

Chapter 46 - ZONING^[1]

Footnotes:

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State Law reference— Zoning ch. 40-47.

ARTICLE I. - IN GENERAL

Sec. 46-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use means a use subordinate to the main use of land or a building on a lot and customarily incidental thereto.

Adult bookstore means an establishment having as a substantial or significant portion (20 percent or more) of its sales or stock in trade, books, magazines, films for sale or for viewing on premises by use of motion picture devices or by coin operated means, and periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specific sexual activities" or "specified anatomical areas" or an establishment with a segment or section devoted to the sale or display of such materials; or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, presence of video preview or coin operated booths, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

Adult entertainment centers includes adult bookstores, adult novelty stores, and adult video stores.

Adult novelty store means an establishment having a substantial or significant portion of its sales or stock in trade consisting of toys, devices, clothing novelties, lotions and other items distinguished or characterized by their emphasis on or use for "specific sexual activities" or "specified anatomical areas" or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

Adult video store means any video store where the inventory, whether for sale or rental, is intended for patrons who are over 18 years old and such inventory occupies 20 percent or more of the store square footage.

Agriculture means an area which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory use for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities, and provided further, that farming does not include large scale commercial feeding of livestock.

Alley means minor ways which are used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

Alterations, structural, means any change in the load-bearing members of a building, such as bearing walls, partitions, columns, beams, or girders. The enlargement of the size or height of a building shall be construed to be a structural alteration.

Apartment means a room or suite of rooms, with toilet and culinary accommodations, used or designed for use as a residence by a family, or any two or more people, located in a building containing more than eight such rooms or suites, or located in a building devoted primarily to nonresidential use.

Auto laundry means a building or portion thereof, where automobiles are washed commercially, or equipment is rented for the same purpose.

Automobile sales room means a building or portion thereof where automobiles and vehicles are sold by a franchised dealer either with or without storage, parts sales, and repair facilities providing all such repair activities are enclosed within a structure.

Basement means a story having part, but not more than one-half of its height, above grade. A basement is considered a story, for the purpose of height regulation if used for dwelling purposes other than by a janitor employed on the premises.

Boardinghouse means a building or place other than a fraternity or sorority house where lodging for no more than eight persons and boarding for no more than 20 is provided by prearrangement for definite periods of time for compensation, for no more than eight persons, and is not open to transient guests.

Building means any enclosed space for human use or activities, whether stationary or movable. When any portion of a building is completely separated from any other portion thereof by a division from any other openings or by a view wall, then each such portion shall be deemed to be a separate building. The term "principal building" means a building, including covered porches, carports and attached garages, in which is conducted the principal use of the lot on which it is situated. In any residence district the main dwelling shall be deemed to be the principal building on the lot on which the same is situated.

Building, height of, means the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

Building line means an imaginary line parallel to the front lot line over which no portion of any building, excluding unenclosed steps, may extend and which is a distance from the front lot line equal to the depth of the front yard required for the district in which such lot is located. On a cul-de-sac the building line shall be measured at the nearest point of tangency between the front property line and the building line and shall also be equal to the front yard requirement for the district.

Carport means a form of private garage providing space for housing or storage of one or more automobiles and enclosed on not more than two sides by walls. The dimensions determining the overall size of the carport shall be measured from the extreme edge of any part of the building.

Centerline means the true centerline of a street which has been fully dedicated to its required width. Where all of the required width of public right-of-way has not been dedicated or such public right-of-way exists in an offset or angular manner, the city engineer shall determine the alignment of the centerline.

Clinic means an establishment where patients are not lodged overnight, but are admitted for examination and treatment by physicians or dentists practicing medicine together.

Club or lodge means a nonprofit association of persons organized for the promotion of service to others, who are bona fide members paying annual dues which owns, hires or leases a building, or portion thereof, except a fraternity or sorority, the use of such premises being restricted to members and their guests. It shall be permissible to serve food and beverages to members and their guests on such premises provided adequate dining room space and kitchen facilities and other services complimentary to the purpose of the club are available and are operated in compliance with the state and local municipal laws.

Dwelling means a building used exclusively for permanent residential occupancy, or a portion thereof, including one-family dwellings, two-family dwellings, and multiple-family dwellings. The term "dwelling" does not include a mobile home designed or used primarily for residential occupancy, or hotel, motel, apartments, boardinghouse, lodginghouse or roominghouse, tents, cottage camps or other structures designed or used primarily for transient residents.

- (1) *Dwelling, single-family,* means a detached building containing only one dwelling unit designed to be located on a permanent foundation and, if site built, constructed in accordance with the provisions of the applicable city codes governing construction; or, if manufactured off site, constructed in accordance with either the city codes governing construction or the HUD

Manufactured Home Construction and Safety Standards (24 CFR 3280) and designed for occupancy or use exclusively by one family. All single-family dwellings shall be considered and taxed as real property as provided by law. Each single-family dwelling shall meet the following requirements:

- a. The main entrance shall face the street;
 - b. Each unit shall have no less than two entrances;
 - c. The roof pitch shall not be less than 4/12 ratio;
 - d. The roof shall have an overhang of not less than 24 inches;
 - e. Each unit shall have space for at least a single stall attached garage;
 - f. Modular homes and site built homes meet the requirements of the state building code;
 - g. Manufactured homes meet HUD Code;
 - h. Each unit shall have at least 900 square feet of living space with a minimum width of 24 feet, excluding the garage;
 - i. Each unit shall have appearance comparable to conventional site built homes and have roofing and siding similar to the surrounding dwelling units; and
 - j. All moving devices, such as wheels and hitches, if any, must be removed.
- (2) *Dwelling, two-family*, means a building designed or used exclusively for occupancy by two families.
- (3) *Dwelling, multiple-family*, means a building, or portion thereof, containing three or more dwelling units.
- (4) *Dwelling unit* consists of one or more rooms in a dwelling which are arranged, designed, used or intended for use as living quarters for one family. This includes permanent kitchen and bathroom facilities.

Family or household means one or more persons related by blood, marriage or adoption, or one family plus two unrelated persons or no more than four unrelated persons occupying a dwelling unit as an individual housekeeping entity.

Feedlot means a commercial venture under corporate partnership, or individual ownership involving the assemblage of livestock for the express purpose of preparation for market in the least time possible, purchasing over 75 percent of its feed, and characterized by rapid turnover of livestock; the absence of dwelling unit or structure for housing livestock, and presence of other uses normally associated with a farm.

Floor area means the total number of square feet of floor space as determined by the outside dimensions of the building, not including space in basements; however, if the basement is used for business or commercial purposes, excluding storage space, it shall be counted as floor area in computing off-street parking requirements.

Garage, private, means an enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than two licensed cars is rented to a nonresident of the premises.

Garage, repair, means any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, parts sales and adjusting or equipping of automobiles or other motorized equipment.

Grade means the average level of the finished surface of the ground adjacent to the exterior walls of the building. When any wall approximately parallels and is not more than five feet from a street line, the grade shall be measured from the top of the curb.

Home occupation means an occupation or a profession which:

- (1) Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit;
- (2) Is carried on by a member of the family residing in the dwelling unit for residential purposes;
- (3) Is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and
- (4) Which conforms to the following additional conditions:
 - a. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto, and shall not occupy more than 50 percent of the floor area of one story.
 - b. Not more than one person outside the family shall be employed in the home occupation.
 - c. There shall be no exterior display, nor exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building except as permitted by of this chapter.
 - d. No noise vibration, smoke, dust, odors, heat or glare shall be produced which is detrimental to the residential character of the zoning district in which it is located.

Hotel means a building occupied as the more or less temporary abiding place of individuals who are lodged with or without meals, and in which there are more than 20 sleeping rooms usually occupied independently.

Junk yard means an area of land with or without buildings used for or occupied by a deposit, collection, or the storage, outside of a completely enclosed building, for used and/or discarded materials such as waste paper, rags or scrap metal, seed, building materials, house furnishings, machinery, vehicles, or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

Kenel means any lot or premises on which four or more domestic animals or pets, at least four months of age, are harbored.

Lot means a piece, plat or parcel of land, or assemblage of contiguous parcels of land, as established by survey, plat or deed, occupied or to be occupied by a building, or a unit group of buildings, and accessory buildings thereto, together with such open spaces as are required under this chapter, and having its frontage on a dedicated public right-of-way.

- (1) *Lot area* means the area of land enclosed with the boundaries of the lot.
- (2) *Lot, corner*, means lots conforming to the requirements of the following specified conditions:
 - a. A lot fronting on two intersecting streets from which form an interior angle of 135 degrees or less and which lot has a frontage or not less than 25 feet on each of such streets.
 - b. A lot located at the angle in a street where the interior angle formed by the intersection of the street lines is not 135 degrees or less and which lot has a frontage of not less than 25 feet on each leg or such angle.
- (3) *Lot line* means a boundary line of a lot.
- (4) *Lot line, front*, means that boundary of a lot which is along an existing or dedicated public street, or where no public street exists, is along a public way. On a corner lot, the shorter street frontage shall be considered the front lot line.
- (5) *Lot line, rear*, means that boundary of a lot which is most distant from and is, or is most nearly parallel to, the front lot line.
- (6) *Lot line, side*, means any boundary of a lot which is not a front lot line or a rear lot line.
- (7) *Lot width* means the straight line distance between points on opposite side lot lines at the building line.

Manufactured home means a factory built dwelling unit, with at least 900 square feet of living space, to be placed on a permanent foundation or basement and is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to be placed on a permanent site and bears a label certifying that it was built in compliance with the latest standards adopted by the U.S. Department of Housing and Urban Development for a manufactured home and the state building code for a modular home.

Mobile home means a manufactured unit, transportable in one or more sections and has at least 900 square feet of living space and is designed as a year-round dwelling unit and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), which became effective June 15, 1976. The term "mobile home" does not include a recreational travel trailer.

Mobile home park means any premise where one or more mobile homes are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public parking space for one or more mobile homes for living or sleeping purposes, and which includes any buildings, structure, vehicles or enclosure used or intended for use as a part of the equipment of such mobile home park.

Motel, motor court, motor lodge or tourist court means any building or group of buildings containing guestrooms or dwelling units, some or all of which have a separate entrance leading directly from the outside of the building with garage or parking space conveniently located on the lot, and designed, used, or intended wholly or in part for the accommodation of automobile transients.

Nonconforming use means any building or land lawfully occupied by a use at the time of passage of this chapter or amendment thereto which does not conform after the passage of this chapter or amendment thereto, with the use regulation of the district in which it is situated.

Nursing home means a home for the aged or infirm, in which three or more persons not of the immediate family are received, kept, provided with food and shelter or care, for compensation; but not including, hospitals, clinics or similar institutions.

Parking space means an off-street space accessible and available for the parking of one motor vehicle and having an area of not less than 200 square feet, together with a driveway connecting the parking space with a street, road or alley, and permitting ingress and egress of an automobile.

Permanent foundation means an extension of the outer walls of a building or structure made of solid materials such as brick, concrete or treated wood and extended below the ground surface through the frost zone, or other depths as required by the city. See attached exhibit A which is by reference thereto incorporated into this chapter and on file in city hall as the required exterior footings and foundation and cross footings and foundation required by double-wide manufactured homes.

Public right-of-way means all streets, roadways, sidewalks, alleys, and other areas reserved for present or future use by the public as a matter of right, for the purpose of vehicular or pedestrian travel or utility installation.

Screen or fence means a manmade enclosure or barrier regardless of material, extending above ground level, including walls, earthen beams or free standing objects.

Sign means any structure or part thereof or device attached thereto or painted or represented thereon which shall display or include any letter, work, model, banner, flag, pennant, insignia, device or representation used as or which is in the nature of any announcement, direction or advertisement. The term "sign" includes the term "billboard."

Specific sexual activities means:

- (1) Human genitals in the state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy; and
- (3) Fondling or other erotic touching of human genitals, public region, buttock or female breasts.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered:

- a. Human genitals;
- b. Pubic region;
- c. Buttock; and
- d. Female breasts below a point immediately above the top of the areola; and

(2) Human male genitals in a discernable turgid state, even if completely and opaquely covered.

Service station means any area of land, including structures thereon, that is used or designed to be used primarily for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, dry cleaning or otherwise cleaning or servicing such motor vehicles.

Story means that portion of a building, other than a basement, included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between the floor and the ceiling next above it.

Street means the traveled portion of the public right-of-way between curb faces, if curb exists, which affords the principal means of access to abutting property.

Structure means anything constructed or erected which requires location on the ground or attached to something having a location on the ground. The term "structure" does not include fences or walls used as fences less than six feet in height, poles, lines, cables, or other transmission or distribution facilities of public utilities.

Transfer station means a cite or building used to transfer solid waste from a vehicle or container, such as a roll-off box, into another vehicle or container for transport to another facility.

Use, principal, means the specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

Yard means the space on a lot extending along a lot line between such lot line and a principal building or buildings, or non-building use occupying such lot. Yard measurements shall be taken from the building wall to the lot line.

- (1) *Front yard* means a yard extending the full width of the lot and situated between the front lot line and the building line. The depth of front yard shall be measured between the building line and the front lot line. Covered porches and garages, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.
- (2) *Rear yard* means a yard extending the full width of the lot and situated between the rear line of the principal building and the rear lot line. Accessory buildings or non-building uses may be located within the rear yard only.
- (3) *Side yard* means a yard situated between the building and the side lot line and extending from the front yard lot line to the rear lot line.
- (4) *Rear yard setback for private detached garages* means where there is a drive-in door which opens to the alley or to a lot line which abuts street, there shall be 20 feet setback from such lot lines, if the garage doors are parallel with the alley, setback on the alley lot line shall be three feet.

(Rev. Ords. 1986, § 16-300; Ord. No. 623, 10-15-1990; Ord. No. 824, 1-16-2001; Ord. No. 878, § 1, 4-17-2006)

Sec. 46-2. - Penalty.

For each and every violation of the provisions of this chapter, the owner, contractor, or other person interested as general agent, architect, engineer, land surveyor, building contractor, owner, tenant, or any other persons who commit, take part, or assist in any violation of this chapter or who maintain any

building or premises or uses of any land in violation of this chapter shall be guilty of a misdemeanor. Whenever such person shall have been officially notified by the zoning officer or by service of a summons in a prosecution, or in any other official manner, that such person is committing a violation, each day's continuance of such violation after such notification shall constitute a separate offense punishable by like fine or penalty.

(Rev. Ords. 1986, § 16-520)

Sec. 46-3. - Instituting action to restrain, correct or abate violations.

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter, the proper zoning officer, in addition to other remedies, may institute any appropriate action or proceeding:

- (1) To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) To restrain, correct, or abate such violation;
- (3) To prevent the occupancy of the building, structure, or land; or
- (4) To prevent any illegal act, conduct, business, or use in or about such premises.

(Rev. Ords. 1986, § 16-521)

State Law reference— Similar provisions, N.D.C.C. § 40-47-12.

Sec. 46-4. - District map.

- (a) The map herein referred to, identified by the title "Zoning District Map, Wahpeton, North Dakota," December 16, 2010, is the official zoning map of and for the city for all lands lying within the city limits and the city's extraterritorial zoning area and that the mayor and finance director/city auditor of the city are authorized and directed to execute said zoning map.
- (b) A copy of the official updated city's zoning map of December 16, 2010, is filed and maintained in the office of the director of public works.
- (c) That the director of public works shall promptly update the city's official zoning map each time the zoning classification of any lot, block and/or tract of land lying within the city's zoning jurisdiction is amended.

(Rev. Ords. 1986, § 16-110; Ord. No. 912, 8-4-2008)

Sec. 46-5. - Purpose and authority.

- (a) The zoning regulations and district herein set forth are made in accordance with a comprehensive plan. They are designed to lessen congestion in the streets; secure safety from fire, flood, panic and other dangers; to promote health and general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population, to facilitate the adequate provisions of transportation, water sewerage, schools, parks and other public requirements.
- (b) They are made with reasonable consideration, among other things, to the character of the area of each district and the particular suitability of such area of particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

- (c) For the purpose of promoting the health, safety, morals, or the general welfare of the community, the city council is hereby empowered to regulate and restrict the height, number of stories, the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

(Rev. Ords. 1986, § 16-120)

Sec. 46-6. - Extraterritorial zoned areas; permit; fees.

- (a) It shall be the responsibility of any person erecting a structure within the area outside of the city limits but within the areas for which zoning has been established and controlled by the city pursuant to the state law, to obtain a zoning permit from the building official of the city. Such zoning permit shall certify as to the zoning for the area for which the permit is applied; shall be signed by the building official.
- (b) The request for zoning permit shall include a description of the property for which the permit is sought; the signature of the owner or contractor; a sketch or drawing of the contemplated structure; and such other information as requested by the building official, including cost, construction materials to be used and the contractor's name.
- (c) Fees. There shall be a fee in the amount established by resolution for the issuance of each zoning permit as described herein. Said fee shall be payable to the city and shall be paid at or before the zoning permit is issued herein.
- (d) Building permits. It shall be the responsibility of any person erecting a structure within the area outside of the city limits within the areas for which zoning has been established by the city pursuant to state law, to obtain a building permit from the building official of the city in the manner as provided by the ordinances of the city.
- (e) Application of city's zoning regulations. The application of the city's zoning regulations is hereby extended to all unincorporated territory located outside the limits of the city for a distance of one mile from the city limits as permitted by N.D.C.C. § 40-47-01.1. The application of the city's zoning regulations contained herein and elsewhere shall extend to each quarter section of unincorporated territory the majority of which is located one mile of its limits in any direction.

(Rev. Ords. 1986, § 16-130)

Sec. 46-7. - Conflicts.

Wherever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions or the regulations made under authority of this chapter shall govern. Wherever the provisions or any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of N.D.C.C. ch. 40-47, the provisions of such statute or local ordinance or regulation shall govern.

(Rev. Ords. 1986, § 16-200)

State Law reference— Similar provisions, N.D.C.C. § 40-47-13.

Secs. 46-8—46-26. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 46-27. - Zoning officer to enforce chapter.

- (a) The city council shall appoint a zoning officer to enforce the provisions of this chapter. It shall be the zoning officer's duty to examine all applications for permits, issue permits only for construction and uses which are in accordance with the requirements of this chapter, record and file all applications for permits with accompanying plans and documents, and make such reports as the city council may require. Permits for construction and uses which are a special exception or variance to requirements of this chapter shall be issued only upon order by the board of adjustment. Nothing contained herein shall require any change in plans or construction of the lawful use, the construction of which is started before the original effective date of this chapter and which is complete within one year of the effective original date of this chapter.
- (b) This chapter shall be enforced by the zoning officer who shall in no case, except under a written order of the board of adjustment or the city council if the board of adjustment's decision has been appealed, issue any permit for the erection or structural alteration of any building, nor grant any zoning and use registration permit for any building or land where the proposed erection, structural alteration, or use thereof would be in violation of any provision of this chapter.

(Rev. Ords. 1986, §§ 16-500, 16-501)

Sec. 46-28. - Request for amendments.

Any request for any amendment or other modification to this chapter shall be reviewed by the planning commission prior to any official action by the city council or board of adjustment.

(Rev. Ords. 1986, § 16-502)

Sec. 46-29. - Nonconforming uses and structures.

The continuance of nonconforming uses or structures shall be subject to the following limitations:

- (1) *Continuation.* Any lawful use of a building or land existing at the original effective date of this chapter may be continued, although such use does not conform to the provisions of this chapter.
- (2) *Extension.* A nonconforming use shall be allowed one, 25 percent expansion of the building. Said expansion shall not exceed 25 percent of the floor area. The extension of a conforming use to any portion of a nonconforming building which existed prior to the effective date of the ordinance from which this chapter is derived shall not be deemed the extension of a nonconforming use.
- (3) *Restoration.*
 - a. Except as otherwise provided, no building damaged by fixture or other causes to the extent of more than 50 percent of replacement value of the total building shall be repaired or rebuilt, except in conformity with the regulations of this chapter.
 - b. If a residential building lying within a zoning district classified as Industrial I-1, Business B-1, Central Business B-2 Heavy, or B-3 Highway Business which constitutes a nonconforming use, is destroyed by fire or natural disaster, and there is not otherwise an abandonment of the nonconforming use, it may be repaired or rebuilt and continue as the same nonconforming use in conformity with the provisions of this chapter.

- c. If a detached garage lying within any zoning district classified as Residential or as Business B-1 Central, Business B-2 Heavy, or B-3 Highway Business which constitutes a nonconforming use, is destroyed by fire or natural disaster, and there is not otherwise an abandonment of the nonconforming use and there is an existing curb cut and existing driveway for access and there is existing concrete or other hard surface floor, it may be repaired or rebuilt and continue as the same nonconforming use and conformity with the provisions of this chapter, provided the same is done within one year from the date of destruction. The repaired or rebuilt garage must comply with the current or existing building codes adopted by the city.
- (4) *Abandonment.* Whenever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be reestablished, and any subsequent use shall be in conformity with the provisions of this chapter.
- (5) *Substitution of nonconforming uses.* No nonconforming use may be changed to any other nonconforming use, unless the board of adjustment shall find that the proposed nonconforming use is not more detrimental to the district than the existing nonconforming use of the property. The board of adjustment may specify such appropriate conditions and safeguards as may be required in connection with such change.
- (6) *Repairs and maintenance.* Ordinary repairs and maintenance of a structure containing a nonconforming use shall be permitted.
- (7) *Change in use.* A nonconforming use shall not be changed except to a conforming or to another use of higher or more restricted classification as provided in this chapter. A change of a nonconforming use in an industrial district to a use which is residential shall not be permitted.
- (8) *Amortization of nonconforming signs.* Signs and billboards which exist off the site of principal use on the effective date of the ordinance from which this chapter is derived and which are nonconforming in accordance with this chapter shall be made to conform within a period of three years from said date or when the current contract or lease expires whichever ever occurs first.
- (9) *Amortization of nonconforming use of open land.* All nonconforming junk yards, storage areas and similar nonconforming uses of open land involving a substantial investment in permanent buildings, shall be torn down, altered or otherwise made to conform within three years from the effective date of the ordinance from which this chapter is derived.

(Rev. Ords. 1986, § 16-400; Ord. No. 853, 6-7-2004; Ord. No. 922, 10-19-2009; Ord. No. 943, 4-2-2012; Ord. No. 959, 5-5-2014)

Sec. 46-30. - Approved plats.

Plats of record before the effective date of the ordinance from which this chapter is derived shall not be affected by this chapter, except as buildings are proposed they shall conform to yard requirements of the appropriate zoning district.

(Rev. Ords. 1986, § 16-440)

Secs. 46-31—46-49. - Reserved.

DIVISION 2. - ZONING AND USE REGISTRATION PERMIT

Sec. 46-50. - Required.

A zoning and use registration permit shall be obtained from the zoning officer for any of the following:

- (1) *Occupancy.* Occupancy and use of a building hereafter constructed, enlarged, relocated, reconstructed or altered.
- (2) *Change.* Any change in the use of an existing building.
- (3) *Occupancy, vacant land.* Occupancy and use of vacant land, or change in the use of land except for any use consisting primarily of tilling the soil.
- (4) *Conformity.* No such occupancy, use, or change of use shall take place until a zoning and use registration permit therefor has been issued by the zoning officer. No zoning and use registration permit shall be issued unless the proposed occupancy is in full conformity with all the provisions of this chapter.
- (5) *Occupancy and use of building or land.* A zoning and use registration permit shall be deemed to authorize, and is required, for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect so long as such buildings and the use thereof or the use of such land is in full conformity with the provisions of this chapter and any requirements made pursuant thereto. However, on the serving of written notice by the zoning officer of any violation of any of said provisions or requirements with respect to any building or the use thereof or of land, the zoning and use registration permit for such use shall thereupon without further action be null and void, and a new zoning and use registration permit shall be required for any further use of such building or land.

(Rev. Ords. 1986, § 16-511)

Sec. 46-51. - Application.

Application for zoning permits and use registration permits shall be made to the zoning officer in writing upon forms approved by the board of adjustment prior to starting construction or establishing a use, and such forms shall be filled in by the owner or authorized agent, and shall be accompanied by a plan in duplicate, drawn to scale, showing the actual lot dimensions, use and intended use, height, size and location of building or buildings, and shall be accompanied by such data as may be required. Such plans and data shall be final and conclusive and any deviation therefrom shall require a new zoning and use registration permit.

(Rev. Ords. 1986, § 16-512)

Secs. 46-52—46-70. - Reserved.

DIVISION 3. - BOARD OF ADJUSTMENT; APPEALS AND VARIANCES^[2]

Footnotes:

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State Law reference— Board of adjustment and appeals, N.D.C.C. § 40-47-07 et seq.

Sec. 46-71. - Board of adjustment.

- (a) *Established.* A board of adjustment is hereby established as provided in N.D.C.C. § 40-47-07, the members of which shall be appointed by the city council.
- (b) *Membership.* The board of adjustment shall consist of seven members, none of whom shall hold an elective office or other official position in the city. Each member shall be appointed to a term of three

years. The members of the board shall be removable for cause by the city council upon written charges and after public hearing. A vacancy shall be filled by the city council for the unexpired term of any member who resigns, dies, or is removed. The board shall elect a chair from its members, and a secretary who may, but need not, be a member of the board. Upon request of the board, the city council shall have the right to appoint an alternate member of the board of adjustment, who shall sit as an active member when and if a member of the board of adjustment is unable to serve at any hearing.

(Rev. Ords. 1986, § 16-531; Ord. No. 815, 4-3-2000)

Sec. 46-72. - Board expenses.

The board shall have authority to expend such sums as may be appropriated by the city council. All requests for variance and special exception, except those initiated by the city council or city planning commission, shall be accompanied by a fee in the amount established by resolution which shall be used to defray the expenses of administration preparation for consideration of the request.

(Rev. Ords. 1986, § 16-532; Ord. No. 815, 4-3-2000)

Sec. 46-73. - Duties of board.

The board of adjustment shall have the following powers:

- (1) *Administrative review.* In addition to the functions provided by law, the board of adjustment shall hear and decide appeals from and shall review any order, requirement, permit, decision, or determination made by the zoning officer or other administrative official charged with enforcement of this chapter. The board shall interpret the zoning map.
- (2) *Vote required.* The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the zoning officer or other administrative or to decide in favor of the applicant any matter upon which it is required to pass under the ordinances of the city, or to effect any variation in the ordinances of the city.
- (3) *Special exceptions.* To hear and decide applications for special exceptions as specified in this chapter and for decisions on any special questions upon which the board of adjustment is specifically authorized to pass.
 - a. Before any special exception is granted, the board or council where applicable shall consider:
 - i. The effect on neighboring property values.
 - ii. The effect on the use of the neighboring properties.
 - iii. Traffic patterns and their impact.
 - iv. Capacity of city facilities (sewer, water) which serve the area.
 - v. The need for the special exception in the community.
 - b. Restrictions and safeguards. In granting a special exception, the board or council, where applicable, may attach thereto any conditions, restrictions and safeguards it deems necessary or desirable and for the purposes of this chapter, which may include restrictions or conditions to ensure guidelines set out in this chapter are met including but not limited to: setbacks, heights, area, noise, hours of operation, dust, etc.; violation of any conditions, restrictions or safeguards established for a special exception shall be deemed to be a violation of this chapter and constitute a misdemeanor and subject to property having the special exception revoked.

- (4) *Variance*. To hear and decide applications for variance from the terms of this chapter because of unnecessary hardship. Before any variance is granted, all of the following conditions must be shown to be present:
 - a. Conditions and circumstances are peculiar to the land, structure or building and do not apply to neighboring lands, structures or buildings in the same district.
 - b. Strict application of the provisions of the ordinance would deprive the applicant of the reasonable use of the land, structure or building equivalent to the use made of neighboring lands, structures or buildings in the same district and permitted under the terms of this chapter.
 - c. The peculiar conditions and circumstances are not the result of actions of the applicant taken subsequent to the addition of this chapter.
- (5) *Financial disadvantages to property owner*. Financial disadvantages to the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
- (6) *Use not generally permitted*. The board does not possess the power to permit a use not generally or by special exception permitted in the district involved.
- (7) *Conditions and safeguards*. In granting a variance, the board may attach thereto any conditions and safeguards it deems necessary or desirable in furthering the purposes of this chapter. Violation of any of these conditions or safeguards shall be deemed a violation of this chapter. Applicants for variance shall pay an application fee of \$50.00 prior to the hearing concerning such application for variance and payment of such fee is a condition precedent to the holding of any hearing to consider the application for variance.
- (8) *Appeal to board*. An appeal to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the city. The appeal shall be taken within the time prescribed by rule of the board by filing with the zoning officer or other administrative official from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The zoning officer or other administrative official from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.
- (9) *Hearing*. The board of adjustment shall fix a reasonable time for the hearing of the appeal and shall give due notice thereof to the parties. It shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board may reverse or affirm, in whole or in part, or may modify, the order, requirement, decision, determination, permit or refusal appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end, the board shall have all the powers of the officer from whom the appeal is taken; provided, however, that any application, petition or appeal be anyone not affiliated with the city shall be set over to its next meeting which could be no sooner than one week from the hearing at which the application, petition or appeal was or could have been presented.
- (10) *Effect of appeal; restraining order*. Any appeal to the board of adjustment stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay, in the officer's opinion, would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by a restraining order which may be granted by the board of adjustment or by a court of record on application and on due cause shown after notice to the officer from whom the appeal is taken.

(Rev. Ords. 1986, § 16-533; Ord. No. 648, 6-3-1991; Ord. No. 815, 4-3-2000; Ord. No. 967, 7-6-2015)

State Law reference— Similar provisions. N.D.C.C. §§ 40-47-8ô 40-47-10.

Sec. 46-74. - Procedure for review of board decisions.

Every decision of the board of adjustment is subject to review the following manner:

- (1) A decision of the board of adjustment may be appealed to the city council by either the aggrieved applicant or by any officer, department, board, or bureau of the city. The appeal must be filed with the finance director/city auditor within 15 days after notice of the decision of the board of adjustment. The city council shall fix a time, within 30 days, for the hearing of the appeal and shall give due notice of the hearing to the parties. The city council shall decide the appeal within a reasonable time. Any party may appear in person or by agent or by attorney at the hearing of the city council on the appeal. The city council may reverse or affirm the decision of the board of adjustment, in whole or in part, or may modify the order, decision, or determination appealed.
- (2) A decision of the city council on an appeal from a decision of the board of adjustment may be appealed to the district court in the manner provided in N.D.C.C. § 28-34-01.

(Rev. Ords. 1986, § 16-534)

State Law reference— Similar provisions. N.D.C.C. § 40-47-11.

Sec. 46-75. - Planning commission to act as board of adjustment for ETZ area.

Notwithstanding anything to the contrary, the planning commission shall have all powers, duties, responsibilities and authority that would otherwise be possessed by the board of adjustment concerning the extraterritorial zone. The planning commission shall hereafter exercise said powers, duties, responsibilities and authority as and for said extraterritorial zone in place of and in substitution for the board of adjustment. The planning commission's exercise of power, duty, responsibility and authority concerning the extraterritorial zone shall be exercised in the same manner and with the same standards and procedures as is set forth in this chapter or as set forth in other ordinance of the city except that the concurring vote of a majority of the planning commission shall be necessary to reverse any order, requirements, decision or determination of the zoning officer or other administrative official concerning a matter in the extraterritorial zone or to decide in favor of the applicant any matter upon which it is required to pass under this section or other ordinance of the city concerning the extraterritorial zone or to effect any variation in the ordinances of the city concerning the extraterritorial zone.

(Rev. Ords. 1986, § 16-535; Ord. No. 617, 6-4-1990)

Secs. 46-76—46-94. - Reserved.

DIVISION 4. - AMENDMENTS^[3]

Footnotes:

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State Law reference— Amendments to zoning ordinances, N.D.C.C. § 40-47-05.

Sec. 46-95. - Requirements.

Whenever the public necessity, safety, general welfare or good zoning practice justifies such action, and after consideration and recommendation by the city planning commission as provided herein, the city

council may change zone district boundaries, use groups or the regulations established by this chapter after public hearing for which public notice is given as provided in section 46-100. A copy of each proposed regulation, restriction, or boundary shall be filed with the finance director/city auditor. No regulation, restriction, or boundary shall become effective until after a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard. Notice of said hearing shall be published once a week for two successive weeks prior to the time set for said hearing in the official newspaper of the city. Such notice shall contain the following items:

- (1) The time and place of the hearing.
- (2) A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
- (3) A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
- (4) A statement of the times at which it will be available to the public for inspection and copying at the office of the finance director/city auditor.

Upon establishment of any regulation, restriction, or boundary hereunder the city council shall file a certified copy thereof with the finance director/city auditor and shall cause notice of the same to be published in the official newspaper of the city. Said notice shall describe the nature, scope, and purpose of the regulation, restriction, or boundary, and shall state the times at which it will be available to the public for inspection and copying at the office of the finance director/city auditor.

(Rev. Ords. 1986, § 16-541)

State Law reference— Similar provisions. N.D.C.C. § 40-47-04.

Sec. 46-96. - Initiation of change.

A proposed change of zone district boundaries or regulations may be initiated by the city council, city planning commission, or by application of one or more of the owners of property within the area requested to be changed.

(Rev. Ords. 1986, § 16-542)

Sec. 46-97. - Consideration.

Every three months or at the discretion of the zoning officer, the city planning commission will set a public meeting to consider requested changes or amendments to this chapter or zoning map pursuant to the provisions of this section. The rezoning process as specified herein for newly annexed areas or amendments to the test proposed by the city itself may be undertaken at any time.

(Rev. Ords. 1986, § 16-543)

Sec. 46-98. - Site plan and schedule.

All requests for changes in the zoning map shall be accompanied by the following:

- (1) *Intentions*. A complete written statement giving reason and intentions for the planned future use of the area proposed for amendment.
- (2) *Site plan*. A site plan, drawn to scale, showing existing and proposed structures, uses, open spaces, facilities for parking and loading, and arrangements for pedestrian and vehicular

circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined.

- (3) *Proposed time schedule.* A proposed time schedule for beginning and completion of development.

(Rev. Ords. 1986, § 16-544)

Sec. 46-99. - Fees and expenses.

All requests for changes in this chapter or the zoning map, except those initiated by the city council or city planning commission, shall be accompanied by a deposit in the amount established by resolution which shall be used to defray the expenses of administrative preparation for consideration of the request.

(Rev. Ords. 1986, § 16-545)

Sec. 46-100. - Amendments to or repeals of regulations; protest; voting.

Regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of 20 percent or more:

- (1) Of the area of the lots included in such proposed change; or
- (2) Of the area adjacent, extending 150 feet from the area to be changed, excluding the width of streets, the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city council. The provisions of section 46-95 relating to public hearings, official notice, and publication of regulations, restrictions, and boundaries shall apply equally to all changes or amendments provided in this section; provided, that protests in writing must be filed with the finance director/city auditor prior to the time set for the hearing.

(Rev. Ords. 1986, § 16-546)

State Law reference— Similar provisions. N.D.C.C. § 40-47-05.

Sec. 46-101. - City planning commission; appointment; terms; duties.

The city council shall appoint a commission, to be known as the city planning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. In addition to the members appointed by the city, the city planning commission shall include two persons residing outside the corporate city limits. Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the city planning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years and the second member appointed shall hold office for three years. Thereafter, the members shall be appointed for terms of five years. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The city council shall not hold its public hearings or take action until it has received the final report of the city planning commission. The city planning commission shall be appointed as the zoning commission pursuant to N.D.C.C. § 40-47-06.

(Rev. Ords. 1986, § 16-547)

State Law reference— Similar provisions. N.D.C.C. §§ 40-47-03, 40-47-06.

Secs. 46-102—46-120. - Reserved.

ARTICLE III. - ZONING DISTRICTS^[4]

Footnotes:

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State Law reference— Zoning districts authorized, N.D.C.C. § 40-47-02.

DIVISION 1. - GENERALLY

Sec. 46-121. - Enumerated.

For the purpose of this chapter, the city is hereby divided into the following types of districts:

Residence	FP-A	Agricultural
Residence	R-1a	Single-Family/Agri.
Residence	R-1b	Single-Family
Residence	R-1c	Single-Family
Residence	R-2	Two-Family
Residence	R-3	Multiple-Family
Res/Business	RB-4	Neighborhood
Business	B-1	Central
Business	B-2	Heavy
Business	B-3	Highway
Industrial	I-1	Light
Industrial	I-2	Heavy
Industrial	I-3	Special

Extraterritorial	ETZ-1	Extraterritorial Zoning District
Airport	AV-1	Airport District
Airport	AV-2	Airport District
Public Use	PU	Special

(Rev. Ords. 1986, § 16-600)

Sec. 46-122. - Interpretation of district boundaries.

- (a) Unless otherwise provided, zone district boundaries shall be on the municipal corporate lines, section lines, lot lines, natural boundary lines, or on the centerlines of highways, streets, alleys, railroad rights-of-way, or such lines extended. In cases where such lines are not used, the zone district line shall be as determined by using the scale of the official zoning district map.
- (b) Disputes concerning the exact location of any zoning district boundary line shall be decided by the board of adjustment according to the intent of this chapter.
- (c) Where a boundary line follows a stream, such boundary shall be deemed to be the centerline of said stream. For any lake, pond, reservoir, river, or other body of water, the regulations of the most restrictive adjacent district in which they are located shall apply.
- (d) Where a boundary line is shown as approximately parallel to a street, highway, stream, or railroad line, such boundary shall be construed as being parallel thereto and at such distance from the centerline thereof as is indicated on the zoning map.
- (e) Where a district boundary line divides a lot which was held in single ownership, and a matter of record, at the time the boundary line was established, the use regulations applicable to the least restricted district shall extend over the portion of the lot in the more restricted district, a distance of not more than 30 feet beyond the district boundary line.
- (f) Whenever any street, alley, or other public way is vacated and in the manner authorized by law, the zoning district adjoining each side of such street, alley, or public way shall be automatically extended to the center of such vacation, and all areas included in the vacation shall be then subject to all regulations of the extended districts.

(Rev. Ords. 1986, § 16-620)

Secs. 46-123—46-141. - Reserved.

DIVISION 2. - RESIDENTIAL DISTRICTS

Sec. 46-142. - Residence R-1a Single-Family Agricultural.

- (a) *Scope.* The provisions of this section apply to the Residence R-1a Single-Family Agricultural District.
- (b) *Permitted uses.* The permitted uses shall be as follows:
 - (1) Single-family dwelling.

- (2) Churches and similar places of worship.
 - (3) Public, parochial schools or general instruction.
 - (4) Public libraries, museums, parks, playgrounds, and similar community facilities.
 - (5) Governmental administration and services such as office, firehouse, police, first aid, civil defense and like uses; however, this section shall not be interpreted to permit such uses as warehousing, indoor and outdoor storage of vehicles, road building equipment and supplies.
 - (6) Accessory uses incidental to any of the foregoing permitted uses.
- (c) *Special exceptions.* Special exception uses shall be as follows:
- (1) Agriculture as a living, provided there is no display of products other than in growth visible from the street.
 - (2) Public utility substations or pumping stations, upon a showing that such structure is essential to serve the immediate neighborhood, that it cannot be located in any other type of district, and that it is housed in buildings that harmonize with the character of the neighborhood and has adequate screening and landscaping and meets all other standards of this chapter.
 - (3) Customary incidental home occupation which is carried on as an accessory use by one or more members of the family residing on the premises, and (a) which shall be carried on wholly within a completely enclosed building, and (b) in the activity, not more than one-half of the floor area of any one floor or basement shall be used, and (c) in the conduct of said activity not more than one person outside the family shall be employed, and (d) such customary home occupation must be in keeping with the character of the neighborhood in which located and must not materially depreciate property values in the immediate area. Such use must also satisfy the regulations prescribed in article IV, division 2 of this chapter, with regard to off-street parking, height limitations, signs and fences.
 - (4) Swimming pool not operated for profit, meeting recognized construction and safety standards and all other requirements of this chapter.
 - (5) Private schools of general instruction, whether or not operated for profit.
 - (6) Nonmunicipal libraries, museums, art galleries and community centers, whether or not operated for profit; and noncommercial clubs, lodges, or fraternal organizations.
 - (7) Hospitals, provided that the local health officer shall first certify that in the proposed location such use will not have a detrimental effect on the health of the surrounding neighborhood and further provided that a nurse's home as an accessory use is permitted only on the same lot as the hospital.
 - (8) Removable roadside stands for the sale of farm products produced on the premises; provided, however, that any such stand shall be situated not less than 40 feet from the street right-of-way line or lot line and shall have a minimum of four off-street parking spaces. Such stands shall be removed during seasons when products are not being offered for sale.
 - (9) Inspection and permits.
 - a. All group day care homes or facilities and day care centers where care is provided to seven or more children other than the provider's own children, shall obtain an occupancy permit from the city building inspector's all state standards and be inspected by the city fire inspector. This permit will be available on a voluntary basis for family day care homes where care is provided to fewer than seven children. The occupancy permit shall be as established by resolution and is a one-time fee per location.
 - b. Any family day care home may be required to comply with the recommendations of the city fire inspector, city building inspector or county health department should the safety or sanitation of the home appear to be questionable by the state licensing agency.
- (d) *Area regulations.* The area regulations shall be as follows:

- (1) *Lot area and width.* A lot area of not less than 20,000 square feet per family shall be provided for every building hereafter erected or used in whole or in part as a dwelling. Each lot shall have a building line frontage of not less than 120 feet.
- (2) *Front yard.* There shall be a front yard on each street on which a lot abuts, which yard shall be not less than 50 feet in depth.
- (3) *Side yard.* There shall be two side yards on each lot, neither of which shall be less than 20 feet in depth.
- (4) *Rear yard.* There shall be a rear yard on each lot, which yard shall not be less than 50 feet.
- (e) *Supplementary regulations.* See regulations prescribed in article IV, division 2, of this chapter.

(Rev. Ords. 1986, §§ 16-700 to 16-704; Ord. No. 754, 6-3-1996)

Sec. 46-143. - Residence R-1b Single-Family.

- (a) *Scope.* The provisions of this section apply to the Residence R-1b Single-Family District.
- (b) *Permitted uses.* The permitted uses shall be as follows:
 - (1) All uses allowed by right in Residence R-1a district except that there shall be no raising or pasturing of livestock, poultry or other commercial domestic animals or birds.
 - (2) Boardinghouse, provided that not more than four such boarders shall be permitted without special exception by the board of adjustment.
 - (3) Public utility substations or pumping stations.
 - (4) Private schools or general instruction and day nurseries.
 - (5) Accessory uses customarily incidental to any of the foregoing permitted uses.
- (c) *Special exceptions.* Special exception uses shall be as follows:
 - (1) All uses allowed by special exception in the Residence R-1a District, except roadside stands and agriculture as a living.
 - (2) Vocational or trade schools, whether or not operated for profit.
 - (3) Retirement or nursing home.
 - (4) Two-family dwelling.
- (d) *Area regulations.* The area regulations shall be as follows:
 - (1) *Lot area and width.* A lot area of not less than 12,000 square feet per family shall be provided for every building hereafter erected or used in whole or in part as a dwelling. Each lot shall have a building line frontage of not less than 80 feet.
 - (2) *Front yard.* There shall be a front yard on each street on which a lot abuts, which yard shall be not less than 35 feet in depth.
 - (3) *Side yard.* There shall be two side yards on each lot, neither of which shall be less than eight feet in depth.
 - (4) *Rear yard.* There shall be a rear yard on each lot, which yard shall not be less than 30 feet.
- (e) *Supplementary regulations.* See regulations prescribed in article IV, division 2 of this chapter.

(Rev. Ords. 1986, §§ 16-710 to 16-714)

Sec. 46-144. - Residence R-1c Single-Family.

- (a) *Scope*. The provisions of this section apply to the Residence R-1c Single-Family District.
- (b) *Permitted uses*. The permitted uses shall be as follows:
 - (1) Single-family dwelling, maximum main floor finished living space of 1,100 square feet.
 - (2) Parks or playgrounds.
- (c) *Special exceptions*. Special exception uses shall be as follows:
 - (1) Churches or similar places of worship.
 - (2) Child day care center home as required in subsection 46-142(c).
 - (3) Two-family dwelling.
 - (4) Single-family dwelling, with a maximum main floor finished living space in excess of 1,300 square feet.
- (d) *Area regulations*. The area regulations shall be as follows:
 - (1) *Lot area and width*. A lot area of not less than 5,000 square feet per family shall be provided for every building erected. Each lot shall have a building line frontage of not less than 50 feet.
 - (2) *Front yard*. There shall be a front yard on each street on which a lot abuts, which yard shall be not less than 25 feet in depth.
 - (3) *Side yard*. There shall be two side yards for each lot, neither of which shall be less than six feet in depth, as measured from the foundation wall.
 - (4) *Rear yard*. There shall be a rear yard on each lot, such rear yard shall be not less than 20 feet in depth.
- (e) *Supplementary regulations*. See regulations prescribed in section 46-263.

(Rev. Ords. 1986, §§ 16-715 to 16-719; Ord. No. 772, 2-18-1997; Ord. 792, 12-7-1998; Ord. No. 884, 10-16-2006)

Sec. 46-145. - Residence R-2 Two-Family.

- (a) *Scope*. The provisions of this section apply to the Residence R-2 Two-Family District.
- (b) *Permitted uses*. The permitted uses shall be as follows:
 - (1) All uses allowed by right in the Residence R-1b District.
 - (2) Two-family dwellings.
- (c) *Special exceptions*. Special exception uses shall be as follows:
 - (1) All uses allowed by special exception in the Residence R-1b District.
 - (2) Boardinghouse.
 - (3) Multiple-family dwelling.
 - (4) Lot area.
 - a. A lot area less than 8,400 square feet not to be less than 5,000 square feet for a single-family residence;
 - b. A lot area less than 10,000 square feet not to be less than 6,000 square feet for a duplex.
 - (5) Building frontage of less than 70 feet, to not less than 40 feet. Subsection (4) of this section and this subsection shall only be for plats approved by the city council before May 15, 1947.
- (d) *Area regulations*. The area regulations shall be as follows:

- (1) *Lot area and width.*
 - a. *Single-family structures.* A lot area of not less than 8,400 square feet per family shall be provided for every building hereafter erected or used in whole or in part as a dwelling. Each lot shall have a building line frontage of not less than 70 feet.
 - b. *Two-family and multiple-family dwellings.* A lot area of not less than 10,000 square feet per two-family dwelling units and a maximum of 12 dwelling units per acre with a minimum frontage of 100 feet of building line frontage for multiple-family dwelling units.
- (2) *Front yard.* There shall be a front yard on each street on which a lot abuts, which yard shall be not less than 25 feet in depth, which shall apply to all plats approved by the city council after March 15, 1947.
- (3) *Side yard.*
 - a. There shall be two side yards on each lot, neither of which shall be less than seven feet in depth.
 - b. The side yard for all plats approved by the city council before May 15, 1947, shall be a minimum of five feet.
- (4) *Rear yard.* There shall be a rear yard on each lot, which yard shall not be less than 25 feet in depth.
- (e) *Supplementary regulations.* See regulations prescribed in article IV, division 2 of this chapter.

(Rev. Ords. 1986, §§ 16-720 to 16-724; Ord. No. 723, § 1, 6-5-1995; Ord. No. 788, 4-20-1998)

Sec. 46-146. - Residence R-3 Multiple-Family.

- (a) *Scope.* The provisions of this section apply to the Residence R-3 Multiple-Family District.
- (b) *Permitted uses.* The permitted uses shall be as follows:
 - (1) All uses allowed by right in the residence R-2 district.
 - (2) Multiple-family dwellings.
- (c) *Special exceptions.* Special exception uses shall be as follows:
 - (1) All uses allowed by special exception in Residence R-2 District.
 - (2) Conversion into two-family and multiple-family dwellings in accordance with section 46-30.
 - (3) Mobile home park and single mobile home.
- (d) *Area regulations.* The area regulations shall be as follows:
 - (1) *Lot area and width.* A lot area of not less than 6,000 square feet per family shall be provided for every single-family dwelling hereafter erected or used in whole or in part as a dwelling. Each lot shall have a building line frontage of not less than 50 feet. For multiunit dwellings, that shall be a maximum of less than 24 dwelling units per acre and ten feet of building line frontage must be added for each dwelling unit up to 150 feet maximum.
 - (2) *Additions.* For two-family dwellings, 2,400 square feet of area and 20 feet of building line frontage must be added for each additional dwelling unit.
 - (3) *Front yard.* There shall be a front yard on each street on which a lot abuts, which yard shall be not less than 25 feet in depth which shall apply to all plats approved by the city council after March 15, 1947. Section 723.21 shall apply to plats approved before March 15, 1947.
 - (4) *Side yard.* There shall be two side yards on each lot, neither of which shall be less than six feet in depth with a minimum aggregate of 16 feet.

- (5) *Rear yard.* There shall be a rear yard on each lot, which yard shall not be less than 20 feet in depth.
- (e) *Area regulations for mobile home parks.* The area regulations shall be as follows:
- (1) *Lot area and width.* There shall be a lot area of not less than 3,000 square feet per mobile home. Each lot shall have a building line frontage of not less than 30 feet.
 - (2) *Front yard.* There shall be a front yard on each street on which a lot abuts, which yard shall be not less than 20 feet in depth.
 - (3) *Side yard.* There shall be two side yards on each lot, neither of which shall be less than five feet in depth with a minimum aggregate of 15 feet. Side yards adjacent to any other residential district shall not be less than 20 feet.
 - (4) *Rear yard.* There shall be a rear yard on each lot, which yard shall not be less than 15 feet in depth. No building shall be within 30 feet of any rear lot line which abuts any other residential district.
- (f) *Supplementary regulations.* See regulations prescribed in article IV, division 2 of this chapter.
- (g) *Establishing townhouse zoning.* The provisions of this section apply only in the R-3 Zoning District.
- (1) *Permitted uses.* The permitted uses shall be as follows:
 - a. One detached single-family dwelling unit per lot, in accordance with the R-3 District.
 - b. Rowhouses or townhouses. Attached single-family dwellings in groups of not more than six units or less than three units.
 - (2) *Density.* The maximum allowable density per acre shall be stipulated in each zoning district. The density for a townhouses shall be no more than 16 units per net acre. (This may be increased by the planning commission upon request).
 - (3) *Lot area.* Lot and yard requirement regulations for townhouse use. Each attached single-family dwelling hereafter erected shall conform to the following minimums:

	Interior	Interior End	Street Corner
Lot area (in square feet)	1,900	2,800	4,900
Lot width (in feet)	18	26	41
Depth of front yard (in feet)	25	25	25
Width of side yard (in feet)	8	25	
Depth of rear yard (in feet)	25	25	25

- (4) *Height regulations.* The maximum height of any principal building shall be 35 feet.
- (5) *Safety provision.* Townhouses shall have wall separations between each dwelling unit of at least a two-hour fire-rated wall which shall extend from the footing to and through the roof at least 30 inches except as may be allowed by chapter five of the state building code pertaining to area separation walls.
- (6) *Roof and setback lines.* No more than two consecutive townhouse units or rowhouses shall have the same roof line and no more than two consecutive units shall have the same setback from the street.
- (7) *Floor area.* Minimum floor area per unit of 850 square feet per unit. Minimum floor area for single-story units of 725 square feet per unit.
- (8) *Public utility.* Each unit shall have separate sewer and water service lines.
- (9) *Lots.* Each unit shall be located on a separate building lot that is separately recordable.
- (10) *Access.* All units shall have adequate access to a public street by means of an interior drive.
- (11) *Access to rear yard.* The required rear yard to each townhouse or row dwelling shall have an unobstructed access with a public walkway at least four-feet wide extending to an alley or street.
- (12) *Off-street parking.* Off-street parking spaces shall be provided for each dwelling unit in compliance with section 46-263.
- (13) *Homeowners' association.* Whenever possible, common open space shall be contiguous and shall be linked to any open space surrounding the development. Common open space shall be protected by covenants running with the land, which shall be drafted to the satisfaction of the city attorney. The covenants shall require that the homeowners' association be held responsible for the maintenance of the common open space, the accessory buildings and the exterior of the townhouse units. A copy of the covenant shall be kept on file in the office of the secretary of the planning commission.
- (14) *Accessory uses.*
 - a. Home occupations in accordance with section 46-1.
 - b. Maintenance, management or community recreation buildings incidental to the development.
 - c. Off-street parking.
 - d. Renting of rooms for not more than two roomers per dwelling unit.
 - e. Signs.
- (15) *Special uses.* Multiple-dwellings, subject to the appropriate provisions of the R-3 Zoning District, provided that the density does not exceed 16 units per acre.

(Rev. Ords. 1986, §§ 16-730-16-736)

Secs. 46-147—46-165. - Reserved.

DIVISION 3. - BUSINESS DISTRICTS

Sec. 46-166. - Business RB-4 Neighborhood.

- (a) *Scope.* The provisions of this section apply to the Business RB-4 Neighborhood District.

- (b) *Permitted uses.* The permitted uses shall be as follows:
- (1) Any use allowed in the Residence R-3 District provided that such use conforms to the area and use requirements of that district.
 - (2) Any local retail business or service establishment which supplies commodities or performs the following services primarily for residents of the surrounding neighborhood: grocery store, meat market, delicatessen, drugstore, barber and beauty shops.
 - (3) Business or professional office; medical or dental clinic.
 - (4) Any accessory use or a use of the same general character as subsections (b)(1) through (3) of this section.
 - (5) Parking lot as a principal use.
- (c) *Area regulations.* The area regulations shall be as follows:
- (1) *Lot area and width.* The minimum lot area shall be 5,000 square feet for each commercial area. The minimum lot width shall be 50 feet.
 - (2) *Front yard.* The building line to establish a front yard for all buildings and structures shall conform to that required by the most restrictive adjacent use.
 - (3) *Side yard.* There shall be a side yard adjacent to any residential district of not less than 20 feet.
 - (4) *Rear yard.* No building shall be within 30 feet of the rear lot line.
- (d) *Supplementary regulations.* See regulations prescribed in article IV, division 2 of this chapter.

(Rev. Ords. 1986, §§ 16-800 to 16-803)

Sec. 46-167. - Business B-1 Central.

- (a) *Scope.* The provisions of this section apply to the Business B-1 Central District.
- (b) *Permitted uses.* The permitted uses shall be as follows:
- (1) Retail or service store or shop.
 - (2) Personal service shop or agency such as tailor, dressmaking, beauty, barber or shoe repair shop.
 - (3) Medical or dental clinic or funeral home.
 - (4) Business, professional and governmental office.
 - (5) Hotels, apartment, second floor or above.
 - (6) Eating and drinking establishments, except those offering in-car services.
 - (7) Theaters, except those offering in-car services.
 - (8) Public transportation passenger facilities.
 - (9) Telephone exchanges.
 - (10) Accessory uses incidental to any of the foregoing uses.
 - (11) Parking lot as a principal use.
 - (12) Assembling and packaging, freight handling, light manufacturing, storage and warehousing and similar operations with the approval and subject to the conditions of the city council.
- (c) *Special exceptions.* Special exception uses shall be as follows:
- (1) Public and/or private schools of general instruction.

- (d) *Area regulations.* The area regulations shall be as follows:
- (1) *Side yard.* All buildings and incidental uses on lots adjacent to a residential district shall be located to provide a 20-foot side yard on the side abutting the residential district. When adjacent to other than residential district, no side yard is required; however, where side yards are provided for such a building, each such side yard shall be not less than six feet in width.
 - (2) *Lot area and width.* The minimum lot area shall be 5,000 square feet for each commercial area. The minimum lot width shall be 50 feet.
 - (3) *Front yard.* Each lot lying between Third Street and Seventh Street abutting Dakota Avenue shall have a building line frontage of zero with all of the buildings being constructed to the lot line.
 - (4) *Rear yard.* No rear yard shall be required.
 - (5) *Variances.* Notwithstanding any other ordinance to the contrary, the city planning commission shall have the power to grant variances from the setback requirements of subsection (c)(2) of this section hereof and shall otherwise follow the procedures provided for in hearing and deciding applications for variances as set forth in article II of this chapter.
- (e) *Supplementary regulations.* See regulations prescribed in article IV, division 2 of this chapter.

(Rev. Ords. 1986, §§ 16-810 to 16-813; Ord. No. 624, 9-17-1990; Ord. No. 918, 3-16-2009; Ord. No. 926, § 16-811.1, 3-15-2010)

Sec. 46-168. - Business B-2 Heavy.

- (a) *Scope.* The provisions of this section apply to the Business B-2 Heavy District.
- (b) *Permitted uses.* The permitted uses shall be as follows:
- (1) Any use allowed in business B-1 district.
 - (2) Automobile sales.
 - (3) Apartments (second floor only).
 - (4) Wholesale business and related warehousing and storage; provided that all inventories located on the premises are stored within a completely enclosed structure.
 - (5) Auto laundries, provided that their operative machinery is within an enclosed structure and adequate drainage is provided.
 - (6) Grocery supermarket.
 - (7) Furniture sales.
 - (8) Other similar uses requiring open storage or off-street parking and loading areas.
- (c) *Special exceptions.* Special exception uses shall be as follows:
- (1) Two-family dwellings.
 - (2) Multiple-family dwellings.
 - (3) Apartments (first floor).
 - (4) Public and/or private schools of general instruction.
 - (5) Any accessory uses incidental to the foregoing special exceptions.
- (d) *Area regulations.* The area regulations shall be as follows:

- (1) *Lot area and width.* A lot area of not less than 15,000 square feet shall be provided for every building hereafter erected or used. Each lot shall have a building line frontage of not less than 100 feet.
- (2) *Buildings and incidental uses.* All buildings and incidental uses on lots adjacent to a residential district shall be located to provide a 40-foot side yard on the side abutting the residential district.
- (3) *Front yard.* There shall be a front yard on each street which a lot abuts, which yard shall not be less than 25 feet in depth.
- (4) *Rear yard.* There shall be a rear yard on each lot, which yard shall be not less than 20 feet in depth.
- (5) *Dakota Avenue setback.* Each lot lying between 1st Street and 11th Street abutting Dakota Avenue and one-half block on all cross streets of Dakota Avenue shall be allowed a zero setback on the Dakota Avenue right-of-way and from the public rights-of-way on the first half blocks of all cross streets.

(e) *Supplementary regulations.* See regulations prescribed in article IV, division 2 of this chapter.

(Rev. Ords. 1986, §§ 16-820 to 16-823; Ord. No. 723, § 2, 6-5-1995; Ord. No. 918, 3-14-2009; Ord. No. 926, 3-15-2010)

Sec. 46-169. - Business B-3 Highway.

- (a) *Scope.* The provisions of this section apply to the Business B-3 Highway District.
- (b) *Permitted uses.* The permitted uses shall be as follows:
 - (1) Any use allowed in business B-2 district.
 - (2) Service stations.
 - (3) Motels.
 - (4) Restaurants.
 - (5) Other similar uses which are highway oriented and dependent upon transient trade.
 - (6) Parking lot as a principal use.
- (c) *Special exceptions.* Special exception uses shall be as follows:
 - (1) Outdoor amusements, such as drive-in theaters, amusement parks, bowling alleys, skating rinks, and commercial recreation areas.
 - (2) Furniture sales.
 - (3) Automobile sales.
 - (4) Boat sales.
 - (5) Camping trailer and mobile home sales.
 - (6) Auto laundries, provided that their operative machinery is within an enclosed structure and adequate drainage is provided.
 - (7) Kennels and/or dog pound.
 - (8) Accessory uses incidental to the foregoing special exceptions.
 - (9) Public and/or private schools of general instruction.
- (d) *Area regulations.* The area regulations shall be as follows:

- (1) *Lot area and width.* There shall be a lot area of not less than 40,000 square feet per lot. Each lot shall have a building line frontage of not less than 200 feet.
- (2) *Front yard.* There shall be a front yard on each street which a lot abuts, which yard shall be not less than 50 feet in depth.
- (3) *Side yard.* There shall be two side yards on each lot, neither of which shall be less than 25 feet in depth. Side yards adjacent to any other residential district shall be not less than 35 feet.
- (4) *Rear yard.* There shall be a rear yard on each lot, which yard shall not be less than 30 feet in depth. No building shall be within 40 feet of any rear lot line which abuts any other residential district.

(e) *Supplementary regulations.* See regulations prescribed in article IV, division 2 of this chapter.

(Rev. Ords. 1986, §§ 16-830-16-832; Ord. No. 914, 8-18-2008; Ord. No. 926, § 16-832.1, 3-15-2010)

Secs. 46-170—46-188. - Reserved.

DIVISION 4. - INDUSTRIAL DISTRICTS

Sec. 46-189. - General use provisions.

- (a) *Scope.* The provisions of this section apply to the industrial districts.
- (b) *Nonindustrial uses.* In industrial districts, no building may hereafter be used in whole or in part for any of the following purposes:
 - (1) Residential uses or any dwelling use, including hotels and motels.
 - (2) Retail stores, service shop, theater or other place of commercial recreation or amusement, restaurant or tavern.
 - (3) School, church, hospital, sanitarium, correctional institution or other institutional use.
 - (4) Cemetery.
- (c) *Prohibited uses.* The prohibited uses shall be as follows:
 - (1) Acid manufacture, or storage except on limited scale as an accessory to a permitted industry and under conditions specified by the zoning board of adjustment.
 - (2) Slaughterhouse and stockyard.
 - (3) Manufacture of fertilizers.
 - (4) Garbage, waste materials, offal, dead animal, or refuse incineration or storage.
 - (5) Manufacture or storage of gun powder, fireworks, or other explosives.
- (d) *Required yards.* The required yards shall be as follows:
 - (1) *Front yards.* No building shall be constructed within 20 feet of the front lot line in the I-1 district and 40 feet in the I-2 district.
 - (2) *Side yards.* On lots adjacent to a residential district, all buildings and incidental areas shall be located so as to provide a minimum side yard of 50 feet on the side adjacent to the residential district. All other side yards shall be a minimum of 20 feet.
 - (3) *Rear yards.* No building shall be constructed within 20 feet of the rear lot line.
- (e) *Off-street parking and loading requirements.* Off-street parking and loading facilities shall be provided in accordance with sections 46-263 and 46-266.

(f) *Building height and sign regulations.* See regulations prescribed in sections 46-235 and 46-286.

(Rev. Ords. 1986, §§ 16-900 to 16-905)

Sec. 46-190. - Industrial I-1 District.

(a) *Scope.* The provisions of this section apply to the Industrial I-1 District.

(b) *Permitted uses.* The permitted uses shall be as follows:

- (1) Assembling and packaging, freight handling, light manufacturing, storage and warehousing and similar operations.
- (2) Filling station (service station).

(c) *Special exceptions (board of adjustment).* Special exception uses shall be as follows:

- (1) Gasoline, oil or alcohol storage above ground in excess of 500 gallons and other similar industrial uses not listed above.
- (2) Kennels and/or dog pound.
- (3) Transfer station.

(Rev. Ords. 1986, §§ 16-910 to 16-912; Ord. No. 897, 8-6-2007; Ord. No. 914, 8-18-2008)

Sec. 46-191. - Industrial I-2 District.

(a) *Scope.* The provisions of this section apply to the Industrial I-2 District.

(b) *Permitted uses.* The permitted uses shall be as follows:

- (1) Any use permitted in Industrial I-1 District.
- (2) Manufacturing, fabricating and processing, provided that the proposed use will not constitute a fire hazard or emit objectionable smoke, noise, vibration, odor or dust.

(c) *Special exceptions (city council).* Gasoline, oil or alcohol storage above ground in excess of 500 gallons, composting and storage of yard waste, and other similar industrial uses not listed in subsection (b) of this section granted by the city council.

(d) *Special exceptions (board of adjustment).* Special exception uses shall be as follows:

- (1) Kennels and/or dog pound.
- (2) Transfer station.

(Rev. Ords. 1986, §§ 16-920 to 16-922; Ord. No. 897, § 16-922, 8-6-2007; Ord. No. 914, § 16-922, 8-18-2008; Ord. No. 970, 9-8-2015)

Sec. 46-192. - Industrial I-3 District.

(a) *Scope.* The provisions of this section apply to the Industrial I-3 District.

(b) *Permitted uses.* The permitted uses shall be as follows:

- (1) Any use permitted in Industrial I-1 District.
- (2) Slaughterhouse and meat processing.
- (3) Temporary storage of animal and slaughtering waste materials, within the limits set by the board of adjustment.

(c) *Special exceptions (board of adjustment)*. Special exception uses shall be as follows:

- (1) Kennels and/or dog pound.
- (2) Transfer station.

(Rev. Ords. 1986, §§ 16-930 to 16-932; Ord. No. 914, § 16-932, 8-18-2008)

Secs. 46-193—46-211. - Reserved.

DIVISION 5. - OTHER DISTRICTS

Sec. 46-212. - Agricultural districts.

(a) *Scope*. All uses except farm residences generally associated and identified with agriculture including, but not limited to, the cultivation of the soil and production of crops and the raising of livestock except swine.

(b) *Permitted uses*. The permitted uses shall be as follows:

- (1) Agricultural purposes such as crop production, raising of livestock except swine which purposes do not require a farm residence.
- (2) Public parks, playgrounds, private recreation, shooting range, campgrounds.
- (3) Dog pounds.
- (4) Landfills with the approval of the city council.
- (5) Sewage lagoons.

(c) *Special exceptions*. Special exception uses shall be as follows:

- (1) Open storage of materials.
- (2) Raising of swine.
- (3) Billboards.
- (4) Feed lots.
- (5) Fertilizer manufacture and storage.
- (6) Single-family residences.

(d) *Area regulations*. There are no minimum area requirements except as required by this chapter or other chapters of this Code.

(Rev. Ords. 1986, §§ 15-1010 to 15-1014; Ord. No. 562, 5-4-1987; Ord. No. 629, 11-19-1990)

Sec. 46-213. - Extraterritorial Zoning District ETZ-1.

(a) *Scope*. The provisions of this section apply to Extraterritorial Zoning District (ETZ-1).

(b) *Permitted uses*. The permitted uses shall be as follows:

- (1) All uses allowed by right in Residence R-1a District.
- (2) Home occupation as allowed by right and under the conditions imposed by subsection 46-142(c).
- (3) Daycare centers.
- (4) Agriculture as a living, limited to cultivation of soil and production of crops.

- (c) *Special exceptions.* The special exception uses shall be as follows if authorized by the planning commission:
- (1) Public utilities, substations, or pumping stations, upon showing that such structure is essential to serve the immediate neighborhood, that it cannot be located in any other type of district and that it is housed in buildings that harmonize with the character of the neighborhood and has adequate screening and landscaping and meets all of the other standards of this chapter.
 - (2) Customary incidental home occupation which is carried on as an accessory use by one or more members of the family residing on the premises, and:
 - a. Which shall be carried on wholly within a completely enclosed building;
 - b. In the activity, not more than the floor area of any one floor or basement shall be used then permitted by the planning commission;
 - c. In the conduct of said activity not more than the number of persons permitted by the planning commission in the special use permit from outside the family shall be employed;
 - d. Such customary home occupation must be in keeping with the character of the neighborhood in which located and must not material depreciate the property values in the immediate area. Such use must also satisfy the regulations described in article IV, division 2 of this chapter with regard to off-street parking, height limitations, signs and fences, in the immediate area; and
 - e. No noise, vibration, smoke, dust, odors, heat or glare shall be produced which is detrimental to the residential character of the zoning district in which it is located.
 - (3) Repair shops with inside storage only.
 - (4) Mobile homes as residences.
 - (5) Raising of livestock, including kennels, but excluding any breed or species of swine of any age.
 - (6) Two-family and multifamily housing as defined in article III, division 2 of this chapter.
 - (7) All of the special exceptions in this classification shall be subject to all of the terms and conditions as determined and established by the planning commission, which is to tailor such conditions as closely as possible to the existing ordinances for the type of district permitting the use allowed hereunder by special exception and such other conditions included, but not limited to, setting a termination date for the special use, restricting the working hours of a home occupation, setting the number of livestock permitted on the premises, and all other terms and conditions as the planning commission deems fit. All such terms and conditions are to be made a part of the special use permit.
- (d) *Area regulations.* The area regulations shall be as follows:
- (1) *Lot area.* A lot area shall not be less than one acre per family shall be provided for every building hereafter erected or used in whole or in part as a dwelling.
 - (2) *Front yard.* There shall be a front yard on each street on which a lot abuts, which yard shall be not less than 50 feet in depth.
 - (3) *Side yard.* There shall be two side yards on each lot, neither which shall be less than ten feet in depth.
 - (4) *Rear yard.* There shall be a rear yard on each lot, which yard shall not be less than 50 feet.
 - (5) *Regulated by planning commission.* The area regulations for special exceptions shall be not less than those for permitted uses and as further conditioned by the planning commission.
- (e) *Parking.* Parking requirements shall be as provided for in the supplemental regulations set forth in article IV, division 2 of this chapter.

Sec. 46-214. - AV-1 and AV-2 Airport Districts.

(a) *Scope.* The provisions of this section apply to the AV-1 and AV-2 Airport Districts.

(b) *Permitted uses.* The permitted uses shall be as follows:

(1) *AV-1 District.*

- a. Runways, landing strips, taxiways.
- b. Buffer zones.
- c. Agricultural.
- d. Airway facilities and equipment.

(2) *AV-2 District.*

- a. Aircraft maintenance facilities whether or not operated for profit.
- b. Aircraft fueling and washing (outdoors).
- c. Public transportation passenger facilities.
- d. Agricultural aircraft operating facilities.
- e. Aircraft storage facilities whether or not operated for profit.
- f. Business and professional offices related to the aircraft or travel industry.
- g. Retail or service store or shop related to the aircraft industry.
- h. Museums, parks, playgrounds and similar community facilities.
- i. Governmental administration and services such as: weather station, control tower for air traffic, offices, firehouse, security, police, first aid and civil defense.
- j. Parking lot as a principal use.
- k. Automobile rental facilities and related services.
- l. Public utility substations or pumping stations.
- m. Assembling and packaging, freight handling, light manufacturing, storage and warehouse and similar operations related to airport uses.
- n. Accessory uses incidental to any of the foregoing airport permitted use.
- o. Aircraft wholesale business and related warehousing and storage, provided all inventories located on the premises are stored within a completely enclosed structure.
- p. Airway facilities and equipment.
- q. Buffer zones between runways, landing strips, taxiways and other uses.

(c) *Special exceptions.* Special exception uses shall be as follows:

- (1) Nonmunicipal museums whether or not operated for profit; and noncommercial clubs and organizations.
- (2) Vocational or trade schools, whether or not operated for profit.
- (3) Hotels, motels and other accommodations for the traveling public.
- (4) Eating and drinking establishments, except those offering in-car services.
- (5) Gasoline and oil storage above ground in excess of 500 gallons.
- (6) Manufacturing, fabricating and processing, provided that the proposed use will not constitute a fire hazard or emit objectionable smoke, noise, vibration, odor or dust.

- (7) Agriculture as a living, provided there is no dwelling or display of products other than in growth visible from the street.
- (8) Other aircraft related uses not listed in subsections (c)(1) through (c)(7) of this section.
- (9) Single-family dwelling units.
- (10) Any accessory uses incidental to the foregoing special exceptions.
- (d) *Prohibited airport uses.* The prohibited airport uses shall be as follows:
 - (1) Church, hospital, sanitarium, correctional institution or other similar institutional uses.
 - (2) Cemetery.
 - (3) Slaughterhouse or stockyard.
 - (4) Manufacture or storage of acid, gun powder, fireworks or other explosives.
 - (5) Landfill and/or dump grounds.
 - (6) Sewage treatment plants.
- (e) *Area regulations.* The area regulations shall be as follows:
 - (1) *Lot area and width.*
 - a. A lot area of not less than 20,000 square feet for commercial operations and not less than 3,000 square feet for private hangar shall be provided for every building hereafter erected.
 - b. Each lot shall have a building line frontage of not less than 200 inches for commercial lots and not less than 60 inches for private lots.
 - (2) *Front yard.* No front yard shall be required.
 - (3) *Side yard.* Seven feet.
 - (4) *Rear yard.* No rear yard shall be required.

(Rev. Ords. 1986, §§ 16-1400 to 16-1404; Ord. No. 632, 12-17-1990)

Sec. 46-215. - Planned Unit Development District.

- (a) *Scope; statement of intent.* This section applies to the PUD Districts. The provisions of the PUD District are established to provide comprehensive procedures and standards designed to allow greater flexibility, uniqueness, innovative design and energy conservation in the development or redevelopment of areas of the community by developing adjacent to, or by incorporating within a mixture of densities/intensities or use types. The benefits of the PUD are intended to be significant as to warrant modifications of the standards required under other district regulations. These provisions are further intended to promote conservation and more efficient use of land, higher standards of site and building design and the preservation and enhancement of desirable site characteristics such as natural topography, scenic features and open spaces. It is also intended that these provisions will give the developer reasonable assurance of ultimate approval before expending complete design monies while providing city officials with assurances that the project will retain the character envisioned at the time of concurrence.
- (b) *Permitted uses.* Any use which is permitted by this chapter within the residential, commercial or industrial districts shall be considered as potentially allowable within a PUD District.
- (c) *Who may apply; ownership requirements.* An application for approval of a PUD shall be filed in the name of the recorded owner of property included in the development. However, the application may be filed by a holder of an equitable interest in such property. Before approval of a plan can be obtained, the applicant must show evidence of full ownership interest in the land (legal title or the

execution of a binding sales agreement). The entire project must be in single ownership by the time the final development plan can be approved.

- (d) *Minimum areas generally required.* The tract of land for which a PUD project is proposed shall be a minimum of three acres. Areas of less than three acres may qualify as a PUD project if the applicant can show that the waiving of this requirement is in the public interest and that at least one of the following conditions is met:
- (1) Unusual physical features of the site or the surrounding neighborhood are such that development under a different zoning district would not conserve the unique physical features of the site or would not allow functional or environmental compatibility with the surrounding neighborhood.
 - (2) The site is adjacent to an area which has been developed under the provisions of a Planned Unit Development District and will contribute to the amenity and functionality of the neighborhood.
 - (3) The site is part of an urban redevelopment and/or spot renewal program, provided it does not conflict with the nature of the surrounding neighborhood.
- (e) *Coordination with subdivision regulations.* It is the intent of this article that subdivision review be carried out simultaneously with the review of a planned unit development and that the development plans submitted under this article be submitted in a form which will satisfy the requirements of the subdivision control regulations for preliminary and final plats.
- (f) *Administrative procedure generally.* Administrative approval is to be obtained for a PUD project at two stages:
- (1) The planning commission is to review and give preliminary approval to a concept development plan for the total area of the proposed PUD District; and
 - (2) Final approval is to be given to a detailed development plan by the planning commission and the city council for the total site development or for sub-areas of the proposed PUD District.

Prior to these two steps, the prospective applicant should submit to the director of public works and city staff, preliminary plans and sketches and basic site information for consideration and advice as to the relation of the proposal to general development objectives to be attained in the area and as to the policies of the planning commission with reference thereto.

- (g) *Preliminary approval of a planned unit development project.*
- (1) The proponents of a PUD project shall submit a concept development plan to the planning commission.
 - (2) The concept development plan shall consist of the following:
 - a. A legal description of the property.
 - b. A statement describing the general character of the intended development.
 - c. An accurate map of the project area showing the proposed site and its proposed land uses, and the adjacent properties and their present urban or projected land uses.
 - d. The pattern of proposed land uses including the shape, size and arrangement of proposed use areas, density acreage, and environmental character.
 - e. The internal traffic and circulation systems, off-street parking areas, and major points of access to public right-of-way.
 - f. Proposed open space and public areas.
 - g. Preliminary number, size and concept of the proposed structures within each area.
 - h. Proposed interior buffer areas between uses.

- i. An outline for the anticipated schedule and sequence of development in terms of sub-areas for the total PUD District.
- j. Preliminary subdivision plat.

(3) Referral and hearing.

- a. Upon receipt and review by the director of public works of the application and the concept development plan, the planning commission and its staff shall study the proposal to determine conformity with the city's comprehensive plan and the above requirements.
- b. In reviewing the plan, the planning commission shall determine if the proposed development is consistent with the intended purposes of the PUD District, with the comprehensive plan, and with the overall development of the city. The design may provide for the modification of yards, setbacks, and height requirements, but the density, intensity of use, and lot coverage requirements for residential developments for the district as a whole shall not be reduced below that required in the underlying district.
- c. The planning commission will hold a public hearing on the concept development plan, after notification of the surrounding property owners within 300 feet excluding right-of-way, and will notify the applicant of its decision to approve, approve with modifications, or disapprove the plan.
- d. Approval of the rezoning and the related concept development plan shall establish the basic right to use the area in conformity with the plan as approved, and shall be recorded as an integral component of the district regulations, but such plan is conditioned upon approval of a detailed development plan, and shall not make permissible any of the uses as proposed until a detailed development plan is submitted and approved for all or a portion of the concept development plan.

(h) *Final approval of a planned unit development project.*

- (1) In order to secure final approval and designation as a PUD District for a proposed site, the applicant will submit to the city planning commission a detailed development plan of any or all of the agreed-to site sub-areas.
- (2) The detailed development plan for any or all PUD District shall consist of the following:
 - a. A final subdivision plat including lot lines, easements, public rights-of-way, etc.
 - b. A map of the site illustrating the following:
 - 1. Size, location and arrangement of buildings including building spacing, setbacks, yards, etc.
 - 2. Parking areas, private and public streets, sidewalks, and other transportation facilities.
 - 3. Landscaping, screening and final ground contours.
 - 4. Common open spaces and/or recreation areas.
 - 5. Sewer, water and other utility lines.
 - c. Where applicable, a written statement outlining the ownership and maintenance responsibility of the common open spaces and recreation areas and documentation of this responsibility.
 - d. A written agreement with the city providing that should the improvements set forth in the illustration above fail to be completed within 18 months after the initiation of construction, as provided for in subsection (h)(5) of this section, then and in that event the city shall be authorized to provide for the installation of said improvements. The installation of such improvements shall be paid for by utilization of the special assessment process, for such cases made, and the developer so involved shall, as a part of the agreement waive any rights the developer might otherwise have to protest said special assessments.

- (3) The proponents of the PUD project shall secure the final approval for the designated section of the PUD area from the planning commission and the city council.
 - (4) Upon approval of the planning commission and the city council, the detailed development plan is attached to and is part of the ordinance establishing the zoning designation of the land. The detailed development plan is the document on which building permits and other city development approvals are issued. The city building official is not authorized to issue permits for improvements which are not indicated on the approved plan.
 - (5) Construction of the PUD shall be started within two years from the effective date of approval of the plan by the city council. Failure to begin the development within two years shall automatically void the development plan and another detailed development plan must be submitted and approved prior to any development of the property.
- (i) Amendments. Any change in the detailed development plan shall first be submitted for approval to the city planning commission, and if, in the opinion of the planning commission, such change constitutes substantial alteration of the original plan, especially with regards to a change in land use or an increase in development density or intensity, the procedure provided in subsections (g) and (h) of this section shall be required.

(Ord. No. 928, §§ 16-1501 to 16-1506, 5-3-2010)

Secs. 46-216—46-233. - Reserved.

ARTICLE IV. - SUPPLEMENTAL DISTRICT REGULATIONS

DIVISION 1. - GENERALLY

Sec. 46-234. - Water and sewerage requirements.

All buildings designated by the city council constructed after the original adoption of the ordinance from which this chapter is derived shall provide municipal sanitary and water supply before a zoning and use registration permit will be issued.

(Rev. Ords. 1986, § 16-410)

Sec. 46-235. - Height limitations.

- (a) In residence districts, no building shall exceed 35 feet in height, provided that such height limits may be exceeded by one foot for each foot by which the width of each side yard is increased beyond minimum side yard requirements, up to a maximum of 50 feet. In commercial and industrial districts, no building shall exceed 80 feet in height, provided that such height limits may be exceeded when authorized by the board of adjustment. Structures supporting utility facilities are exempted from the provisions of this section.
- (b) Residential buildings over two stories in height shall have a side yard setback of one foot plus the height of the building from the finish grade to the peak of the roof. No other building shall be constructed in the side yard setbacks.

(Rev. Ords. 1986, § 16-1120; Ord. No. 709, 7-18-1994)

Sec. 46-236. - Residential districts; limiting accessory buildings; special exceptions.

- (a) *Accessory building requirements in single-family or two-family residential districts.*

- (1) Accessory buildings shall be located in the rear yard only and not exceed 40 percent of the rear yard lot. The rear yard lot is a yard extending the full width of the lot and situated between the rear line of the principal building and the rear lot line.
 - (2) No more than two accessory buildings shall be allowed per lot.
 - (3) Accessory structures shall not exceed 1,200 square feet and in no case shall an accessory building be larger than the first floor square footage of the main building that is on the property. The square footage is calculated by measuring the outside walls of the main building.
 - (4) Accessory detached garages shall not exceed 15 feet in height at midpoint of the roof. Height is measured from the floor level of the structure.
 - (5) Accessory buildings larger than 144 square feet shall be constructed of similar exterior materials and shall be the same color and exterior design as the main building on the property.
 - (6) Accessory buildings with no rear yard access to public right-of-way shall have a minimum rear yard setback of five feet from the lot line.
- (b) *Special exceptions (board of adjustment)*. Special exception to the accessory building square footage requirements may be authorized by the board of adjustment, as follows:
- (1) Accessory detached garages shall not exceed 20 feet in height at midpoint, height is measured from the floor level.
 - (2) Accessory structures for lots consisting of not less than one acre shall not exceed 2,500 square feet.

(Ord. No. 913, § 16-1103, 10-6-2008)

Sec. 46-237. - Fences.

- (a) *Regulations*. Fences or walls not exceeding 30 inches in height may be erected on any part of a lot in any "R" residential zone district except as further regulated on corner lots, between the front lot line and the front building line for structures, and on any other part of the lot may be erected to a height not exceeding six feet. The height of such walls or fences shall be determined by measurement from the ground level at the lowest grade level within three feet on either side of such fences or walls. Any fence or wall more than six feet in height shall be considered a structure. If an "R" residential lot faces into a "B" business or an "I" industrial zone district, the height of the fence or wall in front of the building line for structure may be four feet high.
- (b) *Corner lots*. On corner lots, that part of a backyard fence or wall which extends to the side property line may be five feet high.

(Rev. Ords. 1986, §§ 16-1141, 16-1142)

Sec. 46-238. - Accessory building requirements in single-family or two-family districts.

- (a) Accessory building. A detached subordinate building, the use of which is customarily incidental to that of the main building or to the main use of the land and which is located on the same lot with the main building or use. Such a building shall not include dwelling units or living quarters.
- (b) Accessory buildings shall not exceed 40 percent of the rear yard lot. The rear yard lot is a yard extending the full width of the lot and situated between the rear line of the principal building and the rear lot line.
- (c) No more than two accessory buildings shall be allowed per lot.

- (d) Accessory structures shall not exceed 1,200 square feet and in no case shall an accessory building be larger than the first floor square footage of the main building that is on the property. The square footage is calculated by measuring the outside walls of the main building.
- (e) Accessory detached garages shall not exceed 15 feet in height. Height is measured from the floor level of the structure to the peak of the roof.
- (f) Accessory buildings larger than 144 square feet shall be constructed of similar exterior materials and shall be the same color as the main building on the property.
- (g) Accessory buildings with no rear yard access to public right-of-way shall have a minimum rear yard setback of three feet.

(Ord. No. 888, § 16-300.1, 2-20-2007; Ord. No. 914, 8-18-2008)

Sec. 46-239. - Street frontage required.

All lots shall abut a public street for the required frontage in the district which it is located; one single-family dwelling may utilize a private easement of not less than 20-feet wide and abutting upon a public street, if approved by the zoning board of adjustment.

(Rev. Ords. 1986, § 16-450)

Sec. 46-240. - Visibility requirements at intersections; distance measurements for clear sight triangle.

- (a) On any corner lot at a street intersection which has some form of traffic controls in all districts, there shall be no obstructions to traffic visibility within the clear sight triangle which is formed by the intersection of the centerline of two intersecting streets and a straight line joining the two said centerlines at points 55 feet distant from their point of intersection.
- (b) On any corner lot at a street intersection which does not have any form of traffic control in all districts, there shall be no obstructions to traffic visibility within the clear sight triangle which is formed by the intersection of the centerline of two intersecting streets and a straight line joining the two said centerlines at points a given number of feet distant from their point of intersection. The distance from this point of intersection are given on the following table for various speeds in miles per hour of enforced speed limit:

DISTANCE MEASUREMENT
FOR CLEAR SIGHT TRIANGLE

Miles Per Hour	Distance Measurements (in feet)
20	73
25	99
30	126

(Rev. Ords. 1986, § 16-460)

Sec. 46-241. - Corner lots.

The side yard facing the street shall be the same as the front yard requirements for those lots to the rear of said corner lot abutting on the intersecting street.

(Rev. Ords. 1986, § 16-470)

Sec. 46-242. - Reduction of lots and parts of others.

No lot shall be sold, divided or set off in such a manner that either the portion sold, divided or set off, or the portion remaining, shall be less than the minimum size prescribed by the regulations relating to the district in which it is situated.

(Rev. Ords. 1986, § 16-480)

Sec. 46-243. - Requirements concerning adult entertainment centers.

Notwithstanding anything in this chapter to the contrary, an adult entertainment center shall be permitted only in the industrial zoning district and in no other district, and then only if the adult entertainment center meets the following conditions:

- (1) The adult entertainment center is located no closer than 500 feet from any pre-existing church, school, residential zoning district, nursery, preschool, place of worship, park, swimming pool, any child daycare facility, recreation center, bike paths excluded, or youth athletic facility.
- (2) The adult entertainment center excludes from its premises those persons less than 18 years of age.
- (3) The adult entertainment center displays no signs visible from the exterior of the center, except for signs identifying the center as an adult store and hours of operation.
- (4) No materials depicting specific sexual activities or specified anatomical areas shall be visible from the exterior of the center.
- (5) The manager and the owners of the center are registered with the chief of police and have provided the chief of police with their complete name, address, date of birth, social security number, driver's license number, and any prior criminal offenses within the last five years that consist of the following crimes:
 - a. Section 26-34, sexual assault.
 - b. Section 26-208, fornicating.
 - c. Section 26-209, indecent exposure.
 - d. Section 26-181, disorderly conduct.
 - e. Section 26-233, prostitution.
 - f. Section 26-37, window peeping.
 - g. N.D.C.C. § 12.1-27.1-03.1, objectionable materials or performance-display to minor.
- (6) The business premises of the adult entertainment center which are generally open to its patrons are equally open at the same time without charge to members of the city police force who may wish to enter thereon provided the entry is in the court of the discharge of the police officer's duties.

(Ord. No. 878, 4-17-2006)

Secs. 46-244—46-262. - Reserved.

DIVISION 2. - OFF-STREET PARKING AND LOADING

Sec. 46-263. - Off-street parking requirements.

In conjunction with any principal building hereafter erected or any use of land hereafter established, there shall be provided on the same lot therewith sufficient parking spaces to meet the minimum requirements specified herein with the exceptions of those uses occurring in the B-1 central business district zone.

- (1) Auditorium, assembly halls, dance halls, theaters, gymnasiums, and skating rinks: one space for each four seats or bench seating capacity.
- (2) Automatic car wash: ten spaces for each washing bay. Five spaces for do-it-yourself car wash.
- (3) Boardinghouse, roominghouse or lodginghouse: one space for each sleeping room.
- (4) Bowling alleys: four spaces per each lane.
- (5) Church: one space for each five seats in the main seating area.
- (6) Community center, library, museum or art gallery: ten spaces plus one additional space for each 300 square feet of floor area in excess of 2,000 square feet.
- (7) Dwellings.
 - a. One- and two-family dwellings: one space for each dwelling unit.
 - b. Multiple-dwellings and apartments: two spaces for each dwelling unit.
- (8) Fraternity or sorority: one space for each bed or one space for each student and advisor maintaining overnight accommodations.
- (9) Home occupation: one space per dwelling unit plus three spaces for each 200 feet of floor area devoted to said home occupation.
- (10) Hospital, sanitarium, home for the aged, nursing home or similar institution: one space for each three beds, plus one for each two employees.
- (11) Hotel: one space for each three sleeping rooms or suites, plus one space for each 200 square feet in commercial floor area contained therein.
- (12) Industrial and/or manufacturing: one space for each two employees on the maximum working shift, plus space to accommodate all trucks and other vehicles use in connection therewith.
- (13) Motel, tourist home or cabin court: one space for each sleeping room or unit.
- (14) Offices, professional agencies, banks, medical or dental clinics: three spaces plus one additional parking space for each 400 square feet of floor area over 1,000 square feet.
- (15) Private club or lodge: one space for every 200 square feet of building area.
- (16) Restaurant, night club, cafe or similar recreation or amusement establishment: one space for each 100 square feet of floor area.
- (17) Retail store establishment: one space for each 200 square feet of floor area.
- (18) Personal service establishment: one space for each 400 square feet of floor area.

(Rev. Ords. 1986, § 16-1100)

Sec. 46-264. - Applicability.

- (a) The parking space requirement for a use not specifically mentioned herein shall be the same as required for use of a similar nature.
- (b) Whenever a building erected or established after the effective date of the original ordinance from which this chapter is derived is enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise, to create a need for an increase of ten percent or more in the number of existing spaces, such spaces shall be provided on the basis of expansion or change.
- (c) Whenever a building existing prior to the effective date of the original ordinance from which this chapter is derived is enlarged to the extent of 50 percent or more in floor area, said building or use shall then and thereafter comply with the parking requirements set forth herein.
- (d) All parking spaces required herein shall be located on the same lot with the building or use served, except that where an increase in the number of spaces is required by change or enlargement or use, or where such spaces are provided collectively or used jointly, by two or more buildings establishment of the required spaces may be located not to exceed 400 feet therefrom.
- (e) (1) Not more than 50 percent of the parking spaces required for theaters, bowling alleys, dance halls, night clubs or cafes; and
 (2) Up to 100 percent of the parking spaces required for a church or school auditorium;
 may be provided and used jointly by banks, offices, retail stores, repair shops, service establishments, and other similar uses not normally open, used or operated during the same hours as those listed in subsections (e)(1) and (e)(2) of this section.
- (f) Front yard parking. No off-street parking space shall be permitted in the required minimum front yard of any residential district.
- (g) Off-street parking spaces provided on other than same property as the use is located shall be permitted only in such district permitting parking as a use. Such separate parking spaces shall be maintained as long as the principal building or uses are maintained.

(Rev. Ords. 1986, § 16-1101)

Sec. 46-265. - Access drives.

- (a) In business districts, no parking space or access thereto, except entrance or exit drives as limited in this section, shall be within five feet of a street or lot line. Entrance or exit drives connecting the parking area and the street shall be permitted within the five foot strip required by this subsection; provided:
 - (1) Such drives shall not exceed 15 feet in total aggregate width for each 50 feet of street line abutting such lot, but in no case exceeding 40 feet in total aggregate width for each street line upon which a lot abuts.
 - (2) Such drives shall have at least 60 feet of unobstructed vision in both directions along the street unto which the drive enters measured from the centerline of the drive at the point where it enters the street, and the centerline of such drive shall be at least 60 feet from the centerline of any street intersecting the street onto which the drive enters.
 - (3) Such drives shall have on each side a triangular area formed by the intersection of the driveway line, the street line and a straight line joining said lines at points 30 feet distant from their point of intersection. Within such triangular area, no parking or loading or unloading shall be permitted, nor shall there be any obstruction to traffic visibility.
- (b) In industrial districts, no parking space or access thereto, except entrance or exit drives as limited in this section, shall be within five feet of any lot line. Entrance or exit drives connecting the parking and the street shall be permitted within the five-foot strip required in subsection (a) of this section;

provided these drives meet the requirements as specified in subsections (a)(1) through (a)(3) of this section.

(Rev. Ords. 1986, § 16-1102)

Sec. 46-266. - Off-street loading requirements.

Off-street loading and unloading space with proper access from a street or alley, and with at least 14 feet of vertical clearance shall be provided, either within or outside the building to adequately serve the use on the lot. All off-street loading and unloading spaces shall have an all-weather surface to provide safe and convenient access and use during all seasons.

(Rev. Ords. 1986, § 16-1110)

Secs. 46-267—46-285. - Reserved.

DIVISION 3. - SIGNS

Sec. 46-286. - Council to adopt regulations; amendments.

The city council shall adopt regulations which shall be considered an extension of this article and shall, after approval as hereafter provided, have the full force and effect as if included herein in its entirety. Such regulations shall be known as the city sign code which shall not be effective until approved by the city council after a public hearing shall be conducted by the city council, which notice thereof shall have been published in the official newspaper of the city at least ten days prior to the date of the hearing. Amendments of the city sign code shall be accomplished in the same manner as the adoption of the initial code. The city council may also submit the original code and any amendments proposed thereto to the planning commission for its recommendation. A copy of the sign code and the amendments thereto shall be kept in the office of the city building inspector and be made available for public inspection at any reasonable time.

(Ord. No. 902, § 16-1130.1, 12-3-2007)

Sec. 46-287. - Violation; penalty.

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use or maintain any sign structure in the city's zoning and extra territorial zoning area and jurisdiction, or cause the same to be done, contrary to or in violation of any of the provisions of this Code.

- (1) The failure to purchase a permit before placing a sign.
- (2) The failure to affix permit tag to sign.
- (3) The failure to remove a sign when permit has expired.
- (4) The failure to follow through with annual permit requirements.
- (5) The failure to have sign permanently marked with the name and address of the sign owner.
- (6) The failure to maintain sign in good condition.
- (7) The failure to comply with electrical requirements of this Code.
- (8) The failure to remove a sign not displaying copy.
- (9) The placement of a sign on public right-of-way.

- a. Any violation of this division shall be an infraction for which a maximum fine of \$100.00 per day of the sign is in violation, not to exceed \$500.00. A second and subsequent violation and/or a violation exceeding five days shall be a misdemeanor punishable by a fine not exceeding \$1,000.00, imprisonment of 30 days or both such fine and imprisonment and each such person violating this division shall be deemed guilty of a separate offense for each and every day during which any violation under the provisions of this division is committed, continued or permitted.
- b. The city may seek such other city remedies as are permitted by the city's ordinances and state law including abatement and injunctive relief for enforcement of this division.

This division is being adopted pursuant to article 3 of the Charter.

(Ord. No. 902, § 16-1130.2, 12-3-2007)

Secs. 46-288—46-306. - Reserved.

ARTICLE V. - RESTRICTIONS ON AND REQUIREMENTS FOR SPECIAL USES

DIVISION 1. - GENERALLY

Sec. 46-307. - Accessory buildings.

- (a) A zoning use permit shall be issued for the principal building before one shall be issued for an accessory building.
- (b) Occupancy of an accessory building shall be allowed for a maximum period of one year only, prior to beginning construction of the principal building.

(Rev. Ords. 1986, § 16-420)

Sec. 46-308. - Conversion to two-family or multiple-family.

The board of adjustment may recommend a variance to permit the conversion of any building into a two-family or multiple-family dwelling in any permissible residential district; provided that the lot area per family shall not be reduced thereby to less than the lot area required for such conversion in each of the respective residential districts, and provided further that such conversion is in accordance with the applicable health code.

(Rev. Ords. 1986, § 16-430)

Sec. 46-309. - Purpose; permitted uses.

- (a) The purpose of this section is to protect children who may be attracted to these establishments and to prevent and control detrimental secondary effects including, but not limited to, increased crime, decreased property values, noise, and litter, upon neighboring properties and existing and proposed land uses in the general areas.
- (b) Permitted uses. The following adult entertainment uses shall be restricted to locations within the Industrial Zoning District under certain conditions and limitations:
 - (1) Adult bookstore;
 - (2) Adult entertainment center;
 - (3) Adult novelty store; and

- (4) Adult video store.

(Ord. No. 878, 4-17-2006)

Sec. 46-310. - Service stations.

In any district where permitted, a service station shall be subject to the following regulations:

- (1) The area for use by motor vehicles, except access drives thereto, as well as any structure, shall not encroach on any required yard area.
- (2) No fuel delivery pump shall be located within 20 feet from any side lot line nor within 35 feet of any right-of-way line and no fuel pump shall be located within 50 feet of the side or rear lot line which lies next to a residence.
- (3) All major repair work shall be done within a completely enclosed building.

(Rev. Ords. 1986, § 16-1150)

Sec. 46-311. - Motel and motor lodge development standards.

- (a) *Minimum lot area.* The minimum lot area shall be one acre and the access and egress shall be located not closer than 30 feet to the side lot lines. The setback of any structure shall be 50 feet from the front lot line on the street on which the property fronts.
- (b) *Yard requirements.* A minimum of 25 feet shall be provided for both side yards and a 30-foot rear yard shall be provided.
- (c) *Lot area per unit.* A minimum of 1,000 square feet shall be required for each bedroom unit on the ground floor and 500 square feet for each unit above the first floor level.
- (d) *Parking, height and sign regulations.* See sections 46-266, 26-286 and 26-235.

(Rev. Ords. 1986, § 16-1161)

Sec. 46-312. - Designed residential subdivision.

In the case of a designed residential subdivision or group housing of two or more buildings to be constructed on a plot of ground, not subdivided into the customary streets and lots, and which will not be so subdivided or where the existing or contemplated street and lot layout make it impracticable to apply the requirements of this chapter to the individual building units in such group housing, the application of the term of this chapter may be varied by the board of adjustment in a manner which will be in harmony with the character of the neighborhood; however, in no case shall the board of adjustment authorize a use prohibited in the district in which the housing is to be located, or a smaller area per dwelling unit than the minimum required in such district, or a greater height than the requirements of this chapter permit in such a district.

(Rev. Ords. 1986, § 16-1180)

Sec. 46-313. - Child care.

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

Child day care center means as defined by chapter 75-03-10, North Dakota Administrative Code.

Preschool educational facilities means as defined by chapter 75-03-11, North Dakota Administrative Rules.

Residential family child day care home means as defined by chapter 75-03-08, North Dakota Administrative Rules.

Residential group child care home means as defined by chapter 75-03-09, North Dakota Administrative Code.

Registered child care provider means an occupied residence in which early childhood services are provided for no more than five children at any one time and may also be referred to as self-certified.

School age child care center means as defined by chapter 75-03-11.1, North Dakota Administrative Code.

(b) *Adoption requirements.*

- (1) A child day care center, preschool educational facilities and/or a school age child care center shall comply with all of the following requirements:
 - a. A special use permit shall be required for operation.
 - b. A certificate of occupancy shall be obtained from the building official, who shall inspect each such building. This certificate of occupancy is on a one-time fee per location per operator basis for a fee as established by resolution adopted by the city council.
 - (2) A residential family child day care home, residential group child care home or registered child care provider shall comply with all of the following additional requirements:
 - a. A certificate of occupancy shall be obtained from the building official, who shall inspect each such building. This certificate of occupancy is on a one-time fee per location per operator basis for a fee as established by resolution by the city council.
 - b. Any of the types of child care providers in this section which provide services for eight or more children shall obtain a special use permit.
 - (3) Any certificate of occupancy and/or special use permit granted under this chapter shall be to the property and licensed operator only and are nontransferable to any other site or person.
 - (4) The building official may, in the building official's discretion, call for further inspection by the city fire inspector, the county health department or county social service office if the safety or sanitation of the home appears to be questionable prior to the issuance of the certificate of occupancy.
- (c) *Applicable classifications.* The provisions of this section shall apply to all zoning classifications provided for in this chapter. Child day care centers, preschool educational facilities and school age child care centers are permitted uses in any district; residential family child day care homes, residential group child care homes and registered child care providers are permitted uses in any residentially zoned area.
- (d) *Grandfather clause.* All child day care centers, preschool educational facilities, school age child care centers, residential family child day care homes, residential group child care homes and registered child care providers which are licensed by the state and/or county social services at the date of enactment of the ordinance from which chapter is derived are hereby grandfathered in so far as being required to obtain a special use permit.

(Rev. Ords. 1986, §§ 16-1190-16-1194; Ord. No. 846, 8-4-2003)

Sec. 46-314. - Business and industrial districts.

Child day care centers, preschool educational facilities, residential group child care homes and school age child care centers may be authorized by the board of adjustments as special exceptions in

Business B-1 Central, Business B-2 Heavy, Business B-3 Highway, Industrial I-1, Industrial I-2, Industrial I-3 and Agricultural Districts. All such child care entities or structures shall be subject to the provisions set forth in subsections 46-142(c)(9) and 46-313(a) through (c).

(Ord. No. 857, 12-20-2004)

Secs. 46-315—46-333. - Reserved.

DIVISION 2. - DESIGNED SHOPPING CENTERS

Sec. 46-334. - Description; purpose.

- (a) This type of development is designed to provide for the appropriate development of a modern, well-designed, integrated retail shopping center. The district is established as a district which the principal use of land is for commercial and service uses to serve surrounding trade area and in which traffic and parking congestion can be reduced to a minimum in order to preserve residential values and promote the general welfare of the surrounding area. Among other things, the shopping center shall be comprised of:
 - (1) A group of integrated buildings within which retail trade and related service activities shall wholly be conducted;
 - (2) Convenient, safe and adequate vehicular and pedestrian accessways; and
 - (3) Safe and adequate off-street parking and loading facilities.
- (b) Consistent with the general purposes of this chapter, the specific intent of this article is to:
 - (1) Encourage the construction of, and continued use of, land for neighborhood commercial and service purposes;
 - (2) Prohibit residential and industrial use of the land, and any other use which would substantially interfere with the development and continuation of commercial structures and activities in the district;
 - (3) Discourage any use which, because of its character, would interfere with the use of the land in the district as a shopping and service center for surrounding residential districts;
 - (4) Ensure the safety and convenience of traffic movement, both within the shopping center included in the plan in relation to access streets; and
 - (5) Ensure a harmonious and beneficial relationship between the shopping center and the contiguous land and adjacent neighborhoods.

(Rev. Ords. 1986, § 16-1170)

Sec. 46-335. - Procedural requirements.

- (a) The city council, following review and recommendation by the city planning commission, may authorize as an amendment to the zoning map, the designation of an area as a shopping center district for the location of an integrated business center, subject to the regulations of this article and any other pertinent provisions of this chapter. The total area to be developed for commercial purposes and to be included in the proposed amendment shall be not less than five acres in size, and shall adjoin at least one major road.
- (b) Application requirements. The application for permit shall be accompanied by the following information:

- (1) A plan for the integrated development of the total area to be included in the shopping center which shall be drawn to scale and shall include, among other things:
 - a. The location boundaries, dimensions, and ownership of the land to be included in the shopping center district.
 - b. The location, use and ground area of each proposed building and existing structures.
 - c. The location, dimensions, arrangement, and designation of all open spaces, yard, accessways, entrances, exits, off-street parking facilities, loading and unloading facilities, pedestrian ways, and buffer strips.
 - d. The design of buffer areas and screening devices to be maintained, including the arrangement of all areas devoted to planting, lawns, tees, or similar purposes.
 - (2) A description of the provisions made for sewage and waste disposal, water supply and storm water drainage, including a suitable contour map of the area.
 - (3) Information sufficient to demonstrate that satisfactory arrangements will be made to facilitate traffic movement to the highways adjoining the shopping center and to ensure proper circulation within the center. These arrangements may include provisions for necessary signalization, channelization, turn lanes, right-turn runoff lanes, added highway width, adequate warning signs, and adequate storage area and distribution facilities within the center to prevent backup of vehicles on public streets.
 - (4) An economic study or marketing analysis sufficient to indicate the general economic feasibility of the proposed shopping center.
 - (5) Sufficient data, in all instances, required by the city council and the planning commission to judge the effectiveness of the design and the character of the entire business center, its compliance with the requirements of this article, and to consider properly such things as its relationship to surrounding areas, anticipated traffic, public health, safety, and welfare.
- (c) Although portions of the project may be planned for completion in successive stages, a complete plot plan for the entire project shall be submitted to and approved by the city council prior to the issuance of zoning permits and the beginning of any construction.

(Rev. Ords. 1986, § 16-1171)

Sec. 46-336. - Use regulations.

- (a) A building or combination of buildings may be erected or used, and the lot area may be used or occupied, for any of the following purposes and no other; provided that:
 - (1) In no case shall dwelling, apartment, or other residential use be permitted, except for living quarters for watchmen or caretakers; and
 - (2) In no case shall any processing activity be permitted unless such processing is located not less than 25 feet from the front of the building and is effectively screened from the front of the building and is effectively screened from the front portion of the building by a wall or partition.
- (b) The permitted uses are as follows:
 - (1) Store for retail purposes only, including retail outlet or showroom for uses permitted in this district, provided that no goods shall be displayed on the exterior of the premises.
 - (2) Restaurant or tea room.
 - (3) Professional, business, administrative, finance, insurance and governmental offices.
 - (4) Bank.

- (5) Personal service shops, dealing directly with customers: beauty parlor, barbershop, clothes cleaning or pressing agency (not to include cleaning and dyeing plant); shoe repair shop, dressmaking, millinery, automatic self-service laundry, or similar shop.
- (6) Indoor theater, radio, and television studios.
- (7) Assembly hall or community building; indoor recreational establishment; library, child day center; municipal use.
- (8) Bakery, pastry, candy, confectionery, ice cream, or custom shop, provided that all products are sold at retail on the premises.
- (9) General servicing or repair shop, such as: watch or clock repair, radio or television repair, or home appliance repair.
- (10) Manufacturing display room, or retail outlet.
- (11) Frozen food locker, for storage only.
- (12) Passenger station, electric substation, telephone and telegraph office.
- (13) Accessory use customarily incidental to any of the uses listed in subsections (b)(1) through (12) of this section.
- (14) Motor vehicle service station and any use of the same general character as any of the above permitted uses, when authorized as a special exception by the board of adjustment, provided that such use shall be permitted subject to such reasonable restrictions as the board may determine.
- (15) Signs when erected and maintained in accordance with provisions of article IV, division 3 of this chapter.

(Rev. Ords. 1986, § 16-1172)

Sec. 46-337. - Design and area requirements.

- (a) The proposed development shall be constructed in accordance with an overall plan, shall be designed as a single architectural scheme with appropriate landscaping, and shall provide initially for the construction of either a minimum of 8,000 square feet of ground floor area; or a minimum of six of the permitted uses listed in subsection 46-336(b).
- (b) The total site size shall be not less than five acres.
- (c) All buildings shall be arranged in a group, and the distance at the closest point between any two buildings, groups of attached buildings, shall be not less than 15 feet.
- (d) No building shall exceed 35 feet in height.
- (e) No building, or permanent structure other than a permitted freestanding sign, shall be erected within 75 feet of a major road, or within 50 feet of any other street or property line.
- (f) No more than 20 percent of the lot area shall be occupied by buildings.
- (g) Not less than three square feet of automobile parking space, exclusive of driveways and maneuvering areas and with suitable access shall be provided for each square foot of floor area devoted to selling and patron use.
- (h) Parking, loading, or service areas used by motor vehicles shall be located entirely within the lot lines of the shopping center, shall be physically separated from public streets by a buffer strip or other effective and suitable barrier against unchanneled motor vehicle access or egress, and shall have not more than two accessways to any on public street, unless unusual circumstances demonstrate the need for additional access points. All such areas shall be arranged to facilitate proper and safe internal circulation and shall be paved with dust-free all-weather surface.

- (i) All accessways to a public street or highway shall be located at least 200 feet from the intersection of any street lines, and shall be designed in a manner conducive to safe ingress and egress. Where practicable, exits shall be located on a major rather than a minor street.
- (j) Areas provided for loading and unloading of delivery trucks and other vehicles and for the servicing of shops by refuse collection, fuel, and other service vehicles shall be adequate in size, and shall be so arranged that they may be used without blockage, or interference with the use of accessways or automobile parking facilities.
- (k) Along each side or rear property line which adjoins existing residences or a residence district, a buffer planting strip shall be provided which shall be not less than 30 feet in width, and on which shall be placed shrubbery, trees, or other suitable plantings sufficient to constitute an effective visual screen. Along each street line bounding the district, a 20-foot buffer strip shall be provided, suitably landscaped except for necessary sidewalks and accessways. Nothing herein provided shall prohibit the erection of a suitable fence or wall on the required buffer area.
- (l) All parking, loading, access and service areas shall be adequately illuminated at night. Such lighting, including sign lighting, shall be arranged so as to protect the highway and adjoining property from direct glare or hazardous interference of any kind. All utility lines servicing the area shall be placed underground.
- (m) The proposed shopping center shall be served by public water and sanitary sewer facilities if available within a reasonable distance to the site.
- (n) The city council may prescribe more restrictive conditions, or any further reasonable conditions deemed appropriate with respect to the suitability of the shopping center in the neighborhood. Adequate guarantee shall be given prior to approval of the plan, to ensure that the minimum conditions enumerated in this section are, or will be, fully complied with.
- (o) Pedestrian safety islands shall be required at the end of alternate parking bays if such bays are more than 200 feet in length. Such islands shall be landscaped and designed in such a manner as to provide a safe area for pedestrians to wait prior to crossing vehicular traffic lanes. Each safety island shall be at least 300 square feet in area.

(Rev. Ords. 1986, § 16-1173)

Sec. 46-338. - Time limit on construction permit.

Permits issued pursuant to this article shall automatically expire one year from the date of issuance thereof unless construction other than excavation has commenced within such one-year period.

(Rev. Ords. 1986, § 16-1174)