjacent right-of-way, edge of access easement, alley, or private street, when the garage face is oriented approximately parallel to that street or drive. The purpose of this requirement is to allow an additional parking spot in front of the garage without encroaching into the right-of-way.

ii. When a garage located in the rear yard has an approach parallel to an alley and the car maneuvers on private property, the distance from the alley and side lot lines to the garage may be not less than three feet.[14]

g. Setback Exceptions

Certain physical features may encroach to some degree into the required setback on a lot as follows:

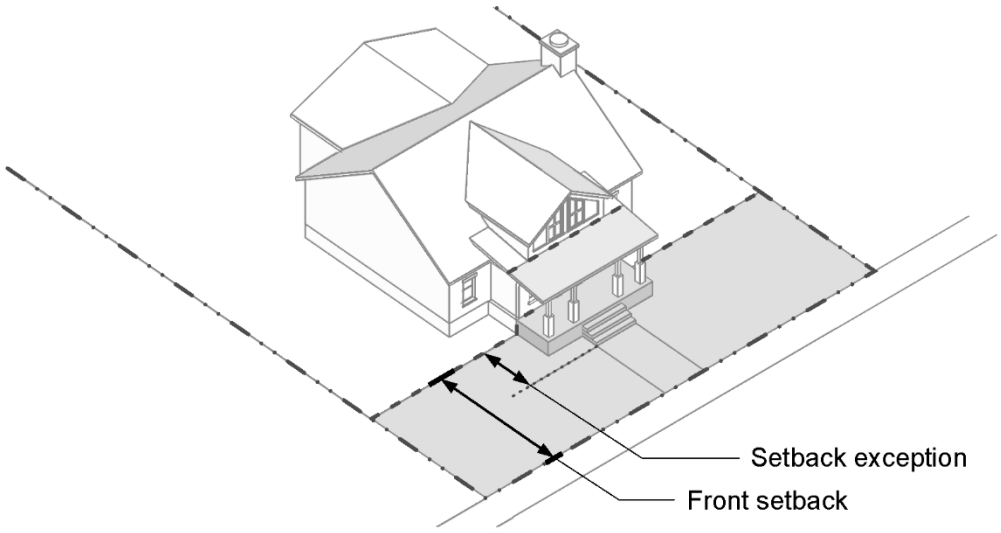


Figure 02-2: Example Setback Exception

i. Setback requirements do not apply to slabs, uncovered patios, walkways, fences, landscaping and/or hedges, or freestanding walls; however, these features are subject to the requirements of Section 14-23-01.11, Sight Triangle.

ii. Certain architectural features and improvements may encroach into required setbacks as shown Table 14-02-3: Exceptions to Setback Requirements, provided there is compliance with any associated building or fire code setbacks or spacing requirements.

iii. Setbacks shall not apply to walkways, either at or above grade, that physically connect two buildings on separate lots or across a public right-of-way, provided that all portions of the buildings not including in the walkway are constructed to the applicable setback.

[14] Carries forward current requirement from 14-03-05.4.b.

iv. The setback exceptions established in this section shall not authorize the encroachment of any development, including related signs, across property lines, into a public right-of-way, or into or over a recorded easement.

Table 14-02-3: Exceptions to Setback Requirements[15]

Type of Exception	Extent and Location of Encroachment
Balconies, canopies, and awnings	**All setbacks:** Up to 3 feet, provided the lowest component of the feature has at least 9 feet of clearance above the ground and no less than 3 feet from the lot line
Decks, uncovered[1]	**Front setbacks:** Up to 15 feet, but no less than 10 feet from the front lot line **Side and rear setbacks:** No limit, but no less than 5 feet from the lot line
Front porches and stoops[2]	**Front setbacks:** Up to 6 feet, but no less than 10 feet from the lot line, provided the porch or stoop is open on the front and each side **Side setbacks:** Up to 3 feet, but no less than 3 feet from the lot line
Fire escapes and open stairways[16]	**Front setbacks:** Not permitted in front setback **Side and rear setbacks:** Up to 4 feet, but no less than 4 feet from the lot line
Ground-mounted mechanical equipment	**Front setbacks:** Not permitted in front setbacks **Side and rear setbacks:** Up to 5 feet, but no element may be less than 2 feet from the lot line, and the equipment complies with screening standards in Chapter 14-15, Landscaping and Screening
Window projections, bay windows, and chimneys	**Front and rear setbacks:** Up to 2 feet
Eaves	**All setbacks:** Up to 2 feet
Other incidental architectural features not listed	**All setbacks:** Up to 5 feet, upon approval from the Director
Mobility access ramps and lifts	**All setbacks:** Up to the lot line
Swimming pools	**Front setbacks:** Not permitted in front setbacks. **Side and rear setbacks:** No limit, but no less than 4 feet from the lot line
Ornamental structures	**All setbacks:** No limit, provided the structure is in compliance with Sight Triangle requirements. See Section 14-17-01.12.

Notes

[1] Decks that encroach into setbacks may be no more than 18 inches above grade at any point, exclusive of railings, and may not be covered.
[2] This includes steps, terraces, and unenclosed porches, provided the floor of the porch is no higher than the first floor entrance to the building.

[15] The allowances for civil defense shelters have not been carried forward. Please advise if this should this be restored.
[16] This is a change from the two feet that is currently permitted, and the prohibition in front setbacks is new.

7. Lot Coverage

a. The cumulative total of all impervious surface, including buildings and all paved or hardscaped areas, on a lot shall at no time exceed the allowable limit for lot coverage established by the Land Development Code for the zoning district in which it is located.

b. All lot coverage shall be measured as described in Section 14-23-01.8, Lot Coverage.

c. The lot coverage requirement may be administratively adjusted through the procedure in Section 14-20-04.2. Before making a determination on an adjustment to lot coverage, the Director and City Engineer shall review and find:

   i. The lot coverage would not increase by more than seven percent. For example, a lot coverage of 50 percent would not be increased to greater than 57 percent.

   ii. The applicant adequately demonstrates the ability to control stormwater generated from increased runoff through either:

      (1). Implementation of a best management practice in accordance with federal guidance, including but not limited to pervious pavers, rain garden, or underground storage.

      (2). Revision of the existing stormwater management plan for the subdivision or creation of a new stormwater management plan showing the site and its vicinity.

      (3). Any unusual conditions of the drainage patterns of the lot or site that are not contingent upon the actions of other property owners. In such cases, the stormwater would be adequately managed under the assumption that all other property owners in the vicinity were afforded an equivalent adjustment.

   iii. The increased lot coverage would not detract from the purposes of the Land Development Code and Comprehensive Plan in relation to provision of natural amenity to a neighborhood or district.

8. Easements

No structure may be permitted within or above any utility, access, stormwater and drainage, or any other easement shown on a subdivision plat or recorded against the property, unless all parties with rights to utilize the easement agree in writing to allow an encroachment. An easement or portion thereof may be released though the easement release procedure in Section 14-20-05.3.

9. Sight Triangles

a. Sight Triangles, with measurements defined in Section 14-23-01.11, shall be maintained free of visual obstructions from adjacent rights-of-way. No structure, fence, wall, hedge, tree, or any other obstruction of drivers' views of traffic between three feet and ten feet above curb level shall be erected, placed, or maintained within the sight triangle, with the following exceptions:

   i. Sight triangle restrictions shall not apply within the DT–Downtown zoning district, with the exception of any alley or private access to a street from a parking structure or surface lot of at least 50 parking spaces.

ii. Deciduous trees and objects on poles, such as signs, that are no greater than six inches in diameter may be allowed within the sight triangle provided there is no obstruction to vision.

b. The City Engineer may require a greater sight triangle than indicated above on a case-by case basis when it is warranted based on the posted speed and traffic volumes on the adjacent roadway, topography, sight distances or any other engineering concern.

c. The location of a sight triangle may be administratively adjusted through the procedure in of Section 14-20-04.2. Before making a determination on an adjustment to a sight triangle, the Director and City Engineer shall review and find:

i. A sight distance analysis has been performed by a licensed Engineer in conformance to standards of AASHTO and/or NACTO considering all site-specific characteristics, including but not limited to roadway geometry, operating speeds, intersection traffic controls, pedestrian and bicycle activity, and snow storage, producing sight distance recommendations.

ii. The structure, sign, landscaping, or other obstruction proposed by the applicant is not within an alternative sight triangle recommended by the study.

iii. There are no planned changes to the adjacent roadways that would alter the outcomes of the analysis and create a visual obstruction after improvement.

iv. The adjustment of the sight triangle will not create an undue safety hazard for the traveling public.

10. Signs

No sign or any structure with the sole purpose of supporting a sign may be constructed, installed, displayed, relocated, converted to electronic or reconstructed until the applicable sign permit is issued, pursuant to Section 14-20-04.7, unless identified as a permit exempt sign per Section 14-18-02.1 or permit exempt activity per Section 14-18-02.2. Signs must comply with all requirements of Chapter 14-18, Signs.

14-02-04. Residential Transitions

1. Applicability

This section shall apply to:

a. Institutional, multi-family residential, or mixed-use buildings (“Impact Lot”) abutting or separated only by an alley or right-of-way from an RRE, RR, RU, or RS zoning district (“Affected Lot”); and

b. Commercial or industrial buildings (“Impact Lot”) abutting or separated only by an alley or right-of-way from a residential-only building, regardless of the underlying zoning district, or from an RRE, RR, RU, or RS zoning district (“Affected Lot”).

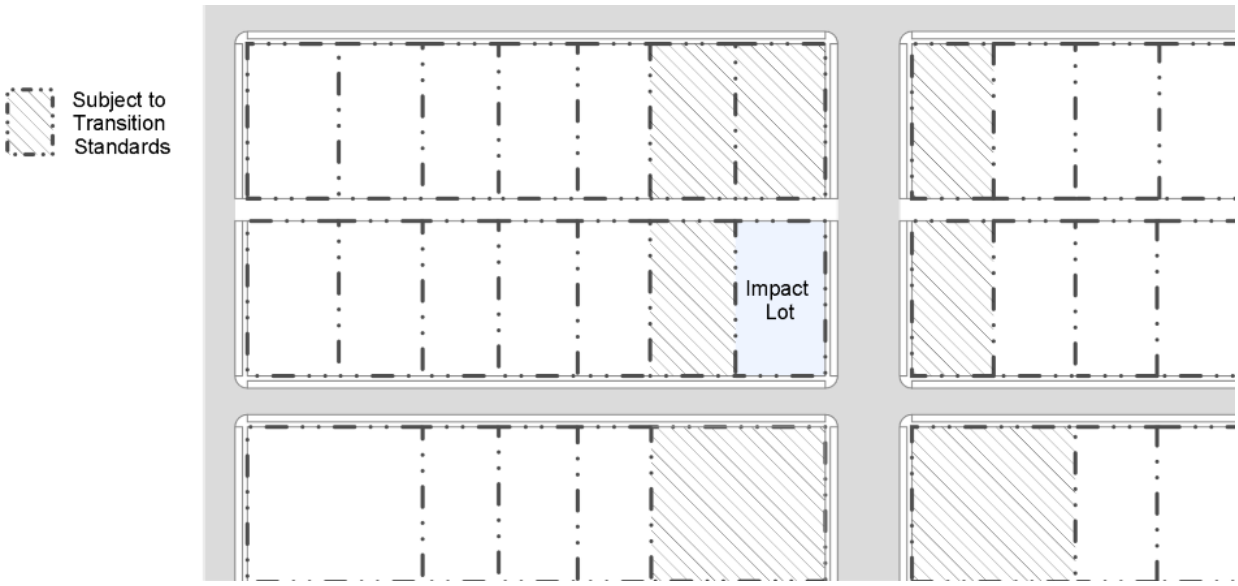


Figure 02-3: Applicability of Residential Transition Standards

2. Exceptions

Residential transition standards do not apply to:

a. Any building constructed in the DT district; or

b. Any lot located across an arterial right-of-way from the Impact Lot, unless the arterial right-of-way is less than 100 feet wide.

3. Building Addition Transition Areas

A height transition area of 25 feet in width shall be established on the Impact Lot along each property line abutting, either to the side or rear, or across an alley or public street from an Affected Lot. All building additions within the height transition area shall be limited in height to no more than the maximum height applicable to the Affected Lot. The maximum height of the underlying zoning district shall apply to any building addition on the Impact Lot beyond the 25-foot transition area. See Figure 02-4.

Figure 02-4: Building Addition Transition Requirement

4. New Building Transition

The visual impact of new buildings when viewed from an Affected Lot shall be reduced by "stepping down" the building height of any portion of the building within 100 feet of a shared property line with an Affected Lot to a maximum of 45 feet. See Figure 02-5.

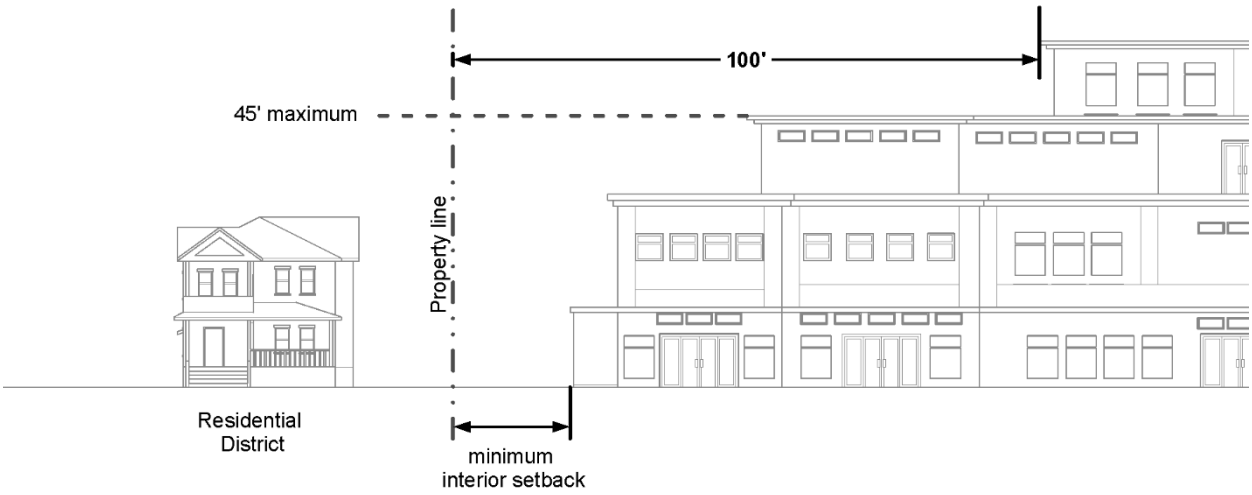


Figure 02-5: Building Step Down Requirement

14-02-05. Required Studies

Certain uses or development types warrant a formal study to determine an appropriate course of action to mitigate any potential negative impacts. The following studies may be required by reference from sections in this Code:

1. General Standards

The following standards apply to all required studies:

a. Proposed conditions analyzed in a study shall reflect the final build-out of the use or development for which the study is required.

b. If a development will be completed in phases, a study may evaluate any number of phases or the complete development of all phases. Any development phase that has not been included in an existing study shall require a new study prior to approval.

c. The Director may require a study to be revised or updated when project changes, new information, or elapsed time materially affect the assumptions or conclusions of the original study. A study revision need not be made by the same author and must include a revision summary outlining the changes.

2. Noise Study

a. Purpose

The purpose of a noise study is to evaluate how much sound a proposed land use will generate, and whether, after development and operation, that sound will comply with applicable noise standards or create adverse acoustic impacts on nearby properties.

b. Applicability

A noise study may be required for certain land uses as identified in use-specific standards of this Code.

c. Certification

The study shall be in the form of an acoustic impact report prepared and signed by a licensed professional engineer with demonstrated acoustical engineering expertise.

d. Contents of Study

The study shall include the following:

i. Identification of all major sound-emitting source points and list the predicted sound pressure level produced by each major sound-emitting source type;

ii. The cumulative predicted sound pressure levels from the project (“Impact Lot”), or the specific project phase under review, accounting for concurrent operation of sources not including operation of sources that operate only during emergencies or testing, if any;

iii. The existing measured ambient cumulative sound pressure levels at the lease or owned project land boundaries;

iv. The existing and predicted cumulative sound pressure levels for each lot within one-half mile, unless otherwise noted for land use type, of the source point(s) as measured to the nearest point on a lot line (“Affected Lot”);

v. Results of study expressed in A-weighted decibels (dBA) as sound pressure levels with notation of any prominent tonality or impulsive events, and supported by a description of operating scenarios, Affected Lots, terrain/ground absorption, shielding, and meteorological assumptions;

vi. A map referencing all project structures and predicted sound pressure levels; and

vii. A summary table comparing predicted levels to applicable requirements in Chapter 8-10 (Noises) of the Code of Ordinances. Penalties to the requirements shall be applied per ANSI S12.9 for identified tonal or impulsive sound sources or events.

e. Mitigation Measures

i. The study shall recommend mitigation measure(s), if any, needed to achieve compliance with all requirements. Mitigation may include, but is not limited to, the use of low-noise fans, earthen berms, sound walls, building placement as a shield, and/or enclosures.

ii. Any recommended measures shall be implemented prior to issuance of a certificate of occupancy for the subject land use, unless the recommendation is adjusted or waived by the City Engineer.

3. Geotechnical Slope Stability Study

a. Purpose

The purpose of a geotechnical slope stability study is to evaluate whether existing or proposed slopes on a development site can safely support the intended land use, grading, and structural loads; to identify potential slope-failure hazards; and to ensure that development does not create instability or adverse impacts on adjacent properties, public infrastructure.

b. Applicability

A geotechnical slope stability study may be required for development as identified in 14-16-04, Steep Slopes.

c. Certification

The study shall be performed in the form of a geotechnical slope stability analysis by a licensed professional engineer qualified in geotechnical engineering,

d. Contents of Study

The study shall include the following:

i. Description of existing site conditions, including topography, soil conditions, drainage patterns, vegetation, and evidence of prior instability or natural hazards.

ii. Field investigation summary with locations and testing results of all borings on the site.

iii. Assessment of natural and proposed slopes or retaining walls for potential failure surfaces, considering all context-specific factors.

iv. Calculated factors of safety for existing and proposed slope conditions under static loading, and evaluation of compliance with any adopted or standardized engineering minimum safety factors.

v. Evaluation of off-site effects, including potential for slope movement, erosion, or drainage changes affecting adjacent lots or public infrastructure.

e. Mitigation Measures

i. The study shall recommend mitigation measure(s), if any, needed to achieve compliance with all requirements. Mitigation may include, but is not limited, to grading and compaction standards, drainage and groundwater control measures, retaining structures, soil stabilization, vegetation, and/or construction phase mitigation measures.

ii. Any recommended measures shall be implemented prior to issuance of a certificate of occupancy for the subject land use, unless the recommendation is adjusted or waived by the City Engineer.

4. Traffic Impact Study

a. Purpose

The purpose of a traffic impact study is to evaluate the potential effects of proposed development on the transportation network, ensure safe and efficient movement of vehicles, pedestrians, and cyclists, and identify necessary improvements to maintain acceptable levels of service. This requirement helps protect public safety, minimize congestion, and coordinate infrastructure investments with anticipated growth.

b. Applicability

A traffic impact study may be required for development as identified in 14-14-03, Traffic Impacts. A traffic impact study may be conducted in conjunction with a parking study, if both area required.

c. Certification

The study shall be performed in the form of a traffic impact analysis by a licensed professional transportation engineer.

d. Content of Study

The study shall include the following:

i. A figure showing the proposed site layout, including building sizes, driveway locations, number of through lanes and turn lanes, distances to nearby driveways/intersections, and any other information to help describe the site;

ii. Depict and explain how the site roadways and access points align with the Major Street Plan and access management provisions of Section 14-14-05;

iii. Existing and future trails from the Active Mobility Plan;

iv. Historical 5-year crash data (request from NDDOT);

v. Existing traffic volumes at study intersections (AM and PM peaks);

vi. Existing capacity analysis at study intersections (AM and PM peaks);

vii. Estimated trip generation and directional distribution for the site at full build-out;

viii. Full build-out capacity analysis at study intersections (AM and PM peaks);

ix. Sight triangle drawings for driveways and intersections;

x. Turn lane warrant analysis;

xi. Traffic signal warrant analysis (if a traffic signal is proposed);

xii. Lighting warrant analysis for segments and intersections; and

xiii. Recommended changes to road segments, intersections, and access points.

e. Mitigation Measures

i. The study shall recommend mitigation measure(s), if any, needed to achieve compliance with all requirements. Mitigation may include, but is not limited, to access management, turn-lane restrictions, intersection improvements, signal timing and operation, and/or roadway improvements.

ii. Any recommended measures shall be implemented prior to issuance of a building permit for the subject land use, unless the recommendation is adjusted or waived by the City Engineer.

5. Parking Study

a. Purpose

The purpose of a parking study is it ensures that development provides an adequate, efficient, and accessible supply of parking to support its intended land use without creating adverse impacts on surrounding streets, neighborhoods, or public facilities. The study evaluates expected parking demand, opportunities for shared or reduced parking, strategies for parking reduction, and on-site circulation and access, and the relationship between the proposed development and the broader transportation system.

b. Applicability

A parking study may be required for development as identified in Section 14-13-08.2, Required Parking Study. A parking study may be conducted in conjunction with a Traffic Impact Study, if both are required.

c. Certification

The study shall be performed in the form of a Parking Demand Study for Parking Impact Study by a professional engineer or planner with experience in transportation and parking.

d. Content of Study

The study shall include the following:

i. A defined and mapped study area to include the site and any surrounding properties and rights-of-way with potential parking utilization;

ii. Existing conditions within the study area, including but not limited to parking supply, parking utilization counts, variations in utilization by season or week, user characteristics, and availability of alternative modes of travel;

iii. Forecasts of parking demand for all proposed land uses sourced from the Institute of Transportation Engineers (ITE), the Urban Land Institute (ULI), or other reliable standards;

iv. Shared parking analysis, if applicable, including peak and off-peak demands for all land uses;

v. Consideration of any strategies to reduce parking demand, if applicable, as identified in Section 14-13-08.3 and plan for implementation.

vi. Operational analysis of circulation within and around the site, including but not limited to access points, passenger loading areas, wayfinding signs, and pedestrian crossings;

vii. Determination of whether existing and proposed parking supply will meet the demand of existing and proposed development.

e. Mitigation Measures

i. The study shall recommend mitigation measure(s) needed to achieve compliance with all applicable requirements of this Code, as needed. Mitigation may include, but is not limited, to parking supply expansions or reductions, shared parking agreements, adjustments to parking area design or striping, signs, parking demand management strategies.

ii. Any recommended measures shall be implemented prior to issuance of a building permit for the subject land use, unless the recommendation is adjusted or waived by the City Engineer.

14-02-06. Accumulation of Certain Items Prohibited

1. Purpose

The purpose of this section is to ensure that exterior property and premises are maintained in a clean, safe, and sanitary condition, particularly with regard to prevention of the accumulation of certain items.

2. Generally Applicable Standards

a. The fact that an item or items has value or is operational shall not be cause for exemption from the prohibitions of this section.

b. Prior to signing a complaint under this section, the Health Officer or their designated agent must serve the property owner or tenant with a notice and order pursuant to Section 14-22-04.3.

3. Residential Districts

For the purposes of this section, residential districts shall include RRE, RR, RS, RM, RU, RX, and RMH.

a. No person shall cause, permit, keep, accumulate or allow the accumulation of any commercial equipment, junk, refuse, surplus, scrap, salvage or other similar items outside of a closed building in any residentially-zoned district, except for storage associated with certain home occupations as permitted under Section 14-10-07.10.

b. The items for which accumulation is prohibited under this section may include but are not limited to: hazardous wastes, scrap metals, used or scrap lumber, household appliances, machinery, farm machinery, commercial equipment, new or used building materials, construction or demolition waste or salvage, abandoned or unlicensed vehicle(s), vehicle(s) without current registration tabs affixed to the license plates, automotive or machinery parts, tires, used oil or solvents, garbage or rubbish of any

kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items.

4. Non-Residential Districts

The prohibitions contained in this section shall apply to properties zoned OX, CX, CG, IX, IG, and DT.

a. No person shall cause, permit, keep, accumulate or allow the accumulation of any junk, refuse, surplus, scrap, salvage or similar items outside of a closed building or opaque fencing in any mixed-use, commercial, industrial or agricultural zoning district without a a special use permit, as described in Section 14-20-05.8.

b. The items for which accumulation is prohibited under this section may include but are not limited to: hazardous wastes, scrap metals, used or scrap lumber, household or commercial appliances, used building materials or salvage, construction demolition waste or salvage, abandoned or unlicensed vehicle(s), automotive or machinery parts, used tires, used oil or solvents, garbage or rubbish of any kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items.

Chapter 14-03 Residential Zoning Districts

COMMENTARY

This draft incorporates the following Bismarck Issues Assessment recommendations into the updated residential zoning district line-up:

B.6. Update the residential zoning district line-up to more clearly accommodate a range of housing choices and development types to more clearly implement Together 2045's future land use goals.

B.7. Allow smaller lots, smaller setbacks, higher lot coverage, and a greater mix of housing types.

14-03-01. General Provisions

1. Purpose

Residential zoning districts are intended to accommodate a broad spectrum of housing types that meet the diverse needs of the community while fostering cohesive, connected, and well-designed neighborhoods.

2. Reference

Any reference in this Code to "Residential Zoning Districts" is a reference collectively to all districts in this Chapter.

3. How to Use this Chapter

a. All general dimensional standards applicable to zoning districts of this Chapter are within Table 14-03-1: Residential District Dimensional Summary, unless specific exceptions or further detail is provided in the subsection for the zoning district.

b. Uses allowed within each zoning district of this Chapter are found within Table 14-09-1: Allowed Uses and defined or further regulated with Chapter 14-10, Use Definitions and Use-Specific Standards.

c. All zoning districts defined in this Chapter are applied to specific locations within the jurisdiction of Bismarck by the Official Zoning Map. See Section 14-02-02, Official Zoning Map.

14-03-02. Summary Table of Residential Dimensional Standards[17]

Table 14-03-1: Residential District Dimensional Summary

sf= Square feet ft = Feet Min = Minimum Max = Maximum N/A = Not applicable

Proposed Zoning District	Residential Rural Estates (RRE)	Residential Rural (RR)	Residential Suburban (RS)	Residential Multi-Family (RM)	Residential Urban (RU)	Residential Manufactured Housing (RMH)
Reference	14-03-03	14-03-04	14-03-05	14-03-06	14-03-07	14-03-08
Lot Standards						
Lot Dimensions, minimum						
Lot Area, detached building	8.5 Acres	65,000 / 40,000 sf [1]	4,000 sf	7,000 sf	2,000 sf	Per District Specific Standards
Lot Area, two-family on separate lots	N/A	N/A	3,500 sf	N/A	1,600 sf	N/A
Lot Area, townhouse on separate lots	N/A	N/A	1,200 sf (interior) 1,400 (end unit)	1,200 sf (interior) 1,400 (end unit)	1,200 sf (interior) 1,400 (end unit)	
Lot Width, detached building	150 ft	150 ft	40 ft	60 ft	Min: 20 ft Max: 100 ft [1]	Per District Specific Standards
Lot Width, two-family or townhouse on separate lots	N/A	N/A	20 ft	20 ft	20 ft	N/A
Setback, Minimum [4]						

[17] Table note 3 (related to fire separation) has been relocated to the General Zoning Provisions section. Table note 4 (related to accessory building footprints) has been relocated to the Accessory Uses and Structures section. Table notes 1, 5, 6, 7 have been referenced in the applicable zoning district section. Footnote 2 (related to additional setbacks for building over 40 feet in height) is not carried forward. New Residential Transition Standards are provided in Section 14-02-04.

Proposed Zoning District	Residential Rural Estates (RRE)	Residential Rural (RR)	Residential Suburban (RS)	Residential Multi-Family (RM)	Residential Urban (RU)	Residential Manufactured Housing (RMH)
Principal Building						
Front [5]	40 ft	40 ft	20 ft	20 ft	Min: 10 ft Max: 50 ft [1]	Per District Specific Standards
Street Side, Corner Lot [4]	40 ft	40 ft	15 ft	15 ft	Min: 10 ft Max: 25 ft [1]	
Contextual Setbacks	N/A	N/A	May Apply	N/A	May Apply	May Apply
Interior Side	15 ft	15 ft	6 ft	10 ft	6 ft	Per District Specific Standards
Rear	50 ft	50 ft	20 ft	10 ft	10 ft	
Accessory Building						
Front	Not Permitted					
Street Side [4]	40 ft	40 ft	10 ft	20 ft	10 ft	Per District Specific Standards
Interior Side	15 ft	15 ft	5 ft / 3 ft [3]	10 ft	5 ft / 3 ft [3]	
Rear	50 ft	50 ft	5 ft / 3 ft [3]	10 ft	5 ft / 3 ft [3]	
Lot Coverage, maximum						
Lot Coverage	N/A	N/A	40%	50%	40%	50%
Structure Standards						
Height, maximum						
Residential Principal Building	40 ft	40 ft	40 ft	50 ft / 70 ft [1]	40 ft	Per District Specific Standards
Residential Accessory Building	25 ft	25 ft	25 ft	25 ft	25 ft	
Non-Residential Principal Building	50 ft	50 ft	50 ft	50 ft / 70 ft [1]	50 ft	
Non-Residential Accessory Building	25 ft	25 ft	25 ft	25 ft	25 ft	
Building Area, maximum						
Accessory Building Footprint [2]	4% of lot area	4% of lot area	1,200 sf	N/A	1,200 sf	

Notes

[1] Additional dimensional standards apply, as described in the applicable zoning district
[2] See Sec. 14-10-07.2.b for additional information.
[3] An interior side or rear setback of less than 5 feet may require fire code compliance, as described in Section.14-02-03.6.b.ii.
[4] Minimum, unless otherwise noted as maximum.
[5] Additional setbacks apply to certain arterials, as described in Section 14-02-03.6.c.

14-03-03. RRE-Residential Rural Estate

1. Purpose

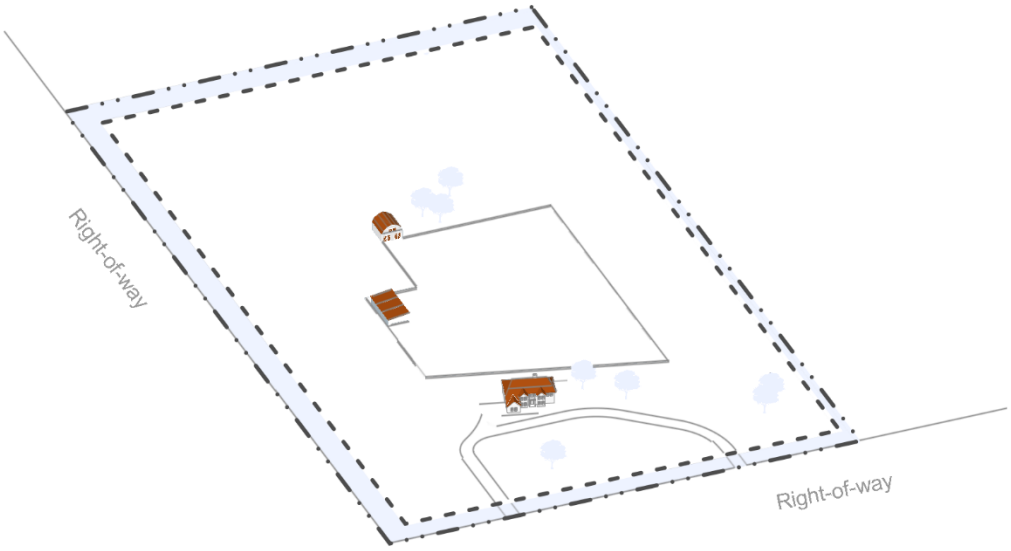
The purpose of the RRE-Residential Rural Estates district is to allow for the creation of very large rural residential lots in the extraterritorial area that, upon annexation into the City, could be subdivided to meet the standards of this Code.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the RRE district.

3. Dimensional Standards

Table 14-03-1: Residential District Dimensional Summary identifies the dimensional standards that apply to the RRE district.



14-03-04. RR-Residential Rural

1. Purpose[18]

The purpose of the RR-Residential Rural district is to protect quiet enjoyment of residential property in a rural setting, including limited agriculture and equine husbandry. The RR district is intended to implement the Rural Residential and Transitional Rural land use categories identified in the Comprehensive Plan.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the RR district.

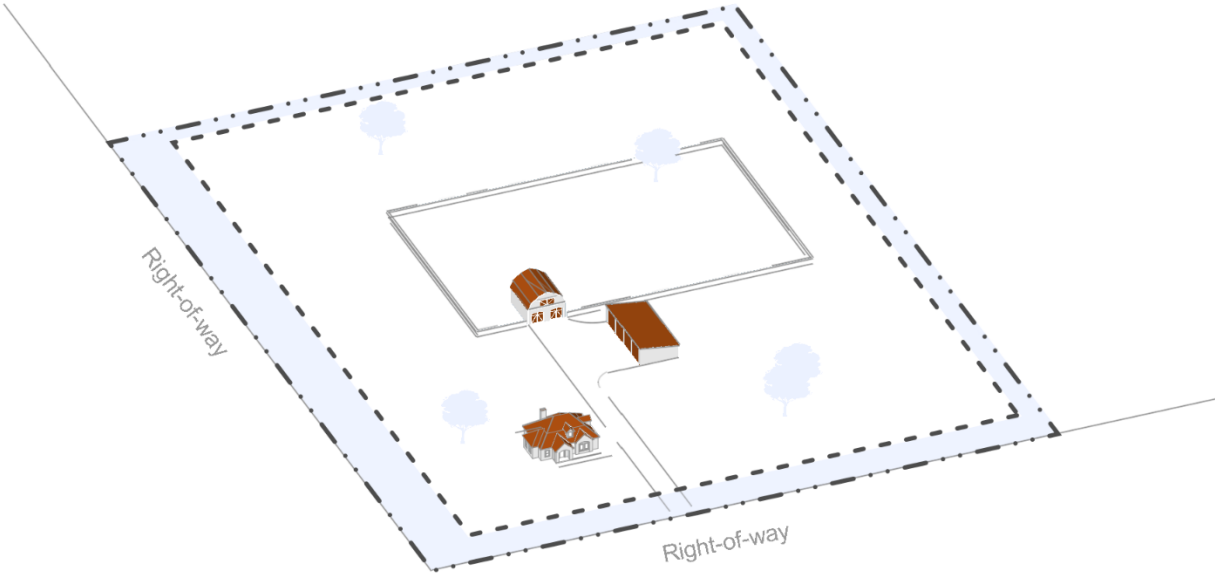
3. Dimensional Standards

In addition to the dimensional standards in Table 14-03-1: Residential District Dimensional Summary, the following standards shall apply to the RR district:

a. If an RR property is not connected to municipal sanitary sewer service, the minimum lot size is dependent on the property owner's ability to demonstrate that the proposed combination of lot area and soil type(s) would support the creation of two septic systems, a primary and a backup, on the subject property.

b. The Director and Building Official may approve a different minimum lot size based on the findings of a soil study, furnished by a qualified soils engineer who has taken soil samples on the site in question, that shows the soil classification on the property to be other than that shown by the soil survey manual.

c. In no case shall a lot area of less than 40,000 square feet be allowed.



[18] New purpose statement based on sections 14-04-01 and 14-04-01.1.

14-03-05. RS-Residential Suburban

1. Purpose

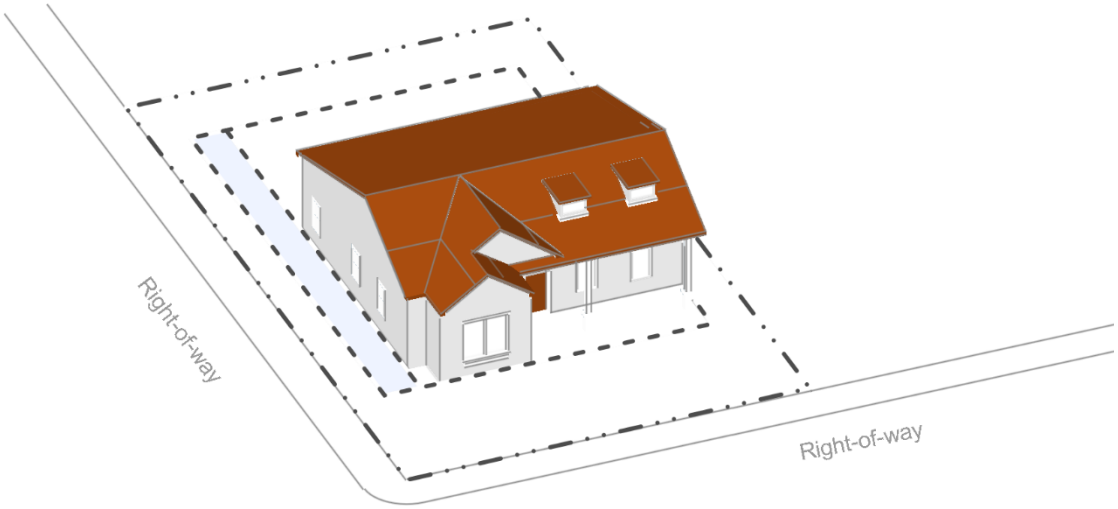
The purpose of the RS-Residential Suburban district is to accommodate larger lot, suburban style development that supports the creation of residential neighborhoods characterized predominantly single-family detached homes, but includes allowances for two-family homes, attached homes, and accessory dwelling units.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the RS district.

3. Dimensional Standards

Table 14-03-1: Residential District Dimensional Summary identifies the dimensional standards that apply to the RS district.



14-03-06. RM-Residential Multi-family

1. Purpose

The purpose of the RM-Multi-family district is to accommodate apartments, condominiums, and townhouses in a suburban style development with basic amenities such as greenspace, parking, storage, and community spaces for residents of the district.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the RM district.

3. Dimensional Standards

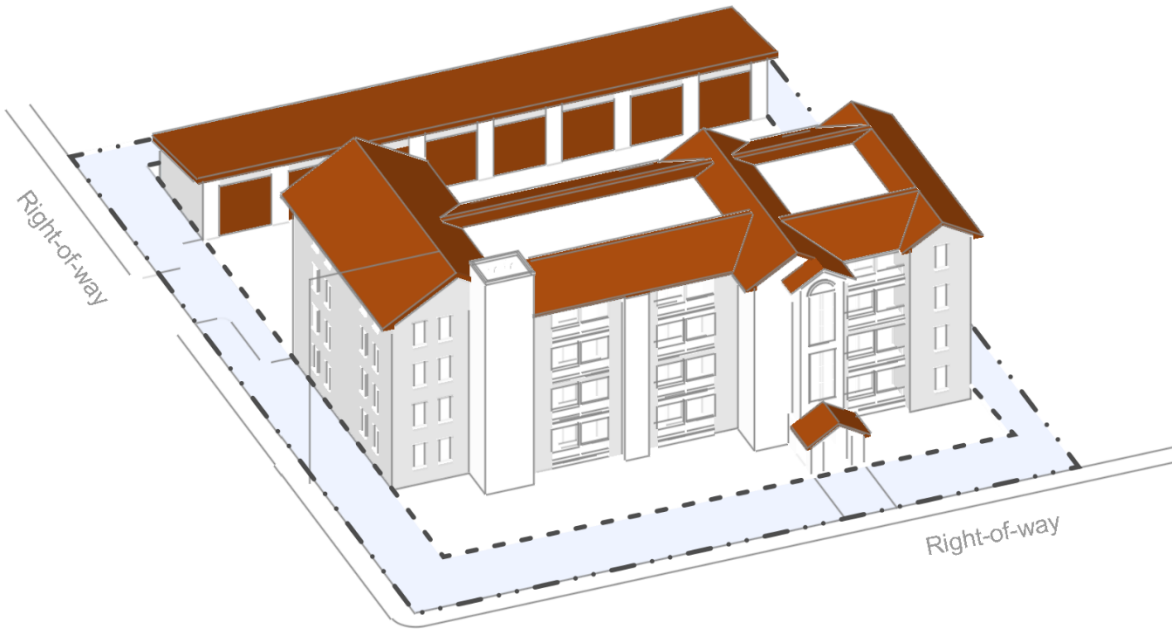
In addition to the dimensional standards in Table 14-03-1: Residential District Dimensional Summary, the maximum building height in the RM district may be increased to 70 feet when the following conditions are meet:

a. Subject property abuts an arterial street, Interstate, or the OS – Open Space zoning district.

b. Any building with height in excess of 50 feet is placed at or within 10 feet of the minimum setback from the arterial street, Interstate, or the OS – Open Space zoning district and as far as practicable from lower intensity residential zoning districts.

4. Density of Dwelling Units

The maximum density for any lot within an RM district is 30 dwelling units per acre.



14-03-07. RU-Residential Urban

1. Purpose

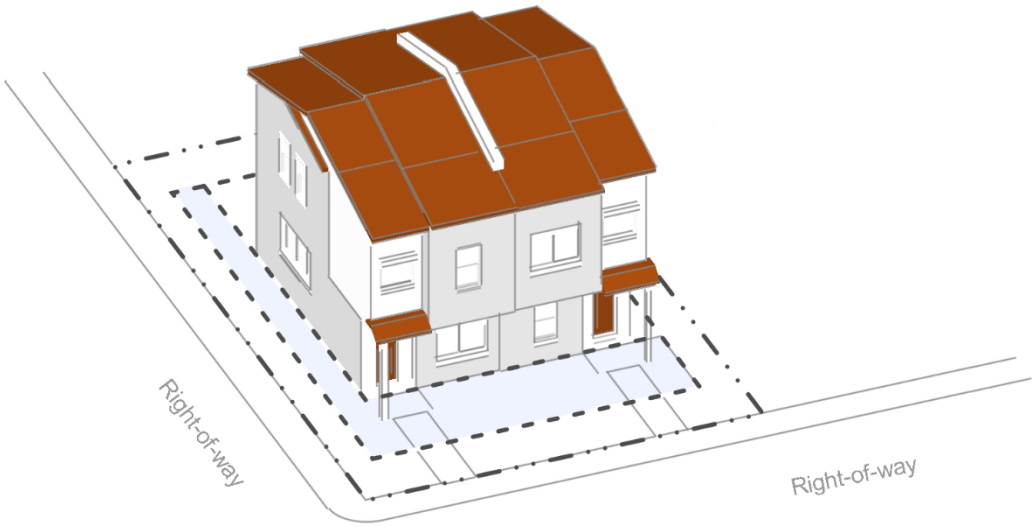
The purpose of the RU-Residential Urban district is to accommodate Bismarck's "old town" residential area that was primarily established before 1953. The RU district supports a mix of low- to medium-density housing types with pockets of civic uses.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the RU district.

3. Dimensional Standards

In addition to the dimensional standards in Table 14-03-1: Residential District Dimensional Summary, the maximum dimensional requirements for lot width, front setbacks, and street-side setbacks do not apply to non-residential uses in the RU district, such as schools, parks, or religious institutions.



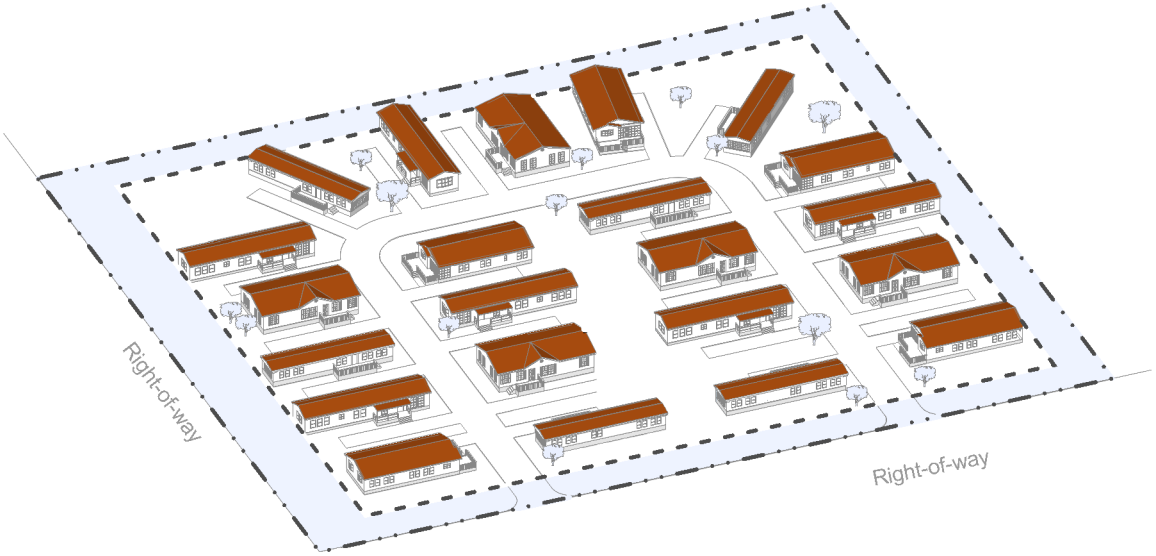
14-03-08. RMH-Residential Manufactured Housing

1. Purpose

The purpose of the RMH-Residential Manufactured Housing district is to accommodate the creation of manufactured home communities for mobile and manufactured home dwellings.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the RMH district.



3. District Specific Standards[19]

a. Housing Standards

All residences within an RMH district shall meet the following standards:

i. All manufactured homes shall comply with the Manufactured Home Construction and Safety Standards of the Housing and Urban Development (HUD) Agency and have a HUD certification label affixed to the home or have an approved letter of label verification.

ii. Modular or site-built homes, compliant with residential building code, may be constructed in an RMH district, subject to the same standards of this section.

iii. The RMH district shall also comply with applicable City, state, and federal regulations and licensing requirements, including NDCC Chapter 23-10, NDCC Chapter 33-33-01, and Chapter 4-08 of the City Code of Ordinances.

b. Minimum Area

An RMH district may not be less than two acres in total area. A manufactured home park that is divided by public rights-of-way into multiple RMH districts, yet operated as a single entity, shall be considered cumulatively as one RMH district for the purposes of this section.

[19] Existing Residential Manufactured Housing standards have been revised to align with North Dakota statutory requirements and other applicable Bismarck regulations.

c. Accessory Buildings

Accessory buildings, either for private or communal use, are permitted according to the following standards:

i. Accessory buildings may only be utilized for the storage, social, or administrative needs of the residents or management of the RMH district.

ii. Accessory buildings for communal use may not exceed 25 feet in height. Accessory buildings for private use may not exceed the height of the associated principal use.

d. Setbacks and Unit Spacing

Each housing unit or accessory structure within an RMH district shall comply with the following setbacks and spacing distances between units:

i. Each manufactured home shall be placed at least 12 feet from all other structures, including attached improvements, such as covered decks or porches.

ii. Each manufactured home shall be set back at least 20 feet from a private accessway that serves as the access point at the front of the dwelling. Setback measurements are made from the closest point of the dwelling, or any attached improvements, to the adjacent curb, pavement edge, or walkway, whichever is closest.

iii. Each manufactured home shall be set back at least 20 feet from a public right-of-way on the perimeter of the district.

iv. All structures shall be setback at least six feet from a lot line on the perimeter of the district.

v. Contextual setbacks in Section 14-02-03.6.e, Contextual Setbacks, apply to Manufactured Home Communities and supersede any requirements of this section.

e. Accessways and Walkways

Private accessways, or streets, internal to an RMH district are subject to the following standards:

i. All accessways shall be hard-surfaced, either concrete or bituminized.

ii. Access to each manufactured home shall be provided from internal accessways. No direct access to manufactured homes may be provided from public streets on the perimeter of the RMH district.

iii. All accessways shall have a posted maximum speed limit of 15 miles per hour and permit vehicle, pedestrian, and bicycle travel.

iv. The width of private accessways and any turnarounds, if applicable, shall meet all width requirements for local public streets as described in Chapter 14-19, Subdivision . All private accessways serving at least three manufactured homes shall have a name compliant with street naming standards applicable to public streets as described in Chapter 14-19, Subdivision .

v. Internal pedestrian connectivity shall be provided between dwelling units and recreation areas or community amenities. The Director may require such pedestrian connections prior to approval of a site plan.

f. Recreation Area

RMH districts that contain 25 or more manufactured homes shall include an outdoor recreational area. The outdoor recreation area shall:

i. Be at least 4,000 square feet in area, with an additional 200 square feet required for each unit beyond the initial 25 manufactured homes.

ii. Include a fence along any portion adjacent to a public right-of-way.

iii. Include planting of at least two shade trees or the installation of two shade structures.

iv. Be open and available to all residents of the RMH district, subject to reasonable operational hours.

g. Lighting

All entrances, exits, and accessways between rows of manufactured homes shall be lighted to provide an intensity of at least five footcandles, measured at ground level.

h. Utilities and Services

Utilities shall be provided within RMH districts according to the following standards:

i. Each manufactured home must be connected to municipal water and sewer service.

ii. Overhead power lines and above-ground storage of fuel are prohibited.

Chapter 14-04 Mixed or Non-Residential Zoning Districts

14-04-01. General Provisions

1. Purpose

Mixed-use, commercial, and industrial zoning districts are intended to provide locations for a wide range of employment, service, and activity centers that support the community's economic vitality. These districts accommodate diverse development forms, from neighborhood-scaled mixed-use areas to major commercial corridors and industrial employment zones, while ensuring compatibility with surrounding land uses.

2. How to Use this Chapter

a. All general dimensional standards applicable to zoning districts of this Chapter are within Table 14-04-1: Mixed or Non-Residential District Dimensional Summary, unless specific exceptions or further detail is provided in the subsection for the zoning district.

b. Uses allowed within each zoning district of this Chapter are found within Table 14-09-1: Allowed Uses and defined or further regulated with Chapter 14-10, Use Definitions and Use-Specific Standards.

c. All zoning districts defined in this Chapter are applied to specific locations within the jurisdiction of Bismarck by the Official Zoning Map. See Section 14-02-02, Official Zoning Map.

14-04-02. Summary Table of Mixed or Non-Residential Zoning District Dimensions

Table 14-04-1: Mixed or Non-Residential District Dimensional Summary

sf= Square feet ft = Feet Min = Minimum Max = Maximum N/A = Not applicable

Proposed Zoning District	Residential Mixed (RX)	Office Mixed (OX)	Commercial Mixed (CX)	Commercial General (CG)	Industrial Mixed (IX)	Industrial General (IG)
Reference	14-04-03	14-04-04	14-04-05	14-04-06	14-04-07	14-04-08
Lot Standards						
Lot Dimensions						
Lot Area, Minimum	2,000 sf [1]	2,000 sf	2,000 sf	2,000 sf	2,000 sf	2,000 sf
Lot Width, Minimum	Min: 25ft Max: 150 ft [1]	50 ft	50 ft	50 ft	25 ft	60 ft
Setback (Minimum, unless otherwise specified)						
Front [2]	Min: 10 ft Max: 50 ft [1]	10 ft	10 ft	20 ft	15 ft	15 ft
Street Side, Corner Lot [2]	Min: 5 ft Max: 35 ft [1]	10 ft	10 ft	10 ft	15 ft	15 ft
Interior Side	6 ft	10 ft	10 ft	0 ft	0 ft	0 ft
Rear	10 ft	10 ft	10 ft	10 ft	10 ft	10 ft
Rear (From Alley)	0 ft	0 ft	0 ft	0 ft	0 ft	0 ft
Lot Coverage (Maximum)						
Lot Coverage	60%	65%	75%	80%	80%	80%
Structure Standards (Maximum)						
Principal Building Height	50 ft/ 60 ft [1]	50ft	75 ft	80 ft	75 ft	75 ft
Accessory Building Height	25 ft	25 ft	25 ft	50 ft	50 ft	50 ft
Tenant Space Area	10,000 SF	N/A	60,000 SF	N/A	N/A	N/A

Notes

[1] Additional dimensional standards apply, as described in the applicable zoning district.
[2] Additional setbacks apply to certain arterials, as described in Section 14-02-03.6.c.

14-04-03. RX-Residential Mixed-Use

1. Purpose

The purpose of the RX-Residential Mixed-Use district is to accommodate primarily higher-density residential neighborhoods with pockets of neighborhood-scale civic and commercial uses.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the RX district.

3. Dimensional Standards

In addition to the dimensional standards in Table 14-04-1: Mixed or Non-Residential District Dimensional Summary, the following standards shall apply in the RX district:

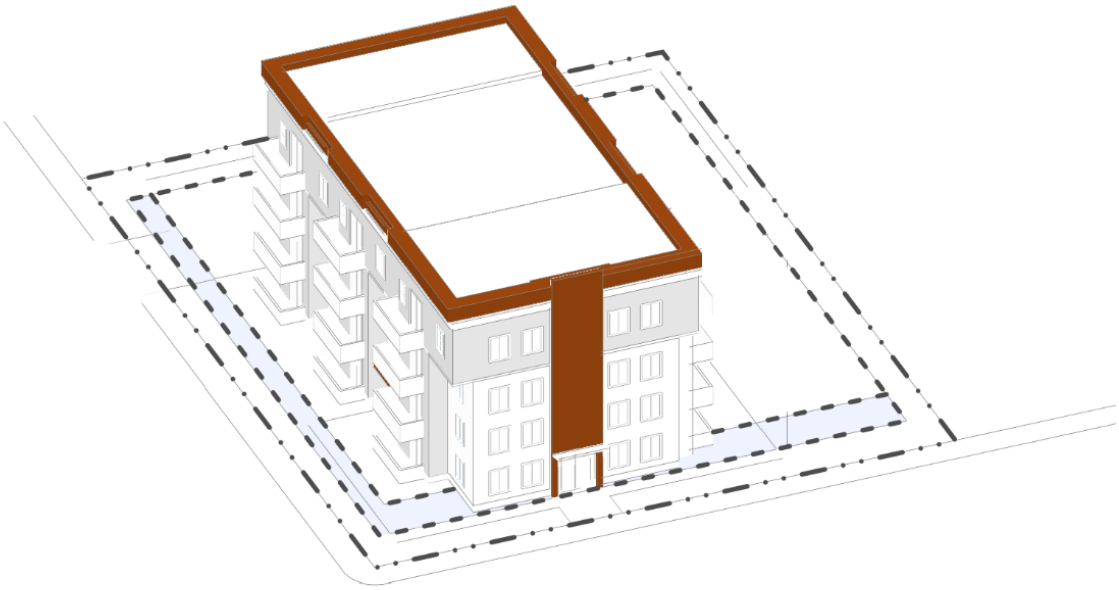
a. Notwithstanding the minimum lot size for the district, the following minimum lot sizes shall apply by residential building type:

   i. Two-Family Dwellings: minimum of 1,600 square feet.

   ii. Townhouses, Exterior Units: minimum of 1,400 square feet.

   iii. Townhouses, Interior Units: minimum 1,200 square feet.

b. The maximum dimensional requirements for lot width, front setbacks, and street-side setbacks do not apply to public or civic uses in the RX district, such as schools, parks, or religious institutions.



14-04-04. OX-Office Mixed-Use

1. Purpose

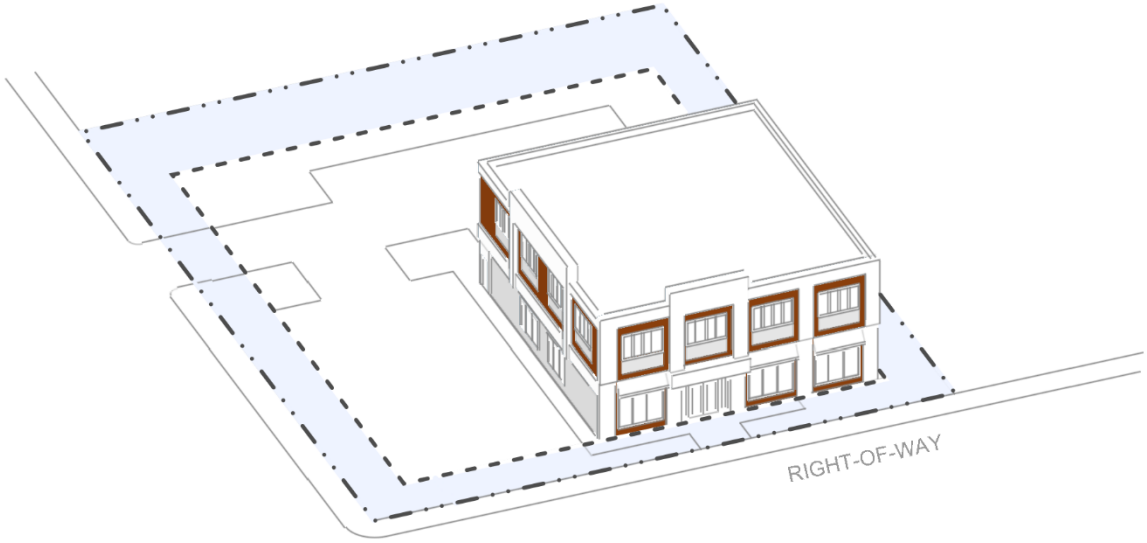
The purpose of the OX-Office Mixed-Use district is to accommodate a mix of neighborhood-scale residential, commercial, and institutional structures that are likely to be accessed by personal vehicle but still contain design features to support multi-modal transportation opportunities. Stand-alone multi-family developments are permitted, though encouraged to be designed to connect to and interact with adjacent civic and commercial uses, as appropriate.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the OX district.

3. Dimensional Standards

Table 14-04-1: Mixed or Non-Residential District Dimensional Summary identifies the dimensional standards that apply to the OX district.



14-04-05. CX-Commercial Mixed-Use

1. Purpose

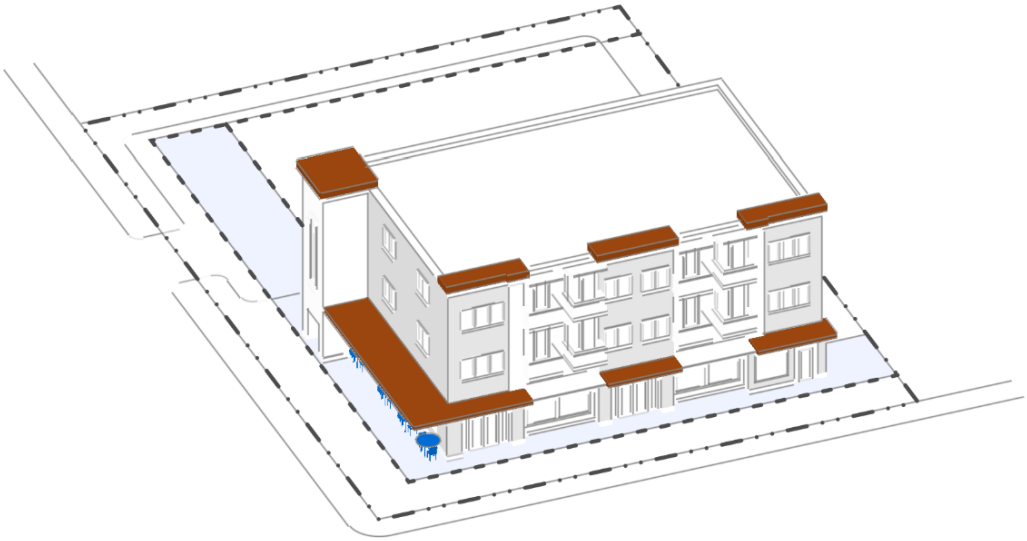
The purpose of the CX-Commercial Mixed-Use district is to accommodate a mix of neighborhood-scale residential, commercial, and institutional structures and uses to support pedestrian-oriented design and multi-modal transportation availability in order to increase opportunities for walkable neighborhood services. Stand-alone multi-family developments are permitted, though encouraged to be designed to connect to and interact with adjacent civic and commercial uses, as appropriate.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the CX district.

3. Dimensional Standards

Table 14-04-1: Mixed or Non-Residential District Dimensional Summary identifies the dimensional standards that apply to the CX district.



14-04-06. CG-Commercial General

1. Purpose

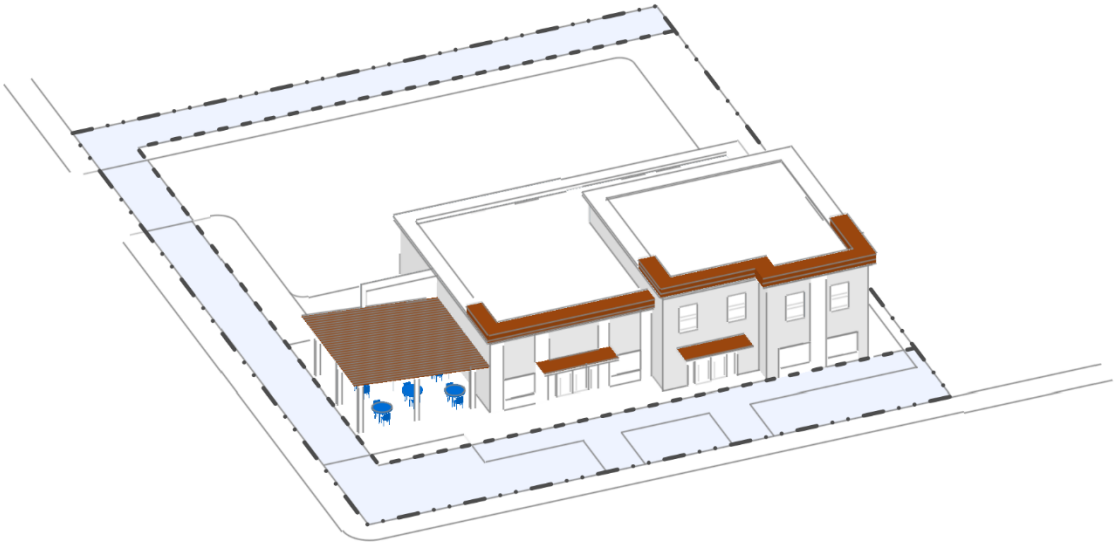
The purpose of the CG-Commercial General district is to provide for a high-intensity commercial district for areas located outside Bismarck's downtown business district, with the intent of serving both the city of Bismarck and the surrounding regional market.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the CG district.

3. Dimensional Standards

Table 14-04-1: Mixed or Non-Residential District Dimensional Summary identifies the dimensional standards that apply to the CG district.



14-04-07. IX-Industrial Mixed-Use

1. Purpose

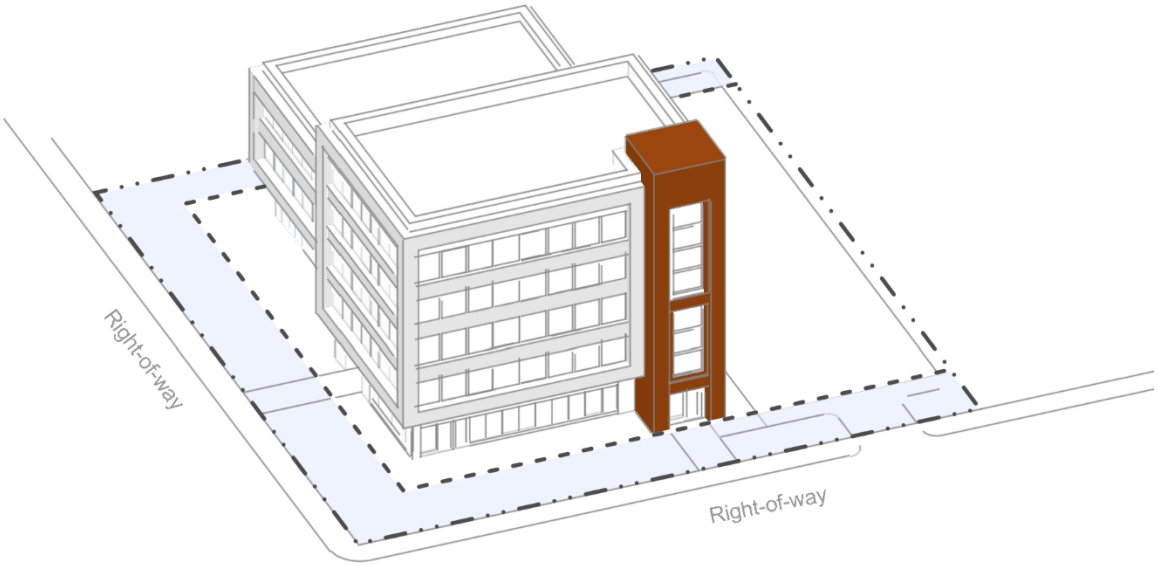
The purpose of the IX-Industrial Mixed-Use district is to provide areas for the development or continued use of light industrial and storage operations mixed with commercial and limited residential uses. IX is focused on providing the users, employees, and owners of the industrial operation already in place with additional options for a diversified range of services, food, shopping, and housing while creating opportunities for the adaptive reuse of structures in the district that are currently underused or abandoned.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the IX district.

3. Dimensional Standards

Table 14-04-1: Mixed or Non-Residential District Dimensional Summary identifies the dimensional standards that apply to the IX district.



14-04-08. IG-Industrial General

1. Purpose

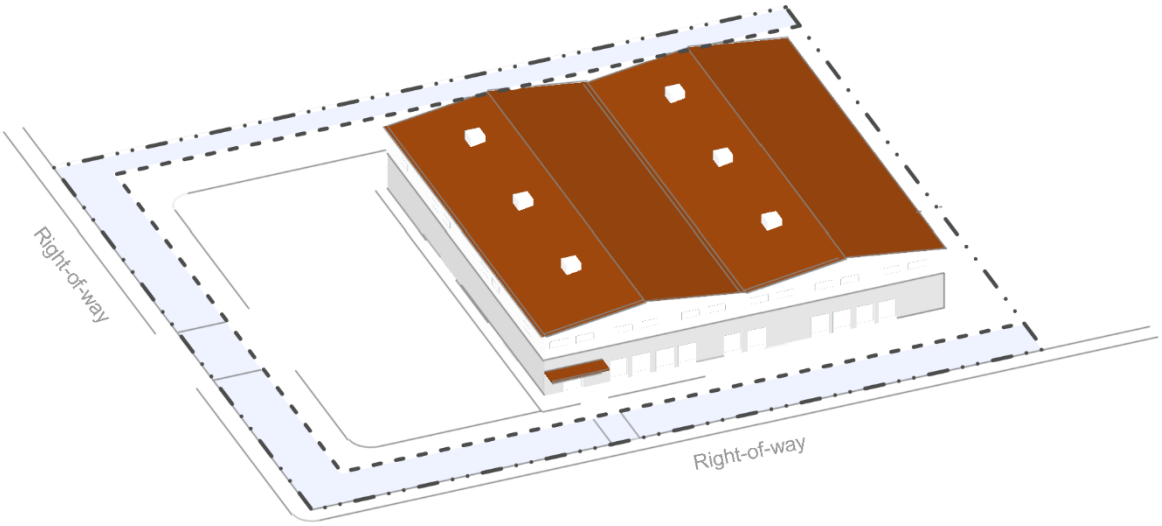
The purpose of the IG-Industrial General district is to accommodate areas of light fabrication, manufacturing, technology, and industrial uses with limited, accessory commercial uses, all of which are compatible with existing adjacent land uses, access to transportation and the availability of public services and facilities.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the IG district.

3. Dimensional Standards

Table 14-04-1: Mixed or Non-Residential District Dimensional Summary identifies the dimensional standards that apply to the IG district.



Chapter 14-05 Downtown Zoning District

14-05-01. Purpose

The purpose of the DT-Downtown district is to maintain the existing traditional downtown character while also accommodating growth. The goal of the development standards is to guide the quality of new development, allow compatible infill and redevelopment, and encourage reinvestment and revitalization.

1. The district standards reinforce the existing pattern of Bismarck's historic downtown. The area is organized around small blocks and an interconnected network of streets.
2. New buildings will generally be multi-story and oriented toward the street or other public spaces with minimal setbacks to support a compact, walkable, park-once environment, that accommodates cars while prioritizing pedestrians.
3. The development standards focus on building form, character, and quality while providing flexibility on the range of permitted uses, with the expectation that building uses can and will change over time.

14-05-02. Organization

The DT district is divided into the following subdistricts, delineated by street frontage, with each subdistrict defined by a common scale, character, and intensity.

1. DS-Downtown Signature Subdistrict
2. DG-Downtown General Subdistrict
3. DM-Downtown Medical Subdistrict
4. DF-Downtown Fringe Subdistrict
5. DC-Downtown Corridor Subdistrict

14-05-03. Applicability

1. The DT district is unique in Bismarck. It encompasses the designated area within the historic core of the city. It is a defined geographic area rather than a land use category that could be applied anywhere in the city.
2. The Downtown subdistricts have the following applicability:
    a. The DS-Downtown Signature subdistrict applies to the primary retail blocks in the core of Downtown. These blocks will be the most intense within the Downtown district, with ground floor shopfronts and active uses along the street.
    b. The DG-Downtown General subdistrict permits a wider range of frontage types, but still provides a pedestrian-oriented, mixed-use environment in an urban form.
    c. The DM-Downtown Medical subdistrict is concentrated around the major medical institutions. While still requiring development in a traditional street-oriented form that defines the public realm, the standards for this subdistrict provide greater flexibility to

accommodate large footprint buildings and the unique requirements of medical facilities, including emergency access, security, and privacy.

d. The DF-Downtown Fringe subdistrict provides a physical transition to adjacent neighborhoods or to other areas of fundamentally different character, where necessary. The standards allow for a smaller scale and more flexible development pattern in these limited locations.

e. The DC-Downtown Corridor subdistrict applies to the designated blocks within Downtown with high traffic volumes where a true pedestrian-oriented environment will be difficult to achieve in the near term. An urban street-oriented development will be permitted, but not required.

14-05-04. Administration of the Downtown District

1. Description of Standards

The Downtown district standards are tailored to complement the existing traditional building fabric and to produce the desired future character of each subdistrict, using a range of scales and intensities. The district regulations include:

a. Generally applicable standards that apply across all subdistricts;

b. A set of subdistrict-specific development standards that establish the following parameters for development form: lot standards and building placement, building form, parking location, and building components and encroachments. The development standards also identify the permitted frontage types.

c. Uses are broadly regulated to transition to adjacent neighborhoods and to distinguish between ground floor and upper floors, where appropriate.

d. Architectural standards that supplement the frontage type and subdistrict standards to reinforce the scale and design of new and adapted buildings to reflect and complement the character of structures in the historic core of Bismarck.

2. Amending the Downtown Subdistricts

The Downtown subdistrict boundaries may be amended through the Zoning Map Amendment process in Section 14-20-05.10, in the same manner as a base zoning district.

14-05-05. Allowed Uses

All uses shall be allowed in the DT district as established in Table 14-09-1: Allowed Uses, with the following exceptions applicable only to the shopfront areas in the DS subdistrict:

1. Residential dwelling units are prohibited in the required shopfront area in the DS subdistrict.
2. Funeral homes, veterinary clinics, community cultural centers, community services, government facilities, schools, and offices are prohibited in the required shopfront area in the DS subdistrict, unless the Director determines that the shopfront space will have accommodation for the public and/or generate significant pedestrian interest from the adjoining sidewalk.
3. Any hotel, event space, or other use that includes private accommodations shall only locate a lobby, restaurant, or similar public space in the shopfront area.

14-05-06. Downtown Subdistrict Development Standards

The district development, frontage, and architecture standards set the basic parameters for building form, including building placement on the lot; the building size (in three dimensions: width, depth, and height) and massing; and other required or permitted functional elements. The following standards apply across all Downtown subdistricts.

1. Building Placement and Other Lot Standards

a. Front Setback Zone (FSZ)

The front setback zone is established as a minimum and maximum distance from the street frontage property line. The front façade of principal buildings shall be located within the FSZ, to the percentage of the property frontage designated in the applicable district standards.

i. Corner lots and double frontage or through lots are required to meet the FSZ requirements for each frontage.

ii. Civic structures and historically significant buildings are not required to fulfill the FSZ occupancy standards.

b. Building Orientation

The front façade shall be oriented toward the street or, where there is no street, toward a public open space.

c. Entrances

All principal buildings shall have at least one publicly-accessible entrance on the front façade within the FSZ. Fire exits and employee-only entrances do not fulfill this requirement. Additional entrances may be required within district or architectural standards.

d. Corner Lots

Front and side street designations of corner lots shall be determined by the Director and identified on the development application. Unless otherwise specified in the applicable subdistrict, the following standards apply:

i. Within 30 feet of a block corner, the principal building façade shall be placed within the FSZ.

ii. Within 12 feet of a block corner, a chamfered building corner that provides a corner entry is permitted and is considered to occupy the FSZ.

Figure 05-1: Examples of Chamfered Building Corners

e. Side, Rear, and Parking Setbacks

Because the Downtown district permits 100 percent lot coverage in most locations, side and rear setbacks are typically not required.

i. Where side and rear setbacks are required, they are identified in the subdistrict placement standards.

ii. Privacy fences may be constructed along common lot lines behind the FSZ, and along alleys or service drives.

iii. Parking setbacks are established for each subdistrict. The intent of the locational parameters of off-street vehicle parking is to have minimal intrusion on the public realm.

f. Natural Lot Features

Building placement standards may be adjusted to the minimum extent needed to avoid impacts on sensitive natural features such as mature trees and steep topography through Section 14-20-04.2, Adjustment.

2. Building Form

a. Scale

i. Building scale limitations are established in the district standards.

ii. A large building with a street-facing elevation wider than 50 feet or a height above two stories (or both), shall be designed to comply with the Architecture Standards in Section 14-05-08.3.

b. Height

The maximum building heights for the Downtown subdistricts are established in the development standards. However, additional height limits may apply, as identified in Section 14-05-06.2, Building Form, when a lot in the Downtown district is adjacent to a non-Downtown district.

3. Building Frontage

a. Transparency

All building façades which face onto a street or other public space shall meet the minimum fenestration (e.g. windows, doors, and other wall openings) requirements of the applicable subdistrict.

i. The minimum and maximum percentage of fenestration is regulated separately for the ground and upper stories.

ii. The percentage of fenestration per story shall be calculated as the area between finished floors and shall be a total percentage of doors and windows along that portion of the façade. Top story fenestration is measured between the floor and the finished ceiling.

iii. Ground floor windows along a street frontage in the DS subdistrict shall have a visible light transmittance (VLT) of at least 50 percent to permit views into the shopfront space and assist with street activation; mirrored glass is prohibited on all ground floor street-facing windows.

iv. Vinyl window applications or treatments shall cover no more than 25 percent of individual window and door glazing along ground floor street frontages. See Section 14-18-05.4, Downtown Zoning District Sign Standards, for additional parameters.

v. Blank wall areas (without fenestration) shall not exceed 20 feet in length, measured from floor-to-floor, on any story facing a street frontage, except in the DC subdistrict, where they shall not exceed 30 feet on the ground story front façade and 50 feet on side street and upper story façades.

vi. A door must have at least 30 percent of 50 percent minimum VLT glass to be counted toward the minimum transparency requirement.

b. Liner Buildings

The typical character of some permitted land uses, such as parking structures and lots, theaters, conference and convention centers, or grocery stores, may preclude buildings from complying with some district-specific standards and detract from the walkability of the surrounding area. In these instances, a liner building may be necessary to meet the building frontage requirements and large building façade composition standards.

i. In addition to meeting the frontage standards, a liner building shall:

(1). Be at least two stories or 25 feet tall;

(2). Provide habitable space of at least 12 feet in depth (i.e., a liner is not simply an applied façade);

(3). Comply with the parking setback for the first two stories or 25 feet when lining a parking structure; and

ii. Liner buildings may contain any use permitted in the applicable subdistrict.

4. Parking and Access

a. There are no minimum parking requirements, but parking maximums are established in Section 14-13-07, Minimum and Maximum Parking Requirements.

b. Parking shall be accessed from rear alleys, service drives, or side streets whenever practicably possible.

c. No parking or drive aisles are allowed between the front of the building and the back of curb, unless expressly permitted in the applicable subdistrict.

14-05-07. Downtown Development Standards

1. Standards by Subdistrict

a. In addition to the generally applicable standards above, the Downtown District includes the following set of subdistrict-specific dimensional standards to reflect the existing urban pattern and establish the parameters for new infill and redevelopment form:

i. Lot standards and building placement;

ii. Building form;

iii. Building components;

iv. Parking placement; and

v. Frontage types.

b. If a building is located on a parcel of land that fronts multiple streets of different downtown subdistricts, the property may choose to apply each subdistrict frontage independently or choose to use whichever subdistrict is the most intense for all street frontages. The property owner and City staff may assign front and side streets as necessary.

Figure 05-2: Examples of the historic development pattern and recent infill development in Downtown Bismarck

2. Lot Standards and Building Placement

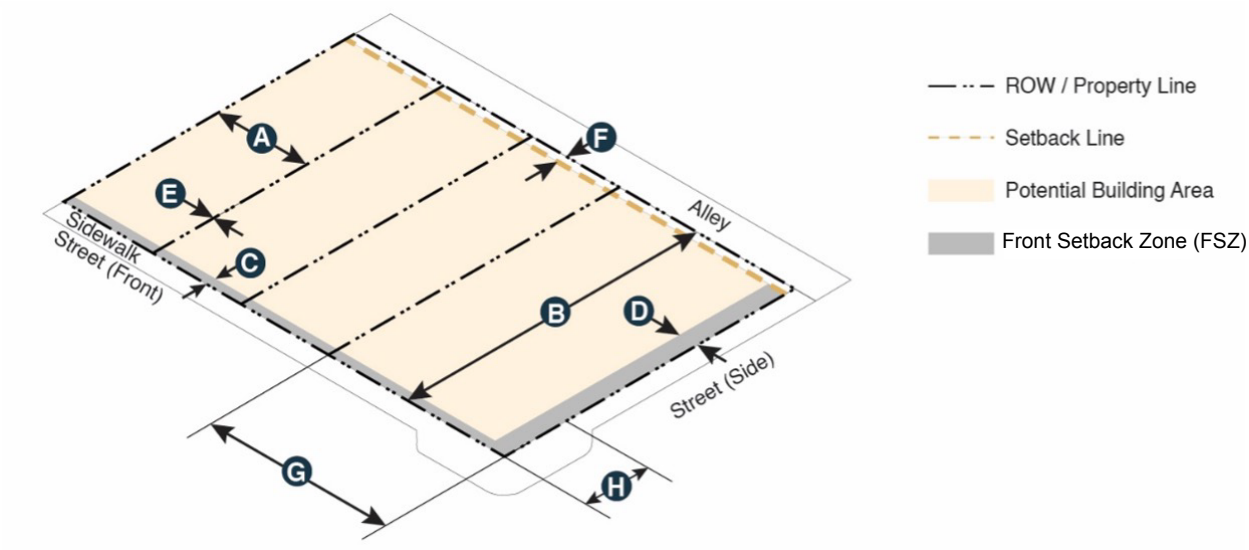


Figure 05-3: Lot Standards

Table 14-05-1: DT Lot Standards and Building Placement[1]

ft = Feet min = Minimum max = Maximum

	DS	DG	DM	DF	DC	
Lot Standards[2] (Minimum)						
Lot Width	25 ft	25 ft	25 ft	25 ft	25 ft	**A**
Lot Depth	No Limit	No Limit	No Limit	No Limit	No Limit	**B**
Front Setback Zone (FSZ) and Other Setbacks[3]						
FSZ (Front)	0 ft min., 5 ft max.	0 ft min., 10 ft max.	0 ft min., 20 ft max.[4]	0 ft min., 15 ft max.	0 ft min., 30 ft max.	**C**
FSZ (Side Street)	0 ft min., 10 ft max.	0 ft min., 15 ft max.	0 ft min., 20 ft max.[4]	0 ft min., 20 ft max.	0 ft min., 30 ft max.	**D**
Interior Side Setback Min.	0 ft min.	0 ft min.	0 ft min.	0 ft min.	0 ft min.	**E**
Interior Side Setback Adjacent to Detached SF	6 ft min.	6 ft min.	6 ft min.	6 ft min.	10 ft min.	**E**
Rear Setback (Minimum)						
Abutting other Downtown or Mixed-Use District	0 ft	0 ft	0 ft	0 ft	0 ft	**F**
Abutting Non-Downtown Residential Districts without Alley/Service Drive	10 ft	10 ft	20 ft	10 ft	20 ft	**F**
Abutting an Alley/ Service Drive	0 ft	0 ft	10 ft	0 ft	10 ft	**F**

	DS	DG	DM	DF	DC	
Façade within FSZ (Minimum Frontage Occupancy)						
Front	90%	80%	60%[4]	70%	20%	**G**
Side Street[5]	30 ft from corner min.	30 ft from corner min.	30 ft from corner min.	30 ft from corner min.	N/A	**H**
Lot Coverage / Building Coverage (Maximum)						
Lot Coverage	100%	100%	100%	100%	100%	

Notes:

[1] In case of discrepancy with similar provisions, lot and building placement standards by subdistrict govern.
[2] The downtown street network shall be maintained; no streets or alleys shall be removed to create larger lots or blocks.
[3] Specified building and lot elements may encroach into required setbacks per Section 14-02-03.6.g.
[4] A covered patient passenger loading area, including for emergency room access, may be considered to fulfill the FSZ minimum occupancy requirement.
[5] On a corner lot, a building must occupy the designated length of the FSZ along the side street frontage line, measured from the corner.

3. Building Form

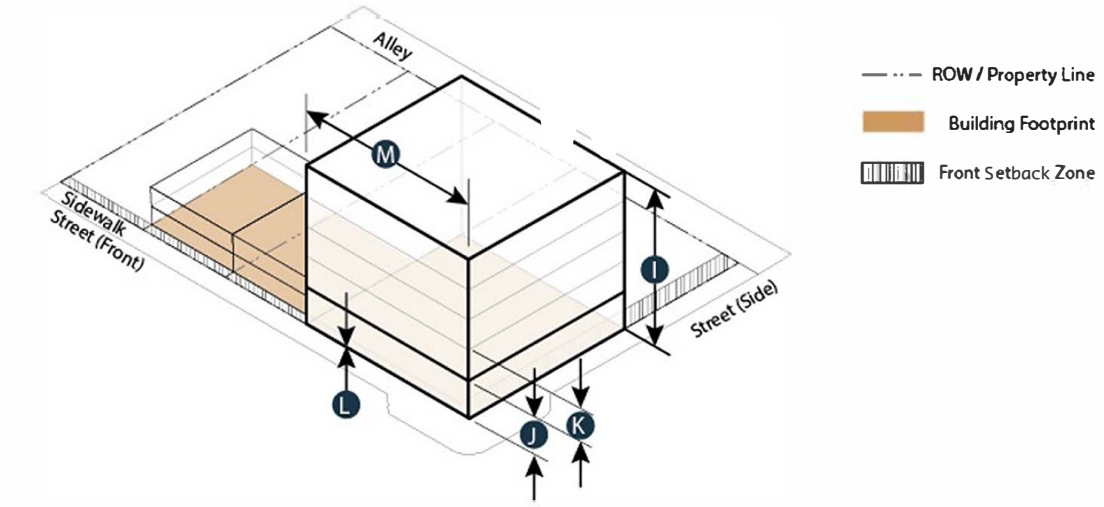


Figure 05-4: Building Form

Table 14-05-2: DT Building Form

ft = Feet min = Minimum max = Maximum FSZ = Front setback zone

	DS	DG	DM	DF	DC	
Building Height[1]						
Principal Building[2]	2 stories or 25 ft, min., 130 ft max.[3]	2 stories or 25 ft, min., 130 ft max.[3]	2 stories or 25 ft, min., 130 ft max.[3]	No min., 75 ft max.[3]	No min., 75 ft max.	**I**
Accessory Building	N/A	N/A	N/A	2 stories or 25 ft, max.	N/A	

	DS	DG	DM	DF	DC	
Ground Story Finished Floor Elevation[4]	1.5 ft min. (residential use at FSZ)[5] 0 ft max. (commercial use)	1.5 ft min. (residential use at FSZ)[5] 0 ft max. (commercial use)	1.5 ft min. (residential use at FSZ)[5] 0 ft max. (commercial use)	1.5 ft min. (residential use at FSZ)[5] 0 ft max. (commercial use)	1.5 ft min. (residential use at FSZ)[5] 0 ft max. (commercia l use)	L

Notes

[1] In case of discrepancy with similar provisions, building height by district governs.
[2] Specified building and lot elements may extend above the maximum permitted height per Section 14-02-03.5.
[3] Within 20 feet of the rear lot line, buildings may not be more than a half-story taller than permitted height of the buildings on adjacent lot.
[4] The ground floor, porch, or terrace finished floor elevation is measured from the average exterior sidewalk elevation at, and within 15 feet of, the minimum front setback.
[5] Main entrances may be at grade, with transitions to meet the minimum finished floor elevation within the building interior.

4. Building Components

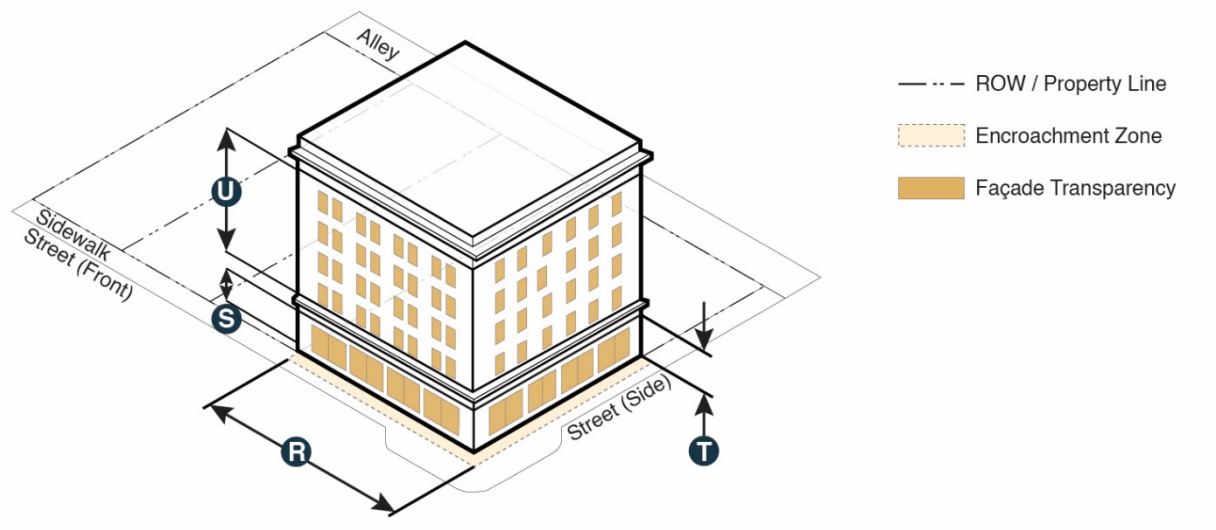


Figure 05-5: Building Components

Table 14-05-3: DT Building Components

ft = Feet min = Minimum max = Maximum

	DS	DG	DM	DF	DC	
Permitted Frontage Types[1]						
See Table 14-05-5: Frontage Types Allowed by Subdistrict						

R = Required P = Permitted P* = Permitted with conditions Blank = Prohibited

	DS	DG	DM	DF	DC	
Building Entrances[2]						
Building Entrances [3]	At least one per façade	At least one per façade	At least one per façade	At least one per façade	At least one per façade	
Distance Between Façade Entrances	50 ft max.	75 ft max.	75 ft for non-medical	90 ft max.	90 ft max.	**R**
Fenestration / Façade Transparency						
Ground Floor						
Front Street	70% min., 90% max.	50% min., 70% max.	50% min., 70% max.	30% min., 70% max.	30% min., 70% max.	**S**
Side Street	25% min., 90% max.	25% min., 70% max.	25% min., 90% max.	25% min., 70% max.	25% min., 70% max.	**T**
Upper Stories	25% min.	25% min.	25% min.	15% min.	15% min.	**U**
Façade Composition						
Required for buildings with 50 ft or more of continuous frontage	See Section 14-05-08.3, Façade Composition, Articulation, and Massing					
Encroachments Permitted						
Architectural Features						
Balcony[4]	Y	Y	Y	Y	Y	
Bay Window[5]	Y	Y	Y	Y	Y	
Awning/Canopy/ Marquee[6]	Y	Y	Y	Y	Y	
Signage	Y	Y	Y	Y	Y	
Roof Equipment[7]	Y	Y	Y	Y	Y	

Notes

[1] For properties that front on a public open space, the building elevation shall be regulated as a Building Frontage and must fulfill all requirements thereof. Privacy fencing along the property frontage line is prohibited.
[2] The goal of this standard is to provide active street frontages, with retail shops or other active uses along the sidewalk. A building frontage that is 100' wide or less is only required to have a single entrance. Doors that serve solely as emergency egress do not qualify as entrances.
[3] On corner lots, a corner entry can be used to fulfill the initial entrance requirement for both façades.
[4] Balconies may encroach into the street right-of-way above the first floor with a clear height of 8 feet above the sidewalk up to a maximum of 6 feet, subject to approval by City Commission.
[5] Bay windows above the ground floor may encroach into the right-of-way; at grade, bay windows may encroach into the sidewalk portion of the right-of-way up to two feet, but shall not block the minimum required clear walkway, subject to approval by City Commission.
[6] Awnings, canopies, and marquees with a clear height of 8 feet may encroach into the sidewalk portion of the right-of-way to within 2 feet of the face of the curb or the edge of the boulevard, subject to approval by City Commission.
[7] Rooftop equipment shall be set back from the façade at least 12 feet or be screened from ground level views with parapet walls or enclosures similar in form, material and detail to the principal structure.

5. Parking

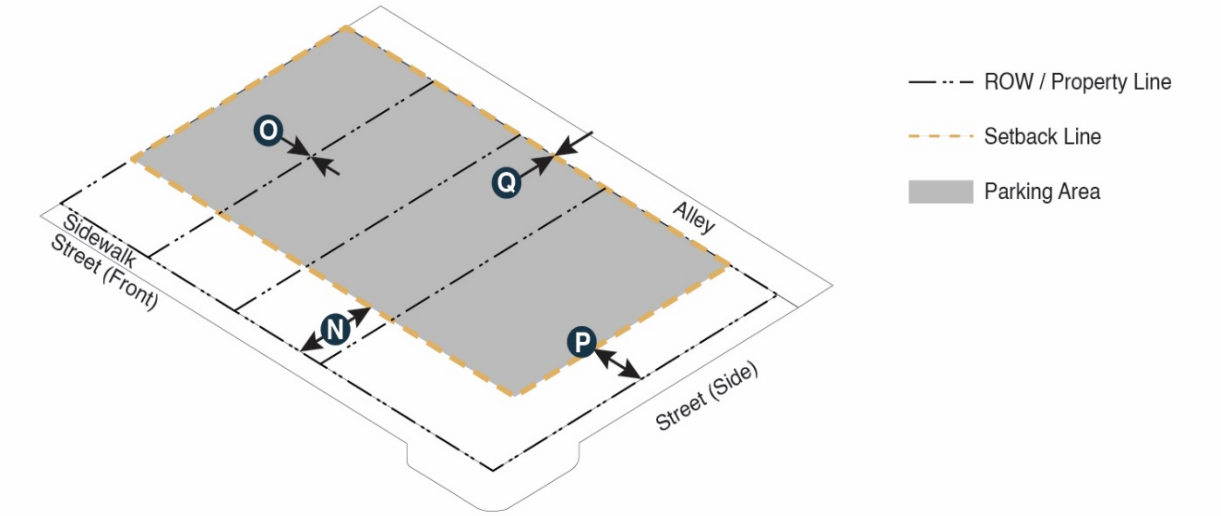


Figure 05-6: Parking Setbacks

See also Chapter 14-13, Parking and Loading.

Table 14-05-4: DT Parking

ft = Feet min = Minimum max = Maximum FSZ = Front setback zone

	DS	DG	DM	DF	DC	
General location	Behind building	Behind building	Behind building	Behind/Beside building	Limited in front/Primarily beside building	
Front Setback [2]	30 ft min.	30 ft min.	30 ft min. from block corner; 12 ft min. in other locations [3]	30 ft min. from block corner; 12 ft min. in other locations [3]	N/A	**N**
Interior Side Setback (mid-block)	0 ft min.	0 ft min.	0 ft min.	0 ft min.	0 ft min.	**O**
Side Street Setback [3] (corner lot)	30 ft min. from block corner; 12 ft min. in other locations	30 ft min. from block corner; 12 ft min. in other locations	30 ft min. from block corner; 12 ft min. in other locations	30 ft min. from block corner; 12 ft min. in other locations	N/A	**P**
Rear Setback	0 ft min. (alley) 5 ft (no alley) [4]	0 ft min. (alley) 5 ft (no alley) [4]	0 ft min. (alley) 5 ft (no alley) [4]	0 ft min. (alley) 5 ft (no alley) [4]	0 ft min. (alley) 5 ft (no alley) [4]	**Q**

Notes

[1] For structured parking above ground, a liner building is required (see Section 14-05-06.3.b, Liner Buildings); for subterranean parking under a building, the parking may be located anywhere on the lot.
[2] No new curb cuts are permitted in the DS subdistrict frontages.
[3] Where a parking setback of less than 20 feet is used, the setback area must be planted with canopy shade trees on 25 ft center parallel to the street, or a 3-foot tall screening wall shall be constructed within the FSZ.
[4] No rear setback is required between adjacent lots that are sharing rear parking area.

6. Frontage Types

Building frontages are the components of a building façade and yard that provide a transition between the public realm (street, sidewalk, or public open space) and private realm (building interior). These elements define the relationship between the two. The frontage design and configuration contribute to the overall character and function of the public realm, including its walkability.

a. Applicability

The frontage standards apply to the area from the front setback zone (FSZ) to the property line along the street or other public space; they are independent of architectural style. Frontages of all principal buildings in the Downtown district shall comply with these standards. Table 14-05-5: Frontage Types Allowed by Subdistrict

R = Required P = Permitted P* = Permitted with conditions Blank = Prohibited

, below, identifies which frontages are required or allowed in each subdistrict.

Table 14-05-5: Frontage Types Allowed by Subdistrict

R = Required P = Permitted P* = Permitted with conditions Blank = Prohibited

Frontage Type	DS	DG	DM	DF	DC
Shopfront	R	P	P	P	P
Common Entry	P*	P	P	P	P
Dooryard/Terrace	P*	P	P	P	P
Forecourt	P*	P	P	P	P
Stoop		P*	P*	P	
Porch		P*	P*	P	

b. Shopfront Frontage Standards

i. Description

This frontage is intended for retail, restaurant, service, or other active uses. The front façade of the building is typically at or near the frontage line with large windows along the ground floor and an at-grade entrance along the public sidewalk. It may include a canopy or awnings that project over the sidewalk along the frontage. A shopfront may be used in conjunction with other frontages.

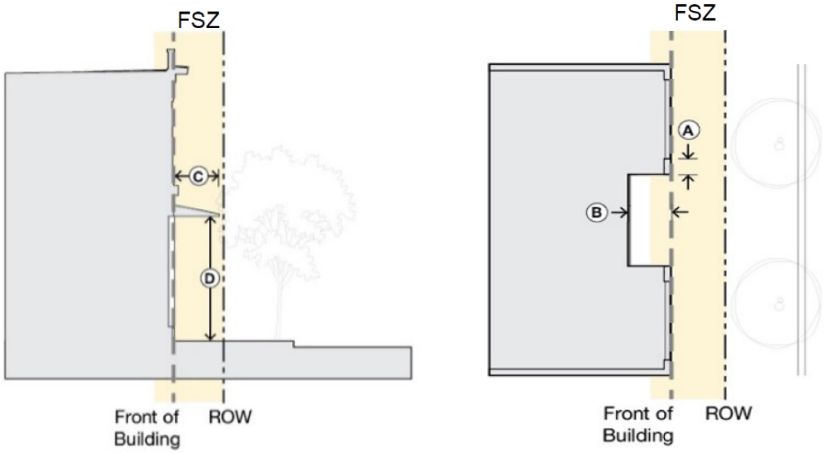


Figure 05-7: Shopfront Frontages

Table 14-05-6: Shopfront Dimensional Standards (in feet)

Recessed Entries (permitted)	5 ft maximum depth unless lined with display windows	**B**
Canopy or Awning (permitted)	4 ft minimum depth	**C**
Awning Maximum Projection	To edge of boulevard or 2 ft from back of curb	**C**
Awning Height, Clearance	8 ft minimum	**D**

ii. Additional Shopfront Standards

(1). A shopfront frontage is required where designated on the zoning map. Other frontages may be permitted to be combined with the shopfront requirements with approval by the Director.

(2). Entryway doors may be recessed if the overall façade fulfills the required frontage occupancy of the district.

(3). Any awning, canopy, or sign encroachment into or above the right-of-way requires approval by City Commission.

(4). Shopfront design standards are included in Section 14-05-08.6, Shopfront Standards.

Figure 05-8: Examples of Shopfront Frontages.

c. Common Entry Frontage Standards

i. Description

This frontage is intended to provide a defined transition between the sidewalk and the building interior, with an entryway leading to a lobby or foyer that provides interior access to residential units or offices. The front façade of the building is typically at or near the frontage line, with a covered or recessed entryway within the main façade.

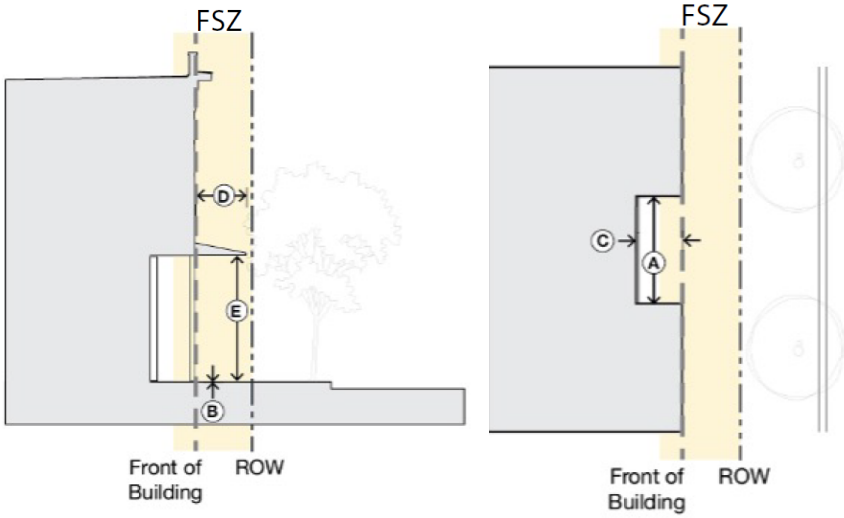


Figure 05-9: Common Entry Frontages

Table 14-05-7: Common Entry Dimensional Standards (in feet)

Width of Primary Door/Window Frame	6 ft minimum	**A**
Entrance Finish Level above Sidewalk	0 ft minimum/maximum	**B**
Recessed Entries (permitted)	5 ft maximum depth unless lined with windows.	**C**
Canopy or Awning (permitted)	4 ft minimum depth	**D**
Canopy/Awning Maximum Projection	To edge of boulevard or 2 ft from back of curb	**D**
Canopy/Awning Height, Clearance	8 ft minimum	**E**

ii. Additional Common Entry Standards

(1). Entry doors must be recessed and/or provide an awning or canopy to provide shelter from the elements.

(2). Any entry awning or canopy encroachment into or above the right-of-way requires an approval by City Commission.

Figure 05-10: Examples of Common Entry Frontages.

d. Dooryard / Terrace Frontage Standards

i. Description

This frontage is intended for use in a pedestrian-oriented mixed-use or urban residential context. In the former, the dooryard often appears as a continuation of the public sidewalk; in the latter, the frontage line may be defined by a garden wall, fence or small hedge to separate residential uses from the sidewalk and remove the private yard from public access. In both contexts the building façade is commonly set back a small distance from the property line but is within the FSZ. A raised dooryard, often called a terrace, can be useful to address flood elevation or topographic issues, if needed.

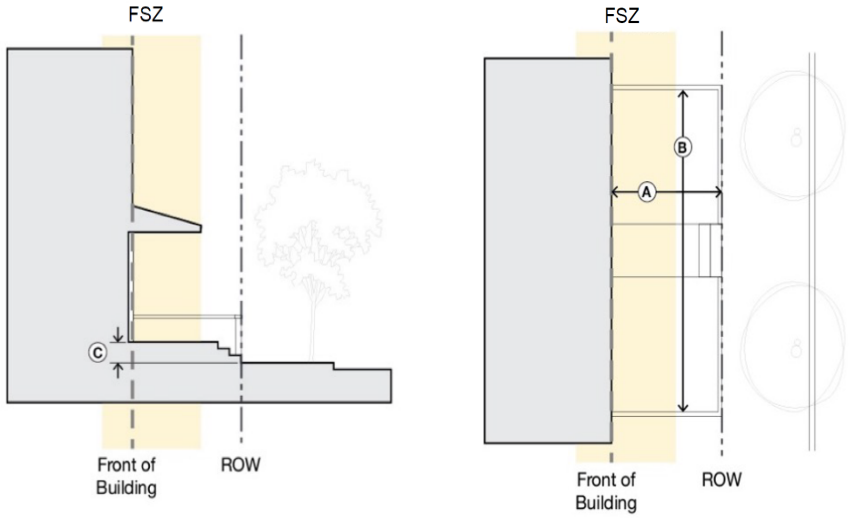


Figure 05-11: Dooryard/Terrace Frontages

Table 14-05-8: Dooryard / Terrace Dimensional Standards (in feet)

Depth	Minimum: Front of front setback zone or 8 ft in terrace configuration; Maximum: Back of front setback zone	**A**
Length	Minimum: 75% of façade width; full façade width preferred	**B**
Finished Floor Level Above Sidewalk	42 inches maximum	**C**

i. Additional Dooryard/Terrace Standards

(1). Where space permits, dooryards and terraces may be used for small gardens, yard, temporary display space, or outdoor dining.

(2). If a dooryard or terrace is used for outdoor dining, a low fence, garden wall, or other physical demarcation shall be required to separate the dining area from the public sidewalk.

(3). Terrace stairs may extend forward of the FSZ; however, a six-foot minimum clear zone for pedestrians shall be maintained on the sidewalk.

(4). Terrace stairs may descend perpendicular or parallel to the building façade.

Figure 05-12: Examples of Dooryard and Terrace Frontages.

e. Forecourt Frontage Standards

i. Description

This frontage is intended to provide additional pedestrian space that can function as an entry court or garden, or for outdoor seating, dining, or retail, with the configuration and use of the forecourt often determined by the building context or principal use. The primary portion of the front façade is within the FSZ while a smaller portion is set back, to create the forecourt space. Forecourts can be especially useful along larger, more auto-dominant streets to provide greater separation between traffic and pedestrians in well-defined, intimately sized public or semi-public outdoor spaces.

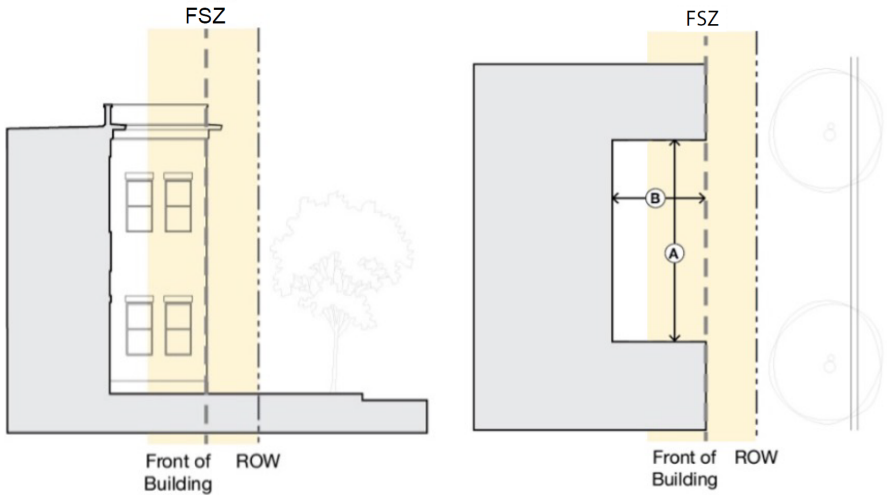


Figure 05-13: Forecourt Frontages

Table 14-05-9: Forecourt Dimensional Standards (in feet)		
Width, Clear	Minimum: 12 ft; Maximum: 75 ft or 30% of lot frontage, whichever is less	**A**
Depth, Clear	Minimum: 12 ft Maximum: 75 ft or 30% of lot frontage, whichever is less	**B**

ii. Additional Forecourt Standards

(1). A forecourt that meets these frontage standards is considered to contribute to the minimum frontage occupancy requirement of the applicable form district.

(2). A forecourt shall be enclosed by building walls on three sides.

(3). The walls of the forecourt shall meet the minimum fenestration requirements of the district.

(4). A forecourt that is greater than 500 square feet in area shall include a minimum of 10 percent of the forecourt as pervious landscape, with remaining areas paved with hardscape material.

(5). Asphalt shall not be used as a forecourt paving material.

(6). A forecourt shall not provide automobile access other than for emergency services.

Figure-14: Examples of Forecourt Frontages

f. Stoop Frontage Standards

i. Description

This frontage is intended to provide access to a first floor that is elevated to create separation from the sidewalk and ensure greater privacy. The main façade of the building is within the FSZ. The stoop commonly projects forward; however, it may be recessed within the building envelope.

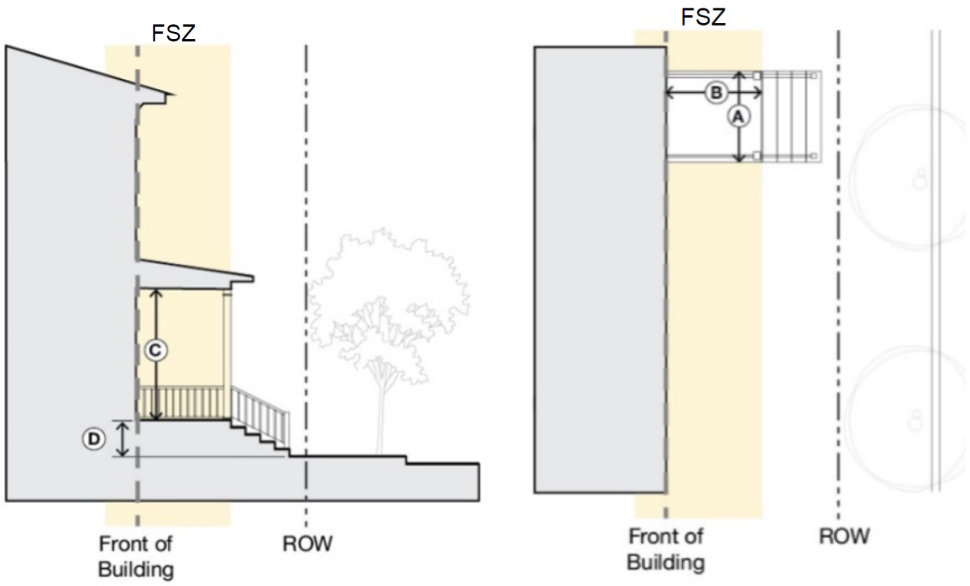


Figure 05-15: Stoop Frontages

Table 14-05-10: Stoop Dimensional Standards (in feet)

Width, Clear	Minimum: 5 ft Maximum: 8 ft	**A**
Depth, Clear	Minimum: 5 ft Maximum: 8 ft	**B**
Height, Clear	Minimum: 8 ft	**C**
Height	Maximum: 1 story	
Finished Floor Level Above Sidewalk	Minimum: 1.5 ft	**D**

ii. Additional Stoop Standards

A stoop is appropriate for residential buildings with limited or no front yard.

(1). A stoop shall not encroach into the right-of-way.

(2). Stairs may descend perpendicular or parallel to the building façade.

(3). The stoop is encouraged to be covered or recessed to shelter the entrance from the elements but a projecting stoop shall not be enclosed.

(4). A stoop shall have stairs that connect directly to the front sidewalk or walkway.

Figure 05-16: Examples of Stoop Frontages

g. Porch Frontage Standards

i. Description

This frontage is intended to access a first floor that is elevated above the sidewalk, to ensure privacy within the building, and to function as an outdoor living space. The main façade is within the FSZ.

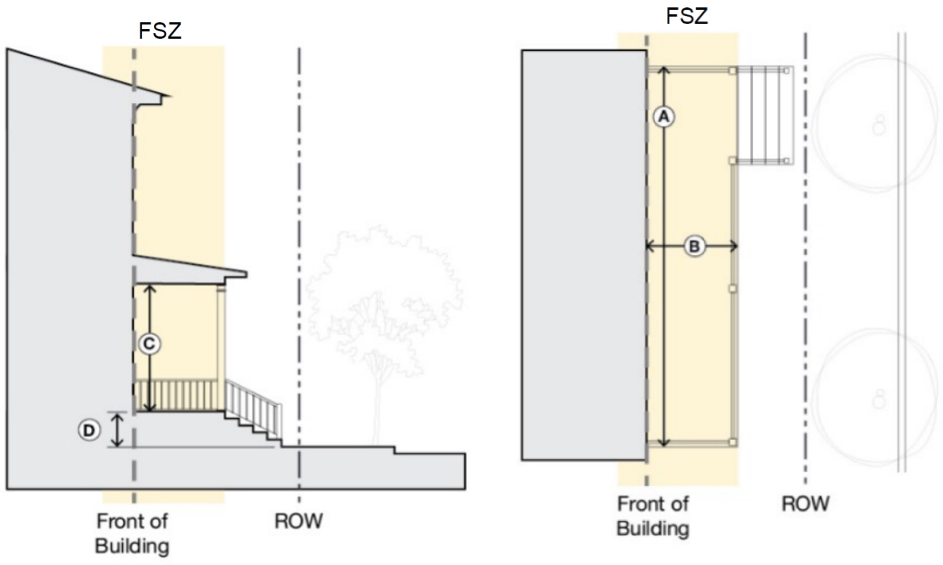


Figure 05-17: Porch Frontages

Table 14-05-11: Porch Dimensional Standards (in feet)

Width, Clear	Minimum: 8 ft	**A**
Depth, Clear	Minimum: 6 ft	**B**
Height, Clear	Minimum: 8 ft	**C**
Porch Height	Maximum: 2 stories	
Finished Floor Level Above Sidewalk	Minimum: 1.5 ft	**D**

ii. Additional Porch Standards

(1). If there is insufficient space to meet the minimum porch depth between the sidewalk clear zone and the back of the FSZ, a porch may not be permitted.

(2). A porch shall not encroach into the right-of-way.

(3). Stairs from a porch may descend parallel or perpendicular to the right-of-way.

(4). Porches may be open on two or three sides, and all porches shall have a roof.

(5). bases shall be visually concealed with latticework or similar materials or landscaping.

Figure 05-18: Examples of Porch Frontages

14-05-08. Architecture Standards

1. Purpose

This section supplements the development standards and frontage types to reinforce the scale and design of new and adapted buildings to reflect and complement the character of structures in the historic core of Bismarck. These requirements are intended to promote the quality and durability of buildings and create a high-quality public realm. They are not style-specific.

2. Applicability

a. The standards in this section apply to all new construction or major renovation or expansion of existing principal or other buildings that occupy street frontage (as defined in Section 14-23-02) in the Downtown district, except civic structures and detached single-family houses.

b. The applicability of some specific standards is based on building size as described in Table 14-05-12: Applicability of Façade Composition Standards.

c. Up to 10 percent deviation in the dimensional standards of this Section may be requested through the adjustment process in Section 14-20-04.2.

3. Façade Composition, Articulation, and Massing

a. Façade composition is the arrangement and proportion of façade materials and architectural elements, including, but not limited to, windows, doors, cornices, columns, pilasters, and bays. A façade shall be organized using a consistent rhythm and pattern of windows, building articulation, or other architectural features. Modulation of the façade, as described in Section 14-05-08.5, Modules, breaks down the perceived scale of large buildings and helps to create or maintain a better pedestrian experience by using human scaled details and proportions along the street frontage.

b. Building façades within a front setback zone are required to be articulated pursuant to this section. Façade compositions are not required to be symmetrical.

Table 14-05-12: Applicability of Façade Composition Standards

Key: X = standards apply

Building Width	Base & Principal Design (Section 14-05-08.4)	Top Design (Section 14-05-08.4)	Modules (Section 14-05-08.5)
≥ 30 Feet and ≤ 50 Feet			
Height < 3 stories			
Height 3-4 stories	X		
Height ≥ 5 stories	X	X	
> 50 Feet and ≤ 150 Feet			
Height < 3 stories			X
Height 3-4 stories	X		X
Height ≥ 5 stories	X	X	X
> 150 Feet			
Height < 3 stories			X
Height 3-4 stories	X		X
Height ≥5 stories	X	X	X

4. Base, Principal, and Top Design

A building can be divided into horizontal sections consisting of a base, principal, and top in order to affect the perceived height and massing of the building, improve its visual relationship to the public realm, and reinforce the pedestrian scale at the sidewalk.

a. Applicability

The standards of this section apply to new buildings that are 30 feet or wider and at least three stories tall.

b. Vertical Standards

i. Façades within the front setback zone must be designed to visually express a base, middle, and top. The façade composition shall include horizontal elements that differentiate one section of a façade from the section above or below.

ii. Boundaries between the base, principal, and top must be articulated by a cornice, projecting profile/string course, expression line (horizontal molding or projections), change in building materials, or other horizontal element.

(1). Expression lines shall either be moldings extending a minimum of two inches, or jogs in the surface plane of the building wall greater than two inches.

(2). Variation in color shall not be used to meet the required articulation.

(3). Changes in building material shall include a jog in the wall plane greater than two inches at the point of material change.

(4). Elements defining the base, principal, and top, as described in Subsections c-e below, must be consistent across the length of the building module, as described in Section 14-05-08.5, Modules.

c. Base

i. The base must comprise the lowest story or stories of the building or module and be differentiated from the stories above by one or more of the following:

(1). a change in material or window pattern, size(s) or location(s);

(2). an expression line, cornice line, entablature or frieze;

(3). awnings or canopies;

(4). recessed entries; or

(5). other architectural treatments.

ii. An expression line shall be used at the top of shopfronts, which may incorporate a band for signage.

d. Principal

i. The principal must include the building's primary finish material.

ii. For buildings or modules with five or more stories, the principal must comprise at least half of the building's stories, not counting any half story or basement.

e. Top

i. The top of each building must be emphasized with at least one of the following:

(1). Parapet with a projecting cap or coping of at least two inches, or railing if the roof will be occupied;

(2). Pitched or mansard roof with projecting eave and/or rake; or

(3). Cornice, which is allowed to be used in combination with a parapet or pitched roof. A cornice may project further than any other expression line on a façade.

(4). Variation in the roofline’s height or planar depth. Variation in only the height or only the depth shall be a minimum of 12 inches, while variation in both simultaneously shall be a minimum of 6 inches for each.

ii. The top is allowed to include the uppermost story or stories as long as a cornice or projecting profile/string course is expressed at the floor level of the uppermost story.

iii. Upper stories that are stepped back at least 10 feet from the main façade do not constitute the top; the portion of the façade that is not stepped back must include its own top pursuant to this section.

5. Modules

Modulation of the façade breaks down the perceived scale and mass of large buildings, distinguishes one part of the façade from another, and provides the appearance of distinct façades, to create or maintain a better pedestrian experience with human scaled details and proportions where long buildings abut the street frontage and define the public realm.

a. Components

A module is defined by major shifts in the wall plane, minor projections or recessions, upper floor(s) stepback, or vertical façade articulation elements.

b. Applicability

Each façade 50 feet or greater, measured parallel to the street or public realm frontage, shall be divided into modules. See Table 14-05-13: Module Standards for applicability parameters.

Table 14-05-13: Module Standards (in feet)

Module Length	Required Number	
≤ 50 ft	Modules not required	Modules not required
> 50 ft to ≤150 ft	10 ft min	2 min
> 150 ft	10 ft min	3 min

c. Standards

Each façade shall be divided into distinct façade modules, per Table 14-05-13: Module Standards. These standards are intended to reduce the apparent size of the building by dividing façades and rooflines into a series of smaller façade composition modules. Each module is required to differentiate from adjacent module(s) with at least one of the following massing features:

i. Major Wall Plane Shift

(1). Wall plane to shift (i.e. project or recess) from the adjacent façade: one foot minimum.

(2). Length of module wall plane projection or recession: entire Module length.

(3). A wall plane is required to extend vertically through the module's base, principal, and top.

ii. Minor Projection or Recession

(1). Depth of projection or recession from the adjacent façade: one foot minimum.

(2). Width of projection or recession: six feet minimum.

(3). A projection or recession may be located at the edge of a module or between modules.

(4). A recession is required to extend vertically through the module's principal and top; it is allowed to extend through the base.

(5). A projection is required to extend vertically through the module's principal; it is allowed to extend through the top and/or base.

iii. Upper Floor(s) Stepback

(1). Stepback from façade plane of main body: 10 feet deep minimum.

(2). Length of stepback: 20 feet minimum.

(3). When there is an upper floor stepback, the story directly below the stepback is required to provide a top, per the standards in Section 14-05-08.4.e, Top.

iv. Vertical Façade Articulation Elements

Vertical articulation elements include architectural features such as columns, pilasters, distinct clustering of window openings, bay windows, or a break in the building plane, according to the standards below.

(1). The articulation elements in this section may be used within the façade composition of individual modules.

(2). Spaces between articulation elements are not required to be the same width. Intervals shall be measured from centerline to centerline of the vertical elements.

(3). Spacing intervals for vertical articulation elements along entire building façade: at least 10 feet in width and no more than 35 feet.

(4). Projection or recession of façade articulation element: 4 inches minimum.

(5). A change of finish material or color in conjunction with a minimum 4 inch planar offset.

(6). Width of vertical element: 4 inches minimum; 6 feet maximum.

(7). A façade articulation element is required to extend vertically through the module's principal; it is allowed to extend through the top and/or base.

(8). On corner lots, the material and articulation of the primary façade shall extend a minimum of 15 feet along the secondary or side street.

v. Architectural Features

The façade composition of each module shall further be differentiated from adjacent module(s) through at least two of the following:

(1). Change in fenestration on upper floors: type, proportions, amount, pattern, rhythm, or configuration.

(2). Change in primary wall finish material (changes in color are insufficient).

(3). Incorporating one or more frontage types not included in the adjacent module. See 14-05-07.6, Frontage Types.

(4). Presence of bay windows or other vertical articulation elements (above).

(5). Using different elements to define base/principal/top, as described in Section 14-05-08.4, Base, Principal, and Top Design.

(6). Eave/parapet height difference of six inches minimum.

(7). Break in building roofline, such as the use of dormers or a roof gable to break up the mass of the roof.

(8). Change in roof type, such as flat vs. sloped, or a difference in roof slope of at least four degrees.

(9). For buildings of four or fewer stories, changes in the cornice projection (horizontal) of at least 24 inches or cornice alignment (vertical) of at least 36 inches.

Figure 05-19: Examples of Façade Composition: Modules

6. Shopfront Standards

a. Shopfront doors shall contain at least 60 percent transparent glass. Solid doors are prohibited.

b. A minimum of 12 feet of depth of habitable space shall be provided behind each shopfront on the primary façade. This ensures that the area behind shopfronts is sufficient to be an actively used space.

c. The top of all shopfront windowsills shall be between one and three feet above the adjacent sidewalk.

d. Shopfront transparency is measured from one foot to 10 feet above the adjacent sidewalk; it should allow views into the interior shop space or display window.

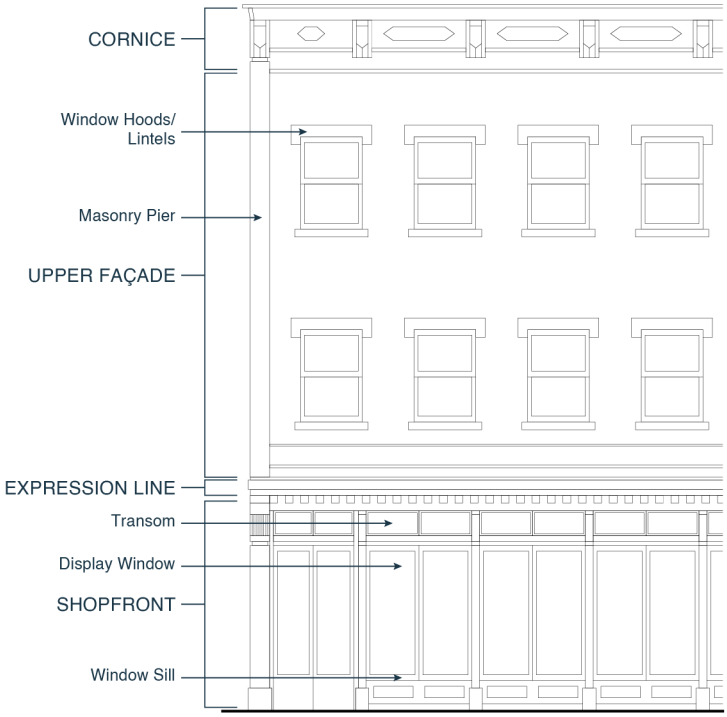


Figure 05-20: Façade and Shopfront Components

7. Building Materials

The following regulations shall apply to all front and corner façades of residential buildings with five or more units and non-residential buildings in all Downtown subdistricts to encourage long-lasting, durable construction of a timeless quality.

a. When materials are layered on a façade in horizontal bands, heavier materials (such as stone or masonry) should be placed below lighter materials (such as wood siding).

b. Permitted finished building wall materials include brick masonry, stone or precast stone, stucco, horizontal lap siding (of wood or composition board, such as HardiPlank®), pre-engineered metal and glass systems (for windows, doors, and shopfront conditions).

c. Prohibited building wall materials include unfinished pre-cast block, and vinyl or steel siding. EIFS (Exterior Insulation and Finishing System), Styrofoam, and all other foam-based products are prohibited on the ground floor.

d. 100 percent of the first 15 feet of height of each front or side street façade shall be constructed of the following primary building materials:

   i. High quality, durable, natural materials, such as brick or stone; wood lap siding; lapped, shingled, or panel fiber cement board siding; and glass.

   ii. Other high quality synthetic materials such as synthetic equivalents of brick or stone, architectural precast concrete that looks like brick or stone; or traditional lime-based stucco may be approved by the Director.

e. No specific percentage of the front or side street façades above 15 feet in height must be made of the materials listed in the previous item except for facades along a Downtown Signature street frontage for which a minimum of 50% of the remaining façade must utilize the materials listed in the previous item.

8. Historically Significant Buildings

a. Any building listed in the National Register of Historic Places, identified as being individually eligible for listing in the National Register or identified as contributing to the Downtown Bismarck Historic District in the Historic Architectural Inventory and Evaluation (2000) or any subsequent inventory and evaluation, is considered to be a historically significant building. For any building not identified above that is more than 50 years old, a determination shall be made on a case-by-case basis as to whether or not the building is historically significant.

b. All projects involving the restoration or rehabilitation of historically significant buildings are subject to review by the Design Review Committee.

i. Projects involving the restoration or rehabilitation of existing historically significant buildings should reflect the original architectural character of the building and its characteristics.

ii. The removal of historic materials or alteration of features and spaces that characterize the building shall be avoided.

iii. The introduction of any new design elements should be consistent with the traditional features of the building.

iv. The rehabilitation of existing historically significant buildings is encouraged to be in accordance with the Secretary of the Interior's Standards for Rehabilitation.

v. The sheathing or installation of another material over the façade or any wall visible from the street shall be prohibited unless deemed necessary to preserve the structural integrity of the building.

14-05-09. Downtown Design Adjustments

The provisions of this chapter may be adjusted through the procedure in Section 14-20-04.2. Before making a determination on an adjustment to any downtown design element, the Director or the Design Review Committee shall review and find:

1. One or more of the following conditions are met:

a. The adjustment of a measurement requirement is not greater than ten percent higher or lower than the required amount;

b. The adjustment to a material or product class would achieve a similar aesthetic effect, durability, and function as the specified requirement;

c. The adjustment for a rehabilitation or building addition is necessary to reuse or align with existing structural or design elements of a building;

d. The adjustment is necessary to align with design elements on existing adjacent structures to ensure compatibility; or

e. The proposed design is for a building of exceptional architectural merit, civic importance, or cultural significance and the adjustment is necessary to achieve a cohesive design vision.

2. The purpose of this chapter and Comprehensive Plan would be met by the proposed design.

Chapter 14-06 Agricultural Zoning District

14-06-01. A-Agricultural

1. Purpose[20]

The purpose of the A-Agricultural district is to accommodate the use of land for agricultural practices. The regulations are intended to prohibit commercial and industrial usage of the land and to prohibit any other use which would interfere with the development or continuation of the agricultural use of the land; and to discourage any use, which because of its character or size, would create requirements and costs for public services such as police and fire protection, water supply, and sewerage before the services can be systematically and adequately provided.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the A district.

3. Dimensional Standards

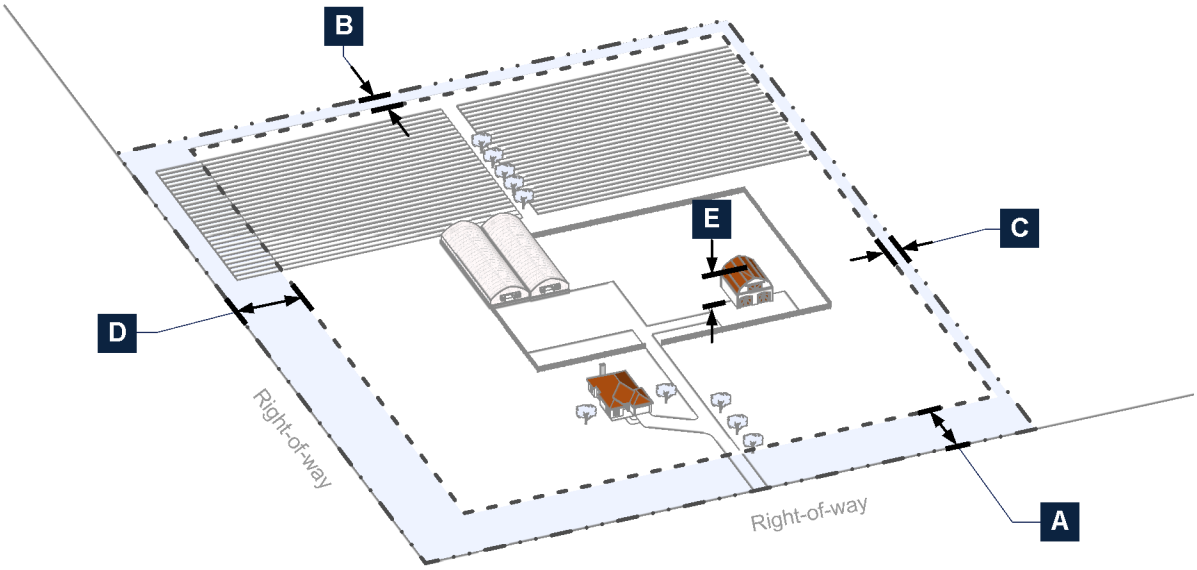


Table 14-06-1: A Dimensional Standards

Key: AC = Acres ft = Feet Min = Minimum Max = Maximum DU = Dwelling units

Lot Standards for Residential Dwellings		
Lot area (min acres)		35
Lot width (min ft)		640
Lot coverage (max %)		11
Building Setbacks (Min)		
A	Front (ft)	

[20] Article 11 Section 1 of the Burleigh County Zoning Code.

Table 14-06-1: A Dimensional Standards

Key: AC = Acres ft = Feet Min = Minimum Max = Maximum DU = Dwelling units

	Arterial street	175
	Collector street	65
	Local street	40
B	Rear (ft)	50
C	Side (ft)	15
D	Side, street (ft)	Same as required front
Height (Max)		
E	Principal building height (ft)	50 [1]
Density		
	Dwelling Units per Acre (max)	1 DU/35 AC

Notes

[1] Front setbacks measured from the centerline of the adjacent street.
[2] Dimensional standards do not apply to agricultural uses.

a. Accessory Structure Standards[21]

Non-farm, residential accessory structures in the A district shall be limited to the following dimensions:

i. The footprint of all non-farm accessory structures shall not exceed four percent of the total area on the lot or tract.

ii. Attached garages that exceed 1.5 times the area of the footprint of the dwelling portion of the principal structure it is attached to shall be counted toward the maximum allowable footprint of accessory structures.

iii. Detached residential accessory structures shall be as described in Table 14-06-2.

Table 14-06-2: Detached Residential Accessory Structure Standards

Key: sf = Square feet ft = Feet

Standard	Maximum Allowance
Building area	4% of lot area
Building height	25 ft [1]

Notes

[1] Any accessory building that exceeds 25 feet in height shall be considered a principal building for the purpose of figuring yards and distances from lot boundary lines.

[21] 14-04-17.11, with modifications to remove the special use permit requirement for larger structures based on conversations with staff. The existing 16.5 feet wall height requirement has not been carried forward for consistency with Burleigh County regulations.

Chapter 14-07 Special Purpose Zoning Districts

14-07-01. PCI-Public, Civic, and Institutional

1. Purpose

The purpose of the PCI-Public, Civic, and Institutional Campus district is to provide for public, quasi-public, educational, institutional, civic, and cultural facilities and campuses where housing can be provided in support of other uses on the campus.

2. Allowed Uses

Table 14-09-1: Allowed Uses identifies the land uses permitted in the PCI district.

3. Dimensional Standards

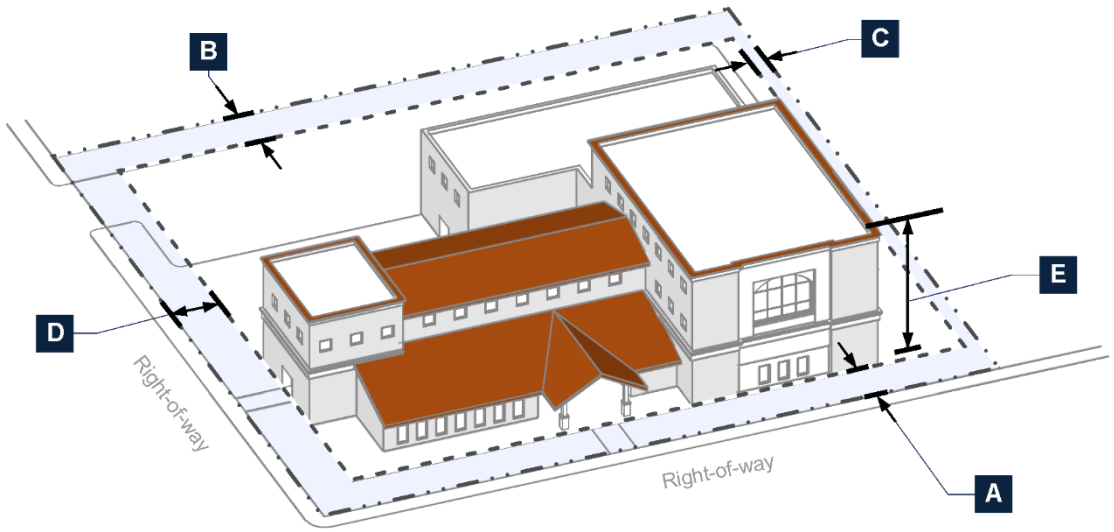


Table 14-07-1: PCI Dimensional Standards Key: ft = Feet		
Lot Standards		
Lot area (min)		None
Lot width (min ft)		None
Lot coverage (max %)		75
Building Setbacks (Min)		
A	Front (ft)	15
B	Rear (ft)	15
C	Side (ft)	5
	Adjacent to residential	15
D	Side, street (ft)	15
Height (Max)		

Table 14-07-1: PCI Dimensional Standards

Key: ft = Feet

E	Principal building height (ft)	60
	Accessory structure (ft)	25
Residential District		
	Related residential district	RS or RU [1][2]

Notes

[1] Apply the dimensional standards from this district to residential development that is not included in a mixed-use structure.
[2] RS is the default residential district. The Director may determine that RU is appropriate based on the scale of existing or planned surrounding development.

14-07-02. OS-Open Space

1. Purpose

The purpose of the OS-Open Space district is to preserve and enhance active and passive open space, natural areas, and recreational areas throughout the City by protecting the natural amenities they possess and by accommodating development that is compatible with those natural amenities.

2. Allowed Uses and Structures

a. Table 14-09-1: Allowed Uses identifies the land uses permitted in the OS district.

b. The construction of permanent structures in OS is limited to those used for visitors, concessions, or maintenance.

3. Dimensional Standards

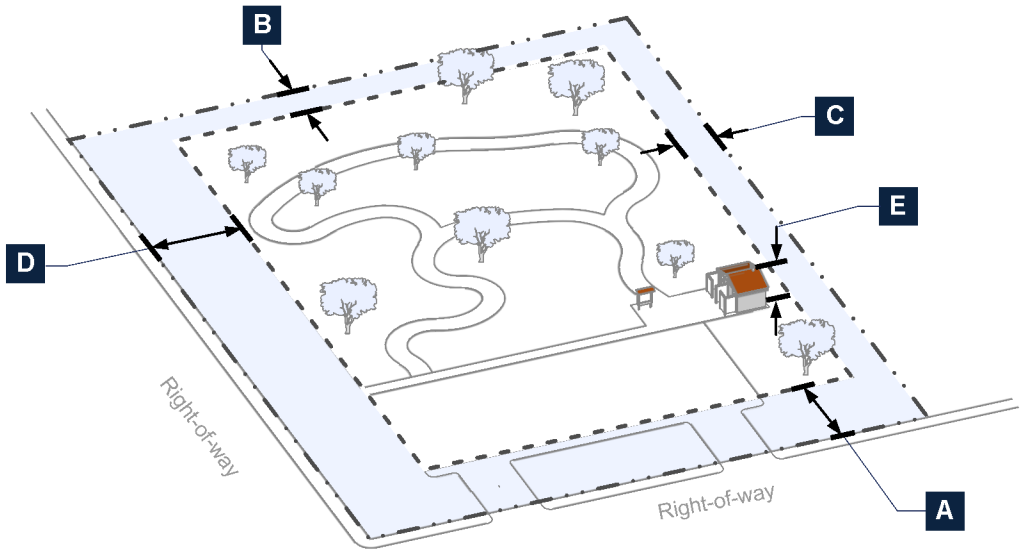


Table 14-07-2: OS Dimensional Standards

Key: ft = Feet

Lot Standards		
Lot area (min)		None
Lot width (min ft)		None
Lot coverage (max %)		N/A
Building Setbacks (Min)		
A	Front (ft)	35
B	Rear (ft)	15
C	Side (ft)	15
	Adjacent to residential	35
D	Side, street (ft)	35
Height (Max)		

Table 14-07-2: OS Dimensional Standards

Key: ft = Feet

E	Principal building height (ft)	35
	Accessory structure (ft)	25

Chapter 14-08 Overlay Zoning Districts

14-08-01. Airport Overlay Districts[22]

Commentary

This section has been carried forward with only minor copy edits, and updates to cross-references.

1. Purpose[23]

The purpose of the Airport Overlay districts is to provide standards to ensure that development proposals do not interfere with the safe and efficient operation of the Bismarck Municipal Airport.

2. Applicability

The Airport overlay district standards apply to those areas around the Bismarck Municipal Airport as shown as AH – Airport Height Overlay, AN – Airport Noise Overlay, and AW – Airport Hazardous Wildlife Protection Overlay on the Official Zoning Map.

3. General Airport Overlay Provisions

The following provisions apply to the administration of all airport overlay districts of this section:

a. Permitting

i. The Airport Director is authorized to review any building permit, site plan, or any other procedure of this Code within an airport overlay district, and that permit may not be issued by the City unless the Airport Director affirms compliance with this section. The following additional activities require a permit from the Airport Director:

(1). Planting any tree in the AH – Airport Height Overlay district that is 75 feet in height or greater, or when because of terrain, land contour, or topographic features such tree would extend above the height limits prescribed for such zone.

(2). Use of temporary or movable equipment, such as a construction crane, within the AH – Airport Height Overlay district with a potential operating height of 75 feet or greater.

(3). Any grading, fill, or earthwork within the AW – Airport Hazardous Wildlife Protection Overlay with a potential to detain water or alter existing drainage patterns.

ii. The Airport Director shall approve any permit found to be in compliance with this section.

[22] 14-04-20 and the marked-up version of 10-09. Definitions relocated to Section 14-17-03.

[23] New.

b. Enforcement by Airport Director

It is the duty of the Airport Director to administer and enforce the regulations of the Airport Overlay District, according to procedures of Chapter 14-22 Enforcement

4. Airport Height Overlay

The AH - Airport Height Overlay establishes limits to prevent the creation of hazards to air navigation by ensuring that structures and vegetation do not penetrate the airspace needed for the safe and efficient operation of aircraft.

a. Creation of Zones

To carry out the provisions of this section, certain zones are created which will include all of the land lying within the instrument approach zones, non-precision approach zones, transitional zones, horizontal zone, and conical zone. These areas and zones are shown on the Official Zoning Map, as maintained by the Planning Department, and the most recently adopted Airport Master Plan. The various zones are established and defined as follows:

i. Instrument Approach Zones

(1). An instrument approach zone is located at each end of the NW-SE and NE-SW instrument runways, as shown in the Airport Master Plan, for the purpose of instrument landings and takeoffs.

(2). The instrument approach zones have a width of 1,000 feet, beginning 200 feet beyond the ends of the runways, then widening uniformly to a width of 16,000 feet extending 50,200 feet beyond the ends of the runways.

(3). The centerlines of the instrument approach zones are the extended centerlines of the runways.

ii. Non-Precision Approach Zones

(1). A non-precision approach zone is established at each end of all existing and future visual runways for the purpose of visual landings and takeoffs.

(2). The non-precision approach zone of the NE-SW and NW-SE runways, as shown in the Airport Master Plan, have a width of 250 feet, beginning 200 feet beyond the ends of the runways, then widening uniformly to a width of 1,250 feet beyond the ends of the runways.

(3). The non-precision approach zone of the N-S runway, as shown in the Airport Master Plan, has a width of 500 feet, beginning 200 feet beyond the ends of the runway, then widening uniformly to a width of 2,500 feet at a distance of 10,200 feet beyond the ends of the runway.

(4). The centerlines of the non-precision approach zones are the extended centerlines of the runways.

iii. Transitional Zones

(1). Transitional zones are established adjacent to each existing and future instrument and non-precision runway and approach zone as indicated on the Airport Master Plan.

(2). Transitional zones symmetrically located on either side of the runways have variable widths as shown on the Airport Master Plan.

(3). Transitional zones extend outward from a line 125 feet on either side of the center lines of the NE-SW and NW-SE non-precision runways, and 250 feet on either side of the centerline of the N-S non-precision runway, extending 200 feet beyond the ends of the runways, which are parallel and level to the runway centerlines.

(4). Transitional zones extend outward on a line 500 feet on either side of the centerline of the NW-SE and NE-SW instrument runways, as shown on the Airport Master Plan, for the length of the runways plus 200 feet beyond the ends of the runways, and are parallel and level to the runways centerlines.

(5). The transitional zones along the runways slope upward and outward one foot vertically for each seven feet horizontally to the point where they intersect the surface of the horizontal zone. Further, transitional zones are established adjacent to the instrument and non-precision approach zones for the entire length of the approach zones. These transitional zones have variable widths, as shown on the Airport Master Plan.

(6). The transitional zones flare symmetrically with either side of the runway approach zones from the base of the zones and slope upward and outward at the rate of one foot vertically for each seven feet horizontally to the points where they intersect the surfaces of the horizontal and conical zones.

(7). Additionally, transitional zones are established adjacent to the instrument approach zones where they project through and beyond the limits of the conical zone, extending a distance of 5,000 feet measured horizontally from the edge of the instrument approach zones at right angles to the continuation of the center line of the runways.

iv. Horizontal Zone

(1). A horizontal zone is established as the area contained within the boundary created by swinging arcs of 10,200 feet from the ends of the NW-SE and future NE-SW runways and connecting the adjacent arcs of lines tangent to those arcs.

(2). The horizontal zone does not include the instrument and non-precision approach zones or the transitional zones.

v. Conical Zone

(1). A conical zone is established as the area that begins at the periphery of the horizontal zone and extends outward for a distance of 4,000 feet.

(2). The conical zone does not include the instrument approach zones or the transitional zones.

b. Height Limits

A structure or tree may not be erected, altered, allowed to grow, or maintained in any zone to a height in excess of the height limit established for the zone, except as

otherwise provided in this section. Where an area is covered by more than one height limitation, the more restrictive limitation prevails. The height limitations established for each of the zones are as follows:

i. Instrument Approach Zones

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

ii. Non-Precision Approach Zones

One foot in height for each 40 feet in horizontal distance beginning at a point 200 feet from and at the elevation of the end of the runway, extending 10,200 feet beyond the end of the runway, established at the ends of the N-S visual runway. One foot in height for each 20 feet in horizontal distance beginning at a point 200 feet from and at the elevation of the end of the runway, extending to a point 5,200 feet from the end of the runway.

iii. Transition Zones

(1). One foot in height for each seven feet in horizontal distance beginning at any point 125 feet normal to and at the respective elevations of the center lines of the NE-SW non-precision runway and the master planned NW-SE non-precision runway and 250 feet normal to and at the elevation of the center line of the N-S non-precision runway extending 200 feet beyond each end, and 500 feet normal to and at the respective elevations of the center lines of the NW-SDE instrument runway, extending 250 feet above the airport elevation which is 1,661.1 feet above mean sea level.

(2). In addition, there are established height limits of one foot vertical height for each seven feet horizontal distance measured from the edges of all approach zones for the entire length of the approach zones and extending upward and outward to the points where they intersect the horizontal or conical surfaces. Furthermore, where the instrument approach zones project through and beyond the conical zone, a height limit of one foot for each seven feet of horizontal distance must be maintained beginning at the edge of the instrument approach zones and extending a distance of 5,000 feet from the edge of the instrument approach zones measured normal to the center lines of the runways extended.

iv. Horizontal Zone

150 feet above the airport elevation or a height of 1,811.1 feet above mean sea level.

v. Conical Zone

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

c. Use Restrictions

Notwithstanding any other provisions of this section, a use may not be made of the land within the airport overlay district established by this section in a manner which:

i. Creates electrical interference with radio communication between the airport and aircraft;

ii. Makes it difficult for flyers to distinguish between airport lights and other;

iii. Results in glare in the eyes of flyers using the airport;

iv. Impairs visibility in the vicinity of the airport; or

v. Otherwise endangers the landing, takeoff, or maneuvering of aircraft.

d. Installation of Lighting Markers

Any permit or variance may be conditioned to require the owner of the structure or tree to allow the City, at its own expense, to install, operate, and maintain markers and lights on the structure or tree as may be necessary to indicate to flyers the presence of an airport hazard.

e. Assuring Safety of Legally Nonconforming Uses

Notwithstanding allowances for legal non-conformities of Chapter 14-21 Nonconformities, the following requirements still apply within the AH – Airport Height overlay district:

i. The owner of any legally nonconforming structure or tree shall permit the installation, operation, and maintenance of the markers and lights the Airport Director deems necessary to indicate to the operators of aircraft in the vicinity of the airport, the presence of such airport hazards. The markers and lights are to be installed, operated, and maintained at the expense of the City.

ii. Whenever the Airport Director determines that a legally nonconforming structure or tree has been abandoned or is more than 80 percent torn down, physically deteriorated, or decayed, a permit may not be granted to allow the structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

5. Airport Noise Overlay[24]

The AN- Airport Noise overlay is established for the area around the Bismarck Municipal Airport based on the analysis and recommendations of the Federal Aviation Regulations (FAR) Part 150 Noise Compatibility Plan prepared for the Bismarck Municipal Airport. The requirements and standards of the airport noise overlay shall supplement the requirements and standards of the underlying zoning district.

a. Purpose

The intent of the Airport Noise overlay is to:

i. Establish specific standards within noise-impacted areas to help mitigate the problems caused by airport noise.

[24] 14-04-20.

ii. Encourage the establishment and continuing operation of land uses within the overlay district which are compatible with the recommendations of the FAR Part 150 Noise Compatibility Plan for the airport.

iii. Permit the establishment and continuing operation of land uses within the overlay district which are non-compatible with the recommendations of the FAR Part 150 Noise Compatibility Plan for the airport, provided the uses are located on lots of record that existed prior to the effective date of this Code.

iv. Prohibit the development of new noise-sensitive land uses within the overlay district, except as provided under the provisions of this Code.

b. Airport Noise Overlay Boundaries

The boundaries of the AN - Airport Noise overlay are shown on the official zoning map, as well as the airport zoning map, and generally correspond to the area impacted by noise exceeding 65 day-night average sound level (DNL) based on the FAR Part 150 Noise Compatibility Plan most-recently prepared for the Bismarck Municipal Airport.

c. Land Use Compatibility Standards

Land uses that are permitted or prohibited in the Airport Noise overlay are as shown in Table 14-08-1 below.

Table 14-08-1: Land Use Compatibility Standards in the Airport Noise Overlay

SLUCM Code	Land Use	Allowed (Y) / Prohibited (N)
10	**Residential**	
11	Household Units	N[1]
11.11	Single unit – detached	N[1]
11.12	Single unit – semi-detached	N[1]
11.13	Single unit – attached row	N[1]
11.21	Two units - side by side	N[1]
11.22	Two units - over-under	N[1]
11.31	Apartments - walk-up	N[1]
11.32	Apartments – elevator	N[1]
12	Group quarters	N[1]
13	Residential hotels	N[1]
14.1	Mobile home parks	N[1]
14.2	Mobile homes in existing parks	N[1]
15	Transient lodgings, hotels, motels	Y[2]
16	Other residential	N[1]
20 - 39	**Manufacturing**	
21	Food & kindred products	Y
22	Textile mill products	Y
23	Apparel & other finished products made from fabrics, leather & similar materials	Y

SLUCM Code	Land Use	Allowed (Y) / Prohibited (N)
24	Lumber & wood products (except furniture)	Y
25	Furniture & fixtures	Y
26	Paper & allied products	Y
27	Printing, publishing & allied industries	Y
28	Chemicals & allied products	Y
29	Petroleum refining and related industries	Y
31	Rubber & miscellaneous plastic products	Y
32	Stone, clay & glass products	Y
33	Primary metal industries	Y
34	Fabricated metal products	Y
35	Professional, scientific & controlling instruments; photographic & optical goods; watches & clocks	Y
39	Miscellaneous manufacturing	Y
40	**Transportation, Communications & Utilities**	
41	Rail transportation	Y
42	Motor vehicle transportation	Y
43	Aircraft transportation	Y
44	Marine craft transportation	Y
45	Highway & street right-of-way	Y
46	Automobile parking	Y
47	Communication	Y
48	Utilities	Y
49	Other transportation, communication & utilities	Y
50	**Trade**	
51	Wholesale trade	Y
52	Retail trade - building materials, hardware & farm equipment	Y
53	Retail trade - general merchandise	Y
54	Retail trade - food	Y
55	Retail trade - automotive, marine craft & aircraft	Y
56	Retail trade - apparel & accessories	Y
57	Retail trade - furniture & home furnishings	Y
58	Retail trade - eating & drinking	Y
59	Other retail trade	Y
60	**Services**	
61	Finance, insurance & real estate services	Y
62	Personal services	Y
62.4	Cemeteries	Y
63	Business services	Y
64	Repair services	Y
65	Professional services	Y
65.1	Hospitals, nursing homes	N[1]

SLUCM Code	Land Use	Allowed (Y) / Prohibited (N)
65.19	Other medical facilities	Y
66	Contract construction services	Y
67	Governmental services	Y
68	Educational services	N[1]
69	Miscellaneous services	Y
70	**Cultural, Entertainment, and Recreation**	
71	Cultural activities (including churches)	Y[2]
71.2	Nature exhibits	Y
72	Public Assembly	Y[2]
72.11	Outdoor music shells, amphitheaters	N
72.2	Outdoor sports arenas, spectator sports	Y
72.3	Auditoriums, concert halls	Y[2]
73	Amusements	Y
74	Recreational activities (including golf courses, riding stables, water recreation)	Y
75	Resorts & group camps	Y
76	Parks	Y
79	Other cultural, entertainment & recreation	Y

Notes

Standard Land Use Coding Manual (SLUCM), U.S. Urban Renewal Administration and Bureau of Public Roads, 1965.
[1] These uses may be permitted on existing lots of record. Although not required, builders and developers should be encouraged to incorporate measures to achieve a noise level reduction of 25 dBA (outdoor to indoor).
[2] Although not required, builders and developers should be encouraged to incorporate measures to achieve a noise level reduction of 25 dBA (outdoor to indoor) in the construction of those portions of these buildings where the public is received, office areas, and other noise-sensitive areas.

6. Airport Hazardous Wildlife Protection Overlay

The AW - Airport Hazardous Wildlife Protection overlay establishes requirement to mitigate against aircraft wildlife strikes, in accordance with Federal Aviation Administration guidance.

a. Purpose

The purpose of this section is to maintain an appropriate environment for the safe and efficient operation of the Bismarck Municipal Airport through mitigation of wildlife strike hazards by managing land use attractants in the vicinity of the airport.

b. Application

The AW - Airport Hazardous Wildlife Protection overlay is defined as the area within 10,000 feet of the airport operational area, with the Bismarck zoning jurisdiction, as shown on the Official Zoning Map.

c. Water Retention

Any man-made pond constructed within the Airport Hazardous Wildlife Protection subdivision for stormwater management, or any other function, shall be designed to drain completely within 48 hours of a storm for which the facility is designed.

d. Wildlife Attractant Land Use

Certain land uses, including but not limited to landfills, waste disposal or transfer facilities, wastewater treatment facilities, dredge disposal, aquiculture, golf courses, or any other land use deemed by the Airport Director to attract hazardous wildlife shall be reviewed by the Airport Director at the time of site plan submittal. Upon review, additional study or mitigation measures may be applied as a condition of the approval.

14-08-02. Design Overlay District

Reserved for potential application of design review procedures to certain designated areas outside of the DT-Downtown zoning district. A Land Development Code Text Amendment and Zoning Map Amendment shall be required prior to institution of a design overlay district.

14-08-03. Floodplain Overlay District[25]

1. Purpose

The purpose of this section is to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

a. Protect human life and health;

b. Minimize expenditure of public money for costly flood control projects;

c. Minimize the need for rescue and relief efforts associated with flooding, generally undertaken at the expense of the general public;

d. Minimize prolonged business interruptions;

e. Minimize damage to public facilities and utilities located in special flood hazard areas such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges;

f. Help maintain a stable tax base by providing for the use and development of special flood hazard areas to minimize future flood blight areas;

g. Ensure that potential buyers are notified that property is located in a special flood hazard area;

h. Ensure that those who occupy the special flood hazard areas assume responsibility for their actions; and

[25] Carries forward Section 14.04.19 with minor copy edits and updated cross-references. Definitions relocated to Section 14-17-03, variance procedures relocated to Section 14-20-05.9, and enforcement content relocated to Chapter 14-22.

i. Provide an increased level of protection in anticipation of future increases in the base flood elevation (BFE).

2. Statutory Authorization

The Legislature of the State of North Dakota has in NDCC, Chapter 40-05 11-11 and 58-06, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

3. Methods of Reducing Flood Losses

To accomplish the purpose of this section, the section includes methods and provisions for:

a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood water elevations or flow velocities;

b. Requiring that uses vulnerable to flooding, including attendant utilities and facilities that serve those uses, be protected against flood damage at the time of initial construction;

c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or convey flood waters;

d. Controlling filling, grading, dredging, and other development which may increase flood damage; and

e. Preventing or regulating the construction of flood barriers or obstructions which will unnaturally divert flood waters or which may increase flood hazards in other areas.

4. General Provisions

a. Jurisdiction

This section shall apply to all special flood hazard areas within the jurisdiction of the City of Bismarck, including all lands within Bismarck city limits and the extraterritorial area as provided for in the NDCC, including areas specifically included in the jurisdiction of the City of Bismarck through agreement as approved by the City Commission.

b. Basis for Establishing the Special Flood Hazard Areas

The special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report titled "The Flood Insurance Study for Burleigh County, North Dakota and Incorporated Areas", dated June 6, 2024, with an accompanying flood insurance rate map (FIRM), and as subsequently updated by any Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR) and/or Letter of Map Revision Based on Fill (LOMR(f)) issued by FEMA, is hereby adopted by reference and declared to be a part of this section. The Flood Insurance Study (FIS) is on file in the office of the Floodplain Administrator. Special flood hazard areas may also be designated in a stormwater management plan prepared for a development, plat or watershed.

c. Compliance

No structure or land shall be constructed, located, extended, converted, or altered without full compliance with the terms of this section and other applicable regulations,

unless a valid building permit was in place prior to July 27, 2010, except as provided for in subsection 14-07-02.5.d.vi(2)(h), Additions to Existing Structures.

d. Greater Restrictions

This section is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this section and another section of the Code of Ordinances, an easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

e. Interpretation

In the interpretation and application of this section, all provisions shall be:

i. Considered as minimum requirements;

ii. Liberally construed in favor of the City of Bismarck; and

iii. Deemed neither to limit nor repeal any other powers granted to the City under the NDCC or the Home Rule Charter for the City of Bismarck.

f. Warning and Disclaimer of Liability

The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the special flood hazard areas or uses permitted within those areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Bismarck, any officer or employee of the City, or FEMA for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

g. Letter of Map Revision (LOMR) and Letter of Map Revision Based on Fill (LOMR(f))

Development on any parcel for which a Letter of Map Revision (LOMR) or Letter of Map Revision based on Fill (LOMR(f)) has been issued shall comply with all of the requirements and recommendations as contained therein. Development on any parcel for which a LOMR or LOMR(f) has been issued shall be constructed in accordance with the provisions of the most recent version of FEMA Technical Bulletin 10.

h. Nonconforming Status

Any structure constructed with the lowest floor elevated as required by the regulations in effect at the time of construction shall be considered a legally nonconforming structure for the purposes of this section.

5. Administration

a. Establishment of a Development Permit

i. A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 14-07-02.4.b, Basis for Establishing the Special Flood Hazard Areas.

ii. A development permit shall be obtained before any land-disturbing activity begins within any special flood hazard area established in Section 14-07-02.4.b, Basis for Establishing the Special Flood Hazard Areas.

iii. Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(1). Elevation in relation to mean sea level (NAVD88), of the lowest floor (including basements and/or crawl spaces) of all structures;

(2). Elevation in relation to mean sea level (NAVD88) to which any structure has been floodproofed;

(3). Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Subsection 14-07-02.5.d.vi(2)(b), Non-Residential Construction; and

(4). Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

b. Administration by the Floodplain Administrator

The Floodplain Administrator, as defined in Section 14-17-02, shall administer and implement this section by granting or denying development permit and non-structural development permit applications in accordance with its provisions.

c. Duties and Responsibilities of the Floodplain Administrator

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

i. Permit Application Review

(1). Review all development permit applications and nonstructural development permit applications to determine that the permit requirements of this section have been satisfied.

(2). Review all development permit applications and nonstructural development permit applications to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

(3). Review all development permit applications and nonstructural development permit applications to determine if the proposed development or land-disturbing activity is located in the floodway. If located in the floodway, assure that the encroachment provisions of this section are met.

ii. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Subsection 14-07-02.4.b, Basis for Establishing the Special Flood Hazard Areas, the Floodplain Administrator shall obtain, review, and reasonably utilize any base

flood elevation data available (known as best available data (BAD)) from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with Subsection 14-07-02.5.d.vi(2), Specific Standards.

iii. Information to be Obtained and Maintained

(1). Obtain and record the actual elevation (in relation to mean sea level in NAVD88) of the lowest floor (including basement and/or crawl space) of all new or substantially improved structures, and whether or not the structure contains a basement and/or crawl space.

(2). For all new or substantially improved floodproofed structures:

(a). Obtain and record the actual elevation (in relation to mean sea level in NAVD88) to which the structure has been floodproofed; and

(b). Maintain the floodproofing certifications required in Subsection 14-07-02.5.a.iii.

(3). Maintain for public inspection all records pertaining to the provisions of this section.

iv. Alteration of Watercourses

The Floodplain Administrator shall:

(1). Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency (FEMA).

(2). Require that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished; and

(3). Notify the appropriate water resource district prior to removal or placement of fill within 200 feet of the ordinary high water mark of a body of water during normal flow or stage.

v. Interpretation of Flood Insurance Rate Map (FIRM) or Digital Flood Insurance Rate Map (DFIRM) Boundaries

Make interpretations, where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Subsection 14-07-02.5.d.vii, Variance Procedure. The Floodplain Administrator may require information be submitted by a registered land surveyor.

vi. Provisions for Flood Hazard Reduction

(1). General Standards

In all special flood hazard areas, the following standards are required:

(a). Anchoring

(i). All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(ii). All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(b). Construction Materials and Methods

(i). All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(ii). All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and

(iii). All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding. These facilities shall be located in areas that have been elevated on fill and/or a permanent foundation to at least two feet above the base flood elevation or in areas that have been floodproofed to at least two feet above the base flood elevation for non-residential construction.

(c). Utilities

(i). All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(ii). All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters; and

(iii). All new and replacement on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(d). Subdivision Proposals

(i). All subdivision proposals shall be consistent with the need to minimize flood damage;

(ii). All subdivision proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(iii). All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(iv). Base flood elevation data shall be provided for all subdivision proposals and other proposed developments. Elevation data must be provided in NAVD88 for areas with a flood insurance rate map (FIRM) or other base flood elevation data in that datum.

(2). Specific Standards

In all special flood hazard areas where base flood elevation data have been provided as set forth in Subsection 14-07-02.4.b, Basis for Establishing the Special Flood Hazard Areas, or Subsection 14-07-02.5.d.ii, Use of Other Base Flood Data, the following provisions are required:

(a). Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two feet above the base flood elevation.

(b). Non-Residential Construction

Construction and substantial improvement of any non-residential structure shall either have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two feet above the base flood elevation or, together with attendant utility and sanitary facilities, shall:

(i). Be floodproofed to at least two feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;

(ii). Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(iii). Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Certifications shall be provided to the Floodplain Administrator as set forth in Subsection 14-07-02.5.d.iii, Information to be Obtained and Maintained.

(c). Manufactured Homes

(i). Manufactured homes shall be anchored in accordance with Subsection 14-07-02.5.d.vi(1)(a), Anchoring.

(ii). All manufactured homes or those to be substantially improved shall be on a permanent foundation, as referenced in FEMA P-85/2009, have the bottom of the frame of the manufactured home elevated on fill and/or a permanent foundation to at least two feet above the base flood elevation, and be securely anchored to an adequately anchored foundation system. However, within a Pre-FIRM manufactured home park, a newly placed manufactured home or those to be substantially improved shall be on a permanent foundation, have the bottom of the

frame of the manufactured home elevated on fill and/or a permanent foundation to at least one foot above the base flood elevation, and be securely anchored to an adequately anchored foundation system.

(d). Recreational Vehicles

All recreational vehicles to be placed on a site must be on the site for less than six months; and be fully licensed and highway ready.

(e). Enclosures

New construction and substantial improvements may have enclosures with areas below the base flood elevation, that are less than 300 square feet and usable solely for building access and utility service connections serving the building, if constructed in accordance with the following requirements:

(i). Must have structural and non-structural components constructed of flood damage resistant material. Flood damage resistant materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;

(ii). Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1;

(iii). Must have mechanical, electrical, and utility equipment elevated at least two feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,

(iv). Prior to the issuance of a building permit, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

(f). Attached Garages, Decks, and Landings Providing Primary Access, and Accessory Buildings

(i). Garages attached to any residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure, or manufactured home to which it is attached.

(ii). Decks and landings providing access to the primary entrance of a residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure, or manufactured home to which it provides access.

(g). Accessory Structures

(i). Accessory structures that are not greater than 600 square feet in area may be constructed with the lowest floor below the base flood elevation in accordance with the following wet floodproofing requirements:

1. Must be anchored to resist floatation, collapse, and lateral movement;
2. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two feet above the base flood elevation. Flood damage materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;
3. Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1;
4. Must have mechanical, electrical, and utility equipment elevated at least two feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and
5. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

(ii). Accessory structures that are greater than 600 square feet in area may be constructed with the lowest floor one foot above the base flood elevation in accordance with the following requirements.

1. Must have mechanical, electrical, and utility equipment elevated at least two feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and
2. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

(iii). Accessory structures that are not enclosed and do not have more than one ridged wall may be constructed at grade in accordance with the following requirements.

1. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two feet above the base flood elevation. Flood damage materials must meet

or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;

2. Must have mechanical, electrical, and utility equipment elevated at least two feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and

3. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

(h). Additions to Existing Structures

Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing, or accessory structure that is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure if the existing structure is a legall nonconforming structure for the purpose of this section.

(3). Floodways

Floodways are designated areas located within the special flood hazard areas established in Subsection 14-07-02.4.b, Basis for Establishing the Special Flood Hazard Areas. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(a). Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(b). If the preceding subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Subsection 14-07-02.5.d.vi, Provisions for Flood Hazard Reduction.

vii. Encroachment Analysis

When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

14-08-04. PLAN OVERLAY DISTRICT[26]

1. Purpose

The purpose of the POD-Plan Overlay District is to:

a. Encourage flexibility in development of land, to promote its most advantageous use;

b. Improve the design, character, and quality of new development;

c. Facilitate the adequate and economical provision of streets and utilities;

d. Allow creative development of neighborhoods and districts as unique places while remaining internally coherent in design; and

e. Preserve the natural and scenic features of open space.

2. Creation of Plan Overlay District[27]

PODs are applied as an overlay that alter the standards of the base zoning district(s) based on a plan for the area within the district. Where the POD is silent as to a development standard or requirement, the requirements of the applicable base zoning district shall apply. Each POD consists of two parts:

a. Plan for Development Text

The POD shall include text in a standard format supplied by the Director with the following information:

i. Name of district, unique among PODs in the Bismarck jurisdiction, following a standard naming convention;

ii. Purpose of district in narrative form;

iii. Goals and objectives of the comprehensive plan supported or advanced by the district;

iv. The applicable base zoning district or districts; and

v. Standards and requirements of the district; and

vi. A reference to the POD exhibit.

b. Plan for Development Exhibit

i. The POD shall include a scaled and dimensioned exhibit of the entire area contained within the district, showing all buildings, transportation networks, public and private improvements, landscaping and open space, and all other features pertinent to the intent and provisions of the POD. The exhibit shall show the final developed condition of the site.

ii. Certain features of the exhibit may be omitted or additional features included, as necessary to adequately describe the terms of the POD.

[26] 14-04-18 carried forward with modifications.

[27] New language to explicitly state that PODs modify the standards of the applicable base zoning district.

iii. A phasing plan of the POD may be incorporated if necessary to meet the stated purpose of the district.

3. Review and Approval[28]

a. All PODs shall be subject to review and approval as described in Section 14-20-05.6.

b. Any POD may be amended according to the procedures of 14-20-05.6.e.

c. Any POD may be vacated through a zoning map amendment process to a base zoning district or districts in 14-20-05.10

4. Force and Effect

If adopted by the City Commission under the procedures of this Code, the text and any referenced exhibits of a POD shall be incorporated into the Land Development Code with the same force and effect of law, including but not limited to the following procedures:

a. A POD shall be interpreted with the same definitions and rules of measurement of this Code, unless otherwise stated within the POD text.

b. Violations within a POD are subject to the appeal and enforcement procedures of this Code, unless otherwise stated within the POD text,

[28] Information related to the review and approval of PODs will be included in Module 3, Administration and Procedures.

Chapter 14-09 Allowed Land Uses

COMMENTARY

Changes in this section include:

Elimination of Use Groups. However, for purposes of organization, the section does retain grouping uses into categories and subcategories.

New uses added. These are shown in Table 14-09-1. They are defined and any applicable use-specific standards are included in Chapter 14-10, Use Definitions and Use-Specific Standards.

Existing uses consolidated. Where included uses with similar characteristics were listed separately, these have in some cases been consolidated. For example, the long list of retail uses listed separately have been condensed into three classes of retail (small, medium, and large) to account for their impacts rather than focusing on the goods being sold.

New permissions included. Where a new permission or more permissive allowance for a given use is suggested, this is shown with a green highlighted cell. Permissions for suggested new uses are also shown this way.

14-09-01. USES ESTABLISHED

1. Allowed Uses

a. Uses defined within the Land Development Code are allowed to be located within each zoning district according to Table 14-09-1: Allowed Uses.

b. Unless a use is explicitly listed as allowed within a zoning district, or allowed under certain conditions, it shall be considered prohibited within that zoning district.

2. Clarity of Use Definition

A property owner or applicant may request a Code Interpretation per Section 14-20-04.3, in such cases when:

a. An actual or proposed uses does not clearly fit within a defined use of this Code;

b. There is perceived ambiguity between an actual or proposed principal use and ancillary functions of that use;

c. There is a need to determine which use on property is principal and which use is, or uses are, accessory.

d. When a Code interpretation is requested, the Director shall consider the following list of factors when classifying the subject use:

i. How closely the proposed use matches an existing, defined use category or subcategory;

ii. The intensity of the proposed activity or use in comparison to the characteristics of a use category or subcategory;

iii. Conformity with the currently adopted Comprehensive Plan and purpose of the zoning district in which the use is proposed;

iv. The amount of site or floor area and equipment devoted to the use or activity;

v. Number of employees, visitors, or customers generated;

vi. The hours of operation;

vii. How the use advertises itself;

viii. Types of vehicles, equipment, and/or processes proposed;

ix. Parking demands associated with the use, or the number of vehicles associated with it, and the traffic it may reasonably be expected to generate;

x. Special public utility requirements for serving the proposed use type, including, but not limited to, electricity, water supply, wastewater output, pre-treatment of wastes and emissions required or recommended, and any significant power structures or infrastructure and communications towers or facilities;

xi. Whether the use or activity would be likely to be found independent of the other activities on the site;

xii. Whether a use is subordinate in area, extent, or purpose to the principal building or use served;

xiii. Whether the use contributes to the comfort, convenience, or necessity of occupants, customers, or employees of a principal use; and

xiv. Any other relevant evidence regarding use or activity that would help to classify a particular land use.

e. The Director may determine that a proposed use is not substantially similar to any use identified in Table 14-09-1: Allowed Uses on the basis of the criteria of this section.

14-09-02. Use Table Explanations

Table 14-09-1: Allowed Uses identifies the uses allowed in each zoning district, with each use given one of the following designations:

1. Permitted Use (P)

These uses are permitted by right in the zoning districts in which they are listed.

2. Special Use (S)

These uses are not permitted by right in the districts in which they are listed but may be allowed through approval of a special use permit, as described in Section 14-20-05.8, Special Use Permit. Uses allowed by special use permit shall follow any applicable use-specific and development standards, as well as meeting any conditions and requirements of the special use permit approval.

3. Use Subject to Specific Standards (*)

These uses, regardless of whether or not they are permitted by right, are subject to additional specific or locational standards identified in Chapter 14-10, Use Definitions and Use-Specific Standards. Cross-references to use definitions and specific standards are provided in the “Reference” column on the right.

4. Not Permitted (Blank)

Uses that are not permitted within a zoning district are indicated by a blank table cell.

Table 14-09-1: Allowed Uses

P = Permitted use S = Special use * = Use-specific standards apply Blank = Not permitted

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Agricultural																	
Farming and ranching[29]	P											P	P				14-10-01.1
Animal feeding operation																	14-10-01.2
Plant nursery	P											P	P				14-10-01.3
Residential																	
Household Living																	
Single-family dwelling	P	P	P		P		P						P			P*	14-10-02.1.a
Two-family dwelling			P		P		P									P*	14-10-02.1.b
Townhouse, three units[30]			P	P	P		P	P	P							P*	14-10-02.1.c
Townhouse, four or more units[31]				P	P		P	P	P							P*	14-10-02.1.c
Multi-family residential				P			P	P	P	P*	S*					P*	14-10-02.1.d
Courtyard development				P*	P*	P*	P*	P*	P*							P*	14-10-02.1.e
Live-work dwelling[32]					S*		P*	P*	P*	P*	S*					P*	14-10-02.1.f
Manufactured home community[33]						P											14-10-02.1.g
Group Living																	
Residential Care Facility[34]				P			P	P	P							P*	14-10-02.2.a

[29] Includes “field crop farming, dairy farming, fur farming, farrowing operation, poultry farming, and livestock raising, and apiaries” from the Farming Group.
[30] Combines “townhouse” and “row house.”
[31] Combines “townhouse” and “row house.”
[32] New. This type of use creates opportunities to co-located residential and non-residential activities within a single unit.
[33] Replaces “single-family mobile home dwellings or manufactured homes with or without a permanent foundation when located within manufactured home parks.”
[34] New. This use has been separated from senior housing.

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Congregate living[35]				P			S	S	S							P*	14-10-02.2.b
Group home (serving 6 or fewer)	P	P	P	P	P		P	P	P								14-10-02.2.c
Group home (serving 7 or 8[36])				P	P		P	P	P								14-10-02.2.c
Group home (serving 9 or more)				P			P	S	S		S						14-10-02.2.c
Civic and Institutional																	
Community Assembly																	
Community or cultural center[37]	S	S	S	S	S		S	P	P	P	P			P	P	P*	14-10-03.1.a
Religious institution	S	S	S	S	S		S	P	P	P	P			P	P	P	14-10-03.1.b
Cultural and Public																	
Government facility[38]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P*	14-10-03.2.a
Park and/or playground	P	P	P	P	P	P	P	P	P	P			P	P	P	P	14-10-03.2.b
Community service								P	P	P	P			P		P*	14-10-03.2.c
Cemetery													S*	S*	S*		14-10-03.2.d
Detention facility														P*			14-10-03.2.e
Educational																	
School[39]			P	P	P		P	P	P	P				P		P*	14-10-03.3.a
College or university[40]			P		P		P	P	P	P				P		P*	14-10-03.3.b

[35] Includes boarding houses, rooming houses, convents/monasteries, and fraternity/sorority houses.

[36] Group home uses include “family foster home for adults” and “family foster home for children,” “halfway house,” and “nursing, convalescent, or orphan’s home” from Group Dwelling use category.

[37] Broke apart “community service” use defined in 14-04-21.3 to accommodate general community programs and public recreation uses, such as “swimming pool” and “ice arena” from Public Recreation Group. Would also include public sports/athletic fields.

[38] Includes “fire stations; safety services; and buildings and necessary on-site facilities required for conduct of government.”

[39] Removed permission from the RR district.

[40] Includes “medical schools” from the Health-Medical Group. Removed permission from the RR district.

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Trade school[41]				P			P	P	P	P	P	P				P*	14-10-03.3.c
Medical																	
Hospital[42]										P						P*	14-10-03.4.a
Medical office or clinic[43]							P	P	P	P	P					P*	14-10-03.4.b
Commercial																	
Animal-Related																	
Animal services, non-veterinary								S	P	P	P	P				P	14-10-04.1.a
Animal boarding										S*	S*	P*	P*				14-10-04.1.b
Veterinary services[44]									P*	P*	P*	P*	P*			P*	14-10-04.1.c
Commercial riding stable													S*	P*			14-10-04.1.d
Livestock sales pavilion												P*					14-10-04.1.e
Commercial Assembly																	
Event center[45]										P*				P		P*	14-10-04.2.a
Food and Beverage																	
Restaurant							S		P	P	P			P		P	14-10-04.3.a
Bar or tavern[46]									P	P	P					P	14-10-04.3.b
Craft alcohol establishment[47]									S*	P*	P					P	14-10-04.3.c

[41] Replaces “commercial school, including business, secretarial, dancing, music, physical culture, technical trade school, adult education or vocational education” from Service Group B.

[42] Removed permission from RX and CX districts.

[43] Replaces “medical office where patients are not kept overnight, including doctor, dentist, and chiropractor offices.”

[44] Includes both veterinary hospitals and veterinary clinics.

[45] Replaces “entertainment event, major.”

[46] Relocated from Commercial Recreation Group. Removed permission from IG district.

[47] Combines “domestic distillery,” “microbrew pub,” and “brewer taproom.” Removed permission from IG district.

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Liquor store[48]									P	P	P					P	14-10-04.3.d
Lodging																	
Hotel or motel[49]									P	P	P					P*	14-10-04.4.a
Campground[50]													S*	S*	S*		14-10-04.4.b
Short-term rental[51]	P*	P*	P*	P*	P*	P*	P*	P*	P*		P*		P*			P*	14-10-04.4.c
Medical Marijuana																	
Compassion center dispensary											S*	S*					14-10-04.5.a
Compassion center manufacturing facility												S*	S*				14-10-04.5.b
Office																	
General office							P	P	P	P	P	P				P*	14-10-04.6.a
Bank or financial service							P	P	P	P	P					P*	14-10-04.6.b
Recreation																	
Indoor entertainment[52]									P*	P	P			P*	P*	P*	14-10-04.7.a
Outdoor entertainment[53]									P*	P*	P*	S*	S*	P*	P*		14-10-04.7.b
Retail Sales and Service[54]																	
Retail sales, small (≤ 6,000 SF)					S*		P*	P*	P	P	P					P*	14-10-04.8.a

[48] Combines “retail liquor sales” with “package liquor store” from Retail Group A. Note: Was permitted by right in the CA, CG, and MA under Retail Group A. Removed permission from IG district.

[49] Removed permission from IG district.

[50] Renamed from “recreational vehicle park.” Removed permission from IX district.

[51] New. Includes bed and breakfast uses.

[52] Includes “commercial athletic facility (indoor); bowling alley; dance hall; pool or billiard parlor; roller and ice skating facilities; theater within an enclosed structure, auditorium; and coin-operated amusements and game devices provided they are accessible to minors and do not require a license under Chapter 5-03 of the Code of Ordinance of the City of Bismarck.”

[53] Includes “miniature golf course; commercial athletic facility (outdoor); golf course; golf driving range; and racetrack.”

[54] Retail sales categories include “antique store; appliance, radio, television store; book, magazine, newspaper store; butcher shop; camera store, art supply store; candy store; clothing, clothing accessories store; delicatessen; department store; drugstore; flower shop; furniture, office equipment store; gift shop; grocery store;

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Retail sales, medium (6,001 – 50,000 SF)									P	P	P					P*	14-10-04.8.a
Retail sales, large (≥ 50,000 SF)[55]										P	P					P*	14-10-04.8.a
Personal service[56]							P*	P*	P	P	P					P*	14-10-04.8.b
Instruction studio[57]							P*	P*	P	P	P					P	14-10-04.8.c
Child care center[58]	S*	S*	S*	S*	S*		P*	P*	P*	P*	S*					P*	14-10-04.8.d
Commercial greenhouse									S	P	P	P	P				14-10-04.8.e
Sexually-oriented business[59]											S*						14-10-04.8.f
Transportation and Vehicles																	
Gas station[60]									P*	P*	P*	P*				P*	14-10-04.9.a
Truck stop										S	S	P					14-10-04.9.b
Car wash[61]									S	P	P	P					14-10-04.9.c
Vehicle sales[62]									S*	P*	P*	P*				P*	14-10-04.9.d
Major vehicle repair											P	P					14-10-04.9.e

hardware store; hobby, toy store; jewelry store; music store; notion, variety store; office supply, stationery store; photographic studio; shoe store; sporting goods store; bakery, in which nothing is baked except for retail sale on the premises; and pet shops, limited to cats, dogs, fish, and other small mammals provided all pets are confined within a building and same do no create an odor, noise, or nuisance affecting the adjacent occupants." Includes "farm implement store" and "feed, grain, and farm supply store" from Retail Group B.

[55] Removed permission from IG district.

[56] Includes "barbershop and beauty shop; dressmaker, furniture repair and upholstery; tailor; laundry pickup agency; self-service laundry; radio and appliance repair; shoe repair; watch, jewelry, and camera repair; and dry cleaning" and "mortuary or funeral home." Removed permission from IG district.

[57] New. Includes yoga or fitness studios, gyms or health clubs, arts or cooking instruction, martial arts training, and music lessons. This use is distinguished from personal service by the larger number of individuals accessing the facility at one time.

[58] Combines "child care centers", "commercial child care facility for child care not in excess of four hours in any 24 hour period…children" from Service Group A. Removed permission from RR and IG districts.

[59] Replaces "adult entertainment center."

[60] Replaces "filling station."

[61] Replaces "auto laundry – car wash."

[62] Includes "trailer sales"

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Minor vehicle repair[63]									S*	P*	P*	P*				P*	14-10-04.9.f
Parking lot[64]							S*	S*	P	P	P	P		P		P*	14-10-04.9.g
Parking structure								S*	P*	P*	P*	P*		P		P*	14-10-04.9.h
Transit center[65]							P	P	P	P	P	P		P		P*	14-10-04.9.i
Airport												S	S	S			14-10-04.9.j
Industrial																	
Industrial Sales and Service																	
Wholesale sales[66]										P	P	P					14-10-05.1.a
Research and development laboratory[67]											P	P					14-10-05.1.b
Repair Service											P	P					14-10-05.1.c
Manufacturing and Processing																	
General manufacturing[68]											P*	P*					14-10-05.2.a
Artisanal manufacturing										S*	P*	P*				P	14-10-05.2.b
Asphalt or concrete batch plant											S*	P*	S*				14-10-05.2.c
Data center, major												S*					14-10-05.2.d
Data center, minor										S*	S*	P*					14-10-05.2.d
Micro data center								P*	P*	P*	P*	P*	P*	P*			14-10-05.2.d
Mining and extraction[69]												P	S				14-10-05.2.e
Salvage and Waste																	
Junkyard or salvage yard												S*					14-10-05.3.a

[63] Combines “tire and battery repair; vehicle repair; and vehicle service, limited.”
[64] Separated “commercial parking lot or structure” from Service Group B into Parking lot and Parking structure.
[65] Replaces “railroad or bus passenger station.”
[66] Replaces Wholesale Group.
[67] Replaces “experimental and testing laboratories” from Industrial Group A.
[68] Replaces Industrial Group B.
[69] Combines “oil or gas well,” “loam stripping,” and “sand or gravel extraction and processing.”

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Solid waste disposal facility[70]												S*		P*	P*		14-10-05.3.b
Storage and Distribution																	
Hazardous material storage[71]												S*					14-10-05.4.a
Personal flex		S*	S*	S*							P						14-10-05.4.b
Storage yard[72]											P*	P*					14-10-05.4.c
Self-storage facility								S*	S*	P*	P*	P*				P*	14-10-05.4.d
Truck terminal or distribution center[73]											P	P					14-10-05.4.f
Warehouse[74]											P	P					14-10-05.4.g
Utility and Telecommunications																	
Telecommunications Facilities																	
Broadcasting station or tower[75]											P	P	P			P*	14-10-06.1.a
Wireless communications facilities																	14-10-06.1.b
Attached facility	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	14-10-06.1.b
Small cell facility	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	14-10-06.1.b
Tower								S*	S*	S*	S*	S*	S*	S*	S*		14-10-06.1.b
Utilities																	
Battery energy storage system												S*	S*				14-10-06.2.a
Energy production												S*	S*				14-10-06.2.b
Wind turbine facility																	14-10-06.2.c

[70] Combined with “landfill, municipal.”

[71] Includes “fuel storage yard” and “petroleum bulk plants, if in compliance with Title 11 of the Code of Ordinances of the City of Bismarck” from Industrial Group A.

[72] Includes “contractors' equipment storage yard” from Industrial Group A.

[73] Combines “truck terminal” with “railroad freight station.”

[74] Includes “storage building and warehouses including refrigerated storage” from Industrial Group A

[75] Combines “radio or television transmitting station” with “radio, television, or communication broadcast and receiving facilities” from Service Group B and “radio or cellular communication tower” from Utility Service Group.

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Major utilities[76]											S*	P*	S*	P*	P*		14-10-06.2.d
Minor utilities[77]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	14-10-06.2.e
Accessory Uses																	
Accessory dwelling unit	P*	P*	P*		P*		P*						P*				14-10-07.3
Accessory sales and service[78]														P	P		14-10-07.4
Agriculture recreation, major													S*				14-10-07.5
Agriculture recreation, minor													P*				14-10-07.6
Animal husbandry	P*	P*											P*				14-10-07.7
Drive-through[79]								S*	S*	P*	P*					P*	14-10-07.8
Electric vehicle charging station[80]			S	P	S		P	P	P	P	P	P		P	P	P*	14-10-07.9
Home occupation, major	P*	P*	S*	S*	S*	S*	S*	S*	S*	S*	S*		P*				14-10-07.10
Home occupation, minor	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*		P*			P*	14-10-07.10
Outdoor dining							P*		P*	P*	P*					P	14-10-07.11
Outdoor sales display									P*	P*	P*	P*				P	14-10-07.12
Outdoor storage											P*	P	P				14-10-07.13
Personal recreation facility	P	P	P		P								P				14-10-07.14
Personal riding arena													S*				14-10-07.15
Small wind energy system	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*		14-10-07.16
Solar energy system	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	14-10-07.17
Storage Container, permanent	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			14-10-07.18

[76] Combines “sewage treatment plant” and “water treatment plant.”

[77] Includes “electric transformer station, but not a steam generating plant; electric transmission line; sewage pumping station; water pumping station; gas regulator stations, excluding stations emitting noise of more than 50 decibels at any property line adjacent to any residentially zoned area; water reservoir; and storm water pumping station” from the Utility Service Group and “public utility service yard” from Industrial Group A.

[78] Combines “food service establishment occupying publicly-owned lands” and “gift shop occupying publicly-owned lands.”

[79] Combines “drive through facilities for a bank” and “drive-in retail or service establishment.”

[80] New.

Zoning District	RRE	RR	RS	RM	RU	RMH	RX	OX	CX	CG	IX	IG	A	PCI	OS	DT	Reference
Well Cover Structure	P*	P*	P*	P*	P*	P*	P*						P*	P*	P*		14-10-07.19

Chapter 14-10 Use Definitions and Use-Specific Standards

14-10-01. Agricultural Uses

Active and on-going agricultural uses and activities, including but not limited to commercial growing and production of field crops, livestock, aquatic, and animal products, produce sales stands, wholesale nurseries, and stables. Lands in agricultural use may also be held for preservation and conservation.

1. Farming and Ranching

a. Definition

Use of land for commercial agricultural production or agricultural research directly related to commercial agricultural production with at least 10 acres of contiguous area in operation, not including an animal feeding operation or livestock sales pavilion. Farming and ranching includes any buildings or equipment used in agricultural production of the land that are on the same site. Farming and ranching does not include certain industries indirectly related to agriculture, including but not limited to: storage, shipping and distribution of agricultural products; storage, sale, and repair of agricultural equipment; food processing; and the sale and distribution of seed, feed, and fertilizer.

2. Animal Feeding Operation

a. Definition

A lot or facility, other than an aquatic animal production facility, where the following conditions are met:

i. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 365 day period; and

ii. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; or

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

(1). Breeding operations of more than 300 animal units; or

(2). Weaned offspring which are kept longer than four months and that are not retained for breeding purposes.

b. Specific Standards

i. Animal feeding operations are prohibited within Bismarck city limits and in Bismarck's extraterritorial area.

ii. All animal operations containing more than 300 animal units, including an animal wintering operation, shall be defined as an animal feeding operation. Adjoining animal feeding operations under the common ownership are considered to be one animal feeding operation if they use common areas or systems for manure handling. An animal feeding operation in place and operating on the date this Code is effective shall be considered an existing animal feeding operation and shall not be allowed to expand by any number of animal units.

iii. Table 14-10-1: Maximum Number of Allowed Livestock shows the maximum number of livestock allowed before the operation is considered an animal feeding operation, based on animal unit equivalents (AUE) for various types of livestock:

Table 14-10-1: Maximum Number of Allowed Livestock

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

3. Plant Nursery[81]

a. Definition

An establishment, including a building, part of a building, or open space, for the growth, display, and/or sale of plants, trees, and other materials used in indoor or outdoor planting for retail sales and incidental wholesale trade.

14-10-02. Residential Uses

A land use offering habitation of a dwelling on a continuous basis. The minimum continuous basis is established by tenancy with a minimum term of one month (long-term tenant) or habitation by the property owner.

1. Household Living Subcategory

Includes uses characterized by residential occupancy of a dwelling unit by one or more persons living together as a single household unit. Each dwelling unit contains its own

[81] New.

facilities for living, sleeping, and food preparation. Uses where tenancy may be arranged for a period of less than one month are considered lodging uses.

a. Single-Family Dwelling

i. Definition

A building containing only one dwelling unit designed to meet residential building code that is not attached to any other dwelling units, with the potential exception of one accessory dwelling unit. A single-family dwelling may contain an accessory dwelling unit within or attached to the single-family structure.

b. Two-Family Dwelling

i. Definition

A building containing only two dwelling units, whether located on one lot or located on two lots and attached. Two-family dwellings are designed to meet International Residential Code.

c. Townhouse[82]

i. Definition

Multiple single-family dwelling units constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on not less than two sides. A townhouse is designed to meet International Residential Code. A townhouse may be placed on an individual lot or a group of attached townhouses may be grouped onto a single lot.

d. Multi-Family Dwelling

i. Definition

A building or buildings containing three or more dwelling units that are not townhouses, as herein defined. Multi-family dwellings are designed to meet the International Building Code. Typical examples include, but are not limited to, triplexes, fourplexes, apartments, and condominiums. The location of multiple residential buildings of any type on the same lot shall be considered multifamily residential, unless the definition of townhouse is met.

ii. Specific Standards

Multi-family dwellings are permitted in the CG and IX districts provided they are included as part of a mixed-use development on a floor other than the ground floor. Stand-alone multi-family developments are not permitted in the CG and IX districts.

[82] New.

e. Courtyard Development[83]

i. Definition

A cluster of at least three attached or detached dwellings that share access, parking, and common spaces. Courtyard developments can include homes on individual lots, or leased homes or condominiums on a single lot.

ii. Specific Standards

(1). Purpose

Courtyard developments are an arrangement of residential structures around a common open space area. Typically, courtyard development lots are smaller than average lots because they share a common space within a higher density format and are oriented perpendicular to a street.

(2). Dimensional and Density Standards

(a). The minimum project size for a courtyard development is one-half acre and the maximum project size is five acres. A courtyard development may be a designated area within a larger development.

(b). The following standards shall apply to individual units:

Table 14-10-2: Courtyard Development Dimensional Standards

Lot Standards	
Courtyard Open Space	
Area of Open Space (min, sf)	400
Dimensions of any side (min, ft)	20
Building Standards	
Density (dwelling units/acre)	
Minimum | Maximum	Per zoning district
Height and Separation	
Height (max)	Per zoning district
Building separation (min)	Per Building Code

(c). The maximum density may be increased by up to 20 percent over the maximum density allowed in the applicable zoning district when the project design can still meet all other applicable Land Development Code standards without administrative adjustment, waiver, or variance.

(d). All other building and lot requirements, including principal and accessory structure setbacks and lot coverage limitations, for the applicable zoning district shall apply to the project site as a whole, not individual units.

[83] New.

(3). Design Standards

(a). Courtyard developments shall be designed to include physical connections and visual breaks at similar intervals as the average lot width of the block face where the development is located.

(b). Areas of a courtyard development along public street frontage shall not be designed to include extended lengths of side facing buildings, rear building walls, garages, storage structures, or outdoor storage areas.

(c). Any residential unit type allowed in the applicable zoning district may be incorporated into the courtyard development. Detached accessory dwelling units are prohibited.

(d). A minimum of 10 percent of the total project area, including but not limited the common courtyard, shall be held in private common open space.

(i). A common courtyard that meets the minimum dimensions of Table 14-09-3 shall be provided.

(ii). The remaining common open space may be divided into multiple locations, each of which shall meet the minimum area and dimensional standards. Open spaces should be designed with a north-south orientation when possible.

(iii). A community building(s) for the sole use of the courtyard development residents may be used to meet up to 25 percent of the required common open space requirement. Community buildings shall not count toward the maximum density calculation.

(e). Paved paths for pedestrian circulation may count toward common open space, but parking areas and driveways for vehicular circulation may not count toward common open space.

(4). Landscaping

Courtyard developments shall meet all landscaping requirements applicable to multi-family dwellings in Chapter Landscaping and Screening. Landscaping located within a common courtyard of common open space area may count toward up to 30 percent of required common open space.

f. Live-Work Dwelling

i. Definition

A residential dwelling unit that includes a dedicated workspace accessible from the living area, reserved for and regularly used by one or more residents of the dwelling unit. Unlike home occupations, live-work dwellings may be constructed or renovated to include outward visual evidence to indicate the presence of a non-residential use, such as alteration of the dwelling from a customary residential appearance.

ii. Specific Standards

(1). Allowed Uses

The uses allowed in a non-residential component of a live-work unit are those permitted in the applicable zoning district where the building is located, subject to the exclusions listed in subsection iv. below.

(2). Prohibited Uses

A live-work unit shall not contain any of the following uses:

(a). Vehicle maintenance or repair, vehicle detailing, painting, and upholstery;

(b). Storage of flammable liquids or hazardous materials beyond that normally associated with a commercial use; and

(c). Outdoor storage of materials.

(3). Development Standards

(a). Total gross floor area for the live-work unit is limited to 3,000 square feet.

(b). The non-residential work area may not be greater than 50 percent of the total area of the live-work unit, and shall be located on the first or main floor only of the live-work unit.

(c). The business may have more than five employees; however, no more than five non-resident workers or employees are allowed to occupy the non-residential work area at any one time.

(d). The residential space within a live-work unit must be occupied by at least one individual who is employed by the business that is conducted within the non-residential component.

(e). Parking is required for the residential and non-residential uses of the live-work dwelling, as required by Chapter 14-13, Parking and Loading.

(f). Landscaping shall be provided as required for the non-residential use in the live-work dwelling, as described in Chapter 14-15, Landscaping and Screening.

(4). Sign Standards

Signs for the associated commercial or work use shall comply with all applicable regulations as described in Chapter 14-18, Signs. Additionally:

(a). Electronic message signs are prohibited.

(b). Flashing or chasing lights are prohibited.

(c). Temporary A-Frame or T-Frame sign shall be stored indoors when the business is closed.

(d). All other forms of temporary signage are prohibited including, but not limited to, banners, streamers, pennants, yard flags and inflatable signs.

g. Manufactured Home Community

i. Definition

An area under single ownership or management that has been planned and improved for the placement of three or more mobile or manufactured homes that are used for dwelling purposes.

2. Group Living Subcategory

Includes uses characterized by residential occupancy of a dwelling or associated group of dwellings by one or more persons that do not qualify as a household. Group living uses contain individual rooming units with private or shared bathroom facilities and may also contain shared food preparation, dining, or common spaces for residents. Residents may or may not receive any combination of care, training, or treatment, but services are only rendered to individuals who reside at the site. Alternatives to incarceration, such as community-based correctional facilities, where residents are placed under supervision in the facility by court order, are excluded from this group and classified as a detention center.

a. Residential Care Facility

i. Definition

A building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. A residential care facility may also be known as assisted living, memory care, or independent senior living. A residential care facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under NDCC Chapter 23-16, Chapter 23-17.7, Chapter 25-16, or Section 50-11-01.4.

b. Congregate Living

i. Definition

A community of private dwelling units that includes shared spaces, such as a community room, or shared facilities, such as a kitchen and sanitary facilities. Typical examples include, but are not limited to, dormitories, rooming houses, fraternities, sororities, convents, and monasteries.

c. Group Home

i. Definition

Any community residential facility, foster home, family care facility, sober living facility, or other similar home for individuals with a disability, that is licensed by the State of North Dakota. Group homes are identified by the maximum number of individuals that they are licensed to serve, except that a Group Home 9 may serve nine or more individuals.

14-10-03. Civic and Institutional Uses

Public, quasi-public, or private non-profit uses that provide unique services to the benefit of the public at-large.

1. Community Assembly Use Subcategory

Includes community, cultural, and religious facilities and institutions that support cultural amenities and assembly of large groups of people for a common activity, provided that facilities and activities are primarily for the general public and not primarily for the purpose of commercial enterprise.

a. Community or Cultural Center

i. Definition

A public or quasi-public facility used for recreational, social, educational, and cultural activities, including but not limited to museums, libraries, art galleries, recreation centers, and any outdoor recreation spaces that support those uses. Community or Cultural Centers include swimming pools or ice skating rinks.

b. Religious Institution

i. Definition

A building that primarily provides a meeting area for religious activities and related social events, including but not limited to churches, chapels, temples, synagogues, or mosques.

ii. Specific Standards

(1). A religious institution may include one accessory residential use, either a single-family dwelling or group dwelling, which may be occupied only by clergy, staff, or caretakers whose duties require on-site presence, which may be known as a rectory, convent, monastery, parsonage, or caretaker unit. Such dwellings are not subject to limitations of an accessory dwelling unit but are subject to the applicable building code.

2. Civic Use Subcategory

Includes government and non-profit services and facilities, provided that services and facilities are primarily for the general public and not primarily for the purpose of commercial enterprise.

a. Government Facility

i. Definition

A building or facility housing the offices or operations of a department or agency of the city, county, state, or federal government, or a quasi-governmental organization, including but not limited to a building or facility that provides fire protection, police protection, or emergency services (not including a hospital or medical office or clinic), together with incidental storage and maintenance of necessary vehicles. This use does not include solid waste disposal facilities.

b. Park and/or Playground

i. Definition

An area designated for and used by the public for active and/or passive outdoor recreation.

ii. Specific Standards

Any park intended to satisfy requirements for the neighborhood park development of this Code shall comply with design standards of Section 14-16-02, Neighborhood Parks.

c. Community Service

i. Definition

Uses of a public, nonprofit, or charitable nature generally providing a local service to community members on a continuing basis (not just for special events), and generally providing on-site services or involving regular employee activity at the site. The use may provide special counseling, education, or training of a public, nonprofit, or charitable nature and may include social service facilities, temporary shelters, or vocational training for persons with physical or mental disabilities.

d. Cemetery

i. Definition

Land used or intended to be used for the burial of the dead, including animals, and dedicated for cemetery purposes. A cemetery may include an accessory mausoleum or columbarium.

ii. Specific Standards

A cemetery may be permitted, provided:

(1). All graves shall be located at least ten feet from any property line of the lot on which they are located.

(2). Any public mausoleum, columbarium, or cemetery chapel shall be erected at least 100 feet from any property line of the lot on which it is located.

(3). Crematoriums may be allowed as an accessory use to a cemetery, provided that no crematorium shall be located within 50 feet of any property line of the lot on which it is located.

(4). A columbarium may be allowed as an accessory use to a religious institution.

e. Detention Facility

i. Definition

A facility providing group quarters and rehabilitation for individuals serving sentences within the criminal justice system.

ii. Specific Standards

The facility shall be located no less than 500 feet from any residentially-zoned property.

3. Education Uses Subcategory

Includes public, private, and parochial institutions at the pre-school, elementary, middle, high school, or post-secondary level, or trade or business schools, which provide educational instruction to students. Accessory uses include play areas, cafeterias, recreation and sport facilities, auditoriums, and before or after school child care.

a. School

i. Definition

An establishment offering general, technical, or alternative instruction at the pre-school, elementary, middle, and/or secondary school levels. This includes public schools, charter schools, and private schools.

b. College or University

i. Definition

A higher education facility authorized by the State to offer post-secondary education. Accessory uses include, but are not limited to, student, faculty, and/or employee housing facilities and research and development laboratories.

c. Trade School

i. Definition

A secondary or higher education facility offering special training in a skill or trade, including but not limited to carpentry, plumbing, welding, cosmetology, and automotive training.

d. Microschool

i. Definition

[RESERVED]

4. Medical Subcategory

Includes facilities that provide medical care services, particularly licensed public or private institutions that provide principal health services and medical or surgical care to persons suffering from illness, disease, injury, or other physical or mental conditions.

a. Hospital

i. Definition

Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis. Accessory uses include, but are not limited to, facilities for outpatient treatment, offices, laboratories, as well as training, research, and administrative services for patients and employees.

b. Medical Office or Clinic

i. Definition

An establishment for the examination and treatment of human patients by licensed medical professionals, including but not limited to doctors, dentists, optometrists, chiropractors, nurses, and other allied health services. Patient care is limited to outpatient services except under emergency conditions.

14-10-04. Commercial Uses

Includes uses involving the conduct of business activities involving the sale of goods, provision of services, or operation of enterprises intended for profit, conducted by businesses or individuals.

1. Animal-Related Use Subcategory

Includes uses related to animal care, sales, and provision of supplies.

a. Animal Services, Non-Veterinary

i. Definition

The provision of services such as boarding/kenneling, grooming, and training services for, and/or the sale of, customary domestic pets. These establishments do not provide any overnight boarding, veterinary care, or services for large animals such as livestock or horses.

b. Animal Boarding

i. Definition

The provision of shelter and care for domesticated animals on a commercial basis, including activities such as feeding, exercising, breeding, and grooming.

ii. Specific Standards

(1). Residential Adjacency

An animal boarding facility that shares a property line with a residential zoning district, including the RX district, or an existing residential use shall be subject to the following standards for outdoor exercise runs:

(a). In the CG zoning district, outdoor exercise runs are prohibited;

(b). In the IX and IG districts, the outdoor exercise run shall be located at least 1,000 feet from the property line shared with the residential property; or

(c). In the A district the outdoor exercise run shall be located at least 5,000 feet from the property line shared with the residential property, with the principal structure located between the outdoor run and the shared property line, where feasible.

(2). Generally Applicable Standards

These standards apply to animal boarding facilities in all zoning districts where animal boarding is permitted:

(a). Outdoor exercise runs shall be enclosed on four sides by a sight obscuring fence or wall at least six feet in height. The Director may waive this requirement in industrial and agricultural districts if there will be no negative impact to adjacent properties.

(b). Animals shall be kept indoors between the hours of 9:00 p.m. and 7:00 a.m.

(c). In order to prevent objectionable noise or odor from being detected outside of the building, the facility must be maintained within a completely enclosed, sound-resistant building, the building must contain adequate heating and cooling, and the ventilation system must have filters incorporated so as to absorb all objectionable inside odors.

(d). A minimum amount of square footage of per animal within the boarding facility is provided at a ratio 15 square feet per animal less than thirty 30 pounds, and 30 square feet for animals thirty 30 pounds or more.

c. Veterinary Services

i. Definition

A medical facility for the treatment of animals.

ii. Specific Standards[84]

(1). The treatment of large animals, such as livestock, is only permitted in the IG-Industrial General and A-Agricultural districts.

(2). Animals may only be kept overnight in connection to veterinary services provided, but this is generally ancillary to the veterinary services provided.

(3). In the CX, CG and IX districts, outdoor exercise runs are permitted provided they are enclosed by a sight obscuring fence or wall at least six feet in height, and that animals are kept indoors between the hours of 9 p.m. and 7 a.m.

d. Commercial Riding Stable

i. Definition

An establishment or area for keeping horses or other domestic animals for compensation, hire, boarding, riding, or show.

ii. Specific Standards

(1). The minimum permitted acreage for operating a commercial boarding or training facility is 35 acres.

(2). The lot in which the use is located is outside the Urban Service Are Boundary.

(3). Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted in Title 4 of the Code of Ordinances.

(4). A site plan, and if necessary, a stormwater management plan, shall be submitted for review and approval prior to the issuance of a building permit.

(5). Outside storage of horse trailers is allowed as part of an equestrian facility.

(a). Only those trailers that are for use by owners of the property, people associated with the operation, and/or boarded horses may be stored. General trailer storage is not allowed.

[84] 14-03-08.3.a. Formerly “small animal veterinary clinic.” Parking requirements have been removed from use-specific standards and will appear instead in the parking table (Module 2).

(b). All horse trailers shall be currently licensed and operable.

e. Livestock Sales Pavillion

i. Definition

A building and associated premises where livestock is assembled on a temporary basis and sold, typically by auction to the highest bidder.

ii. Specific Standards

A livestock sales pavilion may be permitted in the IG district, provided the facility shall not be located within 500 feet of the boundary of any other zoning district.

2. Commercial Assembly Subcategory

Includes facilities that support the assembly of large groups of people for a common activity, provided that facilities and activities are primarily for the purpose of commercial enterprise.

a. Event Center

i. Definition

A facility devoted to assembly of people for social, professional, or recreational activities such as meetings, weddings, conferences, or conventions.

ii. Special standards

(1). In the CX district, event centers shall be limited to 15,000 square feet of gross floor area.

(2). In the DT district, event centers may require a liner building to meet the minimum fenestration and frontage requirements of the district.

3. Food and Beverage Subcategory

Includes businesses that prepare or serve food and/or beverages intended for consumption on or off the premises. Accessory uses include, but are not limited to, entertainment and outdoor dining spaces.

a. Restaurant

i. Definition

An establishment where food and beverages are prepared, served, and consumed within the principal building, on or off the premises as carry-out orders. Typical examples include, but are not limited to, sit-down restaurants, fast-food restaurants, coffee shops, and pastry shops.

ii. Specific Standards

In the RX zoning district, a restaurant may have maximum seating, indoor and outdoor, for 30 people and may not serve food directly into a vehicle.

b. Bar or Tavern

i. Definition

An establishment primarily engaged in the selling of alcoholic drinks and the incidental sale of food for consumption on the premises.

c. Craft Alcohol Establishment

i. Definition

A facility that manufactures no more than 25,000 barrels (775,000 gallons) of fermented malt beverage or 25,000 gallons of wine or spirits per year for wholesale, sale directly to consumers, or for consumption on the premises. This includes state-licensed brewer taprooms, domestic distilleries, domestic wineries, and microbrew pubs. A craft alcohol establishment may be co-located with a restaurant or a stand-alone facility. Full scale breweries, as defined by the State, are considered a general manufacturing use.

ii. Specific Standards

(1). All brewing, distilling, and storage activities shall be located within a completely enclosed building.

(2). The facility shall comply with all applicable licensing and operational requirements of the State.

(3). Beverages brewed or distilled onsite cannot be sold or otherwise provided for consumption on the premises unless the owner holds the appropriate liquor license from the City or County.

(4). Beverages brewed or distilled onsite cannot be sold or otherwise provided to non-wholesale customers for consumption off the premises unless the owner holds the appropriate liquor license from the City or County.

d. Liquor Store

i. Definition

A retail establishment licensed to sell alcoholic beverages for off-site consumption.

4. Lodging Subcategory

Includes uses where temporary housing is offered to the public for compensation and is open to guests on a short-term basis. Lodging uses do not include congregate living opportunities as described in the group living subcategory definition.

a. Hotel or Motel

i. Definition

A building in which lodging, with or without meals, is provided and offered to the public for compensation without kitchen facilities in individual rooms. This use does not include congregate living.

b. Campground

i. Definition

Land under single ownership or management which has been planned and improved for the parking of recreational vehicles and/or tents on a temporary basis, regardless of whether or not a charge is made for such accommodation.

ii. Specific Standards

(1). A campground must provide sites for at least 20 recreational vehicles and/or tents.

(2). The minimum area of each campsite is 1,500 square feet. Each site must be marked or clearly defined on the ground.

(3). The minimum setback requirement between parked recreational vehicles on adjacent sites is 15 feet. Campsites adjacent to a major street or highway shall be setback at least 30 feet.

(4). The minimum width of unobstructed drive lanes within the campground is 20 feet for two-way travel or 12 feet for one-way travel. Dead-end streets shall not exceed 175 feet in length with a minimum internal radius of 60 feet. All streets must be finished with an all-weather surface.

(5). At least one covered garbage container must be provided for campers at the entrance of the campground.

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

(7). Designated outdoor fire locations, if provided, must be in safe and convenient areas where they will not constitute fire hazards to vegetation, undergrowth, trees and recreational vehicles.

(8). Primitive camping cabins, yurts, or other permanent accommodations placed upon and anchored to concrete slabs may occupy five percent of the spaces provided. Such cabins shall not exceed 220 square feet in area and shall provide for no facilities other than sleeping.

c. Short-Term Rental

i. Definition

A residential dwelling unit, or portion of such a unit, that is rented by or on behalf of the owner to the public for compensation for temporary occupancy for less than 30 consecutive days. Short-term rentals do not constitute a long-term residence for a guest(s).

ii. Specific Standards

(1). A short-term rental unit may only be occupied by one household, as defined in Section 14-23-02, at any one time.

(2). No exterior signage or alteration of the outside appearance to reflect the presence of a short-term rental unit is permitted.

(3). Parking space requirements are the same as the applicable dwelling unit type and must be available to occupants for the full duration of the rental period.

(4). A short-term rental may be allowed in an accessory dwelling unit.

(5). Short-term rentals may only be used for overnight accommodations and shall not be used for parties, as defined Section 14-23-02.

(6). Noise associated with the short-term rental shall be limited to what is typically permitted for residential uses in accordance with Chapter 8-10 of the City Code of Ordinances.

5. Medical Marijuana Subcategory

Includes uses are related to the growth and distribution of medical marijuana, as permitted by the State in NDCC Section 19-24.1.

a. Compassion Center Dispensary

i. Definition

An entity registered by the Department of Health and Human Services as a compassion center authorized to dispense usable marijuana to a registered qualifying patient and a registered designated caregiver.

ii. Specific Standards

(1). The dispensary shall be located at least 1,000 feet from any school, college or university, or residentially-zoned property.

(2). Outdoor display of merchandise is prohibited.

b. Compassion Center Manufacturing Facility

i. Definition

An entity registered by the Department of Health and Human Services as a compassion center authorized to produce and process and to sell usable marijuana to a dispensary.

ii. Specific Standards

(1). The manufacturing facility shall be located at least 1,000 feet from any school, college or university, or residentially-zoned property.

(2). Cultivation and processing activities shall take place in an enclosed structure (such as a building or greenhouse).

6. Office Subcategory

Includes uses where people are engaged primarily in on-site administrative, business, or professional activities. These uses are characterized by activities in an office setting that focus on the provision of off-site sale of goods or on-site information-based services, usually by professionals.

a. General Office

i. Definition

The use of a building for conducting activities generally focusing on business or professional services. General office does not include medical office or clinic.

b. Bank or Financial Institution

i. Definition

An establishment that provides retail banking, mortgage lending, and financial services to individuals and businesses, including check-cashing facilities. Automatic teller machines may also be provided as an accessory use.

7. Recreation Subcategory

Includes a broad array of commercial establishments which operate or provide services to meet varied entertainment and recreational interests of their patrons. Restaurants and bars that provide live entertainment in addition to the sale of food and beverages are excluded from this classification and categorized as food and beverage uses.

a. Indoor Entertainment

i. Definition

Entertainment, sports, and recreational activities conducted within an enclosed building, including but not limited to movie theaters, dance halls, bowling alleys, pool halls, ice and roller skating rinks, video game arcades, indoor racquetball, pickleball, or tennis courts, indoor swimming pools, and indoor climbing walls.

ii. Specific Standards

The following standards shall apply to indoor entertainment uses in the CX, DT, PCI, and OS districts:

(1). The indoor entertainment use shall not have vehicle access points from or channel a majority of the traffic generated by the use onto a local residential street.

(2). Any establishment containing over 15,000 square feet of gross floor area shall be located at the intersection of a collector or arterial street with another collector or arterial street.

b. Outdoor Entertainment

i. Definition

Outdoor facilities for entertainment, sports, and recreational activities, including but not limited to zoos, sports arenas, racing facilities, amusement parks, driving ranges, miniature golf courses, outdoor swimming pools, outdoor racquetball, pickleball, or tennis courts, motorized cart and motorcycle tracks, and motorized model airplane flying facilities.

ii. Specific Standards

(1). Design Requirements in All Districts

(a). Sound amplification systems shall be designed so that the noise level at the property line does not exceed the maximum decibel level permitted in the zoning district applicable to the adjacent property. The Director may require noise study pursuant to Section 14-02-05.2 for any racetrack or other outdoor use with significant anticipated noise generation.

(b). The development shall be designed so that no bulb or light source in a ground level fixture is visible from any public right-of-way or adjacent residential properties.

(c). Incidental commercial facilities, such as refreshment stands or pro shops, are permitted subject to the condition they are operated primarily for the patrons of the facility and no outdoor advertising of business or products is maintained.

(d). Parking areas and other areas of intense activity, such as bleachers or rides, shall be setback at least 30 feet from any other property line, and parking surfaces shall have an all-weather surface.

(2). Access Requirements

Outdoor entertainment uses shall not have vehicle access points from or channel a majority of the traffic generated by the use onto a local residential street.

(3). Hours of Operation Restrictions

Outdoor entertainment uses may only operate between 6:00 a.m. and 11:00 p.m.

8. Retail Sales and Service Subcategory

Includes businesses involved in the sale, lease, or rental of new or used products to the general public at a retail location, along with the provisions of commercial and personal services generally rendered on-site.

a. Retail Sales[85]

i. Definition

Establishments engaged in selling goods or merchandise to the general public on-site for personal or household consumption and rendering services incidental to the sale of goods. Typical examples include, but are not limited to, bookstores, clothing stores, grocery stores, appliance stores, flower shops, and pharmacies.

(1). Small retail sales

An establishment with up to 6,000 square feet of gross floor area.

(2). Medium retail sales

An establishment with between 6,001 and 50,000 square feet of gross floor area.

(3). Large retail sales

An establishment with more than 50,000 square feet of gross floor area.

ii. Specific Standards[86]

(1). In the RU district, retail sales uses limited to 2,000 square feet in gross floor area may be permitted in either of the following situations:

[85] New.

[86] New.

(a). The retail sales use is located on a corner parcel at the intersection of a collector or arterial street with another collector or arterial street; or

(b). The applicant can provide evidence that the structure on the subject property was previously used for commercial purposes.

(2). In the RX district, retail sales uses that are not included as part of a mixed-used building shall only be permitted to be located on a corner lot at an intersection including a collector or arterial street.

(3). In the DT district, size limitations are established in Section 14-05-07.3, Building Form.

b. Personal Service[87]

i. Definition

An establishment providing services to the general public in a non-office environment, including but not limited to hair salons, nail salons, barbershops, tanning salons, clothing repair or tailors, photography studios, dry cleaning services, electronic repair, jewelry or watch repair, and funeral homes. Auto repair and body shops are not included under this definition.

ii. Specific Standards

(1). In the RX district, personal service uses that are not included as part of a mixed-used building shall only be permitted to be located on a corner lot at an intersection including a collector or arterial street.[88]

(2). In the DT district, these services are limited to the ground floor, unless the service is provided in a second story extension of the same establishment and the second story floor area is equal to or less than the ground floor area of the same use.

(3). Funeral homes, as defined in Section 14-23-02, shall be permitted in the RX, and DT districts, provided that the funeral home shall be located at least 50 feet from any property zoned RS, RU, RM, RR, RRE, or RMH.

c. Instruction Studio[89]

i. Definition

An establishment that provides teaching or instruction to groups of people, including but not limited to fitness studios, gyms or health clubs, dance studios, art instruction, martial arts training, and music lessons. This use is distinguished from personal service by the larger number of individuals accessing the facility at any given time, and distinguished from educational uses by the non-academic nature of instruction.

[87] New.
[88] New.
[89] New.

ii. Special Standards

In the RX district, instruction studio uses that are not included as part of a mix-used building shall only be permitted to be located on a corner lot at an intersection including a collector or arterial street..

d. Child Care Center[90]

i. Definition

A facility offering care and supervision for hire or compensation, for less than 24 hours per day, for more than 12 children under the age of 12 years, and licensed by the North Dakota Department of Human Services as an early childhood program. The following shall not be considered a child care center:

(1). Child care provided in any educational facility, whether public or private, in grade one or above;

(2). Child care, preschool, kindergarten, and pre-kindergarten services provided to children under six years of age in any educational facility through a program approved by the North Dakota superintendent of public instruction;

(3). Child care provided in facilities operated in connection with a religious facility, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian or custodian is attending religious services or is engaged in other activities on the premises;

(4). Schools or classes for religious instruction conducted by religious orders, Sunday schools, weekly catechism, or other classes for religious instruction;

(5). Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult; and

(6). Child care provided in a medical facility by medical personnel to children who are ill.

ii. Specific Standards

(1). The center shall provide no less than 35 square feet of interior recreation area per child. Work areas, office areas, and other areas not designed for use by children may not be counted in this computation.

(2). The center shall provide an outdoor recreation area for use by the children in care meeting the following:

(a). The recreation area shall be not less than 75 square feet per child who will use the area at a given time;

(b). The recreation area shall be fenced;

(c). The recreation area shall have a minimum width of 20 feet, a minimum depth of 20 feet; and

[90] Existing "child care center" definition.

(d). The be located on the same lot of land as the facility it is intended to serve, unless a space is available that meets all standards of this subsection within ¼ mile walking distance along a safe pedestrian route with sidewalks and marked or low-volume street crossings.

(3). Child care centers shall comply with the applicable requirements of Title 4, Building Regulations and Title 8, Health and Sanitation of the Code of Ordinances, as well as all applicable requirements of the North Dakota Department of Health and Human Services.

e. Commercial Greenhouse[91]

i. Definition

The growing, storage, and sale of garden plants, shrubs, trees, vines, groundcovers, and other related landscaping materials for retail sale to the general public. A commercial greenhouse may include outdoor storage of goods.

f. Sexually-Oriented Business

i. Definition

Any commercial use involving the retail sale, rental or exhibition, of any goods or services that are characterized by an emphasis on the exposure or display of specified sexual activities or specified anatomical parts.

(1). Specified anatomical areas

Less than completely and opaquely covered human genitals, pubic region; buttocks; female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(2). Specified sexual activities

Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling of human genitals, pubic region, buttock or female breast.

ii. Specific Standards[92]

(1). The business shall be located at least 2,000 feet from any existing religious institution, school, or residentially-zoned property and/or property used for residential purposes.

(2). The business shall exclude from its premises any person who is less than eighteen years of age.

(3). The business shall not display signs visible from the exterior of the business except signs identifying the center as a sexually-oriented business.

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

[91] New.

[92] 14-03-08.4.l. Formerly titled “adult entertainment centers.”

(5). The manager and the owners of the business shall register with the chief of police and provide any information the chief may request with respect to their identities, including fingerprints, and prior criminal records, if any.

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

9. Transportation and Vehicle Subcategory

Includes a broad range of uses for air and ground transportation, as well as the maintenance, sale, or rental of motor vehicles and related consumer equipment, including parking facilities as a principal use, either for a fee or for free, but does not include parking accessory to a principal use on the same site.

a. Gas Station[93]

i. Definition

A building or lot having pumps and storage tanks where fuels, oils and/or accessories for motor vehicles are dispensed, sold, or offered for sale at retail only; repair service is incidental; and no storage or parking space is offered for rent. A gas station is district from a truck stop, as it primarily serves passenger vehicles and does not provide extended truck parking or driver services.

ii. Specific Standards

(1). Above-ground storage of petroleum products may be allowed only in the IG district, subject to prior written approval of the Fire Department and adherence to all Fire Code requirements.

(2). The following additional standards apply to gas stations in the CX district:

(a). The minimum total area of the premises shall be at least 21,000 square feet with minimum lot dimensions of 140 feet in width and length.

(b). Pump dispensers shall be set back at least 14 feet from the property line.

(c). The building shall be set back at least 25 feet from any property line adjacent to a public street.

(3). In the DT district, gas stations are only permitted on a lot fronting the DF or DC subdistricts. Where permitted:

(a). No more than two paired pumps shall be permitted within a single island with a single drive aisle allowed on either side of the island.

(b). Minor vehicle repair may be permitted as an accessory use, with overnight vehicle storage not permitted unless within an enclosed building.

[93] Suggested change from “Filling Station” to adopt more commonly used term.

(c). Upon abandonment of the gas station, all structures exclusively used in the business, including underground storage tanks, except buildings, shall be removed by the owner of the property.

b. Truck Stop

i. Definition

A facility designed and intended primarily to serve heavy trucks and commercial vehicles, providing services such as diesel fueling, long-duration parking, driver rest facilities, showers, truck repair or maintenance, scales, and limited food or retail services. A truck stop includes areas for overnight or extended truck parking and may include amenities for long-haul drivers. A truck stop is distinct from a retail or gas station, which primarily serve passenger vehicles and do not provide extended truck parking or driver services.

ii. Specific Standards

(1). All paved areas of a truck stop use accessible to trucks and heavy commercial vehicles shall be at least 500 feet from a residential zoning district.

(2). All specific standards applicable to a gas station shall me met.

c. Car Wash[94]

i. Definition

A facility for the cleaning of automobiles, providing either self-serve facilities, automated machines, or employees to perform washing operations. Car washes may also be established as accessory to a gas station and may obscurely be referred to as auto laundry.

d. Vehicle Sales[95]

i. Definition

Retail sales of new or used motor vehicles, boats, motorcycles, trailers, recreational vehicles, and associated sales and services.

ii. Specific Standards[96]

(1). Vehicles for sale shall not be displayed within the public right-of-way.

(2). In the DT district, vehicle storage is prohibited forward of the parking setback line unless within an indoor vehicle showroom.

(3). All front setback zone requirements of the DT subdistrict apply.

[94] New.

[95] New.

[96] 14-04-21.4.14.

e. Vehicle Repair, Major[97]

i. Definition

An establishment involved in the major repair and maintenance of automobiles, motorcycles, trucks, vans, trailers, or recreational vehicles. Typical services include, but are not limited to, engine, transmission, or differential repair or replacement; body work; upholstery work; painting; and associated repairs.

f. Vehicle Repair, Minor[98]

i. Definition

An establishment engaged in light maintenance activities such as engine tune-ups; oil change and lubrication; brake repair shop; tire store, and detailing and polishing. Vehicle parts ordinarily installed on the premises may be sold.

ii. Specific Standards[99]

(1). All vehicles awaiting repair or pickup shall be stored on site within an enclosed building or in a defined parking space.

(2). All repair work shall be performed within an enclosed building.

(3). All vehicles parked or stored on site shall display a current license plate with a current license tab. Outside storage of automotive parts or storage of junk vehicles shall be prohibited.

g. Parking Lot

i. Definition

Land used for the off-street parking of motor vehicles.

ii. Specific Standards

In the DT district:

(1). Surface parking lots are subject to the parking placement standards in Section 14-05-06.4, Parking and Access, and Section 14-13-09, Vehicle Parking Location and Design Standards.

(2). Surface parking lots may be permitted as an accessory use to any permitted use.

h. Parking Structure[100]

i. Definition

An above ground and/or below ground structure, or a part of a principal structure, designed for parking automobiles, light trucks, and vans, in which at least one level of parking is located above or below another level of parking in the same structure.

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[97] New.

[98] New.

[99] 14-04-21.4.17 and 14-04-21.4.18. Parking and access requirements will be addressed in Parking and Access section (Module 2). Driveway spacing standards will be addressed in the Mobility and Connectivity section (Module 2).

[100] New.

This use does not include parking and storage facilities for recreational vehicles, boats, and trucks seven feet in height or greater.

ii. Specific Standards

In the DT district:

(1). Parking structures are subject to the locational standards and requirements for liner buildings in Section 14-05-06.3.b, Liner Buildings.

(2). Structured parking may be permitted as an accessory use to any permitted use.

i. Transit Center[101]

i. Definition

A facility used as part of a transit system for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another. This use includes passenger rail stations or any building used as a terminal for buses. This use does not include bus stops and bus shelters, which are classified as minor utilities.

ii. Specific Standards

(1). Transit centers are permitted in all DT subdistricts except for lots fronting the DF subdistrict.

(2). Transit centers may be designed as a standalone facility or included as part of a mixed-use building

j. Airport[102]

i. Definition

A place where aircraft can land and depart, usually equipped with landing field facilities for refueling and repair, and various accommodations for passengers.

ii. Specific Standards

(1). A noise study pursuant to Section 14-02-05.2 shall be conducted.

(2). The area shall be sufficient to meet the Federal Aviation Administration (FAA) requirements for the class of airport proposed.

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

(4). There is sufficient distance between the end of each usable landing strip and the airport boundary to satisfy the requirements of the Federal Aviation Administration or any other appropriate authority. In cases where air rights or easements have been acquired from the owners of abutting properties in

[101] New.

[102] New.

which approach zones fall, satisfactory evidence thereof shall be submitted with the application.

(5). Any buildings, hangars or other structures shall be at least 100 feet from any street or lot line.

(6). In addition to the information required generally, the site plan for the airport shall include the following information:

(a). Proposed layout of runways, landing strips or areas, taxi strips, and aprons;

(b). Internal roads and parking areas

(c). Hangars, buildings, and other structures and facilities;

(d). the location and height of all buildings, structures, trees and overhead wires falling within the airport approach zone and less than 500 feet distant from the boundary lines of the airport.

14-10-05. Industrial Uses[103]

Including uses involving extraction, bulk storage, distribution, repair, research, or production of raw materials or manufactured goods, where the finished product is not acquired by the ultimate user on premises.

1. Industrial Sales and Service Subcategory

Includes facilities that specialize in providing services that do not involve members of the general public visiting the site, and that are considered more intensive than a typical commercial use.

a. Wholesale Sales[104]

i. Definition

Establishments primarily engaged in selling merchandise to retail, industrial, commercial, institutional, or professional business users or to other wholesalers, but not to the general public, in which goods are typically purchased or displayed for sale on-site. Wholesale trade does not include uses in the storage and distribution subcategory, which are logistics-based where the primary function is the storage, consolidation, or movement of goods rather than sales.

b. Research and Development[105]

i. Definition

A facility for carrying on investigation in the natural or physical sciences, or engineering and development as an extension of investigation with the objective of creating end products, on a contract or fee basis, and including pilot plant operation.

[103] New.
[104] New.
[105] New.

c. Repair Services[106]

i. Definition

An establishment involved in on-site repair or maintenance of items that are not generally delivered to and retrieved from the site by the ultimate user, including but not limited to: repair of construction or industrial equipment, furniture, appliances, manufactured homes. Repair of motor vehicles or personal services are not included in this subcategory.

2. Manufacturing and Processing Subcategory

Includes establishments involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, constructed, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished, and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, retail activity is a subordinate part of sales. Relatively few customers come to the manufacturing site.

a. General Manufacturing[107]

i. Definition

An establishment engaged in the assembly, fabrication, or processing of goods and materials. Typical examples include but are not limited to: slaughter and packing of animals and meat products; food processing; breweries as defined by the State; tannery, curing, or storing of raw hides; electronic equipment assembly; industrial laundry; manufacturing and assembly from finished products; manufacturing and processing of raw materials; and drop forge industry.

ii. Specific Standards[108]

(1). There is no emission of toxic gases or fumes.

(2). There is no production of heat or glare perceptible from any boundary of the subject property on which the use is located.

(3). There is no production of noise at any boundary of the subject property on which the use is located in excess of the average intensity of street and traffic noise at that point.

(4). Any outdoor storage area associated with the principal use of the site shall be enclosed on all sides by a wall or fence at least six feet in height.

(5). The following uses shall be located at last 500 feet from any non-industrial district:

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

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

(c). Fertilizer manufacturing;

[106] New

[107] New.

[108] 14-03-07.14, a-d and e3.

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

(e). Electric generating plant;

(f). Smelting of tin, copper, zinc, or iron ore;

(g). Soap manufacture;

(h). Slaughter and packing of animals and meat products; and

(i). Tanning, curing or storing raw hides.

b. Artisanal Manufacturing[109]

i. Definition

An establishment or business where an artist, artisan, or craftsperson creates crafts or products by hand or with minimal automation. Artisanal manufacturing is limited to small-scale fabrication or manufacturing operations and may also include an accessory component of limited direct sales to consumers. Typical examples include but are not limited to: pottery, weaving, soap-making, 3-D printing, coffee roasting, and by-hand furniture production. This use does not include alcohol production.

ii. Specific Standards

(1). Artisanal manufacturing facilities shall be limited to structures of 10,000 square feet or less in gross floor area, and all operations shall be conducted entirely within the principal structure.

(2). There is no emission of toxic gases or fumes.

(3). There is no production of heat or glare perceptible from any boundary of the subject property on which the use is located.

(4). There is no production of noise at any boundary of the subject property on which the use is located in excess of the average intensity of street and traffic noise at that point.

(5). Artisanal manufacturing conducted within a live-work dwelling shall be subject to the standards and limitations of Section 14-10-02.1.f, Live-Work Dwelling.

c. Asphalt or Concrete Batch Plant[110]

i. Definition

A facility for the manufacture or mixing of asphalt or concrete, including any apparatus and uses accessory to such manufacturing and mixing.

ii. Specific Standards[111]

(1). All facilities shall be located from the nearest property line of any RS, RU, RM, RX, RR, or RRE zoning district, at least:

[109] New.

[110] New.

[111] 14-03-08.4.t. Removed statement of compliance with IBC and Fire Code (because all new buildings must be compliant).

(a). 1,000 feet for an asphalt batch plant; or

(b). 600 feet for a concrete batch plant.

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

(3). The applicant shall submit an approved air quality permit from the North Dakota Department of Environmental Quality prior to approval of a building permit or temporary use permit, if applicable.

(4). Temporary facilities are governed by Section 14-10-08.9, Temporary Asphalt or Concrete Batch Plant.

d. Data Center

i. Definition

A facility used primarily for the storage, management, processing, and transmission of digital data, which houses computer or network equipment, servers, and other equipment, appliances, and components related to digital data storage and operations. Uses that include data processing as accessory to the principal use on the property shall not be considered a data center.

(1). Data Center, Major

A data center where the total connected electrical load or designed electrical capacity of the facility exceeds 5 megawatt (MW).

(2). Data Center, Minor

A data center where the total connected electrical load or designed electrical capacity of the facility exceeds 100 kilowatts (KW) and is 5 megawatt (MW) or less.

(3). Micro Data Center

A data center where the total connected electrical load or designed electrical capacity of the facility is 100 kilowatts (KW) or less and

ii. Specific Standards[112]

(1). Permission by Type

(a). A major data center may be permitted in the IG district with special use permit approval, as described in Section 14-20-05.8, Special Use Permit.

(b). A minor data center may be permitted in the IG district by right or the IX or CG district with special use permit approval, as described in Section 14-20-05.8, Special Use Permit.

(c). A micro data center may be permitted in the OX, CX, CG, IX, IG, A, and PCI zoning districts, or in any zoning district within the fenced perimeter of a utility or telecommunications use, only as a secondary use to the principal use on the property.

[112] Subsection 7., Additional Requirements, carries forward 14-03-08.4.z, but the other standards are new.

(2). Information at Submittal

Any application for site plan or special use permit shall include a narrative describing the proposed project, including designed electrical capacity, cooling method, the anticipated design life, estimated daily trips during construction and operation, including heavy trucks and passenger vehicles, and general construction phasing plan, description of wastewater the facility will create and approach to managing discharges, if applicable.

(3). Enclosed Building

(a). A data center must be entirely contained within an enclosed building constructed in compliance with the International Building Code and International Fire Code.

(b). Notwithstanding, this requirement may be waived if a data center is collocated with an electrical substation or other utility infrastructure.

(4). Landscaping

(a). Landscaping and buffering shall be required as described in Chapter 14-15, Landscaping and Screening.

(b). Data centers that share a property line with a residential use or zoning district may be subject to enhanced buffering requirements, as described in Section 14-15-09, Buffer Yards.

(5). Mechanical Equipment Screening

(a). Ground- and roof-mounted equipment shall be fully screened from a public right-of-way with material compatible with that used on the rest of the structure; perforations for ventilation are permitted.

(b). Ground-mounted mechanical equipment may not be located in a front yard.

(c). The Director may waive screening requirements when the subject property is located adjacent to other industrially zoned properties.

(6). Projected Noise Impacts

(a). Data centers must demonstrate that requirements of Chapter 8-10 (Noises) of the Code of Ordinances will be met through submittal of:

(i). For minor data centers, manufacturer specifications of equipment or a noise study pursuant to Section 14-02-05.2 modeled to the nearest adjacent property lines.

(ii). For major data centers, a noise study pursuant to Section 14-02-05.2 modeled to one-half mile from the property lines of the subject site.

(b). The City may require of data center operator a post-construction noise study that demonstrates the operation complies with the Noise Ordinance.

(c). Notwithstanding, noise levels may be temporarily exceeded during:

(i). Emergency operations due to use of back-up generators during power grid interruptions; or

(ii). Testing of backup generators only on weekdays, between 9 a.m. and 5 p.m. Only one generator may be tested at a time at the site.

(7). Adjacency and Design

(a). Major data centers that share a property line with or are across a right-of-way from any zoning district other than IG, OS, or A shall include:

(i). Windows, doors, or similar fenestration design features that are distributed horizontally across the façade and comprise no less than 30 percent of the façade's surface area; and

(ii). A variation in the building material or design for every 150 horizontal feet of façade surface, to include at least one of the following: building material, pattern, texture, color, or accent material.

(b). Major data centers that share a property line with a preexisting residential use or RS, RR, RRE, or RU zoning district shall locate no structure or equipment within 1,000 feet of the shared property line.

(8). Utility Capacity

(a). The applicant shall submit written verification from the electric utility provider that sufficient capacity exists to meet anticipated needs for electrical power.

(b). The applicant shall submit written verification from the Director of Public Works, Utility Operations that sufficient municipal water capacity exists on the site to meet all anticipated operational and fire suppression needs of the data center.

e. Mining and Extraction[113]

i. Definition

The extraction, removal, or processing of oil, gas, sand, clay, loam, gravel, rock, top soil, or fill materials (exclusive of sod) for either commercial or off-site purposes or use, except as a necessary incident to any construction on the premises.

3. Salvage and Waste Subcategory

Includes facilities that collect, store, process, or sell waste or salvage materials, or collect and process recyclable material, for the purpose of marketing or reusing the material in the manufacturing of new, reused, or reconstituted products.

a. Junkyard or Salvage Yard

i. Definition

The use of any part of any premises whether inside or outside of a building for the storage, keeping, or abandonment of junk, including scrap metals, rags, paper or

[113] New.

other scrap material, used lumber, salvage house wrecking and used structural steel material, and equipment or for dismantling. The use of the premises for the storage of motor vehicles for dismantling and sale of used parts, or the demolition or storage of unlicensed or abandoned automobiles or other vehicles, is also included.

ii. Specific Standards[114]

(1). The lot area shall be a minimum of two acres and a maximum of five acres.

(2). The site shall not be located adjacent to any arterial street or Interstate 94.

(3). The burning of materials deposited at the site shall be prohibited.

(4). All materials deposited at the site shall be stored within the enclosed area, created by an opaque wall or fence at least eight feet in height, or as approved by the Planning and Zoning Commission. No materials shall be stacked higher than the top of the wall or fence.

(5). The enclosed area shall be set back at least 15 feet from any property line that borders a public right-of-way. All areas between the property line that border a public right-of-way and the required wall or fence shall be landscaped according to the requirements of Chapter 14-15, Landscaping and Screening.

b. Solid Waste Disposal Facility[115]

i. Definition

A facility for the incineration or disposal of solid waste or solid waste residue which is required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories.

ii. Specific Standards[116]

(1). The facility shall be located at least 2,640 feet from any residentially-zoned property or residential dwelling units.

(2). The facility is continuously licensed and approved by the North Dakota Department of Health as to location and operation.

(3). No medical waste incinerator may be constructed within Bismarck city limits or its extraterritorial area.

4. Storage and Distribution Subcategory

Includes facilities used for the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses as well as the storage or goods for commercial or personal purposes. These uses often include on-site sales staff for order taking, and may include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the business operates.

[114] 14-03.08.4.i.

[115] Relocated from 14-03-08.

[116] 14-03-08.4.p.

a. Hazardous Material Storage[117]

i. Definition

An establishment engaged in the handling or storage of chemicals or substances that are physical or health hazards, such as explosives and blasting agents, compressed gases, flammable and combustible liquids, flammable solids, organic peroxides, oxidizers, pyrophoric materials, unstable (reactive) materials, water reactive solids and liquids, cryogenic fluids, highly toxic and toxic materials, radioactive materials, corrosives, carcinogens, irritants, sensitizers and other health hazards.

ii. Specific Standards

Bulk storage plants for the purpose of storage and distribution of flammable, combustible, or hazardous materials in a liquid, gaseous, or solid state may be permitted, provided:

(1). The proposed facility meets all requirements of the city's fire code;

(2). The proposed facility shall not be adjacent to waterways or drainage ways;

(3). The proposed facility shall be located at least 400 feet from any residentially-zoned property; and

(4). The proposed facility shall be located within 800 feet of a dependable water supply for fire suppression purposes.

b. Personal Flex[118]

i. Definition

A non-habitable, non-commercial building used by an individual or household for personal storage, hobbies, craftwork, or private recreation, and not open to the public. Personal flex uses are intended for use by residents of an adjacent neighborhood.

ii. Specific Standards[119]

(1). Personal flex uses may only be permitted on a lot that includes four or more independent personal flex units.

(2). Personal flex structures shall not be occupied as a residence, temporarily or permanently.

(3). Personal flex uses are for private use only. Any commercial activity is prohibited, including storage of commercial goods or public assembly. Personal flex uses shall not be considered an extension of a residence that would allow a home occupation activity.

(4). A Level 2 enhanced landscaped buffer shall be planted where adjacent to residential uses, as described in Section 14-15-09, Buffer Yards.

[117] New.

[118] New.

[119] New standards added to address the desire for neighborhood-serving storage structures.

(5). Personal flex uses may be supplied with water and sewer service to each unit.

(6). The maximum building height of a personal flex structure is 25 feet.

(7). Buildings shall be located with a minimum width of 60 feet of hard-surfaced area when two garage fronts face each other.

(8). The following design standards regarding materials and appearance shall apply to align personal flex structures with the residential character of the surrounding properties:

(a). The front building façade and any façade visible from the public right-of-way shall be designed with finished materials covering at least the bottom 30 percent of the area of each wall on all sides, with finished building materials being limited to modular masonry materials such as brick, stone or dimensional block; precast concrete or aggregate panels; stucco or stucco-like materials; or prefinished metal architectural panels.

(b). All subsequent renovations, additions and related structures constructed after the construction of the original building shall be constructed of materials comparable to those used in the original construction and shall be designed in a manner conforming to the original architectural design and general appearance.

(c). Overhead doors shall be inwardly-oriented to the greatest degree feasible on the lot.

(9). If a homeowners association exists or will be created for an adjacent neighborhood, authority over management of personal flex uses should be assigned to this homeowners association rather than an independent association. Evidence of adequate long-term management may be requested during the special use permit process.

c. Storage Yard[120]

i. Definition

The use of land for the principal purpose of outdoor storage of equipment, supplies, or other items or goods, but excluding uses more specifically defined in this Code. A storage yard includes any use that functions as the base of operations for contractors rendering service off-site. On-site outdoor storage of materials by a principal land use shall be considered an accessory use.

ii. Specific Standards

The storage yard shall be enclosed on all sides by a wall or fence at least six feet in height.

[120] New.

d. Self-Storage Facility[121]

i. Definition

A building or group of buildings that contains varying sizes of individual, compartmentalized, and controlled access units or lockers for use by members of the general public for storage of personal or business items.

ii. Specific Standards

(1). The self-storage structure shall not be used for residential occupancy.

(2). A dedicated parking lane with a minimum width of nine feet shall be provided adjacent to each storage unit opening in the building. Driveways adjacent to each parking lane shall be a minimum of 20 ft in width. In facilities provided with a dedicated rental or leasing office, one space per 300 gross sf of office area must be provided.

(3). In the OX, CX, and CG districts, storage uses must be finished with masonry wainscot not less than three feet high around the perimeter or incorporate other architectural features to assure compatibility with commercial character, as deemed appropriate by the Director.

(4). In the DT district, self-storage is only permitted on lots fronting the DC and DF subdistricts, where access to individual storage units must be from the building interior.

e. Personal Flex[122]

A non-habitable, non-commercial building used by an individual or household for personal storage, hobbies, craftwork, or private recreation, and not open to the public. Personal flex uses are intended for use by residents of an adjacent neighborhood.

(1). Personal flex uses may only be permitted on a lot that includes four or more independent personal flex units.

(2). Personal flex structures shall not be occupied as a residence, temporarily or permanently.

(3). Personal flex uses are for private use only. Any commercial activity is prohibited, including storage of commercial goods or public assembly. Personal flex uses shall not be considered an extension of a residence that would allow a home occupation activity.

(4). A Level 2 enhanced landscaped buffer shall be planted where adjacent to residential uses, as described in Section 14-15-09, Buffer Yards.

(5). The maximum building height of a personal flex structure is 25 feet.

(6). Buildings shall be located with a minimum width of 60 feet of hard-surfaced area when two garage fronts face each other.

[121] New.

[122] New.

(a). Overhead doors shall be inwardly-oriented to the greatest degree feasible on the lot.

f. Truck Terminal or Distribution Center[123]

i. Definition

A facility in which goods shipped by truck are loaded, unloaded, or transferred between trucks and/or vans for shipping or distribution, together with incidental truck storage, maintenance, and administrative offices.

g. Warehouse[124]

i. Definition

A building used primarily for the storage of goods and materials. A warehouse includes any use that functions as the base of operations for contractors rendering service off-site.

14-10-06. Utility and Telecommunication Uses[125]

Facilities involved in the provision of public and quasi-public services to individuals and the community, including the collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, power, information, telecommunications and telephone cable, and facilities for the generation of electricity.

1. Telecommunications Subcategory

Includes facilities designed and used for the purpose of transmitting, receiving, and relaying signals from various wireless communication devices.

a. Broadcasting Station or Tower[126]

i. Definition

Radio and television broadcasting and receiving stations and studios, with facilities entirely within buildings, except for accessory uses like antenna, broadcasting dishes, and related facilities.

b. Wireless Communications Facilities (WCF)

i. Definition

A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies. A Wireless Communications Facility does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A Wireless

[123] New.
[124] New.
[125] New.
[126] New.

Communications Facility includes an antenna or antennas, including without limitation, directional, omni-directional and parabolic antennas, support equipment, alternative tower structures and towers. It does not include the support structure to which the facility or its components are attached if the use of such structures for Wireless Communications Facilities are not the principal use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios/telephones and their associated transmitting antennas.

ii. Specific Standards[127]

(1). Purpose

The purpose of this subsection is to establish development standards for wireless communications facilities (WFCs) that comply with the requirements of state and federal law for public and private telecommunication service and to:

(a). Protect the public safety and welfare, safeguard community land values, and promote orderly planning and development;

(b). Provide for the managed development, installation, maintenance, modification, and removal of wireless communications infrastructure in the city and extraterritorial area with the fewest number of WCFs to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent service;

(c). Encourage the joint use and location of new and existing WCFs; and

(d). Mitigate any adverse, undesirable visual impacts on the community.

(2). Applicability

(a). This subsection shall apply to all WCF applications and shall not preempt underlying zoning regulations unless explicitly stated in this subsection or as explicitly stated in federal and/or state law.

(b). The requirements of this subsection shall not apply to:

(i). Any WCF for which a permit has been properly issued prior to the effective date of this Code, provided that changes and additions to pre-existing WCFs shall meet applicable operational standards set forth in this subsection.

(ii). Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are used exclusively for receive-only antennas, provided the antenna is no taller than the distance from the base of the antenna to the property line.

(iii). Antennas used for reception of television, multichannel video programming, and radio such as OTARD antennas, television broadcast band antennas, and broadcast radio antennas, provided that the antenna complies with all applicable standards in this Code

[127] New standards proposed in place of 14-04-21.4.16, Telecommunication Facilities.

related to accessory uses, and provided the antenna is no taller than the distance from the base to the property line. The Director may approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures if the Director determines that modifications are necessary to comply with federal law.

(iv). Any WCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of public necessity by the City.

(3). General Provisions

(a). Federal Requirements

All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate WCFs. If the standards and regulations are changed, then the owners of the WCF shall bring the facility into compliance with the revised standards and regulations within the time period mandated by the controlling federal agency.

(b). Signal Interference

All WCFs shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone, and other communication services used by adjacent residential and non-residential properties; nor shall any facilities interfere with any public safety communications.

(c). Operation and Maintenance

To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with standards contained in applicable local building and safety codes.

(d). Abandonment and Removal

(i). For any WCF constructed after the effective date of this Code, if the WCF is not used to transmit, receive, or relay voice and data signals to or from wireless communication devices for a period of six months, the WCF shall be considered abandoned, and the owner of record shall notify the Director and apply for a permit to remove the structure. All WCFs shall be restored to service or removed by the person who constructed the facility, by the person who operated the facility, or by the property owner within 18 months from the time the WCF ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices.

(ii). If the use of the WCF has not been restored within an 18-month period from the time the WCF has ceased being used to transmit, receive or relay voice and data signals to or from wireless communication devices, the WCF shall be removed and the WCF

site restored to its original or better condition, at the property owner's expense.

(e). Building Permit Required

A site plan and building permit is required for all new WCFs.

(4). Standards for Specific Facility Types

(a). Attached Wireless Communication Facilities (Building or Roof-Mounted)

(i). Roof mounted WCFs, including the antenna, support structures, and screening, shall not project more than ten feet above the roof line of a building.

(ii). If placed on a structure or building that is nonconforming due to setbacks or height, the addition of antennas or equipment shall not increase the nonconformity.

(iii). Building mounted WCFs, including the antenna, support structures, and screening, shall not extend above the top of the structure or the parapet wall, or, in the case of a pitched roof, above the fascia.

(iv). Attached WCFs shall use camouflage design techniques. An attached WCF shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as technically feasible. Screening shall be used when the visibility of the antennas cannot be minimized by location or painting of the antennas.

(b). Tower, Collocation

An application for the collocation of antennas or other equipment on an existing approved tower shall meet the requirements for an Eligible Facilities Request as set forth in subsection v, below.

(c). Tower, New

(i). To the maximum extent practicable, new towers shall use “stealth technology” to mitigate and/or camouflage visual impacts. Stealth technology consists of, but is not limited to, the use of grain bins, silos or elevators, church steeples, water towers, clock towers, bell towers, false penthouses, or other similar “mimic” structures. “Mimic” structures shall have a contextual relationship to the adjacent area.

(ii). The minimum lot area of any parcel of land proposed for the establishment of a new tower shall be at least one-half acre in size. There shall be no minimum size requirements for the leased parcel.

(iii). All towers shall be setback, at a minimum, the overall height of the tower from any property line. All measurements shall be from the leading edge of the tower structure. Setbacks for guyed wire bases

will be the same as required for an accessory structure in the zone district in which the tower is located.

(iv). There is no minimum setback standard for related accessory buildings and support facilities provided the construction/placement of the buildings and support facilities are contained within the designated fenced leased parcel.

(v). The height of any telecommunication tower shall be governed by the height limit imposed in the special use permit. Any telecommunication tower that is proposed to be established with an overall height of 150 feet or greater shall be required to file with the Federal Aviation Administration Form 7460-1 Notice of Proposed Construction or Alteration for the proposed tower.

(vi). Lighting of telecommunication towers shall only be permitted as required by the Federal Aviation Administration and shall be governed by the Federal Aviation Administration Obstruction Marking & Lighting Advisory Circular (AC 70-7460-1K).

(vii). The boundary of the leased parcel surrounding the telecommunication towers and its related accessory buildings and support facilities shall be fenced with a minimum six-foot security-type fencing. In addition, subject to review and analyses, all telecommunication towers shall be constructed and made available as to permit collocation of, at minimum, two additional, functionally equivalent service providers.

(5). Small Cell Facilities

(a). Definition

A WCF where each antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are not larger than 17 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.

(b). Accessory Equipment and Transmission Equipment

(i). All transmission equipment and accessory equipment shall be grouped as closely as technically possible.

(ii). Transmission equipment and accessory equipment shall be located out of sight whenever possible by locating within equipment enclosures. Where such alternate locations are not available, the transmission equipment and accessory equipment shall be

camouflaged or concealed in a manner appropriate to the character of the site.

(iii). Transmission equipment and accessory equipment shall be of a neutral, nonreflective color that is identical to, or closely compatible with, the color of the supporting structure or uses other camouflage/concealment design techniques to make the equipment as visually unobtrusive as possible, including, for example, painting the equipment to match the structure.

(c). Eligible Facilities Request

All applications for approval of an eligible facilities request and treatment of WCFs that do not propose a substantial change to existing WCFs shall be processed according to and meet the requirements of the federal Telecommunications Act and Section 6409 of the Middle Class Tax Relief and Job Creation Act (2012), also known as the "Spectrum Act," as amended by the federal courts.

2. Utilities Subcategory

Includes facilities for the provision of public goods and services.

a. Battery Energy Storage System

i. Definition

One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle.

ii. Specific Standards[128]

(1). Lighting

Lighting shall be limited to what is minimally required for safety and operational purposes and shall be shielded and downcast from abutting properties.

(2). Vegetation Maintenance

Areas within ten feet of systems that exceed 600 kWh shall be cleared and maintained clear of vegetation and other combustible growth. Trees, shrubbery, or cultivated ground covers such as turf, ivy, succulents, or similar plants used as ground covers may be permitted provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent practicable.

(3). Decommissioning

(a). A decommissioning plan shall be provided for systems that exceed 600 kWh to be implemented upon abandonment and/or in conjunction with removal of the facility. The decommissioning plan shall include:

[128] New.

(i). A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;

(ii). Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;

(iii). The anticipated life of the battery energy storage system;

(iv). The estimated decommissioning costs and how said estimate was determined;

(v). The method of ensuring that funds will be available for decommissioning and restoration;

(vi). The method by which the decommissioning cost will be kept current;

(vii). The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and

(viii). A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

(b). The owner and/or operator of the energy storage system shall continuously maintain a fund or bond payable to the City, in a form approved by the City for the removal of the battery energy storage system, in an amount to be determined by the City, for the period of the life of the facility. This fund may consist of a letter of credit from a State of North Dakota licensed-financial institution. All costs of the financial security shall be borne by the applicant.

b. Energy Production

i. Definition

A facility for the direct generation of energy at a utility-scale for distribution to the power grid or power distribution facilities.

ii. Specific Standards

(1). For a lot line abutting any residential zoning district:

(a). A landscaped buffer yard no less than 15 feet in width is required along the entire length of the abutting side or rear lot line.

(b). The buffer yard shall be planted with two shade trees, two ornamental trees, and two large upright coniferous trees per 100 linear feet of shared lot line in conjunction with site development.

(c). Alternative material types and number of plantings may be requested through the landscape plan application in situations where there are concerns with site security.

(2). Security fencing shall be erected around the perimeter of any site where there is any potential safety hazard. Fencing shall be at least six feet high and may be placed within a required setback provided that the fence is not located within a required sight triangle as described in Section 14-23-01.11, and provided that the location of any gated entrance is set back at least 20 feet from any property line.

(3). For any energy production facility constructed after the effective date of this Code, if the facility is not in use for a period of six months, the facility shall be considered abandoned, and the owner of record shall notify the Director and apply for a permit to remove the structure. All energy production facilities shall be restored to service or removed by the person who constructed the facility, by the person who operated the facility, or by the property owner within 18 months from the time the facility ceased being used to produce energy.

(4). If the use of the energy production facility has not been restored within an 18-month period from the time the facility has ceased being used to produce energy, the facility shall be removed and the site restored to its original or better condition, at the property owner's expense.

c. Wind Turbine Facility

i. Definition

One or more wind turbines, including appurtenant structures and facilities, rated at an individual or combined nameplate capacity of 150 kilowatts or greater

d. Major Utilities[129]

i. Definition

A large-scale utility facility or installation that provides essential services to a broad service area and involves significant land area, structures, or infrastructure. Major utilities typically include power-generation facilities, electrical substations, wastewater treatment plants, water treatment plants, high-capacity pump stations, regional lift stations, transmission pipelines, and similar system-level facilities with substantial visual, noise, or operational impacts.

[129] New.

ii. Specific Standards[130]

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

(2). Structures and equipment other than buildings, such as those found in an electric transformer station, must be setback at least:

(a). Fifteen feet from the front property line in all zoning districts;

(b). Fifteen feet from the side or rear lot line in or abutting any agricultural or residential district; and

(c). Ten feet from the side or rear lot line in any non-residential zoning district.

(3). For a lot line abutting any residential zoning district:

(a). A landscaped buffer yard no less than 15 feet in width is required along the entire length of the abutting side or rear lot line.

(b). The buffer yard shall be planted with two shade trees, two ornamental trees, and two large upright coniferous trees per 100 linear feet of shared lot line in conjunction with site development.

(c). Alternative material types and number of plantings may be requested through the landscape plan application in situations where there are concerns with site security.

(4). Security fencing shall be erected around the perimeter of any site where there is any potential safety hazard. Fencing shall be at least six feet high and may be placed within a required setback provided that the fence is not located within a required sight triangle as described in Section 14-23-01.11, and provided that the location of any gated entrance is set back at least 20 feet from any property line.

e. Minor Utilities[131]

i. Definition

A small-scale public utility installation that provides localized service and involves minimal land area, structures, or operational impacts. Minor utilities typically include local distribution lines, electrical and gas distribution stations, lift stations, electrical and communications boxes, and bus stops and/or bus shelters.

14-10-07. Accessory Uses and Structures

1. Purpose

The purpose of this section is to provide definitions and standards for accessory uses allowable within zoning districts of the Land Development Code.

[130] 14-03-07.15.a, Utility Service Group requirements, provisions 2 and 5-8. Requirements that are generally applicable to all uses (such as building setback and minimum lot size standards) were not carried forward.

[131] New.

2. General Standards[132]

Permitted uses and approved special uses shall be deemed to include accessory uses and accessory structures that are customarily incidental to the principal use, subject to the following standards:

a. Standards Applicable to All Accessory Uses

Accessory uses and buildings shall comply with the following standards:

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

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

iii. No accessory use or structure shall be constructed or established on any lot prior to the time of the substantial completion of construction of the principal use or structure to which it is accessory.

b. Accessory Uses and Structures in Agricultural and Residential Districts[133]

i. All accessory buildings shall comply with the applicable provisions of Section 14-02-04.

ii. Private swimming pools, or swimming pools for the use of residents and their guests, are allowed in accordance with the provisions of Chapter 4-06 of the Code of Ordinances.

iii. Accessory buildings, not including structured parking, shall be located on the side or rear of the principal building and are not permitted within any required front setback.

iv. The accessory building footprint limitation in Table 14-03-1: Residential District Dimensional Summary, includes the following buildings: barns, stables, coops, storage buildings, garden sheds, and detached garages. Attached garages are not included in the accessory building footprint computation, provided the area occupied by an attached garage does not exceed one and one-half times the area of the footprint of the dwelling to which it is attached.

c. Accessory Uses and Structures in Non-Residential Districts

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

ii. All other accessory buildings and structures, including mechanical equipment and electrical transformers, shall comply with the applicable setbacks and lot coverage requirements for principal buildings within the underlying district.

[132] Current 14-03-06.1, with modifications for consistency. Dimensional standards included in 14-03-06.1 have been relocated to the appropriate zoning district dimensional standards tables.
[133] Regulations regarding the number of dogs and cats permitted have been removed, since Title 3 of the municipal code covers animals.

iii. The provisions of Section 14-02-04, Residential Transitions, do not apply to non-residential accessory buildings in non-residential districts.

3. Accessory Dwelling Unit[134]

a. Definition

A separate and complete dwelling unit accessory to the principal dwelling unit, whether within the same structure as the principal unit or within a detached accessory structure on the same lot. An accessory dwelling unit contains at least one bedroom, kitchen, bathroom facilities, and a separate exterior entrance.

b. Specific Standards

i. Purpose

Accessory dwelling units (ADUs) are permitted to provide for a broader range of housing options, efficiently utilize existing infrastructure and housing stock, and preserve the character of existing low-density neighborhoods.

ii. Requirements for All Accessory Dwelling Units

(1). Number and Dimensional Standards[135]

(a). Number Allowed

No more than one ADU may be permitted per single-family detached dwelling or two-family attached dwelling.[136]

(b). Permitted Area

(i). Units within Principal Structure[137]

The floor area of the ADU may not exceed 40 percent of the gross floor area of the principal structure, excluding any attached garage or storage and utility areas used by the principal dwelling.

(ii). Units within Accessory Structure

On any lot five acres or less in area, the floor area of an ADU may not be greater than 800 square feet or less than 300 square feet. On any lot greater than five acres in area, the floor area of an ADU may be up to 1,200 square feet. Measurements only apply to the living unit area of the ADU and shall excluded any garage space or storage if utilized by the principal dwelling.

(2). Utility Requirements

An accessory dwelling unit must be connected to public utilities if available on the lot. If the lot is serviced by an on-site sewage treatment facility, the

[134] 14-03-08.4.y, with modifications to make ADUs generally more permissive (such as removing the occupancy requirement and allowing ADUs by-right).

[135] Removed one bedroom limitation. Most communities do not specify number of bedrooms, and instead rely on square footage limits, and building code for number of occupants.

[136] This is common, but some communities are beginning to allow one internal and one detached ADU on single-family lots of a designated size.

[137] Removed minimum and maximum area (300-800 sf) for interior ADUs.

applicant must show that sufficient sewage treatment capacity will be available to meet anticipated needs.

(3). Other Standards[138]

An accessory dwelling unit on any lot that does not conform to the minimum lot size requirement of the underlying zoning district may only be permitted inside the principal building.

4. Accessory Sales and Service[139]

a. Definition

The accessory sale of goods and services on publicly- or quasi-publicly owned lands, including but not limited to food concession stands and gift shops.

b. Specific Standards

5. Agriculture Recreation, Major

a. Definition

Any agricultural-related use that combines agriculture production with commercial recreation uses that are accessory to the primary agricultural use. Such uses include but are not limited to education related events and tours, a celebration, ceremony, wedding, reception, corporate function, u-pick produce, Christmas tree farm, pumpkin patches, corn maze and hayrides for someone other than the property owner.

b. Specific Standards

i. The use is accessory to the primary agricultural use.

ii. The lot on which the use is located is outside the Urban Service Area Boundary.

iii. The lot on which the use is located is at least 35 acres in area.

iv. The use is setback at least 50 feet from any property line adjacent to properties with a residential use, zoning, or land use classification.

v. Attendance is limited to 250 persons at any one time.

vi. The use may be permitted for no more than 30 days per calendar year, not to include minor agriculture recreation uses.

vii. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted in Title 4 of the City Code of Ordinances.

viii. A site plan, and if necessary, a stormwater management plan, shall be submitted for review and approval prior to the issuance of a building permit or commencement of operations.

[138] Removed “one family” requirement. Since building code sets occupancy limits based on size, zoning does not need to specify this.
[139] New.

ix. All parking areas shall be mowed and designed to prevent debris from the site entering the public right-of-way and be arranged to provide for orderly and safe loading or unloading and parking.

x. Access to buildings or areas associated with the agriculture recreation use shall be an all-weather access and be designed for safe and orderly access for patrons and emergency services.

xi. Sound generated by the use shall meet the requirements outlined in Chapter 08-10 of the City Code of Ordinances.

xii. All outdoor light fixtures shall be installed in accordance with Chapter 14-17.

6. Agriculture Recreation, Minor

a. Definition

Any agricultural-related use that combines agriculture production with commercial recreation uses that are accessory to the primary agricultural use. Such uses include education related events and tours, farm to table dinners, pumpkin patches, u-pick produce, Christmas tree farm, corn maze, and hayrides for someone other than the property owner.

b. Specific Standards[140]

i. Minor agriculture recreation uses shall not exceed an occupancy of 75 people at any one time.

ii. The use is conducted on a property with active farming or ranching.

7. Animal Husbandry Category[141]

The keeping, rearing, exercising, feeding, milking, handling, or general care of non-domesticated animals, including mules, ducks, emus, horses, goats, llama, poultry, and sheep, not primarily for produce or value increase but rather for show, sport, or as pets.

a. General Standards

i. Animal husbandry is only permitted in RRE, RR, and A districts located outside of the corporate city limits.

ii. No stable, barn, coop, or shelter shall be located within 100 feet of any existing residence or permitted structure on a neighboring property. In instances where a structure is constructed on a neighboring property within 100 feet of an existing stable, barn, coop, or shelter, the stable, barn, coop, or shelter may remain.

b. Animal Keeping

Any animals, except horses, that typically weigh more than 100 pounds when mature or that are typically raised for sale or profit, such as mules, goats, llamas, cattle, swine, or alpacas, are only permitted in the A district, which are still subject to requirements for animal feeding operations.

[140] 14-02-03.

[141] New.

c. Chicken Coop[142]

i. Definition

A cage or enclosure for housing chickens.

ii. Specific Standards[143]

(1). The keeping of roosters shall be prohibited. The keeping of hens shall be for private use only.

(2). No more than ten hens shall be kept at a time.

(3). All hens shall be kept in a fenced area.

d. Personal Riding Stable[144]

i. Definition

An area for keeping horses or other domestic animals for the property owner's personal use.

ii. Specific Standards[145]

(1). Animals shall be for personal use only.

(2). In the RRE district, three horses shall be permitted on any premises that contains at least five acres. In the RR district, two horses shall be permitted on any premises that contains at least two acres. In either district, additional horses may be permitted at the rate of one horse for every additional three acres of property owned.

(a). For the purpose of calculating the number of horses allowed under this section, a miniature horse shall be deemed to be the equivalent of 0.66 of a horse.

(b). For the purposes of this section, a horse will be only those horses that are one calendar year of age or older and a miniature horse shall be defined as a horse less than 50 inches high measured at the withers.

8. Drive-Through[146]

a. Definition

An accessory feature of an establishment that permits customers to receive services or obtain goods while remaining in or on a motor vehicle.

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[142] New.

[143] 14-04-01.2.e.

[144] New.

[145] 14-04-01.2.d. Added sentence to clarify that if a dwelling is constructed after the stable, the stable may remain.

[146] New.

b. Specific Standards[147]

i. For a drive-through lane adjacent to a public right-of-way, landscaping must be provided in accordance with the provisions of Chapter 14-15, Landscaping and Screening.

ii. Sound from the order confirmation system shall be designed so that the noise level at the property line does not exceed the maximum decibel level permitted in the zoning district applicable to the adjacent property.

iii. Stacking requirements of Section 14-13-11 Off-Street Vehicle Stacking must be met.

iv. In the DS, DM, and DG subdistricts:

(1). Drive-through lanes are not permitted between the building façade and a public right-of-way or other public space, other than an alley.

(2). All subdistrict development standards apply.

9. Electric Vehicle Charging Station[148]

a. Definition

A facility in which electric vehicle charging services are made available to the public or to members for a fee, including structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

10. Home Occupation

a. Definition

A business, business activity, profession, occupation, or trade activity occurring on a residential property that is conducted by at least one or more occupants of the residence, as an accessory use to the principal residential use of the dwelling, for economic gain other than agriculture or rental for residential occupation. Improvements made to a residential property shall not be considered activity of a home occupation. Unlike live-work dwellings, home occupations do not include outward visual evidence to indicate the presence of the home occupation to an uninformed person, such as alteration of the dwelling from a customary residential appearance.

b. Specific Standards[149]

A home occupation is permitted as an accessory use to any residential use in any zoning district, subject to the following provisions:

[147] 14-04-21.4.3 and 14-03-08.4.g. Parking and access requirements will be addressed in the Parking and Access section (Module 2). Driveway spacing standards will be addressed in the Mobility and Connectivity section (Module 2).

[148] New.

[149] Corrected Ord. 6583.

i. Where Permitted by Type

Home occupations are further divided into major and minor types based on standards contained in this section and subject to a separate approval process for each type:

(1). Minor home occupations are permitted by right. A property owner may choose to request a letter to verify compliance with provisions of this section, and the Director will issue a letter of compliance based on information provided by the property owner and in accordance with a process set by the Director.

(2). Permitting for major home occupations shall vary by zoning district:

(a). In the RR, RRE, or A zoning districts, major home occupations are permitted by right.

(b). In all other zoning districts, major home occupations may be permitted by a special use permit, according to procedures established in Section 14-20-05.8, Special Use Permit.

(3). Home occupations that do not meet either major or minor standards may be permitted only in the RR, RRE, or A zoning districts by a special use permit, according to procedures established in Section 14-20-05.8, Special Use Permit, upon a finding that:

(a). The issuance of the permit would conform to the intent of that zoning district and the goals and objectives of the Comprehensive Plan;

(b). Requirements of the International Building Code (IBC) would be met, as applicable; and

(c). The proposed home occupation remains clearly subordinate to the principal residential use.

(4). More than one home occupation may be permitted on any residential property, provided all standards and permits of this section apply to the cumulative total of all home occupations on the property.

ii. Minor Home Occupations

A minor home occupation is any home occupation that meets all of the following standards:

(1). On-Premise Employment

The home occupation is conducted on-premises by one or more residential occupants of the dwelling and no more than one additional employee, business partner, independent contractor, or any other person affiliated with the home occupation that does not reside on-premises.

(2). Residential Appearance

(a). Up to 50 percent of the floor area of the principal structure and up to 100 percent of one accessory structure is utilized by the home occupation, including storage of associated goods, provided that customary residential amenities, such as a kitchen and bathroom, are not removed

so that the structure would no longer meet building code standards as a dwelling unit.

(b). There is no outward visual evidence to indicate the presence of the home occupation to an uninformed person, such as alteration of the dwelling from a customary residential appearance, or overnight storage of products or materials outside.

(3). Visits

(a). Visits from customers, clients, or patients are by appointment only and limited to four individuals at any one time. Notwithstanding, multiple parties may be present on the property during not more than four events per year, with each event not to exceed four days and no events occurring consecutively. At no time may a home occupation generate traffic significantly greater than that of a conventional residential use.

(b). Visits from customers, clients, patients, or deliveries occur only during the hours of 7 a.m. to 11 p.m.

(4). Vehicles and Traffic

(a). No more than two vehicles and/or two trailers associated with the home occupation may park or stand on the property or street, if permitted, at any time, and any on-street parking shall meet requirements of Chapter 12-13-19 of the Code of Ordinances or any requirements of Burleigh County, as applicable.

(b). Any vehicles, including trailers and equipment, associated with the home occupation must be parked in an orderly manner on surface suitable for parking, devoid of tall grass or other potential fire hazards, and debris from vehicles may not enter a public right-of-way, in accordance with Section 8-07.1-01(2) of the Code of Ordinances.

(c). No vehicles associated with the home occupation which require a Commercial Driver License (CDL) to operate in North Dakota may park overnight on the property or the street.

(5). Signs

One sign meeting all requirements of Section 14-18-05.2.g.i, Minor Home Occupation, shall be allowed.

(6). Other Requirements

(a). There exists no noise, odor, vibration, or electrical interference associated with the home occupation that is noticeable at the property line.

(b). There is no storage of any flammable, toxic, explosive, or otherwise hazardous materials to a greater extent than stored in a typical residential household, and no hazardous material is discharged into any sewer, storm drain, or the ground.

(c). The use is not a sexually-oriented business or registered in North Dakota as a compassion center to dispense or produce medical marijuana.

iii. In-Home Childcare

In-home childcare is home occupation licensed by the State of North Dakota, or exempt from North Dakota licensing requirements, to provide early childhood services of care, supervision, education, or guidance of a child or children. Notwithstanding provisions of Sections 14-09-07.2.c.ii(1), 14-09-07.2.c.ii(2), and 14-09-07.2.c.ii(5), in-home childcare may be permitted as a minor home occupation, subject to the following standards:

(1). In any single-family or two-family dwelling, the in-home childcare is licensed by the State of North Dakota as a Family Child Care or a Group Child Care for no more than 12 children under the age of 12 years, including any children of the operator/provider on the premises that are under the age of 12 years.

(2). In any dwelling unit, the in-home childcare is classified by the State of North Dakota as a Self-Declaration Provider for no more than five children under the age of 12 years, including any children of the operator/provider on the premises that are under the age of 12 years.

iv. Major Home Occupations

A major home occupation is any home occupation that does not meet all standards required of a minor home occupation and does meet all of the following standards:

(1). On-Premises Employment

The home occupation is conducted on-premises by one or more residential occupants of the dwelling and no more than three additional employees, business partners, independent contractors, or any other person affiliated with the home occupation that do not reside on-premises.

(2). Residential Appearance

(a). Up to 50 percent of the floor area of the principal structure, and 100 percent of accessory structures, is utilized for the home occupation, provided that customary residential amenities, such as a kitchen and bathroom, are not removed so that the structure would no longer meet building code standards as a dwelling unit.

(b). There is no outward visual evidence to indicate the presence of the home occupation to an uninformed person, such as alteration of the dwelling from a customary residential appearance.

(3). Outdoor Areas

(a). The home occupation may utilize one contiguous outdoor area of up to five percent of the total lot area or 10,000 square feet, whichever is less, for the storage of associated goods, vehicles, equipment, and trailers. Notwithstanding, there is no limit on use of outdoor area in the A-Agricultural zoning district.

(b). Outdoor and overnight storage of products or materials associated with the home occupation may not be in a front yard and must be screened by fencing, buildings, or landscaping buffer yards where screening remains opaque during all seasons, in accordance with Chapter 14-15,

Landscaping and Screening. Stored materials shall not be visible from a public right-of-way or any adjoining properties. Trailers may be loaded with items.

(4). Visits

(a). Visits from customers, clients, patients, employees, or deliveries do not create an undue burden on traffic safety and congestion or on-street parking availability in the neighborhood. At no time may a home occupation generate traffic significantly greater than that of a conventional residential use.

(b). Visits from customers, clients, patients, employees, or deliveries occur only during the hours of 7 a.m. to 11 p.m.

(5). Vehicles and Traffic

(a). Any vehicles, including trailers and equipment, associated with the home occupation must be parked in an orderly manner on surface suitable for parking, devoid of tall grass or other potential fire hazards, and debris from vehicles may not enter a public right-of-way, in accordance with Section 8-07.1-01(2) of the City Code of Ordinances.

(b). Any on-street parking of vehicles associated with the home occupation shall meet the requirements of Section 14-13-04.1, On-Street Parking Spaces, and any requirements of Burleigh County, as applicable.

(c). No more than one vehicle associated with the home occupation which requires a Commercial Driver License to operate in North Dakota may park on the property at any time. At no time may the vehicle exceed the load restrictions in place for any time of the year on the adjoining street or park on the street.

(6). Signs

One sign meeting all requirements of Section 14-18-05.2.g.ii, Major Home Occupation, shall be allowed.

(7). Additional Requirements

(a). Noise ordinance requirements contained in Chapter 08-10 of the City Code of Ordinances are met at all times, and there is no objectionable odor, vibration, or electrical interference associated with the home occupation and above typical residential levels that is noticeable at the property line.

(b). There is no storage of any flammable, toxic, explosive, or otherwise hazardous materials to a greater extent than stored in a typical residential household, and no hazardous material is discharged into any sewer, storm drain, or the ground.

(c). The use is not a sexually-oriented business or registered in North Dakota as a compassion center to dispense or produce medical marijuana.

11. Outdoor Dining[150]

a. Definition

An outdoor eating and drinking area that is associated with and subordinate to the principal use of that parcel of land. This use may include removable tables, chairs, planters, or similar features and equipment.

b. Specific Standards[151]

i. The outdoor dining area shall not occupy any required parking or landscaping areas.

ii. Outdoor dining areas shall not be established within the public right-of-way, except as specifically approved by the City Commission.

12. Outdoor Sales Display[152]

a. Definition

The accessory display and sales of products or materials outside the entrance of a retail sales establishment.

b. Specific Standards[153]

i. The sales display shall consist solely of products sold or distributed on the site.

ii. The sales display area shall not occupy any required parking or landscaping areas.

iii. Items for sale shall not be displayed within the public right-of-way, except as specifically approved by the City Commission.

13. Outdoor Storage[154]

a. Definition

The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 hours. This shall not include the display of vehicles or equipment for sale in a sales lot.

b. Specific Standards

In the IX district, the outdoor storage area shall be enclosed by opaque solid walls or fencing at least six feet in height, with access only through solid gates that shall be kept closed when not in use. No objects shall be stacked or stored higher than the height of the enclosing wall.

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[150] New.

[151] New.

[152] New.

[153] 14-04.21.4.13. This information came from the downtown use standards section, though we recommend it apply to all outdoor sales displays.

[154] New.

14. Personal Recreation Facility

a. Definition

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

15. Personal Riding Arena

a. Definition

A building or portion of a building used exclusively for private equestrian activities by the property owner.

b. Specific Standards[155]

i. The use is permitted only as an accessory to and in conjunction with a single-family dwelling.

ii. The lot on which the use is located is at least 35 acres.

iii. The lot on which the use is located is outside the Urban Service Are Boundary.

iv. The personal riding arena may be up to 22,000 square feet in area.

v. Sales, shows, competitions, training, clinics, or similar events within or on the premises where the private riding arena is located are prohibited. There will be no spectator seating, stands or bleachers within the arena.

vi. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted in Title 4 of the City Code of Ordinances.

vii. A site plan and, if necessary, a stormwater management plan, shall be submitted for review and approval prior to the issuance of a building permit.

16. Small Wind Energy System (SWES)

a. Definition

A wind turbine of less than 25 kilowatts maximum output capacity and all appurtenant structures and equipment.

b. Specific Standards[156]

i. General

A SWES is intended to produce electricity primarily for on-site consumption, but excess electrical power may be transferred to a utility company power supply grid pursuant to utility company interconnection agreements.

ii. Dimensional Standards

(1). The minimum building setback distance shall be 150 percent of the height of the structure.

[155]

[156] 14-03-08.4.v.

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

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

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

iii. Sound

(1). Sound produced by a SWES shall not exceed the limits at the property line established by Chapter 08-10, Noise, of the City Code of Ordinances.

(2). Following approval and installation of a SWES, the Director may require the owner/operator of the SWES to perform a noise study to determine and report ambient and operating decibel levels.

iv. Braking Controls

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

v. Insurance

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

vi. Shadow Flicker

Shadow flicker shall not negatively impact any adjacent properties.

vii. Electronic Interference

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

viii. Monopole Requirement

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

ix. Roof-mounted SWES

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

x. Color

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

xi. Lighting

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

xii. Signs

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

xiii. Climbing Apparatus

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

xiv. Removal of Defunct Systems

Facilities shall be well maintained in an operational condition that poses no potential safety hazard.

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

(2). The owner shall remove a defunct system at the owner's expense.

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

xv. Building Permit Required

Prior to installing a SWES, the applicant shall obtain a building permit from the Building Inspections Department.

xvi. Compliance with Airport Zoning

A SWES must comply with the applicable standards of Section 14-08-01, Airport Overlay District.

17. Solar Energy System

a. Definition

i. Solar Collector

A solar photovoltaic cell, panel, or array, or solar hot water collection device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

ii. Solar Energy System

Any active mechanical or passive thermal device or feature of a structure designed to collect, distribute, and/or store the sun's radiant energy. A system may consist of a solar collector, battery, and/or any appurtenant features. Passive solar collecting architectural features, such as windows and skylights, are not included in this definition.

b. Specific Standards[157]

i. Purpose

Encourage investment in solar energy generation on all parcels in the city, both residential and non-residential, while ensuring that all solar energy systems are safe and harmonious with the surrounding area.

ii. Accessory Use

An accessory solar energy system is intended to produce energy primarily for on-site consumption, but excess electrical power may be transferred to a power supply grid pursuant to utility company interconnection agreements.

iii. Permits Required

The following permits shall be required prior to installation of an accessory solar energy system:

(1). A building-integrated accessory solar energy system requires no additional permits beyond the building permit required for the structure.

(2). A building permit must be obtained prior to installation of any building-mounted or freestanding accessory solar energy system. A building permit will be granted by the Building Official to any applicant who has demonstrated that all requirements of this section and other applicable sections of the Code of Ordinances have been met.

iv. Building-mounted Solar Energy Systems

Any system that is mounted to the roof or attached to the wall of a principal or accessory structure shall meet the following requirements:

(1). The building-mounted system shall not render the structure to which it is attached non-compliant with the height or setback requirements of the underlying zoning district.

(2). No roof-mounted system may extend beyond the edge of a roof, and no wall-mounted system may extend beyond the façade of a wall.

(3). A system mounted to a residential roof shall have a pitch oriented in the same direction as and no more than 20 percent steeper than the pitch of the roof on which the system is mounted, and no part of the system shall be higher than two feet above the surface of the roof. Measurements are made from any position of an adjustable system.

(4). A system mounted to a non-residential roof shall be no higher than 12 feet above the surface of the roof, measured from any position of an adjustable system.

(5). A system mounted to a wall of a structure shall not project more than five feet from the structure.

[157] Current 14-03-06.4 with modifications for consistency.

v. Freestanding Solar Energy Systems

Any accessory solar energy system that is ground-mounted or pole-mounted and not attached to a structure shall meet the following requirements:

(1). Freestanding accessory systems shall be counted toward lot coverage requirements of the underlying zoning district.

(2). No freestanding accessory solar energy system on a residential property may exceed 800 square feet in area per dwelling unit, except systems on lots in the A, RR, and RRE zoning districts are permitted to be up to an additional 200 square feet in area per acre of land in the lot.

(3). No freestanding accessory solar energy system on a non-residential property may exceed one-half the area of the building footprint of the principal use on the lot, except that any system collocated with and above a required off-street parking lot shall not be counted toward total allowable area.

(4). A freestanding accessory solar energy system must meet all setback restrictions that apply to accessory buildings in the zoning district in which it is located. Setbacks must be met for all positions of an adjustable system.

(5). No freestanding accessory solar energy system may exceed 12 feet in height, measured from any position of an adjustable system to the ground adjacent to the base of the system.

(6). No freestanding accessory solar energy system may extend into or over a legally-recorded easement.

(7). All abandoned or unused freestanding accessory solar energy systems in a state of disrepair shall be removed by the property owner within 12 months of the cessation of operations. Removal of any foundation is not required.

vi. Interconnection

The property owner of any solar energy system that will be connected to the electrical power grid shall receive authorization to enter into an interconnection agreement with the applicable utility company prior to applying for permits from the City.

vii. Appearance

The following provisions apply when any part of an accessory solar energy system may be visible from any public right-of-way, except for alleys.

(1). All electrical and plumbing lines serving a freestanding accessory solar energy system shall be buried.

(2). All exterior electrical and plumbing lines, batteries, and other appurtenant features serving a building-mounted accessory solar energy system shall be either screened or painted/coated to match the color of adjacent roofing or siding materials. This provision does not apply to a solar collector.

(3). The non-collecting side of a solar collector and other appurtenant features of any freestanding accessory solar energy system shall be screened from view of any public right-of-way with vegetation and/or fencing

18. Storage Container, Permanent

a. Definition

Containers that are installed permanently on a site and used for storage purposes, also known as shipping containers, cargo containers, cargo-trailer containers, or metal freight containers. This definition does not include the following dumpsters actively used for solid waste or recycling collections, or the use of storage containers as a building material in structure that meets all building code requirements.

b. Specific Standards

i. Standards that Apply in All Zoning Districts

(1). A storage container installed permanently must be issued a building permit and is considered a structure for purposes of tax assessment.

(2). Storage containers must be on ground-level and may not be stacked atop another storage container.

(3). Storage containers shall not display advertising, company logos, names or other markings painted on, or otherwise attached to the exterior of the container.

(4). Storage containers shall be painted one solid, non-reflective, muted color that blends with a surrounding natural setting or nearby structures.

(5). Storage containers are subject to all other standards applicable to accessory structures and shall be counted toward maximum area and lot coverage requirements.

(6). Storage containers utilized temporarily are exempt from this section, but subject to requirements of Section 14-10-08.8, Storage Container, Temporary.

ii. Standards that Apply in Residential Districts

The following standards apply to the RRE, RR, RS, RU, RMH, RM and RX districts:

(1). No more than one storage container is permitted on a lot.

(2). Storage containers must be screened from view from a public right-of-way, other than an alley, to the greatest extent feasible, through the use of opaque fencing, structures, or vegetation;

(3). If the storage container is visible at any time from a public right-of-way or adjoining property, it must be clad with siding and roof materials similar to the principal residence on the lot.

iii. Standards that Apply in Commercial Districts

In the OX, CX, PCI, OS, and CG districts, storage containers are not permitted between a front building line and an arterial or collector roadway and shall be located on the lot away from a public right-of way, to the greatest extent practicable.

19. Well Cover Structure

a. Definition

A small, enclosed structure constructed over or adjacent to a groundwater well that provides weather protection and workspace for pumps, pressure tanks, electrical controls, or other well-related equipment.

b. Specific Standards

A well cover structure is exempt from all size and lot coverage standards of the Code for an accessory building if the following standards are met:

i. The footprint of the structure is no greater than 120 square feet;

ii. The height of the structure is no greater than eight feet;

iii. No sewer service, heating and cooling, or plumbing unrelated to the primary well function is provided to the structure; and

iv. Setback and yard requirements for accessory buildings are met, unless the structure is proposed to cover a well that existed prior to the adoption of this Code.

14-10-08. Temporary Uses and Structures[158]

Commentary

Issue. The following item was identified by staff as an issue with Title 14: *Revisions to temporary special use permits to account for special events, with reviews from various city departments and agencies. Temporary SUPs is in ordinance, but not currently being applied*.

Discussion. It appears that Title 14 currently includes references to "temporary special use permits," which can be granted by the Zoning Administrator (now replaced with reference to Director) and appealed to the City Commission, and "temporary use permits," which can be granted by the Zoning Administrator without public hearing or approval of P&Z; however, no process is detailed for either permit request, and it is not clear when each permit type applies. Additionally, special events are not discussed in Title 14 at all (and are regulated instead by Title 10).

Outcome

Establish a clear Temporary Use Permit Procedure. A procedure has been created to describe the process for issuance of a Temporary Use Permit. While referenced here, the procedure itself is described in Section 14-20-04.9, Temporary Use Permit.

1. Purpose

In recognition that the duration of a use is a relevant factor in its impact on public health, safety and wellness, special provisions and procedures apply to temporary uses.

2. General Standards

All temporary uses shall comply with the following standards:

[158] 14-03-08.2, with modifications to clarify when a temporary use permit is required. Some assembly-type uses that were previously identified (such as carnival or circus and temporary religious meetings) have been combined and addressed as special events.

a. All temporary uses must obtain a temporary use permit in accordance with the procedures in Section 14-20-04.9, Temporary Use Permit, unless a specific temporary use is exempted by this section.

b. Permanent alterations to the site, including the construction or alteration of any permanent building or structure, are prohibited. Site conditions must be restored to pre-existing conditions upon termination of the temporary use.

c. The temporary use cannot violate any conditions of approval that apply to the principal use of the site.

d. Off-street parking must be adequate to accommodate the proposed temporary use.

e. All temporary signs and structures permitted as part of the temporary use shall be removed within 15 days after termination of the use.

3. Construction Staging Area[159]

a. Definition

The temporary use of a designated area for storage of equipment and materials, and labor support, that is not located entirely within an active, permitted construction site.

b. Specific Standards

i. Dimensions

(1). Temporary structures or storage containers must meet the setbacks of the underlying zoning district. Tents, equipment, and stored materials may be within the setback but must be entirely on the lot.

(2). The staging area shall not obstruct a fire lane, public sidewalk, or public street.

(3). The staging area shall be enclosed by an opaque fence of at least six feet in height.

(4). Outdoor lighting standards applicable to the principal use on the property must continue to be met.

ii. Location

Construction staging areas should be located to minimize visibility from nearby residential areas and public rights-of way to the greatest extent practicable.

iii. Duration

Construction staging areas may remain while a site is under active construction, including during winter periods when construction will resume in the spring. The staging area must be removed no more than one month after issuance of a certificate of occupancy or completion of construction.

[159] New.

4. Mobile Food Vendor[160]

a. Definition

A self-contained and operational vehicle which is designed and used for displaying, cooking, keeping, or storing any food or beverages for sale by a vendor and is registered with a department/division of motor vehicles.

b. Specific Standards[161]

These regulations apply to all mobile food vendors operating on private property. Operation in a public right-of-way is subject to requirements of Title 10 of the City Code of Ordinances.

i. Location

(1). A mobile food vendor may operate in the CX, CG, DT, IX, or PCI zoning districts. Operation in any other zoning district may only occur in conjunction with a permitted special event.

(2). A mobile food vendor may conduct business on an occupied or vacant lot, provided the lot, or portion thereof used by the mobile food vendor, is hard-surfaced.

(3). A mobile food vendor operating from a parking lot shall not occupy any parking spaces that are required for the operation of the principal use on the property, including pedestrian access and seating.

ii. Seating Areas

(1). Any mobile food vendor that provides seating for customers shall also be required to provide access to waste containers and sanitary facilities.

(2). If the mobile food vendor arranges an agreement for access to sanitary facilities within the premises where the vendor is operating, a copy of the written agreement with the property owner shall be provided to the Director for review and approval. No arrangement to share sanitary facilities with a residential use shall be permitted.

(3). If located within a parking lot, seating and gathering areas must be protected from parking lot traffic and drive aisles.

iii. Signage

No permanent signs are permitted for the mobile food vendor. However, temporary signs, such as sidewalk signs, are allowed subject to the applicable standards in Section 14-18-07, Temporary Sign Standards. Signage may be affixed to the food truck or vending structure.

iv. Utilities

Permanent hookups to utilities shall not be provided for mobile food vendors.

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[160] Part of the definition for “mobile vendor vehicle” found in Chapter 10-05.1, with modifications to include licensing requirement.

[161] New. Removed previous requirement for parking lot landscaping, which would likely not be controlled by the mobile food vendor.

v. Wastewater Discharge

Wastewater produced by mobile food vendors shall be discharged only at a facility with an approved industrial pretreatment system or by a licensed waste hauler.

vi. Drive-Up Prohibited

A mobile food vendor may not dispense product directly from the truck into a customer's vehicle. All customers must be served as pedestrians.

5. Model Home[162]

a. Definition

A dwelling representative of other dwellings offered for sale or lease or to be built in an area which may, on a temporary basis, be used as a real estate sales office.

b. Specific Standards[163]

A model home is permitted on any residential property in any zoning district, subject to the following provisions:

i. Model homes are subject to all sign requirements for non-residential uses in a residential zoning district, as described in Section 14-18-05.2.f.

ii. Model homes shall be converted to residential use or removed upon complete development of the subdivision or site.

iii. Model homes may contain ancillary office or indoor storage use provided the principal use of the property remains sales or leasing of homes in the subdivision or site and all applicable building and fire codes of the International Building Code (IBC) are met.

6. Outdoor Sales[164]

a. Definition

The temporary sale of goods and services outside of an enclosed structure. Includes the temporary sale of seasonal merchandise, including but not limited to, Christmas trees, locally grown produce, flags, kites, or arts and crafts. Seasonal outdoor sales that are accessory to agricultural practices are considered agriculture recreation uses.

b. Specific Standards[165]

i. Standards applicable to all sales

Outdoor sales, including the sale of Christmas trees, pumpkins, seasonal produce (farmers' market) and other agricultural products, or goods associated with a principal retail establishment on the site may be permitted, subject to the following standards:

[162] New.

[163] Relocated from updated Home Occupation ordinance to reflect the temporary nature of the use.

[164] New. Combines "outdoor sales" with "seasonal sales" previously described in Module 1.

[165] Modified seasonal sales standards to be less restrictive.

(1). Outdoor sales are permitted in the CX, CG, DT, IX, or PCI zoning districts. Operation in any other zoning district may only occur in conjunction with a permitted special event.

(2). Outdoor sales may remain for a period of three months per calendar year. For those uses that normally span more than one season or event period, a longer timeframe of up to one year may be approved.

(3). The use of a parking lot for an outdoor sale may not reduce the amount of off-street parking spaces provided for the principal use below the number required in Chapter 14-13, Parking and Loading.

(4). Sidewalk sales on public sidewalks are prohibited except as a component of permitted special events or upon issuance of an encroachment agreement from the City Engineer.

ii. Fireworks Sales

In addition to standards applicable to all sales, fireworks sales may only be permitted in a non-residential zoning district outside of city limits from June 15 through July 4, unless fireworks sales are explicitly prohibited as a condition of the district.

7. Special Events

a. Definition

A short-term, temporary activity or gathering that is not part of the ordinary or routine operation of a property and that attracts participants, spectators, or the general public, including but not limited to festivals, concerts, parades, markets, races, ceremonies, circuses, religious revivals, hootenannies, raves, chautauquas, feats of unusual strength or beauty, galas, or convocations.

b. Specific Standards

i. Special events, including any tents, sanitary facilities, signs, fencing, or any other temporary structures, installed for a continuous period of 15 days or less do not require a temporary use permit of this section.

ii. Temporary structures associated with a special event are exempt from all dimensional standards of the underlying zoning district but are still subject to sight triangle requirements.

iii. A special event of any duration may be subject to the following:

(1). A special permit for relief from noise level requirements pursuant to Section 8-10-04.3 of the Code of Ordinances.

(2). Use of a public street, sidewalks, squares, avenues or alleys of the City pursuant to Section 10-05.1-03 of the Code of Ordinances.

8. Storage Container, Temporary

a. Definition

Portable containers that are used temporarily for storage purposes, also known as shipping containers, cargo containers, cargo- trailer containers, or metal freight

containers. This definition also includes semi-trailers, buses, vans, and other types of non-permanent containers used for storage purposes. This definition does not include the following: solid waste collection facilities, contractors' construction trailers or containers being used at construction staging areas, or trailers normally associated with private use such as stock car trailers, boat trailers, utility trailers, campers or other similar equipment.

b. Specific Standards[166]

Storage containers may be utilized on a temporary basis in any zoning district, subject to the following standards:

i. Allowable Uses

Storage containers may be used temporarily for the following:

(1). Storage of materials and equipment or temporary offices for construction sites.

(2). Storage of seasonal merchandise available for sale on site, in any district where retail uses are permitted.

(3). Loading or unloading furniture and other household goods associated with a residential or commercial relocation.

(4). Truckload sales, fundraising activities, or similar promotional or charitable events occupying a parking lot of a non-residential use.

ii. Duration

(1). Storage containers shall remain on a lot no longer than:

(a). One month in RRE, RR, RS, RU, RMH, RM, OX, and RX districts;

(b). Six months in CX, CG districts; or

(c). One year in IX of IG districts.

(2). A storage container that exceeds the applicable duration must be removed for a period of time of no less than six months or may be converted to a storage container, permanent, if compliant with all requirements of Section 14-10-07.18, Storage Container, Permanent.

iii. Additional Standards

(1). Storage containers may only be placed on a hard-surfaced or compacted gravel area.

(2). Storage containers must meet sight triangle requirements.

(3). Storage containers may not be within or extend into a public right-of-way.

(4). Storage containers are exempt from setback, yard, maximum area, and lot coverage requirements.

[166] 14-03-06.3 with modifications for consistency. Additional edits will be needed to align portable storage container requirements for special events with updated temporary use and special event standards.

9. Temporary Asphalt or Concrete Batch Plant

a. Definition

A short-term, project-specific facility used to produce asphalt or concrete for a defined construction project, including the mixing equipment, stockpiles, conveyors, silos, tanks, and associated machinery necessary for on-site production.

b. Specific Standards

i. Applicability

Any temporary asphalt or concrete batch plants ("batch plant") that produces greater than 100 cubic yards of concrete or any continuous production of asphalt for a designated construction activity shall meet the standards of this section. Facilities below this threshold are exempt from provisions of this section if contained entirely within an active construction site.

ii. Batch Plant Standards

(1). Asphalt or concrete batch plants must meet all requirements for permanent facilities in Section 14-10-05.2.c, Asphalt or Concrete Batch Plant, with the following exceptions:

(a). A batch plant that does not meet required spacing distances may be approved with a special use permit if at least 50 percent of required spacing distances and all other requirements are met.

(b). A batch plant may be located within or near a residential zoning district that is under development, provided that the batch plant is removed prior to the issuance of any certificate of occupancy for a residential use within the required spacing distance measured to that lot line.

(2). If the batch plant is not located on an existing platted lot with adequate access, temporary access for all vehicles utilizing the site must be approved by the City Engineer.

(3). The batch plant must be adequately screened from any public right-of-way, outside of the IG zoning district, with opaque fencing or use of any existing visual barriers.

iii. Duration

(1). The estimated duration of the construction project shall be included with the application and noted on the temporary use permit, subject to extension per procedures of Section 14-20-03.7.c.ii.

(2). The batch plant must be removed within 30 days after completion of the associated construction project. Reuse of an existing site for an additional construction project is subject to new temporary use permit approval.

10. Temporary Dwelling Unit[167]

a. Definition

Any recreational vehicle used for human shelter that is designed to be transportable and that is not attached to the ground, to another structure, or to any utility system on the same premises for the purpose of occupancy.

b. Specific Standards[168]

A recreational vehicle (RV) may be used as a temporary dwelling unit while a principal single-family dwelling unit is under construction, or an existing single-family dwelling unit is being remodeled, subject to the following standards:

i. Only one RV is allowed per principal dwelling unit.

ii. The RV shall have current licensing and registration and be in an operable road worthy condition.

iii. The RV shall be located on private property and not parked in a public right-of-way.

iv. The RV shall not be used as a short-term rental.

v. No outdoor storage of personal items is allowed. Exemptions may apply for daily use items (i.e., bicycles).

vi. Use of a recreational vehicle as temporary housing requires a Temporary Use Permit. As part of the Temporary Use Permit application, the applicant shall provide:

(1). Evidence of an active building permit for work on the principal dwelling unit.

(2). A site plan depicting how the RV will be connected to sewer and water. If the RV is not utilizing sewer and water connections, a plan for disposing of sewage and water at an RV dump station shall be provided.

vii. Temporary occupancy of a recreational vehicle is limited to six months. Extension of a temporary use permit for use of a recreational vehicle as temporary housing may be granted in accordance with Section 14-20-04.9, Temporary Use Permit.

11. Temporary Civic Structure[169]

a. Definition

A structure used temporarily for educational or religious purposes.

b. Specific Standards

i. A temporary school or religious structure may be permitted for a period of not more than one year, provided the structure:

(1). Meets the setback requirements for the underlying zoning district;

[167] New.
[168] New.
[169] New.

(2). Does not reduce the amount of required off-street parking; and

(3). Meets all applicable building code requirements.

ii. The temporary use permit may be renewed for additional one-year periods, for a total of not more than five years, except as provided by the provisions of the NDCC.

Chapter 14-11 Improvements

COMMENTARY

This new chapter is a collection of infrastructure requirements, all of which are applicable to both subdivision and non-subdivision development.

Engineering may make further changes to this section on the basis of the Development Cost Policy.

14-11-01. PURPOSE

This purpose of this chapter is to provide standards for improvements, including infrastructure and utilities, that are required in conjunction with development.

14-11-02. APPLICABILITY

All new development subject to site plan review or subdivision shall comply with this section.

14-11-03. PLANS AND STANDARDS

The planning, design, construction, and perpetual maintenance of all development improvements shall be consistent with:

1. The adopted comprehensive plan, including the Major Street Plan and Active Mobility Plan, either in its present state or as amended through procedures of Section 14-20-05.5, Major Plan Amendment, or Section 14-20-04.5, Minor Plan Amendment.
2. The lot, design, and use standards applicable to the zoning district in which the property is located;
3. All other applicable requirements of this Code;
4. Any previous plans or development approvals approved by the City and applicable to all or part of the property on which the development, structure, or subdivision is proposed;
5. All technical and engineering, design, construction, and inspection criteria, standards, and specifications adopted or accepted by the City; and
6. All applicable utility standards.

14-11-04. REQUIRED IMPROVEMENTS

1. Improvements Required

Public and private improvements to a property are required during the development process of all lots. Responsibility for design, funding, and installation of improvements is established in the Development Cost Policy. In addition to infrastructure and facilities necessary to support development of a lot, the following improvements are also required:

2. Oversizing Improvements

The City may elect to participate in the design, installation, and cost of providing any oversized improvement and may require the developer to coordinate construction with the City and with other development taking place nearby and on a similar timeframe.

3. Timing of Installation

a. The improvements shall meet one of the following requirements regarding timing of installation shown in Table 14-11-1

i. Constructed and in place, at the applicant's. cost; or

ii. Secured with financial surety, as described in Section 14-20-03.8, Financial Guarantees.[170]

iii. Timing of sidewalk construction shall be as follows:

(1). Installation of all sidewalks on a property, unless phased according to an approved phasing plan, is required prior to issuance of a certificate of occupancy unless a delay is approved by the City Engineer.

(2). If a delay is requested and approved, a temporary certificate of occupancy may be issued with a full certificate of occupancy held until completion of the sidewalks.

(3). Within all subdivision plats approved after June 1, 2026, all sidewalks shall be installed within ten years of creation of the street improvement district, regardless of whether a building permit has been obtained by the property owner.

iv. Timing of the installation of street trees or other requirement landscaping is determined in Chapter 14-15 Landscaping and Screening

Table 14-11-1: Timing of Required Improvements and Utilities

Item	Prior to Final Plat Approval	Prior to Building Permit	Prior to Certificate of Occupancy	Post Certificate of Occupancy
Property Within City Limits				
Right of Way Grading		X		
Street Paving			X	
Curb and Gutter			X	
Driveways			X	
Sanitary Sewers		X		
Potable Water System		X		
Stormwater Facilities			X	
Monuments		X		
Community Outdoor Warning Sirens				X

[170] This section will be provided in Module 3.

Item	Prior to Final Plat Approval	Prior to Building Permit	Prior to Certificate of Occupancy	Post Certificate of Occupancy
Boundary Fences		X		
Sidewalks			X	
Street Lights				X
Property Within ETA				
Street Grading, on-site	X			
Street Paving, on-site [1]	X			
Section Line Road Construction and Paving, off-site [1]	X			
Turning Lanes or Bridges, off-site	X			
Stormwater Management System	X			

Notes

[1] Unless waived by the County Commission

4. Waiver of Improvements

a. The applicant may request a waiver of the requirement to connect to sanitary sewers when, in the opinion of the City Engineer, the provision of sanitary sewers is impractical. If the City Engineer approves such a waiver request, individual lots shall be provided with approved septic tanks and disposal fields prior to issuance of a certificate of occupancy on the lot.

b. The applicant may request a waiver to delay installation of a street and any public utilities within that street corridor if street improvement would be more economical when combined with a larger project initiated by the City. In exchange for a waiver, the applicant shall submit a petition to specially assess a street improvement district at a future date to be determined by the City Engineer.

c. Any waiver may be included as a component of a development agreement with additional conditions, as applicable.

5. Sanitary Sewer Connection

a. All new development and redevelopment within 200 feet of sanitary sewers shall connect to the municipal sanitary sewer system.

b. Any property utilizing a sanitary sewer holding tank shall connect to municipal sanitary sewer once available within 200 feet of the property, regardless of development or redevelopment activity on the site.

14-11-05. Development Agreements

1. Purpose

The purpose of development agreements is to secure public improvements necessary to support a development with predictable commitments made by all parties, informed by the unique context and phasing of a development.

2. Applicability

A development agreement may be required in conjunction with approval of a preliminary plat, if any of the following conditions apply:

a. The development requires off-site improvements;

b. The development will be constructed in phases and improvements are not proposed to be installed in sequence with construction phases;

c. The development involves shared access, drainage, parking, or private utilities with a site in different ownership;

d. Proposed long-term maintenance obligations differ from standard responsibilities of property ownership and warrant documentation; or

e. The Development Cost Policy does not apply because of unique aspects of the site or proposed development.

3. Contents of Development Agreement

A development agreement shall include the following information, unless not relevant to the purpose of the agreement:

a. Description of the improvements to be installed, with reference to plans and specifications if necessary to the agreement;

b. Timing of the installation of improvements and construction;

c. Responsibility or costs by party to the agreement;

d. Financial sureties, if any;

e. Method of inspection and acceptance of public improvements;

f. Maintenance responsibilities;

g. Remedy for default of the agreement;

h. Term of the agreement; and

i. A clause to indicate that the agreement shall run with the land to any assigns and successors.

4. Approval Process

a. A development agreement is subject to approval by the City Commission before it may be signed and executed. There is no requirement for a development agreement to be reviewed by the Planning and Zoning Commission.

b. A development agreement should be recorded, unless the terms of the agreement apply only to the individual parties listed in the agreement.

c. A development agreement may be amended by mutual agreement of all parties at any time, unless otherwise constricted within the agreement.

5. Relationship to Land Development Code

a. A development agreement may not be used to vary, adjust, or waive any requirements of the Land Development Code, other than the timing and nature of improvements in this Chapter.

b. Any default of an executed development agreement may be subject to remedies of Chapter 14-22, Enforcement, as if a violation of this Code, unless otherwise stated within the agreement.

c. A development agreement shall be considered a tool to implement any conditions placed by the City Commission on a land use application approval and shall not be construed as vesting and permanent development rights on the property.

Chapter 14-12 Site and Structure Design

14-12-01. Purpose

The purpose of this chapter is to provide standards that regulate the physical layout and design of development in areas of prominence and high visibility to ensure harmonious relationships between development and adjacent properties, public streets, neighborhoods, and the natural environment. It is also intended to provide basic design standards to ensure development quality that contributes to a more attractive, efficient, and livable community.

14-12-02. Single-Family to Two-Family Dwelling Conversion[171]

1. Purpose

This section is intended to facilitate the adaptation of existing single-family residences, subject to all applicable building code requirements, into two-family residences, to allow additional housing while preserving the integrity of the surrounding neighborhoods.

2. Applicability

An existing single-family residential structure may be converted to a two-family structure in any zoning district where two-family structures are allowed, subject to the following standards.

3. Stairs

Where the dwelling is two-stories, a stairway to the second floor shall be interior to the structure, unless a request for a covered outside stairway is approved by the Director.

4. Garages

a. Only one attached garage shall be street-facing.

b. Where desired, a second attached garage may be located to the rear of the principal dwelling where there is access to an alley.

5. Driveway and Curb Cut

Widening of any existing driveway or curb cut, except as may be allowed to bring a narrower drive or curb cut to current single-family detached width allowance, is not permitted.

14-12-03. Multifamily Dwelling Structures

1. Applicability

This section applies to new, residential-only development with four or more units in a single structure, regardless of the underlying zoning district.

[171] New.

2. Site Planning and Design

a. Building Orientation

i. All multi-family buildings abutting a public right-of-way shall include at least one entrance that is visible and directly accessible from the public right-of-way.

ii. Where the long axis of a multi-family building is perpendicular to the primary street, the portion of the structure facing the primary street shall be configured with at least one functioning entry and window transparency consistent with the primary façade of the building.

b. Circulation and Parking

i. Circulation shall be designed to protect pedestrian/bicycle ways and shall minimize potentially unsafe interactions with automobile traffic.

ii. Parking areas and freestanding parking structures (detached garages or carports) shall not occupy more than 30 percent of each perimeter public street frontage of a multi-family development.

iii. To the maximum extent practicable, freestanding parking structures that are visible from adjacent public streets shall be sited so that the narrow end of the parking structure is perpendicular to the perimeter street.

iv. To the maximum extent practicable, surface parking lots shall be:

(1). Located behind the front façade of structures facing a public right-of-way;

(2). Internalized in building groupings and located so they do not abut local streets; or

(3). Accessed by an alley.

c. Accessory Storage Structures

i. Accessory storage structures designed and intended for use by residents to store materials such as tools, bicycles, or outdoor gear or equipment shall provide a minimum storage area of 25 square feet, free of encumbrance by water heaters or other mechanical or electrical equipment.

ii. Exterior or detached storage structures shall be designed as an integral part of the project and be integrated with the architectural character of the dwellings on the site. Storage areas incorporated into garages, carports, and screening walls shall use materials and details similar to those of the dwelling unit to achieve an integrated appearance.

3. Garages and Parking[172]

a. Alley Exemption

Alley-loaded garages are exempt from the garage standards contained in this section.

[172] New.

b. Garage Design Standards

i. To the maximum extent practicable, garage entries shall be internalized in building groupings and located away from the public right-of-way.

ii. Detached garages shall incorporate building materials, colors, architectural details, and roof slopes compatible with those found on the principal building.

c. Freestanding Garage Banks and Carports

i. Freestanding garage banks and carports shall be limited to six parking bays or 72 feet in length, whichever is less, per structure.

ii. Freestanding garage banks and carports shall incorporate building materials, colors, architectural details, and roof slopes compatible with those found on primary buildings.

d. Structured Parking

i. Freestanding parking structures shall be designed to complement surrounding buildings in terms of their scale, design elements, building materials, and orientation on the site.

ii. Structured parking or podium parking constructed within or adjacent to a principal structure shall be integrated with the overall design of the principal structure it serves through the use of visually similar architectural features and façade materials.

iii. Residential liner structures should be incorporated into at least the exterior of the ground floor of the parking structure design.

14-12-04. Mixed-Use Design Standards and Guidelines

1. Applicability

The design guidelines in this section apply to mixed-use structures or any structure that is not residential-only in the Design Overlay district, or for land uses that require special use approval.

2. Mixed-Use Design Standards

a. Parking Location and Design

i. To the maximum extent practicable, surface parking lots shall be:

(1). Located behind the front façade of structures facing a public right-of-way; and

(2). Internalized in building groupings and located so they do not abut local streets.

ii. Structured parking or podium parking shall be integrated with the overall design of the principal structure it serves through the use of visually similar architectural features and façade materials.

b. Pad Sites and Kiosks

New development and redevelopment in the Design Overlay districts shall be subject to the pad sites and kiosks standards in Section 14-12-05.3

c. Loading Areas

New development and redevelopment in the Entrance Corridor Overlay districts shall be subject to the loading area standards in Section 14-12-05.4.

d. Building Orientation

i. Buildings shall be arranged and oriented to:

(1). Frame and define:

(a). Street frontages and intersections (internal to the site and on the perimeter of the site);

(b). Entry points into the development;

(c). Parking areas; and

(d). Other site features; and

(2). Complement the organization and orientation of adjacent, existing development.

ii. Primary entryways should be clearly defined, oriented to a public street, parking area, or public sidewalk, and distinguishable from the street and primary public sidewalks.

e. Building Materials

i. All building façades shall be designed with architecturally finished materials, with primary building materials being limited to:

(1). Modular masonry materials such as brick, stone or dimensional block;

(2). Precast concrete or aggregate panels;

(3). Stucco or stucco-like materials; or

(4). Non-corrugated prefinished metal architectural panels (including standing seam metal products). If prefinished metal architectural panels are used, no more than 70 percent of any elevation facing a public right-of-way may consist of the same material, although two different panel types of complementary colors may be used.

ii. The following building materials are expressly prohibited:

(1). Wood as an exterior wall finish, except where used as an accent material;

(2). Corrugated metal roofing or siding; and

(3). Exposed, untextured, uncolored, unaugmented concrete (including poured in place, pre-cast concrete panels and concrete block).

iii. All subsequent renovations, additions, and related structures constructed after the construction of the original building shall be constructed of materials comparable to

those used in the original construction and shall be designed in a manner conforming or complementary to the original architectural design and general appearance.

f. Façade Articulation

Any building façade that faces a public right-of-way shall incorporate at least one design element for each 30 linear feet of the façade that prevents the creation of a blank wall, such as:

i. Distinctive changes in the texture and color of wall surfaces;

ii. Wall plane projections of at least two feet;

iii. Protected and recessed entries;

iv. Transparent windows or entrances; or

v. Other design elements as approved by the Director.

3. Mixed-Use Design Guidelines

a. A mix of non-residential and residential uses is strongly encouraged to expand housing options and access to services. Uses may be mixed vertically or horizontally, in accordance with allowed uses in the underlying zoning district.

b. A vertical mix of uses is particularly encouraged along primary street frontages, as well as adjacent to site amenities or other public spaces where a high level of activity and visibility is desirable.

c. Non-residential uses that generate pedestrian activity, such as restaurants and retail stores, should be located on the ground floor of a vertical mixed-use structure.

d. If a limited portion of a structure's ground floor will be devoted to retail or restaurant space, the space should be located along those façades adjacent to or most visible from the primary street frontage, an active alley, or a public sidewalk.

14-12-05. Commercial Design Standards

1. Applicability

This section shall apply to structures in the CG-Commercial General district.

2. Exceptions

Exceptions to the standards and guidelines of this section may be granted by the Director to accommodate the adaptive reuse of an existing structure.

3. Pad Sites and Kiosks

a. To the extent practicable, buildings on pad sites shall be clustered to allow for shared parking and site amenities.

b. Freestanding kiosks and drive-up ATM structures shall not be located along the primary street frontage. Access to these structures shall be taken from drive aisles internal to the development and not from the adjacent public right-of-way.

4. Loading Areas

a. To the extent practicable, loading docks and commercial truck parking areas shall be located behind the principal structure, oriented away from public rights-of-way and residentially-zoned property.

b. Opaque garage doors shall be oriented away from the public right-of-way.

Chapter 14-13 Parking and Loading

COMMENTARY

Bismarck's parking regulations were updated in 2020 to remove off-street parking requirements throughout the downtown area. Building on the success of that update, the Off-Street Parking and Loading chapter includes changes to simplify off-street parking, loading, and vehicle stacking calculations, clarify design requirements for off-street parking areas, provide more flexibility for parking reductions (where appropriate), and expand bicycle and pedestrian connectivity requirements related to off-street parking standards in support of the Connect element of the City's Comprehensive Plan.

14-13-01. PURPOSE

The purpose of this chapter is to regulate the quantity and design of vehicle parking to:

1. Mitigate against congestion generated by various land uses' vehicles parking in public-rights-of-way and impacting adjoining properties;
2. Prevent potential negative impacts of parking on traffic, stormwater, dust, heat, aesthetics, and public safety for adjoining properties and the community;
3. Provide flexible methods for responding to the transportation and access demands of various land uses; and
4. Encourage multi-modal transportation options and enhanced pedestrian safety.

14-13-02. APPLICABILITY

The parking and loading requirements of this section shall apply to any of the following:

1. New Development

a. Any new building constructed, and any new use established.

2. Expansion of Existing Structure

a. An existing structure or use that is expanded or enlarged.

b. Additional parking and loading spaces shall be required only to serve the enlarged or expanded area.

c. The parking and loading space provided for the existing use prior to the expansion may not be reduced below the minimum that is required.

d. The requirements of this chapter shall not apply when a building alteration reduces the area of any principal structure, nor shall the reduced structure be required to remove any parking that exists in a greater amount than is required after the reduction.

3. Change of Use

When a change of use results in:

a. A requirement for more parking or loading spaces than the existing use, the additional parking and loading spaces will only be required in proportion to the extent of the change.

b. Existing parking that exceeds a maximum limit, that use shall be permitted to maintain the additional parking as a legal nonconformity. The property owner may remove excess parking, but shall not be required to do so.

14-13-03. Exemption or Deferral

1. Downtown Zoning District Exemption

Properties located within the Downtown zoning district are not required to provide any vehicle parking or loading spaces. If parking is provided, it shall comply with the maximums listed in

Table 14-13-1: Baseline Vehicular Parking.

2. Seasonal Deferral

When the installation of required parking cannot be completed in conjunction with site development due to seasonal constraints, the Building Official may issue a temporary certificate of occupancy, subject to a date agreed upon by the property owners as to when the installation of the required parking will be completed, and accompanied by a financial surety pursuant to Section 14-20-03.8, Financial Guarantees.

14-13-04. Provision of Required Parking

Parking requirements may be met through availability of either on-street parking spaces, off-street parking spaces, or a combination of the two, as described in this section.

1. On-Street Parking Spaces

a. Each 25 uninterrupted linear feet of available on-street parking directly adjacent to a parcel may be counted as one of the property's required parking spaces.

b. Driveway access points, designated no-parking areas, sight triangles, and other lengths of pavement with similar constraints shall not be included when calculating the required length to count an on-street parking space.

c. Each on-street parking space may only be counted once, even if there are multiple buildings or tenants on the lot.

d. If on-street parking is later removed by the City or state, and the remaining parking does not meet the minimum required number of spaces, the site shall be considered legally nonconforming.

Figure 13-1: On-Street Parking Option

2. Off-Street Parking Spaces

On-site parking spaces that meet the requirements of Section 14-13-09.2, Off-Street Parking Design Standards, shall be counted toward satisfying the minimum parking requirement.

14-13-05. CALCULATIONS

1. Calculating Parking Baseline Range

a. When calculation of the number of required parking, stacking, bicycle parking, or loading spaces results in a fraction:

   i. Any fraction up to and including 0.5 shall be disregarded; and

   ii. Any fraction over 0.5 shall be rounded up to the next highest whole number.

b. When there are multiple structures on a lot or multiple uses within a structure, parking shall be calculated separately for each different use area within a building or site, including all accessory uses, as a single sum for the site.

c. Where applicable, sufficient space to park all company-owned or leased vehicles, including passenger automobiles, trucks, tractors, trailers, and similar company-owned motor vehicles, must be provided on-site, in addition to the required off-street parking.[173]

2. Area Measurement

All square footage-based parking and loading requirements shall be computed on the basis of gross floor area of the subject use, unless otherwise stated. Structured parking provided within a building shall not be counted as part of the floor area computation, nor shall decks or patios or other areas used for outdoor dining.

[173] Relocated existing requirement from parking table.

14-13-06. Uses Unknown or Not Listed[174]

1. Unknown Uses

When the use or uses that will occupy a site are unknown to the applicant at the time of site development, the following procedure shall apply:

a. The applicant shall submit, in conjunction with a site plan, a narrative listing each space for lease or sale within the site, and projected potential use types for the whole site. This narrative may be combined with a Statement of Baseline Parking Adjustment, pursuant to Section 14-13-08, if applicable.

b. This narrative shall include both the minimum and maximum possible number of required spaces, given potential uses.

c. The site plan shall demonstrate that sufficient area has been reserved on the site to accommodate a number of parking spaces that is midway between the minimum possible number of required parking spaces and the maximum number of required parking spaces for the sum of gross floor area for potential uses on the site.

d. The Director shall evaluate the projection and either accept, modify, or reject it, based on site conditions, use patterns evident in similar sites, existing or proposed legal restrictions, or any other relevant factors.

e. The final approved narrative shall be kept on file by the City, with a copy provided to the applicant.

f. At the time of building or site occupation, each individual use shall be evaluated according to the approved narrative plan and all requirements of this section.

2. Unlisted Uses

For uses not specifically listed in

Table 14-13-1: Baseline Vehicular Parking parking requirements shall be determined by the Director on the same basis as required for the most similar listed uses. In such cases, the Director may also consult parking reference materials, including but not limited to manuals prepared by the American Planning Association and the Institute of Transportation Engineers.

14-13-07. Minimum and Maximum Parking Requirements

The number of parking spaces shall be provided within the range of the minimum and maximum specified in

Table 14-13-1: Baseline Vehicular Parking. The number of spaces within this range shall be known as the baseline requirement.

Table 14-13-1: Baseline Vehicular Parking

sf = Square feet GFA = Gross floor area

[174] 14-03-10.6.g relocated.

Use	Existing Number of Required Spaces	Minimum Number of Spaces Required	Maximum Number of Spaces Allowed
Residential Uses			
Single-family dwelling Two-family dwelling Townhouse	2 per dwelling unit	1 per dwelling unit	No limit
Multi-family residential Courtyard development Manufactured home community	1 space per efficiency or 1-bedroom unit 2 spaces per 2-bedroom or larger unit	1 per dwelling unit	3 per dwelling unit
Live-work dwelling		1 per dwelling unit	2 per dwelling unit
Accessory dwelling unit (ADU)	1 space per accessory dwelling unit [1]	1 per ADU	No limit
Group living, including residential care facility and congregate living	Assisted: 1 per 4 patient beds, plus 1 additional per employee on the largest shift Congregate: 1 per sleeping room rented, plus 2 additional for the owner or operator of the house	0.25 per living unit, or 2, whichever is greater	2 per living unit
Income-restricted multi-family housing Senior housing	0.65 spaces per living unit	Resolved through Adjustment. See 14-13-08.	Resolved through Adjustment. See 14-13-08.
Civic and Institutional Uses			
All uses in category, unless listed separately below	Cultural facility: 1 per 360 sf of GFA Medical office or clinic: 1 per 300 sf of GFA	1 per 500 sf	3 per 500 sf
Community assembly	1 space per 5 seats provided in an assembly area	1 per 5 occupants based on maximum capacity	2 per 5 occupants based on maximum capacity
Cemetery Park and/or playground		No requirement	No limit
Elementary and middle school	1 space per employee, plus additional space for any places of public assembly in accordance with the requirements set forth in this section for such uses	2 per classroom	4 per classroom
High school College or university Trade school	1 space for each employee, plus additional space for any places of assembly in accordance with the	2 per classroom, plus 1 per 3 students	1 per student

Use	Existing Number of Required Spaces	Minimum Number of Spaces Required	Maximum Number of Spaces Allowed
	requirements set forth in this section for such uses and 1 space for every 3 students		
Commercial Uses			
All uses in category, unless listed separately below		1 per 500 sf	3 per 500 sf
Hotel or motel	1 space per guest room. If, in addition to the guest rooms, patrons are provided with assembly halls, bars, restaurants, nightclubs, retail shops, service establishments, or other businesses, additional off-street parking spaces will be required for such other uses in accordance with the regulations of this section for those uses.	1 per guest room	2 per guest room
Campground		1 per campsite	No limit
Short-term rental		Same as applicable dwelling unit type	Same as applicable dwelling unit type
Event center Outdoor recreation Livestock sales pavilion Funeral homes and mortuaries	Funeral home or mortuary: 1 space per 4 seats or 1 space per 75 sf GFA, whichever is greater	1 per 5 occupants based on maximum capacity	2 per 5 occupants based on maximum capacity
Child care center	1 space per employee plus 1 space per 10 children	3, plus 1 per 10 children	4 per 10 children
Food and beverage, unless listed separately	Full service restaurant, Bar or tavern: 1 space per 75 sf GFA, plus 1 space per employee on the largest shift. Outdoor patio areas shall not be included when calculating GFA. If the restaurant includes designated bar areas, off-street parking shall be provided for that area at a ratio of 1 space per 60 sf of GFA.	1 per 100 sf	2 per 100 sf

Use	Existing Number of Required Spaces	Minimum Number of Spaces Required	Maximum Number of Spaces Allowed
Take out restaurant with no patron seating	1 space per 240 sf GFA	Resolved through Adjustment. See 14-13-08.	Resolved through Adjustment. See 14-13-08.
Multi-tenant shopping center	1 space per 300 sf gross leasable area, provided the area of all dining and drinking establishments within the shopping center do not exceed 25% of the total leasable area	Resolved through Adjustment. See 14-13-08.	Resolved through Adjustment. See 14-13-08.
Major vehicle repair Minor vehicle repair	2 spaces per repair stall, plus additional spaces as needed to store vehicles waiting to be repaired or picked up after repair	1 per repair stall	2 per repair stall
Commercial greenhouse Furniture and appliance sales Vehicle sales	1 per 720 sf of GFA	1 per 1,000 sf	2 per 1,000 sf
Industrial Uses			
All uses in category, unless listed separately below		1 per 2,500 sf, plus spaces as required for office or commercial areas	No limit
Data center Junkyard or salvage yard Mining and extraction Storage yard Solid waste disposal facility		No requirement	No limit
Personal Flex		1 per 400 sf	3 per 400 sf
Research and development laboratory		1 per 400 sf	2 per 400 sf
Self-storage facility	A dedicated parking lane with a minimum width of 9 feet shall be provided adjacent to each storage unit opening in the building. Driveways adjacent to each parking lane shall be a minimum of 20 ft in width. In facilities provided with a dedicated rental or leasing office, 1 space per 300 gross sf of office area must be provided.	See use-specific standards, Section 14-10-05.4.d	

14-13-08. Parking Baseline Adjustments

The baseline number of required parking spaces may be adjusted to reflect unique aspects of, or the availability of better data regarding, specific uses or sites, provided the purposes of this Chapter are met.

1. Adjustment Procedure

Administrative adjustment to the baseline parking requirements of this chapter may be requested according to the procedure described in Section 14-20-04.2, subject to the following additional standards:

a. The applicant requesting an adjustment provides a written Statement of Baseline Parking Adjustment, containing the following information:

   i. A description of the proposed use, including any design or operational aspects expected to impact the generation of vehicle parking.

   ii. Estimates of parking demand based on recommendations of the Institute of Traffic Engineers, the American Planning Association, Urban Land Institute, or other acceptable estimate as approved by the Director.

   iii. If the applicant is requesting a reduction below the minimum number of spaces specified in the applicant shall identify one or more strategies from subsection 3 below that will be used to reduce the number of parking spaces required, accompanied by any necessary documentation. The applicant may propose other strategies for reduction not listed below, provided adequate proof is offered to demonstrate the viability of the reduction strategy.

b. The Director shall determine whether to fully or partially adjust the baseline parking based on the information provided, and the review criteria described in subsection 4 below.

2. Required Parking Study

Based on information provided by the applicant and a determination by the Director, a Parking Study pursuant to 14-02-05.5 shall be required to allow an adjustment if any of the following are true:

a. The need for vehicle parking will exceed 300 spaces;

b. The proposed development is within an area of pre-existing parking constraint that may be exacerbated by the development; or

c. Unique conditions of the use or site create uncertainty or sensitive regarding parking demand.

3. Strategies for Reduction of Parking

The following strategies may be used to reduce baseline parking requirements:

a. Shared Parking

Sharing parking facilities between different uses within a site or on a nearby site may reduce the need for vehicle parking for each use, provided the following conditions are met:

i. The uses sharing the parking facility have peak parking demands at different times, as documented by the Urban Land Institute or other acceptable estimates as approved by the Director.

ii. If shared parking arrangements occur off-site, the requirements of this chapter for locating off-street parking areas off-site shall be met.

b. Bicycle Parking

i. Providing bicycle parking facilities on-site may encourage the use of transportation alternatives, and reduce the need for vehicle parking.

ii. The baseline parking may be reduced by one space for every three bicycle parking spaces provided on the parcel, up to 15 percent of the total required parking spaces, subject to bicycle parking standards of Section 14-13-10 below.

c. Transit Availability

i. Sites with convenient transit access and facilities to encourage its use may reduce the need for vehicle parking.

ii. The baseline parking may be reduced by up to five percent of the total required parking spaces when there is fixed-route transit line within 500 feet of the site at the time of development.

iii. If there is more than one fixed-route transit line within 500 feet, the development may take this five percent reduction for each line. For example, if there are three fixed-route transit lines within 500 feet of the development site, the site may reduce its required parking by up to fifteen percent.

d. Transportation Demand Management

i. Property owners may incentivize lower demand for parking among employees, residents, or visitors through internal policies and programs. The baseline parking may be reduced by up to thirty percent of the total required parking spaces if the Statement of Baseline Parking Adjustment includes a signed commitment from the property owner or business operator to implement programs such as:

(1). Rideshare coordination and promotion;

(2). Flexible or remote work arrangements;

(3). Financial incentives for alternative modes of transportation; or

(4). Other policies or programs with demonstrated success in reduction of parking demand.

ii. The Statement of Baseline Parking Adjustment must provide a detailed description of how the proposed program is expected to account for the requested reduction in parking spaces.

e. Shuttle or Valet Parking

i. The operation of shuttle service or valet parking and storing vehicles off-site or in an otherwise inaccessible location may reduce parking demand on-site.

ii. The baseline parking may be reduced by up to twenty percent of the total required parking spaces if the Statement of Baseline Parking Adjustment includes a feasible plan for provision of shuttle service or valet parking.

iii. If an applicant proposes to use an off-site parking location on a property that is not under their ownership, the applicant must secure an agreement according to the requirements of this section for locating required parking areas off-site.

4. Review Criteria

Before making a determination on an adjustment to baseline parking, the Director shall find:

a. Reduction

The applicant has demonstrated that the proposed reduction of required parking below the minimum baseline level will be sufficient to meet the anticipated demand for parking generated by the use(s) on the site for one or more of the following reasons:

i. The site is in an area with elevated levels of pedestrian, cycling, and/or transit usage and is designed to encourage such modes of transportation;

ii. There are unique characteristics of the particular use proposed, relative to uses in this category generally, that would reduce the demand for parking, as determined in a Parking Study, if applicable;

iii. The operator of the use and owner of the property have committed to instituting transportation demand management strategies, as outlined in the Statement of Baseline Parking Adjustment or Parking Study, that would reduce demand for parking;

iv. Parking will be shared between uses with off-set times of peak parking demand on the site or nearby properties to allow more efficient use of spaces; or

v. The site is an adaptive reuse of an older structure with limited capacity for parking, and the proposed use meets anticipated parking demand to the greatest extent feasible, while maintaining the site in productive use.

b. Increase

The applicant has demonstrated that the proposed increase of required parking above the maximum baseline level of spaces is necessary to meet anticipated demand for parking generated by the use(s) on the site for one or more of the following reasons:

i. There are unique characteristics of the particular use(s) proposed, relative to uses in this category generally, that would augment the demand for parking;

ii. Any potential negative impacts of the excess parking will be adequately mitigated by the development; or

iii. Alternative uses of the excess parking area are proposed on a recurring but temporary basis, such as special events, temporary booths, or product displays, that would not meet the use conditions of this section.

14-13-09. Vehicle Parking Location and Design Standards

1. Location

a. On-Site Parking Area

i. The parking facility shall be on the same parcel of land as the structure or use it is intended to serve, or immediately adjacent to it for on-street spaces, unless an off-site parking location is approved in accordance with Section 14-13-09.1.b.

ii. Accessible parking spaces required to meet ADA standards shall not be located off-site and are not eligible for a reduction in number. In calculating the number of required ADA spaces, the required baseline minimum, not subject to any reduction, shall be used as the basis for the calculation.

b. Off-Site Parking Area

A parking area that is not on the same parcel of land as the structure or use it is intended to serve shall meet the following criteria:

i. The facility is located within a zoning district that allows the parking lot or parking structure and, if required in that district, a special use permit is obtained.

ii. Adequate pedestrian access between the proposed off-site parking and proposed development exists or will exist, along a legal pedestrian route of no greater than 500 feet between the parking spaces and at least one entrance to the structure or use(s), that does not require crossing an arterial street.

iii. If the off-site parking location is not under the applicant's ownership, a copy of an attested agreement between property owners that describes the terms of use, duration of agreement, and depicts the number and location of spaces available to the applicant shall be submitted to the Director for review and approval. The agreement shall specify that it binds the current owners, as well as their heirs and assigns. Once approved, this agreement shall be recorded with the Burleigh County Recorder prior to the issuance of a building permit.

2. Off-Street Parking Design Standards

All applications for a building permit or certificate of occupancy shall include a site plan, drawn to scale, that depicts the location and arrangement of required parking and loading spaces, driveways, and walkways as provided for in this chapter.

a. Parking Space Dimensions

i. A standard parking space shall be at least nine feet in width and 18 feet in length.

ii. A compact parking space shall be at least eight feet in width and 16 feet in length. Up to ten percent of required parking spaces may be designated as compact spaces, and all such spaces shall be clearly marked or signed that they are compact spaces.

b. Drive Aisles

Parking areas shall be provided additional area for access lanes, aisles, and drives necessary for safe and adequate parking maneuvering. Access lanes, aisles, and

drives must be designed according to acceptable professional industry design standards.

c. Accessible Parking Spaces and Aisles

The size, number, and location of stalls reserved for ADA parking shall be provided and identified as required by applicable ADA regulations. These spaces are included in the calculation of the baseline parking.

d. Electric Vehicle Charging Stations

Charging station stalls must meet local, state, and federal requirements. These spaces are included in the calculation of the baseline parking.

e. Surfacing

i. All off-street parking and loading spaces and all driveways on private property that lead to parking areas shall be hard-surfaced. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers, or similar materials installed and maintained according to industry standards. Crushed rock, crushed asphalt, crushed concrete, gravel, or dirt shall not be considered an acceptable surfacing material.

ii. Certain overflow parking areas may be exempt from said surfacing requirements through an administrative adjustment if the following conditions are met:

(1). The overflow parking area is projected to be utilized no more than ten times per year based on a parking study or an operational narrative provided by the applicant.

(2). The overflow parking area is maintained as reinforced turf or natural vegetation at all times. Overflow parking areas may not be a crushed rock, crushed asphalt, crushed concrete, gravel, or dirt surface.

(3). All parking spaces outside of the overflow parking area must be accessible without travel through the overflow parking area.

(4). No ADA parking spaces may be placed within the overflow parking area.

(5). The overflow parking area is not within the DT-Downtown zoning district.

iii. Agricultural recreation uses as defined in Section 14-23-02, are exempt from this hard-surface requirement.

f. Turnarounds

All off-street parking areas shall be designed so that vehicles do not have to back into the public right-of-way to exit parking areas.

g. Unencumbered Access

Parking spaces may not be blocked from access by other parking spaces, queueing of vehicles, storage of materials, or any other use or structure on the site.

h. Vehicle Overhang[175]

i. Any portion of a parking or loading area abutting a sidewalk or pedestrian walkway at a point other than a permitted driveway shall be provided with wheel stops, bumper guards, or other devices to prevent encroachment of parked, standing, or moving vehicles upon any sidewalk or walkway area not contained within a permitted driveway.

ii. No sidewalk or walkway shall be decreased to less than four feet in width by use of a vehicle overhang. The maximum front overhang over a sidewalk or walkway shall be two feet as long as the sidewalk is protected by wheel stops or curbing.

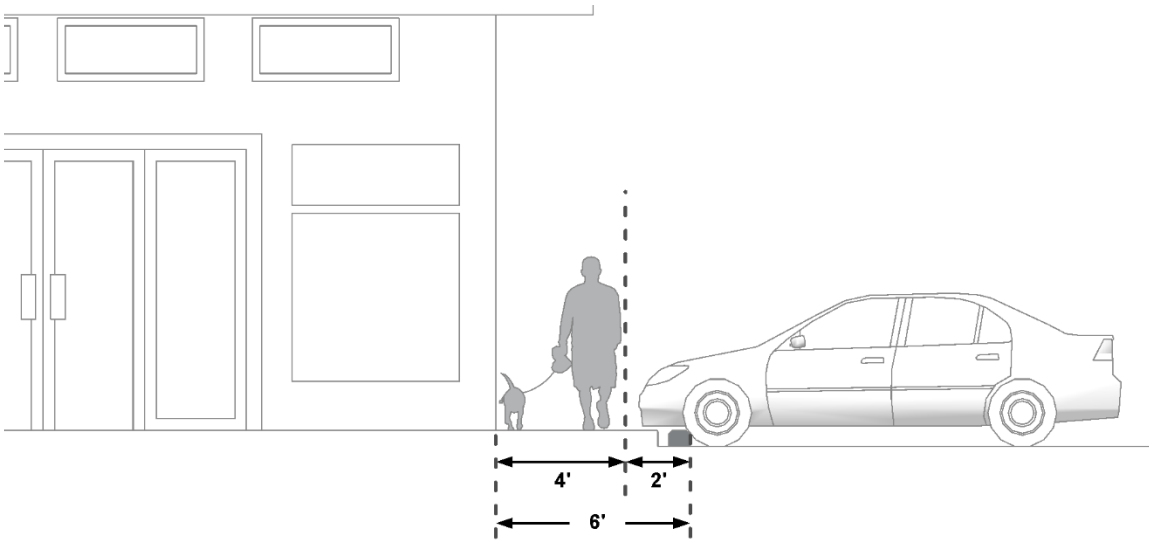


Figure 13-2: Maximum Vehicle Overhang

i. Pedestrian Facilities

Off-street parking lots for 50 or more vehicles shall meet the pedestrian connectivity standards of Section 14-14-07.3.a, Pedestrian Access through Parking Areas.

j. Striping

All off-street parking areas containing four or more spaces or containing angled parking shall have the parking spaces and aisles clearly marked on the pavement.

k. Shared Parking Required

For parking areas that serve multiple tenants or condominium owners on a lot, or parking approved as an adjustment with a condition for shared parking between sites, no signs restricting parking to certain uses only on the site are permitted. This prohibition does not apply to handicap restrictions, spaces reserved for online orders, or other special restrictions that do not deprive use of parking for other tenants or owners.

[175] Carries forward 14-04-21.4.h, use-specific standards for gas stations in the DF district.

l. Use of Parking Area

All required parking, stacking, and loading spaces, and all access lanes, shall be used exclusively for the temporary parking and maneuvering of vehicles and shall not be used for the sale, lease, display, repair, or storage of vehicles, trailers, boats, campers, mobile homes, merchandise, or equipment, or for any other use not authorized by the provisions of this Code.

m. Maintenance

All off-street parking and loading facilities required pursuant to the provisions of this chapter shall be paved, drained, lit, and periodically maintained by the owner.

n. Continuing Obligation

Parking spaces required on a site according to the standards of this Code represent a continuing obligation of the owner of the property on which any structure is located, for as long as the structure is in existence and the use that requires vehicle parking or vehicle loading facilities continues.

14-13-10. Bicycle Parking Requirements[176]

Where bicycle parking is provided to meet the terms of a parking adjustment, the following standards must be met:

1. Location of Bicycle Parking

a. Bicycle parking shall be located within 100 feet of a primary building entrance along a walkway adjacent to the building, or within an abutting parking area with a connection to a primary building entrance via a walkway.

b. Bicycle parking may be provided within a building, but the location must be easily accessible to the anticipated user and appropriately signed.

2. Bicycle Parking Design

a. A fixed bicycle rack shall meet industry design standards, such as those of the Association of Pedestrian and Bicycle Professionals

b. The bicycle rack shall be placed on a hard-surfaced platform.

c. The bicycle rack shall be located so as to not interfere with pedestrian or motor vehicle traffic, with an aisle on at least one side of the bicycle parking space to allow for adequate access and maneuvering.

14-13-11. Off-Street Vehicle Stacking[177]

Specific uses that cause queuing of vehicles for provision of a service shall comply with minimum vehicle stacking lane requirements of this section.

[176] New.

[177] Reformatted to nest 14-03-10.9 (drive-throughs) under 14-03-10.8 (vehicle stacking) requirements.

1. Location of Stacking Spaces

Vehicle stacking lanes shall be located completely on the parcel with the structure or use they are intended to serve, unless an agreement with an adjoining property owner allowing stacking on that property is duly executed and recorded.

2. Minimum Vehicle Stacking Requirements

The minimum number of spaces in a stacking lane for a particular use shall be provided as show in Table 14-13-2: Required Off-Street Vehicle Stacking Spaces.

Table 14-13-2: Required Off-Street Vehicle Stacking Spaces

Use	Minimum Number of Stacking Spaces	Measured From
Financial institution- ATM or teller	3 spaces per lane	Kiosk or window
Drive-through food/beverage service with on-site ordering	10 spaces	Pick-up window
Drive-through food/beverage service, no on-site ordering, pick-up only	3 spaces	Pick-up window
Car wash, automatic	6 spaces per bay	Entrance
Car wash, self-service	2 spaces per bay	Entrance
Drive-through car service (oil change and similar)	3 spaces per bay	Entrance
Self-service fueling station	2 spaces per fueling island	Each end of fueling island
All other drive-throughs	3 spaces	Window

3. Vehicle Stacking Lane Standards

a. Each required vehicle stacking space shall be of an area at least ten feet in width and 20 feet in length.

b. Vehicle stacking lanes shall be designed and located to avoid interference with maneuvering into parking spaces or traffic flow in parking or drive aisles, streets, bikeways, shared use trails, sidewalks, or passenger loading areas for patrons.

c. Vehicle stacking lanes shall not impede pedestrian safety or create an obstacle to the most direct route for pedestrians accessing a building from the parking area.

d. All vehicle stacking spaces shall be hard-surfaced. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers, or similar materials installed and maintained according to industry standards. Crushed rock, crushed asphalt, crushed concrete, or gravel shall not be considered an acceptable surfacing material.

4. Vehicle Stacking Adjustments

The Director may adjust the minimum number of spaces required in a vehicle stacking lane, if the following criteria are met:

a. There are unique characteristics of the particular use proposed, relative to uses in this category generally, that reduce the typical demand for vehicle stacking;

b. There are existing physical conditions unique to the site that affect vehicle stacking; or

c. The purposes of this section can be met through means other than strict adherence to minimum vehicle stacking spaces.

14-13-12. Off-Street Loading

Areas of loading and unloading of supplies or passengers shall comply with the following standards:

1. Supply Loading

A supply loading area to dispatch or receive shipment of goods from a site is not required for any use; however, if a supply loading area is provided, the following standards must be met:

a. Adequate space must be made available for loading and unloading of goods, including the maneuverability of any trucks or trailers into any loading docks, on the parcel of land containing the use it is intended to serve without use of a public right-of-way, unless authorized by the City Engineer.

b. Supply loading areas must be located to the rear or side of the buildings, with the least visibility from a public right-of-way on the site as practicable.

c. In no case shall a supply loading area be part of the area used to satisfy the parking requirements of this section.

2. Passenger Loading

A passenger loading area for pick-up and drop-off of people at a site is not required for any use; however, if a passenger loading area is provided, the following standards must be met:

a. A passenger loading area shall be located at the closest vehicle-accessible point to the main front entrance of the use or structure it is intended to serve, including under a canopy or interior of a building if available.

b. At least one accessible passenger loading space shall be provided for each 100 linear feet of loading zoning, in compliance with ADA standards.

c. A passenger loading area shall be signed and time-limited appropriately to preserve its function.

d. In no case shall a passenger loading area be used to satisfy the parking requirements of this section.

Chapter 14-14 Mobility and Connectivity

COMMENTARY

This is a new chapter for the City's consideration; all provisions are new unless otherwise noted. This chapter was added to the LDC to implement the applicable goals and objectives of the Connect element of the City's Comprehensive Plan – particularly those goals and objectives related to vehicular, pedestrian, and bicycle connectivity.

14-14-01. PURPOSE

The purpose of this chapter is to support the creation of a highly connected transportation system within the City and its extraterritorial area to:

1. Support the goals of the Connect element, as well as implement the Major Street Plan and the Active Mobility Plan of the Comprehensive Plan;
2. Encourage multimodal travel by providing options for automobiles, bicycles, pedestrians, and future transit;
3. Connect neighborhoods to each other and to local destinations such as work, schools, parks, and shopping centers;
4. Construct new and improve existing transportation infrastructure with an eye towards safety improvements for all users; and
5. Mitigate the traffic impacts of new development and redevelopment.

14-14-02. STREET DESIGN

1. Public Street and Alley Design

a. Arrangement and Classification

i. The location of all arterial and collector streets shall conform to the Major Street Plan and shall be considered in relation to existing and planned streets, topographical conditions, and the proposed uses of lands those streets are intended to serve.

ii. Each subdivision shall accommodate a system of collector and local streets providing multiple direct connections between destinations such as parks, schools, and shopping, without requiring the use of arterial streets to the maximum extent practicable.

iii. The arrangement of all streets in a subdivision shall either:

(1). Provide for the continuation or appropriate projection of existing streets in surrounding areas at the same street classification; or

(2). Conform to an adopted or approved plan for the neighborhood that addresses a particular situation where topographical or other conditions make continuance of or conformance to existing streets impractical.

b. Intersections

i. Street jogs for local streets with centerline offsets of less than 150 feet are not allowed.

ii. A street intersecting with or extending to meet an existing street shall be connected to the existing street on centerline with distances and angles to show relationships. Intersecting streets shall be laid out using as nearly right angles as possible, and no such angle of intersection shall be less than 60 degrees.

iii. When connecting street lines deflect from each other by more than ten degrees, they shall be connected by a curve of adequate radius to ensure clear visibility for vehicles.

iv. A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets.

c. Street Width

i. Within City Limits

Rights-of-way and street widths within city limits shall be designed to the standards in Table 14-14-1: Street Width Requirements Within City Limits.

Table 14-14-1: Street Width Requirements Within City Limits

Street Type	Minimum Right-of-Way Width (Feet)	Typical Street Width (Feet) [1]
Arterial	150	Variable [2]
Collector (with parking)	80	40
Collector (no parking)	80	36
Local commercial	80	40
Local industrial (with parking)	80	48
Local industrial (no parking)	80	30
Local residential (parking both sides)	60	32
Local residential (parking one side)	54	26

Notes

[1] Street width along a typical cross-section with potential variations in roadway geometry at intersections and other sections.
[2] Determined by City Engineer through study based on traffic forecasts and function

ii. Outside of City Limits

In all areas outside Bismarck city limits but within the extraterritorial area of the City, right-of-way and street widths shall be as described in the following table:

Table 14-14-2: Street Width Requirements Within the ETA

Street Type	Minimum Right-of-Way Width (Feet)	Street Width (Feet)
Arterial	150	40
Collector	80	30
Local	80	26

iii. Street Design for On-Street Parking

(1). On-street parking is prohibited on arterial roadways.

(2). Collector streets may be designed without on-street parking or with parking on either or both sides of the street, subject to the minimum street widths of this section and all restrictions of Section 12-13-02 of the Code of Ordinances.

(3). Local residential streets with a pavement width 32 feet or greater and local commercial streets shall be designed to allow on-street parking on both sides of the street. Local residential streets with a pavement width of less than 32 feet shall be designed to prohibit parking on one side of the street, subject to all restrictions of Section 12-13-02 of the Code of Ordinances.

(4). Where a street is designed without on-street parking on one or both sides, no-parking signage shall be installed at the developer's expense.

iv. Curbs

(1). All arterial, collector, and local commercial streets shall be designed and constructed with standard curbs.

(2). Local residential streets within the RS zoning district may be constructed with either standard or mountable curbs, provided the type of curb is determined prior to approval of the subdivision dedicating the right-of-way and incorporated into the Post-Construction Stormwater Management Permit for the subdivision.

d. Cul-de-Sacs

i. Limitations on Use

(1). Promoting a well-connected street network that provides for safe, direct, and convenient access by vehicles, bicycles, and pedestrians requires limitations on the use of cul-de-sac streets to instances where pre-existing conditions prohibit future connections to adjoining streets from the site.

(2). Cul-de-sacs may be permitted on a temporary basis, regardless of preexisting obstructions, subject to the following requirements:

(a). A master plan is provided showing the proposed street connection and removal of the cul-de-sac.

(b). The applicant has ownership or a controlling interest in the land within which the street connection is proposed or that property owner provides assent in writing to the connection.

(c). An easement is granted to the City for the area of the cul-de-sac to be vacated once the cul-de-sac is removed. The temporary cul-de-sac shall not be shown on the face of the plat.

(d). A “Road Closed” sign is placed in the location where the future connection will be made.

(3). If a cul-de-sac street is proposed, a detailed written justification for the use of the cul-de-sac in a proposed subdivision shall be provided as part of the plat application process.

ii. Design

Where cul-de-sacs are allowed by the City, either permanently or temporarily, the following standards shall apply:

(1). The maximum overall length of a cul-de-sac shall be 750 feet. The minimum throat length of a cul-de-sac shall be 230 feet. The lengths shall be measured from the centerline intersection with the intersecting street to the center point of the turnaround.

(2). One of the following sets of turnaround dimensional standards shall apply:

(a). Circular cul-de-sac turnarounds shall have a dedicated right-of-way diameter of at least 122 feet and a paved diameter of at least 96 feet for plats within Bismarck city limits and a paved diameter of at least 80 feet for plats within the extraterritorial area. The paved diameter shall be measured from face to face of the curb within the city limits and from roadway edge to roadway edge within the extraterritorial area.

(b). Irregular cul-de-sac turnarounds shall provide a minimum inside radius of 28 feet to the face of the curb and a minimum outside turning radius of 48 feet to the face of the curb. Additional area beyond the minimum outside radius will need to be provided if parking is allowed.

(3). Islands or medians within a cul-de-sac are subject to the following standards:

(a). The design of such proposed islands or medians shall be subject to review and approval by the City or County, depending on the location of the plat during the subdivision plat approval process. Landscaping within islands or medians within Bismarck city limits shall be included with the plat or proposed development’s landscape plan, and subject to the City review and approval.

(b). Landscaped islands or medians may be permitted provided a home owners association assumes responsibility for curb and vegetation maintenance. Maintenance agreements shall be reviewed and approved by the City, depending on the location of the plat, and recorded as part of the subdivision plat approval process.

(c). Islands or medians may provide off- street parking areas. All such parking shall be subject to review and approval by the City or County, depending on the location of the plat.

(4). Islands or medians, including any adjacent parking area, shall be available for snow storage purposes.

e. Dead End Streets

Dead-end streets are not allowed except as approved cul-de-sacs, whether temporary or permanent.

f. Alleys

i. Alleys may be dedicated on a subdivision plat for the purpose of providing service or secondary access to residential or commercial development, subject to review by the City Engineer and Director of Public Works Service Operations.

ii. If an alley is required for use as a fire lane, the width of all alleys shall be no less than 24 feet and meet fire apparatus access roadway standards. All other alleys shall be at least 20 feet in width.

iii. Alleys must connect to streets on both ends. Dead ends or cul-de-sacs in alleys are not permitted.

g. Loop Lane[178]

i. Purpose

A loop lane is an alternate street design that provides a turnaround in place of a cul-de-sac. The loop lane is desirable because it allows for additional courtyard or park area instead of an expanse of asphalt paving found in a standard cul-de-sac.

ii. Ownership

(1). The loop lane and parking shall be dedicated to and maintained by the City.

(2). The courtyard or park shall be owned and maintained by the homeowners association or similar association of property owners, subject to any easements.

iii. Access

Corner lots with frontage on the loop lane and the abutting street shall be required to access from the loop lane only.

iv. Design

(1). The minimum loop lane is 20 feet from flowline to flowline and shall consist of a paved surface with roll-over curb and gutter on at least one side and a roll-over curb or vertical curb on the other side.

(2). No curve on any portion of the flowline of the loop lane shall have an inside radius of less than 33 feet and an outside radius of less than 48 feet.

[178] New. Loop lanes can be used as an alternative to a cul-de-sac or to create a courtyard development without a private street.

(3). No portion of the loop lane shall extend more than 250 feet from the abutting street right-of-way.

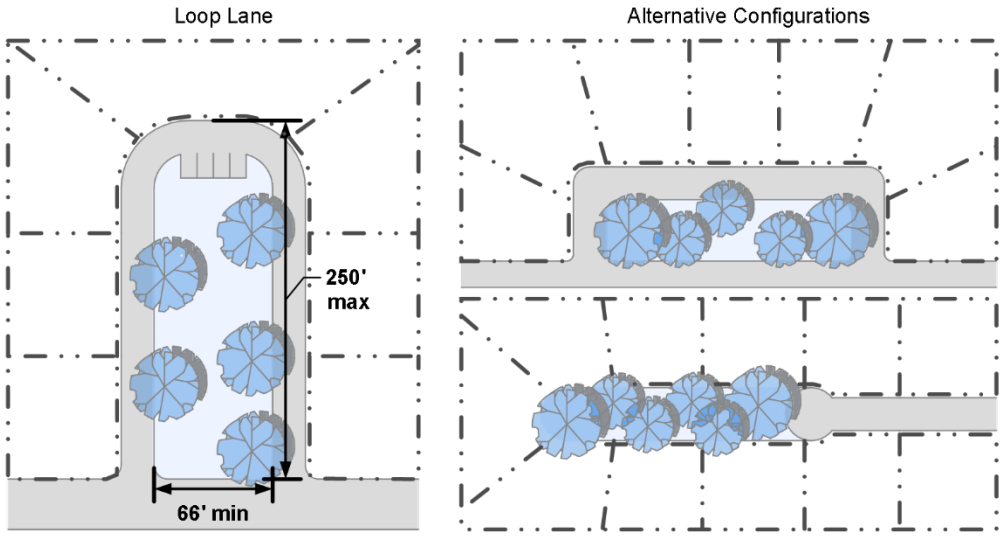


Figure 14-1: Loop Lane Design Examples

(4). A minimum separation of 66 feet is required between the right-of-way on each side of the loop.

(5). The right-of-way shall extend one foot beyond the curb on the interior of the lane and one foot beyond curb on outside edge of the lane.

(6). A 14-foot multipurpose easement shall be dedicated on the outside edge of the lane. The park may be used for stormwater detention.

(7). The loop shall provide for two-way traffic.

(8). A sidewalk is required only where the park abuts a street other than the loop.

(9). The developer shall landscape the park or courtyard per Chapter 14-15, Landscaping and Screening.

v. Parking

(1). Four guest parking spaces, located in the public right-of-way, are required at the end of the loop. The parking area is reserved for guest parking and shall not be used for the parking of residents' vehicles and/or recreation vehicles for more than a 24-hour period.

(2). "No parking" signs shall be installed and maintained so that no parking is allowed between the curbs on any traveled portion of the loop lane, except the designated guest parking spaces.

vi. Adjacent Lots and Structures

(1). No front-loading garage or carport may be closer than 20 feet to the front lot line. Individual driveways must have a five-foot radius fillet on driveway corners.

(2). The front yard setback for the house is 15 feet from the right-of-way (16 feet from the curb).

(3). Lots on the loop lane may be 20 percent smaller and the rear setback can be ten feet less (ten feet minimum) than typically required by the zoning district.

(4). No gates, locked entries, or other access constraints are allowed across the loop lane.

h. Rural Roads

On rural road sections outside of Bismarck city limits but within the extraterritorial area of the City, the following standards shall apply:

i. Adequate culverts shall be installed to handle all drainage, with a minimum size of 18 inches in diameter or equivalent. The owner shall present to the County Engineer two copies of a report proposing the size, type, and location of all drainage structures. All drainage structures shall conform to current North Dakota Department of Transportation standard specifications. For drainage structures with drainage areas of over 40 acres, the report shall include acceptable engineering calculations for the required hydraulic capacity. Written approval shall be obtained from the County Engineer prior to the installation of drainage structures.

ii. Gravel surfacing, where permitted, shall be in accordance with the standards and specifications of the County Engineer. Gravel surfacing shall be spread the full width of the roadway. The depth of the gravel surfacing shall not be less than six inches when compacted in place. Aggregates for gravel surfacing shall conform to North Dakota Department of Transportation specifications for Class 13 Aggregate.

iii. All costs for sampling and testing shall be the responsibility of the developer.

iv. Rural subdivision roadways must be paved in accordance with the standards and specifications of the County Engineer. Minimum depth of hot bituminous pavement shall be six inches in the IX or IG zoning district and four inches in all other zoning districts compacted in place with proper base and subgrade.

v. All approaches shall be graveled with Class 13 or Class 3 aggregate to an un-compacted depth of two inches. Gravel shall extend from the edge of the roadway to the property line.

vi. All drainage under streets, private drives, and approaches must have culverts installed where required by the County Engineer.

vii. All streets must be constructed to an adequate height to ensure proper snow clearance and removal. Any deviation from the minimum road section must have written approval of the County Engineer. Protective covenants shall be filed by the owner to preserve the backslopes extending onto the lots.

viii. The County Engineer will inspect the completed roads in each subdivision before assuming responsibility and maintenance of the roads and streets to ensure that the above standards have been complied with.

ix. No more than two approaches onto an arterial or section line road in any 1,320 feet of distance will be allowed without prior approval of the County Commission

and the County Engineer. No approach may be constructed without first having obtained an approach permit from the County Engineer.

i. Construction Compliance with Design Criteria

All construction of streets, sidewalks, and improvements in the public right-of-way shall be constructed in accordance with the applicable City construction specifications and design guidelines, or the applicable County standards within the city's ETA.

2. Private Street and Driveway Design

a. Private Streets[179]

i. Purpose and Limitations

(1). Private streets have historically posed problems as they deteriorate over time and property owners are not prepared to bear the cost and burden of maintenance. The City's preferred solution to this problem is design, construction, and dedication of public streets for long-term City maintenance.

(2). Private streets are thus prohibited unless there is no practicable design alternative available through the public street standards, and the applicant conclusively demonstrates in a written narrative accompanying the subdivision application that the proposed private street will be safe, attractive, and well-designed, and not have average daily traffic above 250 trips.

(3). If a private street is permitted, it shall be subject to the applicability and design standards of this section. The criteria and standards were established to avoid problems encountered in the past with private streets, and provide property owners with some protection through a maintenance agreement and funding.

ii. Applicability

Private streets may only be utilized if there is no practicable design alternative available through the public street standards.

iii. Street Capacity and Design

(1). A private street shall be assigned street name indicated on the plat.

(2). A private street shall not be permitted to provide the sole means of access for 25 or more residential units.

(3). A private street shall meet the requirements of the most recently adopted version of the International Fire Code (IFC).

(4). Pedestrian facilities and connections as shown on the Active Mobility Plan shall be required within the proposed development and allow access to the general public.

(5). The finished surface of the private street may be composed of variable surfaces such as brick, interlocking pavers, cobblestones, or other similar finishes, designed by a professional engineer and as approved by the City Engineer.

[179] Significantly revised to address issues with the use and maintenance of private streets.

(6). An entrance design feature such as decorative paving, special signage or other conspicuous improvement shall be incorporated into the final design of the private street such that the design clearly distinguishes the private street from the public street.

iv. Dedication on Subdivision Plat

Preliminary and final subdivision plats including a private street shall show the following:

(1). The private street depicted as an access easement;

(2). Clearly establish or indicate private easements on such streets for the benefit of future lot owner, with heirs and assigns, in the subdivision that require the private street for access;

(3). Grant of access to private street easements to any governmental agency, its officers, and employees for utilities and any other governmental use it deems necessary or advisable.

v. Maintenance of Private Street

(1). A private street shall not become a maintenance liability for the City or County.

(2). A private street requires execution and recordation of an agreement with the City on a form provided by the City Engineer, outlining maintenance responsibilities, utility access rights, emergency access requirements, and indemnification for the City to be approved in conjunction with the final plat.

(3). The City shall not be responsible in any way to furnish any City services if the private street easements or finished streets are not properly maintained or are obstructed by the owners of property in the subdivision.

vi. Criteria for Approval

An applicant requesting approval for a private street shall conclusively demonstrate in writing with the application for preliminary plat that a proposed private street meets all of the following:

(1). Is necessary to allow flexibility in residential street access due to design or topographic conditions;

(2). Encourages more creative design including but not limited to the clustering of units in residential development;

(3). Provides a safe human and vehicular environment; and

(4). Promotes attractive streetscapes that give neighborhoods character and identity, such as allowing alternative street surfaces, finishes, and designs.

b. Driveways

All driveways, whether utilized by an individual lot or shared between lots, shall meet all design standards of Title 10-03-07.

c. Shared Driveways[180]

Private, shared driveways serving three or fewer lots are exempt from the private street standards and shall comply with the following standards.

i. Ownership

(1). A shared driveway shall be owned and maintained by the owners of the parcels or lots that abut and have access to the shared driveway.

(2). The shared driveway shall be depicted on the plat as an access easement dedicated to the property owners of the parcels that abut and have access to the shared driveway.

ii. Access

(1). No more than three residential lots and no more than six dwelling units total, including ADUs, may utilize a single shared driveway. Notwithstanding, an ADU may be added to an existing shared driveway without need to create a private street.

(2). Each lot abutting a shared driveway shall be granted full rights to access off of the shared driveway unless approved otherwise at the time of subdivision.

iii. Design

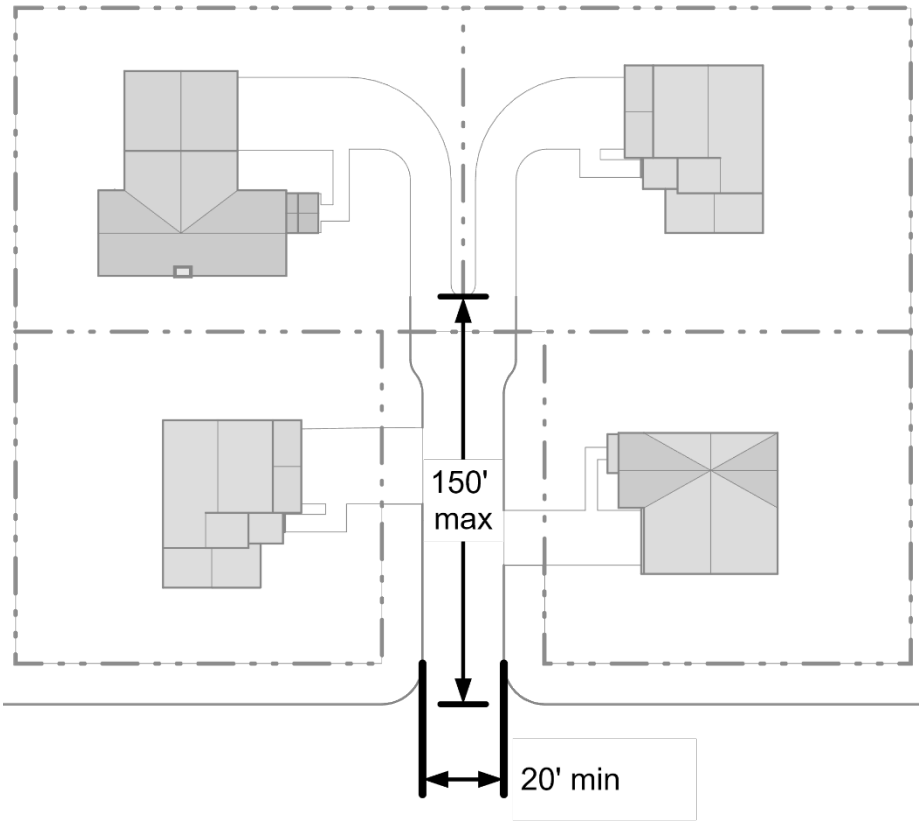


Figure 14-2: Shared Driveway Dimensions

[180] New.

(1). Shared driveways shall be a minimum of 20 feet wide flowline to flowline and a maximum of 150 feet long. See Figure 14-2.

(2). Shared driveways shall be designed to permit the ASHTO "P" design vehicle to back out of an individual driveway and turn 90 degrees in either direction on the shared driveway without any portion of the vehicle:

(a). Leaving the individual driveway from which the vehicle is exiting or the shared driveway; or

(b). Entering on or over the individual driveways of any other residence.

(3). Finished surface may be composed of variable hard surfaces such as brick, interlocking pavers, cobblestones, or similar finishes, designed by a professional engineer and as approved by the City Engineer.

iv. Parking

(1). Parking on a shared driveway designed at the minimum allowed width is prohibited. A shared driveway may be used only where it intersects a street with on-street parking.

(2). Each lot abutting and accessing a shared driveway shall provide four on-site parking spaces. For homes on shared driveways that access a cul-de-sac, five on-site parking spaces shall be provided. These additional spaces may be provided on the shared driveway if it is widened to accommodate such parking.

v. Adjacent Lots and Structures

(1). The building setback adjacent to a shared driveway shall be the minimum side setback required by the underlying zoning district.

(2). No front-loaded garage or carport may be closer than 20 feet from the edge of the shared driveway. Individual driveways must have a five-foot radius fillet on driveway corners.

(3). No gates, locked entries, or other restrictive access constraints are allowed across a shared driveway.

3. Adjustments to Street Design

The street design requirements may be administratively adjusted through the procedure in Section 14-20-04.2. Before making a determination on adjustment to any street design element, the City Engineer shall review and find:

a. The applicant has demonstrated that at least one of the following special site circumstances exists:

i. Natural or preexisting obstructions prevent full compliance with street design standards;

ii. The adjustment is necessary to preserve natural amenities, drainage patterns, or unique civic functions of the site;

iii. The adjustment is necessary to transition between existing and new roadways of varying geometry;

iv. Strict compliance would create a traffic safety hazard.

b. The proposed development can accommodate anticipated traffic through an alternative combination of streets, alleys, or shared-use trails;

c. The alternative street design continues to conform to the comprehensive plan and relevant City policies and guidelines.

14-14-03. Traffic Impacts

Commentary

This requirement is proposed to implement the following Comprehensive Plan objective:

C3.c) Utilize traffic impact studies for proposed developments with high expected trip generation and require implementation of identified mitigation measures at the developer's expense as a condition of development permission.

a. Purpose

The purpose of mitigating traffic impacts from development is to ensure safe and efficient movement of vehicles, pedestrians, and cyclists. This requirement helps protect public safety, minimize congestion, and coordinate infrastructure investments with anticipated growth.

b. Applicability

An evaluation of traffic impacts is required prior to the approval of a site plan, preliminary plat, or zoning map amendment that includes any of the following:

i. Truck stop;

ii. Truck terminals or distribution center;

iii. Parking structures with greater than 300 spaces;

iv. Hospital;

v. High school;

vi. Elementary or middle school of over 600 students;

vii. Major recreation and entertainment facilities, indoor or outdoor;

viii. Medical office building of 100,000 square feet or greater at build-out of all phases;

ix. General or corporate office building of 100,000 square feet or greater at build-out of all phases;

x. Retail building or shopping center of 100,000 square feet or greater at build-out of all phases; or

xi. Any use deemed by the City Engineer to have potentially significant traffic impacts.

c. Traffic Impact Study

A required traffic impact study shall meet all of the requirements of Section 14-02-05.4 Traffic Impact Study.

d. Waiver

The City Engineer may waive the requirement for a traffic impact study and/or mitigation, including at times when the proposed use is one of those listed in applicability above.

e. Mitigation Required

Any mitigation measures identified in the Traffic Impact Study shall be installed at the developer's expense during the development process, unless otherwise agreed to by the City Commission.

14-14-04. CONNECTIVITY STANDARDS

1. Purpose

The purpose of connectivity standards is to ensure that development contributes to a well-connected street and path network that provides multiple, direct, and safe routes for all modes of travel, in order to improvement emergency access, reduce congestion on arterial streets, encourage active forms of transportation, and facilitate long-term development potential of sites.

2. Secondary Vehicular Access

a. Purpose

A secondary means of access to developed sites may be necessary to have a reasonable level of emergency response access to developed property for life safety and property protection, provide alternate means of travel for the general public, and reduce congestion on public streets.

b. Applicability

The provision of secondary vehicular access shall be provided on a subdivision plat or site plan in any of the following cases:

i. In the RU or RS zoning districts, an area of more than 30 single-family residences, two-family residences, or townhouses shall have at least two means of vehicle access.

ii. In the RR or RRE zoning districts, an area of more than 16 single-family residences shall have at least two means of vehicle access.

iii. For multi-family residential uses, an area of more than 100 dwelling units or greater than 800 feet of street frontage shall have at least two means of vehicle access

iv. For commercial, industrial, or institutional uses, an area including more than 62,000 square feet of gross floor area or greater than 800 feet of street frontage shall have at least two means of vehicle access.

c. Method of Calculation

i. Unless restricted through an overlay district or other means, each proposed lot in an RU, RS, RR, or RRE residential zoning district shall be assumed to have one residence during a subdivision process.

ii. The number of dwelling units shall be counted by following the adjoining street or streets, including areas outside of the proposed subdivision, to the nearest street intersection with a connection to the remainder of the street network.

iii. Street frontage is the total length of public right-of-way directly adjacent to the development. Frontage that is restricted by a non-access line or otherwise legally prohibited from access is not included in this calculation. Street frontage does not need to be continuous. Typical obstructions such as hydrants and utility poles are not deducted from street frontage calculations.

d. When Applied

i. Compliance for multi-family residential, commercial, industrial, and institutional uses is reviewed with the site plan. All other uses are reviewed during the subdivision process. No final subdivision plat, simple subdivision plat, or site plan may be approved unless it is in compliance with the standards of this subsection.

e. Location and Standards

i. When two means of access are required, they shall be separated from each other to the greatest extent feasible given existing site conditions. Where a site has legal and unobstructed access to multiple street frontages, access shall be provided to more than one street frontage.

ii. The generally preferred means of secondary access is a full public right-of-way. However, where this is not feasible or in conflict with other provisions of this Code, a private street or a gated public right-of-way may be permitted, subject to the Fire Department retaining the right and physical ability to travel through this access without obstruction at all times.

iii. The City may enter into a development agreement for the provision of secondary access on a temporary basis, in compliance with all requirements of this subsection, with removal of certain temporary accesses stipulated in the agreement when no longer required.

f. Adjustments to Secondary Vehicular Access

The secondary access requirement may be administratively adjusted through the procedure in Section 14-20-04.2. Before making a determination on an adjustment to secondary access, the Director, City Engineer, and Fire Chief shall review and find:

i. The provision of secondary access is constrained by existing development or other physical constraints on the site; and

ii. Adequate fire protection measures are in place to compensate for the access limitations.

3. Intersection Spacing

a. Purpose

Limiting the length between intersections of local and collector streets provides more efficient emergency response, dispersal of traffic during periods of congestion, alternatives for detours during roadway construction, and promotion of active transportation modes.

b. Applicability

The standards of this section shall be reviewed and applied during the subdivision review process for all plats dedicating new local or collector public rights-of-way. The provision shall not apply to arterial roadways.

c. Spacing Standards

Information on method of measurement is available in Section 14-23-01.6, Intersection Spacing.

i. In the RU or RX zoning districts, spacing between two intersections shall not exceed 900 feet, as measured along the centerline of the street to center points of the intersections.

ii. In all other zoning districts, spacing between two intersections shall not exceed 1,320 feet, as measured along the centerline of the street to center points of the intersections.

iii. A street segment that traverses more than one zoning district shall follow the standard applicable to the zoning district with the majority of linear frontage on that street segment.

d. Intersection Spacing Adjustments

Intersection spacing may be administratively adjusted through the procedure in Section 14-20-04.2. Before making a determination on an adjustment to intersection spacing, the Director and City Engineer shall review and find any of the following:

i. The street intersects with or is obstructed by an arterial or interstate street where additional access is not warrant or supported in the location; or

ii. The street is adjacent to or obstructed by a railroad right-of-way; or

iii. The street is obstructed by topographic conditions or environmentally sensitive or natural resource areas such as wetlands, water courses or drainageways, floodplains, wildlife habitat areas, or other hazards.

4. Access Between Abutting Development

a. Purpose

The purpose of this requirement is to facilitate vehicular access between abutting developments, encourage shared parking, minimize access points along streets, and reduce travel distances between commercial and institutional destinations.

b. Applicability

All mixed-use and non-residential development shall comply with the following standards prior to approval of a site plan.

c. Cross Access Standards

i. The internal circulation system shall be designed to allow for cross access between the development's common use areas and common use areas in an abutting mixed-use or non-residential development, or to the boundary of abutting vacant land zoned to allow mixed-use or non-residential development. See Figure 14-3.

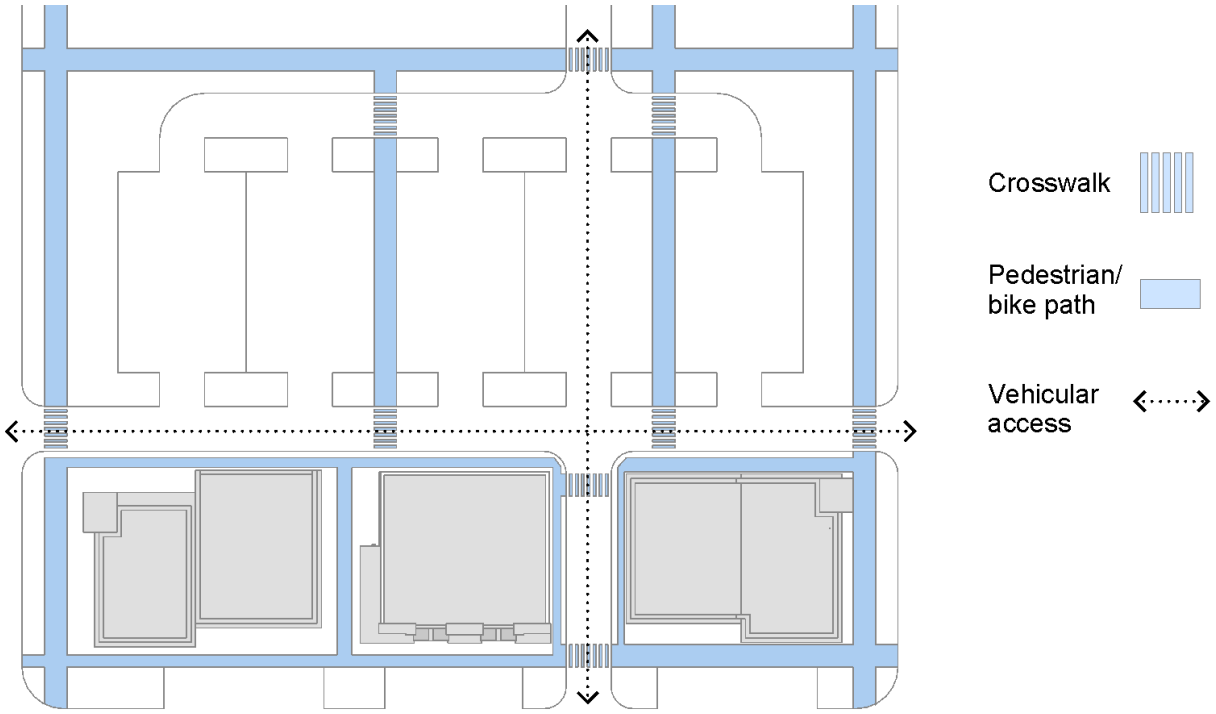


Figure 14-3: Internal Circulation System for Cross Access

ii. Required vehicular cross access between abutting lots shall be provided by a frontage or service street (if the lots front on a major arterial thoroughfare right-of-way), a single two-way driveway or drive aisle, or two one-way driveways or aisles that are sufficiently wide to accommodate traffic by automobiles, service vehicles, loading vehicles, and emergency vehicles.

d. The cross-access requirement may be administratively adjusted through the procedure in Section 14-20-04.2. Before making a determination on an adjustment to cross-access requirement, the Director and City Engineer shall review and find:

i. One of the following conditions applies:

(1). The cross access is impractical or undesirable because it would require crossing a significant physical barrier or environmentally sensitive area, such as a railroad, watercourse, floodplain, wetlands, steep slopes;

(2). The cross-access would create unsafe conditions for vehicles or pedestrians on the site; or

(3). The cross-access would impede the application of other design requirements in this Code; and

ii. The purpose of this chapter can be met with an alternative circulation design.

e. Easements allowing cross access between abutting properties, along with agreements defining maintenance responsibilities of property owners, shall be filed with the Burleigh County Recorder before issuance of a building permit for the development.

14-14-05. Access Standards

1. Purpose

Access management ensures that land uses are served by safe, well-designed, and efficiently spaced access points that preserve the functional integrity of the street network. Its purpose is to regulate the number, location, and design of driveways and street connections so that development can be accessed without creating excessive conflict points, degrading traffic flow, or undermining the capacity and safety of arterial and collector roads.

2. Access to Public Rights-of-Way

Commentary

These requirements are proposed to implement the following Comprehensive Plan objective:

C3.b) Improve safety by reducing potential points of conflict, including pedestrian/vehicular conflict, by consolidating and/or limiting direct access to major roadways.

a. General

i. Every new lot shall have both legal and physical access to a public or private right-of-way. Access may be direct or provided by means of an access easement and shall provide a means of ingress and egress for those needing access to the property in its intended use, including emergency vehicles.

ii. All driveway entrances and other openings onto public rights-of-way shall be constructed so that:

(1). Vehicles may safely enter and exit the driveway from the adjoining street with minimal interference to traffic; and

(2). Joint driveways, frontage streets, or backage streets are utilized on arterials whenever possible to minimize the number of access points to streets.

iii. No property shall have more than two driveway access points to any one street unless approved by the City Engineer.

b. Residential Development

In addition to the above general requirements, all residential development other than multifamily residential shall be subject to the following:

i. Direct driveway access from a residential lot to an arterial street shall be prohibited unless no other legal access alternative is available.

ii. A residential corner lot adjacent to a collector street and a local street shall access from the local street, unless such access is physically infeasible.

iii. If an alley is available adjacent to a residential lot, access to the lot shall only be made from the alley, unless such access is physically infeasible.

iv. Where a collector street has both residential and non-residential lots accessing it, to the greatest extent possible, those lots shall accommodate maneuvering on site so that vehicles do not have to back into the roadway. Where collector streets are only accessed by residential lots, backing into the roadway may be permitted.

c. Mixed-Use and Non-Residential Development

In addition to the above general requirements, all mixed-use, multifamily residential, and non-residential development shall be subject to the following:

i. Driveway access from mixed-use or non-residential developments to an arterial street shall be shared, to the greatest extent practicable, or provided by means of frontage or backage streets.

ii. If multiple access points are required to a lot, they shall be spaced from each other, and any access points on adjoining lots, to the greatest extent feasible.

iii. Limits on turning movements, with or without installation of center medians, may be imposed by the City Engineer when deemed necessary to safely manage access to an arterial street.

d. Driveway Access Flexibility

Existing lot sizes and access locations do not always allow for the practical application of Sections 14-14-05.2.a-c. In these areas, the City Engineer shall have the authority to review driveway spacing on a case-by-case basis, taking into consideration the necessity of the access, the relative location of other access points along the same and opposite sides of the street, opportunities for shared access, and opportunities for on-site modifications that will optimize the location of the driveway. Using these considerations, the City Engineer shall have the authority to approve driveway spacing that does not meet the standards of this section.

3. Non-Access Lines on Subdivision Plats

To provide for safe and efficient vehicular entry into and exit from lots, non-access lines shall be dedicated along street frontages during the subdivision plat process of Section 14-20-06, where any of the following conditions apply:

a. The entire extent of an arterial street, unless direct access is explicitly granted by the City Engineer, North Dakota Department of Transportation, or applicable authority in accordance with access management guidelines, in which case the non-access line shall be discontinued for the least width necessary to provide the access.

b. Extending from the intersections of streets in both directions with the following distances, unless adjusted by the City Engineer:

i. A distance of 25 feet for any access to a local street at an intersection of local or collector streets in the RS, RU, RX, or RMH zoning districts.

ii. A distance of 60 feet for any access to a collector street at an intersection of a local or collector streets in the RS, RU, RX, or RMH zoning districts.

iii. A distance of 100 feet for any intersection in the RR, RRE, or A zoning districts.

iv. A distance of 150 feet from any intersection in the OX, CX, CG, PCI, IX, or IG zoning districts.

c. Any street segment with an usual safety hazard caused by curvature, topography, sight obstructions, or any condition as deemed by the City Engineer.

4. Access Management and Street Connectivity

The City Engineer may utilize the standards of this section, access management guidance from the North Dakota Department of Transportation (NDDOT), or other engineering standards to guide the planning and design of the street network. The purposes of access management of this section and street connectivity of Section 14-14-04 are regarded as complementary, with any balance between standards determined by reference to a hierarchy of street functions and any site-specific factors that relate to the purposes of these sections.

14-14-06. Street Naming

All public rights-of-way and private streets shall be assigned a unique name written on the plat, as approved by Central Dakota Communications Center (CenCom).

14-14-07. Pedestrian and Bicycle Circulation

Commentary

These requirements are proposed to implement the following Comprehensive Plan objectives:

C7.a) Ensure sufficient sidewalk coverage with all new development and systematically prioritize and install sidewalk connections in existing neighborhoods where not currently present.

C7.c) Require reasonably direct and safe pedestrian access to the primary public entrance of all new commercial buildings.

1. Sidewalks Required

a. All new residential, mixed-use, commercial, or industrial subdivisions shall include the installation of sidewalks on both sides of streets, unless specifically waived or delayed by the City Commission during the subdivision process.

b. All sidewalks shall be designed according to standards of Chapter 10-03-06, Sidewalk Standards.

c. Sidewalk installation is required according to the timing specified in Section 14-11-04.3, Timing of Installation.

2. Shared Use Trails

a. A shared-use trail shall be installed in all new development or redevelopment along alignments shown in the Active Mobility Plan.

b. A shared-use trail shall be a minimum of ten feet of paved asphalt or concrete surface, unless a reduced width is granted by the City Engineer based on pre-existing constraints.

c. Unless on a publicly owned lot or within a public right-of-way, a shared-use trail shall be approximately centered within a 20-foot access easement through private property. Fences and any other obstruction to bicycle or pedestrian usage are prohibited within the easement.

3. On-Site Pedestrian Walkways

a. Pedestrian Access through Parking Areas

All parking lots containing 50 or more parking spaces shall include pedestrian walkways through the parking lot to the primary building entrance or a sidewalk providing access to the primary building entrance. At a minimum, one walkway shall be provided for every five driving aisles. See Figure 14-4.

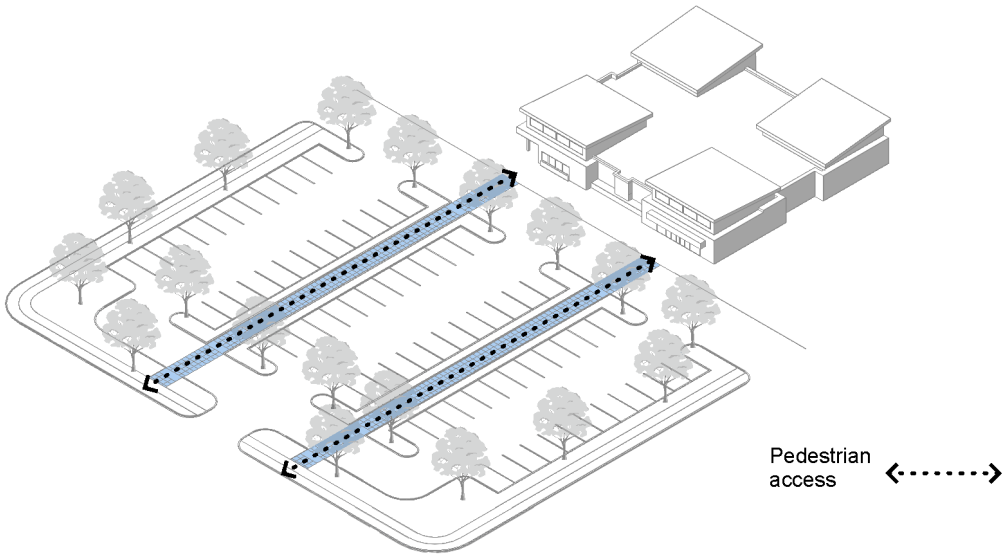


Figure 14-4: Pedestrian Access through Parking Areas

b. Pedestrian Access in Multi-Family and Mixed-Use Development

All multi-family structures with greater than eight units, mixed-use development, and non-residential development shall provide an on-site system of pedestrian walkways that meets the following standards:

i. Areas to Connect

On-site pedestrian walkways shall provide direct access and connections to and between:

(1). The primary entrance or entrances to each building, including pad-site buildings;

(2). Any sidewalks, walkways, or shared-use trails on adjacent properties that extend to the boundaries shared with the development;

(3). Any parking areas intended to serve the development;

(4). Any sidewalk system along the perimeter streets adjacent to the development; and

(5). Any public transit station areas, transit stops, park and ride facilities, or other transit facilities on-site or along an adjacent street.

ii. Walkway Design

Required pedestrian walkways shall be a minimum width of four and 1/2 feet. All required walkways shall:

(1). Be distinguishable from areas used by vehicles using one or more of the following techniques:

(a). Use of a landscaped buffer a minimum of 2 feet wide, as the preferred means of separation. If there are curbs or wheel stops that prevent car bumpers from overhanging the walkway, the landscaping buffer may be eliminated;

(b). Changing surfacing material, patterns, and/or paving color, but not including the painting of the paving material;

(c). Changing paving height;

(d). Decorative bollards; and/or

(e). Raised median walkways with landscaped buffers, permeable pavers, or other low-impact development best management practices.

(2). Be designed with similar and/or complementary details, colors, and finishes as other interconnected walkways, where applicable;

(3). Be lighted for security and safety; and

(4). Be ADA-accessible.

c. Adjustments to Walkway Designs

The pedestrian walkway requirement may be administratively adjusted through procedure in Section 14-20-04.2. Before making a determination on an adjustment to a pedestrian walkway, the Director and City Engineer shall review and find:

i. The provision of pedestrian walkways is impractical or undesirable because it would require crossing a significant physical barrier or environmentally sensitive area (e.g., railroad, watercourse, floodplain, wetlands, steep slopes); or

ii. A pedestrian walkway would create unsafe conditions or impede the application of other design requirements in this Code.

Chapter 14-15 Landscaping and Screening

14-15-01. Purpose [181]

The purpose of this chapter is to:

1. Maintain the City's quality and character by enhancing its visual appearance through the use of landscaping;
2. Enhance environmental conditions by providing shade, air purification, reduction of stormwater runoff, and filtering of noise and light;
3. Promote neighborhood character, traffic calming, wildlife habitat, pedestrian amenity and aesthetic value, screen the view of off-street parking areas and exterior storage areas from public streets and adjoining properties, and mitigate off-site headlight projection;
4. Encourage landscape design that provides visually interesting open space, reduces the potential negative impact of development on adjacent land uses, and complements the scale of the development and its surroundings;
5. Provide buffer areas between land uses of differing intensity; and
6. Encourage the planting of trees and other plant materials throughout the community that are native to or generally suitable for this area.

14-15-02. Applicability[182]

The landscaping requirements contained in this chapter shall apply to any of the following:

1. New Development

All development requiring approval of a general site plan pursuant to Section 14-20-04.8, except municipal utility connection(s).

2. Additions and Redevelopment

a. When an expansion or redevelopment of a building on a lot requires the removal of required landscape material, that landscape material shall be replaced elsewhere on the lot.

b. Any expansion or enlargement of an existing principal structure of 200 square feet or greater shall provide additional landscape material in proportion to the extent of building expansion. Any expansion of 25 percent or greater shall be required to comply with all landscaping requirements of this section.

c. Landscaping as described in this section is required for redevelopment when there is demolition of 50 percent or more of an existing principal structure, and its replacement with any new construction, whether to the same, greater, or lesser extent than the building footprint that previously occupied the lot.

[181] 14-03-11.1.

[182] 14-03-11.2, with new content added for additions & redevelopment.

3. Zoning Map Amendment or Special Use

A change in the use of the property that requires a zoning map amendment to a more intensive zoning district, or approval of a special use permit.

4. Expansion or Reconstruction of Parking Area

a. The expansion of any existing parking area by five or more off-street parking spaces;

b. The reconstruction of a portion of an existing off-street parking lot equal to or greater than 20 percent of the total area of the parking lot at one time, or 40 percent of the total area of the parking lot over a five year period, regardless of whether or not required parking spaces are added, and provided the required plant materials do not reduce the number of off-street parking spaces below what is required. Only those portions of the off-street parking areas being reconstructed would be subject to these requirements.

i. Reconstruction includes any land-disturbing activity or exposure of any subgrade or soil material.

ii. Regular maintenance such as re-striping and repaving, minor repairs, patch work or a partial mill and overlay would not constitute reconstruction.

iii. Consideration may be given by the Director and the City Forester on a case-by-case basis to modify the requirements for the reconstructed off-street parking areas.

14-15-03. Landscaping Plan Required[183]

1. A landscape plan shall be required for all development subject to the provisions of this section. All landscape plans submitted for approval shall contain, at a minimum, the information required by the Director for the landscape plan.
2. A landscaping phasing plan must be provided if the required landscaping will be installed with phased development.

14-15-04. General Requirements[184]

The following items shall be considered in developing a landscape plan for submittal to the City:

1. Landscape materials and structural items placed within the sight triangle of a corner lot, as defined in Section 14-23-01.11, Sight Triangle, shall not have a height of more than three feet above the curb level during all stages of plant growth. Deciduous trees may be planted within the sight triangle provided they are not an obstruction to vision between three feet and ten feet above the curb level.
2. Landscape materials and structural items at driveway entrances shall be placed so that visibility for vehicles entering or exiting a parking lot is not obstructed.
3. Trees or shrubs shall not be planted under utility lines when their ultimate height may interfere with the lowest lines.

[183] 14-03-11.4 with landscaping plan requirements relocated outside of the LDC.
[184] 14-03-11.3 and 14-03-11.5. combined.

4. No required landscaped area shall be used for vehicle parking or for the storage or display of materials, supplies, or merchandise.
5. Boulevard areas shall be subject to the requirements of Section 10-05-04 of the Code of Ordinances regarding placement of materials in public rights-of -way.
6. A variety of tree and shrub species shall be utilized to provide year around visual interest and enhance resilience to disease. Except for continuous hedges and street trees, no more than 50 percent of the required number of trees or shrubs may be comprised of any one species. In addition, no more than 50 percent of the shrubs and perennials within any planting bed larger than 500 square feet in area may be comprised of any one genus.
7. Landscaped areas shall be of adequate size to promote proper plant growth and to protect plantings from pedestrian traffic, vehicle traffic, and other types of concentrated activity. Landscaped areas and plantings shall be located in a manner to allow adequate room for proper maintenance.
8. Final slopes greater than a 3:1 ratio, including slopes on earthen berms, will not be permitted without special approval or treatment, such as special seed mixtures or reforestation, terracing or retaining walls.
9. To reduce runoff and better manage stormwater, the use of rain gardens, bioswales, and stormwater infiltration areas are encouraged.

14-15-05. Landscape Material Standards[185]

1. Plant Quality

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

2. Artificial Plants

The use of artificial plants or vegetation to meet the standards of this section is prohibited, except for limited use of inorganic materials such as mulch, gravel, river rocks, or granite that may be allowed as ground cover under the dripline of trees.[186]

3. Minimum Standards at Installation

The minimum size at time of planting for required plant materials is described in Table 14-15-1: Minimum Planting Sizes, below. Tree caliper shall be measured six inches above the ground up to a four-inch caliper diameter, and at 12 inches above the ground for four-inch or greater caliper diameter.

Table 14-15-1: Minimum Planting Sizes

Type of Material	Minimum Size at Time of Planting	Minimum Height at Maturity
Shade tree	1 ½ inches caliper	30 feet

[185] 14-03-11.6.

[186] The allowance for inorganic material around a tree trunk is new.

Type of Material	Minimum Size at Time of Planting	Minimum Height at Maturity
Ornamental tree, single stem	1 inch caliper	15 feet
Ornamental tree, multi-stem	1 inch caliper	15 feet
Evergreen tree	6 feet tall	30 feet
Shrubs	2-gallon	3 feet
Perennials	1-gallon	N/A

4. Existing Plant Material

The use of existing plant material to meet any landscaping requirement is permitted and encouraged, provided the material meets the following conditions:

a. The City Forester has determined that the plant material is healthy and compliant in size.

b. No more than 25% of the root protection zone of a tree will be disturbed during construction.

c. Adequate tree protection measures will be in place throughout construction to minimize damage.

5. Ground Cover

a. Vegetative ground cover shall be of a size and spacing to provide a minimum of 50 percent coverage during the first full growing season and complete coverage upon maturity. Only pervious weed barriers shall be allowed.

b. Mulch may not be used in lieu of vegetative ground cover, except in those situations where mulch is necessary to promote healthy tree and shrub growth. Where mulch is used, a vertical barrier of at least two inches must be included around the perimeter of the mulch area to prevent mulch from washing into the public right-of-way or on to adjacent properties.[187]

6. Soil in Landscaped Areas

Soil in landscaped areas shall consist of loose, friable, loamy topsoil that is free of excess acid and alkali. The soil shall be free from objectionable amounts of sod, hard lumps, gravel, subsoil, or other undesirable material, to a depth of 18 inches.

14-15-06. Street Trees[188]

1. Purpose

These street tree requirements are intended to promote and enhance air quality, shade, neighborhood character, traffic calming, reduced stormwater runoff, wildlife habitat, pedestrian amenity, and aesthetic value.

[187] The suggestion for the mulch barrier to be two inches replaces vague language that stated the barrier needed to be "adequate."
[188] 14-03-11.7.

2. Applicability

Street trees shall be installed in conjunction with:

a. Residential development of four units or more;

b. Principal commercial, industrial, institutional, or multi-family building with more than three units along a section of public street with curb and gutter installed or scheduled to be installed in conjunction with the project; and[189]

c. Construction of a complete subdivision including residential uses.

3. Location

Street trees shall be installed within the public right-of-way, generally within the boulevard between the back of curb and front of sidewalk. See Figure 15-1.

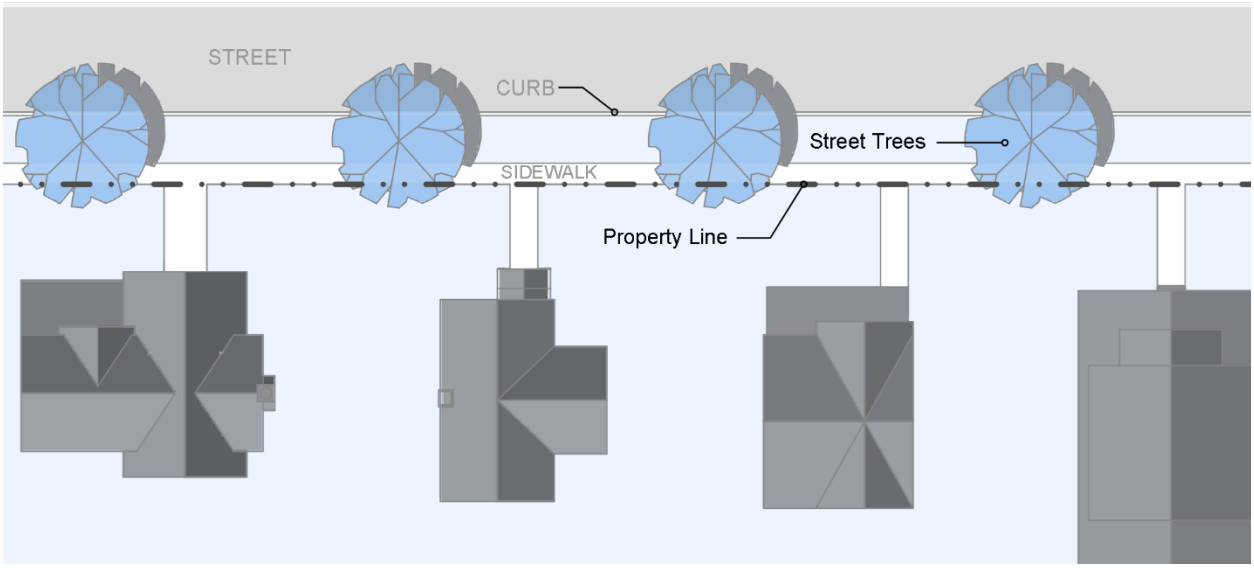


Figure 15-1: Street Tree Location

4. Spacing and Planting Requirements

a. Three shade trees are required for every 100 linear feet of street frontage.

b. Street trees need not be placed at exact intervals, but they must be placed evenly along the street frontage. The City Forester shall have the authority to determine the final location of street trees in accordance with Section 13-02-01 of the Code of Ordinances.

c. Mulch shall be installed to a minimum coverage thickness of two inches within a radius of three feet around the base of the tree trunk, and in accordance with the City Forester's planting standards and specifications.

[189] The addition of this requirement for residential development is new. It is intended that it would apply to residential subdivisions of single-family/duplex development and/or redevelopment if there are three residences.

5. Alternate Placement Where Constrained

Where physical or topographical constraints render the installation of street trees as required by this section either impossible or infeasible in the opinion of the City Forester, a required tree may be planted in a different location on the property, as determined by the City Forester.

6. Permit Required

A planting permit must be obtained from the Forestry Division of the Public Works Service Operations Department prior to planting any trees within the public right-of-way.

14-15-07. Perimeter Parking Lot Landscaping[190]

1. Purpose

The perimeter parking lot landscaping requirements are intended to screen views of parking lots and access lanes from public rights-of-way, mitigate off-site headlight projection, and provide pervious surfaces to reduce stormwater runoff.

2. Applicability

a. Perimeter parking lot landscaping or buffering shall be required with the installation or reconstruction, as defined in Section 14-15-02.4.b, of any off-street parking area or access lane:

   i. Adjacent to the public right-of-way and/or visible from and within 300 feet of a public right-of-way; and

   ii. Along a property line that is shared with a residential use or zoning district.

b. Within the Downtown districts, streetscape elements from the City's Streetscape Guidelines should be incorporated into the perimeter parking lot landscaping.[191]

3. Standards

a. The perimeter landscaping shall be constructed with standard poured-in-place concrete curbing on the parking lot side in order to minimize damage to plant material.

b. The perimeter curbing may be modified to allow for stormwater management applications designed to function as rain gardens, bioswales, or stormwater infiltration areas at the discretion of the Director and the City Forester.

4. Trees and Shrubs

Trees and shrubs shall be installed in accordance with Table 14-15-2. The intent of the minimum requirements column is to provide a total number of trees and shrubs required based on street frontage, not to dictate the spacing of the trees and shrubs within that frontage. For fractions of the specified linear feet, the number of trees and shrubs required shall be the corresponding fraction.

[190] 14-03-11.8.5.h.

[191] Relocated from 14-03-11.

Table 14-15-2: Perimeter Parking Lot Landscaping Installation Requirements

Parking Lot Size (# of Spaces)	Minimum Landscaping Width	Minimum Requirements
Less than 100	4 feet	Masonry wall, decorative fencing or continuous evergreen or deciduous hedge with a minimum height of 3 feet.
	6 feet	One shade or ornamental tree and 5 shrubs for every 25 linear feet of street frontage.
100 to 399	10 feet	4 shade or ornamental trees and 40 shrubs for every 100 linear feet of street frontage; or
		Masonry wall, decorative fencing combined with a variety of landscape materials, or continuous evergreen or deciduous hedge with a minimum height of 3 feet.
	20 feet	4 shade or ornamental trees and 15 shrubs for every 100 linear feet of street frontage.
400 or more	20 feet	4 shade or ornamental trees and 15 shrubs for every 100 linear feet of street frontage; or
		Masonry wall, decorative iron fencing combined with a variety of landscape materials, or continuous evergreen or deciduous hedge with a minimum height of 4 feet.
	30 feet	4 shade or ornamental trees and 10 shrubs for every 100 linear feet of street frontage.
	40 feet or greater	4 shade or ornamental trees for every 100 linear feet of street frontage.

5. Industrial District Exceptions

In the IX-Industrial Mixed-Use and IG-Industrial General districts:

a. Perimeter parking lot landscaping shall not be required for any parking lot of 50 or fewer spaces.

b. Parking lots with 50 or more spaces shall provide a masonry wall, decorative fencing or continuous evergreen or deciduous hedge with a minimum height of 3 feet in a landscaping strip at least four feet wide if the property is located along a collector or arterial street.

c. Buffering along any property line shared with a residential use or zoning district shall be required, regardless of the size of the parking lot.

6. Separation

For off-street parking areas with varying widths adjacent to a public right-of-way, the average separation distance between the parking area and the right-of-way will be the basis for the required plant materials.

7. Substitutions

The Director and the City Forester may allow perennials to be substituted for a portion of the required shrubs on a two-to-one basis (two perennials to one shrub), and for one shade tree to be substituted for three shrubs, based on specific site conditions and the overall landscape design for the site.

14-15-08. Interior Parking Lot Landscaping[192]

Commentary

This section provides a new approach for landscaping requirements in parking lots. The objective in proposing more defined requirements is to ensure consistency in procuring the benefits from tree cover in parking lots. Trees are evenly distributed throughout the parking lot, such that at maturity, there is widespread shade over the parking surface, with heat island effect reduction. Administration is simplified, as the requirements are explicit.

1. Purpose

The interior parking lot landscaping requirements are intended to break up large expanses of pavement, provide relief from the heat island effect associated with paved areas, promote air quality, shade, aesthetic value, and provide pervious surfaces to reduce stormwater runoff.

2. Applicability

Interior parking lot landscaping applies to any new or reconstructed parking lot, as defined by Section 14-15-02.4.b, except IX and IG districts, where interior parking lot landscaping is not required.

3. Standards Applicable to All Parking Lots

a. All interior parking lot landscaping areas shall be constructed with poured-in-place concrete curbing to minimize damage to plant material.

b. The curbing may be modified to allow for stormwater management applications designed to function as rain gardens, bioswales, or stormwater infiltration areas at the discretion of the Director and the City Forester.

4. Landscape Islands

a. An interior landscape island shall be provided for every ten parking spaces, and a terminal island shall be provided at both ends of each row of parking. See Figure 15-2.

b. Interior and terminal landscapes island shall be no less than six feet wide and no shorter than the length of the adjacent parking space(s).

c. An island adjacent to the length of one parking space shall contain at least one shade tree, surrounded by 90 square feet of pervious surface area.

d. A double-length island adjacent to the length of two parking spaces shall provide at least two shade trees, planted no less than 15 feet apart. Each tree shall have a minimum pervious surface area of 90 square feet.

e. Trees shall be selected from a list approved by the City Forester, and the species chosen shall have a root spread at maturity that will not be constrained by the island width.[193]

[192] 14-03-11.9.

[193] It would be helpful to have input from the city's arborist on whether the combination of these requirements is practical or not.

f. Any remaining surface area of the island shall be covered with living plant material, mulch, or other material approved by the City Forester, such as pea gravel or rock mulch.

g. If parking lot lighting is installed within landscape islands, it shall be placed to avoid conflict with growth of required landscaping within the island. .

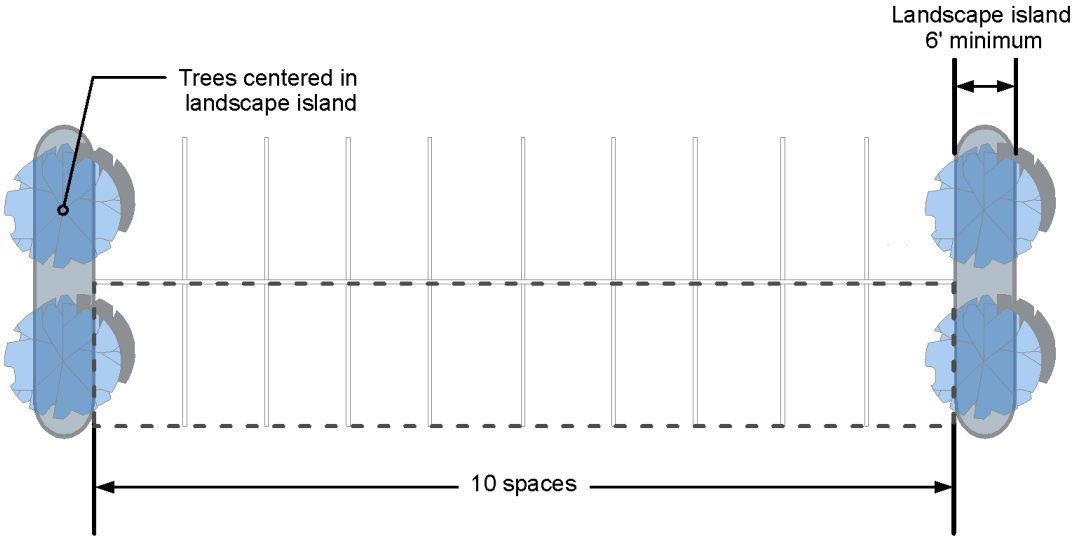


Figure 15-2: Landscape Island Planting Illustration

14-15-09. Buffer Yards[194]

1. Purpose

The buffer yard requirements are intended to provide separation between land uses of differing intensity. Buffer yards use a combination of distance, fences or walls, and plantings to form a defined separation that mitigates the undesirable impacts associated with incompatible land uses on adjacent properties.

2. Applicability

This section refers to uses and zoning districts in terms of intensity of use. Table 14-15-3 below shows the hierarchical intensity of Bismarck's lineup of zoning districts, while questions or disputes regarding the relative intensity of various land uses shall be resolved by the Director.

Table 14-15-3: Hierarchy of Zoning Districts by Land Use Intensity

Low Intensity Zoning Districts	Medium Intensity Zoning Districts	Higher Intensity Zoning Districts
Agricultural, Open Space, and Residential Districts	**Mixed-Use and Public, Civic & Institutional Districts**	**Commercial & Industrial Districts**
A Agricultural	RM Residential Multi-family	CG Commercial General
OS Open Space	RX Residential Mixed-Use	IX Industrial Mixed-Use

[194] 14-03-11.10, with edits to existing requirements, and addition of new material.

Low Intensity Zoning Districts	Medium Intensity Zoning Districts	Higher Intensity Zoning Districts
Agricultural, Open Space, and Residential Districts	**Mixed-Use and Public, Civic & Institutional Districts**	**Commercial & Industrial Districts**
RRE Residential Rural Estate	DT Downtown	IG Industrial General
RR Residential Rural	CX Commercial Mixed-Use	
RS Residential Suburban	OX Office Mixed-Use	
RU Residential Urban	PCI Public, Civic, and Institutional	
RMH Residential Manufactured Housing		

a. When Required

Buffer yards shall be required in the following instances:

i. Between a low intensity zoning district or a single- two-family, or three-family residential use and a medium or higher intensity zoning district or any non-residential land use (except for agricultural uses), regardless of zoning district;

ii. Between a medium intensity zoning district or multi-family (four or more units) residential use and any higher intensity zoning district or any industrial, or institutional use in all zoning districts; and

iii. For parking lots, driveways, and drive aisles associated with these uses, whether the parking area and driving ways are located on the same parcel or on a separate parcel, where these features abut shared property lines with lesser intensity districts and uses.

b. Exemptions

Buffer yards shall not be required:

i. Between land uses of varying intensity when both uses are located in the Downtown subdistricts, or between adjacent uses located in different subdistricts of the Downtown.

ii. When a right-of-way at least 20 feet wide intervenes between districts or uses of varying intensity. However, screening is still required if a parking lot is located along the lot line.

iii. Between a single- or two-family dwelling and a small multi-family building that has between three and nine units.

3. Responsibility for Buffer Yard Installation

a. Installation of all required buffer yards shall be the responsibility of the proposed higher intensity use and shall be located on the lot of the higher intensity use unless a perpetual landscape easement is obtained from the property owner with the lower intensity use, in which case the buffer yard may be located on the lot with the lower intensity use.

b. In situations where a development in the higher intensity district or use exists prior to development or redevelopment of a parcel in an abutting lower intensity district, the

higher intensity district or use shall not be required to install the buffer yard at the time of development in the lower intensity district and shall remain fully conforming to the Land Development Code. Installation of a buffer may be required with subsequent expansion, redevelopment, or change of use of the higher intensity parcel.

4. Landscaping and Easements

a. Landscape requirements for buffer yards shall be determined during the preliminary subdivision plat process and shall be depicted on the preliminary plat.

b. Landscape buffers interact with other types of easements in the following ways:

i. A landscape easement may partially overlap a utility easement;

ii. A landscape easement may only overlap a stormwater and drainage easement if adequately accounted for in the stormwater management plan; and

iii. A landscape easement is prohibited from overlapping an access easement.

c. Landscape easements are not required to be dedicated on a final subdivision plat, and all requirements of this Chapter apply in the absence of an dedicate landscape easement.

d. Notwithstanding, if an alternate location for landscaping is determined during the subdivision process, landscape easements may be placed on the plat to assign locations for buffers and the location of those easements shall supersede the locational requirements of this section.

5. Buffer Yard Standards

a. Buffer Yard Levels

A buffer yard of the specified level shall be installed in accordance with Table 14-15-4.

Table 14-15-4: Buffer Yard Installation Requirements

Buffer Yard Level	Area Where Buffer Yard Required	Option 1	Option 2
Level 1: Basic	Along a side or rear property line of any new multi-family use with 4-15 units, adjacent to single-, two-, or three-family residential use or zoning district	10-foot buffer and 6-foot screening fence with the following plantings per 100 linear feet: • 2 shade trees • 2 large upright evergreens	10-foot buffer with the following plantings per 100 linear feet: • 4 shade trees • 2 ornamental trees • 2 large upright evergreens
Level 2: Enhanced	Along a side or rear property line of any new multi-family use with over 15 units, adjacent to single-, two-, or three-family residential use or zoning district	15-foot buffer and 6-foot screening fence with the following plantings per 100 linear feet: • 4 shade trees • 3 large upright evergreens	15-foot buffer with the following plantings per 100 linear feet: • 4 shade trees • 3 ornamental trees • 3 large upright evergreens • 10 small upright evergreens

Buffer Yard Level	Area Where Buffer Yard Required	Option 1	Option 2
	Along a side or rear property line of any new commercial, mixed-use, institutional, or industrial use adjacent to a multi-family residential use or zoning district	15-foot buffer and 6-foot screening fence with the following plantings per 100 linear feet: • 4 shade trees • 3 large upright evergreens	15-foot buffer with the following plantings per 100 linear feet: • 4 shade trees • 3 ornamental trees • 3 large upright evergreens • 10 small upright evergreens
Level 3: Strong	Along a side or rear property line of any new commercial, institutional, or industrial use adjacent to a single- or two-family residential use or zoning district	25-foot buffer and 6-foot screening fence with the following plantings per 100 linear feet: • 4 shade trees • 4 ornamental trees • 3 large upright evergreens • 10 small upright evergreens	25-foot buffer with the following plantings per 100 linear feet: • 5 shade trees • 5 ornamental trees • 5 large upright evergreens • 15 small upright evergreens

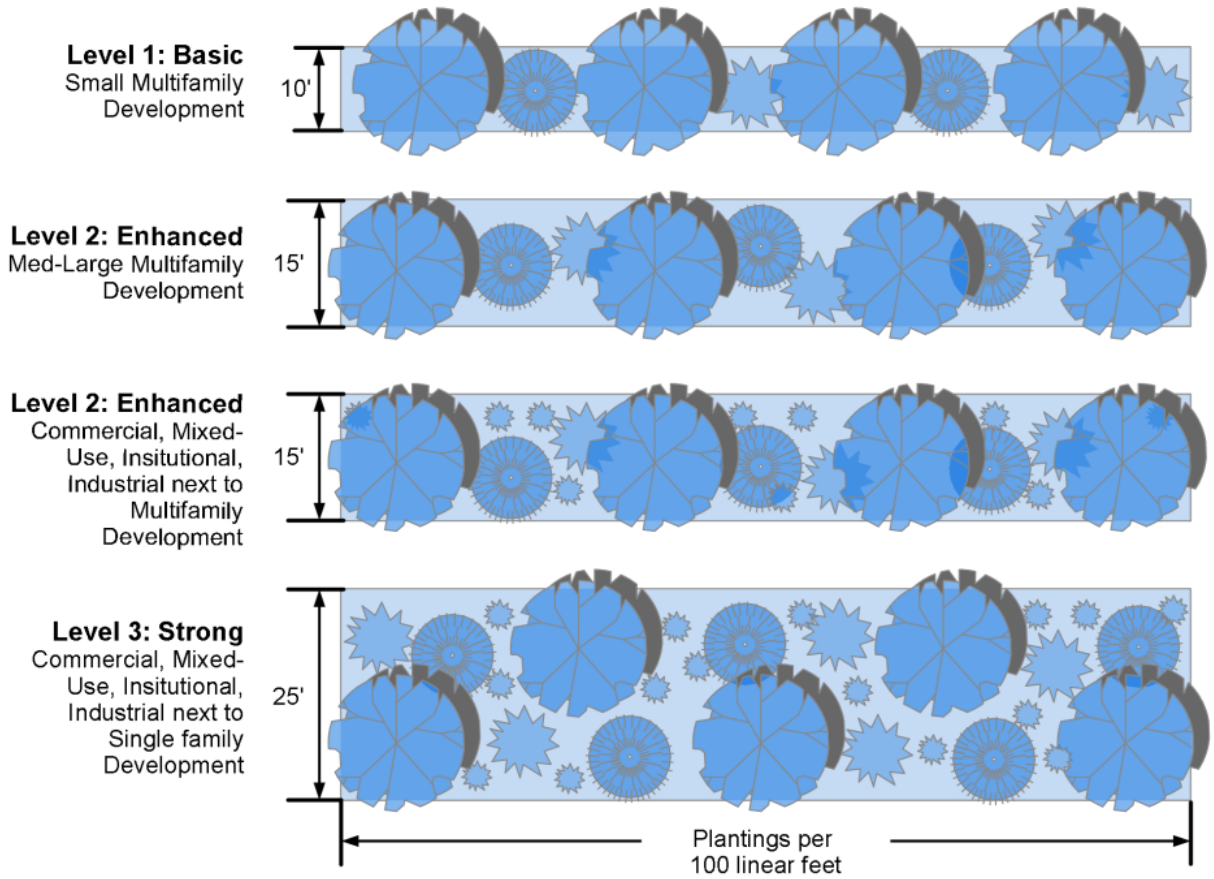


Figure 15-3: Buffer Levels

b. Minimum Size at Time of Planting

Minimum sizes at the time of planting and minimum heights at maturity shall be as specified in Table 14-15-1: Minimum Planting Sizes.

c. Screening Specifications

A screening fence or wall may be made of solid wood, composite material with the appearance of solid wood, vinyl with the appearance of solid wood, masonry, or a combination of masonry and any other materials listed.

d. Location of Buffer Yards

Buffer yards shall be located along the entire length of any lot line where two land uses of differing intensity abut, excluding areas adjacent to access points and sight triangles. Such buffer yards may be located within required setbacks, but not within any portion of the public right-of-way or over any established trail or access easement.

6. Grade Differential

Consideration will be given for required buffer yards that are ten percent or more above or below the finished grade of the adjacent property. Modifications to the required plant quantities may be considered on a case-by-case basis by the Director and the City Forester with the submittal of section and/or elevation drawings showing how the design will meet the intent of the ordinance.

14-15-10. Landscaping Adjustments

1. Adjustments to the quantity, size, and type of plant material, locations of planting areas, and required timelines for planting may be granted administratively by the Director and City Forester through the procedure in Section 14-20-04.2.
2. Before making a determination to adjust landscaping, the Director and City Forester shall review and find:
    a. One or more of the following conditions exists to necessitate an adjustment:
        i. Planned improvements, either public or private, in the near-term future will disrupt the landscaping and assurances are in place for compliance with the Land Development Code after completion;
        ii. The infill or redevelopment of an already-developed site or of a legally non-conforming lot is constrained in area by existing conditions;
        iii. A development site in a rural area is of a scale and distance from surrounding properties such that the intended screening function can be met with reduced plant quantities, sizes, locations, and species;
        iv. A grade elevation of ten percent or more exists between a street curb and the perimeter of a parking area where landscaping is required;
        v. Topography, soil conditions, or another natural feature of the site prevent strict compliance; and

vi. Utilities, either underground or above-ground, would be negatively impacted by plantings, either immediately or at full maturity.

b. The applicant has proposed and laid-out an alternative landscape design that will meet the purpose of this chapter.

14-15-11. Installation, Maintenance, and Enforcement[195]

1. Installation of Street Trees

The City Forester shall determine the timing for installation of street trees.

2. Installation of Other Required Landscaping

a. All other landscaping and buffer yards required by this chapter shall be healthy and in-place as soon as grading or construction has been completed to eliminate or reduce wind and/or water erosion.

b. When landscaping cannot be completed in conjunction with site development due to seasonal constraints, the plant material shall be installed at the beginning of the next growing season, unless otherwise approved by the Director and the City Forester. When installation is deferred for seasonal constraints, a financial surety as described in Section 14-20-03.8, Financial Guarantees, may be required by the City.

3. Maintenance and Replacement

a. The owner, successors in interest, or agent, if any, shall be responsible for regular maintenance of all landscaping. This maintenance must include weeding, watering, fertilizing, pruning, mowing, edging, mulching, and other maintenance, as needed and in accordance with acceptable horticultural practices.

b. All landscaping must be maintained free from disease, pests, weeds, and litter.

c. Dead plants must be promptly removed and replaced within the next growing season.

d. Trees located within or adjacent to a sight triangle must be pruned as needed to maintain a vertical clearance height of no less than ten feet, as described in Section 14-23-01.11.

e. Trees located along fire lanes, as identified on an approved site plan, must be pruned as needed to maintain a vertical clearance height of no less than 14 feet.

4. Inspection and Enforcement

All landscaping shall be subject to periodic inspection by the City Forester. Landscaping that is not installed, maintained, or replaced as needed to comply with the approved landscape plan shall be considered a violation of this section and shall be subject to the enforcement provisions Chapter 13-02-14 of the Code of Ordinances.

5. Certificate of Occupancy

For landscaping required under this chapter, the landscaping shown in the approved landscaping plan must be installed prior to issuance of a certificate of occupancy, unless a seasonal planting delay is granted.

[195] 14-03-11.11.

6. Planting Delay

If the required landscaping cannot be installed in conjunction with site development because of extenuating circumstances, such as seasonal constraints, the Director and City Forester may allow the installation of the required landscaping to be delayed according to the procedure in Section 14-20-03.8, Financial Guarantees.

14-15-12. SCREENING[196]

1. Utility and Mechanical Equipment Screening

Screening of utility and mechanical equipment shall be required in all zoning districts, except IX-Industrial Mixed-Use, and IG-Industrial General.

a. Ground-or Building-Mounted Equipment

i. Ground-mounted mechanical equipment visible from any public right-of-way shall be screened one foot past the height of the equipment.

ii. Screening fences, walls, or opaque landscaping may be used for screening. When landscaping is used, it must provide an opaque screen for the mechanical equipment, of sufficient height as described in provision i. above.

iii. Building-mounted utility boxes or meters visible from any public street shall be screened using architectural features, or opaque landscaping.

iv. Use of architectural features for screening shall be integrated into the design of the building and constructed of materials similar to or compatible with the building.

b. Roof-Mounted Equipment

i. Roof-mounted equipment visible from any public street or adjacent property within 100 feet of the building shall be screened to at least the height of the equipment.

ii. Parapets may be used to conceal roof top equipment on flat roofs.

iii. If a sight line drawing provided with the site plan shows that no rooftop equipment will be visible from a public street or adjacent property within 100 feet, then a parapet wall or other screening shall not be required. See Figure 15-4.

[196] Building- and ground-mounted requirements are new. Roof-mounted content is proposed to replace 14-03-12.a, with more specific, actionable standards.

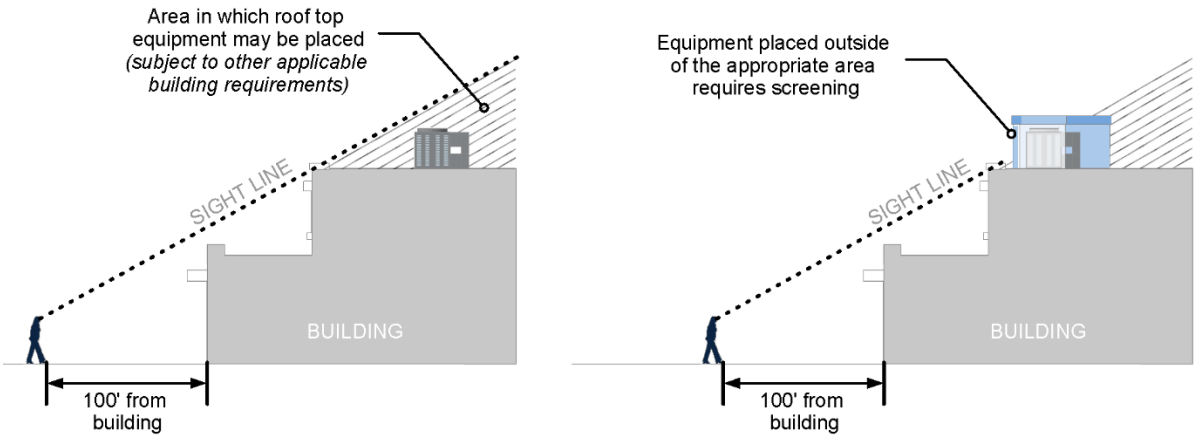


Figure 15-4: Sight Line Example

iv. Where overhanging eaves are used, overhangs shall extend no more than 18 inches beyond the supporting walls.

2. Solid Waste Collection Areas[197]

In order to enhance the visual quality of the streetscape, prevent loose debris from blowing around, and prevent access by animals, solid waste collection areas shall be enclosed in the following manner:

a. For commercial, institutional, or multi-family buildings with three or more units, all solid waste collection areas shall be screened from view according to the following standards:

i. The area shall be enclosed on at least three sides with a solid masonry wall, opaque wood fence, or other compatible building material, that is at least one foot higher than the height of the trash receptacle. See Figure 15-5.

[197] 14-03-12.2, with new standards regarding design of enclosure added.

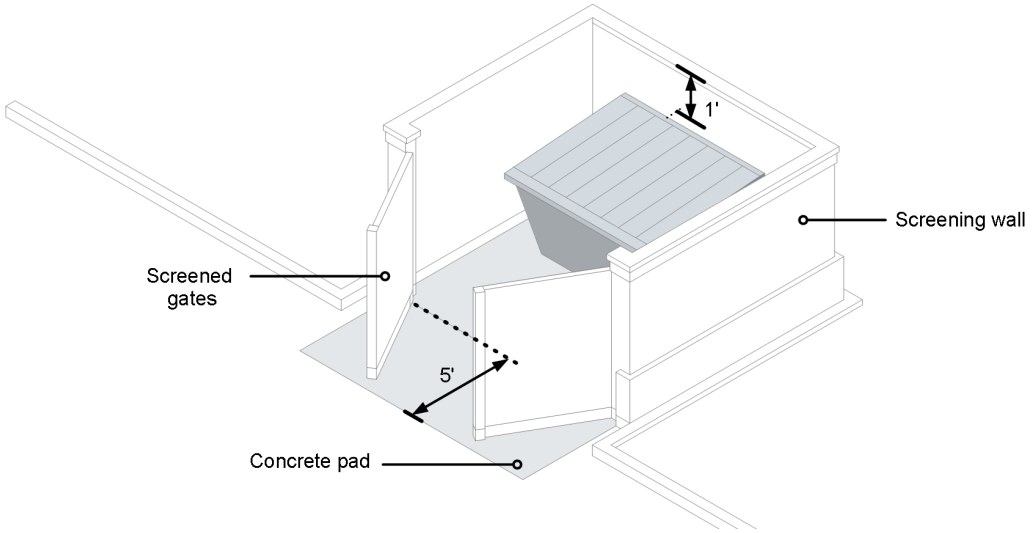


Figure 15-5: Solid Waste Collection Area

ii. The fourth side of the enclosure shall provide an opening with a screened gate, and have a concrete apron extending at least five feet beyond the gate;

iii. Screening gates shall not open into any sidewalk or pedestrian pathway, drive aisle, or street in a manner that would obstruct the movement of pedestrians or vehicles;

iv. Enclosure may be located within the building's rear setback; and

v. Enclosure may not be located between the building and the street, unless there is no other location option available. This location requires approval from the Director.

b. Sites with unusual circumstances may request an administrative adjustment, as described in Section 14-15-12, regarding the location and screening of solid waste collection areas.

14-15-13. Fences[198]

Commentary

Currently, Bismarck's fence regulations are primarily treated as use-specific standards. We propose a basic set of city-wide standards here for consideration.

1. Fence Height

a. Maximum Height

i. Unless a different height is specified elsewhere in this Code, the maximum height for fences in industrial zoning districts is eight feet. In all other zoning districts, the maximum height is six feet.

[198] New.

ii. Ornamental features may be placed on top of the fence and may exceed the fence height limit on top of fence posts, pillars, or columns.

b. Measuring Fence Height

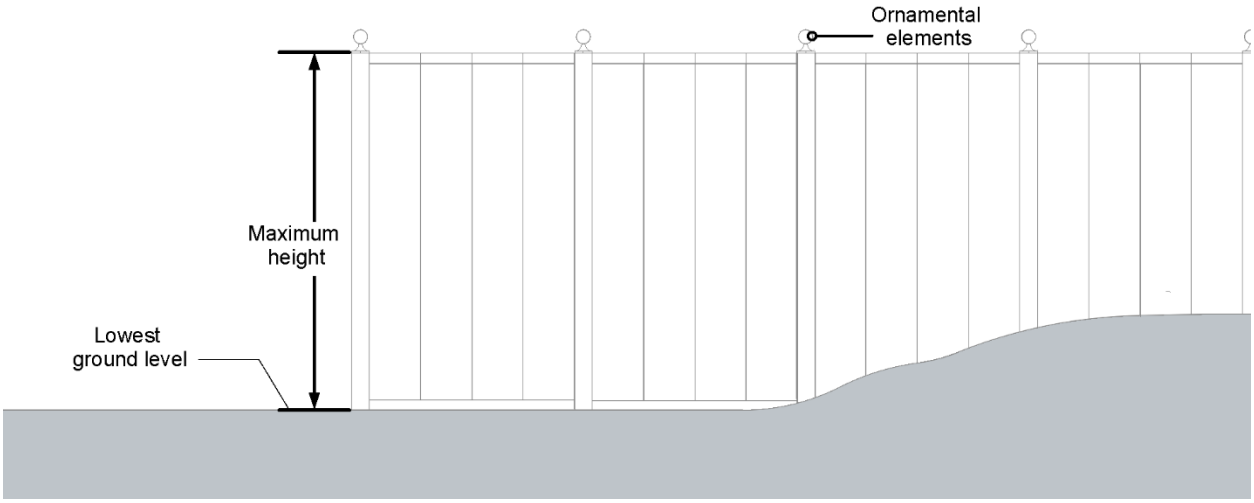


Figure 15-6: Measuring Fence Height

i. Fence height shall be calculated as the vertical distance measured from the lowest adjacent ground level (inside or outside the fence) to the top of the tallest element of the fence, not including ornamental features affixed to the top of any fence post, pillar, or column. See Figure 15-6.

ii. When a fence is erected on top of a retaining wall, fence height measurement shall include the height of the retaining wall and the height of the fence, except when the retaining wall is:

(1). Necessary to the structural soundness of building construction on the lot; or

(2). Abutting a drainage easement or other drainage infrastructure.

c. Exceptions

A fence of up to eight feet in height may be approved when:

i. The ground floor elevation of either the principal dwelling on the property or the principal dwelling on an abutting lot is at least four feet higher than the elevation at the shared lot line. See Figure 15-8;

ii. The fence is erected along a side or rear lot line which abuts an alley, railroad, interstate, or other arterial street;

iii. The fence is a sound dampener or a security fence for a public, institutional, or industrial use; or

iv. In any side or rear yard where a slope is present, the height of a fence may be adjusted to allow the top of the fence to be level, and perpendicular to the support

posts at a height greater than eight feet, provided that the height of the fence at the highest elevation does not exceed eight feet. See Figure 15-7.

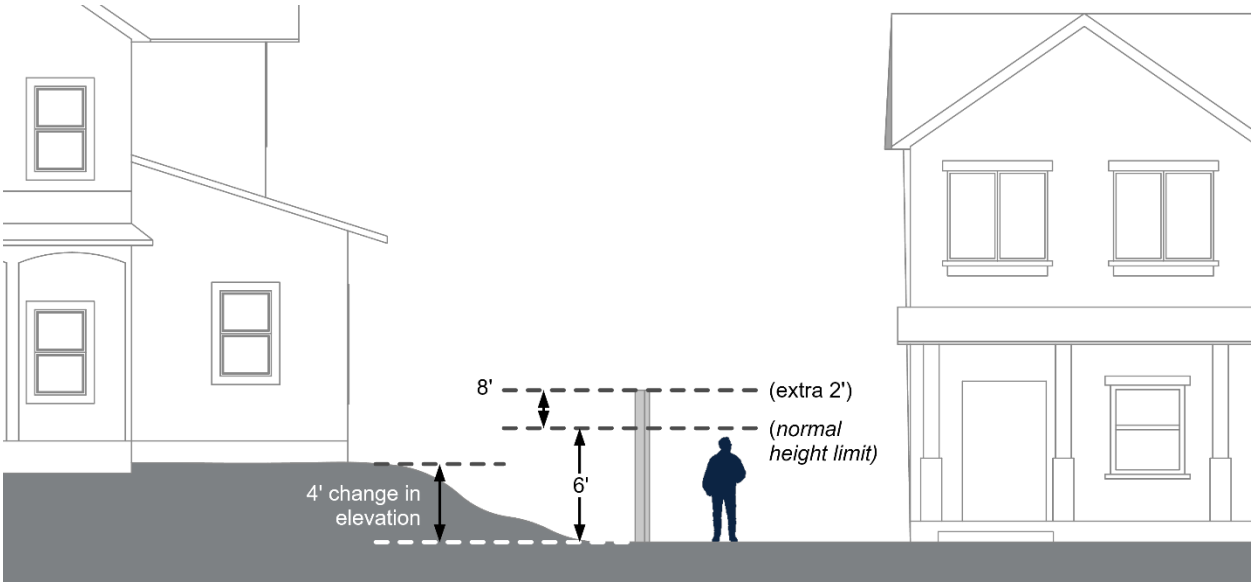


Figure 15-7: Fence Height with Grade Change

2. Fence Location

a. Front Yards

A fence in the front yard shall be no taller than three feet, unless the fence is at least 50 percent open, in which case the fence may be four and one-half feet tall.

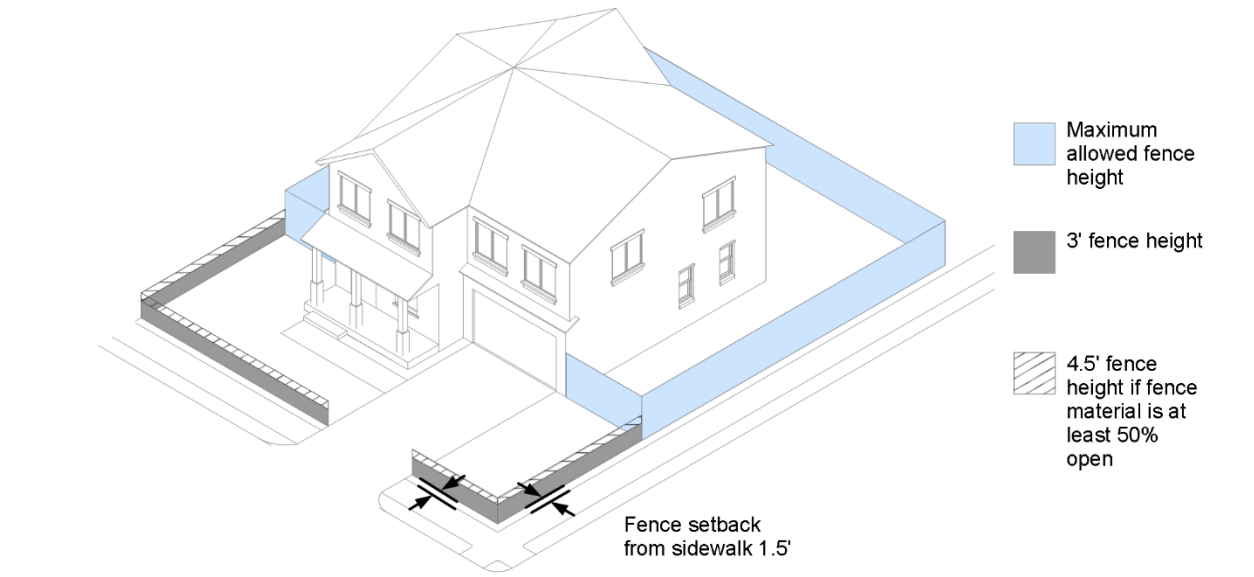


Figure 15-8: Front Yard Fence Height

i. A fence in a front yard shall be set back at least 18 inches from a front property line adjacent to a public right-of-way.

ii. A fence from the front or rear corners of a building may extend through the side yard at the maximum height allowed. See Figure 15-8.

b. Sight Triangle

Fences on corner lots, adjacent to alleys, and around commercial driveways shall not encroach into the clear vision area, as described in Section 14-23-01.11, Sight Triangle.

c. Fences in Easements

i. Fences are prohibited within:

(1). Drainage easements.

(2). Access easements, unless they are placed in a location that avoids impeding the intended access in any way.

(3). Slope protection easements.

ii. A fence within any other type of public easement shall have a gate or removable panel to allow for maintenance access to the easement. The City or the franchise utility provider may remove the fence for maintenance or operational purposes at any time without notice.

3. Fence Materials

a. Prohibited Material[199]

i. Barbed wire fence is prohibited in all zoning districts except the IG or IX district.

ii. Electric fence is prohibited in all zoning districts except the IG, IX, or A district.

iii. Any barbed wire or electric fence erected atop fencing adjacent to a public street or sidewalk shall maintain the lowest strand of barbed or electrified wire at least six feet above sidewalk grade.

iv. Electric fences shall be clearly identified with warning signs that read, "Warning: Electric Fence" with a universal symbol indicating the presence of an electrified fence. Such signs shall be installed at each gate and access point, and around the perimeter the fence at least every 30 feet in length.

v. The maximum electrical charge produced by a fence upon contact shall not exceed standards set by the International Electrical Code.

b. Screening Fences

When a screening fence is required by Section 14-15-09, Buffer Yards, the fence shall be constructed of one of the following materials, to form a solid screen, or one that is opaque for at least 90 percent of its length:

i. Brick;

ii. Stone;

iii. Cast stone;

[199] 14-03-05.3, with edits.

iv. Rock;

v. Marble;

vi. Granite;

vii. Split-face concrete block;

viii. Poured-in place concrete;

ix. Precast concrete;

x. Composite; or

xi. Vinyl.

c. Other Fences

Fences that are not required for screening may be opaque or may be constructed of materials that allow for transparency along their length.

4. Required Boundary Fences

Fences shall be provided by the property owner along the boundary of any subdivision at all points at which the subdivision abuts or adjoins interstate highway right-of-way or any open drainage facility where required by the City Engineer. Said fence shall meet the requirements of the North Dakota Department of Transportation, where applicable. Boundary fences shall be installed prior to issuance of a building permit. When a fence is required by this Code, it shall be installed prior to issuance of a certificate of occupancy.

Chapter 14-16 Parks and Open Space

14-16-01. Purpose

The purpose of this chapter is to:

1. Implement those policies from the Comprehensive Plan and other plans adopted by the City related to natural resource protection and enjoyment;
2. Provide access to outdoor recreation to encourage healthy lifestyles, social interaction, and high quality of life.
3. Guide development and land use within environmentally sensitive lands or other areas containing natural resources that need to be protected;
4. Protect the public from avoidable financial expenditures for hazard control projects, hazard relief measures and damages to public utilities, streets, and bridges; and
5. Protect people and property and minimize damage from possible hazards.

14-16-02. Neighborhood Parks

1. Purpose

Since new development within the City, or intended to be in the City, increases population and the demand for public services, the City of Bismarck shall require that the owner and/or developer of urban complete subdivisions including residential uses reserve space for neighborhood parks, playgrounds, open space and natural areas, and trails. In support of this objective, the purpose of this section is to:

a. Maintain and enhance the high-quality visual aesthetic of the community; and

b. Ensure that adequate usable neighborhood parks, open space, and recreational facilities are provided for existing and future residents of the City of Bismarck.

2. Applicability

a. The requirements of this section apply as a condition of approval of any subdivision in which all of the following are true:

   i. The subdivision is a complete subdivision.

   ii. The subdivision is within city limits or intended to be prior to development.

   iii. The subdivision is within a residential or mixed-use zoning district.

b. The requirement for a park development agreement may be waived in writing by the Director of the Parks District for any of the following reasons:

   i. The subdivision is insufficient in size or number of lots to provide a neighborhood park;

   ii. The subdivision is within an area already sufficiently served by a park, whether a neighborhood park or regional park;

iii. The subdivision is already included within a previously executed park development agreement;

iv. The subdivision is adequately served by a private park; or

v. The subdivision is within an area under common ownership in which a neighborhood park is planned for future phases of development. In such cases, a park concept development plan of the entire area must be submitted in conjunction with the subdivision for future provision of this park and shall be approved in the same manner as specified for park development agreements.

3. Park Standards

The lot(s) proposed for a neighborhood park should generally meet the following standards:

a. The minimum neighborhood park area shall be three acres and area is commensurate with the population density and size of the surrounding neighborhood;

b. A neighborhood park shall include a play area, picnic shelter, loop trail or trail connection, and open, green play space of suitable topography;

c. A neighborhood parking shall be located centrally to minimize walking distances from residences the park is intended to serve;

d. All elements of the park plan meet or exceed accessibility (ADA) standards, including pathways, shelter, picnic tables, and playground;

e. Play Equipment meets or exceeds playground safety standards, including Consumer Product Safety Commission (CPSC) public playground safety guidelines and ASTM International standards; and

f. All playground equipment and playground installers are International Play Equipment Manufacturers Association (IPEMA) certified.

4. Private Park Standards

A privately owned and maintained park may satisfy the requirements of this section if the following additional park standards are met:

a. Responsibility for maintenance and operation of the park is clearly assigned to a homeowners association in recorded covenants or agreements; and

b. The park lot is within or being rezoned to the OS zoning district.

5. Procedure

The provision of neighborhood parks and open space shall be accomplished through the approval of applicable subdivisions, as described in Section 14-20-06, Subdivision Procedures, and the following:

a. A park development agreement shall be submitted in draft form with the application of the preliminary plat for the subdivision.

b. Staff from the Parks District and/or the City and the applicant determine an appropriate park design, generally following the park standards contained in this section, subject to potential adjustments to account for site-specific constraints or unique aspects of the proposed development.

c. The park development agreement shall be signed by the property owner and representatives of the Bismarck Park Board and recorded in conjunction with the approved final plat. The recording of a park concept development plan is not required.

d. If an agreement to provide a neighborhood park is not reached, the requirement to provide a neighborhood park may be appealed to the City Commission, as described in Section 14-20-07, Appeals. The City Commission shall have the authority to waive this requirement.

6. Transfer of Property

The transfer of property for the purposes of parks and open space may be accomplished either by voluntary dedication or by sale of the land to the Bismarck Parks and Recreation District. The costs of the sale of the land may be financed through the City's special assessment process.

7. Establishment of Facilities

a. The installation of neighborhood parks and/or other recreational or open space areas must be done by the Parks District at the time of installation of other public infrastructure, prior to development on the lots within the subdivision plat, unless otherwise approved by the City Commission.

b. The costs of the installation of neighborhood parks and open space areas may be financed through the City's special assessment process. Any costs financed through the City's special assessment process must be approved by the City Commission. Any required utility and access easements within the subdivision plat shall be provided by the owner/developer.

8. Maintenance

Maintenance of a public park, trails, or other public open space will be provided by the Parks District. Private parks shall not become the maintenance responsibility of the Parks District or the City.

14-16-03. Wetland and Water Body Buffer

Commentary

This new wetland and water body buffer requirement helps the City maintain or improve stormwater runoff quality. This draft proposes a single setback area that allows very limited land disturbance and no construction. Some communities divide the buffer into a "protected area" immediately adjacent to the wetland or water body, and a "limited use" area between the protected area and development. Community feedback on which approach to use is encouraged.

1. Applicability

The standards of this section apply to areas within stormwater and drainage easements along bodies of water, or easements containing wetlands.

2. Buffer Zone

The area within these easements shall be designated a buffer zone, subject to the limits on structures and activities as described in this section.

3. Structures and Activities Allowed in the Buffer Zone

a. Irrigation and water diversion facilities, flood control structures, culverts, bridges, and other reasonable and necessary structures requiring some disturbance within buffer zones may be allowed if approved by the Director.

b. Shared-use trails, designed to City standards.

4. Structures and Activities Prohibited in the Buffer Zone

The following activities and development shall be prohibited in the buffer zone:

a. Placement of material, including soil, sand, gravel, mineral, aggregate, organic material, or snow plowed from roadways and parking areas.

b. Construction, installation, or placement of any obstruction, building, or structure not allowed under Section 3 above.

c. Removal, excavation, or dredging of solid material, including soil, sand, gravel, mineral, aggregate, or organic material.

d. Disturbance or removal of any existing live vegetation or conducting any activity that will cause any loss of vegetation, unless it involves the approved removal of noxious weeds, non-native species, dead, or diseased trees.

e. Lowering of the water level or water table by any means, including draining, ditching, trenching, impounding, or pumping.

f. Disturbance of existing natural surface drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics by any means including grading and alteration of existing topography, except for the purpose of restoring existing topography or to improve drainage, flow patterns, and flood control.

5. Buffer Zone Standards

a. Only plant species that are identified by the City as being acceptable for wetland or riparian life zones can be introduced into any wetland or riparian area, including the required buffer area.

b. Applications for developments shall evaluate the impact of the proposed development on surface and groundwater flows and design the project to ensure that the historic flow of surface and groundwater needed to sustain an existing wetland will not be interrupted.

c. Surface and groundwater flows intercepted by roads, utility trenches, and other development improvements cannot be diverted away from an existing wetland unless a mitigation plan is approved with the development to mitigate the impact on the existing wetland.

d. Activities below the seasonal high groundwater table, decreases in infiltration, and diversions of surface and groundwater flows with drainage ditches or fill shall be avoided.

e. Restoration is required when a wetland or water body or its buffer is altered in violation of law or without specific permission or approval of the City. The following standards

apply to restoration of a wetland, water body, or buffer area, proportionate to the development:

i. The original wetland configuration shall be restored, including its width, depth, length, and gradient at the original location.

ii. The original soil type and configuration shall be restored.

iii. The wetland edge and buffer area shall be restored to its original configuration.

iv. The wetland and buffer shall be replanted with species native or adaptive to the region that restores the original vegetation in species composition, size, and densities to the maximum extent practicable.

v. The original wetland functions shall be restored, including hydrologic and biologic functions.

vi. The restoration shall be accomplished according to a plan prepared by a recognized wetland expert with demonstrated expertise in the field who is acceptable to the City.

vii. The property owner is responsible for the expert's fee and cost of restoration.

viii. Restoration shall be accomplished within 12 months after the alteration of the wetland or buffer area is discovered.

6. Exceptions

a. Trail connections between new trails and existing trails may be located within the easement.

b. Improvements to existing structures, uses, or facilities already located within a wetland or water body buffer shall not increase the encroachment any closer to the wetland or water body. Bank stability concerns on private property shall be addressed by the property owner when making improvements to existing land within the setback zones.

c. The application of stream channel buffers is not intended to deprive any landowner of substantially all of the market value of their property or otherwise constitute an unconstitutional taking without compensation. If application of the stream channel setbacks to a specific project has the potential to result in a claim for inverse condemnation, the applicant or Director shall notify the City Attorney’s Office who will review the potential impact and make any necessary recommendations to the City Commission.

7. Maintenance

Maintenance is allowed and shall be the responsibility of the property owner.

14-16-04. Steep Slopes

1. Purpose

The purpose of this section is to:

a. Prevent soil erosion and landslides;

b. Protect the public by preventing or regulating development in locations with steep slopes;

c. Provide safe circulation of vehicular and pedestrian traffic to and within hillside areas and to provide access for emergency vehicles necessary to serve the hillside areas; and

d. Encourage only minimal grading that relates to the natural contour of the land.

2. Applicability

This section shall apply to any development or subdivision that contains slopes of 15 percent or greater over a distance of 100 feet, or where adverse conditions associated with slope stability, erosion, sedimentation, or vulnerable adjacent uses are present as determined by the Director or City Engineer.

3. Conformance to Studies

a. If an existing regional study includes recommendations for building setbacks from slopes or any other provision necessary to protect slope stability, development shall adhere to all recommendations contained in the regional study, unless a more localized study is performed.

b. Proposed development that does not conform to an applicable regional study, or where there is no existing regional study, shall be required to perform a geotechnical slope stability study in compliance with Section 14-02-05.3 prior any land-disturbing activity.

c. If a geotechnical slope stability study is performed at the scale of a subdivision, building permits may be issued on any lot within that subdivision if in conformance to the study.

d. Any proposed structure or land-disturbing activity that does not conform to both a regional or subdivision-wide study, shall be required to perform a geotechnical slope stability study in compliance with Section 14-02-05.3 with site-specific and project-specific parameters prior any land-disturbing activity.

4. Slope Protection Easements

a. If certain areas within a subdivision are identified through a geotechnical slope stability study as unstable or potential unstable, easements shall be shown and labeled as slope protection easements on a final plat of the subdivision.

b. Unless determined otherwise in the geotechnical slope stability study and noted on the subdivision plat, the easements shall include the including the following restrictions on development:

i. Irrigation is not permitted.

ii. Grading, excavating, filling, terracing, stockpiling of material or equipment, or any other surface alterations are not permitted.

iii. Buildings, primary or accessory, may not be constructed in this area.

iv. The natural vegetation in this area must be left undisturbed.

5. Development on Steep Slopes

Development of structures and grading may occur in areas containing steep slopes, unless encumbered by an easement and subject to the following standards:

a. Grading Standards

i. Grading shall be limited to the minimum necessary for development of streets, building sites, utilities, and driveways.

ii. Visible cut or fill slopes shall not exceed three horizontal to one vertical (3:1); provided, however, that slopes as steep as two horizontal to one vertical (2:1) may be approved by a qualified engineer upon a finding that the appearance or stability of the completed project will be superior to the result that would be obtained by adhering to the three horizontal to one vertical (3:1) standard.

b. Erosion Control

Standard erosion control methods shall be used during construction to protect water quality, control drainage, and reduce soil erosion. Sediment traps, small dams, barriers of straw bales, or other methods acceptable to the City Engineer shall be located wherever there are grade changes to slow the velocity of runoff.

c. Cutting Into a Slope

Cutting into the slope is prohibited without provision of adequate mechanical support.

d. Adding Water or Weight

Adding water or weight to the top of the slope, or along the length of the slope, is prohibited.

e. Removing Vegetation

Vegetation shall not be removed from the slope unless it will be replaced on a timely basis, acceptable to the City Forester, or adequately support through other erosion control measures.

f. Over-Steeping

Activities that over-steep the existing grade of an unstable slope are prohibited. If a site is identified as having unstable or potentially unstable slopes, then development may be allowed if the applicant demonstrates that the development cannot avoid those areas and the development complies with certified geotechnical design and construction stabilization and maintenance measures.

Chapter 14-17 Outdoor Lighting

COMMENTARY

This is new content regulating outdoor lighting, included for consideration. It is common for lighting regulations to be included as a section in a city's zoning ordinance. While lighting standards can be extremely detailed and complicated, what appears in this section is a set of basic lighting standards that are common in many communities.

14-17-01. PURPOSE

The purpose of this section is to provide for exterior lighting that enhances safety, preserves the city's nighttime character, and improves the ability to view the nighttime sky from within city limits. This section is intended to decrease light pollution, increase energy efficiency, and promote high quality lighting design as it relates to the built environment. The lighting regulations are also intended to:

1. Ensure that parking areas, public gathering places, and other public places have adequate outdoor illumination;
2. Ensure that light levels are uniform to enhance night vision and security;
3. Minimize adverse impacts on public safety and neighborhood enjoyment due to excessive glare;
4. Minimize spillover of light onto adjacent or nearby properties; and
5. Minimize the effects of skyglow, from light spilling into the night sky in built-up areas.

14-17-02. APPLICABILITY

1. New Lighting

New exterior lighting within city limits shall be installed in conformance with the requirements of this section, the building code, the electrical code, and other applicable City regulations.

2. Existing Lighting

Existing exterior lighting that does not meet the provisions of this ordinance and requires luminaire or electrical investment to conform, shall be considered a legally nonconforming site feature.

3. Change of Use

A change of use on a property where exterior lighting is considered a legally nonconforming site feature shall be required to bring the site lighting into compliance with these standards for the change of use to be approved.

4. Redevelopment

Exterior lighting as described in this section is required for redevelopment of a lot that involves the demolition of 50 percent or more of an existing principal structure, and its replacement with any new construction, whether to the same, greater, or lesser extent than the building footprint that previously occupied the lot.

5. Expansion of Parking Area

a. Exterior lighting as described in this section is required for an existing parking lot that is being expanded or altered to an extent between 25 and 50 percent of the lot's surface area prior to expansion. Only the parking lot area being added shall be required to meet the standards of this section.

b. When a parking lot is expanded by more than 50 percent of its surface area, the entire parking lot shall meet all of the requirements of this section.

c. Expansion is measured cumulatively, so that separate expansions that add up to a 25 percent or greater increase in parking lot surface area within a span of five years shall be required to meet the requirements of this section.

6. Exemptions

The following are exempt from the requirements of this section:

a. Emergency Lighting

Lighting used only under emergency conditions.

b. Seasonal Lighting

Temporary seasonal lighting, provided such lighting does not create glare to motorists or result in light trespass onto adjacent properties.

c. Lighting Required by FAA or FCC

Lighting required by the Federal Aviation Administration or the Federal Communications Commission.

d. Special Events

Special events that have been received all necessary permits shall be allowed temporary lighting for the duration of the event, provided such lighting does not create glare to motorists or result in light trespass onto adjacent properties.

e. Street Lighting

These requirements shall not apply to street lighting within City, County, or state rights-of-way.

f. String Lighting

Permanently exposed string lighting typically used for patio or roadway ambiance, provided such lighting does not create glare to motorists or result in light trespass onto adjacent properties.

g. Lighting Required by Building Code

Any lighting that is required by the building code for life safety purposes such as stairway lighting, walkways, and building entrances, shall not be prohibited by this section, but shall be subject to the lighting standards contained herein.

14-17-03. Lighting Types Not Permitted

The following types of exterior lighting are not permitted:

1. Unshielded lights, lamps, or floodlights that produce glare and light trespass in excess of that allowed in Table 14-17-1: Maximum Light Trespass at Property Line;
2. Lights affixed to the top of a roof, except where required by building code;
3. Lights that flash, move, revolve, blink, flicker, vary in intensity, change color, or use intermittent electrical pulsation, except for temporary Seasonal Lighting, as described in Section 14-17-02.6 above;
4. Searchlights and rotating beacons;
5. Mercury vapor and low-pressure sodium lighting; and
6. Upward-directed lighting that allows spillage into the sky.

14-17-04. Lighting Plan Required

1. Unless lighting is expressly exempt by Section 14-17-02.6 above, a lighting plan shall be required for:
   a. New multi-family developments of 50 or more units;
   b. Mixed-use or non-residential developments over 25,000 square feet.
2. The lighting plan shall be submitted as part of the applicable site plan and/or building permit request.
3. The lighting plan shall include sufficient information to enable the Director to determine whether proposed lighting complies with this Code.

14-17-05. Exterior Lighting Standards

1. Automated Controls

All new installations of lighting subject to the requirements of this section shall be installed with automatic controls to allow timing and remote operation of light levels.

2. Hours of Illumination

Hours when outdoor lighting may be operated at maximum illumination are between 6 a.m. and 11 p.m., unless otherwise specified by this section. Outside of those hours, all outdoor lighting shall be dimmed by at least 50 percent or turned off, with the following exceptions:

a. Any uses within the IG zoning district.
b. Street lighting, traffic signals, construction lighting for projects in the right-of-way, and other North Dakota Department of Transportation lighting.
c. Lighting utilized by any use that operates continuously throughout the night, such as a hospital, truck stop, or restaurant.
d. Code-required lighting for public steps, stairs, walkways, and building entrances.
e. Security lighting.
f. Parking lot lighting, which may be equipped with motion detecting sensors to temporarily illuminate the lot outside of business hours.

g. Other permitted exceptions, such as lighting for flags, seasonal, sports fields, and businesses which operate during overnight hours; such lighting may remain illuminated only while the establishment is open for business.

3. On-Site Lighting Level

Maximum on-site illumination, including spillage from doorways, signs, and windows, shall not exceed ten footcandles, unless otherwise allowed in this Code.

4. Light Trespass

a. Maximum Light Trespass Levels

The maximum measured light levels (footcandles) shall not exceed those provided in the following table:

Table 14-17-1: Maximum Light Trespass at Property Line

Area Intensity Level	Zoning District	Footcandles at Property Line
High Intensity Area	CG, IX, IG	3.0
Medium Intensity Area	RM, RX, DT, OX, CX, PCI	1.0
Low Intensity Area	A, OS, RRE, RR, RS, RU, RMH	0.5

b. Measurement

i. Light trespass shall be measured at grade level unless otherwise noted.

ii. Lighting measurements shall be taken under normal conditions. Measurements to determine compliance shall not be taken when conditions are present that will influence the outcome of measurements including snow, snowpack, rain, fog, or other influences.

iii. Light sources from a property shall be measured as cumulative of all sources on the subject property.

c. Transitions between Zoning Districts

The maximum level for light trespass when a more intensive zoning district borders a less intensive zoning district shall be the lower of the two values, along that border only. Where separated by a public street or right-of-way, the light trespass level shall apply at the nearest property line of the less intensive zoning district.

5. Shielded Light Source Required

a. All luminaires located shall be designed so that the light source (bulb or lamp) is completely shielded from direct view at a point three feet above grade on a property line abutting a low intensity area.

b. In all other instances, the light source must be completely shielded from direct view at a point six feet above grade on a bounding property line.

c. Examples of shielded or cutoff fixtures are shown in Figure 17-1:

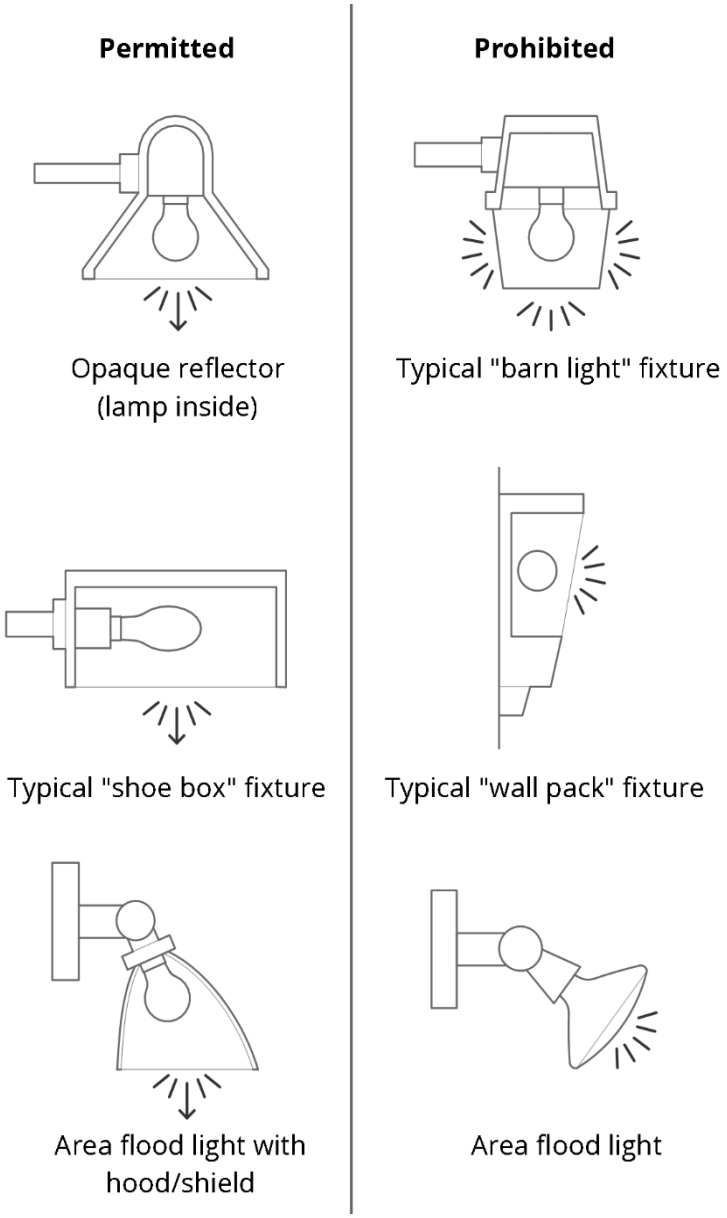


Figure 17-1: Acceptable Light Source Sheilds

6. Cutoff Angle

a. All luminaires must have a total cutoff angle equal to or less than 90 degrees, unless a more restrictive standard is specified by this code.

b. The use of exterior lighting with a cutoff angle greater than 90 degrees shall be permitted only when the Director finds the following:

i. That the proposed lighting is not in conflict with the Purpose of this section;

ii. That the proposed lighting will not have a negative impact on adjacent properties; and

iii. The proposed lighting will not result in an impairment of vision creating a hazard for vehicular or pedestrian traffic.

7. Height for Freestanding Luminaires

a. The maximum permitted height for freestanding luminaires is as follows:

i. Low Intensity Areas: 12 feet.

ii. Medium Intensity Areas: 20 feet.

iii. High Intensity Areas: 30 feet.

b. Lighting mounted higher than 30 feet may be approved as a variance, as described in Section 14-20-05.9, Variance. The standards of this subsection do not apply to lighting for Outdoor Recreation Facilities.

8. Pedestrian-Scale Lighting

Low-level pedestrian lighting may be used along walkways pursuant to the following:

a. Light shall be directed downward;

b. Shatterproof lamp coverings are required;

c. Lighting shall not cause the site to exceed the maximum trespass levels described in Table 14-17-1: Maximum Light Trespass at Property Line; and

d. Light shall not be located to present hazards for pedestrians or vehicles.

9. Security Lighting

Security lighting shall be allowed in all zoning districts, subject to the following standards.

a. Examples of Appropriate Security Lighting Techniques

i. Recessed lights under a canopy.

ii. Full cut-off fixtures on parking lot poles.

iii. Fully shielded wall packs or other fixtures.

iv. Floodlights that are down-directed, fully shielded, and are controlled by motion sensors.

b. Fixtures

i. Security lighting fixtures shall be fully shielded and directed only to the designated area.

ii. Security lighting shall not be directed above a horizontal plane through the top of the lighting fixture.

iii. Security lighting fixtures shall include shields that prevent the light source from being visible from adjacent properties and roadways to the maximum extent practicable.

10. Lighting of Outdoor Recreation Facilities

Because of their unique requirements for nighttime visibility and their limited hours of operation, outdoor recreation uses, such as stadiums, playing fields, and baseball diamonds, are exempt from the standards of this section, subject instead to the following standards:

a. Lights at outdoor recreation uses may not exceed a maximum permitted post height of 60 feet.

b. Lighting fixtures shall be mounted and directed no higher than 62 degrees up from vertical so that no direct illumination extends off the site.

c. No flickering or flashing lights are permitted.

d. Unless an hour for extinguishing illumination is otherwise specified, lights may not remain illuminated for more than one hour after the end of an event.

e. Lighting shall be designed, to the maximum extent practicable, to minimize adverse impacts on traffic safety and nuisance impacts on residentially zoned property.

f. Lighting plans must be provided prior to approval of any request for recreation facility lighting, and as-built plans are also required upon the completion of the project.

g. Mitigation, when necessary, can be required via extra landscaping, limited hours of operation for the lights, the use of cutoff fixtures or shields (where practicable), and other techniques as determined necessary by the Planning and Development Services Department.

Chapter 14-18 Signs

COMMENTARY

This chapter carries forward Bismarck's current sign regulations (Section 14-03.1) with minor changes, such as the addition of graphics and the reorganization of existing dimensional standards into tables for easier viewing.

14-18-01. PURPOSE[200]

The purpose of this chapter is to:

1. Provide fair standards and procedures to ensure that individuals, businesses, and organizations have a reasonable ability to communicate messages to the general public.
2. Protect public safety by preventing or mitigating traffic hazards through obstruction of view, distraction of street users, and all other negative effects on public travel.
3. Promote wayfinding to facilitate the efficient identification of destinations, which requires making a distinction between on-premises signs and off-premises signs.
4. Reduce visual clutter along public rights-of-way to improve the legibility of existing signs, including traffic control devices, and enhance the overall aesthetics of the community.
5. Protect property values of residential and commercial property owners who may be negatively impacted by signs within view of the property.
6. Encourage creative expression and artistic contributions to the community, which requires a distinction between signs of a commercial and non-commercial nature.

14-18-02. APPLICABILITY[201]

This chapter shall apply to the construction, installation, function, maintenance, and/or alteration of all signs, whether permanent or temporary, in the entirety of the City and its extraterritorial area, with requirements varying by the following sign types:

1. Permit-Exempt Sign Types[202]

The following sign types are exempt from requirements to obtain sign permits, but are still subject to the general standards of Section 14-18-04, along with any specific standards noted below.

a. Accessory Machine Sign

A sign integral to a legally-operating vending machine, automatic teller machine (ATM), parking kiosk, or similar electronic or mechanical device.

[200] 14-03.1-01.

[201] 14-03.1-03.1.

[202] 14-03.1-03.2.

b. Address Number

A physical street address marking, as required by Section 10-01-07 of the Code of Ordinances, except where the address information is also included within the name of the business or organization owning or occupying the premises.

c. Architectural Feature

A sign, symbol, logo, or lettering that is integral to a building's structure and design that is constructed with permanent materials that are used generally throughout the building and are not specific to the sign.

d. Flag or Pennant

A flag, emblem or insignia of any nation, political subdivision, corporation, or any other entity.

e. Government Signs

Signs of a non-commercial nature and in the public interest displayed by order of a political subdivision or public utility in performance of its official duties, for the purpose of traffic control, wayfinding, public safety, providing legal notice, or identifying public facilities or historical landmarks.

f. Grave Marker

A name or other marker of the deceased located in a cemetery.

g. Identification Plaque

A small, permanent wall sign or plaque that identifies a household name, business and/or organization occupying a building, subject to the following provisions:

i. No more than one identification plaque is permitted on any parcel.

ii. Identification plaques may not exceed 1 ½ square feet in area on any single-family or two-family residence

iii. Identification plaques may not exceed three square feet in area on any multi-family, commercial, industrial, or institutional structure.

iv. An identification plaque may be freestanding only in agricultural zoning districts.

v. Identification plaques may not be illuminated, either internally or externally.

h. Inwardly-Oriented Sign

A sign that meets any of the following conditions:

i. Located indoors;

ii. Located inside a stadium, concert venue, or athletic fields and oriented toward patrons of that venue;

iii. Located within a parking area or site, such as signs used to provide directions or practical information, and oriented toward the interior of the site;

iv. Any sign not intended to be visible from the public right- of-way or any adjoining property.

i. Murals and Public Art

In the Downtown zoning district, the standards of Section 14-18-05.4 shall apply to public art, as defined in the Land Development Code.

j. Small-Scale Freestanding Sign

A small, permanent on-premises sign, typically used for ancillary messages such as providing directions, subject to the following provisions:

i. The sign is no larger than six square feet with a height of three feet or less.

ii. No more than two small-scale freestanding signs may be installed on each street frontage of each parcel, in addition to any permitted freestanding signs.

k. Temporary Sign

Temporary signs do not require a permit, but are subject to the standards in Section 14-18-07.

l. Window Sign

A sign affixed to the inside or outside of a building window, or located inside a building within 12 inches of a window and oriented to the exterior, intended to be viewed by individuals passing by outside the building, subject to the following requirements:

i. Window signs may not be used for off-premises content.

ii. In the Downtown zoning districts:

(1). Vinyl cut-outs and window painting may be permitted on second floor windows or above. Paper, cardboard, or solid surface signs are not permitted on second floor windows or above.

(2). A window sign may not occupy more than 25 percent of the total transparent surface of each window or door opening. The Downtown Design Review Committee may approve a larger window sign, occupying no more than 50 percent of the total transparent surface of each window or door opening, in the following instances:

(a). The interior space of the building is unoccupied; or

(b). The window sign is used for an appropriate screening function, such as for a dance studio or healthcare facility.

(3). Any window sign or part of a window sign that does not completely impede visibility, but provides transparency between individual letters or designs, shall be counted as 50 percent of a window sign for the purposes of measuring maximum window coverage.

2. Permit-Exempt Activity Types[203]

The following activities are exempt from requirements to obtain a permit, as long as the activity does not render a sign non-compliant, or increase existing non-compliance in the case of legally nonconforming signs:

[203] 14-03.1-03.3.

a. Routine Maintenance

Maintenance necessary to keep a sign in a functional and attractive condition, including painting, cleaning, replacing parts, and small repairs. Temporary removal may be considered routine maintenance if the same sign is placed back in the same location and orientation. Any enlargement, structural alteration, upgrading of technological elements, or relocation is not considered routine maintenance.

b. Change of Message

Changing the message content on the face of any off-premises sign, changeable copy sign, or electronic message center; however, replacing or altering the copy of any permitted permanent sign requires a permit for the replacement or alteration.

c. Removal of Sign

Removal of any permanent or temporary sign, including the dismantling and complete removal of all supporting structures used exclusively for the sign.

3. Prohibited Sign Types[204]

Certain signs that detract from the purpose of this chapter are prohibited. Provisions related to the prohibition of signs in specific zoning districts are within Section 14-18-05. The following signs are prohibited in all zoning districts:

a. Roof Sign

A sign that is mounted on the roof of a building which is wholly dependent upon a building for support and which projects above the parapet of a building for a flat roof, the eave line of a building with gable roof, or the deck line of a building with a mansard roof. A false roof, canopy, and other non-structural fascia shall not be considered a roof for the purposes of this section.

b. Searchlights

High-intensity lighting devices oriented outward, such as strobe lights, searchlights, laser lights, or beacons.

c. Use of Mechanical Motion

A sign that rotates, revolves, pivots, swings, or uses any mechanical motion, with the exception of rotating barber poles.

d. Use of Vegetation or Live Animal

A sign painted on or affixed to an animal, or a tree or other organic matter.

e. Use of Pyrotechnics

A sign that uses open flames, sparks, explosions, or any form of illumination by means other than electricity. This prohibition does not apply to fireworks displays that comply with all local and state requirements.

f. Use of Sound

A sign that emits any sound through audio speakers or any other device. This includes the use of sound to advertise or draw attention to a business or activity occurring on

[204] 14-03.1-03.4.

premise that is clearly audible from a public right-of-way or adjoining property, whether or not the sign includes a visual component.

g. Vehicle Sign

The use of a parked car, truck, bus, boat, or other vehicle or part of a vehicle as a sign, unless the vehicle containing a sign meets all of the following conditions:

i. The vehicle is consistently used in the normal conduct of a business or organization or is utilized as an example of products that are sold on premises.

ii. The vehicle is maintained in operable condition and is properly registered with the State of North Dakota Department of Transportation.

iii. The vehicle is lawfully parked.

4. Permitted Sign Types

Any sign that is not identified as a permit exempt sign or a prohibited sign by this section shall be considered a permitted sign, and shall require a permit and be subject to all provisions of this chapter. Unless explicitly identified as an off-premise sign, all permitted sign types of this chapter shall be considered on-premises signs.[205]

5. New Sign Types[206]

Due to changing technology and the desires of businesses in the community, sign types may be proposed that do not clearly meet any definitions of this chapter. Such signs are not necessarily prohibited by this ordinance. The Director is authorized to interpret a proposed new sign type to be substantially similar, in terms of size, shape, duration, and overall visual impact, to a sign type defined in this Code, including prohibited sign types.

14-18-03. Summary Table of Sign Requirements

Commentary

The following table provides all of the sign standards in one table for review.

1. Permitted Sign Type (P)

These sign types are permitted by right in the zoning districts in which they are listed.

2. Special Use Sign Type (S)

These sign types are not permitted by right in the districts in which they are listed but may be allowed through approval of a special use permit, as described in Section 14-20-05.8. Sign times requiring a special use shall meet the requirements of this section, as well as meeting any conditions and requirements of the special use permit approval.

3. Not Permitted (NP)

Sign types that are not permitted within a zoning district

4. No Limit (NL)

There is no maximum or minimum limitation within the zoning district.

[205] 14-03.1-03.5.

[206] 14-03.1-03.6.

Table 14-18-1: Sign Requirements for Non-Residential Land Uses

sf= Square feet | ft = Feet | Min = Minimum | Max = Maximum | N/A = Not applicable | P = Permitted | NP = Not Permitted | NL = No Limit | S = Special Use Permit

Zoning District	RR/RRE/ RS/RU/ RM/RMH	RX	OX	CX	CG	IX/IG	DT	Reference
All On-Premises Sign Types								
Sign area (Max), per linear foot of lot primary frontage	0.5 SF	0.5 SF	NL	NL	NL	NL	Varies by Subdistrict	14-18-05.2.f 14-18-05.4.d
Sign area (Max), per linear foot of lot secondary frontage	0.25 SF	0.25 SF	NL	NL	NL	NL	Varies by Subdistrict	14-18-05.2.f 14-18-05.4.d
Illumination	S [1]	S [1]	P	P	P	P	P	14-18-05.2.f.v
Dimensional Content	Required	Not Required	Not Required	Not Required	Not Required	Not Required	Required	14-23-01.12.h
Freestanding Signs								
Permitted	P	P	P	P	P	P	P	14-18-05.3.e
Number (max)	1 per frontage / 2 per lot	1 per frontage / 2 per lot	1 per 350 ft frontage	1 per 350 ft frontage	1 per 350 ft frontage	1 per 350 ft frontage	1 per lot	14-18-05.3.e
Height (max)	20 ft	20 ft	30 ft	40 ft	50 ft / 80 ft [2]	50 ft / 80 ft [2]	20 ff	14-18-05.3.e
Clearance (min)	8 ft	8 ft	8 ft	8 ft	8 ft	8 ft	8 ft	14-18-05.3.e
Setback (min)	Height of Sign [3]	Height of Sign [3]	NL	NL	NL	NL	NL	14-18-05.3.e
Area (max)	With all sign types	With all sign types	NL	NL	NL	NL	With all sign types	14-18-05.3.e
Wall Signs								
Permitted	P	P	P	P	P	P	P	14-18-05.3.g
Number (max)	1 per frontage / 4 per lot	1 per frontage / 4 per lot	NL	NL	NL	NL	NL	14-18-05.3.g

Zoning District	RR/RRE/ RS/RU/ RM/RMH	RX	OX	CX	CG	IX/IG	DT	Reference
Area (max)	With all sign types [4]	With all sign types [4]	NL	NL	NL	NL	With all sign types	14-18-05.3.g
Projecting Signs								
Permitted	NP	P	P	P	P	P	P	14-18-05.3.f
Number (max)	N/A	NL	NL	NL	NL	NL	NL	14-18-05.3.f
Area (max)	N/A	With all sign types	NL	NL	NL	NL	With all sign types	14-18-05.3.f
Projection from wall (max)	N/A	6 ft	6 ft	6 ft	6 ft	6 ft	4 ft	14-18-05.3.f
Clearance (min)	N/A	8 ft	8 ft	8 ft	8 ft	8 ft	8 ft	14-18-05.3.f
Electronic Message Center								
Permitted	S	S	P	P	P	P	NP	14-18-05.3.d
Number (max)	1 per lot	1 per lot	NL	NL	NL	NL	N/A	14-18-05.3.d
Area, Interstate (max sf)	32	32	32	72	100	100	N/A	14-18-05.3.d
Area, Arterial (max sf)	32	32	32	48	72	72	N/A	14-18-05.3.d
Area, Collector (max sf)	32	32	32	32	48	48	N/A	14-18-05.3.d
Area, Local (max sf)	32	32	32	32	32	32	N/A	14-18-05.3.d
Off-Premise Advertising Signs								
Permitted	NP	NP	NP	NP	P	P	NP	14-18-06
Portable Signs								
Permitted	S	S	P	P	P	P	NP	14-18-07.4.f

Notes:

[1] Special use permit required for internal illumination only.
[2] Maximum of 80 ft only if oriented toward and within 660 feet of Interstate 94 and with a special use permit. Maximum of 50 ft for all other streets.
[3] Setback applicable to pole signs. Monument signs are exempt.
[4] A minimum of a 20 SF wall sign permitted on street frontage of any length.

14-18-04. General Sign Standards[207]

1. Applicability

The provisions of this section apply to all signs, whether permitted or permit-exempt, in all zoning districts.

2. Building Code

All permanent signs must conform to the structural design standards of the International Building Code most recently adopted through Section 04-02-02 of the Code of Ordinances.

3. Electronic Message Center Signs

a. Generally Applicable Standards

The following standards apply to all electronic message center signs, regardless of underlying zoning district.

i. See Section 14-18-05.2.f.vi for additional standards related to electronic message center signs in residential zoning districts.

ii. See Section 14-18-05.3.c for additional standards related to electronic message center signs in mixed-use, commercial, or industrial zoning districts.

b. Sign Type

i. Electronic message center signs may be incorporated into on-premises pole signs, monument signs, or wall signs, as shown in Figure 18-1.

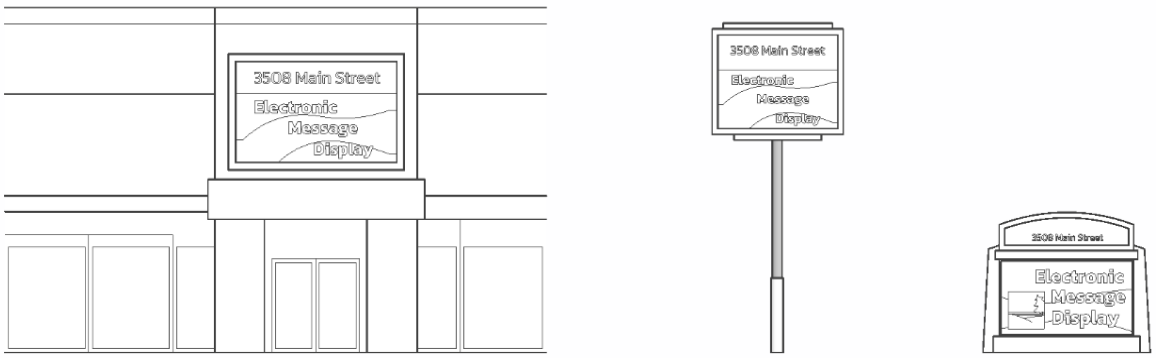


Figure 18-1: EMC Sign Types (left to right: wall, pole, monument)

ii. Electronic message center signs shall not be located on projecting signs, portable signs, or any other temporary signs.

iii. No off-premises advertising may occur on electronic message center signs. Digital off-premises signs are defined independently and subject to requirements of Section 14-18-06.7.

[207] 14-03.1-05.

c. Operational Requirements

i. Brightness

The sign shall not exceed a maximum illumination level of 0.3 footcandles above ambient light levels.

ii. Video

The use of streaming video or full-motion video is prohibited.

d. Sign Features

i. A default mechanism that shall freeze the sign in one position as a static message if a malfunction occurs; and

ii. A mechanism able to automatically adjust the illuminative brightness of the display according to ambient light conditions by means of a light detector/photocell.

4. Illumination of Signs

The illumination of all signs, including electronic message centers and digital off-premises signs, is subject to the following requirements:

a. Externally-illuminated signs shall direct illumination toward the sign or downward to minimize the amount of glare or light trespass across property lines.

b. Internally-illuminated signs shall not exceed a brightness level that creates a safety hazard for drivers on adjacent streets or a nuisance for any nearby residential uses, as determined by the Director.

c. High-intensity lighting devices oriented outward, such as laser lights, strobe lights, searchlights, and beacons, are not permitted.

d. Lighting for any signs, with the exception of electronic message centers or digital off-premises signs, may not alternate between fully illuminated and fully non-illuminated in a flashing manner. However, lighting of internally illuminated signs may gradually transition between colors in a fading, but not flashing manner, as determined by the Director.

e. Illumination of temporary and portable signs is not permitted.

5. Restrictions on Placement

In all zoning districts, the placement or installation of all signs is further restricted in the following areas:

a. Public Right-of-Way

No sign, or part of any sign, may be located within or above a public right-of-way, either temporarily or permanently, unless an encroachment agreement is approved in accordance with Section 02-01-04 of the Code of Ordinances or as permitted in Section 14-18-07.4.g, Sidewalk Sign. The City Engineer is authorized to approve encroachment agreements for signs extending above a public right-of-way.

b. Sight Triangles

All signs must meet sight triangle requirements of Section 14-02-03.9.

c. Property Lines

No part of any sign, or necessary supports of a sign, may project across or over any property line.

d. Easements

With the exception of portable signs, yard signs, site signs, and other signs of a temporary nature, no sign may be placed within or above any utility, access, stormwater and drainage, or any other easement encumbering use of the land, unless all parties with rights to utilize the easement agree in writing to allow an encroachment. An easement or portion thereof may be released though the easement release procedure in Section 14-20-05.3.

e. Means of Egress

No sign may be placed or installed in such a way that obstructs any means of egress from windows or doors required by building or fire code.

6. Restrictions on Content

All provisions of this chapter apply irrespective to the content or message of any sign, and no greater preference is conferred to commercial over non-commercial signs, except that the following content, without reference to the viewpoint of the speaker, shall not be displayed on any sign:

a. Text or images that may be reasonably confused with traffic control or public safety devices, including any sign that contains the words “stop,” “caution,” “danger,” or similar words hereby reserved for public safety.

b. Text or images that are obscene from the point of view of a typical person applying current standards of the community to the whole content of the sign; describe sexual or excretory functions, as defined by state law; and, taken as a whole, lack serious literary, artistic, political, or scientific value.

c. Text or images that are unlawful by local, state or federal law, including but not limited to slander, defamation, incitement to imminent lawless action, and true threats.

7. Protection of Public Safety[208]

A sign shall not:

a. Resemble or interfere, to any degree, with the effectiveness of a public sign, traffic control device, or signal;

b. Be placed beside or behind a traffic control device in a location or at a height that makes a motorist’s view of a traffic control device indistinguishable from the sign;

c. Obstruct or interfere with a motorist’s view of approaching, merging, or intersecting traffic within the operational area of an intersection; or

d. Have distracting flashing or moving lights so designed or lighted as to create a traffic hazard.

[208] Combined with 14-16-01.5.a, Sign Resembling Public Facility.

8. Standards of Structure Not Applicable

Freestanding signs shall not be considered a structure subject to dimensional requirements, such as setbacks and height, applied to structures within Section [District Regulations]. All dimensional standards for freestanding signs within this chapter shall take precedence.

9. Off-Premises Content on Signs of Public Interest

Notwithstanding all other provisions of this chapter, permanent on-premises signs or temporary banners used by public or non-profit entities or used for community-wide events shall be considered signs of public interest and may include ancillary off-premises content, such as naming rights or sponsorships.

10. Small-Scale Electronic Components

Any permanent permitted sign may include small-scale electronic components, which shall not be considered an electronic message center sign, subject to the following conditions:

a. Each electronic component is no greater than five square feet in size;

b. No more than three electronic components are included on any sign;

c. Each frame of all electronic components is held for a minimum of three hours before changing content; and

d. Each electronic component uses only one color.

14-18-05. District-Specific Sign Standards

Unless established as a general standard, the standards for permitted sign types or portable signs shall apply the standards for the district within which it is located, as follows:

1. Agricultural Zoning District Sign Standards[209]

a. Purpose

The purpose of the agricultural district standards is to preserve the agricultural nature of this district and discourage any uses with direct commercial sales or services requiring signage

b. Applicability

Any sign installed within the A zoning district

c. Prohibited Signs

No signs are permitted with the exception of:

i. Portable signs, subject to all requirements of Section 14-18-07.4.f applicable to commercial zoning districts; and

ii. Any signs exempt under Section 14-18-02.1, Permit-Exempt Sign Types.

[209] 14-03.1-06.

2. Residential Zoning District Sign Standards[210]

a. Purpose

The purpose of these standards is to preserve the residential character of neighborhoods while allowing uses within these districts the reasonable ability to identify themselves and promote activities occurring on premises.

b. Applicability

i. Any sign installed within the RRE, RR, RS, RM, RU, RMH, or RX zoning districts.

ii. For the application of electronic message centers, the provisions of this section also apply to all property within 150 feet of a residential zoning district included in this section, as measured from any part of the sign to the nearest property line within any residential zoning district:

c. Prohibited Signs

In addition to signs prohibited in Section 14-18-03, the following signs are prohibited in residential zoning districts:

i. Off-premises signs; and

ii. Portable signs.

d. Identification Sign for Residential Developments

Signs used to identify residential subdivisions, multi-family complexes, or manufactured home parks may be permitted according to the following standards:

i. Location and Number

No more than two signs shall be permitted for each entrance to a residential subdivision, or for each multi-family complex or manufactured home park. For the purposes of this section, residential subdivisions shall include all phases of staged developments that share a common name or identity.

ii. Monument Sign

Only monument signs may be used to identify residential areas under this provision.

iii. Dimensions

The total area of the sign face shall not exceed 60 square feet, and the sign may not exceed eight feet in height.

iv. Sign Materials

The base, supports, and face of the sign shall be constructed of durable, weather-resistant materials.

v. Landscaping

A landscaped area shall be provided around the base of the monument sign equal to or greater than 30 percent of the sign area.

[210] 14-03.1-07.

vi. Dimensional Lettering

The sign must be dimensional in nature, utilizing letters, numerals, and/or imagery that are either raised or engraved relative to the plane of sign face.

vii. Maintenance Responsibility

Ongoing responsibility for maintenance and upkeep of the sign shall be assigned to a private entity such as a homeowners association with sufficient rights and capacity to perform the necessary maintenance. The Director reserves the right to request any documents of an association and to make a determination regarding its ability to comply.

e. Multi-Family Residential Wall Signs

On any multi-family residential building, one non-illuminated wall sign of up to 12 square feet in area may be permitted per street frontage.

f. Signs for Non-Residential Uses in Residential Zoning Districts

On-premises signs are permitted in residential zoning districts on properties with non-residential uses, other than home occupations, subject to the following standards:

i. Sign Types and Dimensions

All requirements for signs shall be applied as shown in Table 14-18-1: Sign Requirements for Non-Residential Land Uses.

ii. Small Lot Exception

Notwithstanding maximum sign area requirements, A wall sign of up to 20 square feet may be permitted on any street frontage.

iii. Monument Sign Landscaping

All monument signs shall be provided with landscaping around the base of the sign.

iv. Wall Signs on Principal Buildings

Wall signs may only be affixed to the principal building on the property and may not be affixed to any accessory buildings.

v. Illuminated Signs

Any illumination of signs with residential zoning districts shall be from external lights sources only or halo-lit lettering. Internal illumination of signs shall require a special use permit and meet all requirements of an electronic message center.

vi. Electronic Message Center Signs

In addition to the standards in Section 14-18-04.3 and dimensional standards of Table 14-18-04.3, the following provisions apply to electronic message center signs:

(1). Special Use Permit

A special use permit shall be required in a residential zoning district, subject to the procedure described in Section 14-20-05.8, Special Use Permit.

(2). Proportion of Sign[211]

Electronic message centers may only be included on pole signs or monument signs that also contain static content. The static portion of the sign must be at least 33 percent of the total sign face.

(3). Operational Requirements

(a). Frame Hold Time

The sign shall have a frame hold time of no less than three seconds between 7:00 a.m. and 9:00 p.m. The sign shall hold on a constant frame or be turned off between 9:00 p.m. and 7:00 a.m.

(b). Effects

The sign shall be limited to instantaneous or continuous fading transitions from one static frame to another static frame without the use of any frame entrance, exit or hold effects or the use of any animation or background animation.

g. Home Occupations

Signs for home occupations, as established in Section 14-10-07.10, are permitted in all Residential districts as follows:

i. Minor Home Occupation

No more than one non-illuminated on-premises wall sign may be placed on the property of no greater than three square feet, attached to a primary or accessory structure on the lot.

ii. Major Home Occupation

No more than one non-illuminated on-premise sign is placed on the property of no greater than three square feet, plus one square foot per acre in the lot, of sign area.

iii. Special Use Approval Home Occupation

Permitted home occupations that exceed the requirements for a major home occupation shall follow any sign provisions included as a condition of a special use permit.

3. Commercial Zoning District Sign Standards[212]

a. Purpose

The purpose of these standards is to afford the greatest degree of flexibility for signs in areas with mixed-use, commercial, or industrial activity while still adhering to the other purposes of this chapter.

[211] Removed requirement that the electronic portion of the sign must be entirely below the static portion of the sign.
[212] 14-03.1-08.

b. Applicability

Any permitted or portable sign installed within the OX, CX, CG, IX, or IG zoning districts.

c. Sign Types and Dimensions

All requirements for signs shall be applied as shown in Table 14-18-1: Sign Requirements for Non-Residential Land Uses

d. Electronic Message Center Signs

In addition to the standards in Section 14-18-04.3 and shown in Table 14-18-1: Sign Requirements for Non-Residential Land Uses, the following provisions apply to electronic message center signs:

i. Proportion of Sign

Electronic message center signs may only be included on freestanding signs that also contain static content. Electronic message center signs used as wall signs are exempt from this requirement.

ii. Operational Requirements

(1). Frame Hold Time

The sign shall have a frame hold time of no less than one second. The use of animation and background animation is allowed and is not subject to the one second frame hold time requirement.

(2). Special Effects

(a). Special effects may be used to transition from one frame to another, provided said entrance effects result in all of the text within the frame appearing at once or in the order that the text is normally read, including, but not limited to, scrolling from right to left or scrolling from bottom to top entrance effects.

(b). Entrance effects where all of the text within the frame does not appear at once or in the order that the text is normally read are prohibited, including, but not limited to, scrolling from left to right, scrolling from top to bottom, and entrance effects referred to as slot machine, slots, splice, mesh, radar, kaleidoscope and spin.

(c). There are no limitations on the types of exit effects used.

(d). Except for such transitions, each frame shall remain static with no additional frame or hold effects applied to text within the frame, including, but not limited to, the fading or flashing on any part of the message and hold effects referred to as flash, spin, twinkle, wavy and rumble. The use of bijou lights as a frame effect is allowed.

e. Freestanding Signs on Interstate Frontages

Freestanding signs along interstate frontages are further subject to the following standards:

i. All freestanding signs along interstate frontages shall require special use approval, as described in 14-20-05.8, Special Use Permit.

ii. The applicant shall be required to demonstrate that all requirements of Section 14-20-04.7, Sign Permit, that are applicable to off-premises signs, including street visualizations and verification of public safety, are met.

iii. The sign shall be oriented toward and within 660 feet of an Interstate.

iv. Electronic message centers associated with the sign are limited to 50 feet in height or lower.

f. Projecting Signs

In addition to the standards in Section 14-18-04.3 and shown in Table 14-18-1: Sign Requirements for Non-Residential Land Uses, the following provisions apply to projecting signs:

i. A projecting sign may not extend above a driving, loading, or parking lane or area.

ii. Projecting signs may extend into a required setback and are not considered part of a structure for the purpose of determining setbacks.

iii. A higher clearance is needed to meet sight triangle requirements.

g. Wall Signs

In addition to the standards in Section 14-18-04.3 and shown in Table 14-18-1: Sign Requirements for Non-Residential Land Uses, the following provisions apply to wall signs:

i. Wall signs may only be affixed to a principal building on the property, and may not be affixed to any accessory buildings

ii. The face of a wall sign shall be parallel to the plane of the wall it is mounted on and shall not project above or beyond the wall it is mounted on.

4. Downtown Zoning District Sign Standards[213]

a. Purpose

The purpose of the downtown zoning district standards is to encourage signs that are scaled and oriented predominantly toward pedestrians, complementary to the existing context of the downtown streetscape, and aligned with the goals and objectives of Section 14-05-07, Downtown Development Standards, and Section 14-05-08, Architecture Standards.

b. Applicability

The standards of this section shall apply to any permanent or portable sign installed within the DT zoning district.

c. Prohibited Signs

In addition to signs prohibited in Section 14-18-02.3, the following signs are prohibited in downtown zoning subdistricts:

[213] 14-03.1-09.

Off-premises advertising signs

i. Electronic message center signs

ii. Portable signs, excluding sidewalk signs.

iii. Feather flag signs.

iv. Air-blown signs.

d. Area of Sign

The total allowable sign area for on-premise advertising signs shall be determined per linear foot of the building frontage as follows:

Table 14-18-2: Sign Area by Downtown Subdistricts

Subdistrict	DS	DG	DM	DF	DC
Sign area (Max), per linear foot of building frontage	3 Square Feet	2.5 Square Feet	2.5 Square Feet	1 Square Foot	2 Square Feet

e. Dimensional Signs

All signs in downtown zoning subdistricts, except as exempted in this section, including wall signs, projecting signs, pole signs, and monument signs are required to be dimensional, with the following exceptions:

i. Signs that are internally illuminated

ii. Signs painted on the wall of a building

iii. Sidewalk signs

iv. Signs on an awning of light material that is not suitable for supporting dimensional lettering

v. All permit exempt signs

f. Wall Signs

i. The face of a wall sign shall be parallel to the plan of the wall it is mounted on and shall not project above or beyond the wall it is mounted on.

ii. All signs placed against exterior walls of buildings and structures may not protrude more than 12 inches from a wall's surface.

iii. Signs painted directly on exterior walls or surfaces of a building are allowed, provided such signs are not located on the front façade of the building and the building is not a historically significant building, as defined in Section 14-05-08.8.

g. Awning Signs

i. No awning may extend into the sidewalk further than two feet from the back of the street curb.

ii. Any awning shall generally be located within a window and/or door recess.

iii. The shape, color, and material of any awning shall complement the overall architectural design of the building and conform to Section 14-05-07, Downtown Development Standards, and Section 14-05-08, Architecture Standards.

iv. A sign may be attached beneath an awning, provided sufficient structural support for the weight of the sign exists and the sign does not extend more than one foot below the lowest point of the awning.

v. All signs attached to or hanging below canopies must maintain a clearance of at least eight feet below all parts of the sign.

vi. Signs on sloped canopies shall be encouraged to be placed on the vertical band or the valance of the awning and shall be discouraged on the sloped portion.

h. Projecting Signs

i. A sign may not project from the face of any building or structure more than four feet.

ii. Projecting signs shall have a clearance of at least eight feet, and no part of any projecting sign may be above the sill of any second-floor window of the building or parapet of the roof of the building.

iii. A projecting sign may not be permitted in an alley, unless the primary public access to the business or firm is obtained from the alley.

i. Monument Signs

i. A monument sign or part thereof may not exceed eight feet in height, recognizing that a lower maximum height is required in sight triangles.

ii. Monument signs shall be constructed of brick, stone, or a similar durable material complementary to the building material.

iii. No more than one monument sign may be installed per street frontage on any lot or parcel. Parcels with multiple street frontages are permitted an additional monument sign for each additional frontage.

j. Pole Signs

i. A pole sign may not be more than 20 feet in height.

ii. Pole signs of more than three feet in height shall have a clearance of at least eight feet, except where a greater clearance is required in sight triangles.

iii. No more than one pole sign may be installed on any parcel.

iv. The visible supports of any pole sign shall be enclosed or covered with a decorative sheathing.

k. Sidewalk Signs (within public right-of-way)

i. One sidewalk sign is allowed per business or organization occupying an adjoining property.

ii. All sidewalk signs must be portable and may not be affixed to the ground or any streetscape elements, such as signs or trees.

iii. The maximum width of a sidewalk sign shall be 2.5 feet and the maximum height shall be four feet.

iv. A sidewalk sign shall be placed only where a minimum width of four continuous feet for pedestrian movements and all requirements of the Americans with Disabilities Act can be maintained.

v. Sidewalk signs may be placed on the sidewalk only during hours of operation and must be removed during non-business hours.

vi. Sidewalk signs shall not be illuminated.

vii. Sidewalk signs may not be placed in a location that creates a safety hazard by limiting visibility for pedestrians or motorists or obstructing any building ingress or egress.

viii. Streamers, flags, or banners shall not be attached to any sidewalk sign or use the sign as an anchor.

l. Public Art

i. The public art is not installed on a vacant building or within a vacant lot or parcel, unless the property owner has filed a building permit with the intention of occupation or is otherwise actively in the process of improving the building or parcel for the purpose of occupation.

ii. The public art is not installed on any original façade of a historically significant building, unless the art may be attached to a removable panel without damage to the underlying historic façade and the artwork meets all other design review requirements pertaining to historic structures.

m. Design Review

All signs in the downtown zoning subdistricts shall be subject to the City's minor downtown design review, as an administrative decision, as described in Section 14-20-05.2.

5. Special Purpose Zoning Districts

Signs may be permitted in the PCI or OS zoning districts, following standards of an alternate zoning district as follows:

a. Any PCI or OS zoning district directly adjacent to or across a public right-of-way from a residential zoning district shall apply standards for Section 14-18-05.2 Residential Zoning District Standards.

b. All other PCI or OS zoning districts shall apply the standards of Section 14-18-05.3 Commercial Zoning District Standards.

14-18-06. Off-Premises Signs

In addition to general standards of Section 14-18-04, the following provisions shall apply specifically to all off-premises signs:

1. State Approval Required

The sign meets provisions outlined in Chapter 24-17 of the North Dakota Century Code and a permit has been issued by the North Dakota Department of Transportation, where required.

2. Off-Premises Sign Dimensions

All off-premises signs must meet the following dimensional standards:

a. Number of Faces

A maximum of two faces. Three-sided and four-sided signs are prohibited.

b. Area of Sign Face

i. A maximum area of each sign face shall vary by adjacent street frontage:

(1). 672 square feet if adjacent to Interstate 94 or Bismarck Expressway east of Airport Road; or

(2). 300 square feet if adjacent to all other street frontages.

ii. A minimum area of 200 square feet.

c. Height

A maximum height of 16 feet to the highest part of the sign

d. Width

A maximum width of 50 feet.

e. Clearance

A minimum clearance of 10 feet from the lowest portion of the sign face to the highest grade below the sign.

f. Setback

A minimum of 15 feet on along all street frontages other than Interstate 94, from which no setback is required.

3. Arterial Street Required

Off-premises signs may only be located adjacent to an arterial street. If the right-of-way of an arterial street includes a local or frontage street, the sign may be adjacent to said local or frontage street.

4. Extensions to Signs

A non-digital off-premises sign may have up to an additional 20 percent of the sign face area on the perimeter of the sign face for extension elements. All sign extension space shall be of the same material as the sign face.

5. Spacing

a. Any and all parts of the sign, whether static or digital, shall be located:

i. At least 300 feet from any residential zoning district, as measured from any part of the sign to the nearest property line within any residential zoning district;

ii. At least 300 feet from any part of an existing or approved off-premises sign, whether static or digital;

iii. At least 200 feet from the center point of any intersection of an arterial and an arterial and/or collector street; and

iv. At least 500 feet from the nearest right-of-way of an interstate interchange.

b. In addition, all parts of a digital off-premises sign shall be located at least 1,200 feet from any part of an existing or approved digital off-premises sign.

6. No Obstruction of View

The sign shall not obstruct any other existing sign, either off-premises or on-premises.

7. Digital Signs

Digital off-premises signs shall meet the following additional standards:

a. The sign shall have a frame hold time of no less than seven seconds and must transition instantaneously from one static image to another static image without any special effects. The use of streaming video, full-motion video, animation or frame effects is prohibited.

b. The sign shall have a default mechanism that shall freeze the sign in one position as a static message if a malfunction occurs.

c. The sign shall have a mechanism able to automatically adjust the illuminative brightness of the display according to ambient light conditions by means of a light detector/photocell.

d. The sign shall not exceed a maximum illumination level of 0.3 footcandles above ambient light levels.

8. Conversion of Type

A separate sign permit shall be required for the conversion of any existing non-digital off-premises advertising sign to a digital off-premises advertising sign. An existing legally nonconforming sign must meet all requirements outlined in this chapter prior to approval of a sign permit.

14-18-07. Temporary Sign Standards

1. Purpose

The purpose of these temporary sign regulations is to identify permissible signage for temporary uses and temporary events, while reducing distractions, obstructions, and hazards to pedestrian and automobile traffic caused by an excessive number, size, or height of temporary signs, or their inappropriate placement, illumination, or movement.

2. Applicability

The standards of this section apply to temporary, on-premises signs on private property.

3. Term and Display

Temporary signs do not require a permit, but are subject to the following standards:

a. Other than election event signs which are not subject to a limit on duration of display, temporary signs shall be erected, re-erected, or maintained for no more than a cumulative 240 days per calendar year, whether consecutive or not.

b. Temporary signs may be displayed on any private property provided the signs meet the following requirements:

   i. The sign conforms to all requirements of this section, including the maximum square footage of signage allowed on the property where placed, and clear vision area limitations as described in Section 14-23-01.11, Sight Triangle;

   ii. The sign does not interfere with pedestrian or automobile traffic;

   iii. The sign is not placed in the public right-of-way or on public property;

   iv. The sign is placed with the express permission of the property owner; and

   v. The sign is not a public danger or nuisance during high winds or inclement weather.

4. Temporary Sign Types

a. Air-Blown Sign

A temporary sign, as defined in Section 14-23-02, subject to the following provisions:

i. Air-blown signs may be displayed on a property or lease space for a continuous display period of no greater than seven days. Up to two display periods are permissible per calendar year per business or organization. The display periods cannot be consecutive and must be separated by at least 30 days.

ii. Air-blown signs are prohibited in the downtown zoning districts.

b. Bulletin Board

An informational display, such has a menu board, an event listing, promotional flyer, or other display intended to be read from a close distance and providing specific information typically sought by the viewer. Bulletin Boards may be illuminated only externally with light directed toward the bulletin board.

c. Carried Sign

A sign carried or worn by a person or persons, provided that all traffic safety laws are met.

d. Construction Fence Sign

A sign affixed to a fence erected temporarily around a construction site, subject to the following provisions:

i. Construction fence signs must be installed flush to the fence and may not extend beyond the area of the fence but are otherwise not limited size.

ii. Construction fence signs must be removed no later than 30 days after a certificate of occupancy has been granted on the building on site or ceasing of the activity for which the fence is used.

e. Feather Flag Sign

A sign, as defined in Section 14-23-02, subject to the following provisions:

i. Feather flag signs may be displayed on a property or lease space for a continuous display period of no greater than two months. Up to two display periods are permissible per calendar year per business or organization. The display periods cannot be consecutive and must be separated by at least 30 days.

ii. Feather flag signs are prohibited in the downtown zoning districts.

f. Portable Signs

i. In Residential Zoning Districts

In addition to general standards of Section 14-18-07.4.f, all portable signs in residential zoning districts shall obtain a special use permit, subject to all requirements of Section 14-20-05.8, Special Use Permit, to verify that the placement and design of proposed portable sign(s) does not have a negative impact on the surrounding neighborhood. The term of any special use permit may not exceed two years.

ii. In Non-Residential Zoning Districts

In addition to general standards of Section 14-18-07.4.f, the following provisions apply to all portable signs in commercial zoning districts or industrial zoning districts:

(1). On-Premises

Portable signs may only be used as on-premises signs.

(2). Spacing

Portable signs shall be placed with a minimum spacing of 100 feet between portable signs on a parcel.

(3). Dimensions

Portable sign faces shall not exceed 60 square feet in area, and the sign, including all supporting structures, shall not exceed eight feet in height. Lettering may not extend beyond the face of the sign.

(4). Duration

Portable signs may only be displayed at any location for eight months within any calendar year. Each location must be vacated of all portable signs for the remaining four months of each calendar year. For the purposes of this section, a location shall be defined as a street frontage of a parcel or portion thereof within which a sign may be legally placed and meet all spacing requirements.

(5). Electricity

Portable signs may not be wired to received electricity, produce electricity, or contain any batteries.

(6). Location

Portable signs shall not obstruct a parking space required to meet the provisions of Chapter 14-13, Parking and Loading.

(7). Identification

The name and telephone number of the owner of any portable sign must be clearly displayed while in use.

iii. Portable Sign Reporting

A licensed sign installer may place an unlimited number of portable signs without approval of a permit for each sign placement, subject to the following reporting requirements.

(1). Keeping Report Required

Any sign installer with portable signs in use that have not been issued individual permits must keep a report on a form prescribed by the City containing the following information:

(a). Name and address of the sign installer.

(b). A record of each sign placed for any duration of time, indicating the address, street toward which the sign is oriented, the date the sign was placed, the date the sign was removed, if applicable, and a photograph of the sign in location during each display period.

(c). Evidence of property owner approval for each sign in use at any time.

(2). Submittal of Report

Any licensed sign installer shall furnish a report upon request of the Director of all portable signs placed by the installer within the previous one year of the request date, or since the effective date of this ordinance, whichever is most recent.

(3). Individual Option

In lieu of keeping reports, portable signs may also be permitted individually according to the procedure in Section 14-20-04.7. A license and insurance is not required for individually-permitted portable signs.

(4). License Revocation

The Director may revoke the license of any sign installer for up to one year upon failure to provide an accurate report in a timely manner, or failure to meet any other requirements of this ordinance.

g. Sidewalk Sign

i. Standards that Apply in All Zoning Districts

(1). The maximum width of a sidewalk sign shall be 2 ½ feet, and the maximum height shall be four feet.

(2). Sidewalk signs may only be placed within a public right- of-way in downtown districts. Sidewalk signs must be placed on private property in all other districts, unless granted an encroachment agreement.

ii. Standards that Apply in DT Zoning District

(1). One sidewalk sign is allowed per business or organization occupying an adjoining property.

(2). All sidewalk signs must be portable and may not be affixed to the ground or any streetscape elements, such as signs or trees.

(3). A sidewalk sign shall be placed only where a minimum width of four continuous feet for pedestrian movements and all requirements of the Americans with Disabilities Act can be maintained.

(4). Sidewalk signs may be placed on the sidewalk only during hours of operation and must be removed during non-business hours.

(5). Sidewalk signs shall not be illuminated.

(6). Sidewalk signs may not be placed in a location that creates a safety hazard by limiting visibility for pedestrians or motorists or obstructing any building ingress or egress.

(7). Streamers, flags, or banners shall not be attached to any sidewalk sign or use the sign as an anchor.

h. Site Sign

A temporary site sign used for on-premises advertising may be permitted on a site depending on activity currently underway on the lot, or within 200 feet of the subject lot, subject to the following restrictions,

i. Property For Sale or Rent

(1). Site signs may be placed on parcels containing property that is currently for sale or rent in commercial, industrial, downtown, or agricultural zoning districts, as well as any RM district.

(2). One site sign may be placed per street frontage on a parcel, with one additional site sign allowed on street frontages of greater than 200 feet in length.

(3). The sign shall be no greater than 64 square feet in area and ten feet in height and shall be removed no later than 30 days after sale, lease, or occupancy of the property.

ii. Property Under Construction

(1). Site signs may be placed on parcels that are currently under development or building construction in any zoning district.

(2). No more than three site signs may be placed at each entrance into a development or site. All of said site sign(s) shall be no greater than 144 square feet in area cumulatively and ten feet in height, and may be displayed until thirty 30 days after all lots in a subdivision have been sold by the developer or 30 days after a certificate of occupancy has been granted on an individual commercial property that is not associated with a subdivision under development. Additional Standards

(3). Site signs are prohibited on properties that do not meet provisions i. or ii. above in this section.

(4). Site signs are permitted in addition to any other temporary or permanent signs allowed by this chapter, and all measurements of spacing or number shall be made independently of other sign types.

(5). Site signs may not be illuminated, either internally or externally.

i. Temporary Banner

i. Temporary banners may be displayed on a property or lease space for a continuous display period of no greater than ten months per calendar year per business or organization.

ii. Temporary banners may not be used to advertise off- premises commercial content.

iii. Temporary banners must be attached to, and flush with, a building wall, retaining wall, fence, or other permanent structure.

iv. Temporary banners may not exceed 32 square feet in area in downtown zoning districts and residential zoning districts.

v. Temporary banners may not be displayed on residential properties of three units or less.

vi. Temporary banners may not be illuminated, with the exception of temporary banners affixed to a permitted permanent sign structure to allow for transitions between occupants of a building.

j. Yard Sign

i. A yard sign may not be used to advertise off-premises commercial content. Advertisement of on-premises commercial activity, including but not limited to real estate, sales, and construction activity, is permitted for the entire duration of said activity and must be removed within 30 days after completion of said activity. Non-commercial yard signs are permitted and not limited in number or duration.

ii. Yard signs are not permitted for home occupations.

iii. Each yard sign may not exceed eight square feet in area, exclusive of any post or supporting structure. Notwithstanding, one non-commercial yard sign may exceed this area limitation for a time period no greater than 24 hours. Said non-commercial sign may not be used more than one time per calendar year on any parcel unless the content of the sign is changed.

iv. Yard signs may be freestanding or attached to a fence, deck, or garage door, but may not be affixed to a building wall or any vegetative matter.

v. Yard signs may not be illuminated, either internally or externally.

14-18-08. Sign Maintenance

All signs, whether permanent or temporary, shall be kept in a state of good repair and operation at all times. The Director may issue a notice and order to any owner of property containing a

sign out of compliance with the provisions of this chapter to maintain or remove said sign. A sign shall be considered obsolete or in disrepair if it exhibits one or more of the following conditions:

1. A business or organization that has vacated the property on which the sign is located, or any freestanding supporting structure without a sign face. A sign or supporting structure shall be considered abandoned and in violation of this section six months after the occurrence of either event.
2. Structural supports are deemed to be unstable due to deterioration or previous damage.
3. Panels, sections, or lettering of the sign face are missing or significantly damaged or faded.
4. Bulbs are burned out or electronic elements of a sign are malfunctioning such that the intended display of the sign is compromised.
5. Paint, coating, or other cosmetic materials of the sign are peeling or no longer present in their original form.
6. The face of a sign is obstructed from public view by growth of vegetation on private property or any other visual obstruction.
7. The condition of a sign has changed in any way that creates a public safety hazard.

Chapter 14-19 Subdivision of Land

14-19-01. Purpose

The purpose of this chapter is to implement the Comprehensive Plan and to provide for the safe, efficient, orderly, and environmentally sound development of land within the City and its extraterritorial area through the following:

1. Ensuring that all developable lots have adequate provision for right-of-way, streets, utilities, services, and facilities;
2. Ensuring that all developable lots have adequate legal access to the public street network;
3. Reducing long-term service and maintenance costs to the City, its residents, and owners in a subdivision;
4. Reinforcing the importance of public places such as civic buildings, parks, and open spaces;
5. Promoting active transportation modes such as pedestrian uses and bicycling;
6. Promoting subdivision layout that incorporates and emphasizes unique features of the land;
7. Protecting existing natural resources and wildlife habitat, and preserve stands of existing mature trees and native vegetation;
8. Reducing safety risks in areas with hazards such as wildfire, wind and water erosion, riverine slide areas, geologically hazardous areas, and floodplains;
9. Providing opens spaces for active and passive use that are integrated with those on abutting properties where possible;
10. Designing subdivision layout to complement adjacent neighborhoods development and uses, and
11. Mitigating significant adverse impacts on neighboring developments.

14-19-02. Applicability

This chapter shall apply to all divisions of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or building development, created pursuant to NDCC Section 40.50.1. The following legal divisions of land shall not be considered a subdivision and all boundaries shall be disregarded in the application of the Land Development Code:

1. A division of land to create a real estate lease.
2. A division of land for condominiums created under the North Dakota Condominium Act (NDCC 47-04.1).
3. A division of land into graves in a cemetery.
4. A division of land through a plat of irregular description in accordance with NDCC Chapter 57-02-39, unless constituting a legally nonconforming lot.

14-19-03. General Standards

The following standards are applicable to all subdivisions:

1. Compliance with Zoning District

All lots, blocks, rights-of-way, or feature of a subdivision shall conform to the dimensional standards of the zoning district within which it is located, either existing or approved in conjunction with the subdivision.

2. Transfer of Lots

No lot or lots depicted on a preliminary subdivision plat or final subdivision plat submitted under this Code may be transferred in ownership until such plat receives final approval and is recorded.

3. Suitability of Land for Subdivision[214]

Land subject to natural hazards such as flooding shall be considered unsuitable for residential occupancy or other uses which impair the health, safety or welfare of the inhabitants. Where hazardous conditions exist on or adjacent to lands proposed for subdivision, the proposal shall be disapproved unless design of lots, streets, and improvements eliminates or mitigates any specific life safety hazards. Areas deemed unsuitable for development may be marked as such on the subdivision plat.

4. Applicability of Standards[215]

Subdivision design shall meet the standards in this chapter. An applicant may propose an alternative subdivision design to accomplish a public purpose as identified in Section 14-19-01, such as the preservation of natural resources. Alternative subdivision designs shall be accompanied by a written description of the applicable public purpose and how the alternative design proposed the minimum amount of adjustment from these standards required to meet the specified public purpose.

5. Review Procedures

The subdivision review procedures are located in Section 14-20-06, Subdivision Procedures.

6. Order of Required Studies

The Director may require additional studies, as identified in Section 14-02-05 Required Studies or a different type of study not listed, to be submitted with a subdivision plat.

14-19-04. Layout and Design

The layout and design of a subdivision shall meet the following standards:

1. Subdivision Boundary

The outer boundary of a subdivision shall comply with the following:

[214] New.

[215] New.

a. The boundary shall extend to be aligned with all existing subdivisions in the vicinity, avoiding any gaps or omission of undevelopable land in between, to the greatest extent feasible to the landowner initiating the subdivision.

b. The boundary of a replat shall extend to the entirety of any included lots, without leaving a remnant of a lot split by the replat.

c. The boundary of a replat shall not include any right-of-way previously dedicated unless necessary to extend to lots and blocks to be replatted.

2. Lots[216]

Lot types and measurements are shown in Section 14-23-01.9, and defined in Chapter 14-23-01.9. Each lot in a subdivision shall comply with the following:

a. General Standards

i. All lots within a block shall be numbered in a logical sequence.

ii. The subdivision layout shall not create lots that do not meet the standards for a developable lot in the zoning district where the property is located, unless designated as “unbuildable” or adequate assurance is provided that lots will comply with future developments.

iii. No lot shall be divided by a city limit, zoning district, or township boundary line, unless the subdivision is approved in conjunction with an action to remedy the division.

iv. Lots in the RRE, RR, or A districts shall be arranged to allow further subdivision and/or dedication of street rights-of-way once municipal services are available to the site in the future, unless the Director determines that requirement to be impractical or unwarranted based on the Comprehensive Plan.

b. Utility Access

i. Inside of city limits, lots shall be sized and sited to accommodate all municipal services, such as sanitary sewer, water, and stormwater, necessary for development of that lot and surrounding lots

ii. Outside of city limits, lots shall be sized to accommodate on-site wastewater treatment, as soil conditions allow, unless serviced with a centralized sewage system.

c. Street Access

i. All lots shall have direct legal access and abut a public right-of-way with sufficient width unencumbered by a non-access line to allow vehicular travel onto the lot, with the following exceptions:

(1). Lots accessed through a private street connected to a public right of way.

(2). Courtyard development with a dedicated pedestrian access easement through a courtyard or green space.

[216] 14-09-05, updated and edited.

ii. All lots shall have physical access through improved public or private streets built according to City or County standards prior to issuance of a building permit on the lot.

d. Layout

i. Interior lots shall be sized with enough width and depth to accommodate setbacks for building sizes anticipated for development.

ii. Corner lots shall be wide enough to accommodate setbacks on both streets, which is the front and street-side setbacks of the underlying zoning district.

iii. Side lot lines shall be approximately at right angles or radial to street lines to the greatest extent practicable.

e. Irregular Lot Types

The following types of lots shall be avoided unless pre-existing conditions necessitate their use for efficient development of the land.

i. Reverse Frontage Lots

Reverse Frontage Lots shall only be permitted where the rear of the lot is adjacent to an arterial street or topographic or other conditions render subdividing in another fashion unreasonable.

(1). Double frontage lots shall be sized to accommodate a rear setback that is at least 20 feet deeper than the minimum rear setback requirement in the underlying zoning district in order to allow property owners to plant screen planting and landscaping along the back lot line.

(2). The street frontage providing vehicular access to any reverse frontage lot shall be the lesser designation of the two streets involved. For example, if the lot has access to a collector and a local street, then vehicular access shall be from the local street.

ii. Double Frontage (Through) Lots

Including new Double Frontage Lots on subdivision plats is prohibited in residential zoning districts. Double frontage lots may be permitted in all other zoning districts, subject to all access control and connectivity requirements of Chapter 14-14 Mobility and Connectivity.

iii. Multiple Frontage Lots

Lots with three or four frontages should be avoided.

iv. Flag Lots

Flag lots may be approved where there is no reasonable alternative to the creation of flag lots, provided each flag lot complies with the following standards:

(1). Not more than 15 percent of the lots in a subdivision may be flag lots;

(2). Not more than two flag lots may abut each other;

(3). The developable “flag” portion of each flag lot shall meet the minimum lot size required in the zoning district where the property is located,

(4). The access “flagpole” portion of the lot shall be at least 20 feet in width;

f. Unbuildable Lots

i. Certain lots shall be marked “unbuildable” on the face of the plat if the following conditions apply:

(1). The lot is encumbered by easements that substantially prevent development of the lot.

(2). The lot is intended for utilization by an unoccupied public utility installation, such as a substation or sanitary sewer lift station.

(3). The lot contains natural features such as steep slopes or wetlands and that substantially prevent development of the lot.

ii. No building permit may be issued on an unbuildable lot unless the plat is modified according to the procedure in Section 14-20-06.5.

iii. Unbuildable lots shall be exempt from all lot area, width, and coverage requirements. Notwithstanding, all landscaping, screening and other requirements shall apply if the lot is used for utility purposes.

3. Blocks

All blocks bounded by rights-of-way, waterways, or other permanent features shall be labeled and numbered on the subdivision plat and comply with the following:

a. Blocks shall have a length and width that complies with the intersection spacing requirements of Section 14-14-04.3.

b. Where the street network adjacent to a proposed subdivision is in a uniform street grid pattern, new blocks shall be dedicated as an extension of that pattern, to the greatest extent feasible, unless constrained by topography or other permanent obstructions or divided by an arterial street.

4. Non-Access Lines

a. Non-access lines shall be placed on all plats in accordance with standards of Section 14-14-05.3 to manage access to streets, as defined for different street types.

b. Non-access lines on plats may be released, either partially or completely, through procedures of Section 14-20-06.5 Plat Modification.

5. Easements

Easements shall be provided during the subdivision process necessary for development of the subdivision, as well as future development of areas outside of the boundaries of the subdivision projected in the Future Land Use Plan. The following types of easements may be required:

a. Utility Easements

Utility easements shall be provided where necessary to accommodate utilities that will serve the development and to allow for utility service in and through the proposed development, according to the following standards:

i. Utility easements shall be a cumulative minimum of ten feet wide. In some circumstances, a greater width may be required.

ii. Utility easements shall connect with easements established in adjoining properties.

iii. Utility easements shall be shown on the preliminary plat and depicted with full dimensions on the final plat for approval.

iv. Utility easements shall be dedicated to the public.

b. Stormwater and Drainage Easements

Stormwater and drainage easements shall be provided where necessary to facilitate adequate drainage and/or installation of stormwater facilities as identified in an approved Post-Construction Stormwater Management Plan, according to the following:

i. Stormwater and drainage easements shall be depicted with full dimensions on the final plat for approval.

ii. Stormwater and drainage easements shall be dedicated to the public.

c. Access Easements

Access easements shall be provided for any private drive or walkway intend for use by any persons other than owners or tenants of that lot. Access easements are not required to be dedicated to the public but must include the City of Bismarck as a grantee for the purpose of providing emergency services, unless waived by the during subdivision review.

d. Temporary Turnaround Easements

Temporary turnaround easements shall be dedicated at the ends of street segments greater than 150 feet that have not yet connected, according to the following standards:

i. Turnarounds shall be adequately sized for emergency vehicles according to fire apparatus access roadway standards.

ii. Turnaround easements shall not be shown on the final plat but shall be recorded on a separate document in conjunction with plat recordation.

iii. Turnaround easements shall be dedicated to the public.

iv. This easement shall be released upon completion of connections in the street network necessary to allow emergency vehicle through access.

e. Slope Protection Easements[217]

Slope protection easements shall be provided where necessary to protect steep or unstable slopes, according to the following standards:

i. The area of a slope protection easement shall be determined with reference to Section 14-16-04 Steep Slopes.

[217] New.

ii. Slope protection easements shall include written restrictions on placement of structures, soil disturbance, removal of natural vegetation, irrigation, or any other activities injurious to stope stability.

iii. Slope protection easements shall be dedicated to the public.

f. Other Easements

i. Subject to review and approval by the City Engineer, some among the preceding easements may be combined in one easement location, to serve multiple purposes, such as water and sanitary sewer, or stormwater and drainage.

ii. Additional easements may be determined necessary by the Director or City Engineer.

6. Monuments

A final subdivision plat shall show accurate locations of all monuments in compliance with Section 14-19-06 Survey Standards.

7. Reserved Land

In addition to any required easements, land shall be reserved during the subdivision process for the following purposes:

a. Unbuildable Lands

A determination on final ownership of unbuildable lands, if any, shall be made prior to approval of a final subdivision plat. Land determined by the owner and City to be unbuildable shall be:

i. Included in adjoining platted lot(s) as either a stormwater and drainage easement or a slope protection easement or other type of easement that is privately owned and maintained. The amount of property taxes and special assessments for these areas will be determined by the City based on the level of benefit and the value of the land; or

ii. Platted as a separate unbuildable lot(s) that is owned and maintained by the City, as a regional stormwater conveyance or detention facility; or

iii. Platted as a separate unbuildable lot(s) that is owned and maintained by the Parks District, subject to their agreement, either with or without a city-maintained stormwater easement; or

iv. Other options as agreed to by the landowner and the City.

b. Warning Sirens

The Emergency Manager may require the applicant to reserve a location(s) on the site for City installation of an outdoor warning siren which will integrate with the existing system of outdoor warning sirens. Warning siren locations shall be noted on the face of the final subdivision plat.

i. Siren Locations

When evaluating land space options, outdoor warning siren site considerations include:

(1). Proximity to existing siren sites.

(2). Topography: Siren site elevation compared to surrounding area. Siren coverage is better at higher elevations.

(3). Elevation of siren head compared to existing or planned structures, especially within approximately ¼ mile.

(4). Proximity to schools and outdoor recreation areas.

(5). Availability or electrical power to the site.

ii. Siren Waiver

The requirement for reserving space may be waived by Bismarck Emergency Management based on evaluation of the existing siren coverage area and/or identification of alternate location(s) meeting the community needs of outdoor warning siren coverage.

iii. Siren Installation and Maintenance

Siren installation shall be coordinated by the City in locations designated on a subdivision plat or otherwise agreed to by the property owner. An outdoor warning siren is typically pole-mounted at a height of approximately 50 feet. The City shall be granted access to the site, sufficient for utilization of a bucket truck, for installation and for regular maintenance and repair activity. Once installed, emergency warning sirens shall be maintained by the City.

14-19-05. Public Rights-of-Way[218]

The following standards apply to public rights-of-way on subdivision plats:

1. Dedication on Plat

Subdivision plats shall dedicate to the public sufficient public rights-of-way to meet the access and mobility needs of the subdivision. The dimensions of all rights-of-way shall be accurately shown on the face of the plat and referenced in the certificate of dedication signed by the property owner(s) executing the subdivision plat.

2. Design of Public Rights-of-Way

All public rights-of-way shall be designed to accommodate a street network in compliance with Chapter 14-14, Mobility and Connectivity.

14-19-06. Survey Standards

In order to ensure consistency across surveys, protect property rights and public infrastructure, and enhance legal reliability, all subdivision plats shall comply with the following survey standards:

1. Coordinate Systems and Datums

Subdivision plats must utilize the current standardized horizontal datum, measurement units, ground values, and vertical datum, as established by the City Surveyor.

[218] Carries forward 14-09-05 without local street design requirement.

2. Survey Control and Ties

a. PLSS Ties

All new subdivisions shall be tied to a minimum of two Public Land Survey System (PLSS) corners (e.g., section or quarter corners), preferably on a common line (e.g. Section line, ¼ line, etc.). A replat of a subdivision may rely upon the original subdivision's ties to corners that exist of record.

b. Controlling Monuments

All boundary lines shall indicate the monuments recovered which control each retraced line of the boundary.

c. City Control Network

All surveys are required to tie into at least two monuments from the City of Bismarck Survey Control Network. This may include a vector to the NDBK RTK network station if using GNSS techniques.

d. Plat Annotation

The following information shall be annotated on the face of the plat:

i. Horizontal coordinates for a minimum of two boundary corners; and

ii. A full description for every monument annotated on the plat, including type, diameter, whether capped or not, Land Surveyor's licensed registration number, and notation as found or set. This can be by individual annotations or by unique symbols in the legend.

3. Monumentation and Reestablishment

a. Placement of Monuments

A surveyor must certify on the plat that all shown monuments have been placed or found prior to recordation, or the surveyor may certified that monuments will be placed by a future date certain, to be noted in the certification, if there is a reasonable expectation that monuments would be disturbed by site improvements or weather conditions temporarily prohibit placement of monuments.

b. Timing of Placement

The maximum allowable time available to install monuments shall vary by type:

i. All monuments constituting the subdivision boundary must be installed prior to recordation of the plat.

ii. All interior lot corner monuments within subdivisions of 20 lots or less shall be installed within one year after recordation of the plat.

iii. All interior lot corner monuments within subdivisions of more than 20 lots shall be installed within two years after recordation of the plat.

iv. If improvements to plats are not anticipated to be completed within the required maximum timeline for reasons particular to the development, the City Engineer may increase the allowable timeline prior to approval of the final plat.

v. In all cases, monuments shall be installed as soon as practical after substantial completion of infrastructure construction and seasonal suitability.

c. Temporary Monuments

i. The setting of temporary corner positions for key construction monuments, including points of curvature, points of tangency, block corners, and angle points, is permitted temporary in lieu of installation of permanent monuments

ii. Temporary monuments shall be of sufficient durability for construction and boundary control and replaced with permanent monuments as soon as practical after substantial completion of infrastructure construction or seasonal suitability.

d. PLSS Corner Reestablishment

Reestablishment of an obliterated PLSS monument is required for subdivisions of new lane, but not for replats of previously subdivided land. If re-establishing an obliterated PLSS monument, the surveyor shall follow the instructions of the most recently adopted Manual of Survey Instructions. A detail of the reconstruction survey shall be included with the Corner Record filing with the Burleigh County Recorder.

e. Recording Requirements

A Corner Record shall be recorded for all established or rehabilitated corners with recordation of the subdivision.

f. Obliterated Boundary Monuments

All missing or obliterated bounding monuments shall be reestablished using standard retracement surveying techniques with a detail shown on the plat, including which controlling monuments were used in re-establishing a corner's record position.

4. Survey Standard Compliance

All surveys and subdivisions shall comply with the Manual of Practice for Land Surveying in North Dakota, North Dakota Century Code (NDCC) regarding minimum survey requirements, specifically NDCC Section 40-50.1 and NDCC Section 47-20.1 and all applicable North Dakota administrative code regulations.

Chapter 14-20 Administration and Procedures

14-20-01. Advisory and Decision-Making Bodies

1. City Commission[219]

In addition to the powers and duties established in Chapter 02-02 of the Code of Ordinances, the City Commission shall have the review and decision-making authority listed in Table 14-20-1: Summary Table of Review Procedures, and referenced elsewhere in this Code.

2. Board of Adjustment[220]

a. Purpose

The Board of Adjustment is formed to review and consider variance and appeal of this Code, pursuant to Chapter 40-47-07 of the North Dakota Century Code.

b. Members

i. The Board of Adjustment shall consist of five members, each to be appointed by the City Commission for a term of three years.

ii. An alternate member may be appointed in the same manner as all Board of Adjustment members, to be assigned all powers and duties in the event a member of the Board of Adjustment is absent or recused.

iii. Any member of the Board of Adjustment may be removed by the President of the City Commission, subject to approval by the City Commission, only after holding a hearing and providing at least ten days of notice to the member proposed for removal.

c. Powers and Duties

i. The Board of Adjustment shall have all of the powers and duties imposed upon it by the North Dakota Century Code and City Ordinances.

ii. The Board of Adjustment shall have the review and decision-making authority listed in Table 14-20-1: Summary Table of Review Procedures, and referenced elsewhere in this Code.

iii. The Board of Adjustment is an administrative board, and any actions taken by the Board of Adjustment in full compliance with the provisions of this Code shall be deemed to be administrative actions, and shall not be interpreted as unauthorized amendments of the Land Development Code.

d. Bylaws

The Board of Adjustment is authorized to establish bylaws, provided the bylaws do not conflict with any provisions of the laws of North Dakota, this Code, or any other

[219] New.

[220] Carries forward Section 14-06-01, -02 (in part), and -10, with modifications.

ordinance of the City of Bismarck, as it may deem necessary to carry out the provisions of this Code.

e. Votes Required for Approval

Any approval of a request subject to review by the Board of Adjustment shall require the affirmative vote of no less than four members of the Board of Adjustment.

3. Planning and Zoning Commission[221]

a. Purpose

The Planning and Zoning Commission is formed to provide two defined functions:

i. As the Planning Commission, pursuant to Section 40-48-03 of the North Dakota Century Code, this body oversees adoption and amendment of the Comprehensive Plan and implementation of the plan through the subdivision of land and dedication of public property; and

ii. As the Zoning Commission, pursuant to Section 40-47-06 of the North Dakota Century Code, this body recommends amendments to the zoning map and regulations of this Code.

b. Members

i. The Planning and Zoning Commission shall consist of 11 members. All members shall have equal voting status on all issues. Membership shall be provided as follows:

(1). The President of the City Commission (the Mayor);

(2). The City Engineer;

(3). Six members, who shall be persons residing in city limits, appointed by the President of the City Commission with the approval of the City Commission for a term of five years each;

(4). Three members, who shall be persons residing in the Extraterritorial Area, appointed by the County Commission for a term of five years each.

ii. A township supervisor of any organized township shall be invited to participate as a voting member, in addition to the 11 members above, when an application applies to property within that township, but outside city limits. Each township shall designate one township supervisor for this limited Planning and Zoning Commission membership.

iii. Any member of the Planning and Zoning Commission may be removed by the President of the City Commission, subject to approval by the City Commission, only after holding a hearing and providing at least ten days of notice to the member proposed for removal.

c. Powers and Duties

i. The Planning and Zoning Commission shall have all of the powers and duties imposed upon it by the North Dakota Century Code and City Ordinances.

[221] Carries forward Sections 14-01-01 through -05, with modifications for clarity and consistency.

ii. The Planning and Zoning Commission shall act in an advisory capacity to the City Commission on matters related to their purpose.

iii. The Planning and Zoning Commission shall have the review and decision-making authority listed in Table 14-20-1: Summary Table of Review Procedures, and referenced elsewhere in this Code.[222]

d. Bylaws

The Planning and Zoning Commission is authorized to establish bylaws, provided the bylaws do not in conflict with any provisions of the laws of North Dakota, this Code, or any other ordinance of the City of Bismarck, as it may deem necessary to carry out the provisions of this Code.

4. Design Review Committee[223]

a. Purpose

The Design Review Committee is formed to review development proposals for compliance with design guidelines and ordinance requirements regarding architecture, landscape architecture, and urban design.

b. Members

i. The Design Review Committee shall consist of five voting members, each to be appointed by the City Commission for a term of three years. In addition to the five voting members, non-voting Design Advisors may be appointed as follows:

(1). Two Design Advisors for general design review guidance serving as long as they are willing; and

(2). One Historic Advisor appointed by the Historic Preservation Commission to assist on matters involving buildings or properties listed in the National Register of Historic Places.

ii. Any member of the Design Review Committee may be removed by the President of the City Commission, subject to approval by the City Commission, only after holding a hearing and providing at least ten days of notice to the member proposed for removal.

iii. The City Commission may combine membership and duties of the Design Review Committee with any other appointed board, or portion thereof.

c. Powers and Duties

i. The Design Review Committee shall have all of the powers and duties imposed upon it by City Ordinances.

ii. The Design Review Committee shall act in an advisory capacity to the City Commission on matters related to their purpose.

[222] The continuation of powers statement contained in 14-01-05 has not been carried forward because it is redundant.

[223] Information brought in from the City's website.

iii. The Design Review Committee shall have the review and decision-making authority listed in Table 14-20-1: Summary Table of Review Procedures, and referenced elsewhere in this Code.[224]

d. Bylaws

The Design Review Committee is authorized to establish bylaws, provided the bylaws do not conflict with any provisions of the laws of North Dakota, this Code, or any other ordinance of the City of Bismarck, as it may deem necessary to carry out the provisions of this Code.

5. Administrative Roles[225]

a. The Director shall have primary responsibility for administering this Code, and shall have the review and decision-making authority listed in Table 14-20-1: Summary Table of Review Procedures and referenced elsewhere in this Code, unless otherwise assigned to an alternative defined position within City or Couty government.

b. The Director is hereby authorized to:

i. Certify and sign any resolution issued by an advisory board established through the Land Development Code.

ii. Certify and sign an acknowledgement of a subdivision plat approval by the Planning and Zoning Commission.

iii. Certify any minutes or proclamations issued by an advisory board established through the Land Development Code.

14-20-02. Summary Table of Review Procedures

1. Decision Types

The following types of decision are applied by the table below to each project type and each entity listed below:

a. Administrative Review (R)

The advisory-body, as assigned by application type in this Code, reviews the application and passes information or a recommendation to another body for a final decision. Any review conducted by a board shall be presented on the consent agenda at a meeting of that board.

b. Administrative Decision (D)

The decision-maker, as assigned by application type in this Code, issues a final decision on an application with a resolution or approval letter. Any administrative decision rendered by a board shall be presented on the consent agenda at a meeting of that board.

[224] The continuation of powers statement contained in 14-01-05 has not been carried forward because it is redundant.
[225] New.

c. Public Hearing Review (PR)

This advisory body, as assigned by application type in this Code, holds a public hearing on the application, following the procedure described in Section 14-20-03.6 Review and Decision, and issues a recommendation to another body for final decision.

d. Public Hearing Decision (PD)

This decision-maker, as assigned by application type in this Code, holds a public hearing on the application, following the procedure described in Section 14-20-03.6, and issues final decision on an application.

e. Appeal (A)

This decision-maker, as assigned by application type in this Code, hears an appeal petitioned through Section 14-20-03.6 and decides on a final decision made by an advisory board or staff.

f. Public Hearing on Concurrent Applications

If applications are processed concurrently and a public hearing is required for one of the applications, all applications shall be presented together during the public hearing.

2. Summary Table of Review Procedures

Table 14-20-1: Summary Table of Review Procedures

ST = City staff as assigned by LDC
DRC = Design Review Committee
PZC = Planning and Zoning Commission
BOA = Board of Adjustment
BCC = City Commission

R = Administrative Review
D = Administrative Decision
PR = Public Hearing Review
PD = Public Hearing Decision
A = Appeal

Review or Decision by …

Application	Section	Required Pre-App. Meeting	Property Owner Signature	ST	DRC	PZC	BOA	BCC
Administrative Applications								
Adjustment	14-20-04.2			D			A	A
Code Interpretation	14-20-04.3			D			A	A
Lot Combination	14-20-04.4		✓	D			A	A
Minor Design Review	14-20-05.2			D	A			A
Minor Plan Amendment	14-20-04.5			D			A	A
Sign Permit	14-20-04.7			D			A	A
Site Plan Review	14-20-04.8			D			A	A
Temporary Use Permit	14-20-04.9			D			A	A
Public Hearing Applications								
Annexation	14-20-05.1	✓	✓	R		R		PD
Major Design Review	14-20-05.2	✓		R	PD			A
Easement Release	14-20-05.3		✓	R		PR		D

Application	Section	Required Pre-App. Meeting	Property Owner Signature	ST	DRC	PZC	BOA	BCC
Land Development Code Text Amendment	14-20-05.4			R		PR		PD
Major Plan Amendment	14-20-05.5	✓		R		PR		D
Plan Overlay District Review	14-20-05.6	✓	✓	R		PR		PD
Right-of-Way Vacation	14-20-05.7	✓	✓	R		PR		D
Special Use Permit	14-20-05.8		✓	R		PD		A
Variance	14-20-05.9		✓	R			PD	A
Zoning Map Amendment	14-20-05.10	✓	✓	R		PR		PD
Subdivision Procedures								
Preliminary Subdivision Plat	14-20-06.3.c	✓	✓	R		D		D
Final Subdivision Plat	14-20-06.3.d		✓	D				A
Simple Subdivision Plat	14-20-06.4		✓	R				D
Plat Modification	14-20-06.5		✓	R				D
Plat Vacation	14-20-06.6	✓	✓	R		PR		D

14-20-03. Common Review Procedures

The following procedures apply to all application types, unless otherwise specified. In case of any conflict between a common review procedure of this section and a specific review procedure of Section 14-20-04 Administrative Applications, Section 14-20-05 Public Hearing Applications, or Section 14-20-06 Subdivision Procedures, the specific review procedure shall apply.

1. Scoping Request Submission

a. A scoping request is the initial formal contact from a potential applicant to City staff prior to submittal of an application and shall be required for all procedures requiring a pre-application meeting and all site plans. A scoping request is optional for all other application types.

b. The purpose of the scoping request is to:

i. Initiate scheduling of a pre-application meeting. City staff reserve the right to choose the date and time of all pre-application meetings.

ii. Begin staff review of the mandatory stormwater scoping sheet, required in Title 14.1 Stormwater Management.

iii. Begin staff review of a park concept development plan, if applicable.

iv. Allow submittal of any preliminary utility servicing plans, subdivision or design sketches, or any concept plans as applicable to the proposed application, upon request by the applicant.

c. There is no expiration of a scoping request or expectation that a formal application will be submitted for any scoping request made.

d. No fee shall be applied for a scoping request or associated pre-application meeting.

2. Pre-Application Meeting[226]

a. Pre-application meetings provide opportunities for applicants to meet with City staff to discuss development proposals and identify potential issues with their proposal early in the review process. When not required, pre-application meetings are highly encouraged. A pre-application meeting may be used to discuss some or all of the following:

i. Required applications and the timing of application submittals;

ii. Application materials and submittal requirements;

iii. Estimated time frames for review and decision;

iv. General compliance with the Comprehensive Plan and other applicable plans, zoning, and design standards, including any potentially significant issues regarding compliance;

v. Preliminary review of provision of water, sewer, stormwater, transportation, and any other city services to the proposed development site;

vi. A park concept development plan, if required; and

vii. Other requirements and potential issues concerning staff from the City, County, Parks District, and/or School District.

b. Pre-application meetings are for the applicant or any designated representatives and are not open to the public, although notes from a pre-application meeting are a public record.

c. Pre-application meetings are advisory only and do not constitute approval of any aspect or item of an application nor a thorough review of the project. The City does not guarantee that all issues relevant to a project submittal will be raised or addressed during a pre-application meeting, and the City is not responsible for making or keeping a summary of the topics discussed at pre-application meetings.

3. Application Submission[227]

a. Authority to Submit Application[228]

i. Development applications shall be submitted by the property owner or their designated representative.

ii. All applications must be signed by the property owner or owners if listed as such in Table 14-20-1: Summary Table of Review Procedures.

iii. If there are multiple unincorporated owners or individuals authorized to submit the application, all such persons shall sign the application or a letter or document consenting to the application. Where one representative of a limited liability

[226] New in ordinance, reflects standard city practice.

[227] Predominantly new content to clarify submittal standards, unless otherwise noted.

[228] Reworked from Section 14-07-02.2, Amendments procedures.

partnership is authorized to act on behalf of the partnership, only one signature is required.

iv. City staff may request legal documentation that an individual is authorized to sign on behalf of a corporation or partnership if that individual is not identified in recorded documents or listed as a registered agent by the North Dakota Secretary of State.

v. The Director may initiate any application for a plan amendment, zoning map amendment, plan overlay district, or Land Development Code Text Amendment in the same manner as an application from a property owner.

b. Application Content[229]

i. The application shall be submitted to the Director on the proper forms available in the Planning Department office or on the City's website. An application may be submitted at any time, although regular deadlines shall be established in advance of hearings to allow time for staff review and notice requirements to be met.

ii. The applicant bears the burden of ensuring that an application contains sufficient information to demonstrate compliance with application requirements and contains all required supporting documents.

iii. Application attachments shall be submitted in the format noted on Planning Department forms or checklists. Digital formats will generally be used, but the Director may request paper copies of certain submittal items for review.

iv. A list of supporting materials required to be submitted with each application type is available in the Planning Department office or on the City's website.

v. The Director may require the submission of additional information necessary to evaluate the application, based on size, complexity, or potential impacts of the project on surrounding properties.

vi. The Director may waive application submittal requirements of this Code upon determining that the information is not necessary to demonstrate compliance with the applicable approval criteria.

c. Application Fees[230]

Application fees shall be as established by the City Commission for each type of project or request and shall be collected at the time of application submittal or an amendment to a submitted application.

d. Complete Application Required

i. Determination of Completeness

(1). The determination of completeness is intended to ensure that all required components of an application are included in the submittal packet, and that all required information has been completed thoroughly and accurately on the application form provided by the Planning Department. The completeness

[229] Builds on Section 14-07-02.2.

[230] Carries forward and simplifies Section 14-05-05.

review is not intended to determine compliance with this Code. Compliance is determined during Application Review and Analysis, as described in Section 14-20-03.4 below.

(2). The Director shall determine whether an application is complete based on substantial compliance with the submittal requirements for the application type and payment of required fees.

(3). Completeness shall be determined prior to referral for review of applications to staff and external agencies.

ii. Complete Applications

(1). Following a determination of completeness, the Director, Planning and Zoning Commission, or City Commission may request additional information at any time during the course of the application review, including during public hearings, if it is deemed necessary to determine compliance with the relevant standards and review criteria for the application.

(2). A complete application shall be processed according to the procedures in this Code.

iii. Incomplete Applications

(1). An incomplete application shall not be processed.

(2). If an application is incomplete, the Director shall provide a written description of the incomplete items to the applicant. All deficiencies noted by the Director shall be addressed by the applicant prior to resubmitting the application. The applicant shall resubmit the updated application by the next application deadline, or the application may be deemed abandoned.

e. Withdrawn Applications[231]

i. An applicant may withdraw an application upon submittal of a written request to the Director at any time in the process until the final action has occurred.

ii. Applications withdrawn within the completeness review period, prior to initiation of staff review, will receive a refund of the fee (or the fee will not be accepted). After an application has been accepted as complete, application fees are not reimbursed for withdrawn projects. However, the Director may reimburse all or part of the fee if the project application was the result of erroneous or misunderstood information provided in writing by staff, or if staff review time has not been incurred.

iii. An application cannot be reinstated once withdrawn. If the applicant later submits a new or revised application concerning the same property, a new application fee must be paid and the review process must be restarted.[232]

[231] Project Withdrawal content from the Development Review Procedures Manual, with minor edits for clarity. Language about reinstating applications (“unless done in error and quickly reversed before file close-out occurs.”) not carried forward.

[232] The second sentence requiring payment of a new application fee is new.

iv. If an application is withdrawn after a public hearing has been noticed but before the public hearing is held, the public hearing will still be held and the advisory board or City Commission will be informed of the applicant's wish to withdraw an application.

f. Abandoned Applications

i. If an applicant has received comments from staff on application deficiencies, but a corrected resubmittal has not been received within six months of staff providing the applicant with comments, or the applicant has requested a delay and the project has remained unchanged for over six months, the application shall be deemed abandoned and application fees paid in connection with the application shall be forfeited.

ii. Prior to the determination of abandonment at six months, the applicant may request three additional months to address staff-noted deficiencies or other needs, and the Director may approve this additional time. An extension may also be requested when an applicant is waiting for a response or approval from a third party agency.

iii. If the applicant submits a new or revised application concerning the same property after it has been deemed abandoned by the Director, a new pre-application meeting may be required, and a new application fee must be paid and the process must be restarted.

g. Concurrent Application Processing

Where multiple development applications concern the same general property and timeline, the Director may authorize concurrent review of development applications provided all minimum notification requirements of Section 14-20-03.5 are met.

4. Application Review and Analysis[233]

a. Referral to Staff and Review Agencies

i. The Director shall distribute the complete application to appropriate City departments and external agencies for review and comment, as necessary.

ii. All comments and requested revisions provided by City staff and external agencies shall be provided in writing to and satisfactorily resolved by the applicant.

b. Applications Subject to Staff Decision

i. Administrative Decision

(1). If an application is subject to a final decision by the Director per Table 14-20-1: Summary Table of Review Procedures, or a decision by the Director in conjunction with other City staff, the Director, and other staff as applicable, shall approve, approve with conditions, or deny the application based on the review criteria applicable to that type of application.

(2). The decision shall be in writing, shall clearly state the reasons for a denial or for any conditions of approval, and shall be sent to the applicant.

[233] New.

ii. Advisory Board Referral

(1). The Director may refer an application as specified below to an advisory board for review and decision, based on the proposed size, complexity, or potential impacts of the project on the surrounding neighborhood.

(a). Administrative design review applications may be referred to the Design Review Committee.

(b). All other administrative applications may be referred to the Planning and Zoning Commission.

(2). If the Director refers an application to an advisory board, the board shall conduct a public hearing pursuant to Section 14-20-03.6 before deciding upon the application.

(3). After reviewing a referred administrative application, the advisory board shall either make a final decision, or refer the application to the City Commission for a final decision.

(4). The advisory board and/or City Commission shall make their decision pursuant to the review criteria for the application type they are reviewing.

c. Applications Subject to Staff Recommendation

i. If an application is subject to a decision by another decision-making body per Table 14-20-1: Summary Table of Review Procedures, staff shall prepare a written staff report that summarizes the development proposal, findings, and recommendations. The staff report shall include as an attachment any document submitted by an applicant for approval, and draft ordinances or resolutions for consideration by the decision-making body.

ii. Staff reports may include a staff recommendation to approve, deny, or continue the application, and suggested conditions, if any, that would apply to an approval. Final determination of a staff recommendation shall be made by the Director, based on project criteria of this Code and the Comprehensive Plan.

iii. The staff report and related application materials shall be shared with the decision-making body and available for public review prior to the public meeting or public hearing at which the application is scheduled to be heard.

5. Scheduling and Notice of Public Hearings[234]

a. General Requirements

i. All applications subject to a public hearing shall be scheduled by the Director for either a regularly scheduled meeting or special meeting of the applicable decision-making body.

ii. Once the Director has determined that all staff comments on an application have been satisfactorily resolved, the Director shall issue notice of a public hearing.

[234] Predominantly new content unless otherwise noted.

Notwithstanding this determination, an applicant may elect to proceed to the decision-making body at any time during the review process.

b. Summary of Public Notice Requirements

i. All development applications shall comply with North Dakota state statutes and the provisions of this section regarding public notification. The required notice for each application type is identified below in Table 14-20-2: Summary Table of Public Notice Requirements.

ii. Notice for two or more application types that will be reviewed concurrently may be combined into a single notice of each type of notice that is required (e.g., one mailing, one publication), provided all required information for each type of application is included.

Table 14-20-2: Summary Table of Public Notice Requirements

✓ = Required Notice

Application Type	Mailed	Published	Posted
Administrative Applications			
All Applications			
Public Hearing Applications			
Annexation	✓ [1]	✓ [1]	✓ [1]
Easement Release	✓ [2]		
Land Development Code Text Amendment		✓	
Major Plan Amendment	✓ [3]	✓	✓
POD Development Plan	✓	✓	✓
Right-of-Way Vacation	✓	✓ [4]	✓
Special Use Permit	✓	✓	✓
Variance	✓		✓
Zoning Map Amendment	✓	✓	✓
Subdivision Applications			
All Applications	[5]	[5]	[5]

Notes

[1] Notice issued 15 days prior to public hearing with City Commission.
[2] Mailed notice for certain easement types only and sent to adjacent property owners.
[3] Mailed notice for major street plan amendments is limited to adjacent property owners. Growth Phasing Plan amendments or any other amendments not related to a specific area are only published.
[4] Published notice one each week for four consecutive weeks
[5] Notice only published for hearings if required for associated project types.

c. Content of Public Notices[235]

All public notices shall include:

i. The date, time, and place of the public hearing;

ii. The property involved in the application, described by street address, legal description, and/or map, except that notice posted at the application site does not need to include this information;

iii. A description of the nature and scope of the application; and

iv. The office and contact information where further information about the application can be viewed by the public.

d. Requirements by Notice Type

i. Mailed Notice[236]

(1). The City shall mail written notice at least ten days prior to the date of the scheduled public hearing, except for annexation requests which will be mailed at least 15 days prior to the date of the public hearing, to property owners within the following proximity to the subject property or properties of the application:

(a). Properties inside city limits: within 350 feet of the subject property or properties.

(b). Properties outside of city limits: within 1,320 feet of the subject property or properties.

(c). Notwithstanding, mailed noticed for easement release applications shall only be sent to land owners directly adjacent to the subject property.

(2). Property owner information shall be obtained from the City Assessor or Burleigh County Auditor.

(3). If an application procedure includes multiple public hearings or public hearings are continued by an advisory or decision-making body, the mailed notice shall only be sent for the first public hearing. Notwithstanding, if a public hearing is held as the result of an appeal of a previous denial, a new mailed notice shall be issued for that public hearing.

(4). The failure of property owners to receive the notice shall not invalidate the proceedings.

ii. Published Notice[237]

(1). The City shall publish notice of the upcoming public hearing in the official newspaper for the following periods:

[235] New. Expands on “time and place” requirement associated with multiple notice requirements in the current code.

[236] Modifies Section 14-07-02.4, text and map amendments.

[237] Carried forward from 14-03-08, Special Uses.

(a). For annexations, at least one time no less than 15 days prior to the date of the scheduled public hearing.

(b). For right-of-way vacations, at least once each week for four consecutive weeks prior to the scheduled public hearing.

(c). For all other applications, at least once each week for two consecutive weeks prior to the date of the scheduled public hearing.

(2). A newspaper's failure to publish a public notice shall not invalidate the proceedings, provided the notice was available on the City website on the required dates.

iii. Posted Notice

(1). The City shall place notice of the public hearing on the subject property or adjacent public right-of-way at least ten days prior to the date of public hearing, except in the case of annexation requests, which require posted notice at least 15 days prior to the date of the public hearing.

(2). Posted notification shall be in the form of a temporary sign, either freestanding or attached to a site feature, and oriented toward an adjacent public right-of-way.

(3). The number and location of signs shall be determined by City staff to maximize visibility and legibility to the public. Signs may be placed in a public right-of-way or on the subject project, with consent granted from the applicant.

(4). Only City staff or a designee shall place, remove, or alter public notice signs.

(5). If an application procedure includes multiple public hearings or public hearings are continued by an advisory or decision-making body, the posted notice shall only be sent for the first public hearing. Notwithstanding, if a public hearing is held as the result of an appeal of a previous denial, a new posted notice shall be issued for that public hearing.

(6). City staff will attempt to remedy any missing, obstructed, or fallen public notice postings, if aware. However, the failure to achieve continuous posting for the entire period prior to the public hearing to shall not invalidate the proceedings.

e. Alternative Forms of Notice

The Director may provide additional notice of applications received, the review status of those applications, public hearings to be held regarding those applications, and/or decisions made regarding the applications on the City website or through other means, provided notice is published systematically and consistently for all similar project types.

6. Review and Decision

a. Public Hearing

A public hearing may be required prior to the issuance of a recommendation or decision on an application. Hearing requirements are identified in the procedure for the specific application type.

b. Burden of Proof

In all cases, the burden is on the applicant to show that an application complies with applicable review or approval criteria.

c. Action by Advisory and Decision-Making Bodies

i. Advisory and decision-making bodies shall apply the review criteria of this LDC listed for the specific project type(s) in review, along with any other provisions of this Code or the Comprehensive Plan relevant to the decision. The review criteria shall be considered cumulatively, as to the total effect of the request.

ii. Advisory and decision-making bodies shall gather facts related to a request to evaluate in terms of the above criteria, including but not limited to:

(1). Information presented by the applicant regarding the nature of the request and any existing conditions of the property;

(2). Findings of fact presented by the staff in a staff report or any presentation to the board;

(3). Information and testimony presented at the public hearing, where applicable; and

(4). Personal investigation of the site or any background information relevant to the decision, which should be disclosed during a hearing for the benefit of all members.

iii. Advisory or decision-making bodies shall recommend or decide on applications as follows:

(1). Approve or recommend approval of the application;

(2). Approve or recommend approval of the application subject to modifications or conditions;

(3). Deny or recommend denial of the application; or

(4). Continue the public hearing.

d. Conditions of Approval

When applications are subject to the addition of conditions of approval, the conditions shall be designed to address a situation created or aggravated by the proposed use or development. When conditions are imposed, final approval in the form of recordation, publication, or any other actual effect is contingent upon the applicant demonstrating compliance with all conditions. Any additional approvals required by the City for a project shall be withheld until all conditions of an approval are met.

e. Documentation of Decision

i. All recommendations or final decisions shall be recorded in the meeting minutes of that board, along with findings of fact to support each decision.

ii. Final decisions, including all conditions, shall be provided in writing to the applicant and made available for review by the public.

f. Continuance

i. If a public hearing is not closed, the advisory or decision-making body may, at its discretion, continue the hearing to a date/time certain to be announced during the hearing. An applicant may request a continuation during the hearing, but the final determination to grant the continuance shall be made by the advisory or decision-making body.

ii. If the applicant requests a continuance and the continuance is granted:

(1). The applicant shall pay a continuation fee in the amount determined by the City Commission. In the event an applicant requests more than one continuance, the continuance fee shall double for each subsequent continuation.

(2). The applicant shall include in their request for a continuance the date of the regularly scheduled public hearing to which they would like their application continued.

g. Time Limits for Decision

When this Code requires a decision within a specific time period, the City and the applicant may mutually agree in writing to a different time period.

7. Post-Decision Actions and Limitations.[238]

a. Appeals

i. An applicant or City official who can show they have been aggrieved by a final decision may appeal that decision to the decision-making body designated in Table 14-20-1: Summary Table of Review Procedures.

ii. A request for an appeal of administrative decision shall be subject to the specific procedure in Section 14-20-07.1.

iii. A request for an appeal of non-administrative decision shall be subject to the specific procedure in Section 14-20-07.2.

b. Modification of Approved Applications

i. Applicability

(1). If, at any time prior to expiration, any person with an existing development approval desires to modify the terms of that approval or the conditions attached to that approval, the person may request a modification of the approved application.

(2). The possibility for such a modification does not extend to any application after a final instrument has been recorded or any ordinance after final publication.

ii. Submittal Requirements

The following information is required to initiate a modification to an approval:

(1). A request in writing from the initial applicant, in any format including email.

[238] New, unless otherwise noted.

(2). An application fee, if applicable.

(3). An exhibit or site plan depicting the proposed version of the application.

(4). An exhibit highlighting the changes between the approval and proposed versions of the application.

iii. Modification Request Review

(1). The Director shall review requests for modification to determine whether the proposed modification(s) constitute a minor revision to the existing approval. Minor modifications that may be approved by the Director include:

(a). Minor changes in the location of structures, improvements, or open areas caused by engineering or other unforeseen difficulties that do not exceed 10 percent of any measurable standard or modify the use, character, or density of an approved application; or

(b). Modifications as described in Section 14-20-03.7.b or other criteria as included in the specific application type.

(2). Proposed modifications that require the submission of a new application include any request that:

(a). Exceeds the limits of a minor modification described in Section 14-20-03.7.b.iii(1); or

(b). Modifies a condition of approval established by a decision-making body.

iv. Review Criteria

The Director shall apply the same review criteria utilized for the initial application in the review of any modifications to that application.

c. Expiration and Extension of Approval

i. Expiration of Approvals

Except where a different time period is specified in a condition of the approval, certain approvals lapse and are deemed void according to the time frames after date of approval specified below in Table 14-20-3:

Table 14-20-3: Development Approval Expirations

Approvals that Expire	Expiration Period	Completion Action
Adjustment	Same as associated application	Completion of associated application
Easement Release	2 years	Recordation
Sign Permit	6 months	Sign Installation
Site Plan Review	2 years	Building permit issuance or occupancy of site
Temporary Use Permit	Date noted in permit	Discontinuance and removal of use
Downtown Design Review	2 years	Building permit issuance or occupancy of site
POD Development Plan	2 years months	Building permit issuance or occupancy of site
Special Use Permit	2 years	Building permit issuance or occupancy of site

Approvals that Expire	Expiration Period	Completion Action
Variance	2 years	Building permit issuance or occupancy of site
Preliminary Subdivision Plat	1 year	Submittal of final plat preview
Final Plat Preview	2 months	Submittal of final plat in recordable form with all required attachments
Simple Plat Preview	2 months	Submittal of final plat in recordable form with all required attachments
Any approval with conditions	6 months	Completion of associated application

(1). All applications that are conditionally approved and not effective until conditions are satisfied shall expire 6 months from the date of approval, unless an alternative time period is specified in the condition.

(2). All approval application types not listed in the above Table 14-20-3 shall be considered complete upon approval and perpetually valid, unless changed by a future action.

ii. Extension of Approval

(1). Request for Extension

(a). Any approval that is subject to expiration, regardless of which decision-making body acted as the original decisionmaker, may be extended for good cause shown.

(b). A request to extend an approval shall be submitted in writing to the Director prior to the expiration of the original approval.

(c). The extension request shall include a description of the reasons for the applicant's inability to comply with the specified approval deadlines, as well as the anticipated time schedule for completion.

(2). Review[239]

The following criteria shall be used to determine if an extension should be granted:

(a). No changes to the ordinance, plans, state law, or any policies have occurred that may impact the initial approval.

(b). The property has not been transferred to a new owner, unless to a similar controlling partner.

(c). No changes have occurred in the physical development or legal status of the land that would invalidate the initial approval.

(d). The project has not been substantially changed in any way or the changes are under review by staff or a public body.

[239] Carries forward content from the Project Delay section of the Development Review Procedures Manual, with minor edits for clarity.

(e). The applicant has provided a valid reason for the delay, related to unforeseen conditions outside of the applicant's control.

(f). The applicant reaffirms an intent to continue the process and sustained and measurable progress toward completion is evident.

d. Installation of Required Improvements

i. Required Improvements

A description of the type of improvements required, and the timing of installation for those improvements, is provided in Section 14-11-04 Required Improvements.[240]

ii. Subdivision Improvements within Bismarck City Limits[241]

(1). No improvements shall be made unless and until all necessary plans, profiles, and specifications associated with the improvements have been submitted to and approved by the City Engineer.

(2). At the time such plans, profiles, and specifications are submitted for review, the City Engineer shall prepare an estimate of cost as described in Section 14-20-03.8.b.ii.

(3). At the time of filing an application for a building permit the applicant will submit either:

(a). A certificate signed by the City Engineer that all required improvements are contracted for installation or have been installed; or

(b). A certificate signed by the City Engineer that plans, specifications, and profiles for the improvements have been filed with and approved by them, and a certificate signed by the Director of Finance that an approved form of security has been posted for completion of improvements, including the City's review and inspection costs.

(4). Where part of the improvements has been completed, appropriate certification will be filed.

iii. Subdivision Improvements within the Extraterritorial Area[242]

(1). No improvements shall be made unless and until all necessary plans, profiles, and specifications for the improvements have been approved by the County Engineer in accordance with the Burleigh County Highway Department Subdivision Road Design and Construction Policy.

(2). Before any improvements are installed, the developer shall submit a County Development Permit Application to the County Engineer. Once the Development Permit Application has been reviewed and approved by the

[241] 14-09-06.2,a, b., and d.
[242] 14-09-06.4.

County Engineer, the developer may proceed with the construction of the road subgrades within the subdivision.

(3). Upon satisfactory completion of all required roadways and stormwater facilities, the County Engineer will notify the City in writing.

(a). Improvements that are required within a right-of-way under the jurisdiction of the North Dakota Department of Transportation must be accepted by the NDDOT District Engineer.

(b). The completion of required off-site improvements, such as the construction of turning lanes or the paving of section line roadways, may be delayed with the submittal of security to assure completion.

e. Revocation

At any time, the Director may recommend that an approval be revoked based on applicant noncompliance with approval terms or conditions, as described in Section 14-22-05.2, Revocation of Permit or Plan Approval.

f. Subsequent Applications

If an application is denied, no development application for substantially the same request involving the same property shall be permitted within one year of the application denial. Following the one-year period, a new application may be submitted.

g. Administrative Errors

The issuance of any approval in error shall not be construed as a waiver or modification of any applicable law, ordinance, or regulation. All persons and entities remain fully responsible for compliance with all requirements of this Code notwithstanding any administrative mistake or oversight in the permitting or review process.

8. Financial Guarantees[243]

a. Applicability

This section applies to all permits and approvals under this Code for which the City determines that the failure of the applicant or a successor in interest to the property to complete required construction or installation of infrastructure, street improvements, landscaping, or site amenities required by this Code or by a condition attached to the permit or approval could result in the City needing to complete construction or installation of those items to protect the public health, safety, or welfare.

b. Required Security

The City may require financial guarantees for the construction or installation of infrastructure, street improvements, landscaping, or site amenities required in this Code.

i. Form of Security

Public and private improvements required by this Code or by a condition attached to an approval under this Code shall be secured by a financial guarantee as a

[243] 14-09-06

surety bond in a form approved by the City Attorney, unless the City approves an alternative as provided in Section 14-20-03.8.b.vi.

ii. Amount of Security

The security shall be in the amount of 110 percent of a project cost estimate approved by the City Engineer or City Forester. The additional ten percent shall be used to cover office review and field inspection of all improvements.

iii. Right to Draw on Financial Guarantee

(1). The City shall have the right to draw on the security for the purpose of restoring and remediating any site disturbance and/or constructing or completing construction of any required improvements including landscaping; however, the City shall not be obligated to undertake such action if the City Commission, for good cause, deems it inadvisable to do so.

(2). In the event the City draws on the security, neither the applicant nor their successors or assigns shall engage in any work on the site until new security is provided to the City in the amount specified in this section.

iv. Release of Security

(1). The City shall release the financial guarantee upon satisfaction of all conditions of approval and acceptance of the required improvements.

(2). The applicant may request partial release of the security based on its partial completion of the required improvements and the City's acceptance of dedication of those improvements, and the Finance Director may approve such partial release if the Finance Director determines that the City is adequately protected from risk of financial liability to complete any of the remaining improvements.

v. Substitution of Security

The applicant may request that the City substitute a new form of security for an existing security held by the City. The City Attorney may approve that request if the Finance Director determines that the replacement security provides the City equal or better protection against risks of financial liability to complete any of the remaining improvements.

vi. Alternative Form of Security

As an alternative to providing the financial security as described in Section 14-20-03.8.b.i, the City may approve other forms of assurance that the City Attorney confirms will adequately protect the City against any financial liability to complete required improvements. Alternatives may include but are not limited to:

(1). Cash deposit, certified check, or cashier's check;

(2). Irrevocable letter of credit issued by a financial institution with perpetual renewal allowing the City to draw on demand;

(3). The pledge or dedication of other financial assets with a development agreement authorizing the City to sell or otherwise realize the value of those

assets upon the applicant's failure to timely complete and dedicate required improvements; or

(4). Written agreements by the applicant to initiate and complete development of only a limited portion of the development, and not to request approvals of later portions of the development, until all required improvements have been constructed and dedicated to the City.

14-20-04. ADMINISTRATIVE APPLICATIONS

1. General Standards for Administrative Applications[244]

a. Applicability

Administrative applications are reviewed and decided on by the Director or other specified City staff member. Administrative application types are identified in Table 14-20-1: Summary Table of Review Procedures and described in further detail below.

b. Review Criteria

The Director or applicable City staff member shall review each administrative application against the following criteria. Individual application types may include exceptions to these criteria or impose additional criteria.

i. The application complies with the applicable provisions of this Code;

ii. The application complies with any other approvals on the property;

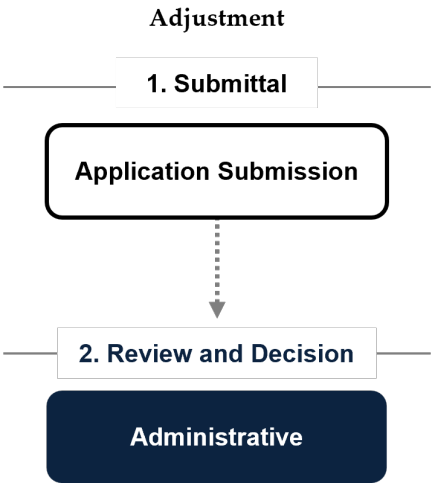
iii. The application complies with or will comply with other applicable City, state, and federal regulations; and

iv. The property is not subject to a pending notice and order or legal action as a result of a violation of any federal, state, county, or City land use law or administrative rule.

2. Adjustment[245]

a. Purpose

The purpose of the adjustment procedure is to create a streamlined administrative process to allow minor adjustments to measurable standards of this Code for good cause.



b. Applicability

i. An adjustment may be requested by an applicant to deviate from measurable standards as identified in the following chapters and sections:

(1). Section 14-02-03.7.c, Lot Coverage.

[244] New.
[245] New.

(2). Section 14-02-03.9.c, Sight Triangles.

(3). Section 14-05-07, Downtown Development Standards.

(4). Section 14-13-08, Parking Baseline Adjustments.

(5). Section 14-14-02, Street Design.

(6). Section 14-14-04.3, Intersection Spacing.

(7). Section 14-14-04.4, Access Between Abutting Development.

(8). Chapter 14-15, Landscaping and Screening.

(9). Chapter 14-17, Outdoor Lighting.

ii. An adjustment may be requested by any person to allow a reasonable accommodation as identified in the Americans with Disabilities Act, Fair Housing Act, or any other applicable federal law.

iii. An adjustment may be requested from any requirement necessary to eliminate substantial burdens on religious exercise as guaranteed by the Federal Religious Land Use and Institutionalized Persons Act.

c. Review Procedures

Common review procedures for an adjustment are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Request for Adjustment

(1). Adjustment requests may be initiated in conjunction with any other application by the owner of the property or a representative of the owner for which the adjustment is desired and must include in writing:

(a). The nature and extent of the adjustment requested;

(b). A citation of the requirement(s) to be adjusted; and

(c). A justification for the adjustment that meets applicable review criteria.

(2). A fee shall be incurred for each adjustment, with the exception of any adjustment necessary to meet the conditions of federal law.

(3). Multiple adjustments to different provisions of the Land Development Code, including adjustments of different types, may be requested through a single application, and the review and approval, if granted, shall be conducted and applied cumulatively.

ii. Review and Approval of Adjustment

(1). Any adjustment necessary to achieve compliance for a subdivision, design review, special use permit, or any other non-administrative procedure shall receive concurrence from the decision-making body of that procedure.

(2). Adjustments to certain provisions of the Land Development Code, as identified, require approval from a City official or officials, in addition to the

Director. In such cases, final approval shall not be granted until all identified officials have granted approval.

(3). The Director shall issue a letter to document any approval of an adjustment with the following content:

(a). A reference to the subject property or properties;

(b). The nature of adjustment granted, either granting the full or partial extent of adjustment requested;

(c). The reasons for the adjustment; and

(d). Any conditions, if necessary to meet the review criteria.

iii. The approval letter shall be kept on file with the Planning Department but not recorded.

d. Review Criteria

i. Before making a determination on an adjustment request necessary to comply with any federal law, the Director and/or decision-making body shall find that the terms, published guidance, or policies relevant to that law have been met.

ii. The following review criteria, in addition to any criteria specific to the adjustment type, apply in lieu of the review criteria described in Section 14-20-04.1.b. The Director or decision-making body shall find that all of the following apply:

(1). The adjustment applies to a requirement explicitly identified in this Code as adjustable and within the allowable thresholds for adjustment.

(2). The adjustment is justified on the basis of a constraint or opportunity that is specific to the site or development objective and not generally applicable to the majority of sites or development objectives.

(3). The adjustment is the minimum necessary to alleviate the constraint or achieve the development objective.

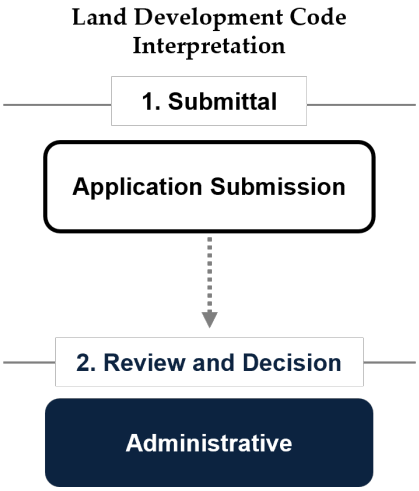
(4). The adjustment will not negatively impact nearby properties or the general public or any impacts will be effectively mitigated; and

(5). The purpose of the requirement for which the adjustment is made and relevant objectives of the Comprehensive Plan will be met.

3. Code Interpretation[246]

a. Purpose

The purpose of the Code Interpretation procedure is to clarify how regulations are applied to a specific scenario as well as guide general application of the Land Development Code.



b. Applicability

Code Interpretations may be requested to:

i. Provide a written interpretation of the contents and requirements of this Code;

ii. Determine whether a use not specifically mentioned in **Error! Reference source not found.** can reasonably be interpreted to fit into a use category; or

iii. Clarify whether specific regulations in this Code are applicable to a specific subject property.

c. Review Procedures

Common application procedures a Code Interpretation are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Code Interpretations may be requested by:

(1). An applicant;

(2). A person affected by an action proposed pursuant to this Code; or

(3). Any City staff, elected or appointed officials, or other governmental agency that may be subject to the provisions of this Code.

ii. A Code Interpretation shall be issued as a letter on City letterhead to the party submitting the request signed by the Director.

iii. The Director shall keep a record of Code Interpretations available for public inspection, either in person at the Planning Department or posted on the City's website.

d. Review Criteria

In place of the review criteria described in Section 14-20-04.1.b, the Director shall consider the following criteria when reviewing and deciding on a request for Code Interpretation:

i. The intent or purpose of the applicable Land Development Code section, either stated directly in the Land Development Code or in the Comprehensive Plan;

ii. The technical meaning of the provision being interpreted;

[246] New.

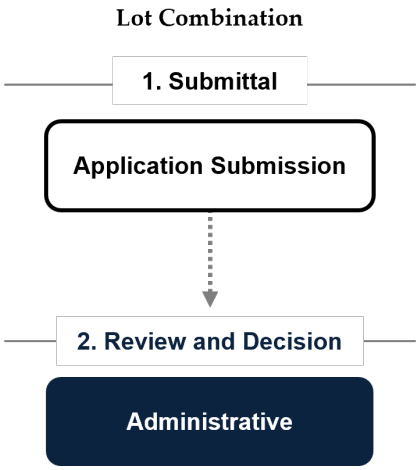
iii. Evidence of the manner in which the provision has been interpreted in the past; and

iv. If the interpretation is related to an unlisted use, the Director shall consider the list of factors in Section 14-09-01.2, Clarity of Use.

4. Lot Combination

a. Purpose

The purpose of a lot combination is to ensure compliance with the requirements of this Code while allowing flexibility in building placement and design.



b. Applicability

i. Any combination of two or more lots in a subdivision platted pursuant to the requirements of this Code with no alterations to the dimensions of the underlying lots.

ii. A lot combination does not release or alter any easements, right-of-way, or other legal rights dedicated on a subdivision plat.

c. Persistence of Lot Combination

Upon approval and recordation of a lot combination, the combined lots shall be considered to be one lot for the purpose of the application and enforcement of the Land Development Code, including subdivision violations of 14-22-03.1.c.

d. Review Procedures

Common application procedures for a lot combination are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Upon approval, a Declaration of Lot Combination shall be signed and notarized by the property owner and recorded to render the lot combination effective, stating that any future division of the lots along their prior boundaries shall require a subdivision.

ii. A combination of lots shall continue to be referred to by the full legal description of the underlying lots and not assigned a new lot name.

e. Review Criteria

In addition to the review criteria in Section 14-20-04.1.b, the Director shall also consider the following criteria when making a determination on a lot combination application, subject to the additional standards:

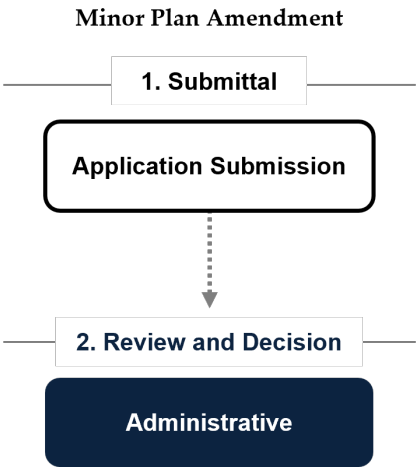
i. All lots are in common ownership or will be prior to recordation of the Declaration of Lot Combination; and

ii. All lots are within a single zoning district, unless a zoning map amendment is approved in conjunction with the request.

5. Minor Plan Amendment[247]

a. Purpose

The purpose of the minor plan amendment procedure is to allow the City to make insubstantial refinements or correct technical errors in the Future Land Use Plan, Major Street Plan, Growth Phasing Plan, or Active Mobility Plan of the Comprehensive Plan.



b. Applicability

Minor plan amendments may be requested to:

i. Consider an adjustment that is below the threshold of a major plan amendment, as described in Section 14-20-05.5;

ii. Adjust an alignment or boundary to a more precise location based on availability of better data or newly approved subdivision plats;

iii. Correct technical errors that do not require a major plan amendment, as described in Section 14-20-05.5; and

iv. Convert a street alignment from "future" to "existing" on the Major Street Plan upon construction.

c. Review Procedures

Common application procedures for a minor plan amendment are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Minor plan amendments may be initiated by the City or by a property owner or their representative.

ii. Minor amendments to the Major Street Plan or Active Mobility Plan are subject to review and determination by both the Director and the City Engineer.

d. Review Criteria

i. Minor Amendment to the Future Land Use Plan

In place of the review criteria described in Section 14-20-04.1.b, the Director shall consider the following criteria when making a determination on a proposed minor amendment to the Future Land Use Plan:

(1). The amendment is compatible with adjacent land uses, both existing and proposed in the Future Land Use Plan;

(2). The amendment is consistent with the goals and objectives of the Comprehensive Plan;

[247]Incorporates Future Land Use Plan Amendment Standards from page 59 of the Comprehensive Plan.

(3). Natural conditions of the site, including topography, drainage, wetlands, and other natural conditions are suitable for the amendment;

(4). The amendment is aligned with the Major Street Plan or accompanied by an amendment to the Major Street Plan that would render it in alignment;

(5). The current Future Land Use Plan designation is not adequate to meet the needs of the community or suitable for this tract of land, as justified by the applicant, and the proposed land use designation would, to some degree, alleviate this condition.

(6). The amendment does not adversely affect the City's ability to provide municipal utilities or services in the future to or beyond the district(s) proposed for amendment; and

(7). The amendment will not adversely affect the public health, safety, and general welfare.

ii. Minor Amendment to the Major Street Plan

In place of the review criteria described in Section 14-20-04.1.b, the Director and City Engineer shall consider the following criteria when making a determination on a proposed minor amendment to the Major Street Plan:

(1). The amendment is consistent with the goals and objectives of the Comprehensive Plan;

(2). The amendment retains or improves the overall continuity and function of the Major Street Plan, and its connections to surrounding areas;

(3). The amendment does not reduce the spacing and quantity of intersections sufficient to meet access management standards;[248]

(4). The amendment does not substantially increase the length of the alignment, affecting construction and maintenance costs, unless offset by commensurate public benefit;

(5). The current plan is not adequately aligned with the existing or proposed street layout or development proposed for the site and the amendment will, to some degree, alleviate this deficiency;

(6). The proposed alignment is not adversely affected by steep grades, wetlands, drainages, railroad crossings, transmission lines, or any other constraints to a degree greater than the current plan; and

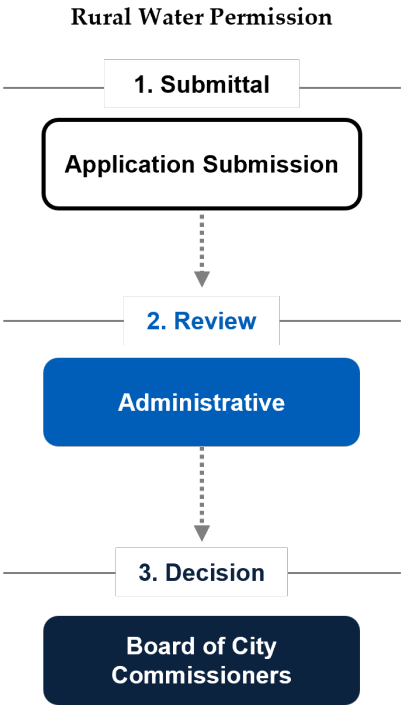
(7). The amendment would not adversely affect the public health, safety, and general welfare.

[248] Formerly "The spacing and quantity of intersections sufficient to meet access management standards are retained after the proposed amendment."

6. Rural Water Permission[249]

a. Purpose

The purpose of the rural water permission procedure is to grant permission to South Central Regional Water District to provide water service to any individual user, platted subdivision, or commercial or industrial use, per the terms of the most recent Water Service Contract between the City and South Central Regional Water District.



b. Applicability

The rural water permission procedure shall be required for all new rural water services that are within two miles of the city limits, unless within an area covered by an existing water service agreement.

c. Review Procedures

Any permission shall be granted through a resolution of the City Commission, upon recommendation by the City Engineer and Director of Public Works Service Operations.

i. If the new water service would result from subdivision plat approval within the City's extraterritorial area, the resolution shall accompany approval of the final plat.

ii. Any other applicable new water service shall be reviewed upon request of South Central Regional Water District.

iii. Any subdivision plat approved in conjunction with granting permission for rural water shall include a note on the face of the plat with terms of the agreement.

d. Review Criteria

Before making a determination on a requested rural water permission, the City Engineer and Director of Public Works Utility Operations shall review and recommend and the City Commission shall find:

i. The proposed rural water service is not within an area proposed for urban growth water utility extension within the next 25 years; or

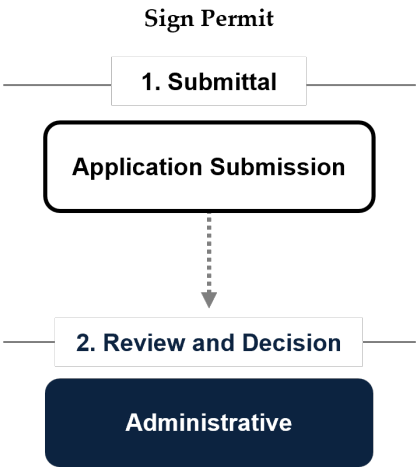
ii. If the water service is within an anticipated growth area, installation of the rural water service will not inhibit the City's ability to provide municipal water service to the area in the future.

[249] New procedure added to reflect agreement with SSRWD.

7. Sign Permit[250]

a. Purpose

The purpose of the sign permit procedure is to review proposed signs for compliance with the applicable standards of this Code.



b. Applicability

i. A sign permit shall be required to construct, install, or alter any sign except signs that are exempt from permits as identified in Section 14-18-02.1, Permit-Exempt Sign Types.

ii. A sign permit is not required for any sign-related activity identified in Section 14-18-02.2, Permit-Exempt Activity Types.

c. Review Procedures

Common application procedures for a sign permit are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Any person wanting to erect a sign that requires a sign permit shall first obtain a sign installation license from the City.

(1). A sign installation license may not take effect until the licensee files with the Building Official a copy of the licensee's liability insurance policy in the amounts determined by the City Attorney, which names the City as an additional insured, and insures against any damage or claim resulting from or related to the erection or maintenance of any sign within the City's jurisdiction by the licensee.

(2). Sign installation licenses are valid for the calendar year within which the license is issued. All licenses expire on December 31 of each year.

ii. Application Content

An application for a sign permit shall include the following materials, if applicable:

(1). Sign Display

An elevation or photographic visualization of the proposed sign and surrounding context, with exact dimensions of the area, height, depth, and placement of the sign, must be submitted for all signs, with the exception of portable signs. If any other signs exist within the parcel, they must be shown and dimensioned or described in terms of area.

(2). Site Exhibit

A site exhibit showing the dimensions of the sign, the exact location of the sign and any appurtenant features must be submitted for all pole signs, monuments signs, and off-premises advertising signs. The exhibit must

[250] Incorporates permitting procedures from Section 14-03.1-04.

include locations of all property lines, easements, sign setbacks, and structures in proximity to the proposed sign. This requirement may be waived by the Zoning Administrator if the sign is shown on an approved site plan for the overall development of the site.

(3). Street Visualizations

Street visualizations must be submitted for all new electronic message center signs and off-premises advertising signs, unless waived by the City Engineer. Renderings of the proposed sign superimposed on a photograph of the proposed location, with accurate scale and placement, must be submitted. A separate rendering is required from 100 feet, 300 feet, and 500 feet from each direction of all streets from which the sign would be visible.

(4). Operational Narrative

An operational narrative is required for all electronic message centers and digital off-premise advertising signs. The narrative must outline brightness levels, times of day the sign will be operational, entrance or exit effects that will be utilized, and any other features of the sign that are relevant to administration of this chapter. The operational narrative shall be agreed to and signed by the owner of the sign.

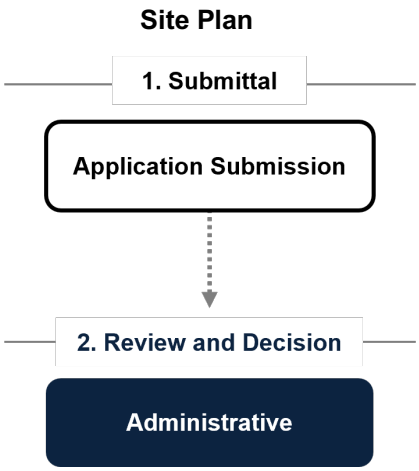
d. Review Criteria

The Director shall consider the review criteria in Section 14-20-04.1.b when making a determination on a sign permit application.

8. Site Plan

a. Purpose

The purpose of the site plan procedure is to ensure that a proposed development complies with all applicable requirements of this Code, adopted fire code, and engineering standards for connections to public utilities and roadway access.



b. Applicability[251]

i. General Site Plan

Site plan approval shall be required prior to the issuance of a building permit for any of the following:

(1). New multi-family residential (four or more units), and civic, institutional, commercial, industrial, or personal flex buildings;

(2). Additions or accessory structures greater than 200 square feet associated with the above uses;

[251] Incorporated from the site plan review information guide. Updated use-specific language to align with Module 1 content.

(3). Installation or expansion of impervious surfaces greater than 200 square feet associated with above uses;

(4). Municipal utility connections except direct connections to single-family dwellings or installation of water lines for a fire suppression system;

(5). Private roads and/or private utilities serving more than two units;

(6). Parking lot reconstruction of at least 20 percent of the total area at any one time, or at least 40 percent of the total area over a five year period.

(7). Utility structures (gas, electric, telephone, and communications) greater than 200 square feet;

(8). Electric vehicle charging stations;

(9). Fuel tank(s);

(10). Wireless communication facilities and associated equipment;

(11). A change in the use of the property that requires a zoning map amendment to a more intensive zoning district, or approval of a special use permit.

(12). Any project deemed necessary for review by the Director or City Engineer due to unique circumstances.

ii. Site Plan Residential

Prior to issuance of a building permit for a two-family or three-family dwelling, whether on a single lot or attached on separate lots, a site plan depicting connections to municipal utilities shall be required, with the following exceptions:

(1). The City Engineer may reduce or waive any required site plan contents contained herein for site plans submitted for two-family or three-family dwellings.

(2). Notwithstanding, clusters of two-family or three-family dwellings developed on a single site shall warrant a general site plan, if deemed necessary by the Director or City Engineer.

c. Review Procedures

Common application procedures for site plan review are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures.

d. Content of Site Plan

A site plan must meet all of the following standards to be considered by the City for approval:

i. Drawn to scale and dimensioned.

ii. Identify all property boundaries and easements within or adjacent to the site under development.

iii. Depict existing conditions relevant to development of the site, including but not limited to, buildings, parking areas, streets, driveways, sidewalks, open space,

landscaping, fire hydrant(s), parking areas, free standing signs, fuel tanks and utilities (municipal and/or private).

iv. Depict proposed new or modified development of the site, including but not limited to, structures, parking areas, driveways, walkways, stormwater facilities, landscaping, fire hydrants, mechanical equipment (rooftop and ground mounted), solid waste collection and required screening, freestanding signs, fuel tanks, and utilities (municipal and/or private).

v. Depict setbacks to a public right-of-way for all new or modified structures.

vi. Any other technical criteria as determined by the City Engineer or Director, or the waiver of any technical criteria if deemed not relevant to the review criteria.

e. Site Plan Phasing

i. An applicant may choose to implement a site plan in phases, in which case a phasing plan must be submitted with the site plan showing:

(1). A map of the site showing boundaries of each phase;

(2). A sequence and estimated schedule for each phase, with defined events that would trigger initiate for the next phase; and

(3). Improvements to the site that would be completed with each phase.

ii. A phasing plan shall be reviewed, approved, and amended, if applicable, in conjunction with its associate site plan. If phasing is proposed to be completed after the site plan expiration date, a new general site plan for remaining phasing may be required.

iii. An applicant may choose to apply a phasing plan to an already approved site plan that has not been completely developed, which shall be processed as an amendment to that site plan.

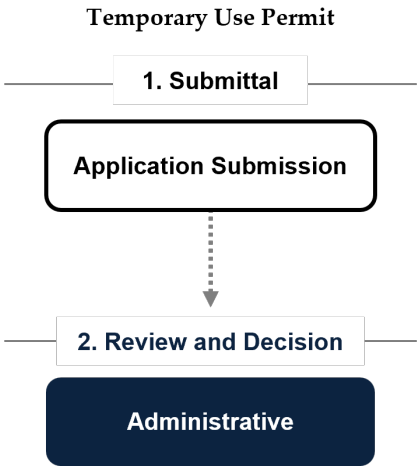
f. Review Criteria

The City Engineer shall consider the review criteria in Section 14-20-04.1.b when making a determination on a site plan application.

9. Temporary Use Permit[252]

a. Purpose

The purpose of the temporary use permit procedure is to ensure that a proposed use or structure that is temporary in nature complies with the applicable requirements of this Code.



b. Applicability

Any use identified as a temporary use in Section 14-10-08 requires a temporary use permit, as described in this section.

c. Review Procedures

Common application procedures for a temporary use permit are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. A temporary use permit shall be valid beginning on the date specified on the permit and shall remain valid for the time period indicated on the permit, but in no event longer than the timeframe allowed for the specific use identified in Section 14-10-08, Temporary Uses and Structures. In instances where the Land Development Code is silent as to a maximum time period for a specific use, the temporary use permit may be valid for a maximum of 6 months.

ii. The Director may grant a single, one-year extension. All temporary uses or structures must cease or be removed no later than one year after the original expiration date.

iii. Upon expiration of a temporary use permit, the permittee shall discontinue all temporary uses, remove all temporary structures and associated equipment, and remove all trash, litter, and debris from the site.

iv. A temporary use permit may be revoked[253] if the use is found to be in violation of:

(1). The applicable requirements of this Code or other sections of the Code of Ordinances; or

(2). Any conditions imposed by the Director in granting the temporary use permit.

d. Review Criteria

In addition to the review criteria in Section 14-20-04.1.b, the Director shall consider the following criteria when making a determination on a temporary use permit application:

i. Requirements for vehicular ingress/egress and corresponding traffic safety provisions, parking requirements and facilities, and hours of operation;

[252] New, informed by Section 14-03-08.2.

[253] Carries forward 14-03-08.4.v.2, with modifications for general applicability.

ii. Mitigation of public nuisance factors, such as light glare, noise, vibration, smoke, dust, dirt, odors, gases, and heat; and

iii. Planned maintenance and restoration of the subject property during and after termination of the temporary use or expiration of the temporary use permit.

14-20-05. Public Hearing Applications

1. Annexation[254]

a. Purpose

The purpose of the annexation procedure is to establish a process for bringing land into, or excluding land from, the jurisdiction of the City.

b. Applicability

Annexation or detachment are required to formally change the boundaries of Bismarck city limits.

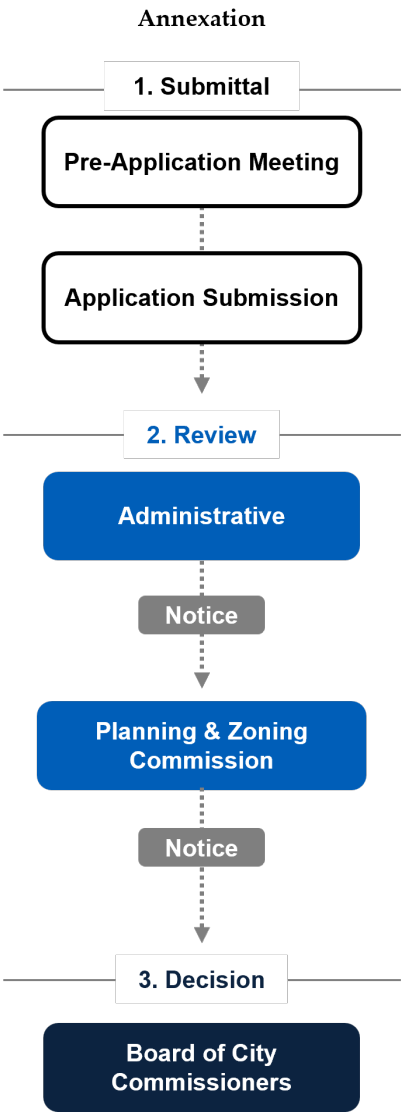
c. Review Procedure

Common application procedures for an annexation are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Annexations may be initiated and processed according to either of two separate procedures established in NDCC Section 40-51.2:

(1). Petitions for annexation or detachment from qualified electors affected by ordinance of the City Commission

(2). Initiation of annexation by resolution of the City Commission.



d. Review Criteria

Before making a determination on an annexation, the Planning and Zoning Commission shall review, and the City Commission shall find:

i. The annexation complies with the Growth Phasing Plan and all other provisions of the Comprehensive Plan;

ii. Adequate public facilities are or will be available to serve the annexed properties completely and equitably;

[254] New reference to annexation procedures established in the Municipal Annexation Act of 1969 (NDCC 40-51.2).

iii. The annexation is a logical and contiguous extension of the current corporate limits of the City of Bismarck;

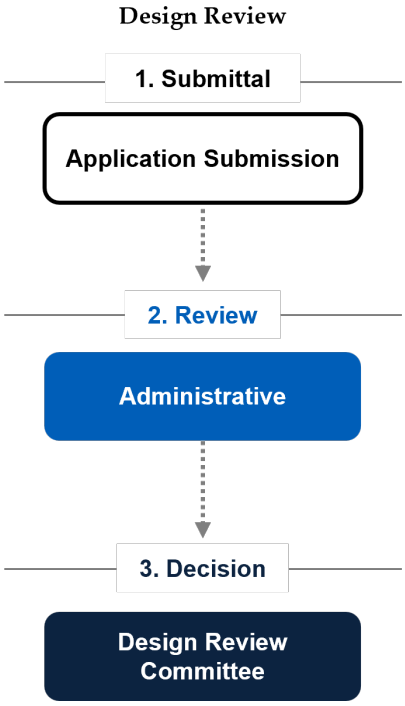
iv. Proper administrative procedures related to the request have been followed; and

v. The annexation will not adversely impact the public health, safety, and general welfare.

2. Design Review

a. Purpose[255]

The intent of the design review process is to ensure development proposals maintain a high visual quality and appearance by complying with all applicable standard of the Land Development Code.



b. Applicability

Design review procedures shall be either major or minor, based on the following criteria:

i. Major Design Review

The design review process applies to any of the following types of development when located in a Downtown district:

(1). New construction, other than single or two-family dwellings;

(2). Building additions that are clearly visible from a public right-of-way, other than an alley, or an increase of the building footprint by 30 percent or more;

(3). Exterior renovation or rehabilitation of existing structures, including historically significant buildings, that are clearly visible from a public right-of-way, other than an alley;

(4). Permanent/semi-permanent streetscape projects initiated by a property owner and involving an encroachment agreement;

(5). Public improvement projects that alter the design of streetscape elements within the sidewalk area of the public right-of-way; or

(6). Demolition of existing structures, including historically significant buildings.

ii. Minor Design Review

The following types of development in the Downtown districts shall be considered minor design review, which may be decided administratively by the Director:

(1). Signs;

(2). Fences and screening;

[255] Carries forward 14-04-21.1 and 14-04-21.2 with some grammatical changes.

(3). Outdoor lighting;

(4). Exterior building maintenance, including like-for-like replacements of windows, doors, or other building elements in place;

(5). Projects that do not require a building permit or other City approval, such as painting or other color-only alterations;

(6). Any construction or demolition projects involving single- or two-family dwellings, unless those projects involve changing the existing use of the property to something other than a single- or two-family dwelling; and

(7). Public art.

(8). Other projects that do not clearly fall into the Major Design Review category outlined above.

c. Review Procedures

Common application procedures for design review are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Minor design review applications shall be reviewed and approved by the Director according to procedures in Section 14-20-04.1 prior to issuance of a site plan for the applicable development. If no site plan is required, the approval shall be made prior to issuance of a building permit or sign permit.

ii. Major design review applications may be processed in conjunction with Renaissance Zone applications.

d. Review Criteria[256]

Before making a determination on a design review, the Design Review Committee or the Director shall find:

i. The design complies with the standards of the downtown zoning district, or relevant zoning district;

ii. Proper administrative procedures related to the request have been followed; and

iii. The design will not adversely impact the public health, safety, and general welfare.

3. Easement Release[257]

a. Purpose

The purpose of the easement release process is to provide a mechanism for the removal of obsolete easements or relocation with a release and dedication of a new easement.

[256] Incorporates review criteria 1 and 5 for downtown design review from the required standards and findings document.

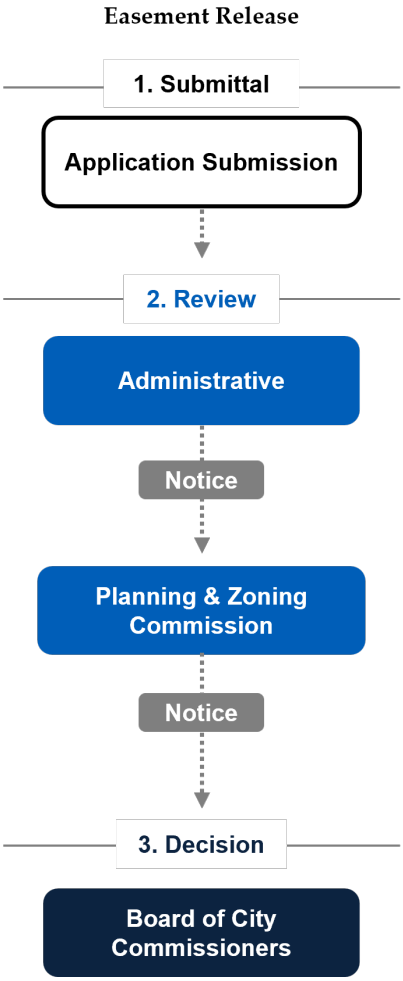
[257] New procedure added to reflect the City's existing plat modification processes.

b. Applicability

i. Easement release procedures shall be followed to release any one easement, or part thereof, dedicated or referenced on a subdivision plat pursuant to this Code. A complete subdivision is required in conjunction with the release of more than one easement, either in a single application or series of applications.

ii. Any area designated on a recorded plat that designates a public function and alters the property rights within that area, other than building setback lines, shall be considered an easement for the purposes of this section, whether or not it is labeled “easement” on the plat.

iii. This process does not apply to easements that are publicly or privately held and dedicated through an instrument outside of the subdivision process, unless that easement has been referenced on a subdivision plat.



c. Review Procedures

Common application procedures for easement release are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. The application shall be signed by all owners of land containing the easement and notarized by at least one property owner.

ii. For release of a utility easement, utility consent forms shall be provided by all franchised utilities. Notwithstanding, if the easement is dedicated to a named entity, only that entity must provide consent.

iii. Easement releases are subject to a public hearing with the Planning and Zoning Commission, unless any of following conditions are met:

(1). The easement is a utility easement, either for general utility use or for named entities other than the City of Bismarck.

(2). The easement is dedicated only to the benefit of parties that have signed the application for easement release, not including emergency services.

iv. In such cases when a replacement easement is required to be dedicated to satisfy a condition of approval of an easement release, the new easement shall be approved on a separate instrument and recorded in conjunction with the instrument to release.

d. Review Criteria

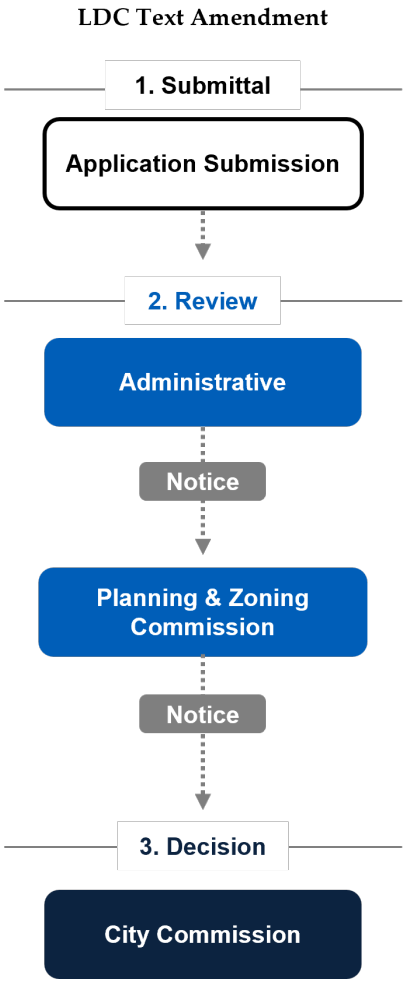
Before making a determination on an easement release, the Planning and Zoning Commission shall recommend, and the City Commission shall find:

i. The easement proposed for release is no longer needed for the purpose for which it was dedicated or an adequate alternative has been provided;

ii. Proper administrative procedures related to the request have been followed; and

iii. The easement release will not adversely impact the public health, safety and general welfare.

4. Land Development Code Text Amendment



a. Purpose

The purpose of the Land Development Code Text Amendment procedure is to establish a process and requirements for requested changes to the text of this Code.

b. Applicability

A Land Development Code Text Amendment is required to change, add, or remove any provisions of this Code or Title 14.1 Stormwater Management.

c. Review Procedures

Common application procedures for a Land Development Code Text Amendment are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. A Land Development Code Text Amendment may be initiated by City staff, the Planning and Zoning Commission, the City Commission without a formal application.

ii. All Land Development Code Text Amendments shall be published in the official newspaper upon approval.

d. Review Criteria[258]

Before making a determination on a Land Development Code Text Amendment, the Planning and Zoning Commission shall review and recommend and the City Commission shall find:

i. The amendment is consistent with the Comprehensive Plan;

[258] Review criteria pulled in from recent staff report, excluding "proper administrative procedures related to this request are being followed" and "The proposed amendment will preserve the overall integrity and coherence of this Code."

ii. The amendment does not conflict with other provisions of this Code, other titles of the Bismarck Code of Ordinances, state, or federal law;

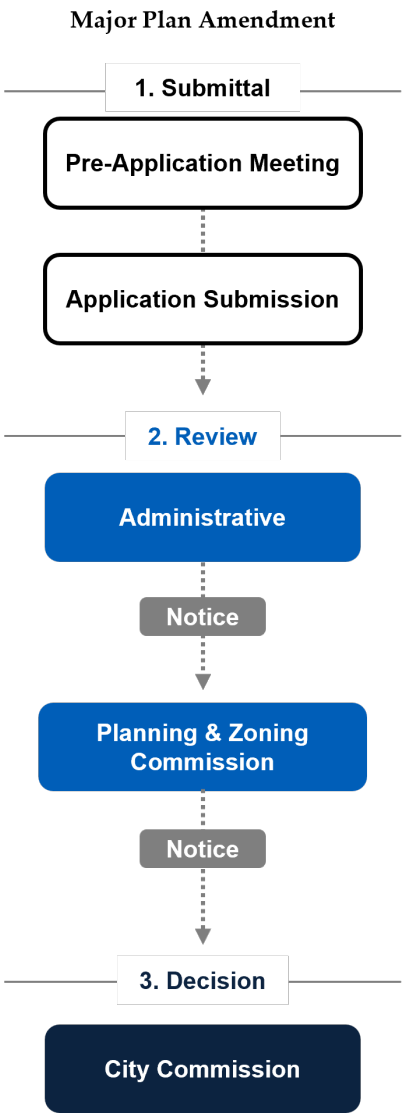
iii. Proper administrative procedures related to the request have been followed; and

iv. The amendment will not adversely impact the public health, safety, and general welfare

5. Major Plan Amendment

a. Purpose

The purpose of the major plan amendment procedure is to allow the City to consider changes to the Future Land Use Plan or Major Street Plan of the Comprehensive Plan.



b. Applicability

i. An amendment to the Future Land Use Plan is considered major if any of the following apply:

(1). A boundary between land use districts is moved more than 660 feet;

(2). A land use district is changed to a different classification; or

(3). Director determines that change would result in a significant impact on the surrounding areas.

ii. An amendment to the Major Street Plan is considered major if any of the following apply:

(1). The intersection of existing or future streets is moved more than 100 feet;

(2). An alignment between intersections is moved more than 660 feet;

(3). An alignment is added or removed; or

(4). Director determines that change would result in a significant impact on the surrounding areas.

c. Review Procedures

Common application procedures for a major plan amendment are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. An amendment to the Future Land Use Map may be proposed by the City or by the owner of property within the district(s) proposed for amendment.

ii. An amendment to the Major Street Plan may be proposed by the City or by an owner of property adjacent to a corridor. Formal consent from all property owners within or adjacent to any corridor is not required to initiate an amendment, but building an early consensus of all parties affected by the action is recommended before application submittal.

iii. If an amendment to the Future Land Use Plan is required to support a zoning map amendment or any other procedure of this Code that plan amendment must be approved by the City Commission prior to the final hearing of the dependent request or requests with the Planning and Zoning Commission.[259]

iv. An amendment to the Major Street Plan may be submitted in conjunction with a subdivision that depends upon the amendment for compliance, and the public hearing on the plan amendment shall be held in conjunction with review of the preliminary plat.

d. Review Criteria

i. Major Amendment to the Future Land Use Plan

Before making a determination on an major plan amendment, The Planning and Zoning Commission shall review and recommend, and the City Commission shall find:

(1). The proposed land use designation is compatible with adjacent land uses, both existing and proposed in the Future Land Use Plan;

(2). The proposed land use designation is suitable for the natural conditions of the site, including topography, drainage, wetlands, and other natural conditions;

(3). The amendment is aligned with the Major Street Plan or accompanied by an amendment to the Major Street Plan that would render it in alignment;

(4). The amendment does not adversely affect the City's ability to provide municipal utilities in the future to or beyond the district(s) proposed for amendment;

(5). The amendment is consistent with the goals and objectives of the Comprehensive Plan;

(6). The current land use designation is not adequate to meet the needs of the community or suitable for this tract of land, as justified by the applicant, and the proposed land use designation would, to some degree, alleviate this condition;.

(7). Proper administrative procedures related to the request have been followed; and

(8). The amendment will not adversely impact the public health, safety, and general welfare.

[259] New.

ii. Major Amendment to the Major Street Plan

The Planning and Zoning Commission shall review and recommend, and the City Commission shall decide on major amendments to the Major Street Plan based on the following criteria:

(1). The amendment is consistent with the goals and objectives of the Comprehensive Plan;

(2). The amendment retains or improves the overall continuity and function of the Major Street Plan, and its connections to surrounding areas;

(3). The amendment does not reduce the spacing and quantity of intersections sufficient to meet access management standards;[260]

(4). The amendment does not substantially increase the length of the alignment, affecting construction and maintenance costs, unless offset by commensurate public benefit;

(5). The current plan is not adequately aligned with the existing or proposed street layout or development proposed for the site and the amendment will, to some degree, alleviate this deficiency;

(6). The proposed alignment is not adversely affected by steep grades, wetlands, drainages, railroad crossings, transmission lines, or any other constraints to a degree greater than the current plan;

(7). Proper administrative procedures related to the request have been followed; and

(8). The amendment will not adversely impact the public health, safety, and general welfare.

6. Plan Overlay District Review[261]

a. Purpose

The purpose of the Plan Overlay District (POD) review procedure is to create a process for reviewing a request for a zoning map amendment including a POD, as established in Section 14-08-04, for compliance with this Code.

b. Applicability

i. A property owner may apply for a POD only when the base zoning districts are inadequate to accommodate the desired development, and the POD approach would achieve the purposes of Section 14-08-04 Plan Overlay District.

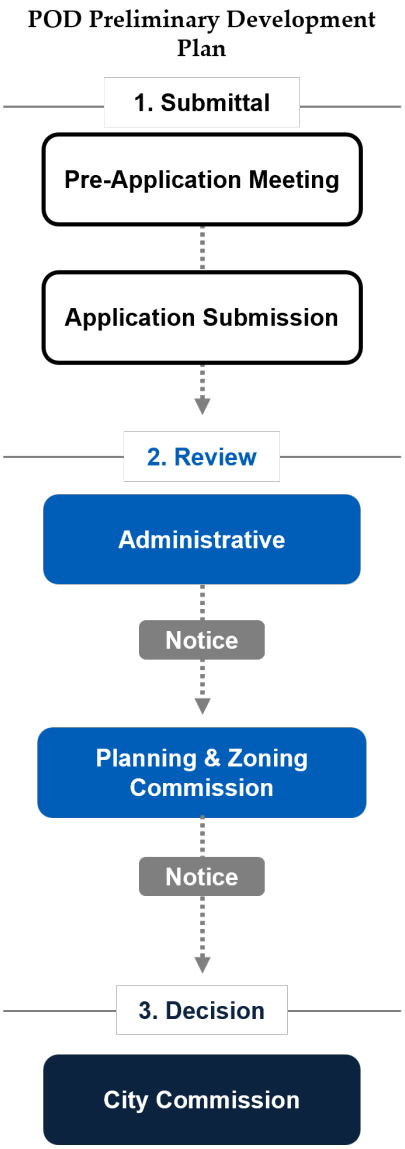
ii. A POD may not be used to provide a site-specific solution to a single issue that can be resolved through a more appropriate means, such as use of a different base zoning district, a variance, or an adjustment from a specific dimensional standard.

[260] Formerly "The spacing and quantity of intersections sufficient to meet access management standards are retained after the proposed amendment."

[261] 14-04-18 procedural information, carried forward with modifications.

c. Review Procedures

Common application procedures for a preliminary development plan are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:



i. The zoning map amendment procedure in Section 14-20-05.10 shall be used to establish the POD.

ii. The application for a POD shall include all information necessary to create both the text and exhibit elements of the POD, as described in Section 14-08-04.

iii. During review, City staff may negotiate with the applicant the terms of conditions of the text and the layout and design of the exhibit to achieve full compliance with the Land Development Code. The Planning and Zoning Commission and City Commission may provide directions for negotiation and conditions of any approval.

iv. The applicant may provide and staff may request additional exhibits to display the intended outcomes of the POD, including but not limited to streetscape elevations, perspective renderings, or other views may be required if necessary to display distinctive elements of the POD. Such documents must be clearly labeled “illustrative” unless incorporated by reference into the text of the POD.

d. Review Criteria[262]

Before making a determination on a POD, the Planning and Zoning Commission shall review and recommend, and the City Commission shall find:

i. The plan satisfies the review criteria for zoning map amendments in Section 14-20-05.10.d;

ii. The plan mitigates or offset significant adverse impacts, including but not limited to hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts anticipated to result from the POD;

iii. The plan includes an internal street circulation system, if relevant, designed for the type of traffic that is expected to be generated by the development;

[262] Criteria b. and e. from Section 14-04-08 have not been carried forward, but replaced with new mitigation plan criteria (iii).

iv. The plan preserves natural features, such as healthy trees and drainage areas, to the maximum extent practicable;

v. The Plan Overlay District supports or advances objectives of the Comprehensive Plan;

vi. Proper administrative procedures related to the request have been followed; and

vii. The plan will not adversely impact the public health, safety, and general welfare

e. Amendments to a POD[263]

An applicant may initiate an amendment to an approved POD, according to the following procedures:

i. Minor Amendment

Minor amendments to an approved POD may be approved by the Director if the proposed amendment:

(1). Does not:

(a). Increase the gross floor area of a non-residential or mixed-use building by more than 10 percent;

(b). Increase or decrease the number of approved dwelling units by more than five percent;

(c). Result in a decrease in the amount of open space;

(d). Change the number or location of vehicular access points in a way that negatively impacts public safety or the flow of traffic onto public streets; or

(e). Modify numeric standards by more than would be allowed through Section 14-20-04.2, Adjustment;

(2). Will not cause adverse impacts to development within the POD or adjacent development.

ii. Major Amendment

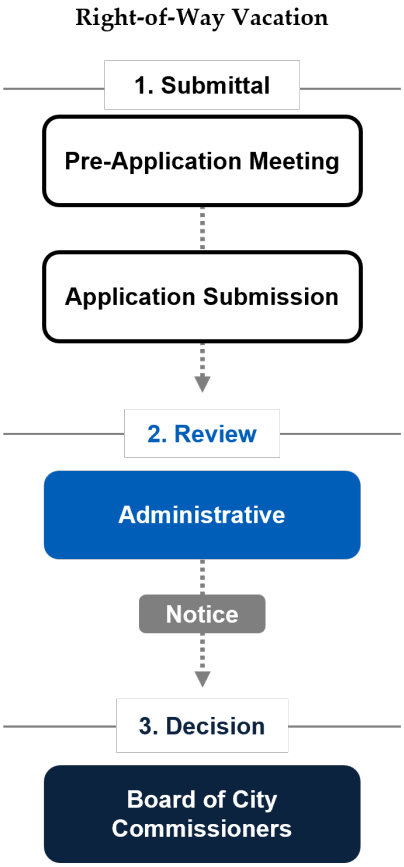
Major POD amendments shall be processed as a new POD in accordance with this section.

[263] Clarifies Section 14-04-18.3 by identifying the types of changes that qualify for minor amendment.

7. Right-of-Way Vacation[264]

a. Purpose

The purpose of the right-of-way vacation process is to allow the productive use of lands previously dedicated as public-right-of way but no longer needed as such.



b. Applicability

i. Right-of-way vacation procedures shall be followed for the removal of a public right-of-way (street or alley) or portion of a public right-of-way in city limits, whether dedicated on a subdivision plat or another recorded instrument.

ii. Outside of city limits, vacation of public right-of-way is subject to procedures of Burleigh County or an organized township, as applicable, if they formally accepted the right-of-way on a subdivision plat. If the City of Bismarck accepted the right-of-way, the vacation procedures of this Code shall be followed.

c. Review Procedures

Common application procedures for a right-of-way vacation are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. The application shall be signed by all adjacent property owners and notarized by at least one property owner.

ii. Utility consent forms shall be provided by all franchised utilities.

iii. A resolution for vacation of public right-of-way may specify the retention of easements over all or part of the area to be vacated.

iv. All right-of-way vacations shall be published in the official newspaper upon approval.

d. Disposition of Vacated Land

The final ownership of property subject to vacation is split at the centerline of the right-of-way, unless specified otherwise in the resolution of the City Commission.

e. Review Criteria[265]

Before making a determination on a vacation of right-of-way, the City Commission shall find:

[264] New procedure added to reflect the City's existing plat modification processes.
[265] Incorporated from City staff report required standards and findings.

i. A valid petition from all property owners adjoining the public right-of-way or portion thereof proposed for vacation has been submitted;

ii. The right-of-way proposed to be vacated does not contribute to the transportation function of the overall roadway network or a public benefit proportional to the loss of function has been provided;

iii. The right-of-way proposed to be vacated is not needed by the City of Bismarck or any affiliated entities for public utilities, or easements have been granted for any existing or potential utility infrastructure within the right-of-way;

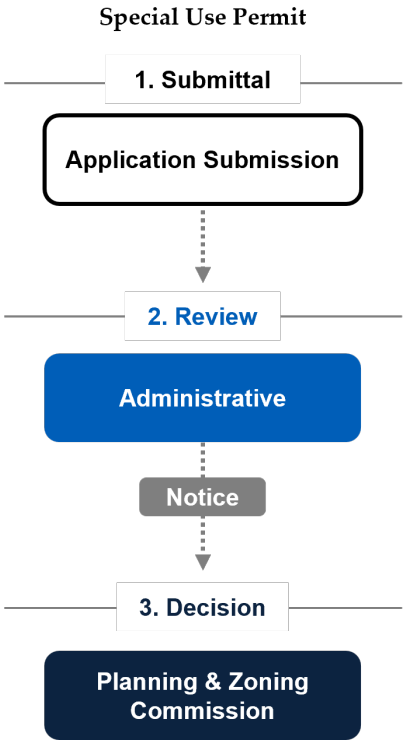
iv. Proper administrative procedures related to the request have been followed; and

v. The right-of-way vacation will not adversely impact the public health, safety and general welfare.

8. Special Use Permit[266]

a. Purpose

The purpose of the special use permit procedure is to evaluate certain land uses identified in this Code for special consideration to ensure that such uses do not create negative impacts on surrounding properties and that adequate mitigation is provided for anticipated impacts.



b. Applicability

Any use identified as a special use in **Error! R eference source not found.** requires a special use permit, as described in this section.

c. Review Procedure

Common application procedures for a special use permit are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedure specific to this project type:

i. No building permit or certificate of occupancy shall be issued by the Building Official until the required special use permit has been approved by the Planning and Zoning Commission.

ii. A special use permit shall expire if the special use is not established within 24 months of approval or extended according to the procedure in Section 14-20-03.7.c.

[266] Carries forward 14-03-08.1, with modifications.

d. Review Criteria[267]

Before making a determination on a special use permit, the Planning and Zoning Commission shall find:

i. The special use permit is consistent with the Comprehensive Plan and the purpose of the applicable zoning district;

ii. The special use permit complies with the requirements of this Code, including any use-specific standards in Section Chapter 14-10 Use Definitions and Use-Specific Standards; and

iii. The special use permit includes a plan for mitigating or offsetting any significant adverse impacts, including but not limited to hours of operation, traffic generation, lighting, noise, odor, dust and other external impacts, anticipated to result from the use.

iv. Proper administrative procedures related to the request have been followed; and

v. The special use permit will not adversely impact the public health, safety, and general welfare.

9. Variance

a. Purpose

The purpose of the variance procedure is to allow an applicant to request relief from the strict application of this Code based on the existence of an extraordinary hardship.

b. Applicability

i. An applicant may request a variance to applicable regulations that meet the requirements of the review criteria below.

ii. A variance may not be requested to:[268]

(1). Permit a use that is not allowed in the underlying base district; or

(2). Modify any definition contained in this Code.

iii. If the property is individually Listed in the National Register of Historic Places (NRHP), preliminarily determined as meeting the requirements for individual listing in the NRHP, certified or preliminarily determined as contributing to the historical significance of a registered NRHP historic district, or individually listed on a state inventory of historic places, the historic building variance review criteria shall apply instead of the standard variance review criteria.

iv. If a variance is requested from any provision of Section 14-07-02 Floodplain Overlay District, the floodplain variance review criteria shall be applied in addition to the standard variance review criteria.

c. Review Procedures

Common application procedures for a variance are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, subject to

[267] New.

[268] New.

the requirement that the concurring vote of four members of the Board of Adjustment is required to approve any variance.

i. Any applicant to whom a floodplain variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation lower than two feet above the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

ii. The Floodplain Administrator shall maintain the records of all appeal actions and report any floodplain variances granted to the Federal Emergency Management Agency (FEMA) upon request.

d. Standard Variance Review Criteria[269]

Before making a determination on a variance, the Board of Adjustment shall find:

i. The request arises from circumstances or conditions that are peculiar to the land or building for which the variance is sought that are not normally found in the same area, such as unusual topography, irregular lot shape, unstable soils, or other conditions;

ii. The peculiar conditions were not created by an action of the applicant or property owner taken;

iii. The unique conditions deprive the applicant of a reasonable use of the subject property and constitute an unnecessary and undue hardship on the applicant;

iv. The variance is the minimum necessary to provide relief;

v. Proper administrative procedures related to the request are being followed; and

vi. The variance will not adversely impact the public health, safety, and general welfare.

e. Floodplain Variance Review Criteria

In addition to standard review criteria for variances, the Board of Adjustment shall consider the following factors for variances from Section 14-08-03, Floodplain Overlay District:

i. The danger to life and property due to flooding or erosion damage;

ii. The danger that materials may be swept onto other lands to the injury of others;

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of damage on the individual owner;

iv. The importance of the services provided by the proposed facility to the community;

v. The necessity to the facility of a waterfront location, where applicable;

vi. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

[269] Clarifies existing requirements in Section 14-06-02.2.

vii. The compatibility of the proposed use with the existing and anticipated development;

viii. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

f. Historic Property Variance Review Criteria

In lieu of the standard review criteria for variances, the Board of Adjustment shall find for historic properties:

i. The variance is necessary to maintain the historic character and integrity of the building or site;

ii. Applicable federal guidelines standards were evaluated;

iii. The variance is the minimum necessary to provide relief;

iv. Proper administrative procedures related to the request are being followed; and

v. The variance will not adversely impact the public health, safety, and general welfare.

g. Floodplain Variance Concurrence

Any issuance of a variance from Section 14-08-03, Floodplain Overlay District, shall be provided to the Federal Emergency Management Agency for concurrence that the review criteria of this section has been or will be met prior to the issuance of a building permit for the proposed variance.

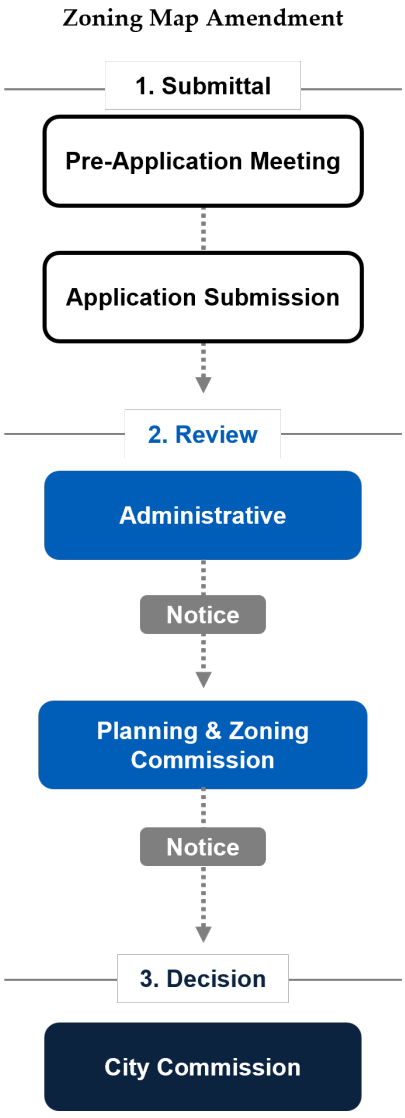
h. Historic Property Variance Concurrence

Any issuance of a variance on any historic property may be provided to the North Dakota State Historic Preservation Office and Bismarck Historic Preservation Commission for concurrence that the review criteria of this section has been or will be met prior to issuance of a building permit for the proposed variance.

10. Zoning Map Amendment[270]

a. Purpose

The purpose of the zoning map amendment (or rezoning) procedure is to allow the City to amend the district boundaries or classification of property on the official zoning map.



b. Applicability

i. A zoning map amendment is required to rezone property to a different zoning district classification.

ii. Zoning map amendments may apply to a single lot, multiple lots, or a broader area, as identified in the application or initiation.

c. Review Procedures

Common application procedures for a zoning map amendment are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. Zoning map amendments may be initiated by the Planning and Zoning Commission, City Commission, or all property owner(s) within the land proposed to be rezoned.

ii. If a subdivision is required to develop land proposed for a zoning map amendment, the required public hearing for the zoning map amendment with the Planning and Zoning Commission and City Commission shall be held concurrent with review of the preliminary plat. The zoning map amendment may not be processed in advance of the preliminary subdivision plat.[271]

iii. If owners of twenty percent or more of the property immediately adjacent or within 150 feet, excluding rights-of-way, of the proposed zoning map amendment file a protest petition, the amendment shall not become effective except by a favorable vote of three-fourths of all members of the City Commission, as allowed by state law. The Director shall determine the validity of the petition and announce this determination prior to decision of the City Commission.

iv. From time to time, the Planning and Zoning Commission and City Commission may choose to amend the zoning map in its entirety, subject to a robust public

[270] Carries forward parts of 14-07-02, with modifications.

[271] New

process. Mailed notice to individual properties and posted notice on individual sites required by Section 14-20-03.5.d shall not be required only in such case that the entire zoning map is adopted comprehensively for all land under City jurisdiction. Published notice remains a requirement, with reference to the entirety of lands within City jurisdiction.

d. Review Criteria[272]

Before making a determination on a zoning map amendment, the Planning and Zoning Commission shall review the application in light of the following criteria, and the City Commission shall find:

i. The amendment is consistent with the Future Land Use Plan and all other provisions of the Comprehensive Plan;

ii. The amendment adheres to the general intent and purpose of this Code;

iii. The proposed zoning district is compatible with adjacent land uses and zoning;

iv. Proper administrative procedures related to the request have been followed; and

v. The amendment will not adversely impact the public health, safety, and general welfare.

14-20-06. Subdivision Procedures

1. Purpose[273]

The purpose of subdivision procedures is to ensure that growth and development of the community will:

a. Result in orderly, efficient, and well-designed development that complies with the Comprehensive Plan;

b. Provide for the proper arrangement of streets in relation to existing streets and the Major Street Plan;

c. Ensure adequate public facilities and services are available or will be available to support future land uses;

d. Preserve and enhance natural areas; and

e. Promote the health, safety, and general welfare of the public.

2. Public Participation

a. In order to focus public involvement on subdivisions with the highest expected impact on surrounding properties and enhance efficiency of reviews with limited expected impact on surrounding properties, the Planning and Zoning Commission and City

[272] Review criteria pulled in from recent staff report, excluding "proper administrative procedures related to this request are being followed," and "Would not result in undue restriction of housing options or access to neighborhood amenities," which we believe may be accurately captured through review against the Comprehensive Plan. Modified Comprehensive Plan requirement for consistency with other procedures in this section.

Commission hereby waive their right to hold a public hearing, as established in this Code, on a subdivision unless any of the following conditions are met:

i. A zoning map amendment is required or requested with a complete subdivision, in which case the required public hearings are held in conjunction with the preliminary plat and not the final plat;

ii. A vacation of public right-of-way is required or requested with a complete subdivision, in which case the required public hearings are held in conjunction with the preliminary plat and not the final plat;

iii. An amendment to the Major Street Plan is required or requested with a complete subdivision, in which case the required public hearing is held by the Planning and Zoning Commission in conjunction with the preliminary plat and not the final plat;

iv. A preliminary plat is forwarded by staff to the Planning and Zoning Commission or the City Commission with a recommendation to deny; or

v. Any subdivision deemed by either the Planning and Zoning Commission or the City Commission to have a potentially substantive impact on surrounding properties. Upon consideration of any subdivision, a member of that body may request a vote and that body may call for a public hearing upon majority vote.

3. Complete Subdivision

a. Purpose

The purpose of the complete subdivision procedure is to require a more thorough process, with both a preliminary and final stage, for subdivisions with greater public impact and need for coordination with municipal services and infrastructure.

b. Applicability

The complete subdivision procedures shall be followed for any subdivision of land that does not meet the conditions of a simple subdivision plat in Section 14-20-06.4.14-20-06.4

c. Preliminary Subdivision Plat

i. Purpose

The purpose of the preliminary subdivision plat process is to allow City staff, other public agencies, and the general public to review the overall plan for development, within the context of existing conditions, to determine if the proposal complies with the requirements of this Code and the Comprehensive Plan, and to ensure adequate public facilities and services exist or will exist to support the development.

ii. Review Procedures

Common application procedures for a preliminary subdivision plat are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

(1). If a complete subdivision is processed concurrently with a zoning map amendment, the required public hearings with the Planning and Zoning

Commission and City Commission shall be held in conjunction with the preliminary plat.

(2). Approval of a preliminary subdivision plat is not an acceptance of the subdivision plat for record, but is rather an expression of general approval of the subdivision for the final approval and recording upon fulfillment of all requirements of these regulations.[274]

(3). Requests for modification or amendment of an approved preliminary plat shall be processed according to Section 14-20-06.5, Plat Modification.

iii. Content of Preliminary Plat

A preliminary plat must meet all of the following standards to be considered by the City for approval:

(1). All lots, blocks, and public right-of-way within the area being subdivided, drawn to scale.

(2). Identification of area of neighborhood park, if applicable.

(3). Meet all technical criteria identified on the preliminary plat checklist available at the office of the Planning Department.

iv. Review Criteria[275]

Before making a determination on a preliminary plat, the Planning and Zoning Commission shall review and recommend and the City Commission shall find:

(1). The subdivision complies with the applicable dimensional standards of this Code;

(2). The subdivision adheres to the Major Street Plan;

(3). Vehicle trips generated by the proposed subdivision will be adequately supported by the transportation system;

(4). Street connectivity is provided for efficient travel and secondary access for emergency services;

(5). Roadway access is managed to reduce potential points of conflict and improve safety;

(6). A neighborhood park will be available within walking distance for all urban residents;

(7). The subdivision is designed to minimize natural hazards and impacts to environmentally sensitive land;

(8). Stormwater runoff impacted by this subdivision is adequately managed to protect public and private investments and the natural environment;

(9). Water supply systems will be adequately supplied by the City or seamlessly transition from a rural to an urban system through cooperation with the South C-central Regional Water District;

(10). The City's investment in infrastructure associated with the proposed subdivision is expected to receive a proportional long-term return to residents through future revenues or other public goods associated with the proposed subdivision;

(11). Technical specifications required of the preliminary plat have been met; and

(12). Proper administrative procedures related to the request have been followed; and

(13). The subdivision will not adversely impact the public health, safety, and general welfare.

d. Final Subdivision Plat

i. Purpose[276]

The purpose of the final subdivision plat process is to ensure the technical specifications of the proposed subdivision align with the approved preliminary plat and applicable City standards in preparation for recordation of the plat.

ii. Review Procedures

Common review procedures for a final subdivision plat are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

(1). Final Plat Preview

(a). An application for a final plat shall be accompanied with a preview version of the final plat in a digital format for staff review, along with all other submittal requirements identified on the application. The applicant shall furnish a paper copy or copies of a final plat preview for staff review, upon request.

(b). City staff shall perform a review of the final plat preview according to technical specifications and requirements of this Code.

(c). To allow the final plat to proceed, the Director shall communicate to the applicant a determination that the final plat meets all technical requirements and substantially conforms to the approved preliminary plat;

(2). Final Plat with Substantial Changes

(a). Where the Director determines that the final plat does not substantially conform to the approved preliminary plat or conditions of approval have not been met satisfactorily, the final plat shall be sent to the Planning and

Zoning Commission and City Commission with public hearings for review and determination in the same manner as a preliminary plat.

(b). Upon approval of the final plat by the Planning and Zoning Commission and City Commission, the final plat in recordable form may be submitted.

(3). Final Plat in Recordable Form

(a). After completion of the appropriate review, the applicant shall supply the signed final plat in recordable form to the Planning Department office on durable paper of the proper size for final consideration and signature, along with the following:

(i). Documentation that property taxes have been paid on all properties within the boundary of the subdivision;

(ii). Either a copy of a current title insurance policy running to the benefit of the City of Bismarck or a current attorney's opinion of ownership;

(iii). Documentation that the associated Post Construction Stormwater Management Plan has been approved, per Section 14.1-04-04 Stormwater Management;

(iv). A signed neighborhood park development agreement or documentation of a waiver; and

(v). Any documentation required to satisfy a condition placed on the preliminary plat by the City Commission.

(b). Final plats must be signed or ratified, with notarization, by all fee simple property owners and all financial institutions with a property interest within the boundary of the subdivision plat. Owners of easements do not need to sign or ratify subdivision plats.

(4). Signature of Final Plat

Upon approval of the final plat, the following signatures shall be provided:

(a). The Director is hereby authorized to sign as an acknowledgement of preliminary plat approval by the Planning and Zoning Commission

(b). The City Administrator is hereby authorized to sign as certification of City Commission preliminary approval and dedication of all public rights-of-way and public easements shown on the plat, and the vacation of previous platting, if any, within the boundaries of the subdivision.

(c). The City Engineer is hereby authorized to sign the plat as an approval.

(d). Together these signatures shall denote official final approval of the subdivision plat by the City.

(5). Recordation of Final Plat

City staff shall submit the final plat for recordation upon approval and signature at the earliest practicable time.

iii. Content of Final Plat

A final plat must meet all of the following standards to be considered by the City for approval:

(1). Drawn to scale and dimensioned;

(2). Presented on a document of 30 inches by 36 inches in page size;

(3). Meet all technical criteria identified on the final plat checklist available at the office of the Planning Department; and

(4). Meet all requirements of the Burleigh County Auditor and Recorder's Office to allow recordation.

iv. Conformance to Preliminary Plat

Prior to making a determination on whether a final plat substantially conforms to a approved preliminary plat, the Director shall consider the following:

(1). The final plat does not substantially increase the overall number of lots approved in the preliminary plat;

(2). The outer boundary of the final plat does not extend beyond the outer boundary of the preliminary plat;

(3). The orientation and dimensions of lots continue to comply with the Land Development Code and are not altered such that access, drainage, utility service, or any other public function is negatively impacted;

(4). Public rights-of-way are not added, removed, or altered other than minor technical adjustments or corrections;

(5). No public easements are removed or substantially altered. Easements may be added or relocated, provided the intended function is still met and all parties to the determination of the original location agree; and

(6). Any conditions of approval attached to the preliminary plat are met by the final plat.

v. Review Criteria[277]

Before making a determination on a final plat, the Director and City Engineer shall find:

(1). The final plat substantially conforms to the approved preliminary plat for the proposed subdivision;

(2). All conditions placed on approval of the preliminary plat have been satisfied or will remain in place for future completion;

(3). All existing lot lines, rights-of-way, easements, and other property rights are accurately depicted on the final plat;

(4). Sufficient easements and rights-of-way are included dedicated on the plat to provide for orderly development and provision of municipal services within and beyond the boundaries of the subdivision;

(5). Technical specifications required for the final plat have been met; and

(6). Proper administrative procedures related to the request have been followed.

4. Simple Subdivision[278]

a. Purpose

The purpose of the simple subdivision process is to allow for expedited review of lot splits, adjustments to lot lines, and other divisions of land with limited impact on the public or municipal services.

b. Applicability

Simple subdivision procedures shall be followed if all of the following conditions are met:

i. The subdivision does not result in more than three additional platted lots after final completion;

ii. The subdivision does not dedicate any new public rights-of-way, public easements, or private streets; and

iii. The subdivision is not of unusual complexity requiring a compete subdivision, in the determination of the Director.

c. Review Procedures

Common review procedures for a simple subdivision plat are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

(1). Simple Plat Preview

(a). An application for a simple plat shall be accompanied with a preview version of the simple plat in a digital format for staff review, along with all other submittal requirements identified on the application, including:

(i). Documentation that property taxes have been paid on all properties within the boundary of the subdivision; and

(ii). Either a copy of a current title insurance policy running to the benefit of the City of Bismarck or a current attorney's opinion of ownership.

(b). City staff shall perform a review of the simple plat preview according to technical specifications and requirements of this Code.

(c). After administrative review is complete, the simple plat preview shall be presented to the City Commission on consent agenda for final approval.

(2). Simple Plat in Recordable Form

(a). After City Commission approval, the applicant shall supply the signed simple plat in recordable form to the Planning Department office on durable paper of the appropriate size for final consideration and signature, along with the following:

(b). Simple plats must be signed or ratified, with notarization, by all fee simple property owners and all financial institutions with a property interest within the boundary of the subdivision plat. Owners of easements do not need to sign or ratify subdivision plats.

(3). Signature of Simple Plat

Upon approval of the simple plat, the following signatures shall be provided:

(a). The City Administrator is hereby authorized to sign as certification of City Commission approval.

(b). The City Engineer is hereby authorized to sign the plat as an approval.

(c). Together these signatures shall denote official final approval of the subdivision plat by the City.

(4). Recordation of Simple Plat

City staff shall submit the final plat for recordation upon approval and signature at the earliest practicable time.

d. Content of Simple Subdivision Plat

A simple plat must meet all of the following standards to be considered by the City for approval:

i. Drawn to scale and dimensioned;

ii. Meet all technical criteria identified on the simple plat checklist available at the office of the Planning Department; and

iii. Meet all requirements of the Burleigh County Auditor and Recorder's Office to allow recordation.

e. Review Criteria

Before making a determination on a simple subdivision plat, the Director shall review and recommend and the City Commission shall find:

i. The subdivision does not result in a lot located in more than one zoning district;

ii. All resulting lots conform to the minimum lot area, width, and other applicable standards of the underlying zoning district in which the property is located, or will when combined with an adjacent lot in conjunction with the request;

iii. The subdivision will not render any structures or uses non-compliant with this Code;

iv. Technical specifications required of the plat have been met;

v. Proper administrative procedures related to the request have been followed; and

vi. The subdivision will not adversely impact the public health, safety, and general welfare.

5. Plat Modification[279]

a. Purpose

The purpose of the plat modification process is to ensure minor modifications to recorded plats, other than easement releases or vacations of public right-of-way, comply with applicable City standards.

b. Applicability

A plat modification shall be required to release non-access lines, release building setback lines, change the name of a street, or modify any other component of a recorded plat in any way other than altering a dedicated easement or public right-of-way.

c. Review Procedures

i. Common review procedures for a plat modification are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures.

ii. In cases when a replacement non-access line(s) is required to be dedicated to satisfy a condition of approval of a non-access line release, the new non-access line(s) may be approved and recorded on the same instrument to release or on a separate instrument and recorded in conjunction with the instrument to release.

d. Review Criteria[280]

i. Non-Access Line Release

Before making a determination on a plat modification involving the release of a non-access line, the Director shall review and recommend, and the City Commission shall find:

(1). The non-access line release will not disrupt:

(a). Traffic operations or diminish traffic safety in the area;

(b). Proper administrative procedures related to the request have been followed; and

(c). The non-access line release will not adversely impact public health, safety, or general welfare.

ii. Setback Line Release

Before making a determination on a plat modification involving the release of a building setback line, the Director shall review and recommend, and the City Commission shall find:

(1). The Land Development Code establishes building setbacks, rendering platted building setback lines—which are no longer permitted by state law—unnecessary;

(2). Proper administrative procedures related to the request have been followed; and

(3). The setback line release will not adversely impact the public health, safety, or general welfare.

iii. Street Name Change

Before making a determination on a plat modification involving a street name change, the Director shall review and recommend, and the City Commission shall find:

(1). The street name shown on the plat of record is confusing, in error, or is otherwise inconsistent with other street names within the City or surrounding areas;

(2). A change to the proposed street name would alleviate the confusion or inconsistency to some degree;

(3). The street name change would improve public navigation and travel;

(4). The street name change would improve emergency response in the area;

(5). Proper administrative procedures related to the request have been followed; and

(6). The street name change will not adversely impact the public health, safety, or general welfare.

6. Plat Vacation[281]

a. Purpose

The purpose of the plat vacation process is to allow the City to consider requests to formally undo or vacate part or all of a previously approved and recorded subdivision plat.

b. Applicability

The same plat vacation procedure is applicable to all recorded subdivisions within jurisdiction of the City. A partial vacation of an element(s) of a recorded subdivision plat may be processed under the plat modification procedures, provided the outer boundary and all lots and blocks remain unchanged.

c. Review Procedures

Common review procedures for a plat vacation are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures, with the following procedures specific to this project type:

i. A recorded subdivision plat, or any part of a recorded plat, may be vacated by:

(1). The developer before the sale of any lots in the subdivision; or

(2). All owners of the lots in the plat signing on to the proposed vacation.

ii. Common application procedures for a plat vacation are established in Section 14-20-03 and summarized in Table 14-20-1: Summary Table of Review Procedures.

iii. A plat vacation that vacates any right-of-way or easement shall follow applicable procedures established in Section 14-20-05.

d. Review Criteria[282]

Before making a determination on a plat vacation request, the Director and Planning and Zoning Commission shall review and recommend, and the City Commission shall find:

i. Any rights-of-way that contribute to the transportation function of the overall street network would not be removed unless a public benefit proportional to the loss of function has been provided;

ii. Stormwater management facilities that are needed for overall stormwater management in the area would not be removed;

iii. Any right-of-way or easements proposed to be vacated as part of the proposed plat vacation area not needed by the City of Bismarck and/or any affiliated entities for public utilities, and/or easements have been granted for any existing utility infrastructure in use within the right-of-way;

iv. Proper administrative procedures related to the request have been followed; and

v. The public health, safety and general welfare will not be adversely impacted by the proposed subdivision.

14-20-07. Appeals

The following procedure shall be applied for all appeals, and not the common review procedures of Section 14-20-03.

1. Appeal of Administrative Decision[283]

a. Purpose

The purpose of the appeal of administrative decision procedure is to provide a fair and structured process for an aggrieved party to seek correction of errors related to the administration and enforcement of this Code.

b. Applicability

The Board of Adjustment is authorized to hear and decide appeals of an administrative action by either:

i. An aggrieved applicant or applicant's representative, upon issuance of any of the following:

[283] Incorporates content from Sections 14-06-03.1, .2, and the procedures manual.

[283] Incorporates content from Sections 14-06-03.1, .2, and the procedures manual.

(1). A denial of a building permit, certificate of occupancy, or any other administrative approval required by this Code;

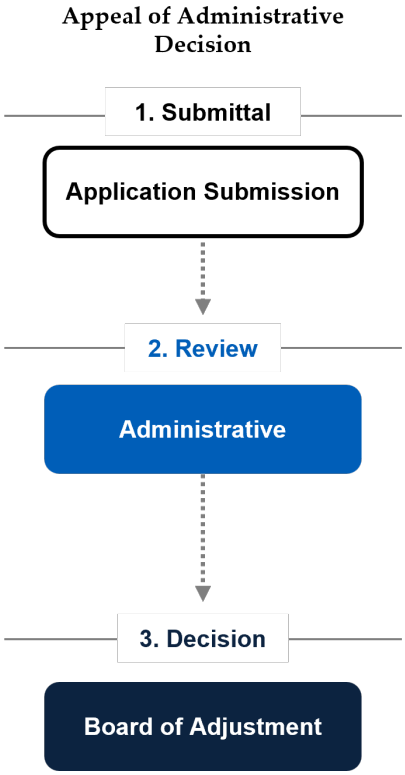
(2). A Code Interpretation that determines a violation occurred; or

(3). Any enforcement remedy or penalty of Chapter 14-22, Enforcement.

ii. Any officer, department, or board of the City affected by a decision of the Director or administrative official of the City in administering and enforcing this Code.

c. Review Procedures

The following procedures apply to an appeal of an administrative decision:



i. The appellant shall file an appeal in writing, which may include email, and pay an application fee within 15 days of the final decision from which the appeal is made. The appellant must specifically identify in their appeal all sections of this Code that they believe were interpreted or applied incorrectly.[284]

ii. An appeal stays the original development application from being processed by the City or pursued by the applicant. Processing the original development application will not be stayed if, after the notice of appeal, the officer from whom the appeal is taken certifies to the Board of Adjustment that a stay, in the official's opinion, would cause eminent peril to life and property. In this case, proceedings will not be stayed unless a restraining order is granted by a court of competent jurisdiction.

iii. The appeal shall be placed on the agenda of the next regular meeting of the Board of Adjustment, unless the appellant requests additional time. Requests to delay the hearing for over one additional month must have a valid justification, as determined by the Director.

iv. Notice of the hearing on appeal shall be provided to all applicable parties in writing, which may include email, at least ten days prior to the hearing.

v. The concurring vote of four Board of Adjustment members shall be required to reverse an order, requirement, decision, or determination of the Director or other administrative official of the City. In its decision, the Board of Adjustment may:

(1). Affirm, modify, or reverse a decision in whole or in part;

(2). Attach conditions of approval; or

[284] New, slightly different timeline than what is identified in the procedures manual (ten days from written notification of the decision).

(3). If the Board of Adjustment determines that additional evidence is needed to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain the needed evidence and to reconsider the decision based on that evidence.

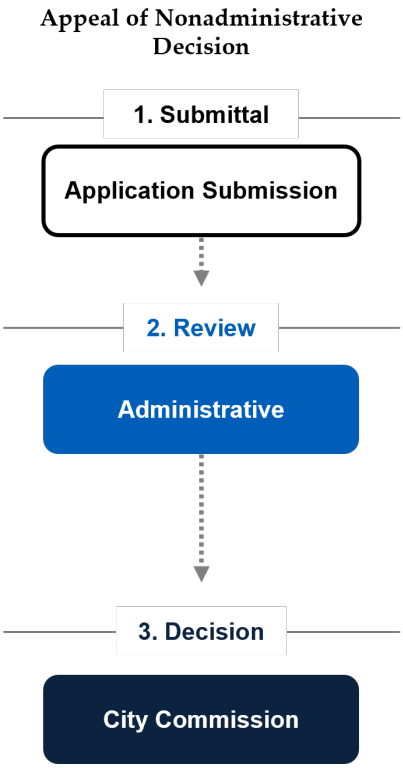
d. Review Criteria

Before making a determination on an appeal of an administrative decision, the Board of Adjustment shall review and determine whether the administrative decision was made in accordance with the intent and requirements of this Code, considering whether the Director or administrative official:

i. Acted in a manner inconsistent with the provisions of this Code; or

ii. Made erroneous findings of fact based on the evidence and testimony on the record.

2. Appeal of Non-Administrative Decision[285]



a. Purpose

The purpose of the appeal of non-administrative decision procedure is to provide a process for appealing non-administrative decisions in reviewing development requests under this Code.

b. Applicability

The City Commission is authorized to hear and decide appeals made by the aggrieved applicant or applicant's representative, or by any officer, department, or board of the City affected by a final decision of the Design Review Committee, Board of Adjustment, or Planning and Zoning Commission in reviewing development applications under this Code.

c. Review Procedures

The following procedures apply to an appeal of a non-administrative decision:

i. The aggrieved party or City official shall file an appeal according to the following timelines no later than 15 days after the final decision

ii. The appeal shall be placed on the City Commission agenda within 30 days of receiving the appeal, unless otherwise agreed by the applicant.

iii. Notice of the hearing on appeal shall be provided to all applicable parties in writing, which may include email, at least ten days prior to the hearing.

iv. The concurring vote of a simple majority of the City Commission shall be required to reverse an order, requirement, decision, or determination of the Design Review

[285] Carries forward 14-06-03.3. Section 14-01-06 has not been carried forward.

Committee, Board of Adjustment, or Planning and Zoning Commission. In its decision, the City Commission may:

(1). Affirm, modify, or reverse a decision in whole or in part;

(2). Attach conditions of approval; or

(3). If the City Commission determines that additional evidence is needed to resolve the matter, it shall remand the appeal to the decision-making body from whom the appeal is taken, with directions to obtain the needed evidence and to reconsider the decision based on that evidence.

v. A final decision of the City Commission may be appealed to the district court in the manner provided in NDCC Section 28-34-01.

d. Review Criteria[286]

Before making a determination on an appeal of a non-administrative decision, the City Commission shall review and determine whether the decision was made in accordance with the intent and requirements of this Code, considering whether the decision-making body:

i. Acted in a manner inconsistent with the provisions of this Code;

ii. Made erroneous findings of fact based on the evidence and testimony on the record;

iii. Failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or

iv. Acted arbitrarily, acted capriciously, or abused its discretion.

[286] Criteria iii. and iv. are new for consideration.

Chapter 14-21 Nonconformities[287]

COMMENTARY

Chapter 14-21, Nonconformities, contains all new content to address the continued existence of uses, structures, lots, signs, and site features that came into existence legally but do not comply with one or more requirements of the new Land Development Code.

14-21-01. PURPOSE

The purpose of this chapter is to regulate the continued existence of uses, structures, lots, signs, and site features that came into existence legally but do not comply with one or more requirements of this Code. The regulations in this chapter are intended to permit these nonconformities to continue until they are removed, but not to encourage their survival.

14-21-02. APPLICABILITY

This chapter applies to all permitted land uses, structures, lots, signs, and site features that were legally created or initiated, but do not conform to the applicable regulations of this Code. It also applies to nonconformities under previously applicable ordinances, even if the type or extent of the nonconformity is different. The burden of establishing that any nonconformity legally existed prior to the effective date of this Code or other applicable date shall, in all cases, rest solely with the property owner.

14-21-03. NONCONFORMING USE

1. Continued Use

a. A legally nonconforming use may be continued and normal or routine maintenance of the structure containing a legally nonconforming use shall be allowed.

b. The right to continue the use shall pass to a future buyer, lessee, or occupant of the property, use, or business or entity that operates the use, provided there is no significant lapse of time in the operation of a legally nonconforming use. See Abandonment of Nonconforming Uses in subsection 3. below.

2. Enlargement of Nonconforming Use

A legally nonconforming use may not be physically enlarged or relocated to occupy any portion of a building(s) or lot that it did not occupy on the date it became legally nonconforming, unless such alterations render the use conforming to the requirements of the Land Development Code.

3. Abandonment of Nonconforming Uses

a. A legally nonconforming use shall be deemed to be abandoned, and the right to continue the legally nonconforming use shall terminate, if:

i. The legally nonconforming use ceases to operate for a period of one year or more, for reasons within the control of the property owner or occupant;

[287] New. Section 14-09-03 has not been carried forward.

ii. The property owner has expressed in writing to the Director or other City official(s) a clear and unambiguous intent to abandon the use.

b. If the Director has determined that a legally nonconforming use has been abandoned, the burden of proving that it has not been abandoned shall rest solely with the property owner.

4. Substitution of Nonconforming Use

a. A legally nonconforming use may be replaced by another use that is not permitted in the zoning district where the property is located, if the Director determines that the proposed use creates fewer adverse impacts on surrounding properties than the current legally nonconforming use. In making this determination the Director shall consider impacts including but not limited to: levels of auto and truck traffic, hours of operation, noise, dust, vibration, and nighttime lighting and glare.

b. An operational alteration of a use, such as provision of new services not previously available, may be considered a substitution of a new use if the Director determines that the change results in a different land use classification.

5. Subdivision of a Nonconforming Use

A legally nonconforming use may be included within a subdivision and remain in continued use, provided all dimensional standards applied by the subdivision conform to the requirements of the Land Development Code.

14-21-04. Nonconforming Structure

1. Continued Use

a. A legally nonconforming structure may continue to be occupied and used, and normal or routine maintenance of the structure shall be allowed, unless and until the Building Official determines that the structure is no longer safe for occupancy.

b. The right to continue use and occupancy of the structure shall pass to a future buyer, lessee, or occupant of the structure.

2. Alteration of Nonconforming Structure

Permitted change to a legally nonconforming are limited to alterations that:

a. Bring the structure more closely or completely into compliance with the applicable provisions of this Code;

b. Comply with applicable provisions of the Americans with Disabilities Act, the Fair Housing Amendments Act, or similar state or federal legislation; or

c. Install any other feature or improvement that the Building Official determines is necessary to protect public health and safety.

3. Expansion of Nonconforming Structure

A legally nonconforming structure may only be expanded beyond its size on the date it became nonconforming if:

a. The expansion does not increase the nonconformity of the structure;

b. The expansion complies with all other applicable standards of this Code; and

c. The Director and Building Official determine that the expansion does not create a threat to public health or safety.

4. Damage or Destruction

a. A legally nonconforming structure, other than a single-family detached principal dwelling, shall be deemed destroyed, and cannot be replaced or re-established except in conformity with this Code, when:

i. More than 50 percent of its floor area is destroyed; or

ii. The cost to repair the damage is more than 50 percent of the actual value of the structure before the damage, as determined by the City Assessor; or

iii. The Building Official determines that the property was damaged by an intentional act of the property owner or occupant.

b. A legally nonconforming structure, other than a single-family detached principal dwelling, that has been damaged, but not destroyed as defined in Subsection a above, may be reconstructed, provided that:

i. The repairs are begun within six months after the date on which the structure was damaged and are completed within 18 months of the date of the damage, unless extended per Section 14-20-03.7.c.ii, Extension of Approval;

ii. The repairs comply with all applicable building and fire codes and building permitting procedures; and

iii. The restoration does not increase the degree of nonconformity that previously existed.

c. A legally nonconforming single-family detached principal dwelling that has been damaged or destroyed may be repaired or reconstructed as long as the restoration does not increase the degree of nonconformity that previously existed. This provision applies whether the detached single-family dwelling is a nonconforming use or structure, or exists on a nonconforming lot.

5. Relocation

A nonconforming structure shall not be moved in whole or in part to any other location on the same lot or to any other lot unless the relocation brings the structure into full compliance with this Code.

14-21-05. Nonconforming Lots

1. Types of Nonconforming Lots

The following types of lots are hereby defined and referred to collectively as legally nonconforming lots:

a. Nonconforming Lot by Dimensions

A lot that has been legally created through a subdivision pursuant to this Code and North Dakota Century Code, that is nonconforming as to size, width, configuration, or

other dimensional standards specified in this Code, unless granted a waiver or adjustment during the subdivision process.

b. Lot of Record

A tract, parcel, auditors lot, lot, or any independent unit of land, regardless of term, recorded with a separate and unique legal description with the Burleigh County Recorder's office prior to May 26, 2009, that has not been legally platted per this Code and North Dakota Century Code or legally created through the City's lot modification process, and meets the following minimum standards:

i. Meets or exceeds the minimum lot area requirement for the zoning district in which it is located.

ii. Has direct access to a public right-of-way or unobstructed access through a legally recorded easement to a public right-of-way.

c. Combined Lot

Two or more lots legally platted pursuant to this Code and North Dakota Century Code that were combined into one parcel by the City Assessing Division on or before May 26, 2009.

2. Continued Use

A legally nonconforming lot may be used for any purpose permitted in the zoning district in which it is located, and all uses or structures on the property may continue in use, notwithstanding its nonconforming status.

3. Access Required

Access from the legally nonconforming lot to a street, pursuant to Section 14-19-04.2.c, must be available before any change of use, development, or redevelopment may be permitted on any legally non-conforming lot.

4. Change of Use

The use of a legally nonconforming lot may be changed to any use that is permitted in the zoning district in which it is located, unless the Director determines that the proposed use creates a threat to public health or safety due to the nonconforming features of the lot.

5. Development or Redevelopment

A new structure may be developed on a legally nonconforming lot, or an existing structure on a legally nonconforming lot may be altered, expanded, or redeveloped, provided that the resulting structure and the use of that structure complies with all applicable provisions of this Code.

14-21-06. Nonconforming Signs[288]

1. Applicability

Any existing permanent sign that does not currently conform to the provisions of this Code, but did conform to all applicable regulations at the time of the sign's installation or most

[288] 14-03.1-10.

recent alteration, relocation, or reconstruction, shall be considered a legally nonconforming sign. Portable or temporary signs may not be considered legally nonconforming.

2. Continuation

A legally nonconforming sign may continue to exist in its vested form, place, and operation and shall not be considered in violation of this Code, unless rendered in violation on the basis of this section.

3. Maintenance and Change of Message

Permit-exempt activities identified in Section 14-18-02.2, Permit-Exempt Activity Types, or any change of message content, may be performed on a legally nonconforming sign only if the activity does not increase the extent to which the sign does not comply with the requirements of this Code.

4. Technological Upgrades

Any electronic elements of a legally nonconforming electronic message center or digital off-premises sign may be replaced or upgraded, provided the overall dimensions, orientation, and location of the screen is not altered and the operation of the sign is in compliance with all provisions of this Code. In cases where the same sign model is no longer available on the market, an available alternative with the closest comparable dimensions may be selected.

5. Relocation

A legally nonconforming sign may not be relocated or reoriented unless the sign in its new location or orientation complies with all provisions of this Code. Temporary removal and replacement of a sign for repair purposes shall not be considered relocation.

6. Alteration

A legally nonconforming sign may not be enlarged or altered, except as allowed by this section. Electronic components or illumination may not be added to a legally nonconforming sign where none previously existed.

7. Reconstruction

A damaged legally nonconforming sign may be rebuilt or reconstructed to resemble its previous condition only if the following conditions are met:

a. The cost of reconstruction does not exceed 50 percent of the replacement cost of the sign at the time of damage.

b. The reconstructed sign is not enlarged or altered such that the sign is non-compliant with the provisions of this Code to a greater extent than the sign was prior to damage.

14-21-07. NONCONFORMING SITE FEATURES

Any site feature lawfully existing at the effective date of this Code that does not conform to the requirements of this Code is hereby declared to be a legally nonconforming site feature and not in violation of this Code. However, a legally nonconforming site feature shall be subject to, and the owner shall comply with, the following regulations:

1. Parking

a. The use of a parking facility that provides fewer spaces than required by this Code may be continued but shall not be further reduced below the number of spaces existing on the effective date of this Code, unless a change of use of the property requires fewer spaces than are in existence or an adjustment is granted.

b. The use of a parking facility that provides more spaces than allowed by this Code may be continued but shall not be further increased above the number of spaces existing on the effective date of this Code, unless a change of use of the property requires more spaces than are in existence or an adjustment is granted.

c. When a building or site is expanded or a use is changed in a manner that increases required parking by 25 percent or more, parking shall be provided consistent with this Code or an adjustment must be granted. No changes to parking are required if a building or use is altered such that fewer parking spaces are required.

2. Landscaping

a. Existing landscaping that does not conform to current standards may be maintained without an immediate requirement to alter, expand, or reinstall the landscaping.

b. If existing landscaping that does not conform to current standards dies, it shall be replaced with landscaping that conforms to the requirements of this Code.

c. When a site is expanded, redeveloped, or subject to site plan approval, all landscaping shall be upgraded to meet current standards.

3. Lighting

a. Legally nonconforming outdoor lighting may continue in use unless deemed a nuisance or code violation, but shall not be altered in a manner that increases glare, spillover, or other adverse effects.

b. Replacement of legally nonconforming outdoor lighting in full shall require the lighting to be brought into compliance with this Code, unless replacement only involves bulbs, filaments, or other elements that are replaced during routine maintenance.

4. Other Features

a. Other legally nonconforming site features, such as screening, or refuse collection areas, may be maintained in use without the immediate requirement to come into compliance with this Code.

b. When such features are replaced or moved to a different location on the site, they shall be brought into compliance with this Code.

Chapter 14-22 Enforcement[289]

14-22-01. Purpose

The purpose of this section is to provide for the fair and consistent enforcement of this Code. It is the intent of this section to declare that any violation of this Code constitutes a public nuisance; to establish clear procedures for investigation, notice, remedies, and penalties; and to ensure that violations are corrected in a timely manner to protect the public health, safety, and welfare.

14-22-02. Responsibility

1. A property owner is responsible for any violation of this Code within the boundaries of their property, and has the duty to ensure that all persons using the property, whether tenants, lessors, sublessors, occupants, operators, or others comply with the Land Development Code.
2. The Building Official and Director, according to duties assigned in this chapter, shall be responsible for enforcement of this Code, with the following exceptions:
    a. The Airport Director shall be responsible for enforcing Section 14-08-01 Airport Overlay District.
    b. The Director of Public Health shall be responsible for enforcing Section 14-02-06 Accumulation of Certain Items Prohibited.

14-22-03. Violations

Within the jurisdiction of the City, the following are hereby declared to be violations of this Code:

1. Types of Violations

a. Development Violation

The construction, reconstruction, alteration, repair, conversion, or maintenance of any building or structure or the grading, improvement, or modification of any land prohibited by this Code.

b. Use Violation

The use or occupancy of any building, structure, or land, prohibited by this Code.

c. Subdivision Violation

The transfer, sale, agreement to sell, negotiation to sell, or recordation of any land by reference to a legal description or exhibit that has not been duly approved for subdivision or recognized as a legally nonconforming lot under requirements of this Code.

[289] New.

d. Procedural Violation

The infringement of or failure to comply with any term, condition, or order instituted by the City Commission or any other board or individual granted authority under the procedures of this Code.

e. Misinformation Violation

The use of factually inaccurate or misleading information, either in submitted documents or presentation during a public hearing, in order to obtain a permit or complete a process of this Code, including the misrepresentation of land ownership or rights.

f. Obstruction of Notice Violation

The obstruction or removal of any public notice issued under this Code.

2. Continuity of Violations

Violations that exist over time shall be considered a separate violation for each day it is in existence, and all such violations shall be considered cumulatively by the procedures of this section.

3. Multiple Violations

Multiple types of violations or multiple instances of any type of violation may be found present on a single property at any time. Such violations may be considered cumulatively by the procedures of this section or may be enforced independently.

14-22-04. Enforcement Procedure

Enforcement action to remedy any violations, actual or suspected, shall be conducted according the following procedure:

1. Investigation

a. The Building Official, upon receipt of credible information that a violation may exist or through a routine process applied evenly to all similarly situated property owners, may conduct an investigation to gather any evidence relevant to ensuring compliance with this Code.

b. The Building Official or designee is authorized to enter any building or premises for the purpose of an investigation, as allowed by applicable law and in Section 04-01-01 of the City Code of Ordinances.

2. Determination of Violation

Upon review of all evidence gathered through investigation and the requirements of, or terms and conditions authorized by, this Code, the Director shall issue a Code Interpretation letter addressed to the Building Official, pursuant to Section 14-20-04.3, making a determination that a violation exists if supported by the facts.

3. Notice and Order

The Building Official may issue a written notice to any person determined to be in violation, containing the following information:

a. A description of the violation on the property with a citation of the provision of the Land Development Code being violated.

b. An order to correct the identified violation by a date certain, if applicable. This shall be known as the corrective date.

c. An order to pay any penalties incurred through the violation, if applicable.

d. A statement issuing notice of the right to appeal the violation determination, including the date and means by which the appeal must be made.

4. Appeal

Any person may appeal a determination of violation, according to Section 14-20-07.1 Appeals of Administrative Decision. Submittal of an appeal shall stay the corrective order until appeal proceedings are completed.

5. Extension

The Building Official may grant, but is not obligated to grant, an extension of the corrective date and allow additional time to correct a violation if the following conditions are met:

a. The person determined to be in violation has requested such an extension in writing.

b. The person determined to be in violation has provided a valid reason for the delay, related to unforeseen conditions outside of their control.

c. The person determined to be in violation reaffirms an intent to continue the process and sustained and measurable progress toward completion is evident.

6. Remedy of Violation

It is the policy of the City to favor voluntary compliance and, unless an imminent threat to public health or safety exists, to offer a reasonable amount of time for correction of violations commensurate with the nature of the violation. Notwithstanding, a permissible remedy or penalty may be instituted to ensure compliance.

14-22-05. Remedies and Penalties

One or more of the following remedies and penalties may be used to ensure compliance with the Land Development Code, as applicable.

1. Withhold Permit

a. The Building Official shall not grant a permit for any of the following:

i. The construction, moving, alteration, or demolition of any building that would result in the violation of this Code, unless an appeal is granted.

ii. Any building unless such building is to be located on a lot in a subdivision platted pursuant to the Land Development Code, unless exempt from platting requirements or a legally nonconforming lot.

iii. A permit for any sign that would result in a violation of this Code.

iv. A floodplain development permit or any action taken by the floodplain manager that would result in a violation of this Code.

v. A demolition permit for the removal of any structure that would result in a violation of this Code.

b. All applications for building permits shall include information as may be necessary to determine and provide for the enforcement of this chapter.

c. Withholding a building permit does not require issuance of a notice and order.

2. Revocation of Permit or Plan Approval

a. At any time, the Director may recommend that an approval be revoked based on applicant noncompliance with approval terms or conditions.

b. The Director shall provide written notice to the approval holder and schedule a show cause hearing as described below:

i. The notice shall state the date, time, and place for a public hearing at which the City Commission will consider whether the development approval should be revoked.

ii. The notice shall also set forth a concise statement of the grounds for revocation.

iii. Notice shall be provided at least 15 days prior to the scheduled public hearing.

c. Following the hearing, the City Commission shall issue a written decision either revoking the approval or finding insufficient evidence to revoke the approval.

3. Stop Work Order

With or without revoking permits, the Building Official may order a stop to work on any building or structure, on any land on which there is an uncorrected violation as herein defined, in accordance with the Building Official's power to stop work under the building code. A stop work order does not require issuance of a notice and order.

4. Withhold Certificate of Occupancy

The Building Official shall not grant a certificate of occupancy to any building in which a zoning violation has been determined to exist until all violations have been corrected or an appeal is granted. Withholding a certificate of occupancy does not require issuance of a notice and order.

5. Notice of Violation Recordation

A violation may be subject to recordation of a notice of violation, including a legal description of the property found to be in violation and a statement of facts regarding the nature of the violation. A notice of violation shall be signed by the Director or Building Official.

6. Administrative Fine

A subdivision violation may be subject to the penalty of a monetary fine not to exceed the maximum allowable by state law. A fine for a subdivision violation shall be incurred individually for each lot or parcel subject to the violation.

7. Abatement

If a violation has not been corrected by the corrective date in a notice or extension thereof, the Building Official is hereby authorized to restrain, correct, or abate the violation and have the costs incurred assessed against the property.

8. Criminal Penalty

A violation of this Code or refusal or failure to comply with any regulation, order, requirement, decision, or determination made under authority of this Code shall be an infraction and punishable as provided in Title 1, General Provisions, of the Code of Ordinances.

9. Civil Penalty

The City reserves the right to utilize any civil action or injunctive relief available in the State of North Dakota to meet the enforcement purpose of this chapter.

Chapter 14-23 Measurements and Definitions

14-23-01. Rules of Measurement

All quantitative provisions of this Code shall be measured according to the following rules:

1. Building Height Measurement

Building height is the vertical distance between the average finished grade along the foundation and a specified point along a building roofline, dependent upon the type of roof.

a. The level of the highest point at the roof beams of flat roofs, parapets, or roofs with not more than one inch of vertical rise to one foot of horizontal run;

b. The deck line of mansard roofs;

c. The mean height level of the top of the main plate and highest ridge for other roofs.

d. When a building has multiple roofs, the roof with the tallest ridge or greatest height shall be used to calculate total building height.

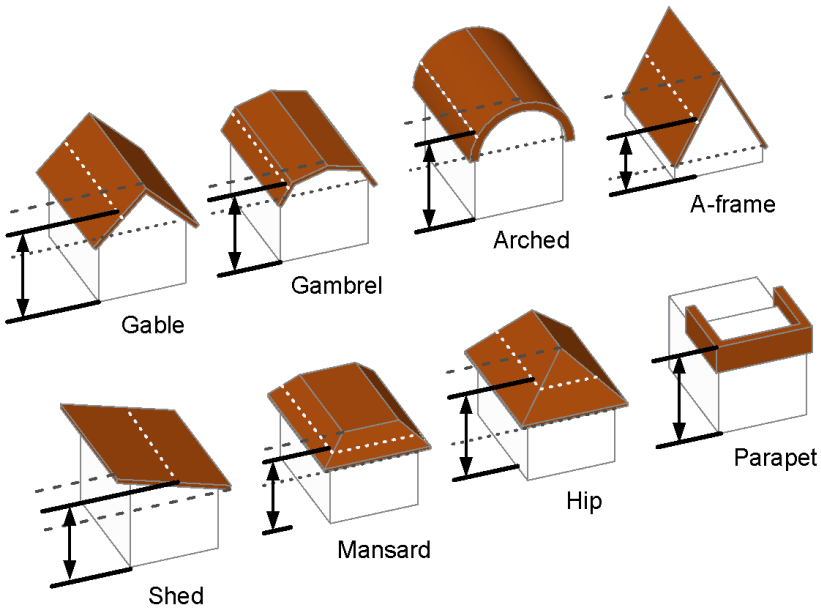


Figure 23-1: Building Height Measurement

2. Distance Between Structures

The shortest horizontal distance measured between the vertical walls of two structures perpendicular to an axis, all points along which are midway between the vertical walls.

3. Density

Density of dwelling units shall be calculated as the number of dwelling units per net acre of land. The land area shall exclude any public rights-of-way, private streets, floodways, an easement that prevents development, or any area otherwise determined by the Director to be unbuildable.

4. Floor Area

a. Floor Area

The sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls or from the centerline of walls separating two buildings.

b. Floor Area, Gross (GFA)

The sum of the horizontal areas of the several stories of a building, measured from the exterior faces of exterior walls, or in the case of a common wall separating two buildings, from the centerline of the common wall.

c. Floor Area, Net

The horizontal area of a floor or several floors of a building or structure; excluding those areas not directly devoted to the principal or accessory use of the building or structure, such as storage areas or stairwells, measured from the exterior faces of exterior or interior walls (when calculating floor area for a specific section of interior space, such as one room).

5. Fractions

a. Minimum Requirements

When a regulation is expressed in terms of a minimum requirement, any fractional result will be rounded to the next whole number. For example, if a minimum requirement of one tree for every 30 feet is applied to a 50-foot strip, the resulting fraction of 1.37 is rounded up to two required trees.

b. Maximum Limits

When a regulation is expressed in terms of maximum limits, any fractional result of 1/10 or above will be rounded to the next whole number (fractions shall be truncated at the first decimal place). For example, if a maximum limit of one dwelling unit for every 20,000 square feet is applied to a 56,000-square-foot site, the resulting fraction of 2.8 is rounded up to three allowed dwelling units.

6. Intersection Spacing

Intersection spacing is the distance between center points of intersections measured along the centerline of the subject street, as the linear distance or arc length following curvature of the street, with the additional considerations:

a. Private streets shall be included in measurements, but driveways and alleys shall not be included.

b. Intersections of three street segments (T-intersections) or more shall be included.

c. Intersections with an arterial street shall be counted when measuring the intersection spacing along a local or collector street.

Figure 23-2: Intersection Spacing Measurement

7. Lots

a. Lot Area

The area of a lot includes the total horizontal surface area within the lot's boundaries.

b. Lot Depth

The distance between the midpoint of the front lot line and the mid-point of the rear lot line.

c. Lot Width

The horizontal distance between the side lot lines measured at right angles to its depth along a straight line located at the minimum front setback line. Lot width for a lot with a curved frontage is measured at the front setback line adjacent to a public street. See Figure 23-3.

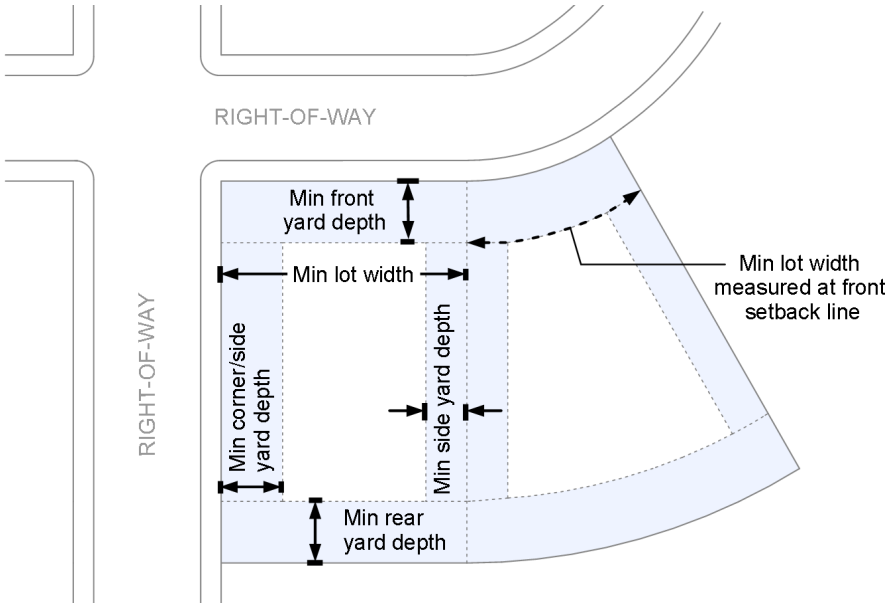


Figure 23-3: Measuring Lot Width and Setbacks Lines

d. Property and Lot Lines

Lot line interpretation, as needed, shall be made by the Director.

i. Property Line

The legally described boundary line that indicates the perimeter boundary of a parcel, tract, lot, or block to delineate ownership and setback requirements.

ii. Lot Line

A boundary of a lot, whether on a subdivision plat or other legal description of record.

(1). Lot Line, Front

The street line at the front of a lot. On corner lots, the shorter frontage shall be designated as the front lot line.

(2). Lot Line, Interior Side

A lot line that is not a front lot line or rear lot line and is not adjacent to a street or alley.

(3). Lot Line, Street Side

A side lot line adjacent to a street other than an alley.

(4). Lot Line, Rear

The lot line opposite and most distant from, and parallel or close to being parallel to, the front lot line. A triangular lot has no rear lot line.

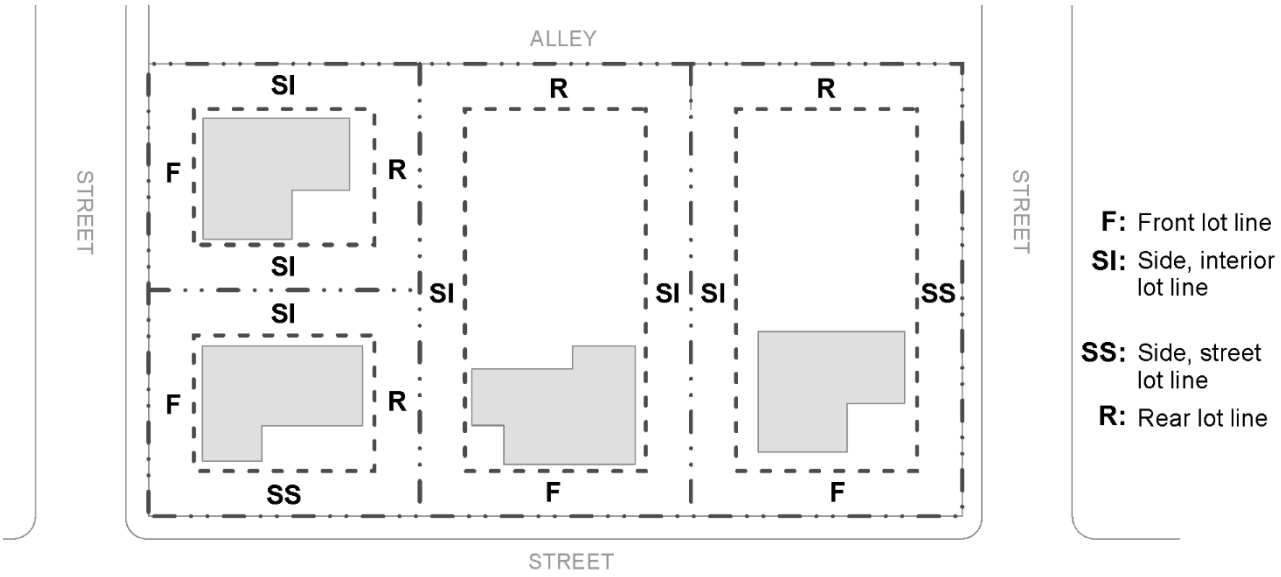


Figure 23-4: Lot Lines on Interior and Corner Lots

e. Irregular Lots

In the case of irregularly shaped lots, the rear lot line shall be those lines that are most nearly opposite the front lot line. To the maximum extent possible, setbacks of irregular lots will match the setbacks of adjacent lots.

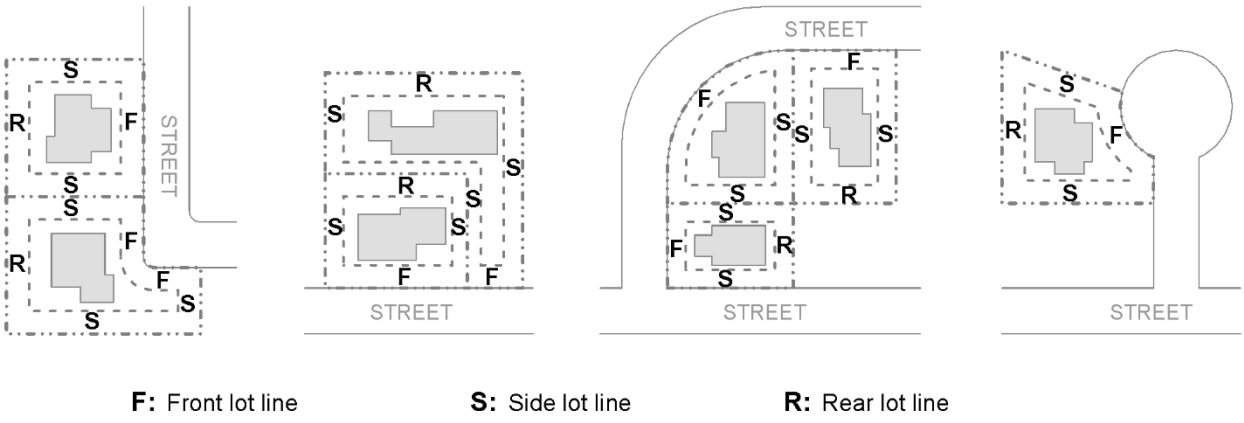


Figure 23-5: Lot Lines and Setbacks on Irregular Lots

8. Lot Coverage[290]

The percentage of the total lot area that is covered by either:

a. A building or structure, as measured along the outside wall at ground level, and including all projections, other than unroofed porches, fire escapes, and the first two feet of a roof overhang.

b. The minimum required parking spaces as applied during the site plan review, including any adjustments, or measured based on off-street parking requirements of the applicable use if no site plan is available. Required parking met within a garage is already counted within the building area and shall not be counted twice.

9. Lot Types

a. Corner Lot

A lot at the junction of two or more intersecting or intercepting streets where the angle of intersection of the lot lines does not exceed 135 degrees.

b. Double Frontage (Through) Lot

A lot having a pair of opposite lot lines along, and with legal access to, two relatively parallel public rights-of-way and that is not a corner lot. A through lot shall have two front lot lines at opposite ends of the lot. The front setback provisions of this section shall apply to both. Other sides of a through lot shall be subject to side setback standards. For exceptions to fencing standards, see Section 14-02-04, Dimensional Standards General Rules and Exceptions.

[290] With the establishment of a definition for this, and a method of measuring it, we can discuss whether any additional development limitations should be considered, such as impervious surface coverage.

c. Reverse Frontage Lot

A through lot that is not legally accessible from one of the parallel or non-intersecting streets upon which it fronts. The frontage to the accessible street shall be considered the front lot line.

d. Flag Lot

A lot not meeting the minimum lot width at the public street frontage, and where access to a public street is limited to a narrow strip of land or private access way.

e. Interior Lot

Any lot that is not a corner lot or double frontage (through) lot.

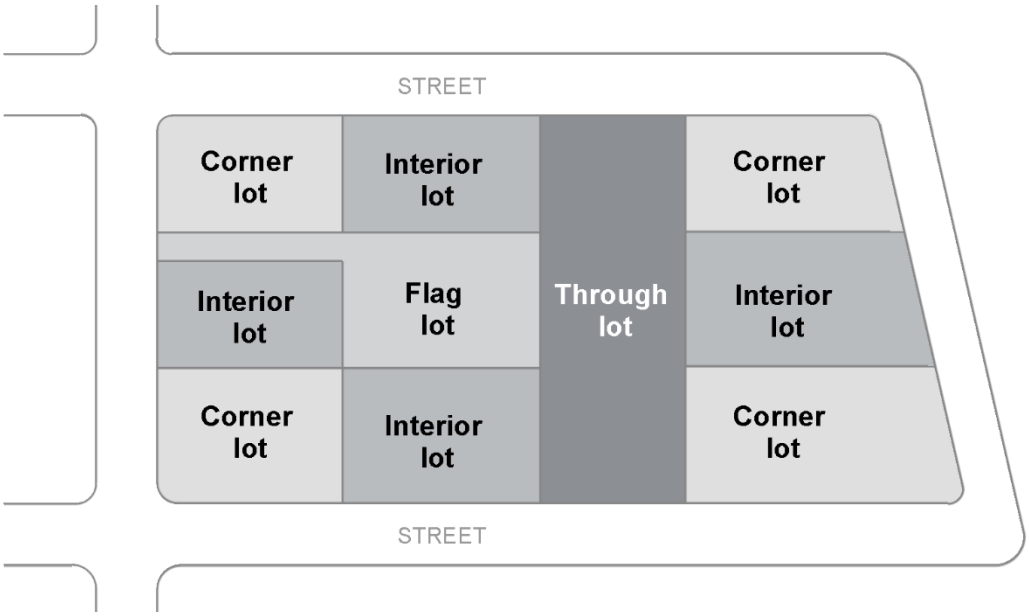


Figure 23-6: Lot Types

10. Setbacks

All setbacks are measured from the property line to the walls, or the outermost exterior structurally supporting features (such as columns), of the building, or the projecting building element, such as deck or porch. The following standards apply by type of setback:

a. Front and Street Side Setbacks

Front and street-side setbacks extend the full width and/or depth of a lot. The front and street side setbacks will overlap at the outside corner of the lot.

b. Interior Side Setbacks

Interior side setbacks extend from the required front setback line to the required rear setback line and are measured from the side property line. If no front or rear setback is required, the required setback area shall run to the opposite lot line.

c. Rear Setbacks

Rear setbacks extend the full width of the lot and are measured from the rear property line.

d. Private Street Setbacks

For purposes of setback measurement, a private street is considered equivalent to a public right-of-way. In such cases, the front or side street setback is to be measured from the edge of a dedicated access or private street easement. Access easements that do not qualify as a private street do not require a setback.

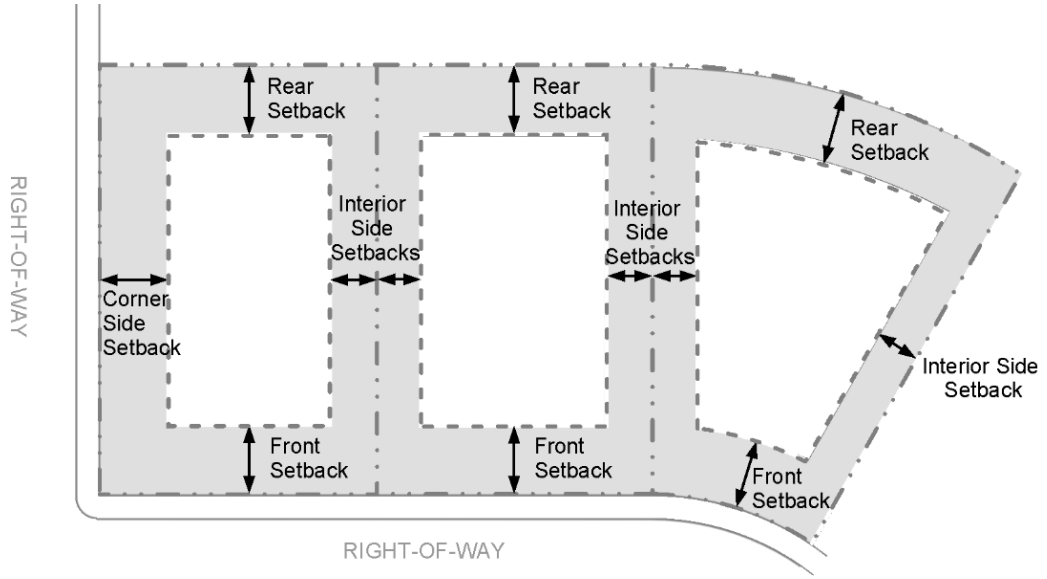


Figure 23-7: Building Setbacks

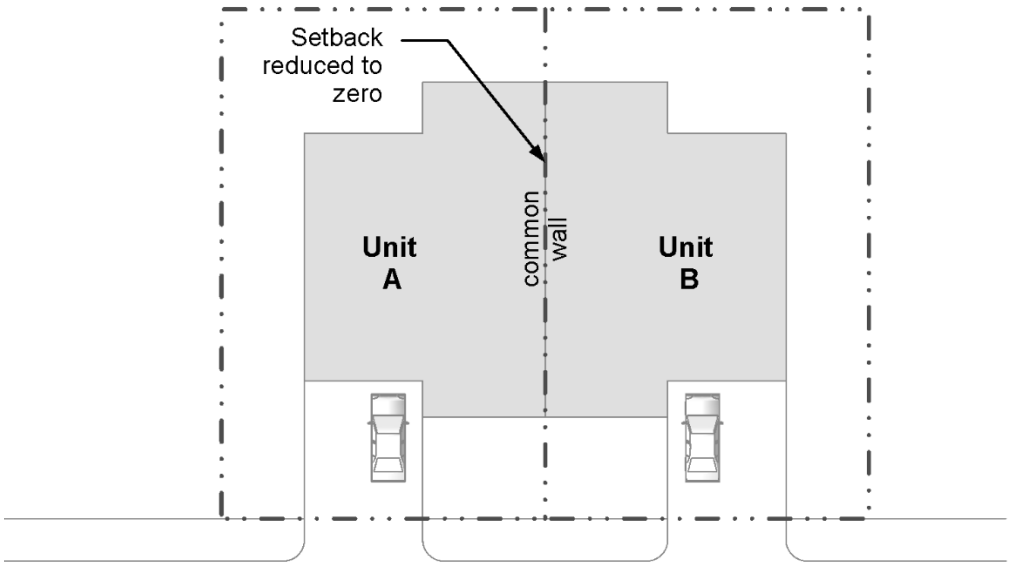


Figure 23-8: Common Wall Setback

e. Parking Setbacks

Parking setbacks are measured from the property line inward.

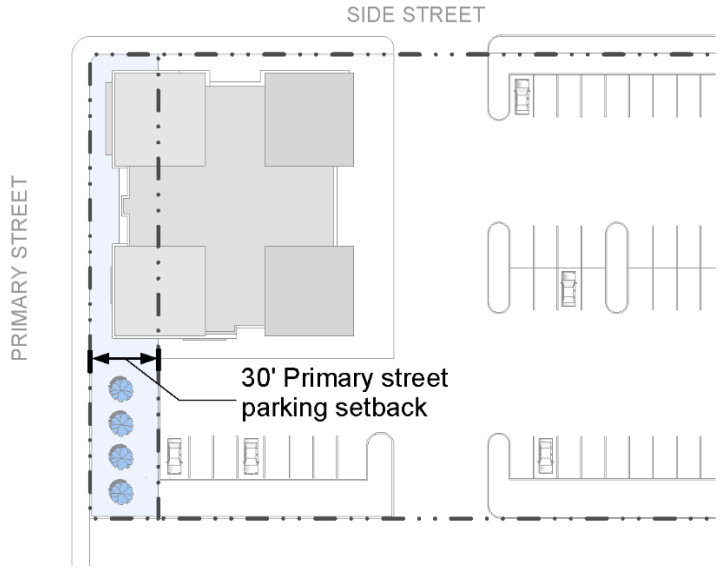


Figure 23-9: Example Parking Lot Setback

f. Contextual Setbacks

Contextual setbacks are measured from each reference lot in the same manner as a front yard setback is measured, excluding any allowable encroachments into the setback that may exist on the property.

11. Sight Triangle[291]

a. Description

An area of unobstructed vision at the intersections of streets, alleys, and driveways. The purpose of the sight triangle is to ensure visibility for operators of motor vehicles, bicycles, and pedestrians on intersecting streets, driveways, and alleys at a height between three and ten feet.

b. General Area of Measurement

The sight triangle is measured from the point of intersection of the two property lines extending in both directions a specified distance along the right-of-way lines or property lines, then connecting the points to form a triangle encompassing the area of the lot within that triangle.

c. Intersection of Two Streets

For any use on a corner lot, the sight triangle is measured from the point of intersection of the two property lines a distance of 25 feet in both directions along the street right-of-way lines.

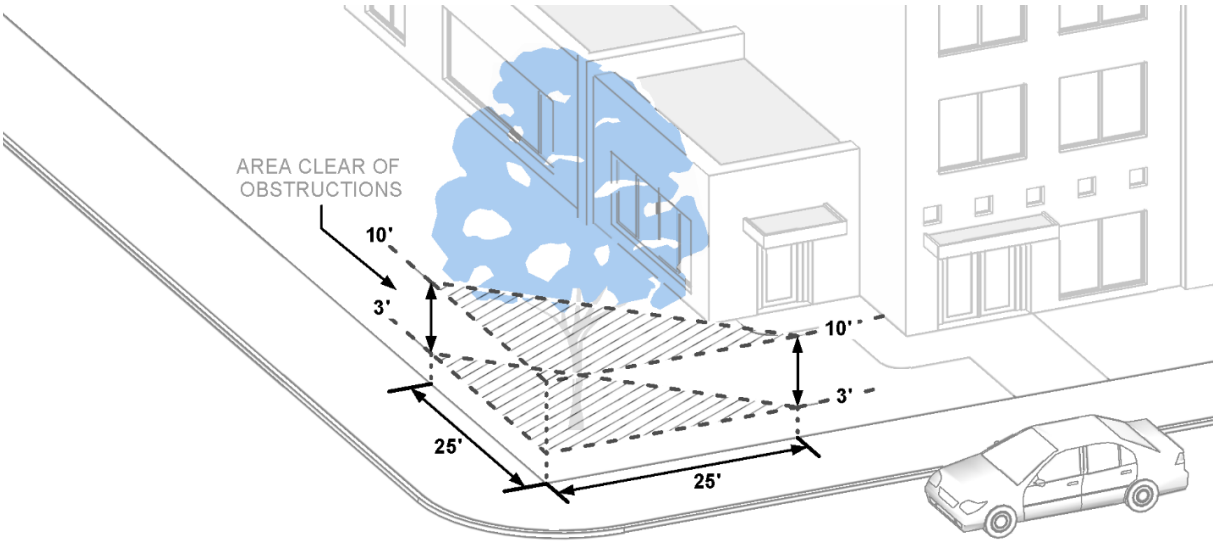


Figure 23-10: Sight Triangle for Intersection of Streets

d. Intersection of a Street and an Alley or Driveway

For a commercial, industrial, institutional, or multi-family residential use with an alley or driveway, the sight triangle is measured from the point of intersection of the street right-of-way line and the alley or driveway edge for a distance of 15 feet.

[291] Provision a, c, d, and e have been relocated from the definition for sight triangle, and subject to copy editing. A limited exemption process will be added in Module 3.

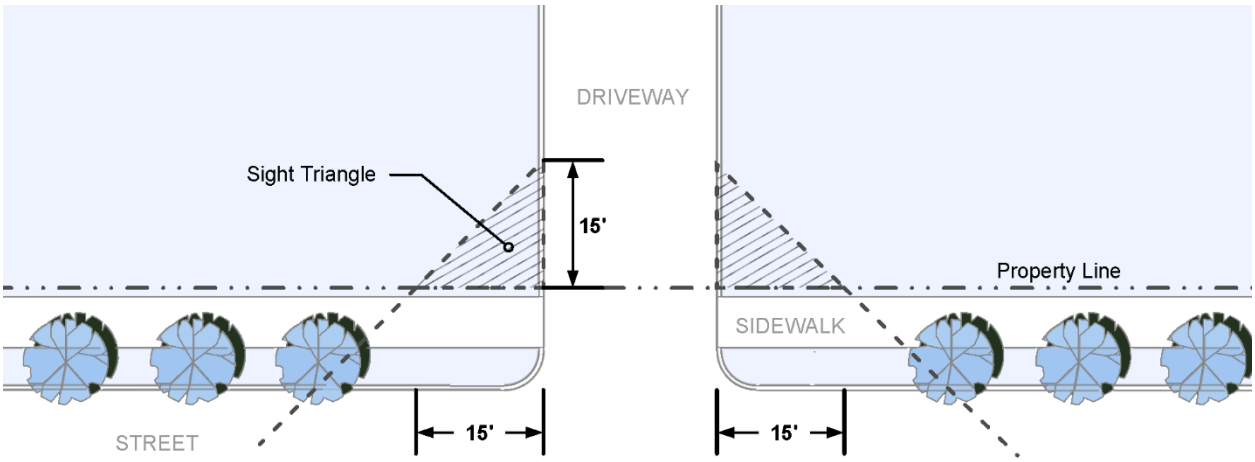


Figure 23-11: Sight Triangle for Driveway and Street Intersection

e. Sight-triangle Easements

If a sight-triangle easement is dedicated on the subdivision plat or a separate document duly recorded for the property, that easement takes precedence over measurement criteria of this section.

12. Signs

a. Allowable Sign Area

Wherever a total allowable sign area is applied in this chapter, the following methods shall be used to determine area measurements:

i. Outside of Downtown Zoning Districts, the total allowable sign area for all signs on a parcel is based on the length of linear street frontage of the parcel on a public right-of-way, other than alleys, towards which the sign or signs are oriented.

ii. In Downtown Zoning Districts, total allowable sign area for all signs on a parcel is based on the length of street frontage that is occupied by a building at any point along a perpendicular line extending from the street frontage, other than alleys, towards which the sign or signs are oriented.

iii. The primary street frontage shall be considered the side from which the principal structure on the parcel has its primary entrance, which is the means by which the majority of the ground-floor space of the building is accessed or the most commonly used entrance for the building. In such cases where said entrance is on a corner or the classification is otherwise ambiguous, the Director shall assign one street frontage as primary.

iv. Secondary street frontages shall be considered all sides of a property that are not considered the primary street frontage.

v. The total allowable sign area of any street frontage, whether primary or secondary, may be applied to any sign that is visible from that frontage, including the combined total from multiple street frontages. The total allowable sign area of any street frontage may not be applied to any sign that is not visible from that frontage.

vi. Only permitted signs are included in total allowable sign area calculations. Permit-exempt signs shall not be included.

b. Area of Sign Face

The area in square feet of a sign face, not including any supporting structures, is measured as follows:

i. Signs within a cabinet or base with a regular polygon or circular shape shall be measured as the total area of the shape, including any frame.

ii. Signs with irregularly-shaped sign faces or multiple parts, such as independent letters or logos, shall be measured as the area of the smallest single polygon with all interior angles less than 180 degrees that encompasses the entire sign face.

Figure 23-12: Irregular Shape Area Measurement (area within the dashed line)

iii. Signs on a non-planar shape, such as spheres, cylinders, cones, or other multidimensional shapes, shall be measured as the area of the sum of the four vertical sides of the smallest cube that completely encompasses the sign.

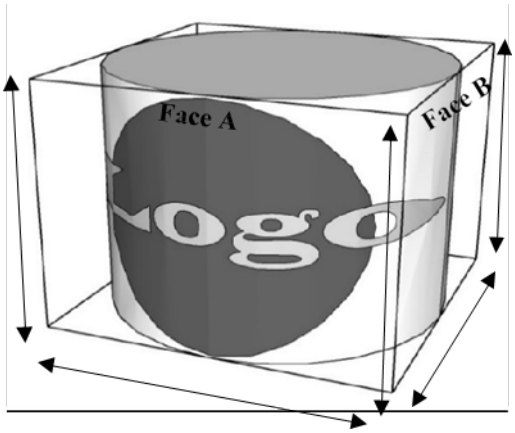


Figure 23-13: Non-planar Shape Measurement

iv. Signs with two faces are measured as the area of only the larger of the two faces, as long as the faces are no greater than 18 inches from each other in distance and are either parallel to or at an interior angle of less than 30 degrees with each other. Signs with multiple faces that do not meet this condition shall be considered separate signs for each face.

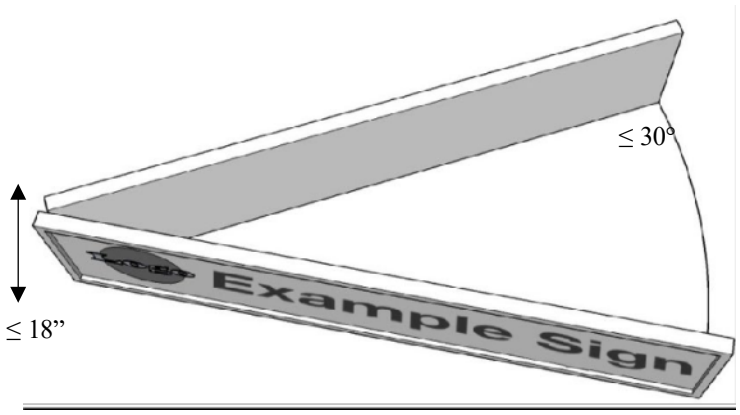


Figure 23-14: Sign with Two Faces Measurement

c. Height of Sign

The vertical distance in feet between the top of the curb of the roadway nearest to the pole, monument, or building wall supporting the sign and the highest point of the area of the sign face.

d. Setback of Sign

The horizontal distance between any part of a sign or supporting structure and the front property line of the parcel the sign is located within.

e. Clearance of Sign

The vertical distance between any part of a sign, including supporting structure, and the highest finished grade directly beneath the sign.

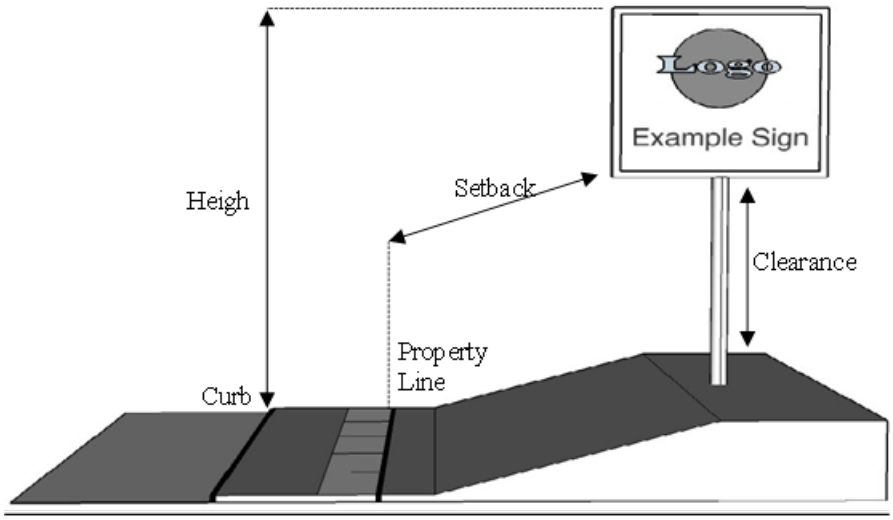


Figure 23-15: Sign Height, Setback, and Clearance Measurements

f. Spacing of Signs

i. Measurement between signs is the shortest distance between two signs, as measured horizontal to the ground plane from any point on both signs.

ii. Measurement between a sign and intersection is the shortest distance between the sign and the center point of the intersection.

g. Illumination of Signs

The illumination of signs is measured in footcandles by an illuminance meter. Two measurements must be taken, one for ambient light and another for operational light, with as short a duration between tests as practicable. Required illumination levels are determined by subtracting ambient light from operational light.

i. Location of Tests

Measurements shall be taken from a distance no closer than the nearest curb of a public right-of-way or the nearest property line to the subject sign at a height of three feet above the ground.

ii. Time of Tests

Measurements may be taken at any time. However, conducting tests at least 30 minutes past sunset is recommended.

iii. Testing Method

Ambient light is recorded with the subject sign turned off, or alternatively the sign may be blocked by a dark and opaque object. Operational light is recorded with the sign turned on and displaying a full white image or alternatively measured as the highest level recorded during normal sign operation. The light meter shall be pointed directly at the sign for both tests.

h. Dimensional Signs

A requirement for a sign to be dimensional means that

13. Streets

a. Width

The shortest distances across a street along a typical cross-section, not including turning-lanes, curb extensions, or other variations. Streets with standard curbs are measured between the faces of the curbs. Streets with mountable curbs are measured between points at six inches from the backs of each curb. Streets with no curbs are measured from the ends of the pavement area.

14. Time

a. References to days are calendar days unless otherwise stated. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or a holiday observed by the City, that day shall be excluded, and the next working day is the last day.

b. References to months and years are calendar months or calendar years, respectively, unless otherwise stated. All references to intervals of months or years are measured as the interval between the calendar days within each month or year. For example, six months after January 1 is always July 1 of a given year. If the interval includes a beginning and end calendar day that do not match, the next working day shall be the last day. For example, six months after March 31 would be October 1, since September only has 30 days.

c. All measurements of time are based on standard civil timekeeping and do not vary based on the motion, location, or gravitational environment of any person or object.

14-23-02. Definitions

The definitions in this chapter apply to terms used in the Land Development Code, structured as follows:

1. Most terms are indexed alphabetically, but certain commonly-used compound terms are indexed alphabetically by the root word, such as Lot, Street, and Building.
2. All uses are defined in Chapter 14-10 Use Definitions and Use-Specific Standards, and not within this chapter.
3. Terms used for the Airport Overlay District, Floodplain Overlay District, or Downtown Zoning District are listed in their respective sections. All other terms are defined in the General Definitions.

General Definitions

A Terms

Access Point

A designated location where vehicles, pedestrians, or utilities are permitted to enter or exit a property from a public or private roadway.

Access Easement

See “Easement, Access”

Access Management

The process of managing access to land development while preserving the regional flow of traffic in terms of safety, capacity, and speed.

Accessory Structure

A permanent, or semi-permanent, ancillary building or structure, the use of which is customarily incidental to that of a principal building on the same lot, including but not limited to garages, storage sheds, playhouses, kennels, personal greenhouses, barns, stables, coops, storage buildings, garden sheds, tent-like structures, storm or civil defense shelter, radio towers, satellite receiving or transmitting stations or antennas, and other structures, towers, antenna, ornaments or devices.

Accessory Use

A use of land that is customarily incidental and subordinate to the principal use of a property, located on the same lot, and serving a purpose that supports or complements the primary use. An accessory use is distinct from a secondary use, which may not functionally relate to the principal use of the lot.

Active Mobility Plan

A map showing existing and future shared-use trails and street connections for bicycle and pedestrian mobility as a component of the adopted Comprehensive Plan.

Adjustment

An official approval that allows a property to deviate slightly from specific requirements.

ADA (Americans with Disabilities Act)

Federal civil rights law that prohibits discrimination against individuals with disabilities.

Adjacent Lot

A lot or parcel of land that abuts, adjoins, or shares a property line or boundary with another lot.

Affected Lot

A lot or parcel of land that is directly impacted by a development or development activity, including, but not limited to, a zoning map amendment, subdivision of land, special use permit, adjustment, appeal, and/or variance.

Alley

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

Ancillary

A secondary function of a principal use that is subordinate to the principal use yet integral to its primary function. An ancillary function shall be considered a component of the principal use and not defined and regulated as an accessory use. Examples of ancillary uses are storage in a retail store, an office in an industrial warehouse, a cafeteria in a school, or a conference room in an office building.

Annexation

The legal process by which the city expands its boundaries to incorporate unincorporated land into its corporate limits.

Apiary[292]

A place where bee colonies, hives, or combs are kept.

Appeal

A formal request to review, reverse or modify a decision made by the zoning administrator, planning and zoning commission, or other City official.

Approach

The improved area between a roadway and private property that provides vehicular access to a lot or parcel of land.

[292] New.

Average Finished Grade

The elevation determined by averaging the highest and lowest elevations of a parcel, building site or other defined area of land after final grading.

Awning

Any structure or shelter attached to and projecting outward from the face of a building, typically extending over a sidewalk or other thoroughfare.

B Terms

Base Zoning District

See “Zoning District, Base”

Basement

Generally, that portion of a building below the first story joists, the floor of which is more than one-half clear ceiling height below the adjacent finished grade level. For the purposes of the floodplain district, a basement is any area of a building having its floor subgrade (below ground level) on all sides.

Bicycle

A vehicle with two-wheels in tandem that is propelled by pedals and steered with handlebars.

Bicycle Parking Space

An area designated for the purpose of parking and securing bicycles.

Bioswale[293]

Landscape elements designed to concentrate or remove silt and pollution from surface water runoff.

Block

A unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any other barrier to the continuity of development, as shown on an approved subdivision plat.

Block Face[294]

All lots on a block fronting on a public or private street of any classification in the Comprehensive plan, on the same side of the street, and between two consecutive street intersections, not including alleys.

[293] Changed from Bio Swale. Common usage renders this as one word.
[294] New

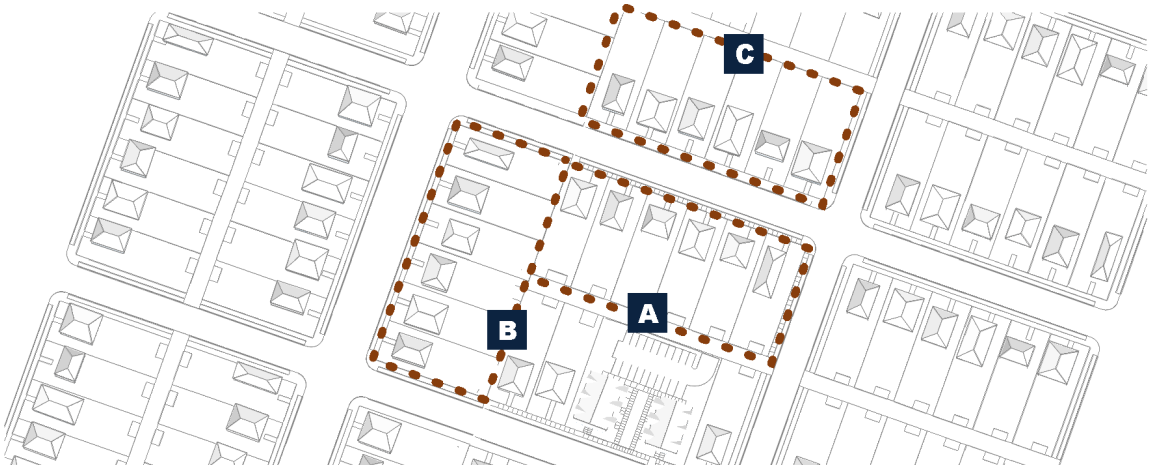


Figure 23-16: Example Block Faces

Boulevard

The portion of the public right-of-way that separates the pedestrian sidewalk from vehicular travel lanes.

Boundary Fence

A fence or physical barrier constructed along or near the property line of a lot, marking the boundary between lots or parcels of land.

Buffer

A combination of physical space and vertical elements, such as plants, berms, fences, or walls, the purpose of which is to separate and screen changes in land uses from each other.

Building

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

Building Footprint

The area on a lot that is covered by the building at ground level, including overhangs and covered projections, as viewed from above.

Building Form

The shape and structure of a building as distinguished from its substance or material.

Building Frontage

That portion of a building or structure that is adjacent to or faces that public frontage. A building located on a corner lot may have multiple building frontages where there is public right-of-way on two or more sides.

Building-Integrated Solar Energy System

Any active solar energy system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include but are not limited to

photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.

Building-Mounted

A system, device, or structure that is physically attached to and supported by a building's roof, wall or other structural component, rather than being installed on the ground.

Building Official

The Director of the Building Inspections Department responsible for administering the City's building requirements and other duties assigned in this Code.

Building Permit

A permit issued by the Building Official allowing construction, alteration, repair, or demolition of a structure.

Building, Principal

See "Principal Building"

Bylaws

Adopted internal rules that govern the organization, procedures, and operations of a board or commission.

C Terms

Carport

An attached or detached roofed structure designed to provide shelter for motor vehicles that is open on at least one or more sides and not fully enclosed by walls.

Certificate of Occupancy

An official document issued by the Building Official certifying that a building or structure complies with applicable building codes, zoning regulations and land uses, and is safe for occupancy.

Change of Use

The conversion of a building or structure from one legally established land use classification to another use classification.

Chicken Coop[295]

A cage or enclosure for housing chickens.

Circulation

The system and pattern of movement of vehicles, pedestrians, bicycles, and transit within and around a development site or throughout the community.

[295] New.

City Commission

The Bismarck Board of City Commissioners as constituted in Title 2 of the Bismarck Code of Ordinances.

Clearance

The minimum required distance or space between structures, natural features, or public infrastructure and certain objects or boundaries to ensure safety, accessibility, and compliance with zoning, building, and other municipal standards.

Code of Ordinances

The Bismarck City Code of Ordinances.

Commercial

A land use category that involves the buying, selling, or provision of goods and series, including retail, offices, restaurants, and other business activities, typically intended for profit rather than residential or industrial purposes.

Community-wide event

Any special event or other local, cultural, educational, or sporting activities of specific benefit to the City. Any content with the primary purpose of endorsing or promoting commercial interests; campaign messages that endorse or oppose a candidate for election to public office; or business logos and sponsorships by commercial entities shall not be considered advertisement of a community event

Complete Application

Includes all required application information and submittal documents necessary for review and evaluation of a request, as specified by the Planning Director.

Comprehensive Plan

The most recently-adopted statement in documented text setting forth explicit goals and objectives of the City of Bismarck to guide public and private development, adopted by the Bismarck Planning and Zoning Commission and the City Commission.

Condominium

A form of property ownership in which individuals own separate units within a multi-unit building or complex, while sharing ownership of common areas and land, with rights and responsibilities governed by a condominium association.

Construction Specifications and Design Guidelines

The most current version of the City of Bismarck’s Construction Specifications for Municipal Public Works Improvements and Engineering Department Design Guidelines.

Controlling Development Measurement (CDM)

The measurement in any zoning district that establishes the required baseline standard to determine how much development is allowed on a parcel. The CDM may be a lot size, a lot width, a density, or the application of a set of development standards.

County

The County of Burleigh County, North Dakota.

County Engineer

The County Engineer of Burleigh County or a duly authorized representative of the County Engineer.

Covenant

A private and legally binding agreement or restriction placed on a property that governs how the land may or may not be used.

Cross Access

A service drive providing vehicular access between two or more contiguous sites, so the driver need not enter the public street system.

Cul-de-Sac

A street or roadway that has only one inlet/outlet and terminates in a permanently closed end, often with a circular or bulb-shaped turnaround to allow vehicles to reverse direction safely.

Cultural Facility

A publicly accessible building or structure used primarily for the performance, exhibition or benefit of arts and heritage activities, including but not limited to, museums, art galleries, and theaters for the performing arts.

Culvert

A structure that allows water to flow under a road, driveway, railroad or embankment, ensuring proper drainage.

Curb

The raised or defined edge along a street or roadway that separates the vehicular travel lanes from sidewalks, boulevards, or other similar features, serving both functional and regulatory purposes in traffic management, drainage, and public safety.

Curb cut

A designated opening or lowered section of curb that provides vehicular access from a street to a driveway, parking lot, or private property, allowing vehicles to enter or exit safely.

D Terms

Dead end

A roadway that terminates without connecting to another street.

Dedication

The voluntary or required transfer of land or an interest in land by a property owner to the City or County for a public purpose.

Demolition

The intentional tearing down, removal, or destruction of a building or structure on a property, whether fully or partially.

Density[296]

The number dwelling units developed on an acre of land.

Density, Gross

The measurement of density on a district-wide basis, expressed as the number of dwelling units allowed per acre.

Density, Net

The measurement of density at a parcel level, expressed as a measurement of how many units the specific site allows.

Development Activity

Any human-made change to premises, including but not limited to:

1. The erection, conversion, expansion, reconstruction, renovation, movement, or structural alteration, or partial or total demolition of buildings and structures;
2. The subdivision of land;
3. Changing the use of land, or buildings or structures on land; or
4. Mining, dredging, filling, grading, paving, excavation, drilling, or landscaping of land or bodies of water on land.

Development Agreement

A legally binding contract between a property owner or developer and the City that specifies the terms, conditions, and obligations for development of a property.

Developer

An individual, company, or organization that undertakes the improvement of land, including the construction, subdivision, or redevelopment of property.

Director[297]

The Director of the Planning Department, or any person(s) designated by the Director to administer and enforce the Land Development Code.

Drive Aisle

The internal vehicular travel lane within a site that provides access to parking spaces, loading areas, or driveways.

[296] Removed reference to number of families as a means for calculating density.

[297] Formerly Zoning Administrator.

Drive-Through

A facility, building feature, or equipment at which an occupant of a vehicle may make use of the service or business without leaving their vehicle.

Driveway

A private access that connects a public street right-of-way to a property.

Driveway, Shared

A single driveway that is privately owned but below the threshold of a private street.

Driveway Apron (or Approach)

The part of the driveway that lies within the street right-of-way adjacent to the property. The driveway apron is often flared to accommodate access. The driveway apron or approach is typically located between the sidewalk and the curb. When there is no sidewalk, the apron or approach shall be defined as extending a minimum of six feet from the back of the curb toward the lot line.

Dwelling/Dwelling Unit

A building or portion thereof arranged or designed to provide living facilities for one or more families, including permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "dwelling" shall not be deemed to include transient housing facilities.

E Terms

Easement

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

Easement, Access

A legally recorded easement that allows a person, property owner, or the public to cross or use a portion of another person’s land for ingress and egress.

Easement, Slope Protection

A legally recorded easement that reserves a portion of land ensuring long-term structural stability of the land and drainage control.

Easement, Stormwater and Drainage

A legally recorded easement for conveyance, storage, infiltration, and/or maintenance of stormwater runoff and drainage facilities.

Easement, Temporary Turnaround

A legally recorded easement granting the temporary access to ensure safe and adequate space for vehicles to turn around at a temporary dead end streeet, while preserving the ability to extend the roadwy in the future.

Easement, Utility

A legally recorded easement granting to a municipality, public utility, or service provider to install, operate, access, repair, replace, and maintain utility infrastructure on or beneath a portion of private property.

Effective Date

October 1, 2026, which is the date this Code became effective. The effective date shall remain the same even after subsequent amendments to the Land Development Code.

Electronic component

A small-scale electronic component of a permanent sign.

Encroach

To extend, project above, or occupy any portion of a required setback, easement, right-of-way, or other area where structures or uses are restricted by this Code or general property law. Encroachment includes any part of a building, structure, appurtenance, or site improvement that intrudes into an area in which it is not permitted, whether above, at, or below grade.

Encroachment Agreement

A written, legally binding agreement between a property owner and the City and/or County permitting a private improvement to extend into or occupy a public right-of-way or easement.

Extraterritorial Area (ETA)

The territorial zoning and subdivision authority of the City which extends to all unincorporated land located within the limits of negotiated agreements with Burleigh County and/or organized townships, as authorized by the NDCC.

F Terms

Façade

Exterior face (side) of a building which is the architectural front, sometimes distinguished by elaboration or architectural or ornamental details.

Fence

A freestanding barrier, typically constructed of wood, metal, vinyl, masonry, or similar materials, that is erected to enclose, screen, mark, or separate areas of land.

Fence, Barbed Wire

A type of fencing material consisting of stranded wire with sharp barbs or points spaced at intervals along its length.

Fence, Electric

A fence designed to deliver an electric shock upon contact.

Financial Surety

A financial guarantee provided by a developer, contractor, or property owner to ensure the completion of required improvements, compliance with approvals, or fulfillment of contractual obligations.

Fire Escape

A means of egress from a structure for occupants to exit to a public way or open space in the event of a fire or other emergency.

Fire Lanes

A road or other passageway developed to allow the passage of fire apparatus. A fire lane is not necessarily intended for vehicular traffic other than fire apparatus.

Fixture

The assembly that houses a lamp(s) and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a ballast, a lamp, a reflector, or a mirror and/pr refractor lens.

Footcandle

A unit of measurement referring to the illumination incident to a single point. One footcandle is equal to one lumen uniformly distributed over an area of one square foot.

Frame Hold Time

The duration or interval of time during which each individual digital advertisement or message is displayed on any sign which is capable of sequentially displaying more than one advertisement or message on its display surface.

Frontage

The boundary of a lot that abuts a street right-of-way, measured along the front lot line. Frontage identifies the side of a lot oriented toward a street and is used for determining setbacks, access location, and applicable frontage-based standards. A lot may have more than one frontage when it abuts multiple streets, including corner lots and double-frontage lots.

Front-Loaded Garage

A garage that is accessed from and oriented toward the front lot line, with its vehicular entrance facing the street on which the property fronts.

Funeral Home

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

Fully-shielded

A luminaire that allows no light emission above a horizontal plane through its lower light-emitting part.

Future Land Use Plan

A plan that designates intended future uses and development pattern of land, serving as a guide for zoning regulations, subdivision approvals, and public infrastructure decisions.

G Terms

Geotechnical Slope Stability Study

A technically engineering analysis prepared by a qualified geotechnical engineer that evaluates the stability of natural or man-made slopes and determines the risk of landscapes, erosion, or soil failure in connection with proposed development.

Glare

The amount of visual discomfort caused by glare from the luminaire to an observer in different positions.

Greenhouse, Personal [298]

The accessory or temporary use of a structure whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for noncommercial use.

Ground Cover

Living landscape materials or living low-growing plants other than turf grasses, installed in such a manner so as to provide a continuous cover of the ground surface and which, upon maturity, normally reach an average maximum height of not greater than 24 inches.

Ground Floor

A level of building floor which is located not more than two feet below nor six feet above finished grade.

Gross Floor Area

The total floor area within the exterior walls of a building, measured from the outside face of exterior walls, including all floors, basements, mezzanines, corridors, stairways, storage areas, and enclosed building support spaces. Gross Floor Area excludes exterior porches, balconies, patios, decks, open parking or loading areas, and any space with a ceiling height of less than 7 feet unless used for storage or mechanical equipment.

Ground-Mounted

A structure or equipment installation that is directly affixed to or supported by the ground, rather than attached to a building or other structure.

Growth Phasing Plan

A map showing a prioritized sequence for spatial growth of the annexed boundary of the City, ad a component of the adopted Comprehensive Plan.

[298] New.

H Terms

Hard-Surfaced

An area covered with a durable, non-natural material designed to provide a stable, dustless, and all-weather surface for vehicular or pedestrian use. Typical materials include asphalt, concrete, or paver blocks. Gravel, crushed rock, and other loose aggregate surfaces are not considered to be hard-surfaced.

Hardship

A condition where strict application of the zoning ordinance prevents reasonable use of a property due to unique physical characteristics of land, not caused by the owners, and not based on financial or economic factors.

Historically Significant Building or Property

Any building or property listed in the National Register of Historic Places, identified as being individually eligible for listing in the National Register, or identified as contributing to the Downtown Bismarck Historic District in the Historic Architectural Inventory and Evaluation (2000) or any subsequent inventory and evaluation, is considered to be a historically significant building.

Homeowners Association

A private, legally established organization composed of property owners within a subdivision, or condominium that is responsible for managing, maintaining, maintaining, and enforcing covenants and shared property or facilities.

Household

One or more persons living together in a single dwelling unit as a single housekeeping unit, sharing common living, cooking, and sanitation facilities.

I Terms

Illuminated

Any object or area made visible by artificial light.

Impact Lot

A lot that is directly affected by the development or use of an adjacent property.

Impervious Surface

Any surface that prevents or significantly limits the infiltration of stormwater into the ground, including but not limited to buildings, roofs, paved or sealed driveways, parking areas, sidewalks, patios, decks with impervious flooring, and any other hard surface constructed or compacted so as to impede natural infiltration. Impervious surfaces include materials such as concrete, asphalt, brick, stone, and compacted gravel, as well as structures that shed water onto the ground. Impervious surfaces are distinct from pervious surfaces that allow infiltration.

Improvements

The physical enhancements made to land within a new development that are necessary for the development to function properly and meet community standards, including but not limited to infrastructure, utilities, and street trees.

Improvements, Off-Site

Improvements located on property outside the perimeter of the subdivision that are necessary because of the proposed subdivision, e.g., construction of streets, signalization of intersections, drainage channels, or extension of public utilities.

Infill Development

Development on a vacant or substantially vacant tract of land surrounded by existing development.

Infrastructure

Those human-made structures which serve the common needs of the community, such as potable water systems, wastewater disposal systems, storm drainage systems, electric, gas, or other utilities, bridges, roadways, street bike connections, shared-use trails, sidewalks, and transit stops.

Intensive Zoning District (more intensive)

A zoning district that allows higher density or greater impact uses compared with adjacent or otherwise lower-intensity zoning districts. Generally, the order in which zoning districts are established in Section 14-02-01 may be construed as from less intensive to more intensive, with exception of the Agricultural zoning district, which is the least intensive zoning district. Special Purpose and Overlay zoning districts are not measured in terms of intensity.

Interstate

Roadway which provides rapid movement of large traffic volumes between major population centers and other arterials. Interstate 94, including any on and off ramps, is the only interstate within the Bismarck jurisdiction.

Investigation

To examine, gather evidence, and review or verify facts for a property or use to ascertain compliance with this Code.

Island

A raised, defined area within a site, parking lot, or roadway that separate traffic lanes, provides pedestrian safety, or accommodates landscaping, stormwater management, fuel areas or utilities.

J Terms

Jurisdiction

All areas with Bismarck City Limits or the extraterritorial area shown on the official zoning map.

K Terms

Kiosk

A small, freestanding, typically unattended structure used for limited retail, informational, or service functions, such as the sale of goods, ticketing, wayfinding, or electronic transactions. Kiosks are generally designed for short-term or walk-up use, contain minimal or no customer space inside the structure, and are not intended to function as full-service commercial establishments.

L Terms

Land-Disturbing Activity

Any action that results in the physical disturbance, exposure, movement, removal, placement, or compaction of soil, sediment, or earth materials. Land-disturbing activity includes, but is not limited to, clearing, grubbing, grading, excavating, filling, stockpiling, trenching, drilling, or the movement or operation of equipment that alters ground surfaces.

Landscape Buffer

A designated strip of land, reserved along a lot line or between land uses, that is permanently maintained with vegetation, berms, fencing, according to standards of this Code to reduce visual, noise, light, or operational impacts between adjoining properties.

Landscape Plan

A scaled drawing and supporting documentation that identifies the location, type, size, and quantity of all proposed and existing landscaping, screening, and buffer materials on a site, including trees, shrubs, groundcover, berms, fences, and other required improvements. A landscape plan must show how the development complies with all applicable landscaping requirements of this Code.

Landscape Material

Vegetation and related natural elements, including trees, shrubs, grasses, groundcover, and other living plant materials selected to provide screening, shade, visual softening, and environmental benefits. Decorative rock and other non-living materials do not qualify as landscape material unless as used sparingly on the site and approved with the Landscape Plan.

Landscaping

Any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses. May include structural features such as walkways, fences, benches, works of art, reflective pools, fountains or the like. Landscaping shall also include irrigation systems, mulches, topsoil use, soil preparation, re-vegetation or the preservation, protection and replacement of trees.

Legally Non-Conforming

A use, structure, lot, sign, or site feature that was lawful when established but does not conform to one or more requirements of this Code due to subsequent amendments. A legally non-conforming condition is permitted to continue subject to certain limitations of this Code. A

condition created in violation of the regulations in effect at the time of establishment is not legally non-conforming.

Light Trespass

The shining of more than one footcandle of light produced by a luminaire that shines beyond the boundaries of the property on which the fixture is located.

Loading Area

A designated space on a lot where passengers, goods, materials, or supplies are loaded onto or unloaded from motor vehicles. A loading area includes the paved or otherwise improved surface used for temporary stopping, standing, or maneuvering of vehicles engaged in pick-up, drop-off, delivery, or service activities, and may include associated access aisles, maneuvering space, and overhead clearance. Loading areas are not considered parking spaces.

Loop Lane

A relatively short and low-traffic residential street that loops back to the same intersecting street and includes a courtyard or common area in the center of the loop.

Lot

A unit of land, legally created and recognized by the City, that is occupied or intended to be occupied by a principal building or use and any accessory buildings or uses, together with the required yards and open space. A lot is typically defined as such on a recorded subdivision plat but may also be a non-conforming lot as established in this Code.

Lot Combination

A durable combination of two or more previously platted lots or parcels into a single parcel, according to the procedures of this Code.

Lot Coverage

The proportion of lot covered by building footprint and required parking space as specified Section 14-23-01.8 of this Code.

Lumen

A unit of luminous flux. One footcandle is equal to one lumen per square foot.

Luminaire

The complete lighting system, that includes the lamp(s), parts designed to distribute the light, to connect the lamps to the power supply, and the fixtures that contain and support them.

M Terms

Major Street Plan

A map of all existing and planned alignments of arterial, collector, and Interstate streets adopted as a component of the Comprehensive Plan.

Manufactured Home

A factory-built residential structure that complies with the HUD Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280)(HUD Code).

Mechanical Equipment

All electrical, cooling or heating equipment, pumps, generators, communications equipment, private utility cabinets, meters, and other similar equipment. Solar, wind, or other energy conversion systems are not included in this definition.

Mitigation

Actions, improvements, or operational measures required to avoid, minimize, reduce, or offset adverse impacts identified in a study or technical report prepared for a development application. Mitigation may include physical construction, site-design modifications, operational restrictions, or other measures necessary to ensure compliance with this ordinance and to maintain acceptable levels of service, safety, environmental protection, or compatibility with surrounding properties.

Mixed-use

The development or occupancy of a building, site, or district by two or more different land-use categories—such as residential, commercial, civic, or employment uses—designed and arranged to be compatible, mutually supportive, and connected through coordinated site design, pedestrian access, and shared infrastructure. Mixed-use development may include vertical mixing of uses within a single building or horizontal mixing of uses on the same site or within a planned district.

Mobile Home

A transportable, factory built home, designed to be used as a year-round residential dwelling that is not certified per the HUD Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), which is defined separately as a manufactured home.

Model Home[299]

A residential dwelling unit constructed and maintained as a display for sales and leasing of similar units in a subdivision or site.

Monument

A permanent physical marker established by a licensed land surveyor to identify a precise point used in boundary surveys, plats, or other legal land descriptions. A survey monument may consist of an iron pin, pipe, rebar with cap, concrete monument, or other durable material set to mark lot corners, right-of-way lines, control points, or other locations required for accurate land surveying. Survey monuments must be set, maintained, and referenced in accordance with standards of this Code, state law, and accepted surveying standards.

[299] Corrected Ordinance 6583.

N Terms

Neighborhood Park

See “Park, Neighborhood”

Noise Study

A technical analysis prepared by a qualified professional that measures or models existing and projected sound levels associated with a proposed use, development, or activity; evaluates potential noise impacts on surrounding properties, particularly noise-sensitive uses; compares expected noise levels to applicable standards; and identifies any mitigation measures necessary to ensure compliance with this ordinance and to maintain compatibility with adjacent land uses.

Non-access Line

A line delineated on a subdivision plat or described in a deed that is for the purpose of prohibiting access from the subject property to the adjoining street or public right-of-way.

Non-Conforming

See “Legally Non-Conforming.”

O Terms

Occupancy

The use or intended use of a building, structure, or site by a person, household, business, or other activity, including the commencement of habitation, operation, or conduct of a permitted or approved use. Occupancy occurs when a structure or site is first used for its authorized purpose following construction, alteration, or change of use, and continues for as long as the use remains active. Occupancy does not refer to the number of persons within a building, which is regulated by applicable building and fire codes. In a residential context, occupancy is residing on the property for the majority of the year.

On-Site Ordering

A transaction in which a customer places an order and/or makes payment at a service point located on the premises of a business, including but not limited to a drive-through order board, menu board, speaker post, or walk-up ordering station. An on-site order occurs prior to receiving the purchased item and requires the customer to interact with the business while physically present on the site. If on-site ordering is not present, placement of orders and typically payment is made online or via phone and only pick-up of the final product occurs on site.

Operational Hours

The hours of a typical day and week in which a use is open and available to the public or fully function in its intended purpose

Ornamental Structures

An accessory, decorative landscape feature, including flag poles not used as a commercial sign, trellises and other garden structures, play structures, fountains, sculptures and lamp posts that are seven feet or less in height.

Outdoor Recreation Area

A designated outdoor space on a site that is improved, equipped, or maintained for active or passive recreation by residents, tenants, or program participants. An outdoor recreational area may include play equipment, open turf areas, courts, trails, seating, shade structures, or other facilities intended for physical activity, play, or outdoor enjoyment. The area must be safely accessible, appropriately surfaced, and located to minimize conflicts with parking, drive aisles, and service areas.

Overflow Parking Area

A designated area on a site that is used intermittently to accommodate temporary or occasional parking demand that exceeds the capacity of required parking spaces. Overflow parking areas must be clearly identified on the site plan and may be used only during peak-demand events, seasonal activity periods, or other infrequent conditions as approved by the City.

Overlay Zoning District

See “Zoning District, Overlay”

Owner (Property Owner)

A person, association, partnership, or corporation having legal or equitable title to land other than legal title held only for the purpose of security. For the purpose of notice, the owner may be determined using the latest Bismarck Assessing Division or Burleigh County Office of Tax Equalization information.

P Terms

Pad Site

A parcel of commercial land within a larger development like a shopping center or strip mall, intended for a standalone business. Also called an outparcel, a pad site is sold or leased separately from the main shopping center. Pad sites often have businesses like fast-food restaurants, banks, and retail stores because they offer high visibility and easy access, often with their own drive-through capacity.

Parcel

A tract of land created by any means, whether or not included in a subdivision platted pursuant to NDCC Chapter 40-50.1. Parcels are recognized and catalogued by the Bismarck Assessing Division or Burleigh County Office of Tax Equalization to taxation purposes.

Parcel of Record

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

Park and Ride

A facility that provides designated parking spaces for commuters to park their vehicles and transfer to public transit, carpools, vanpools, or other shared-ride services. A park-and-ride

facility may include surface parking, shelters, bicycle parking, passenger loading areas, and related amenities intended to support multimodal travel. Park-and-ride facilities are not intended for long-term vehicle storage or general public parking unrelated to transit or ridesharing.

Park

An outdoor area designed and intended for recreation, leisure, or open-space enjoyment, which may include lawns, natural areas, trails, playgrounds, athletic fields, courts, shelters, picnic areas, landscaping, and related support facilities. A park is typically owned by Parks District and Recreation for public use, although a park of substantially similar character may be privately owned and operated.

Park, Neighborhood

A park that typically serves the immediate residential areas within walking distance, where both passive and active park uses may be provided. Neighborhood parks do not typically have amenities that would draw users from outside the neighborhood but may include such features as part of a park development agreement.

Park, Regional

A large public park designed to serve multiple neighborhoods or the broader community, providing a wide range of recreational facilities, natural areas, and amenities intended for extended visits and diverse user groups. A regional park typically includes features such as shared-use trails, athletic complexes, picnic shelters, natural resource areas, water access, or specialized recreation facilities, and is intended to accommodate both local and citywide demand. Regional parks generally exceed neighborhood-scale park standards and draw users from a service area larger than one mile.

Park Concept Development Plan

A conceptual plan of development of park and open space facilities for a particular property. The park concept development plan may be developed for a subdivision or as part of a larger property that may be developed in phases and form the basis for subsequent subdivisions.

Park Development Agreement

A written agreement between the Parks District and an owner and/or developer of land within the jurisdiction of the City of Bismarck. Park development agreements shall be in accordance with the neighborhood parks standards of the Land Development Code and shall include provisions for the transfer of property to the Park District for the purpose of development of park and open space facilities and the obligations of all parties pursuant to the provisions of the agreement.

Parking

The temporary standing of a motor vehicle, whether occupied or unoccupied, for the purpose of stopping, waiting, or leaving the vehicle on a lot, street, or other designated area. Parking includes the act of placing a vehicle within a parking space or facility but does not include the loading or unloading of passengers or goods, vehicle storage, or standing for active loading purposes.

Parking, Off-Site

Parking provided for a use that is located on another lot.

Parking, Shared

Use of the same off-street parking spaces for two or more different uses based on differing times of peak parking demand or the arrangement of uses that result in visiting multiple land uses on the same trip. Shared parking may or may not be located on the same lot as the use.

Parking, Structured

A commercial parking facility that is not accessory to a specific use and is designed to accommodate vehicular parking spaces that are fully or partially enclosed or located on the deck surface of a building, including parking garages and deck parking.

Parking, Surface

A commercial parking facility that is not accessory to a specific use and is unenclosed, grade-level, and designed to accommodate vehicular parking spaces.

Parking Area

That portion of a lot set aside, marked, posted, or intended for parking. This includes circulation areas, loading and unloading areas, parking spaces and drive aisles, landscaped areas, bikeways, and walkways.

Parking Space

A space for the parking of one motor vehicle or bicycle within a public or private parking area.

Parking Study

A technical analysis prepared by a qualified professional that evaluates existing and projected parking demand for a proposed use or development; assesses the adequacy, location, and design of on-site and off-site parking facilities; analyzes opportunities for shared or reduced parking; and identifies any operational or physical improvements necessary to ensure compliance with this ordinance and to minimize impacts on surrounding properties and the transportation system.

Parks District

The Bismarck Parks and Recreation District

Party

Any gathering, event, or social activity occurring at a short-term rental property that exceeds the intended use of property for lodging and residential purposes, typically involving a significant number of guests who are not residential occupants of the rental, and may include amplified sound, music, food, drink, and/or other activities likely to disturb the peace, create a nuisance, or violate local ordinances.

Patio

A ground-level, unenclosed outdoor surface constructed of concrete, pavers, stone, brick, gravel, or similar materials, used for seating, dining, or other outdoor activities. A patio has no roof, walls, or structural framing and is not elevated above adjacent grade. Patios are considered hardscape surfaces and are distinct from decks, porches, and other elevated or roofed structures.

Paved

See “Hard-surfaced.’

Pervious

A surface or material that allows water to infiltrate into the ground through direct penetration or through voids within the material, thereby reducing stormwater runoff. Pervious surfaces include natural vegetation, turf, uncompacted soil, permeable pavement systems, and other materials designed to permit infiltration. Pervious surfaces are distinct from impervious surfaces, which prevent or significantly limit water infiltration.

Phasing

The planned sequencing of development in two or more stages, in which specific site improvements, buildings, infrastructure, or mitigation measures are completed according to an approved schedule or plan. Each phase must function independently in compliance with applicable zoning, subdivision, and life-safety requirements, and all required improvements for a given phase must be installed before occupancy or use of that phase is permitted.

Phasing Plan

A plan that exhibits the intended phasing of a development, typically submitted in conjunction with a site plan.

Pick-up Window

A window or designated exterior service point on a building where customers receive pre-ordered or prepared items directly from staff without entering the building. A pick-up window may serve walk-up customers, drive-up customers, or both, and is intended for short-duration transactions associated with food service, retail, pharmacy, or similar uses. A pick-up window is distinct from a full drive-through facility, which includes a dedicated vehicle lane and required stacking spaces.

Plan Overlay District (POD)

A zoning overlay district with unique characteristics that are established in a plan text and exhibit that adjust the standards and requirements of a base zoning district.

Planned Unit Development (PUD)

A previously-utilized zoning district that established customized development standards for master-planned and cohesive areas of development. Although new PUDs are no longer created, PUDs created through a prior ordinance remain in full effect unless amended through the Zoning Map Amendment process.

Plat

A document containing all written and visual information necessary to affect a subdivision of land. The use of plat as a stand-alone term is reserved only for subdivisions created pursuant to this Code and NDCC 40-50.1.

Plaza

A public square or similar open area intended as a gathering space that is typically paved and includes pedestrian elements such as benches, seating, fountains, landscaping, and public art.

Porch

A roofed, unenclosed structure attached to a building and open to the weather on at least one side, providing a covered outdoor area for entry, seating, or circulation. A porch may include railings, posts, or partial walls not exceeding the height or enclosure limits established by this ordinance, but does not include fully enclosed or conditioned space. Porches are distinct from decks, which are typically unroofed, and from patios, which are ground-level and lack structural framing.

Potable Water

Water suitable for drinking or cooking purposes.

Pre-Application Meeting

A meeting held between a prospective applicant and staff from the City, or other political subdivisions as necessary, prior to the submission of a formal application, for the purpose of reviewing the proposed development concept, identifying applicable standards, discussing required approvals and timelines, and identifying potential issues or information needs. Pre-applications may be mandatory or optional, depending on application type.

Premises

A lot, together with all buildings and structures thereon.

Principal Building

The building in which the principal use of the lot is conducted. Where allowed, a lot may have more than one principal building.

Principal Use

The primary purpose for which land or a structure is utilized, based in part on the amount of floor area devoted to each identifiable use. The main use of the land or structures as distinguished from a secondary or accessory use.

Public Art

A permanent or temporary work of art created by an artist and intentionally placed in a location accessible to the public, including sculptures, murals, mosaics, integrated architectural or landscape features, installations, or other creative works. Public art is designed to enhance the visual, cultural, or experiential quality of public spaces and is distinct from standard architectural ornamentation, commercial signage, or mass-produced decorative elements. Public art may be publicly or privately owned and maintained.

Public Frontage

The publicly-owned layer between the lot line or street line and the edge of the vehicular lanes. The public frontage may include sidewalks, street planters, trees and other vegetated landscaping, benches, lamp posts, and other street furniture.

Public Hearing

A formally noticed meeting of a public body at which members of the public are given an opportunity to present testimony, evidence, or comments on a proposed action before a decision is made. A public hearing is conducted according to the procedures of this Code and applicable state law, requires advance public notice, and forms part of the official record for the decision.

Public Notice

A formal announcement issued by a governmental body to inform the public of a proposed hearing or legislative action, published or posted in accordance with requirements of this Code and applicable state law, potentially including newspaper advertisement, mailings, signs, website, or other methods.

Public Utility

A facility, system, or infrastructure owned, operated, or regulated by a governmental entity or a utility provider franchised with the City of Bismarck for the provision of essential services to the public, including but not limited to electricity, natural gas, water supply, wastewater collection and treatment, stormwater management, telecommunications, and similar services. Public utilities include the equipment, lines, pipes, structures, and appurtenances necessary to deliver such services, and are distinct from private service lines or on-site systems serving a single property.

Q Terms

[Reserved]

R Terms

Rain Garden

A planted depression or hole that allows rainwater runoff from impervious urban areas the opportunity to be absorbed prior to entering municipal stormwater facilities.

Reconstruction

Building a structure, building, or site feature again after it has been damaged or destroyed.

Reconstruction, Parking Lot

Any land disturbing activity or exposure of any subgrade or soil material in an existing parking lot. Regular maintenance, minor repairs, patch work or a partial mill and overlay would not constitute reconstruction of the parking lot.

Record

Recording a document in the Burleigh County Recorder's office.

Record Lot

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

Recreational Vehicle

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

Redevelopment

Generally, redevelopment on a tract of land with existing buildings where all or most of the existing buildings would be razed and a new building or buildings built.

Reserve Strip

A strip of land that is reserved by a subdivider in order to prevent or control access to abutting streets or parcels.

Right-of-Way

An area dedicated to public use for pedestrian and vehicular movement, which may also accommodate public utilities.

Roof

The covering that forms the top of a building or structure.

Roof-Mounted

Installed on, attached to, or supported above the roof of a building, including equipment, mechanical units, solar energy systems, antennas, or other structures whose primary placement is on the roof surface or within the roof plane. Roof-mounted installations are distinct from wall-mounted and ground-mounted installations and are subject to applicable height and screening provisions of this Code.

Roof Form

One or more roof types used in a structure, including but not limited to: gable end, gable side, gabled "L", hip, gambrel, shed, mansard, flat, or dormers.

Root System Zone

A subsurface area designated within the public frontage in a mixed-use development. Root system zones shall reserve space for the root system of street trees and landscaping planted in the street tree and furniture zone.

Routine Maintenance[300]

The regular upkeep of buildings, structures, and land to ensure a property does not have a negative impact on the health and welfare of the City.

S Terms

Scoping

The process of identifying and defining the specific issues, requirements, studies, and regulatory standards that will apply to a proposed development project before formal review or approval.

Screen or Screening

A method of visually shielding, obscuring, or providing spatial separation of an abutting or nearby use or structure from another by fencing, walls, berms, or densely planted vegetation, or other means approved by the Director.

Secondary Use

A use that is located on the same site as the principal use but is independent and does not directly support or serve the principal use. It operates as a separate activity, even if allowed within the same zoning district.

Section Line

A surveyed boundary line that divides land into one-mile-square sections under the Public Land Survey System (PLSS) and often serves as a legal reference line for property descriptions, roads, and jurisdictional boundaries. Section line may also reference the statutory right-of-way applicable to all section lines.

Setback

The minimum or maximum, if specified, horizontal distance by which any building or structure must be separated from a street right-of-way or lot line, as described in Measurements.

Setback, Contextual

A front or street-side setback applicable to significantly built-out areas that determined by reference to the existing setbacks of buildings on adjoining or nearby lots to ensure the new buildings are reasonably well aligned with the existing structures on the same side of the street.

Setback, Front

The setback required between a building and the front lot line.

Setback, Interior Side

The setback required between a building and the side lot line.

[300] New.

Setback, Street-Side

The setback required between a building and an abutting street other than an alley that is not a front lot line.

Setback, Rear

The setback required between a building and the rear lot line.

Shade Tree

Usually a deciduous tree, rarely an evergreen; planted primarily for its high crown of foliage or overhead canopy.

Shared Use Trail

A separated, paved pathway for use by bicycles, pedestrians, and other forms of active transportation and recreation. Shared use trails are separated from vehicular traffic by at least vegetative strip or other protective buffer and are typically ten feet in width, or as narrow as eight feet in width if space is constrained.

Shrub

A deciduous, broadleaf, or evergreen plant, smaller than an ornamental Tree and larger than ground cover, consisting of multiple stems from the ground or small branches near the ground, which attains a height of 24 inches.

Sidewalk

A paved, surfaced, or leveled area, paralleling and usually separated from the street.

Sight Triangle

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

Sign

Any visual display visible from a public right-of-way designed to identify, announce, direct, or inform.

Sign, Air-Blown

A sign designed to be moved or filled with air or gas, such as balloons and products marketed as “air puppet” or “tube man.” This includes such devices that do not contain a message but are intended to attract attention.

Sign, Changeable Copy

A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged manually without altering the face of the sign. Reader boards and marquee signs are considered changeable copy signs.

Sign, Electronic Message Center (EMC)

An on-premises sign with a digital display of information that is capable of displaying characters, letters, or illustrations and can be electronically changed by remote or automatic means. Small scale electronic components to signs that comply with all requirements of this ordinance are not included in this definition.

Sign, Feather Flag

A freestanding sign typically constructed of a single plastic or metal shaft driven in the ground or fixed to a weighted base and with an attached pennant that is vertically elongated and attached to the shaft.

Sign, Freestanding

A permanent sign that is not attached to any building or structure, with the exception of a structure, such as a pole or foundation, with the sole purpose of supporting signs. Freestanding signs are further divided into pole signs or monument signs.

Sign, Monument

A freestanding sign supported by a solid base, extending to the ground, of at least 50 percent of the sign width with the highest point of the sign face located eight feet or less from the ground. Signs that are affixed to boulders or other inorganic natural features may be considered monument signs

Sign, Off-Premises

A ground sign, as defined in the most recent adoption of the International Building Code (IBC), that may advertise goods or services that are not associated with the use of the premises. Off-premises signs may also advertise on-premises goods or services. An off-premises sign may be static, digital, illuminated, non-illuminated, or any combination thereof where permitted.

Sign, On-Premises

A sign advertising the business, person, service, or major product of the building or land upon which it is located, or identifying the premises or goods manufactured, produced, or services rendered thereon. On-premises does not necessarily imply that the sign and its referent share a single lot or parcel. A set of contiguous lots or parcels that function as a whole use may be considered a premise for the purposes of this definition.

Sign, Permanent

A freestanding sign resting on or supported by one or more poles or other vertical structures. Any permanent freestanding sign that does not meet the definition of monument sign shall be considered a pole sign. Signs commonly referred to as pylon signs are considered poles signs.

Sign, Portable

A sign that is constructed to be movable, either by skids, wheels, truck, or other conveyance and which does not have a permanent foundation or is otherwise permanently fastened to the ground and is not actively used as a vehicle for movement of goods. When

on a trailer, the removal of the wheels or undercarriage does not place the sign in another category, neither does the anchoring of the sign by means of concrete blocks, sandbags, or other types of temporary anchors. Sidewalk signs are not considered portable signs.

Sign, Projecting

A sign that is wholly or partly dependent upon a building or structure for support and which projects outward from the surface of the building in a direction not parallel to the surface.

Sign, Public Interest

Notwithstanding all other provisions of this chapter, permanent on-premise signs or temporary banners used by public or non-profit entities or used for community-wide events may include ancillary off-premise content, such as naming rights or sponsorships.

Sign, Sidewalk

A sign that is portable, typically designed with an A-frame structure, and is placed on the sidewalk or boulevard area of a public right-of-way, associated with an abutting commercial

Sign, Wall

A sign fastened to the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms a background surface of, the sign.

Sign, Yard

A small sign of a temporary nature inserted into the ground by wire or post, including but not limited to real estate signs, garage sales, political signs, and construction signs, constructed of a light temporary material, such as corrugated plastic, aluminum, or composite, with or without a frame. Portable signs and site signs as herein defined shall not be considered yard signs.

Sign, Site

An on-premises sign of temporary nature installed on a parcel of land with certain activity specified in this ordinance underway and constructed of temporary materials such as plywood, durable plastic, composite, or metal, with or without a frame. Yard signs as herein defined shall not be considered site signs.

Sign Face

The entire surface area of the sign that is used to identify, advertise, or communicate information for visual representation and is visible from any one direction, exclusive of any supporting structure for the sign. Multiple parts of a sign attached to a wall are considered a single sign face if the parts are intended to be viewed as a coherent whole. Multiple sign faces may be considered parts of one sign, provided the sign faces are no greater than 18 inches from each other in distance and are either parallel to or at an interior angle of less than 30 degrees with each other.

Site Feature

A feature of a developed lot, parcel, or site that is not a structure, building, or use, such as landscaped area, surface parking, or outdoor lighting.

Site Plan

A scaled drawing that shows the layout, design, and proposed use of a parcel of land, including buildings, access, parking, utilities, drainage, landscaping, and other features necessary to evaluate compliance with zoning, subdivision, and development standards.

Skyglow

Brightness in the night sky around built-up areas as a result of light pollution.

Slope Protection Easement

See “Easement, Slope Protection.”

Solar Collector

A solar photovoltaic cell, panel, or array, or solar hot water collection device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

Solid Waste Collection Area

A site or facility used for the temporary collection, consolidation, storage, and transfer of solid waste from multiple sources before it is transported to a recycling center, processing facility, or disposal site, also known as a dumpster or trash enclosure.

Special Effects

Visual, lighting, motion, sound, or technological features incorporated into a sign that enhance its attention-getting qualities beyond a static, non-illuminated display.

Special Use

A use permitted in a particular zoning district only upon showing that the use, in a specified location, will comply with all conditions and standards for operation as specified in the Land Development Code through a public hearing with the Planning and Zoning Commission.

Special Use Permit

A permit required before construction, establishment, or occupation of a special use. A special use permit is similar to the term “conditional use permit,” which is used in other communities but not Bismarck.

Statement of Baseline Parking Adjustment

A formal written determination or recorded document establishing the approved minimum (and sometimes maximum) parking requirement for a specific property, adjusted from the standard zoning requirement based on site-specific conditions or approved modifications.

Stacking Spaces

The space specifically designated as a waiting area for vehicles in a queue at a drive-through or pick-up use or drop off area.

Steep Slope

Any area of land where the natural or existing grade is 15 percent or greater over a distance of 10 feet, or where adverse conditions associated with slope stability, erosion, sedimentation, or

vulnerable adjacent uses are present as determined by the Director or City Engineer. Steep slopes include both continuous and intermittent segments that meet or exceed the threshold and are subject to additional grading, disturbance, and development standards to protect public safety, minimize erosion, and maintain slope stability.

Stoop

A small, elevated entrance platform or landing, typically with steps, that provides access from grade to a building entrance and is not intended for general occupancy or use as a porch or patio.

Stop Work Order

A written enforcement directive issued by the building official, or other authorized public official requiring the immediate suspension of construction or site work due to a violation of applicable laws, permits, or approved plans.

Stormwater and Drainage Easement

See “Easement, Stormwater and Drainage.”

Street

A thoroughfare designed and intended for vehicular, bicycle, and pedestrian travel, providing access to adjoining properties and serving as a component of Bismarck’s circulation system. Unless the context implies only the pavement area, a street includes the roadway, sidewalks, boulevards, and associated public infrastructure such as utilities and drainage facilities located within the right-of-way. Streets are distinct from alleys, driveways, and private access easements that provide only secondary or limited access.

Street, Arterial

Roadway that provides for rapid movements of relatively large traffic volumes between large land areas, major traffic generators and other arterials. Arterials should have controlled access and are usually multi-lane roads with no parking. The locations of roadways classified as arterials shall be as designated on the most recent edition of the City’s Major Street Plan.

Street, Collector

Roadway that provides traffic movements between local roads and arterial roads and also provides direct access to abutting property. Collectors are often only two-lane roads but should be generally planned and designed to reduce on-street parking and direct driveway access. The locations of roadways classified as collectors shall be as designated on the most recent edition of the City’s Major Street Plan.

Street, Local Commercial

Roadway whose primary function is to provide access to abutting commercial, industrial, or multi-family residential property. Local Commercial roads are typically two-lane roads with parking and direct access to adjacent lands.

Street, Local Residential

Roadway whose primary function is to provide access to abutting residential property. Local Residential roads are typically two-lane roads with parking and direct access to adjacent residentially-zoned lands.

Street, Primary

Street abutting the front lot line.

Street, Private

A privately-owned and privately maintained street providing vehicular access to more than three lots or six dwelling units, including ADUs, that is shown and named on a recorded plat. Facilities that serve only as shared driveways, parking-lot circulation lanes, or other non-street access ways shall not be considered private streets.

Striping

Painted lines and markings that define parking spaces, traffic lanes, pedestrian walkways, and other essential areas in a parking lot.

Structural Alteration

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

Structure

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

Subdivision

The division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or building development, created pursuant to the Land Development Code and NDCC Section 40.50.1.

Subdivision, Complete

A subdivision with greater impact on the public and need for coordination with public entities for utilities and infrastructure, according to criteria set in the Land Development Code, for which both a preliminary subdivision plat and final subdivision plat are required.

Subdivision Plat, Preliminary

An initial schematic plan for how a proposed subdivision will be laid out, showing proposed layout of lots, blocks, public right-of-way, easements, public improvements, and all content as specified in the Land Development Code. Approval of a preliminary subdivision plat by any governing bodies does not constitute final approval of the associated subdivision plat until all requirements of the Land Development Code have been satisfied. A preliminary subdivision plat may also be referred to as “preliminary plat.”

Subdivision Plat, Final

The precise, survey-accurate, legally recordable map of all lands to be subdivided, showing the exact locations of lots, blocks, public rights-of-way, easements, and all content as specified in the Land Development Code. A final subdivision plat is prepared in full compliance with the approved preliminary plat and all applicable requirements of this Code. A final subdivision plat may also be referred to as “final plat.”

Subdivision Plat, Simple

The precise, survey-accurate, legally recordable map of all lands to be subdivided, showing the exact locations of lots, blocks, public rights-of-way, easements, and all content as specified in the Land Development Code, where all criteria of the Land Development Code intended to allow expedited review for subdivisions of limited public impact have been met. A simple subdivision plat may also be referred to as “simple plat.”

Submittal

The formal submission of required plans, documents, studies, applications, and supporting materials to the Planning Department for review and approval of a proposed development, land use, or permit.

Surety Bond

A written, three-party financial guarantee provided by a surety company authorized to do business in the state, ensuring that the applicant or property owner (the principal) will complete required improvements, install required improvements or site features, or comply with conditions of approval. If the principal fails to fulfill the obligation, the surety is responsible for providing the required performance or paying the City an amount sufficient to complete the work.

T Terms

Temporary banner

A display sign banner, or other advertising device constructed of, cloth, canvas, fabric, or other light temporary material, with or without a structural frame intended for a limited period of display, including but not limited to decorative displays for holidays, public demonstrations, business sales, promotions, and relocations. Portable signs as herein defined shall not be considered temporary banners.

Temporary Use Permit

A formal, time-limited authorization issued by the Planning Department that allows a specific land use identified in this Code on a property for a defined period, even if the use is not otherwise permitted in permanent form under the property’s zoning district.

Temporary Turnaround Easement

See “Easement, Temporary Turnaround.”

Tenant Space Area

A portion of a building designed or intended for occupancy by a single commercial establishment, irrespective of ownership or lease arrangement.

Thoroughfare

Any public right-of-way that provides a public means of access to abutting property.

Traffic Impact Study

A study prepared by a qualified traffic engineer that evaluates the expected effects of a proposed development on the existing and planned transportation network, including traffic operations, safety, and the need for mitigation measures.

Transit

Public or shared transportation systems that provide the movement of people along fixed or semi-fixed routes, which influence land use patterns, density, and development design. Unless otherwise specific, a transit facility is one operated by Bismarck-Mandan Transit.

Transition

A permitted use or structure that, by nature or level and scale of activity, acts as a transition or buffer between two or more incompatible uses.

Tree Protection

Means the measures taken, such as temporary fencing and the use of tree wells, to protect existing trees from damage or loss during and after construction projects.

Trip

A one-direction vehicle movement with either the origin or the destination (exiting or entering) inside a specific development.

Trip Generation

The total number of vehicle trip ends produced by a specific land use or activity.

Turnaround

A designated vehicular maneuvering area provided at the end of a street, drive aisle, or private lane that allows vehicles to reverse direction in a safe and efficient manner. A turnaround may be permanent or temporary and may include configurations such as a circular bulb, hammerhead, or other approved design.

U Terms

Urban Service Area Boundary (USAB)

An area established in the Growth Phasing Plan of the Comprehensive Plan that is outside of city limits but projected to be annexed and provided with municipal services within the next 25 years.

Use

The purpose or activity for which land, a building, or a structure is designed, arranged, intended, occupied, or maintained, including any activity conducted on the premises. A use is classified according to the nature of the activity occurring on the site and is regulated by the zoning district

in which it is located. A use is distinct from the physical structure in which it occurs and from the occupancy limits established by building or fire codes.

Use category

A specific category and subcategory for uses established in this Code, based on similarities in physical characteristics, traffic generation, locational, utility or municipal service requirements, or generally compatible with other uses in the use category.

Utility Easement

See “Easement, Utility”

V Terms

Variance

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

W Terms

Walkway

A designated pedestrian path or passage on a property, providing safe and convenient movement for people between buildings, streets, parking areas, or other site features.

Warning Siren

An outdoor audible alert system installed on a property or within a community to provide advance warning of emergencies, hazards, or civil threats, regulated in zoning to address location, noise, and safety considerations.

Wayfinding

Design elements, signage, or systems that help people navigate a site, neighborhood, or district safely and efficiently, typically implemented systematically on a site.

Wetlands

Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Working Days

Monday through Friday, 8AM to 5PM excluding City holidays.

X Terms

[Reserved]

Y Terms

Yard

The open space created between a property line and the front, side, and rear building lines on a property.

Z Terms

Zoning District

A portion of City territory within which certain uniform regulations and requirements or various combinations of regulations apply under the provisions of this Code.

Zoning District, Base

Any zoning district delineated on the Official Zoning Map under the terms and provisions of this Code, as amended, for which regulations governing the area, use of buildings, or use of land, and other regulations relating to the development or maintenance of existing uses or structures, are uniform; but not including overlay zoning districts.

Zoning District, Overlay

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

AIRPORT OVERLAY DEFINITIONS

The definitions in this section are related to the content of Section 14-07-01, Airport Overlay District.

Airport

Bismarck Municipal Airport.

Airport elevation

The established elevation of the highest point of the landing areas, set at 1,661.10 feet above mean sea level.

Airport hazard

Any structure, tree or use of land which obstructs the airspace for or is otherwise hazardous to the flight of aircraft in landing or taking-off at the airport.

Airport reference point

The point established as the approximate geographic center of the airport landing area and so designated.

Day-night average sound level (DNL)

A cumulative noise metric which describes the noise occurring during a 24-hour period as averaged over one year. The DNL metric assesses a ten decibel penalty to all noise events

occurring between 10:00 p.m. and 7:00 a.m., reflecting the greater annoyance associated with nighttime noise.

DNL contour

A line linking together a series of points of equal cumulative noise exposure based on the DNL metric. Aircraft noise contours are developed based on aircraft flight patterns, number of daily aircraft operations by type of aircraft and time of day, noise characteristics of each aircraft, and typical runway usage patterns.

Height

For the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map, the datum shall mean sea level elevation unless otherwise specified.

Instrument runway

A runway equipped or to be equipped with electronic or visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions.

Landing area

The area of the airport used for the landing, take-off, or taxiing of aircraft.

Navigable airspace

The airspace above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101(24) 49 United States Code 1301, including the airspace needed to ensure safety in the take-off and landing of aircraft.

Noise compatibility plan

A plan developed in conformance with the Federal Aviation Regulations Part 150 proposing noise abatement and land use management measures to reduce the adverse impact of aircraft noise on surrounding residents and noise-sensitive land uses.

Non-compatible land use

A land use shown in 14-08-01 [Airport Overlay District] as not permitted within the Airport Noise subdistrict.

Nonconforming use

Any structure, tree, or use of land which is lawfully in existence at the time this Code is adopted or an amendment to this Code becomes effective, and does not then meet the requirements of the Land Development Code.

Official noise exposure map

A map showing either existing or forecast aircraft noise exposure prepared in conformance with the Federal Aviation Regulations Part 150.

Person

An individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

Primary surface

A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

5. 250 feet for utility runways having only visual approaches.
6. 500 feet for utility runways having non-precision instrument approaches.
7. For other than utility runways, the width is:
    1. 500 feet for visual runways having only visual approaches.
    2. 500 feet for non-precision instrument runways having visibility minimums greater than 0.75 of a statute mile.
    3. 1,000 feet for a non-precision instrument runways having a non-precision instrument approach with visibility minimums as low as 0.75 of a statute mile, and for precision instrument runways.
    4. The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

Runway

The surface of an airport landing strip, which may or may not be paved.

Structure

An object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

Visual runway

A runway other than an instrument runway.

Downtown (DT) Zoning Districts Definitions

In addition to terms defined in General Definitions, the definitions in this section are related to the Downtown Zoning District:

Chamfered building corner

An angled or curved building wall that connects two other walls of the same building on a diagonal rather than at a right angle. See Figure 23-17.

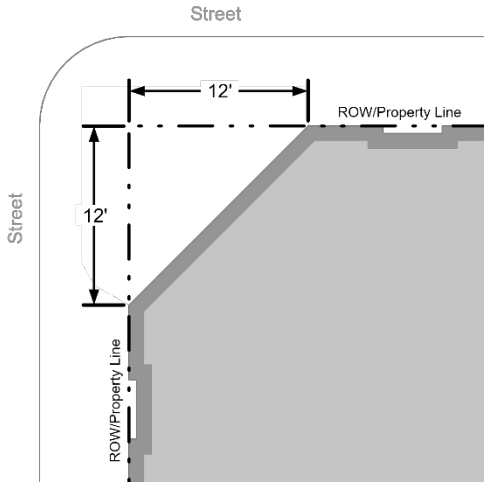


Figure 23-17: Chamfered Building Corner

Civic structures

Buildings that are or were designed to house strictly civic, ceremonial, or cultural assembly uses or are historically, symbolically, or urbanistically significant structures, as determined by the Director. These may include meeting halls; libraries; schools; police and fire stations; post offices (retail operations only, no primary distribution facilities); places of worship; museums; cultural, visual and performing art centers; transit centers; courthouses; and other similar community uses. Public ownership alone does not constitute a civic structure. Civic structures and publicly-owned public art are not subject to the building form and placement standards of the Downtown District unless specifically noted otherwise.

Dooryard

The area extending across the entire frontage of the lot, between the building façade or front setback zone and the sidewalk. This area may be hard-surfaced or planted depending on the frontage type or district sub-area.

Design Review Committee

The group designated by the City of Bismarck to administer and apply the Design Review procedures outlined in this Code, and other related policies when relevant such as the Downtown Streetscape Standards.

Fenestration

Openings in a wall, including windows and doors, allowing light and views between the building and/or lot interior (private realm) and exterior (public realm).

Forecourt

An open area in front of a building.

Front façade

The building elevation facing the street or front setback zone (FSZ). In the absence of a street, the front façade may face a public space. Building walls facing private interior courts, common lot lines, and alleys are not front façades.

Front Setback Zone (FSZ)

An area within which the building façade shall be placed. The FSZ defines the street frontage. It extends vertically and is generally parallel to the street. It is a requirement, not a permissive minimum. The minimum length and height of façade that is required within the FSZ is shown on the applicable frontage type and DT subdistrict standards.

Liner building

A shallow structure that wraps the perimeter of a block (or one or more block faces for buildings that fill less than a full block) to create a usable street-level space. A liner building is specifically designed to mask a parking lot, parking structure, or other large floorplate structure from a street frontage.

Marquee

A canopy above a building entrance that projects over a sidewalk and typically also serves as a sign, commonly used for theaters, hotels, or other entertainment venues.

Massing

The size and shape of a structure and its arrangements relative to other structures.

Module

A portion of a building façade that is designed to read as a discrete façade or building section.

Parking setback line

A line or plane, generally parallel to the front setback zone behind which parking may be located. (The parking setback line may extend vertically above the ground story when designated in the subdistrict placement standards.)

Public realm

The space between fronting façades or front setback zones, including streets, squares, greens, sidewalks, dooryards, and parks, but not within alleys or service drives.

Shopfront

The area of a building frontage running vertically from the sidewalk up to the bottom of the second story floor structure and horizontally for the full width of the interior shop or store space. It is intended to permit views into the interior space or to display wares, or both. A shopfront is comprised of various architectural elements including knee walls, transoms, windowpanes, mullions, muntins, posts, pilasters, columns, and any sign bands, awnings, canopies, roofs, cornices or eaves—all of which shall comply with the standards of Section 14-05-07.6.b, Shopfront Frontage Standards, and Section 14-05-08, Architecture Standards.

Shopfront space, required

An area of a prescribed minimum depth from the front setback zone on the ground floor of buildings within the Downtown Signature (DS) subdistrict.

Sidewalk clear zone

The portion of a sidewalk that must remain clear of obstructions (furniture, signage, trees, lighting, etc.) to allow for unimpeded public passage.

Floodplain Definitions

The definitions in this section should be read in the context of floodplain management and are all related to the content of Section 14-07-02, Floodplain Overlay District.

Accessory structure

Structures that include the following uses are not considered accessory structures for floodplain management purposes: habitable spaces, bathrooms, toilet rooms, laundry facilities, and entertainment and recreational spaces including but not limited to workshops and game rooms.

Agricultural structure

Structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock.

Appeal

A request for a review of the Floodplain Administrator's interpretation of any provision of this section or a request for a variance.

Attendant utilities and equipment

Utilities, electrical, plumbing, heating, ventilation, and air conditioning equipment, as well as facilities and services associated with new construction.

Base flood or 100-year flood

The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE)

The height of the base flood or 100-year flood, usually in feet above mean sea level, as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by the stormwater management plan prepared for the area in which the property is located.

Basement

Any area of a building having its floor subgrade (below ground level) on all sides.

Best available data (BAD)

Water elevation information from any source used to estimate or determine the base flood elevation (i.e., high water mark).

Conveyance or hydraulic conveyance

A geometric characteristic of a river or watercourse at a given location that determines the flow-carrying capacity at that location.

Development

Any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

Enclosure

Enclosed walled in areas below the lowest floor of an elevated building that are constructed of flood-resistant materials and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters.

Existing manufactured home park or subdivision

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Fill

Materials such as soil, gravel, or crushed stone that are placed in an area and increases the ground elevation, whether or not that was the intention.

Flood or flooding

A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) or digital flood insurance rate map (DFIRM)

The official map issued by the Federal Emergency Management Agency (FEMA) where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

Flood insurance study (FIS)

The official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the flood insurance rate map (FIRM), and the water surface elevation of the base flood.

Floodplain or flood-prone area

The channel and the relatively flat area adjoining the channel of a natural stream or river which has been or may be covered by floodwater, or any land area susceptible to partial or complete inundation by water from any source.

Floodplain Administrator

The person designated by the Planning Director to administer and enforce the City's floodplain regulations.

Floodproofing (dry)

Protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight to two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

Floodproofing (wet)

The use of flood damage resistant materials and construction techniques to minimize flood damage to structures by intentionally allowing floodwater to enter and exit automatically (without human intervention) to minimize unequal pressure of water on walls (hydrostatic load or pressure). Wet floodproofing also requires structures to be anchored to resist flooding, have mechanical and utility equipment elevated or protected, and have flood openings installed in walls.

Floodway or regulatory floodway

The channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Letter of map amendment (LOMA)

An official amendment to the currently effective flood insurance rate map (FIRM) which establishes that a property is not located in a special flood hazard area. A letter of map amendment (LOMA) is issued by FEMA.

Letter of map revision (LOMR)

An official amendment to the currently effective flood insurance rate map (FIRM) which is issued by FEMA and changes flood zones, delineations and elevations. A letter of map revision based on fill (LOMR(f)) is a LOMR issued by FEMA based on the placement of fill.

Lowest floor

The lowest floor of a structure including the basement and/or crawl space.

Manufactured home

A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle, but does include a mobile home.

Manufactured home park or subdivision

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction

Structures for which the "start of construction" commenced on or after the effective date of this section.

New manufactured home park or subdivision

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community

Non-conversion agreement

An agreement signed by applicants and property owners, affirming that the owners agree not to convert or modify in any manner that is inconsistent with approved permit (and variance conditions, when applicable).

Non-residential

Any building or structure or portion thereof that is not classified as residential.

Ordinary High Water Mark

The elevation of the Missouri River at a flow rate of 33,000 cubic feet per second. In areas where there are multiple channels, the ordinary high water mark is the landward extent of the floodway, as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps for the City of Bismarck and Burleigh County.

Pre-FIRM building

A building for which construction or substantial improvement occurred on or before September 18, 1985 or before the effective date of an initial Flood Insurance Rate Map (FIRM).

Principal structure

A structure that is not an accessory structure. All principal structures must be constructed in accordance with the requirements applicable to residential construction or non-residential construction as determined by the use of the structure.

Post-FIRM Building

A building for which construction or substantial improvement occurred after September 18, 1985, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

Reasonably safe from flooding

Base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational vehicle

A vehicle which is built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designated to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal uses. Recreational vehicles include, but are not limited to, travel trailers, trailers on wheels, park-model trailers and other similar vehicles.

Residential

1. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;
2. Residential structures, including but not limited to one and two-family dwellings, multi-family dwellings, group dwellings, bed and breakfast facilities, hotels and motels; and

3. Institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, nursing homes, group homes, congregate care facilities, hospitals, medical centers, jails and detention centers.

Special flood hazard area (SFHA)

An area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year (100-year flood).

Start of construction

Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within six months of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms.

Storage tank

Any closed vessel used to store gases or liquids.

Stormwater management plan

A document prepared in accordance with the provisions of Title 14.1 of the Code of Ordinances to evaluate surface water runoff and flood risks within a development, plat or watershed; to document special flood hazard areas; and to determine the systems required to convey or control flood flows within and through the area.

Structure

A walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

Substantial damage

Damage of any origin sustained by a structure where the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value as assessed of the structure before the damage occurred.

Substantial improvement

Any repair, reconstruction, or improvement of a structure that occurs within a consecutive two year period. The cost of which equals or exceeds 50 percent of the market value as assessed of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: any project for improvement of a structure to comply with existing state or local health, sanitary, or safety

code specifications which are solely necessary to assure safe living conditions; or any alteration of a structure listed in the National Register of Historic Places or a State Inventory of Historic Places.

Violation

The failure of a structure or other development to be fully compliant with the floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by the floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.

Agenda Item # 4A
March 25, 2026

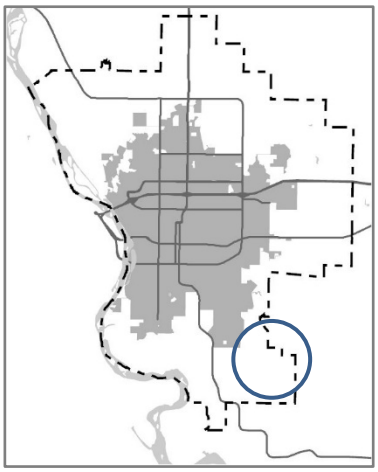
STAFF REPORT

Application for: **Final Plat**
Zoning Map Amendment

Project ID: **FPLT2025-004**
ZC2025-009

Project Summary

Title:	Cruz Subdivision
Status:	Planning and Zoning Commission - Public Hearing
Property Owner(s):	Evaristo Cruz & Damares Torres Villegas (Lot 1) Verna & Barbara Hoover (Lot 2)
Project Contact:	Josh Muehler, Mountain Plains LLC
Project Location:	Southeast of Bismarck, east of 52nd Street Southeast, on the south side of 48th Avenue Southeast
Project Size:	9.97 acres
Applicant Request:	Plat and rezone to rebuild current residence on Lot 1
Staff Recommendation:	Approve



Site Information

Existing Conditions		*Proposed Conditions*	
Lots/Blocks:	3 parcels	*Lots/Blocks:*	2 lots in 1 block
Land Use:	Single-family rural residential	*Land Use:*	No change
Future Land Use:	Rural Residential (RR)	*Future Land Use:*	No change
Zoning:	A – Agricultural	*Zoning:*	RR – Residential
Uses Allowed:	A – Agriculture	*Uses Allowed:*	RR – Large lot single-family residential and limited agriculture
Max Density:	A – 1 unit / 40 acres	*Max Density:*	RR – 1 unit per 65,000 square feet

Area Information

Zoning Jurisdiction:	Extraterritorial Area (ETA) (prior to 3/1/26)
Township:	Apple Creek (organized)
Neighborhood:	Undefined

Property History

Zoned:	04/1978
Platted:	N/A
Annexed:	N/A

(continued)

Project Narrative

Evaristo (Lito) Cruz, Damares Torres Villegas, and Verna and Barbara Hoover are requesting approval of a major subdivision final plat titled Cruz Subdivision as well as a zoning map amendment from the A – Agricultural zoning district to the RR – Residential zoning district on Lots 1 and 2, Block 1, Cruz Subdivision.

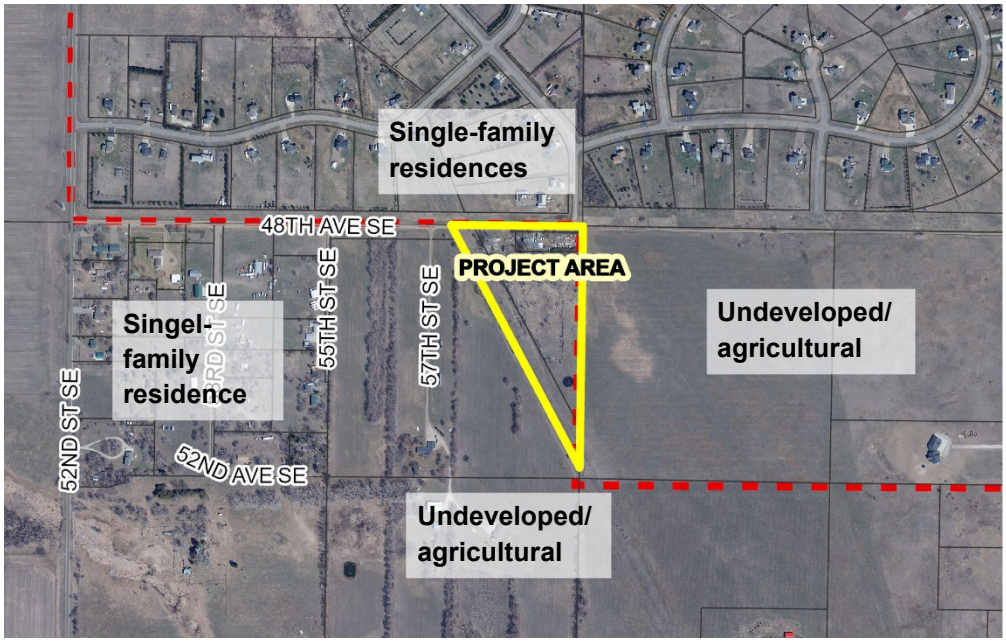
Background
Prior to March 1, 2026, this property was within Bismarck's Extraterritorial Area (ETA). Bismarck's ETA boundary in this area was adjusted on March 1, 2026, as part of an update to the agreement between the City of Bismarck and Burleigh County. Per the updated agreement, projects located in areas that were leaving Bismarck's ETA that were started with the City prior to March 1 had the option to finish the process with the City. As such, at the request of the applicant, this request is being processed as though it were still within the City's ETA.

Burleigh County staff have been part of the review process for this project since the initial request was submitted for review in March 2025. There are currently several buildings located within the area being dedicated for the right-of-way for 48th Avenue SE. The applicant's consultant has noted that the owners of Lot 2 intend to rebuild the current residence which will comply with building code regulations and setback requirements. The owners of Lot 1 do not have intentions at this time to rebuild any of the structures on the lot. At the direction of the City and County Engineers, a note has been included on the plat for these current structures stating that no building permits or improvements will be issued to the buildings located within the dedicated right-of-way.

The applicant's consultant is working with Burleigh County staff on the dedication and acceptance of the 48th Avenue SE and Pinewood Drive rights-of-way. A paving waiver was submitted for these roadways and was approved by the Burleigh County Commission at their regular meeting on May 19, 2025.

Project Context

Land uses adjacent to the project area are depicted on the adjacent map:



A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.

(continued)

The property has been identified as Rural Residential (RR) in the Future Land Use Plan. The RR areas are places for country living with convenient proximity to city life. Goals and objectives of this plan as they relate to major subdivision final plats and zoning map amendments are referenced in review standards below.

Land to the south and east is in an undeveloped or agricultural state. Large lot single-family residences are located to the north and west. To the north and east of the project area, the land is inside of the City of Lincoln's ETA. Lincoln city limits are near the project area. Most of the nearby land within Lincoln's ETA contains single-family residences.

Public Engagement

The Planning and Zoning Commission considered this request on May 28, 2025, and called for a public hearing.

Apple Creek Township was notified of this request on May 6, 2025, and have not provided a comment.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on March 13 and 20, 2026, and 62 postcards were mailed to the owners of nearby properties on March 13, 2026.

A physical sign providing information on the public hearing was placed in a publicly accessible spot at the project location on March 9, 2026.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Open Development Projects Dashboard and Community Development Activities map.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

Major Subdivision Final Plat

The final plat generally conforms to the preliminary plat for the proposed subdivision that was tentatively approved by the Planning and Zoning Commission

Yes. The proposed final plat is substantially similar to the preliminary plat.

Any and all conditions placed on approval of the preliminary plat by the Planning and Zoning Commission have been satisfied or will remain in place for future completion

Yes. No specific conditions were placed on the approval of the preliminary plat.

Sufficient easements and rights-of-way are included on the proposed subdivision to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision (Goal G3-d)

Yes. The proposed subdivision is not within the city limits or the urban service area boundary of the City of Bismarck. Therefore, planning for future municipal services is not necessary.

The Major Street Plan is adhered to with the proposed subdivision (Major Street Plan)

Yes. The corridors identified in the Major Street Plan are incorporated into rights-of-way within the proposed subdivision. 48th Avenue SE is an arterial roadway which has right-of-way included in the final plat. A future North-South collector roadway titled Pinewood Drive is also included in the final plat. A plan reference map is attached to this staff report. A paving waiver was submitted

(continued)

for these roadways and was approved by the Burleigh County Commission at their regular meeting on May 19, 2025.

The Active Mobility Plan is adhered to with the proposed subdivision (Active Mobility Plan)

Yes. There are no corridors identified in the Active Mobility Plan within or adjacent to the proposed subdivision. A plan reference map is attached to this staff report.

A neighborhood park will be available within walking distance for all urban residents (Goal I1-a, Section 14-09-04(2)a(vii))

Yes. The provision of neighborhood parks and open space is not needed because the proposed final plat is not an urban subdivision with residential zoning districts.

Vehicle trips generated by the proposed subdivision will be adequately supported by the transportation system (Goal C3-c)

Yes. The proposed subdivision would likely not have a substantial effect on circulation and safety of public roadways in the vicinity, and therefore no traffic impact study is required.

Street connectivity is provided for efficient travel and secondary access for emergency services (Goal C4, Section 14-09-05)

Yes. Subdivision design requirements, such as maximum block length, intended to promote street connectivity has been met, and there are no cul-de-sacs or dead-end streets in the proposed subdivision. The City's Secondary Roadway Access Policy has been met allowing alternative routes into and out of the subdivision.

Roadway access is managed to reduce potential points of conflict and improve safety (Goal C3-b)

Yes. Direct access to major public roadways is appropriately limited and spacing of all intersections is adequate to meet the City's access management standards and professional engineering judgement. Non-access lines will be dedicated with the proposed plat to communicate and enforce this access control.

Stormwater runoff impacted by this subdivision is adequately managed to protect public and private investments and the natural environment (Goal I5, Section 14.1-04-03);

Yes. The City Engineer, with concurrence from the County Engineer, has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP) for the proposed subdivision.

Dimensional standards of the zoning ordinance are met with the proposed subdivision (Title 14)

Yes. All lots meet area and width requirements of the zoning district within which they are located, and there is sufficient space within each lot for anticipated buildings to meet density, setback, and lot coverage requirements. All rights-of-way and dedicated easements conform to design standards of the subdivision ordinance.

Natural hazards and impact to environmentally sensitive land is minimized through the location and design of the proposed subdivision (Goal I6-a)

Yes. The proposed subdivision is not located within the Special Flood Hazard Area (SFHA), also known as the 100-year floodplain, an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, or an area that is topographically unsuited for development

Water supply systems will seamlessly transition from a rural to an urban system through cooperation with the South-Central Regional Water District (Goal G3-f, Section 14-09-04(2)d)

Yes. The proposed subdivision is within two miles of the city limits and will require an agreement with the South Central Regional Water District prior to recordation of the plat. The City of Bismarck will retain rights to extend municipal

(continued)

water into the proposed subdivision after five years.

The City's investment in infrastructure associated with the proposed subdivision is expected to receive a proportional long-term return to residents through future revenues or other public goods associated with this subdivision (Goal G3-a)

Yes. The proposed subdivision is outside of Bismarck city limits and will not be served by municipal services at this time.

The public health, safety and general welfare will not be adversely impacted by the proposed subdivision (Goal S10-a)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed subdivision would not adversely impact the public health, safety, and general welfare.

Technical specifications required of the final plat have been met (Section 14-09-07)

Yes. The proposed final plat contains the required information to ensure an accurate and timely review by staff, the Planning and Zoning Commission, and the general public.

Proper administrative procedures related to the request are being followed (Section 14-09-04)

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. Upon tentative approval of the preliminary plat, the applicant has submitted a complete application for final plat approval, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission. A public hearing has been scheduled for this request, and all requirements for notice of this hearing have been met, as documented in this report above.

Zoning Map Amendment

The Future Land Use Plan is adhered to with the proposed zoning map amendment (Future Land Use Plan)

Yes. The proposed zoning map amendment is within the area designated as Rural Residential in the Future Land Use Plan, as described in the Project Context section above. The proposed zoning district would generally conform to the character of this district.

The proposed amendment is compatible with adjacent land uses and zoning (Goal S10-a, S5-a)

Yes. Adjacent uses are described in the project context section above. The proposed zoning district would allow large lot single-family residences with limited agricultural uses. Development that may be anticipated from the proposed zoning would have no negative impact on the surrounding properties.

A change in conditions or by an error in the zoning map has occurred since the previous zoning classification was established (Goal S9-e)

Yes. The current zoning district of A - Agriculture was established in April 1978. Conditions have changed since this time such that the current owners of the proposed Lot 2 wish to rebuild their single-family residence.

Undue restriction of housing options or access to neighborhood amenities would not result from the proposed zoning map amendment (Goal S1-a, Goal T1-c)

Yes. The proposed zoning map amendment would not adversely impact housing opportunities in any way.

The goals and objectives of Together 2045 Bismarck's Comprehensive Plan would be advanced by the proposed zoning ordinance map amendment (Comprehensive Plan)

(continued)

Yes. The following objectives of the plan would be advanced through the proposed amendment.

- S5: Protect the rural character of existing planned rural residential areas in Bismarck's Extraterritorial Area.
- G2(c): Exercise zoning and subdivision authority within the City's Extraterritorial Area and periodically review this boundary with potential adjustments to align with expected growth.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed zoning map amendment (Section 14-02-01; NDCC 40-27-03)

Yes. The proposed zoning map amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

Proper administrative procedures related to the request are being followed (Section 14-07-02, NDCC Chapter 40-47)

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The applicant has submitted a complete application for a zoning map amendment, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning map amendment (Goal S10-a)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning map amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning map amendment from the A – Agricultural zoning district to the RR – Residential zoning district and the major subdivision final plat titled Cruz Subdivision.

Attachments

1. Draft Zoning Ordinance
2. Zoning and Plan Reference Map
3. Proposed Zoning
4. Preliminary Plat
5. Final Plat

Staff report prepared by: Lauren Oster, Planner

701-355-1846 | laoster@bismarcknd.gov

CITY OF BISMARCK
ORDINANCE NO. XXXX

First Reading	_____
Second Reading	_____
Final Passage and Adoption	_____
Publication Date	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the A – Agricultural zoning district and included in the RR – Residential zoning district:

Lots 1 and 2, Block 1, Cruz Subdivision

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

DRAFT

Proposed Zoning Change

CRUZ SUBDIVISION

ZC2025-009

Proposed New Zoning Map

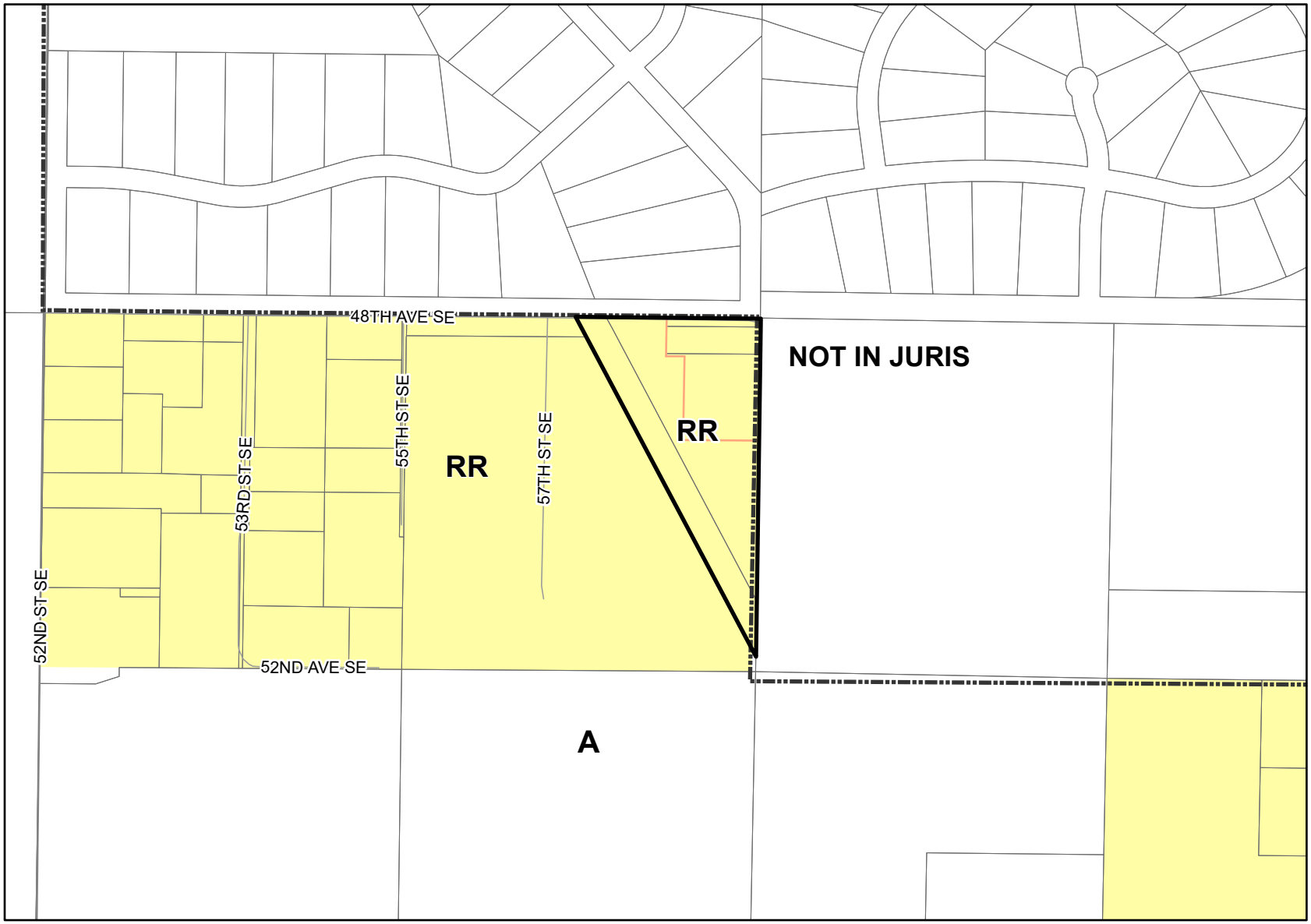
Project Area (zoning within is proposed)

City Limits

Zoning Districts

A	Agriculture
RR	Rural Residential
R5	Residential
RMH	Manufactured Home Residential
R10	Residential
RM	Residential Multifamily
RT	Residential (Offices)
HM	Health and Medical
CA	Commercial
CG	Commercial
MA	Industrial
MB	Industrial
PUD	Planned Unit Development
DC	Downtown Core
DF	Downtown Fringe

A "C-" prior to the district indicates that special conditions would apply to the zoning district



0 0.17 0.35 0.7 Miles

This map is for representational use only and does not represent a survey.
No liability is assumed as to the accuracy of the data delineated hereon.

City of Bismarck
Community Development
Planning Division
May 19, 2025

Zoning and Plan Reference Map

CRUZ SUBDIVISION

PPLT2025-002

Zoning Districts

A	Agriculture
RR	Rural Residential
R5	Residential
RMH	Manufactured Home Residential
R10	Residential
RM	Residential Multifamily
RT	Residential (Offices)
HM	Health and Medical
CA	Commercial
CG	Commercial
MA	Industrial
MB	Industrial
PUD	Planned Unit Development
DC	Downtown Core
DF	Downtown Fringe

Future Land Use Plan

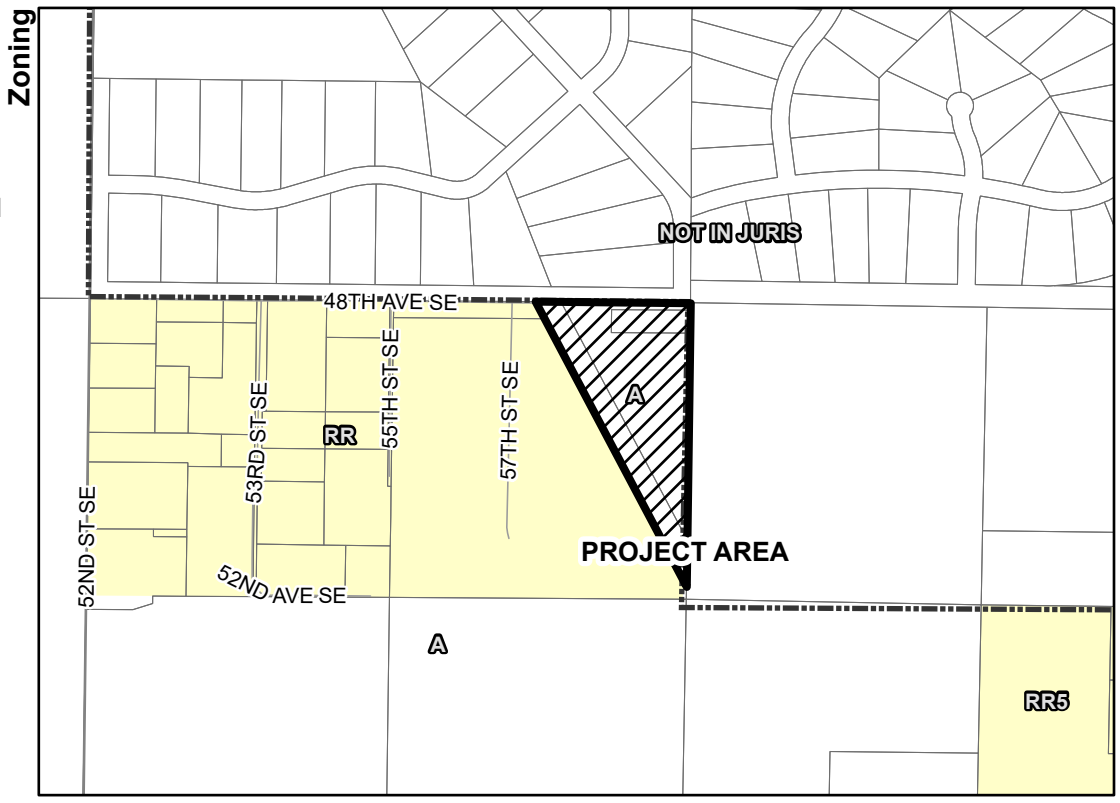
UN	Urban Neighborhood
NMU	Neighborhood Mixed Use
CMU	Community Mixed Use
DMU	Destination Mixed Use
DT	Downtown
IND	Industrial
IF	Industrial Flex
IMU	Industrial Mixed Use
INS	Institutional
RR	Rural Residential
TR	Transitional Rural
PKOS	Parks/Open Space
	Urban Reserve
URA/ URB	Mid/Long-Term

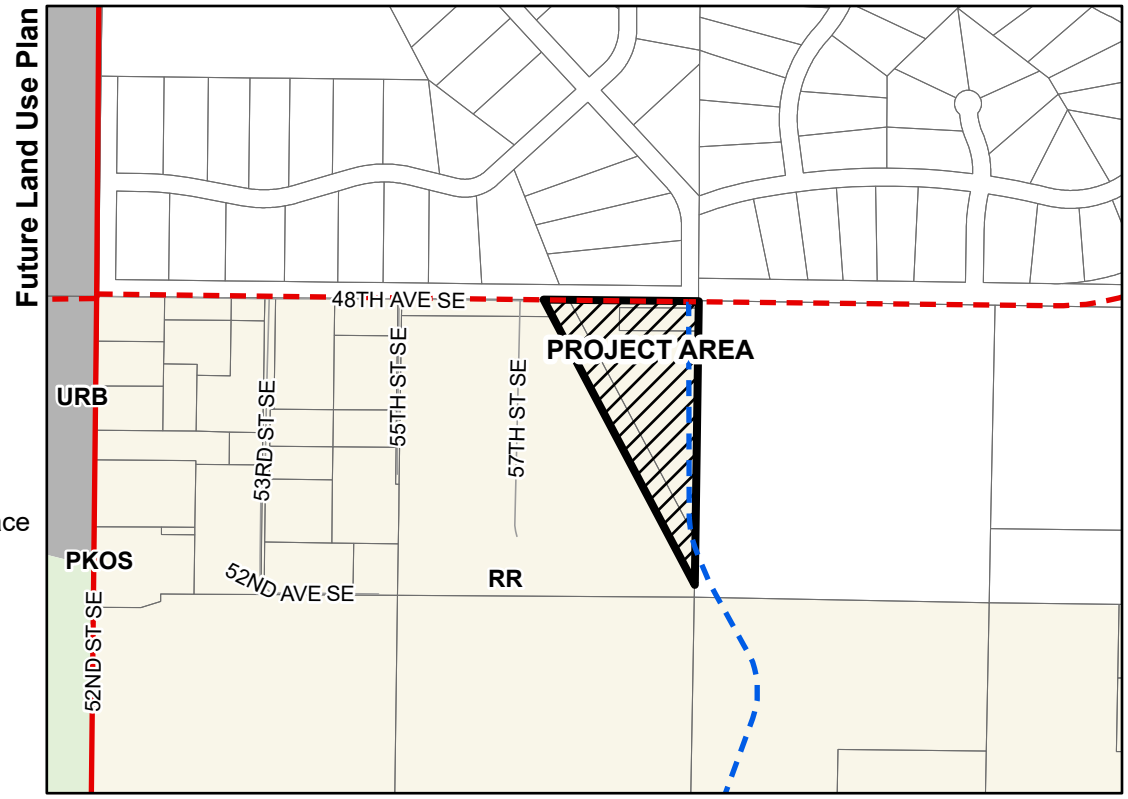
Active Mobility Plan

- Future Shared Trail

Major Street Plan

- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate
- City Limits





This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

0 500 1,000 2,000 Feet

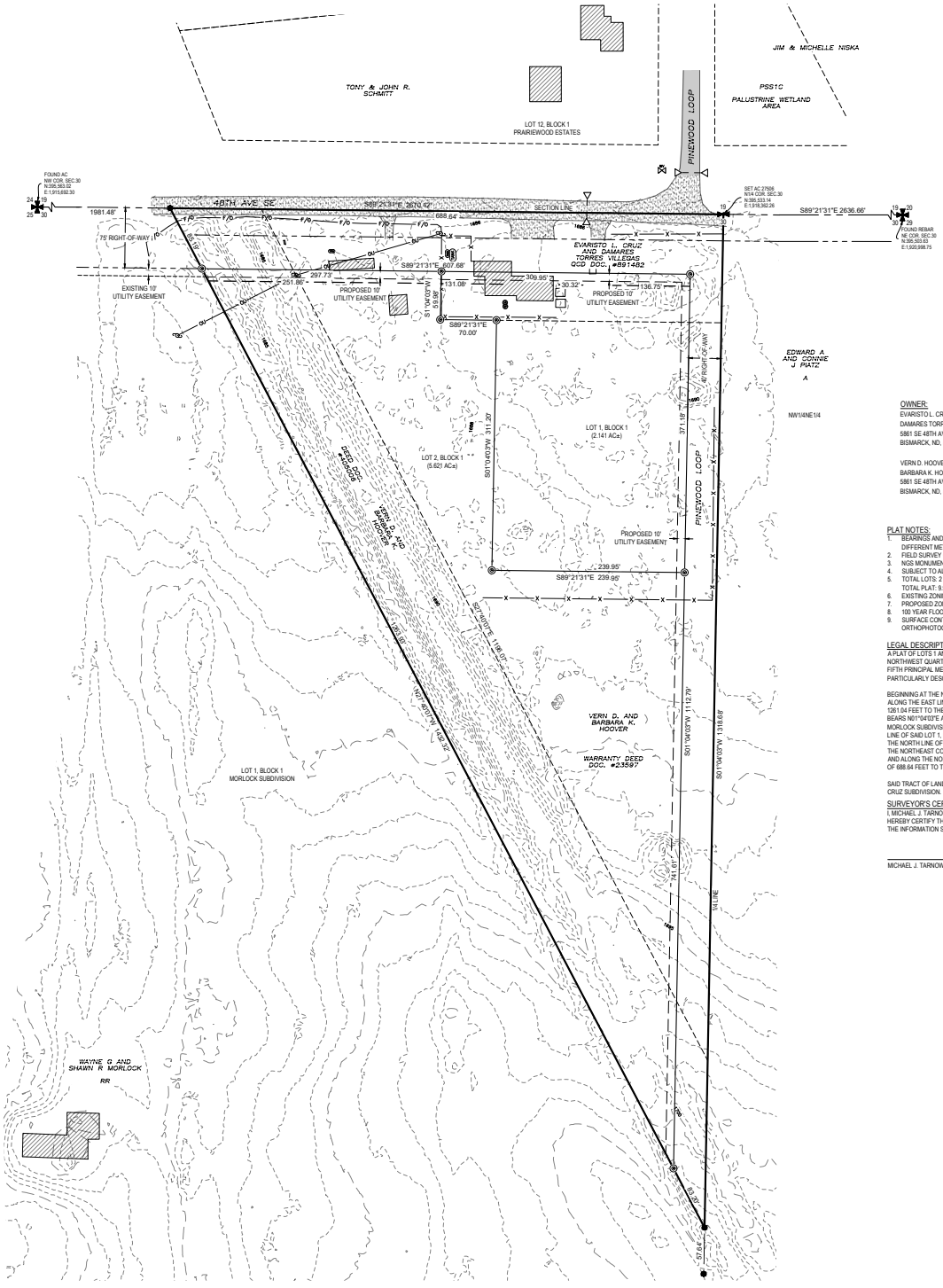
City of Bismarck
Community Development
Planning Division
May 19, 2025

PRELIMINARY PLAT

CRUZ SUBDIVISION

TO THE CITY OF BISMARCK

IN THE NE1/4NW1/4 OF SECTION 30, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA



LOT ACRES	7.762 ±
ROW ACRES	2.206 ±
TOTAL ACRES	9.968 ±

OWNER:
EVARISTO L. CRUZ
DAMARES TORRES VILLEGAS
5861 SE 48TH AVE
BISMARCK, ND, 58504

VERN D. HOOVER
BARBARA K. HOOVER
5861 SE 48TH AVE
BISMARCK, ND, 58504

SURVEYOR:
MICHAEL J. TARNOWSKI, PLS-27506
MOUNTAIN PLAINS, LLC
1300 TACOMA AVE, SUITE A
BISMARCK, ND, 58504
(701) 557-3348

PLAT NOTES:
1. BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS DOCUMENTS OF RECORD DUE TO DIFFERENT METHODS OF FIELD MEASUREMENT.
2. FIELD SURVEY COMPLETED 3/1/22025.
3. NGS MONUMENT DESIGNATION - CITY OF BISMARCK CONTROL B51 - 25 (NAVD88).
4. SUBJECT TO ALL EASEMENTS OF RECORD WHETHER SHOWN OR NOT SHOWN.
5. TOTAL LOTS: 2
   TOTAL PLAT: 9.97 ACRES
6. EXISTING ZONING: A
7. PROPOSED ZONING: RR
8. 100 YEAR FLOOD PLAIN: FEMA ZONE X. DOCUMENT #38015C0815E. EFFECTIVE DATE: 6/6/2024
9. SURFACE CONTOURS SHOWN IS SOURCED BY THE BISMARCK-MANDAN MPO DIGITAL ORTHOPHOTOGRAPHY & MAPPING PROJECT AND WAS COLLECTED ON MAY 3RD, 2023

LEGAL DESCRIPTION

A PLAT OF LOTS 1 AND 2, BLOCK 1 OF CRUZ SUBDIVISION IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 30, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, TO THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

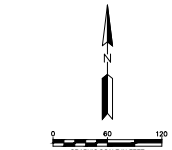
BEGINNING AT THE NORTH QUARTER (N1/4) CORNER OF SAID SECTION 30; THENCE S01°04'03"W ON AND ALONG THE EAST LINE OF THE NORTHWEST QUARTER (NW1/4) OF SAID SECTION 30 A DISTANCE OF 1261.04 FEET TO THE SOUTH CORNER OF A TRACT OF LAND, PER DOCUMENT NO. 455606, WHICH POINT BEARS N01°04'03"E A DISTANCE OF 57.64 FEET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 1 OF MORLOCK SUBDIVISION, PER DOCUMENT NO. 523232; THENCE N27°40'07"W ON AND ALONG THE EAST LINE OF SAID LOT 1, BLOCK 1 OF MORLOCK SUBDIVISION A DISTANCE OF 1432.32 FEET TO A POINT ON THE NORTH LINE OF THE THE NORTHWEST QUARTER (NW1/4) OF SAID SECTION 30, SAID POINT BEING THE NORTHEAST CORNER OF SAID LOT 1, BLOCK 1 OF MORLOCK SUBDIVISION; THENCE S89°21'31"E ON AND ALONG THE NORTH LINE OF THE NORTHWEST QUARTER (NW1/4) OF SAID SECTION 30 A DISTANCE OF 688.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 9.97 ACRES, MORE OR LESS, AND SHALL HENCE FORTH BE KNOWN AS CRUZ SUBDIVISION.

SURVEYOR'S CERTIFICATE

I, MICHAEL J. TARNOWSKI, A REGISTERED LAND SURVEYOR, NORTH DAKOTA PLS NO. LS-27506, DO HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS MADE BY ME OR UNDER MY DIRECTION, AND THE INFORMATION SHOWN ON THIS MAP IS TRUE AND CORRECT, TO THE BEST OF MY KNOWLEDGE.

MICHAEL J. TARNOWSKI, PLS-27506 — DATE — PRELIMINARY



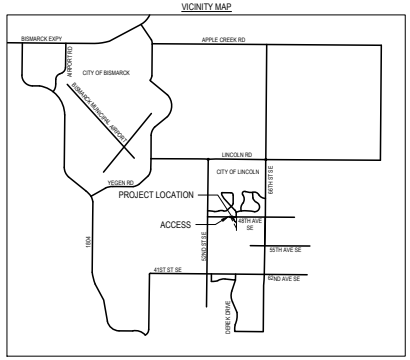
HORIZ. DATUM: NAD83
VERT. DATUM: NAVD88

BASIS OF BEARINGS: NORTH DAKOTA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83, INTERNATIONAL FEET, GRID DISTANCES

LEGEND

- FOUND MONUMENT
- SET 5/8" REBAR YPC STAMPED "TARNOWSKI LS - 27506"
- SECTION CORNER - AS NOTED
- QUARTER CORNER - AS NOTED
- CULVERT
- GAS TANK
- GAS VENT PIPE
- WATER GATE VALE
- EXISTING LOT LINE
- EXISTING EASEMENT
- EXISTING RIGHT-OF-WAY
- PLAT BOUNDARY
- PROPOSED EASEMENT
- PROPOSED LOT LINE
- NON-ACCESS LINE
- SECTION LINE
- QUARTER LINE
- OVERHEAD POWERLINE
- FIBER OPTIC
- FENCE
- GRAVEL
- ASPHALT
- BUILDING

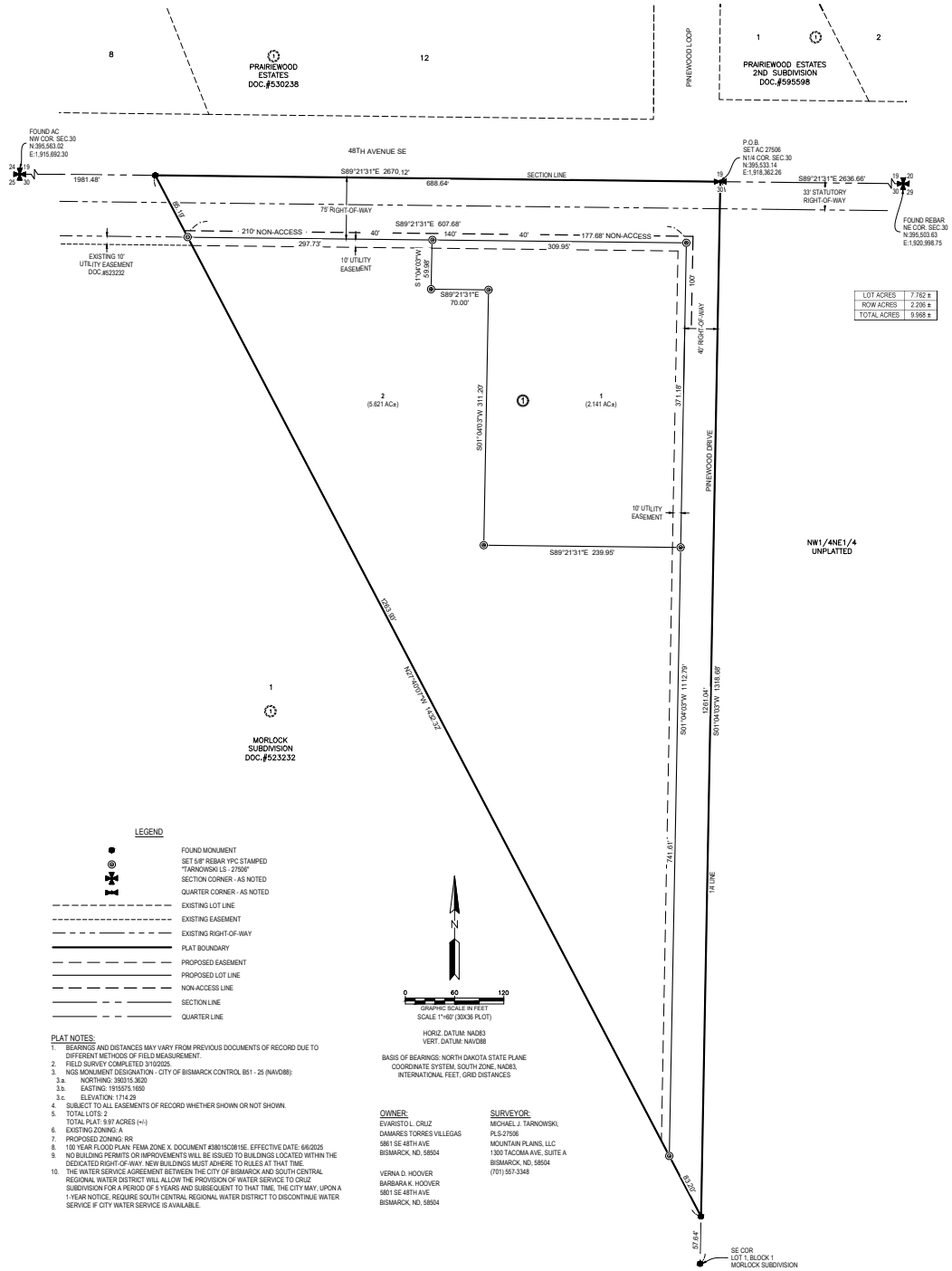
VICINITY MAP



CRUZ SUBDIVISION

TO THE CITY OF BISMARCK

IN THE NE1/4NW1/4 OF SECTION 30, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA



LEGEND

- FOUND MONUMENT
- SET 5/8" REBAR YPC STAMPED "TARNOWSKI LS - 27506"
- SECTION CORNER - AS NOTED
- QUARTER CORNER - AS NOTED
- EXISTING LOT LINE
- EXISTING EASEMENT
- EXISTING RIGHT-OF-WAY
- PLAT BOUNDARY
- PROPOSED EASEMENT
- PROPOSED LOT LINE
- NON-ACCESS LINE
- SECTION LINE
- QUARTER LINE

PLAT NOTES:

1. BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS DOCUMENTS OF RECORD DUE TO DIFFERENT METHODS OF FIELD MEASUREMENT.
2. FIELD SURVEY COMPLETED 3/10/2025.
3. NGS MONUMENT DESIGNATION - CITY OF BISMARCK CONTROL B51 - 25 (NAVD88):
   - 3.a. NORTHING: 390315.3620
   - 3.b. EASTING: 1915575.1650
   - 3.c. ELEVATION: 1714.29
4. SUBJECT TO ALL EASEMENTS OF RECORD WHETHER SHOWN OR NOT SHOWN.
5. TOTAL LOTS: 2
   TOTAL PLAT: 9.97 ACRES (+/-)
6. EXISTING ZONING: A
7. PROPOSED ZONING: RR
8. 100 YEAR FLOOD PLAIN: FEMA ZONE X. DOCUMENT #38015C0815E. EFFECTIVE DATE: 6/6/2025
9. NO BUILDING PERMITS OR IMPROVEMENTS WILL BE ISSUED TO BUILDINGS LOCATED WITHIN THE DEDICATED RIGHT-OF-WAY. NEW BUILDINGS MUST ADHERE TO RULES AT THAT TIME.
10. THE WATER SERVICE AGREEMENT BETWEEN THE CITY OF BISMARCK AND SOUTH CENTRAL REGIONAL WATER DISTRICT WILL ALLOW THE PROVISION OF WATER SERVICE TO CRUZ SUBDIVISION FOR A PERIOD OF 5 YEARS AND SUBSEQUENT TO THAT TIME, THE CITY MAY, UPON A 1-YEAR NOTICE, REQUIRE SOUTH CENTRAL REGIONAL WATER DISTRICT TO DISCONTINUE WATER SERVICE IF CITY WATER SERVICE IS AVAILABLE.

OWNER:
EVARISTO L. CRUZ
DAMARES TORRES VILLEGAS
5861 SE 48TH AVE
BISMARCK, ND, 58504

VERNA D. HOOVER
BARBARA K. HOOVER
5801 SE 48TH AVE
BISMARCK, ND, 58504

SURVEYOR:
MICHAEL J. TARNOWSKI, PLS-27506
MOUNTAIN PLAINS, LLC
1300 TACOMA AVE, SUITE A
BISMARCK, ND, 58504
(701) 557-3348

LEGAL DESCRIPTION

IN THE NE1/4NW1/4 OF SECTION 30, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER (N1/4) CORNER OF SAID SECTION 30; THENCE S01°04'03"W ON AND ALONG THE EAST LINE OF THE NORTHWEST QUARTER (NW1/4) OF SAID SECTION 30 A DISTANCE OF 1261.04 FEET TO A POINT ON THE EASTERLY LINE OF LOT 1, BLOCK 1 OF MORLOCK SUBDIVISION, PER DOCUMENT NO. 523232, WHICH POINT BEARS N01°04'03"E A DISTANCE OF 57.64 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 1, BLOCK 1 OF MORLOCK SUBDIVISION; THENCE N27°40'07"W ON AND ALONG THE EASTERLY LINE OF SAID LOT 1, BLOCK 1 OF MORLOCK SUBDIVISION A DISTANCE OF 1432.32 FEET TO A POINT ON THE NORTH LINE OF THE THE NORTHWEST QUARTER (NW1/4) OF SAID SECTION 30, SAID POINT BEING THE NORTHEAST CORNER OF SAID LOT 1, BLOCK 1 OF MORLOCK SUBDIVISION; THENCE S89°21'31"E ON AND ALONG THE NORTH LINE OF THE NORTHWEST QUARTER (NW1/4) OF SAID SECTION 30 A DISTANCE OF 688.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 9.97 ACRES, MORE OR LESS, AND SHALL HENCE FORTH BE KNOWN AS CRUZ SUBDIVISION.

SURVEYOR'S CERTIFICATE

I, MICHAEL J. TARNOWSKI, HEREBY CERTIFY I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, THAT THIS SURVEY WAS MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN, THAT ALL MONUMENTS, AND MARKS SET, TOGETHER WITH THOSE FOUND, ARE OF THE CHARACTER AND OCCUPY THE POSITIONS SHOWN THEREON, AND ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

_____ DATE:_____
MICHAEL J. TARNOWSKI
PROFESSIONAL LAND SURVEYOR
N.D. REGISTRATION NO. PLS-27506

OWNER'S CERTIFICATE AND DEDICATION

WE, THE UNDERSIGNED, BEING ALL THE OWNERS OF THE LANDS PLATTED HEREIN, HAVE CAUSED THE LAND TO BE PLATTED AND DO HEREBY VOLUNTARILY CONSENT TO THE EXECUTION OF THIS PLAT TITLED CRUZ SUBDIVISION AND DO DEDICATE ALL RIGHTS OF WAY SHOWN ON THIS PLAT FOR PUBLIC USE, AND CONSENT TO ANY ACCESS CONTROL TO THE PROPERTY AS SHOWN.

WE ALSO DEDICATE TO THE PUBLIC ALL EASEMENTS AS SHOWN ON THIS PLAT AS "UTILITY EASEMENT" TO RUN WITH THE LAND FOR GAS, ELECTRIC, COMMUNICATION AND/OR OTHER PUBLIC UTILITIES ON OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON.

WE FURTHER GRANT ANY OTHER EASEMENTS OR SERVITUDES AS SHOWN AND THOSE THAT ARE RECORDED BUT NOT SHOWN.

_____
DAMARES TORRES VILLEGAS, OWNER
LOT 1, BLOCK 1

STATE OF _____)
) SS
COUNTY OF _____)

ON THIS____ DAY OF _____, 2026, BEFORE ME PERSONALLY APPEARED DAMARES TORRES VILLEGAS, KNOWN TO ME TO BE THE PERSON(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN CERTIFICATE AND THEY ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC, _____

_____
EVARISTO L. CRUZ, OWNER
LOT 1, BLOCK 1

STATE OF _____)
) SS
COUNTY OF _____)

ON THIS____ DAY OF _____, 2026, BEFORE ME PERSONALLY APPEARED EVARISTO L. CRUZ, KNOWN TO ME TO BE THE PERSON(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN CERTIFICATE AND THEY ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC, _____

_____
VERNA D. HOOVER, OWNER
LOT 2, BLOCK 1

STATE OF _____)
) SS
COUNTY OF _____)

ON THIS____ DAY OF _____, 2026, BEFORE ME PERSONALLY APPEARED VERNA D. HOOVER, KNOWN TO ME TO BE THE PERSON(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN CERTIFICATE AND THEY ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC, _____

_____
BARBARA K. HOOVER, OWNER
LOT 2, BLOCK 1

STATE OF _____)
) SS
COUNTY OF _____)

ON THIS____ DAY OF _____, 2026, BEFORE ME PERSONALLY APPEARED BARBARA K. HOOVER, KNOWN TO ME TO BE THE PERSON(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN CERTIFICATE AND THEY ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC, _____

APPROVAL OF CITY PLANNING AND ZONING COMMISSION

THE SUBDIVISION OF LAND AS SHOWN ON THIS PLAT HAS BEEN APPROVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF BISMARCK, NORTH DAKOTA, ON THE ____DAY OF _____ 2026, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA AND ORDINANCES OF THE CITY OF BISMARCK.

_____ _____
MICHAEL J. SCHWARTZ - CHAIR ATTEST: DANIEL NAIRN - SECRETARY

APPROVAL OF BOARD OF CITY COMMISSIONERS

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THIS PLAT, HAS APPROVED THE GROUNDS AS SHOWN ON THIS PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS ACCEPTED THE DEDICATION OF ALL RIGHTS OF WAY AND PUBLIC EASEMENTS SHOWN THEREON AND DOES HEREBY VACATE ANY PREVIOUS PLATTING WITHIN THE BOUNDARY OF THIS PLAT.

THE FOREGOING ACTION OF THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA, WAS APPROVED ON THE ____DAY OF _____ 2026.

_____ _____
MICHAEL T. SCHMITZ - PRESIDENT ATTEST: JASON TOMANEK - CITY ADMINISTRATOR

APPROVAL OF CITY ENGINEER

I, GABRIEL J. SCHELL, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVE THIS PLAT ON THE ____DAY OF _____ 2026.

_____
GABRIEL J. SCHELL - CITY ENGINEER

BOARD OF COUNTY COMMISSIONERS

THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA, HAS ACCEPTED THE DEDICATION OF ALL RIGHTS-OF-WAY AS SHOWN ON THIS PLAT. THE FOREGOING ACTION OF THE BOARD OF COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA, WAS APPROVED THE ____DAY OF _____ 2026.

_____ _____
BRIAN BITNER - CHAIR ATTEST: MARK SPLONSKOWSKI - AUDITOR

Agenda Item # 4B
March 25, 2026

STAFF REPORT

Application for: **Zoning Ordinance Text Amendment**

Project ID: **ZOTA2026-001**

Project Summary

Title:	Revisions to FP – Floodplain District
Status:	Planning and Zoning Commission - Public Hearing
Project Contact:	Jenny Wollmuth, AICP, CFM, Senior Planner
Request:	Amend Section 14-04-19 to update references to North Dakota Century Code (NDCC) chapters relating to Senate Bill 2027
Staff Recommendation:	Approve

Project Narrative

The Planning Department requests approval of a zoning ordinance text amendment to Section 14-04-19 to update references to North Dakota Century Code (NDCC) chapters relating to Senate Bill 2027.

Background

SB2027 clarified and streamlined local floodplain management authority by separating it from zoning, allowing communities to manage flood risks without adopting zoning ordinances. It created new sections in NDCC Chapters 40-05, 11-11, and 58-06.

While beneficial for smaller North Dakota communities, Bismarck already regulates floodplain management through its zoning ordinance, which applies within the city and its extraterritorial area. This amendment will not change how Bismarck manages floodplains.

However, to comply with state and federal law, the North Dakota Department of Water Resources (DWR) has requested that communities participating in the National Flood Insurance Program (NFIP) update their ordinances to reference NDCC Chapters 40-05, 11-11, and 58-06 in their specific authorization sections. This particular section was added to Section 14-04-19 in 2024 at the request of NFIP representatives in conjunction with adoption of the 2024 FIRM Map. A model amendment has been provided to communities and is included for review.

SB2027 also requires that all ND communities annually certify to the DWR that they are continuing to undertake floodplain management. This certification was presented to the City Commission at their meeting on February 24, and forwarded to the DWR on March 4, 2026.

Public Engagement

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on March 13 and 20, 2026.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Open Development Projects Dashboard.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

(continued)

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

The goals and objectives of Together 2045 Bismarck's Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment (Comprehensive Plan)

Yes. The following objectives of the plan would be advanced through the proposed amendment.

I6(b): Participate actively in the National Flood Insurance Program and Community Rating System to manage designated floodplains.

T9(d): Integrate development review processes conducted by various city departments and external agencies into a clear and seamless process.

The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance (Goal S9-e, G10-g)

Yes. This section of the zoning ordinance was previously adopted in 2024. In particular, the authorization section referencing NDCC chapters was added at the request of representatives of the NFIP. The purpose of the proposed zoning ordinance text amendment is to clarify this provision referencing modified chapters as noted in SB2027 to ensure that the original intent is met.

The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment (Section 14-02-01; NDCC 40-27-03)

Yes. The proposed zoning text amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance (Goal G10)

Yes. All sections of the zoning ordinance containing any references to or potential conflicts with the proposed zoning ordinance text amendment have been reviewed and corrected, as needed.

Proper administrative procedures related to the request are being followed (Section 14-07-02, NDCC Chapter 40-47)

Yes. All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning ordinance text amendment has been initiated by staff from the Planning Department, on behalf of the Planning and Zoning Commission. A preliminary draft is attached to this report for consideration by the Planning and Zoning Commission.

The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment (Goal S10-a)

Yes. As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning text amendment would not adversely impact the public health, safety, and general welfare.

Staff Recommendation

Based on the above findings, staff recommends approval of the zoning ordinance text amendment to Section 14-04-19 to update references to North Dakota Century Code (NDCC) chapters relating to Senate Bill 2027.

Attachments

1. Draft Zoning Ordinance
2. Model Amendment

(continued)

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1854 | jwollmuth@bismarcknd.gov

CITY OF BISMARCK
ORDINANCE NO. XXXX

First Reading	_____
Second Reading	_____
Final Passage and Adoption	_____
Publication Date	_____

AN ORDINANCE TO AMEND SECTION 14-04-19 OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO STATUTORY AUTHROIZATION THE IN FLOODPLAIN DISTRICT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amend. Section 14-04-19 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to FP – Floodplain District, is hereby enacted to read as follows:

14-04-19. FP Floodplain District. In any FP floodplain district, the following regulations shall apply:

1. Statutory Authorization. The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47~~7~~05, 11-~~33~~11 and 58-0~~3~~6, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

* * * * *

(Ord. 4137, 5-26-87; Ord. 4737, 11-14-95; Ord. 4948, 10-13-98; Ord. 5037, 03-14-00; Ord. 5259, 05-27-2003; Ord. 5423, 05-24-05; Ord. 5728, 05-26-09; Ord. 5779, 07-27-10 and 08-10-10; Ord. 5811, 03-22-11; Ord. 6028, 01-28-14; Ord. 6068; 06-24-14; Ord. 6173, 10-27-15; Ord. 6477, 08-02-21; Ord. 6577, 06-11-24, Ord XXXX, [DATE])

Section 2. 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.

DRAFT

Section 3. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Effective Date. This ordinance shall take effect after final passage, adoption and publication.

DRAFT

MODEL AMENDMENT
FLOODPLAIN MANAGEMENT

SECTION 1.0
STATUTORY AUTHORIZATION

The _____ of _____,
(governing body) (local unit)
North Dakota does hereby amend its floodplain management ordinance as follows:

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-05, 11-11 and 58-06, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

PASSED THIS _____ of _____,_____.

APPROVED:

_____
CHIEF EXECUTIVE OFFICER

ATTEST:
(seal)

_____
(Auditor or Clerk)