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## **CHAPTER SIX**

### **ZONING - LAND USE PLANNING**

**NOTE:** Zoning and land use planning and development are best left to local design. Therefore, this code will not attempt to formulate model zoning and land use ordinances.

It should be noted that a city may, by resolution, relinquish its zoning authority to the County Zoning Board of the county in which the city is located. The County Zoning Ordinances are then incorporated, by reference, into the city's revised ordinance code. If the City does not relinquish its zoning authority what follows is a broad outline of model zoning ordinances.

## CHAPTER SIX

### ZONING - LAND USE PLANNING

#### ARTICLE 1 - Planning and Zoning Commission

##### 6.0101 Planning Commission Created

There is hereby created a planning commission consisting of \_\_\_\_\_ members to be appointed by the City's chief executive officer, with the approval of the governing body. The chief executive officer, the engineer and city attorney shall be ex-officio members thereof. If the City exercises extraterritorial zoning authority pursuant to North Dakota Century Code section 40-47-01.1, the planning commission must include \_\_\_\_\_ members residing outside the corporate limits of the city. (Source: North Dakota Century Code section 40-48-03)

##### 6.0102 Terms, Compensation, Meetings

The terms of the members, their compensation, and meetings shall be as provided by Chapter 40-48 of the North Dakota Century Code.

##### 6.0103 Ex-Officio Zoning Commission

The planning commission shall also serve as the zoning commission of the City to hold hearings, make reports and recommendations as to the boundaries of the various original districts and appropriate regulations to be enforced therein, and for changes in or supplements thereto. (Source: North Dakota Century Code section 40-47-06)

OR

##### 6.0101 Zoning Commission

There is hereby created a zoning commission consisting of \_\_\_\_\_ members to be appointed by the governing body of the City which shall recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. If the City exercises extraterritorial zoning authority pursuant to North Dakota Century Code section 40-47-01.1, the zoning commission must include \_\_\_\_\_ members residing outside the corporate limits of the city. Such commission shall make a preliminary report and hold public hearings before making its final report. Such commission shall also hold hearings and make reports and recommendations as to the supplements and changes in boundaries and regulations. (Source: North Dakota Century Code section 40-47-06)

#### ARTICLE 2 - Definitions

##### 6.0201 Definitions

For the purpose of this chapter the following words and phrases shall have the meanings herein given:

1. "Accessory Use or Building" is a subordinate use or building customarily incident to and located on the same lot with the main use or building.
2. "Alteration" as applied to a building or structure, is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

3. "Building" is a structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property, including tents, lunch wagons, dining cars, camp cars, trailers and other roofed structure on wheels or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purposes of this definition "roof" shall include an awning or other similar covering, whether or not permanent in nature.
4. "Building Line" is the line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level. The building line is considered a vertical surface intersection the ground on such line.
5. "Dwelling" is a building designed or used as the living quarters for one or more families.
6. "Dwelling House" is a detached house designed for an occupied exclusively as the residence of not more than two families each living as an independent housekeeping unit.
7. "Dwelling Unit" is one or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping and eating.
8. "Dwelling, Multi-Family" is a dwelling or group of dwellings on one plot containing separate living units for three or more families, but which have joint services or facilities for both.
9. "Family" is a single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage or other domestic bond as distinguished from a group occupying a board house, lodging house, club, fraternity or hotel.
10. "Garage, Private" is a building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.
11. "Lot" is a parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.
12. "Non-conforming Use" is a building, structure or use of land existing at the time of the enactment of this chapter and which does not conform to the regulations of the district in which it is located.
13. "Setback Building Line" is a building line back of the street line.
14. "Structure" is anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.
15. "Use" is the purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.
16. "Yard" is an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.
17. "Yard, Front" is an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot.

18. "Yard, Rear" is an open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.
19. "Yard, Side" is an open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a lot line.

### ARTICLE 3 - Establishment of Districts

#### 6.0301 Use and Area Districts Established

For the purposes of this chapter, the City is hereby divided into use districts and area districts as provided hereafter.

#### 6.0302 Maps and Boundaries

The boundaries of these districts are hereby established as shown on a map entitled "The Zoning Map of the City of \_\_\_\_\_" which is on file in the office of the city auditor. This map, with all explanatory matter thereon, is hereby made a part of this chapter.

#### 6.0303 Annexed Property

Property which has not been included within a district and which has become a part of the City by annexation shall automatically be classified as lying and being in the R-2 residential district until such classification has been changed by an amendment to the zoning ordinances as prescribed by law.

### ARTICLE 4 - Application of Regulations

#### 6.0401 Application of Regulations, Extraterritorial Zoning

Except as provided in this chapter:

1. **Conformity of Buildings and Land.** No building, structure or premises shall be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged or altered except in conformity with the regulations herein specified for the district, as shown on the official map, in which it is located.
2. **Conformity of Buildings.** No building, structure or premises shall be erected, altered or used so as to produce smaller yards or less unoccupied area, and no building shall be occupied by more families than prescribed for such building, structure or premises for the district in which it is located.
3. **Conformity of Open Spaces.** No yard, court or open space, or part thereof, shall be included as a part of the yard, court or open space similarly required for any other building, structure or dwelling under this chapter.

#### 6.0402 Extraterritorial Zoning

Pursuant to North Dakota Century Code section 40-47-01.1, the City may extend the application of the City's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within \_\_\_\_\_ mile(s) of the corporate limits of the City.

ARTICLE 5 - Non-Conforming Uses

6.0501 Non-Conforming Uses

The lawful use of any building, structure or land existing at the time of the enactment of this chapter may be continued, although such use does not conform with the provisions of this chapter, provided the following conditions are met

1. Alterations. A non-conforming building or structure may be altered, improved or reconstructed provided such work is not to an extent exceeding in aggregate cost twenty-five percent (25%) of the assessed value of the building or structure, unless the building or structure is changed to a conforming use.
2. Extension. A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building or structure which existed prior to the enactment of this ordinance shall not be deemed the extension of such non-conforming use.
3. Changes. No non-conforming building, structure or use shall be changed to another non-conforming use.
4. Abandonment. A non-conforming use of a building or premises which has been abandoned shall not thereafter be returned to such non-conforming use.
5. Unlawful Use Not Authorized. Nothing in this chapter shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of this chapter.
6. Certificate of Non-Conforming Use. Upon the effective date of this chapter, the zoning administrator shall issue a "Certificate of Non-Conforming Use" to all owners of property, the use of which does not conform to the provisions of the use zone in which the property is located.
  - a. In accordance with the provisions of this section no use of land, buildings or structures shall be made other than that specified on the "Certificate of Non-Conforming Use," unless said use shall be in conformity with the provisions of the use zone in which the property is located.
  - b. A copy of each "Certificate of Non-Conforming Use" shall be filed with the office of the zoning administrator. No permit or license shall be issued to any property for which a "Certificate of Non-Conforming Use" has been issued until said permit or license has been approved by the zoning commission.
7. District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any non-conforming uses existing therein.

ARTICLE 6 - Use Districts

6.0601 Use Districts

The City is hereby divided into the following Use Districts to be known as:

- R-1 Residential Districts, Single-Family
- R-2 Residential Districts, Two-Family
- R-3 Residential Districts, Multi-Family
- C Commercial Districts
- I Industrial Districts

6.0602 R-1 - Residential Districts - Single Family

In a single-family district, the following buildings and uses are permitted:

1. Dwelling houses occupied by not more than one family.
2. Publicly owned and operated buildings.
3. Churches and parish houses.
4. Hospitals.
5. Nursing and Rest Homes.
6. Homes for the Aged.
7. Playgrounds and Parks.
8. Cemeteries.

6.0603 R-2 - Residential Districts - Two-Family

In a two-family district, the following buildings and uses are permitted:

1. Dwelling houses each occupied by not more than two families. Each family shall not be allowed more than two roomers or boarders per family.
2. All other uses permitted in a one-family district.

6.0604 R-3 - Residential Districts - Multi-Family

In a multi-family district the following buildings and uses are permitted:

1. All uses permitted and as regulated in a two-family district.
2. Multi-family dwellings.
3. Private clubs.
4. Lodges or social buildings.
5. Hotels, motels, tourist camps.



6.0605 Accessory Uses in Residential Districts

The following accessory uses and buildings are permitted in residential districts:

1. Professional office for a physician, clergyman, architect, engineer, attorney or similar professional person residing in such main building.
2. Home Occupation. Customary home occupation for gain carried on in the main building or a building accessory thereto requiring only home equipment and employing no non-resident help and no trading in merchandise is carried on.
3. Agricultural uses, gardens, poultry enclosures, beehives.
4. Private garages.
5. Any other accessory use customarily incident to a use authorized in a residential district.

6.0606 Commercial District

The following buildings and uses are permitted in the commercial district:

1. Retail stores and shops.
2. Service establishments.
3. Business and professional offices.
4. Eating establishments.
5. Funeral homes and mortuaries.
6. Transportation services.
7. Amusements and recreation.
8. Wholesale businesses.
9. Storage buildings and warehouses.
10. Any other building or use similar to the uses herein listed in the type of services or goods sold.
11. Any accessory use customarily incident to a use herein listed.

6.0607 I - Industrial

The following buildings and uses are permitted in the industrial district:

The compounding, assembly, treatment, manufacture, processing and packing of articles or materials shall be permitted in the industrial district.

- a. Uses permitted. All uses permitted in a C - Commercial District.
- b. Uses prohibited. No dwelling or dwelling unit.

ARTICLE 7 - Area Districts

6.0701 Area Regulations - Residential Districts

In any use district no residence building shall hereafter be erected, established or altered on a lot having a lot area of not less than the square feet required as follows:

1. One-family - not less than \_\_\_\_\_ sq. ft.
2. Two-family - not less than \_\_\_\_\_ sq. ft.
3. Multi-family - not less than \_\_\_\_\_ sq. ft.

and the following minimum lot widths:

1. One-family - not less than \_\_\_\_\_ feet of lot width measured along the front building line.
2. Two-family - not less than \_\_\_\_\_ feet of lot width measured along the front building line.
3. Multi-family - not less than \_\_\_\_\_ feet of lot width measured along the front building line.

and the following minimum floor area ratios:

1. One-family not over \_\_\_\_\_ % of the lot area.
2. Two-family not over \_\_\_\_\_ % of the lot area.
3. Multi-family not over \_\_\_\_\_ % of the lot area.

ARTICLE 8 - Yard Regulations

6.0801 Yard Regulations

In **one-family** districts there shall be:

1. A front yard of not less than \_\_\_\_\_ feet.
2. A side yard on each side of not less than \_\_\_\_\_ feet.
3. A rear yard of not less than \_\_\_\_\_ feet.

In **two-family** districts there shall be:

1. A front yard of not less than \_\_\_\_\_ feet.
2. A side yard on each side of not less than \_\_\_\_\_ feet.
3. A rear yard of not less than \_\_\_\_\_ feet.

In **multi-family** districts there shall be:

1. A front yard of not less than \_\_\_\_\_ feet.

2. A side yard on each side of not less than \_\_\_\_\_ feet.
3. A rear yard of not less than \_\_\_\_\_ feet.

#### ARTICLE 9 - Enforcement

##### 6.0901 Administrative Official

1. Administrative Official. Except as otherwise provided herein the zoning administrator shall administer and enforce the provisions of this chapter, including the receiving of applications, the inspection of premises and the issuing of building permits. No building permit or certificate of occupancy shall be issued except where the provisions of this chapter have been met.
2. Building Permit Required. No building or structure shall be erected, added to or structurally altered until a permit therefore has been issued by the zoning administrator. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the Board of Adjustment, no such building permit or certificate of occupancy, shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter.
  - a. Matter Accompanying Application. There shall be submitted with all applications for building permits two copies of a layout or plot drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this ordinance.
  - b. Payment of Fee. One copy of such layout or plot plan shall be returned when approved by the zoning administrator together with such permit to the applicant upon the payment of a fee of \_\_\_\_\_.
3. Certificates of Occupancy
  - a. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the zoning administrator, stating that the building or proposed use thereof complies with the provisions of this chapter.
  - b. No non-conforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the zoning administrator therefore.
  - c. All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within \_\_\_\_\_ days after the erection or alteration shall have been approved.
  - d. The zoning administrator shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.
  - e. No permit for excavation for, or the erection or alteration of or repairs to any building shall be issued until an application has been made for the certificate of occupancy.
  - f. Under such rules and regulations as may be established by the Board of Adjustment and filed with the zoning administrator, a temporary certificate of occupancy for not

more than thirty (30) days for a part of a building may be issued by the zoning administrator.

## ARTICLE 10 - Board of Adjustment

### 6.1001 Creation of Board

1. **Creation, Appointment and Organization.** A Board of Adjustment, to be appointed by the City governing body, is hereby created. Said Board shall consist of five members for three-year terms. The Board shall elect a chairman from its membership, shall appoint a secretary and shall prescribe rules for the conduct of its affairs. (Source: North Dakota Century Code section 40-47-07)
2. **Powers and Duties.** The Board of Adjustment shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:
  - a. **Interpretation.** Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
  - b. **Variances.** To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. In granting any variance, the Board of Adjustment shall prescribe any conditions that it deems to be necessary or desirable. However, no variance in the strict application of any provision of this chapter shall be granted by the Board of Adjustment unless it finds:
    - 1) That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.
    - 2) That, for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the board is the minimum variance that will accomplish this purpose.
    - 3) That the granting of this variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of adjoining buildings and those in the vicinity, the board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity.
3. **Procedure.** The Board of Adjustment shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board of Adjustment shall be by resolution, each

of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the city auditor.

4. Notice and Hearing. No action of the Board shall be taken on any case until after due notice has been given to the parties and public hearing has been held.

#### 6.1002 Amendments

The governing board may, from time to time, amend this article by supplementing, changing, modifying or repealing any of the regulations, restrictions or other provisions thereof or of the district map or the districts on said map or of the boundaries of such district. A proposed amendment may be initiated by the said Board upon its own motion, or upon receipt of a request therefore from the City zoning commission or upon receipt of a petition therefore from any interested person or persons or their agents.

1. Report by City Zoning Commission - Public Hearing. The governing body shall require a report from the City zoning commission on a proposed amendment before taking final action thereon. The City zoning commission shall thereupon make a tentative report and hold a public hearing thereon with notice the same required for a public hearing by the governing body, before submitting its final report. Such final report shall be submitted within ninety (90) days after the time of referral of the proposed amendments to the City zoning commission unless the governing body is agreeable to an extension of time.
2. Action by Governing Body - Public Hearing. After the receipt of the required final report on any amendment from the City zoning commission or in the event of the failure of the City zoning commission to so report within ninety (90) days following the time of referral of the proposed amendment to the City zoning commission, the governing body shall hold a public hearing, after which the proposed amendment may be passed. Not less than fifteen (15) days notice of the time and place of holding such public hearing shall first be published in the official newspaper. A hearing shall be granted to any person interested, and the time and place specified.
3. Vote after Protest. If a protest against a change, supplement, modification, amendment or repeal is filed and signed by owners of twenty percent (20%) or more:
  - a. Of the area of the lots included in such proposed change; or
  - b. Of those immediately adjacent in the rear thereof extending 150 feet therefrom; or
  - c. Of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.

The amendment shall not become effective except by the favorable vote of three-fourth (3/4) of all the members of the governing body.

#### 6.1003 Enforcement

The erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure or the use of any building, structure or land in violation of this article or of any regulation, order, requirement, decision or determination made under authority conferred by this article, shall constitute the maintenance of a public nuisance and any appropriate action or proceeding may be instituted by the City, through any administrative officials, department, board of bureau charged with the enforcement of this article:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;

2. To restrain, correct or abate such violation;
3. To present the occupancy of the building, structure or land; or
4. To prevent any illegal act, conduct, business or use in or about such premises.

A violation of any provision of this article or a violation of or refusal or failure to comply with any regulation, order, requirement, decision of determination made under authority conferred by this article shall be punishable as an infraction. Each day the violation continues constitutes a separate violation. (see North Dakota Century Code section 12.1-32-01)