

Amendment of Chapter 5
Ellendale Revised Ordinances

WE THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH
DAKOTA, DO HEREBY AMEND CHAPTER 5.

Be it ordained by the City Council of the City of Ellendale, Dickey County, North
Dakota, that the Ordinances of the City of Ellendale be amended by changing Chapter 5
to read as follows:

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CHAPTER FIVE
ZONING - LAND USE PLANNING

ARTICLE 1 - Planning and Zoning Commission

5.0101 Planning Commission Created

There is hereby created a planning commission consisting of five members to be appointed by the Mayor, with the approval of the City Council. The Mayor, the engineer and City attorney shall be ex-officio members thereof. (Source: North Dakota Century Code Section 40-48-03) If no planning commission is appointed, then the City Council shall serve as the planning commission.

5.0102 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.

5.0103 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)

ARTICLE 2 - Definitions

5.0201 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. "Alley" means any public way intersecting a City block or portion thereof.
3. "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.
4. "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.
5. "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.

6. “Community Garage” means a group of private garages located jointly on any lot or premises or two (2) or more adjacent premises and having no shop or service in connection therewith, with a total capacity of not more than four (4) motor vehicles; provided that a community garage may exceed four (4) motor vehicle storage spaces if the lot on which said building is located includes at least two hundred fifty (250) square feet for each motor vehicle storage space;
7. “Curb Level” means the level established for the curb in front of a building, measured at the center of such front, and where no curb level has been established, the City engineer shall establish such curb level or its equivalent for the purpose of this article;
8. “Depth of Rear Yard” refers to the mean distance between the rear line of the building and the center line of the alley, if an alley exists, otherwise to the rear lot line;
9. “Depth of Lot” refers to the mean distance between the front street line and the rear lot line;
10. “Dwelling” is a building designed or used as the living quarters for one or more families.
11. “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.
12. “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.
13. “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.
14. “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.
15. “Garage, Private” is an accessory building or accessory portion of the principal building which is intended for and used for customary residential storage and the storage of automobiles and in which no occupation or business for profit is carried on. All garages shall be maintained in good condition and must be enclosed by an overhead garage door which consists of several panels hinged

together that roll along a system of tracks guided by rollers; or a solid barrier that opens by turning on hinges or by sliding in grooves.

- 15(a). “Carport” is a canopy supported by posts either ornamental or solid and completely open on one or more sides.
16. “Grade” means the surface of the ground, court, lawn, yard or sidewalks adjoining a building; the established grade is the grade of the street curb lines fixed by the City of Ellendale; the natural grade is the undisturbed natural surface of the ground; the finished grade is the surface of the ground, court, lawn, or yard, after filling or grading to desired elevation or elevations around a building or structure; but where the finished grade is below the level of the adjoining street, the established grade shall be deemed the finished grade;
17. “Half Story” means the portion of a building immediately under a sloping roof which has the point of intersection of the top line of the rafters and the face of the walls not to exceed three (3) feet above the top floor level;
18. “Height of Building” means the vertical distance from the top of the curb at the middle of the building or the ground level at the front of the building to the average height of the roof; in case of a mansard roof, to the top of the deck; in case of a flat roof, to the top of the highest enclosure wall;
19. “Height of Court or Yard” means the vertical distance from the lowest level of such court or yard to the highest point of any bounding wall;
20. “Hotel” means a building where lodging is provided for transient guests and having ten (10) or more sleeping rooms;
21. “Inner Court” means an open, unoccupied space surrounded on all sides by walls, or by walls and a lot line;
22. “Length of Outer Court” refers to the mean distance between the open and closed ends of the court;
23. “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.
24. “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.
25. “Street” means a public highway designated as a street, avenue, boulevard, place, court or road on the official records and maps;
26. “Setback Building Line” is a building line back of the street line.
27. “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.

28. “Structural Alterations” means any change in the supporting members of a building such as bearing walls or partitions, columns, beams, or girders, excepting such alteration as may be required for the safety of the building.
29. “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.
30. “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.
31. “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.
32. “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.
33. “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

5.0301 Division into Districts

For the purpose of regulating, classifying, and restricting the location of buildings designed, erected or altered for specific uses, and limiting the height and bulk of such buildings and the use of lot areas, and regulating yards and courts and other open spaces within and surrounding buildings hereafter erected, and preventing additions to an alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations contained in this article, the City of Ellendale, North Dakota is hereby divided into six (6) districts, termed as follows:

- “C-1” - Commercial and Industrial District
- “C-2” – Commercial District
- “R-1” - Residential District
- “R-2” – Residential District
- “M-1” – Mixed District
- “M-2” – Mixed District

5.0302 Maps and Boundaries

The boundaries of these districts are hereby established as shown on a map entitled “The Zoning Map of the City of Ellendale” 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.

5.0303 District “C-1” Boundaries

The boundaries of the “C-1” Commercial and Industrial District are defined as follows:

1. All of the Third Addition to the City of Ellendale, North Dakota.
2. All of Northport Addition to the City of Ellendale, North Dakota.
3. All of Ellendale Nursing Home Addition to the City of Ellendale, North Dakota.
4. All of Rada Outlot A of the City of Ellendale, North Dakota.
5. All of D&J Mobile Home Court Addition to the City of Ellendale, North Dakota.
6. All of Spring Creek Addition to the City of Ellendale, North Dakota.
7. All of Blocks Twenty-five (25), Forty-one (41) and Forty-two (42) of Ellendale Land Company Addition to the City of Ellendale, North Dakota.
8. All of Outlots “E”, “F” and “G” of Shepard and Grahams Addition to the City of Ellendale, North Dakota.
9. All of Blocks Two (2) and Three (3) of Olson’s Addition to the City of Ellendale, North Dakota.
10. All of Blocks Three (3), Nine (9), Eleven (11), the South Half of Block One (1) and the North Half of Block Five (5) of DeCoster, Flemington and Wells Addition to the City of Ellendale, North Dakota.
11. All of Blocks One (1), Two (2), Three (3) and the North Half of Block Four (4) of Stahlecker’s Subdivision of Shepard and Grahams Addition to the City of Ellendale, North Dakota.
12. All of Blocks Ten (10), Eleven (11), Twelve (12) and the South Half of Block Seven (7) of Bell’s Addition to the City of Ellendale, North Dakota.
13. All of Lot Five (5) of Boekelheide’s Subdivision of Block One (1) of Olson’s Addition to the City of Ellendale, North Dakota
14. All of Lots Ten (10) thru Twelve (12) of Block Eight (8) of Bell’s Addition to the City of Ellendale, North Dakota .
15. All the platted area known as Lot A and Lot 5 of the City of Ellendale, North Dakota.
16. All the unplatted portions (including those portions of former railroad right of way) of Sections One (1), Two (2), Eleven (11), Twelve (12) and Thirteen (13), Township One Hundred Twenty Nine (129) North, Range Sixty Three (63) located within the City Limits of the City of Ellendale, North Dakota less those portions listed in M-1.

5.0303.1 District “C-2” Boundaries

The boundaries of the “C-2” Commercial and Industrial District are defined as follows:

All of Blocks One (1) and Six (6) of Ellendale Acres Fourth (4th) Addition to the City of Ellendale, North Dakota.

5.0304 District “R-1” Boundaries

The boundaries of the “R-1” Residential District are described as follows:

All areas not listed within Districts “C-1”, “C-2”, “R-2”, “M-1” and “M-2” that are within the City limits shown on the official zoning map on file in the office of the City Auditor shall be a residential district.

5.0304.1 District “R-2” Boundaries

The boundaries of the “R-2” Residential District are described as follows:

All of Blocks Two (2), Three (3), Four (4) and Five (5) of Ellendale Acres Fourth (4th) Addition to the City of Ellendale, North Dakota

5.0305 District “M-1” Boundaries

This district is a mixture of residential and commercial properties. Zoning shall be based on the present use of those properties as of May 1, 2015. Future changes to the use of a property in this zone may be granted by the City Council upon request of the property owner.

The boundaries of the “M-1” Mixed District are defined as follows:

1. All of Judd’s Addition, Judd’s Third (3rd) Addition, Replat of Judd’s Addition and Judd’s Outlots “A”, “B” and “C” of the City of Ellendale, North Dakota.
2. All of Nazarene Addition and Nazarene Second (2nd) Addition of the City of Ellendale, North Dakota.
3. All of Outlots “A”, “B”, “C” and “D” of Shepard and Grahams Addition to the City of Ellendale, North Dakota.
4. All of Block Thirty-seven (37) of Merrick Addition to the City of Ellendale, North Dakota.
5. All of Blocks Twenty-one (21) and Thirty-six (36) of Ellendale Land Company Addition to the City of Ellendale, North Dakota.
6. All of Blocks Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), Thirty (30) and Thirty-five (35) of First (1st) Addition to the City of Ellendale, North Dakota.
7. All of Blocks Two (2), Eleven (11) and Twelve (12) of Original Plat of the City of Ellendale, North Dakota.
8. All of Blocks Nineteen (19) and Twenty (20) of DeCoster, Flemington and Wells Addition to the City of Ellendale, North Dakota.

9. All of Lots Twenty-two (22) thru Thirty-four (34) of Block Thirteen (13) and Lots Fifteen (15) thru Thirty-eight (38) of Block Thirty-four (34) of First (1st) Addition to the City of Ellendale, North Dakota.
10. All of Lots Twenty (20) thru Thirty (30) of Second (2nd) Addition to the City of Ellendale, North Dakota.
11. All the unplatted portions of Section Twelve (12), Township One Hundred Twenty Nine (129) North, Range Sixty Three (63) located between Lot 34, Block Thirteen (13) of First (1st) Addition; Outlots "A", "B", "C" and "D" of Shepard and Grahams Addition and Blocks Nineteen (19) and Twenty (20) of DeCoster, Flemington and Wells Addition of the City of Ellendale, North Dakota.

5.0305.1 District "M-2" Boundaries

This district is a mixture of residential and commercial properties. Zoning shall be based on the present use of those properties as of May 1, 2015. Future changes to the use of a property in this zone may be granted by the City Council upon request of the property owner.

The boundaries of the "M-2" Mixed District are defined as follows:

All areas located within the TIF District created March 9, 2015 entitled Tax Increment District 2015-1, also known as Blocks One (1), Five (5), Six (6), Seven (7) and Eight (8) of Original Plat of the City of Ellendale, North Dakota and out to the center line of all platted public ways adjacent to said Blocks.

5.0306 District Boundaries - When Questionable; How Determined

Where uncertainty exists with respect to the boundaries of the various districts hereby established and as shown on the maps and made a part of this article, the following rules shall apply:

1. The district boundaries are the center lines of streets or alleys, unless otherwise shown.
2. Where the district boundaries are not center lines of streets or alleys and where the land has been or may hereafter be divided into lots, or blocks and lots, the district boundaries shall be construed to be lot lines; and where the designations on the maps accompanying and made a part of this article indicating the various districts are approximately bounded by lot lines, the nearest lot line shall be construed to be the boundary of such district.
3. Where land has not been subdivided into lots or blocks and lots, the district boundary lines on the official zoning map, which is made a part of this article, shall be determined by the use of the scale of measurement shown on such map.
4. Where uncertainty may exist as to the exact boundary line of a district, the same shall be determined by the Board of Adjustment and a record kept thereof.

5.0307 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 “C-2” Commercial & Industrial District until such classification has been changed by an amendment to the zoning ordinances as prescribed by law.

ARTICLE 4 - Application of Regulations

5.0401 Application of Regulations

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.

ARTICLE 5 - Non-Conforming Uses

5.0501 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 section 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. 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.

5.0502 Small Wind Energy Systems Within City Limits

Section 1. Definitions

The following definitions represent the meanings of terms as they are used in these regulations: Small Wind Energy System (SWES): A wind turbine of less than 25 kilowatts maximum output capacity and all appurtenant structures and equipment.

Section 2. Special Uses

In order to carry out the purposes of this title, the city council finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city council and building inspector prior to the granting of a building permit or certificate of occupancy and that the city council and building inspector are hereby given discretionary powers relating to the granting of such permit or certificate.

Section 3. Permanent Uses (city council approval)

This section is intended to provide reasonable standards for the use of a Small Wind Energy System (SWES) which would allow electrical power consumers to supplement or replace their use of utility-provided electrical power without creating negative impacts to adjacent properties or the public.

The city council is authorized to grant special use permits for the following uses:

1. For the purposes of this section, a SWES is defined as a wind turbine of less than 25 kilowatts maximum output capacity and all appurtenant structures and equipment. A SWES is incidental and accessory to a permitted principal use located on the same lot or parcel of land. A SWES is intended to produce electricity primarily for on-site consumption but excess electrical power may be transferred to a utility company power supply grid pursuant to utility company interconnection agreements.
2. A SWES may not be permitted in any zoning district except by approval of a special use permit by the Ellendale City Council. A special use permit may be revoked at any time if the SWES is found to be in violation of any of the rules of this or other sections of the Ellendale Code of Ordinances or in violation of any of the conditions imposed by the Ellendale City Council in granting the special use permit.
3. The minimum building setback distance shall be 150% of the height of the structure.

- a. The setback distance is the horizontal distance from the center of the supporting structure to the nearest property line or to the nearest overhead utility easement or underground petroleum product pipeline easement.
 - b. The height of the structure is the vertical distance from the ground surface to the highest point of a rotor blade when in an upright position.
4. The bottom of the rotor blade sweep shall be no closer than 35-feet above the ground surface. Blades may not extend over parking areas, driveways or sidewalks.

Sound produced by a SWES shall not exceed the following limits at the property line:

Residential: Day – 55; Night – 45
 Commercial: Day – 60; Night – 50
 Industrial: Day – 65; Night – 60

- a. Sound pressure level limits are measured in dB(A) as specified in the latest edition of the American National Standards Institute specifications.
- b. Sound is measured at the property line of any receiving property.
- c. Day is defined as the time period from 7:00 AM to 10:00 PM. Night is defined as the time period from 10:00 PM to 7:00 AM.

5. Additional rules regarding SWES's.

- a. **Sound Measurements.** Following approval and installation of a SWES, the Building Inspector may require the owner/operator of the SWES to engage a certified technician to perform sound measurements at the closest property line to determine and report ambient and operating decibel levels.
- b. **Braking Controls.** A SWES shall be equipped with both automatic and manual braking controls to prevent uncontrolled rotation and to limit the rotation speed to the design limits of the SWES.
- c. **Insurance.** The owner/operator of a SWES must provide proof of liability insurance at the time of application.
- d. **Shadow Flicker.** Shadow flicker shall not negatively impact any adjacent properties.
- e. **Electronic Interference.** The SWES shall not cause electronic or electromagnetic interference with signal receptions or transmissions beyond the boundaries of the property upon which the SWES is located.
- f. **Monopole Requirement.** Within the corporate boundary (city limits) of the City of Ellendale, wind turbines are required to be mounted on monopole structures without guy wires.

- g. Roof-mounted SWES. A roof mounted SWES is not allowed on any structures.
 - h. Color. To minimize off-site visibility to the greatest extent possible, the color of a structure shall be a neutral white or light gray and the surface finish shall be non-reflective.
 - i. Lighting. The use of flood lights, laser lights, strobe lights, searchlights, beacons and similar lighting is prohibited unless required by the FAA.
 - j. Signs. No signs are allowed on SWES structures except for safety or warning signs which are limited to three square feet in area.
 - k. Climbing Apparatus. No climbing apparatus shall be located within 12-feet of the ground on any structure. All structures shall be designed to prevent climbing by unauthorized persons.
 - l. Removal of Defunct Systems. Facilities shall be well maintained in an operational condition that poses no potential safety hazard.
 - 1) If a SWES remains nonfunctional for a continuous period of one-year, the system shall constitute a public nuisance and shall be removed.
 - 2) The owner shall remove a defunct system at the owner's expense.
 - 3) Removal includes the entire structure and related appurtenances including any foundation and transmission systems.
 - m. Building Permit Required. Following approval of a special use permit and prior to installing a SWES, the applicant shall obtain a building permit from the City Council.
 - n. Compliance with Airport Zoning. A SWES must comply with airport zoning rules.
4. An application for a special use permit for the placement of a SWES shall include the following:
- a. Scaled and dimensioned site plan drawing showing features of the property and adjacent land within 300-feet of the subject parcel, including but not limited to:
 - 1) Location and height of the SWES;
 - 2) Property boundaries;
 - 3) Distances from a SWES to closest points on adjacent property boundaries;
 - 4) Location and dimensions of structures;

- 5) Zoning districts of all adjacent properties;
 - 6) Owners of all adjacent properties;
 - 7) Locations, dimensions and descriptions of utility easements;
 - 8) Location of overhead utility lines;
 - 9) Location of underground petroleum pipelines; and
 - 10) Distances from the SWES to the closest points on utility easements.
- b. Written information from the manufacturer on the proposed SWES stating the following:
- 1) Compliance with noise standards established by Section 3, (5) of this ordinance;
 - 2) Compliance with electronic interference standards established by Section 3 (7) of this ordinance;
 - 3) Evidence that the proposed SWES model has an operational history of at least one year; and
 - 4) Shadow flicker properties.
- c. Unless certified by the manufacturer as not causing shadow flicker in the proposed installation, a shadow flicker model and map showing:
- 1) Shadow flicker map coverage area of 1,000 feet from a SWES; and
 - 2) Shadow flicker model representing locations affected, intensity and duration.
- d. Copy of letter of compliance of the proposed SWES with airport zoning from the Ellendale Municipal Airport.
- e. Copies of letters of compliance of the proposed SWES from the following:
- 1) Federal Aviation Administration;
 - 2) United States Fish and Wildlife Service; and
 - 3) The local electrical utility company serving the subject property.
5. An application for a building permit for the placement of a SWES must include:
- a. A copy of the special use permit, with the site plan, as approved by the city council;

- b. Dimensioned engineering drawings of the structure including the tower, base and footings;
- c. Line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation will meet compliance with the electrical code; and
- d. Documentation certifying that the SWES will meet structural loading requirements for a 90 m.p.h. sustained wind. Wind load certification shall be prepared by a professional structural engineer registered in the State of North Dakota.

5.0503 Installation and Maintenance of Fences, Hedges and Wall within City Limits

1. The following structures shall be subject to regulation as provided herein: a fence, hedge, wall, column, pier, post, latticework, screen or any similar structure or any combination of such structures.
2. Property lines shall be located by a qualified, licensed surveyor and a building permit obtained prior to the installation of any structure as contemplated herein. This shall be the responsibility of the property owner wishing to erect the fence.
3. Permissible fence type shall be determined by city zoning. In areas of mixed zoning, the City Council shall determine which type of fence shall be permitted.
4. All fences, hedges, walls, or similar structures to be erected or maintained on residential property, must meet the following requirements:
 - a. Be a minimum of eighteen (18) inches from any public sidewalk or right-of-way (unless otherwise approved by the city council);
 - b. Be a minimum of eighteen (18) inches from the property line unless a written agreement with the abutting landowner is obtained and filed with the City Auditor prior to the construction of any fence. The written agreement must contain the legal description of both properties and be signed and notarized prior to filing with the City Auditor;
 - c. Be erected and maintained at a height and in an area where such structure will not obstruct a clear vision of intersecting roadways or otherwise constitute a traffic hazard;
 - d. Be thirty-six (36) inches or less in height if such structure is solid or closed so as to obstruct vision and if such structure is to be located in a front yard. Front yard is defined as the yard space between the right of way and main entrance of the residence facing the right of way displaying the property address. Open vision type structures, such as chain link fences must be forty-eight (48) inches in height or less when placed in a front yard and subject to any other conditions or requirements set forth herein;

- e. Be eight (8) feet or less in height when located in a back yard or side yard of the property, subject to any other conditions or requirements set forth herein; and
 - f. Be accessible by any entity having authority to enter upon the premises, including but not limited to, utilities for the purposes of reading meters.
5. All fences, hedges, or walls erected or maintain on commercial property, must meet the following conditions:
- a. Be a minimum of six (6) inches from any public sidewalk or right-of-way (unless otherwise approved by the city council);
 - b. Be a minimum of eighteen (18) inches from the property line unless a written agreement with the abutting landowner is obtained and filed with the City Auditor prior to the construction of any fence. The written agreement must contain the legal description of both properties and be signed and notarized prior to filing with the City Auditor;
 - c. Be erected and maintained at a height and in an area where such structure will not obstruct a clear vision of intersecting roadways or otherwise constitute a traffic hazard;
 - d. Be ten (10) feet or less in height, whether such structure is located in a front, side or back yard, subject to any other conditions or requirements set forth herein.
6. No fence may be constructed of barb wire or electric fence unless said fence is located on commercial property and approval is obtained from the city council prior to the construction of the same.
7. Any structures shall be constructed and maintained in good condition and repair so as to serve the purpose for which such structure was originally installed. No person shall allow any such structure to become a hazard or danger to animals or human beings or permit the same to become unsightly or otherwise constitute a nuisance.
8. The use of boxes, sheet metal, old or decayed wood, broken masonry blocks or other unsightly materials is prohibited.
9. All similar structures now existing within the city limits of the City of Ellendale shall be grandfathered in, except that no structure shall be constructed of the materials specifically enumerated in subsection G herein. Any existing structure not otherwise prohibited shall maintain its grandfather status so long as it is maintained using like materials and similar construction to the original structure. If the property owner wishes to significantly alter the original structure, the new structure shall become subject to the requirements of this ordinance.
10. Any fencing or structure located around athletic facilities and public property shall be exempt from the requirements of this ordinance. Any pens located on residential property that are three (3) feet from the property line shall not be subject to this ordinance. If such pen is used to house a dangerous animal, such pen shall be subject to the requirements set forth in the dangerous animal ordinance.

ARTICLE 6 - Use Districts

5.0601 Use Districts

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

- “C-1” - Commercial and Industrial District
- “C-2” – Commercial and Industrial District
- “R-1” - Residential District
- “R-2” – Residential District
- “M-1” – Mixed District
- “M-2” – Mixed District

5.0601.1 Building Code for Use Districts

WE, THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH DAKOTA, do hereby amend Chapter 5 by adding article 5.0601.1 to read as follows:

5.0601.1 Building Code for Use Districts

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion and occupancy within any of the Use Districts shall conform to the city building code as set forth in Chapter 14 of the Ellendale Revised Ordinances.

Regardless of the permitted uses outlined in this Chapter 5 regarding Zoning and districts, it shall be unlawful to permanently or temporarily place on any property within city limits any metal storage shed classified as an intermodal freight transport container sometimes referred to as a standard shipping container or ISO container or isotainer or any similar style of metal shed or container without first obtaining a conditional use permit from the city and this clause shall supersede all contrary ordinances found in the Ellendale Ordinances.

5.0602 Commercial and Industrial “C-1” District

1. Height. No building shall exceed sixty (60) feet or four (4) stories in height.
2. Side Yards. Side yards, if any, shall not be less than five (5) feet in width.
3. Use. Except as otherwise provided in this article, all new buildings, and alterations of existing buildings, shall be exclusively constructed, designed and arranged for, and all buildings and premises or parts thereof shall be used exclusively for, one or more of the following purposes:
 - a. Grain Elevators and Storage
 - b. Institutions of an educational, philanthropic or charitable nature;
 - c. Clubs and lodges;
 - d. Hospitals;
 - e. Hotels;
 - f. Retail stores and shops;

- g. Service establishments;
- h. Business and professional offices;
- i. Eating establishments;
- j. Funeral homes and mortuaries;
- k. Nursing homes;
- l. Transportation services;
- m. Amusements and recreation;
- n. Wholesale businesses;
- o. Storage buildings and warehouses;
- p. Manufacturing, except manufacturing of explosives, acids, or fat rendering plants;
- q. Tourist courts or tourist cabins;
- r. Any other building or use similar to the uses herein listed in the type of services or goods sold;
- s. The compounding, assembly, treatment, manufacture, processing and packing of articles or materials shall be permitted in the industrial district;
- t. Any accessory use customarily incident to a use herein listed.

5.0602.1 Commercial and Industrial “C-2” District

1. Height. No building shall exceed sixty (60) feet or four (4) stories in height.
2. Side Yards. Side yards, if any, shall not be less than five (5) feet in width.
3. Use. Except as otherwise provided in this article, all new buildings, and alterations of existing buildings, shall be exclusively constructed, designed and arranged for, and all buildings and premises or parts thereof shall be used exclusively for, one or more of the following purposes:
 - a. Commercial apartment building of four (4) or more units;
 - b. Institutions of an educational, philanthropic or charitable nature;
 - c. Clubs and lodges;
 - d. Hospitals;
 - e. Hotels;
 - f. Retail stores and shops;
 - g. Service establishments;
 - h. Business and professional offices;
 - i. Eating establishments;
 - j. Funeral homes and mortuaries;
 - k. Nursing homes;
 - l. Amusements and recreation;
 - m. Tourist courts or tourist cabins;
 - n. Any other building or use similar to the uses herein listed in the type of services or goods sold;
 - o. Any accessory use customarily incident to a use herein listed.
4. To promote the orderly development of this addition, construction of the principal structure shall begin within 18 months after the lot is purchased, and construction once started shall be completed within 18 months.

5. All structures must meet the State Building Code Standard. No building, pool, play structure, driveway, sidewalk or any structure shall be commenced, erected or maintained on the lots, nor shall any exterior addition to or change or alteration thereto be made to any building on the lots until the plans and specifications for same have been submitted to and approved in writing by the Building Official, City Council or their agent(s). Plans submitted for approval shall include the following:
 - a. One complete set of building plans, the building plans should indicate:
 - i. Elevations and sections,
 - ii. Construction materials with specifications,
 - iii. Roofing materials
 - iv. Exterior finishes.
 - b. One site plan, the site plans should indicate:
 - i. The basement outline with projections shown as a dotted line.
 - ii. The garage “footprint” and exterior steps or decks as indicated.
 - iii. The main floor proposed grade and the basement floor grade should be clearly shown.
 - iv. The finished landscape grade at each corner of the building as well as those adjacent to any unusual indentations within an elevation.
 - v. Any sidewalk, walkway and driveway locations and sizes.
 - vi. Any accessory structures such as pools, pool houses, gazebos, utility building, storage buildings, additional garages, decks and play structures.
 - vii. Any solar heating devices, TV and radio antennae or satellite dishes locations and sizes.
 - c. Material samples (if required or requested by the city)
6. The Lands shall not be Subdivided with the exception of Lot 1, Block 1 which shall be allowed to subdivide once. Such subdivision must be approved by the City of Ellendale prior to execution.

5.0603 Residential “R-1” District (Amended)

In R-1, the regulations shall be as follows:

1. Height. No building shall exceed forty (40) feet in height.
2. Area. The minimum dimensions of yards and courts and the maximum building shall be as follows:
 - a. Front Yard. There shall be a front yard having a depth of not less than twenty-five (25) feet from the front lot line.
 - b. Rear Yard. On all lots there shall be a rear yard having a depth of not less than fifteen (15) feet.
 - c. Side Yards. On every lot in the residential district there shall be two (2) side yards, one on each side of the building, and neither of such side yards shall be less than 50% of the depth required for the front yard.

3. Building. No building with its accessories shall occupy in excess of fifty (50) percent of an inside lot nor an excess of sixty (60) percent of a corner lot.

4. Use. All new buildings, and alterations of existing buildings, shall be used exclusively, and exclusively constructed, designed and arranged for, one or more of the following purposes:

- a. One-family dwellings;
- b. Two-family dwellings, each family shall not be allowed more than two roomers or boarders per family;
- c. Churches and schools;
- d. Parks and playgrounds;
- e. Nurseries and greenhouses, but not including any sales rooms or other buildings used primarily for the sale of products thereof;
- f. Apartment houses (3 or more dwellings in one building);
- g. Community garages;
- h. Funeral homes;
- i. Child day care centers;
- j. Beauty salons/barber shops.
- k. Governmental buildings
- l. Public utility buildings

5.0603.1 Residential "R-2" District (Amended)

In R-2, the zoning and use regulations shall be as follows:

1. Height. No building shall exceed forty (40) feet in height.

2. Area. The minimum dimensions of yards and courts and the maximum building area shall be as follows:

- a. Front Yard. There shall be a front yard having a depth of not less than twenty-five (25) feet from the front lot line.
- b. Rear Yard. On all lots there shall be a rear yard having a depth of not less than fifteen (15) feet.
- c. Side Yards. On every lot in the residential district there shall be two (2) side yards, one on each side of the building, and neither of such side yards shall be less than 50% of the depth required for the front yard.

3. All lots shall be used and occupied solely for single family residential purposes. If two or more lots are combined, they may be used for townhome/condominium style housing. At the discretion of the City Council, parks and playgrounds may be established within R-2.

4. For any construction a City of Ellendale Building Permit, with required documentation, drawings, and/or construction plans, shall be submitted and approved prior to construction.

5. Except as stated above, each lot will be restricted to construction of one single family detached residence with attached garage. Two or more recorded plat lots may be combined into one parcel. No recorded plat lots may be subdivided, unless by majority vote of city council.

6. The fully enclosed first floor area of the main structure, exclusive of open porches and garages, shall not be less than 1400 square feet. No residence shall exceed two stories in height when viewed from the street.

7. All structures shall comply with the: Uniform Building Code (UBC), International Building Code (IBC), or the North Dakota State Building Code, as adopted by the State of North Dakota. Manufactured dwelling units built to US Department of Housing and Urban Development (HUD) standards are prohibited. Dwelling units constructed upon metal frames to which wheels may be permanently or temporarily attached for transport are prohibited. Modular dwelling construction is permitted if in compliance with the UBC, IBC, or State of North Dakota Building Code.

8. No house or structure shall be moved in or onto any lot unless it is a new structure built to meet all of the current building codes and authorized by City of Ellendale Building Permit.

9. Driveways shall be no closer than 3 feet to the side property lines and must be of concrete or asphalt construction. Driveway access to Sixth (6th) Street South is prohibited.

10. Landscaping of the front and side yards shall be completed within 2 years of the commencement of the construction and shall include at a minimum, grass.

11. Ten foot drainage and utility easements border the inside of all lot lines. Within the area of the easements no structures, plantings (with the exception of grass) or other materials shall be placed, erected or permitted.

5.0604 Accessory Uses in Residential District R-1

1. A garage which has an entrance on a side street must not be less than ten (10) feet from the side lot line and the side of the garage must not be less than ten (10) feet from the alley line.
2. A garage which has an entrance from an alley must not be less than fifteen (15) feet from the alley line. .
3. In no case may an accessory building be located less than five (5) feet from any other lot line.
4. Use. The following accessory uses and buildings are permitted in residential districts:
 - a. Professional office for a physician, dentist, chiropractor, clergyman, architect, engineer, attorney or similar professional person residing in such main building, but no display advertising other than a sign or plate not more than two (2) feet square bearing only the name, occupation and office hours of such person shall be made in connection therewith.
 - b. 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.
 - c. On the same lot shall be allowed the usual accessories to dwellings, not involving the conduct of a business, and including not more than one (1) private garage.
 - d. Any other accessory use customarily incident to a use authorized in a residential district.
 - e. The above side yard regulations shall apply to all lots including corner lots, except that in the case of a reversed corner lot which faces an intersecting street, the side yard on the street side of such reversed corner lot shall have a width of not less than fifty (50) percent of the front yard depth required and no accessory building on such reversed corner lot shall project beyond the front yard limits of the lot in the rear of such reversed corner lot.
 - f. A manufactured/mobile home may be considered a dwelling and allowed to be moved or built within a residential district if said mobile home is not less than doublewide (18') in width and the owner has met

the requirements set forth by law for proper affixation. An Affidavit of Affixation, approved by the city, must be recorded with the Dickey County Recorder before the manufactured/mobile home is placed on the owner's property.

5.0605 Mixed "M-1" District

This district is a mixture of residential and commercial properties. Zoning shall be based on the present use of those properties as of May 1, 2015. Future changes to the use of a property in this zone may be granted by the City Council upon request of the property owner and must conform to the zoning requirements of C-1 or R-1 whichever is deemed applicable.

5.0605.1 Mixed "M-2" District

This district is a mixture of residential and commercial properties. Zoning shall be based on the present use of those properties as of May 1, 2015. Future changes to the use of a property in this zone apply to renovations and new construction commenced after May 11, 2015.

1. Permitted uses
 - (a) Upper level residential unit above a commercial storefront.
 - (b) Retail service uses including grocery, pharmacies, hardware, clothing, bakeries, eating and drinking places, automobile service station, print shop, and repair shops.
 - (c) Personal service uses including offices and clinics, barber and beauty shops, hotels and motels, financial institutions, bowling alleys and amusement centers, theaters, dry cleaners, laundries and tailor shops.
 - (d) Educational, governmental, philanthropic, or charitable institution.
 - (e) Sales and servicing of motor vehicles and farm implements.
 - (f) Amusement places including bowling alleys, athletic clubs, pool halls and similar indoor facilities.
 - (g) Automobile dealerships.
 - (h) Hotels and motels.
 - (i) Truckstop
2. Area and yard requirements and construction requirements

Lot area and yard requirements for buildings used for residential purposes shall conform to the yard requirements of R-1-Residential District. No pole sheds or storage sheds or garages are permitted unless the same have at least two windows on all sides and have an overhang with soffit and gutters.
3. Off-street parking and loading facilities

If practicable, provide appropriate off-street parking and loading facilities for employees, vendors, visitors and customers.
4. Conditionally Permitted Uses
 - (a) Stand-alone residential dwelling units
 - (b) Contractor's yard and operations
 - (c) Processing and packaging of materials
 - (d) Warehouses and wholesale dealerships
 - (e) Animal hospitals and veterinary clinics

5. Commercial Development Submission Requirements

Any application for a development permit for construction or development within a commercial district must include construction documents prepared by a registered design professional. **Exception:** The building official is authorized to waive the requirement that such documentation be prepared by a registered design professional if it is determined that the nature of the work applied for is such that a review of the construction documents is not necessary to obtain compliance with this Code.

5.0606 Gasoline Filling Stations and Bulk Stations; Where Prohibited

It shall be unlawful for any person, firm or corporation to erect, construct, or maintain and operate any retail gasoline filling station or bulk oil or gasoline station where petroleum products are sold or handled within three hundred (300) feet of any block in the City of Ellendale, North Dakota, whereon there is located any public, private or parochial school. It shall be unlawful for any person, firm or corporation to erect, construct, or maintain and operate any public or private or parochial school within three hundred (300) feet of any block in the City of Ellendale, North Dakota, whereon there is located any retail gasoline filling station or bulk oil or gasoline station where petroleum products are sold or handled.

5.0607 Same: Deemed Health Menace and Public Nuisance; When

All gasoline stations for selling gasoline and petroleum products at retail and all bulk or wholesale stations for the handling of gasoline and all other petroleum products are hereby declared to be dangerous instrumentalities, and when located or to be located within the territory described in 5.0606 are hereby declared to constitute a menace to public health and safety and to be a public nuisance.

5.0608 Same: Application of 5.0606 and 5.0607

5.0606 and 5.0607 shall not be construed to apply to any retail gasoline filling station or bulk oil or gasoline station handling petroleum products that may have been in existence or operation prior to taking effect of this article.

5.0609 Area Regulations, Exceptions to

The foregoing requirements in R-1, C-1 and M-1 shall be subject to the following exceptions to the regulations:

1. A building, except buildings for human habitation, upon a through lot, may waive the requirements for a rear yard; provided, however, that when such building is located between lots either or both of which require rear yards, such building on the through lot shall provide a court on the side or sides on which the adjoining lots are required to provide a yard or court.
2. In computing the depth of the front yard in the "R-1" residential district in portions which have been partly built up where the average established depth of front yards fronting on one (1) side of any given street between two (2) cross streets exceeds the requirements under this article, the depth of the front yards of

future buildings fronting on side streets as required under this article shall be increased to conform with such average. If the average established depth of front yard is less than that required under this article, the depth of the front yard may be decreased to conform to such average, which shall in no case be less than ten (10) feet. No existing building shall be altered to decrease the depth of the front yard so that the same shall fall below or still further fall below the requirements of this article for future buildings.

3. In residential districts, no building on a corner lot shall have a side yard on the side street less than ten (10) feet in width.

5.0610 Agricultural Use

1. Agriculture use of real estate within the City of Ellendale shall be strictly prohibited unless the property owner has applied for and been granted an Agricultural Use Permit for that piece of real estate. Such permit shall be allowed for both residential and commercial property.
2. An Agricultural Use Permit shall contain the following:
 - a Name of the property owner with a current mailing address and phone number
 - b Legal description of the property
 - c Detailed description of the proposed agricultural activity
3. An Agricultural Use Permit shall require a fee of \$5.00 and shall expire in five years from date of issue or upon a transfer of ownership, whichever shall occur first.
4. Those property owners who prior to May 1st, 2015 have been granted the right to conduct agricultural activities on their property shall be automatically granted an Agricultural Use Permit with the following conditions:
 - a They must complete and submit the required permit form within 30 days
 - b The permit fee shall be waived and shall not be required to be renewed
 - c The permit shall be for that owner and shall expire upon transfer of ownership of the grandfathered property
 - d If such owner shall wish to expand or alter the agricultural activity for which a grandfathered permit has been issued, they shall lose their grandfather status and shall be subject to the current requirements of this subsection
5. Agricultural activities held in conjunction with the Dickey County Fair shall be exempt from the requirements of this subsection but shall only be limited to 7 days prior to and 7 days after the conclusion of the fair

**Amendment of Chapter 5
Ellendale Revised Ordinances
Amendment of Article 7**

WE, THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH DAKOTA, do hereby amend Chapter 5 of the Ellendale Ordinances by changing Article 7 as follows:

Be it ordained by the City Council of the City of Ellendale, Dickey County, North Dakota, that the Ordinances be amended by amending Chapter 5, Article 7 to read as follows:

5.0701.1 STATUTORY AUTHORIZATION

The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the City Council of of Ellendale, North Dakota does ordain as follows:

5.0701.2 FINDINGS OF FACT

- (1) The flood hazard areas of the City of Ellendale are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

5.0701.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and

generally undertaken at the expense of the general public;

- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in special flood hazard areas;
- (6) To help maintain a stable tax base by providing for the second use and development of special flood hazard areas so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in a special flood hazard area;
- (8) To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.

5.0701.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

SECTION 2.0 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Appeal" means a request for a review of the City Council's interpretation of any provision of this ordinance or a request for a variance.

"Base flood or 100-year flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation" (BFE) means the height of the base flood or 100-year flood usually in feet, measured in the same datum (either NAVD88 or NGVD29) as the FIRM.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Best Available Data" (BAD) means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).

"Community" means any political subdivision that has the authority to zone, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

"Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood Insurance Rate Map" (FIRM) means the official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

"Flood Insurance Study" (FIS) means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or; from the unusual and rapid accumulation or runoff of surface waters from any source.

"Floodproofing" (Dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

"Floodway or regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Lowest floor" means the lowest floor of a structure including the basement.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle" but does include "mobile home".

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

"Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes any agency of the United States, a state agency, or any political subdivision of the state.

"Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

“Recreational vehicle” means a vehicle which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck;
- (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
- (e) travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.

"Special Flood Hazard Area" (SFHA) means an area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

"Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- 1) Before the improvement or repair is started; or
- 2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- 1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- 2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

“Watercourse” means only the channel and banks of an identifiable watercourse, and not the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel, except in the case of alluvial fans, where a channel is not typically defined. The definition of watercourse in N.D.C.C. § 61-01-06 is not applicable in this ordinance.

“Variance” means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by the community’s floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.

SECTION 3.0 GENERAL PROVISIONS

5.0703.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all special flood hazard areas within the jurisdiction of The City of Ellendale.

5.0703.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled ““The Flood Insurance Study for the City of Ellendale, dated on the last and most recent update of said Study,” with an accompanying Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the City Hall of the City of Ellendale.

5.0703.3 COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

5.0703.4 GREATER RESTRICTIONS

This ordinance is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5.0703.5 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

5.0703.6 WARNING AND DISCLAIMER OR LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Ellendale, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

5.0703.7 SEVERABILITY

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

SECTION 4.0 ADMINISTRATION

5.0704.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 3.2. Application for a development permit shall be made on forms furnished by the City fo Ellendale and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in the same datum (either NAVD88 or NGVD29) as the FIRM, of the lowest floor of all structures;
- (2) Elevation in the same datum (either NAVD88 or NGVD29) as the FIRM to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5.2-2; and,
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

5.0704.2 DESIGNATION OF THE CITY AUDITOR OR THEIR DESIGNEE.

The CITY AUDITOR OR THEIR DESIGNEE is hereby appointed to administer implement this ordinance by granting or denying development permit applications in accordance with its provisions.

5.0704.3 DUTIES AND RESPONSIBILITIES OF THE CITY AUDITOR OR THEIR DESIGNEE.

Duties of the CITY AUDITOR OR THEIR DESIGNEE shall include, but not be limited to:

5.0704.3-1 Permit Review

- (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (2) Approve or deny all applications for development permits required by adoption of this ordinance.
- (3) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
- (4) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5.4 are met.

5.0704.3-2 Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 3.2, BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS, the CITY AUDITOR OR THEIR DESIGNEE shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available (known as best available data) from any other federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with Section 5.2, SPECIFIC STANDARDS.

5.0704.3-3 Information to be Obtained and Maintained

- (1) Obtain and record the actual elevation (in the same datum (either NAVD88 or NGVD29) as the FIRM), of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures:
 - (i) obtain and record the actual elevation (in the same datum (either NAVD88 or NGVD29) as the FIRM), to which the structure has been floodproofed;
 - (ii) maintain the floodproofing certifications required in Section 4.1(3).
- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

5.0704.3-4 Alteration of Watercourses

The responsible person shall:

- (1) Notify nearby communities, water resource districts, and the North Dakota Department of Water Resources, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and,
- (3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

5.0704.3-5 Interpretation of Flood Insurance Rate Map (FIRM) Boundaries

Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.4.

5.0704.3-6 Encroachment Analysis

When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for and receives a Conditional Letter of Map Revision (CLOMR) through FEMA.

5.0704.4 VARIANCE PROCEDURE

5.0704.4-1 Appeal Board

- (1) The ELLENDALE CITY COUNCIL as established
By ELLENDALE CITY COUNCIL shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The CITY COUNCIL shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the CITY AUDITOR in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the CITY COUNCIL or any taxpayer, may appeal such decision to the _____ District Court _____, as provided in N.D.C.C. §§ 40-47-11, 11-33-12, or 58-03-14.
(statute)
- (4) In passing upon such applications, the CITY COUNCIL shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance; and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;
 - (ii) the danger to life and property due to flooding or erosion damage;

- (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) the importance of the services provided by the proposed facility to the community;
 - (v) the necessity to the facility of a waterfront location, where applicable;
 - (vi) the availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
 - (vii) the compatibility of the proposed use with existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (5) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 4.4-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors of Section 4.4-1(4) and the purposes of this ordinance, the CITY COUNCIL may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (7) The CITY AUDITOR AND THE CITY COUNCIL shall maintain the records of all appeal actions the report any variances to the Federal Emergency Management Agency upon request.

5.0704.4-2 Conditions for Variances

- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 4.4-1(4), or conflict with existing local laws or ordinances.
- (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 5.0
PROVISIONS FOR FLOOD HAZARD REDUCTION

5.0705.1 GENERAL STANDARDS

In all special flood hazard areas the following standards are required:

5.0705.1-1 Anchoring

- (1) All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (2) All manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

5.0705.1-2 Construction Materials and Methods

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.0705.1-3 Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.0705.1-4 Subdivision Proposals

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

5.0705.2 SPECIFIC STANDARDS

In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS or Section 4.3-2, Use of Other Base Flood Data, the following provisions are required:

5.0705.2-1 Residential Construction

- (1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.

5.0705.2-2 Nonresidential Construction

Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities shall:

- (1) Be floodproofed to at least two feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 4.3-3(2).

5.0705.2-3 Manufactured Homes

- (1) Require all manufactured homes placed within Zone A shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- (2) Require all manufactured homes placed or substantially improved within Zones A 1-30, AH, or AE on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision which has incurred substantial damage, be elevated on a permanent foundation so the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely

anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

(3) Require that manufacture homes placed or substantially improved on sites in an existing manufacture home park or subdivision within Zones A 1-30, AH, or AE not subject to other requirements of this section be elevated so that either:

- (i) the lowest floor of the manufacture home is one foot above the base flood elevation, or
- (ii) the manufacture home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36” in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

5.0705.2-4 Recreational Vehicles

In A1-30, AH, and AE Zones, all recreational vehicles to be placed on a site must

- (i) be elevated and anchored to meet the requirements in 5.2-3; OR
- (ii) be on the site for less than 180 consecutive days; AND
- (iii) be fully licensed and highway ready

5.0705.3 Shallow Flooding AO and AH Zones (this Section 5.3 is only applicable if the community now has, or has in the future, Flood Zones AO and/or AH on the effective FIRM)

Located within the areas of special flood hazard established in Section 3.2, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated one foot above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of **non-residential** structures;

- (i) have the lowest floor (including basement) elevated one foot above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;

(ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard as specified in Section 5.2-2.

(3) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

5.0705.4 FLOODWAYS

Located within the special flood hazard areas established in Section 3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. Any increase, as is used in this section, means any modeled impact greater than 0.00 feet.

(2) If Section 5.4 (1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction requirements of this ordinance.

(3) Under the provisions of 44 CFR Section 65.12 of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applies for and receives a Conditional Letter of Map Revision (CLOMR) through FEMA.

5.0705.5 ENCLOSURES

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they allow the automatic entry and exit of floodwaters.

SECTION 6.0
VIOLATIONS

5.0706.1 PENALTIES FOR VIOLATIONS

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
- (2) Nothing herein contained shall prevent the CITY COUNCIL from taking such other lawful action as is necessary to prevent or remedy any violation.

Be it so ordained this _____ day of _____, 2023.

CITY OF ELLENDALE

By: _____
Donald Flaherty, Mayor

ATTEST:

Candace Middlestead, Auditor
First Reading: _____
Second Reading: _____
Publication Date: _____

ARTICLE 8 - Enforcement

5.0801 Administrative Official

1. Administrative Official. Except as otherwise provided herein the City Auditor 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 complied with. The City Auditor shall be empowered to hire a building official/building inspector to assist in this process upon approval of the City Council.
2. Building Inspector is Building Official. Reference to “building inspector” in this chapter and elsewhere in the Ellendale Revised Ordinances shall be reference to the appointed or hired Ellendale “building official” who may not necessarily be a licensed building inspector. Any right and/or duty given to the appointed building inspector/building official by any of the Ellendale Revised Ordinances may be assigned by the Ellendale building official to a licensed and qualified building inspector if the building official or the city determines that the building official is not qualified to exercise the right or duty conferred to him or her by the Ellendale Revised Ordinances. When a licensed building inspector is assigned rights and/or duties as set forth herein, the licensed building inspector shall be acting as an agent of the city and shall be compensated at a reasonable rate agreed upon in writing prior to the exercise of said rights and/or duties. Any person acting as the city’s building inspector who is not a licensed and qualified building inspector shall be deemed to be a building official and such building official may not perform activities reserved for licensed building inspectors or activities that the building official is not qualified to perform.
3. Building Permit Required. No building or structure shall be erected, added to, structurally altered or remodeled until a permit therefore has been issued by the City Auditor after approval by the City Council. For purposes of this Chapter, remodeled shall mean changes that are not merely maintenance and which cause an increase in value to the property that is deemed more than de minimus by the City Council. A non-refundable fee of an amount determined by resolution of the City Council from time to time shall be paid at the time the application is received. 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. Any residential permit shall be valid for eighteen (18) months from the date the permit is approved and any commercial permit shall be valid for twenty four (24) months from the date the permit is approved. A person shall be able to apply for a continuation of a

permit, and the city council may in its sole discretion grant said continuation if the project cannot be completed within the original permit timeframe. This request must be made not less than one (1) month prior to the original permit deadline.

- 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 section. One copy of such layout or plot plan shall be returned to the applicant when approved by the City Auditor. This copy shall be available at the premises until completion of the approved project.
- b. Payment of Fee: Payment of the required fees shall be made at the time of application submission and will be held in escrow until either the permit has been approved or shall be refunded if the permit is denied.

5.0802 Penalty

Anyone who violates any provision or requirement of this Chapter shall be deemed to have violated this Chapter and shall be subject to a fine or penalty or fee of no less than \$100.00 per day of violation in addition to any other fee required by this Chapter. The city may elect in addition to any fine or penalty or fee provided herein, to cause the violating condition to be removed at the sole expense of the owner of the property to be collected directly from the owner of the property or assessed as a special assessment onto the real estate or a combination. Each day of violation shall be deemed a separate violation subjecting the violator to the fine, penalty and/or fee applicable in this Chapter.

The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violation(s), prohibited act(s) or defect(s) within a reasonable time; and when not otherwise specified, each day that the violation, prohibited act, or defect continues shall constitute a separate offense.

5.0803 Nonpayment of fines; Assessment against taxes

Whenever an individual fails to pay any penalty as assessed under Section 5.0802 for a violation of this Chapter, the amount of said penalty shall be assessed against the property found to be in violation and on or before the first day of May in each year, any officer with knowledge of the same shall make and file in the office of the City Auditor a list of the property chargeable with such expense, the actual amount of any outstanding penalties and a description of the lot, lots or parcels of land that are the subject of any violation herein.

The City Auditor shall give notice by publication in the official newspaper of the hearing and confirmation of such report and assessment at the regular June meeting of the City Council, notifying all persons objecting thereto to appear and present their objections. The notice shall be published once each week for two (2) consecutive weeks, the last publication to be not less than eight (8) days before the time fixed for the hearing. At the June meeting of the City Council or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the City Council shall consider said assessment and shall hear any objections thereto or to any part thereof, and after revising and correcting the same, if necessary, it shall approve and confirm the

list. The City Auditor shall attach to such list his certificate that the same is correct as confirmed by the City Council and shall file said assessment list in his office. The assessment shall be certified to the County Auditor by the City Auditor in the manner provided in Section 40-24-11 of the North Dakota Century Code.

ARTICLE 9 – Demolition or Removal of Buildings

5.0901 Permit Required

It shall be unlawful to demolish, raze, dismantle, or remove any building presently located or hereafter constructed or established within the City, without first having secured a permit therefore, unless the work is performed by the City. Applications for such permit shall be made to the City Auditor upon approval of the City Council.

5.0902 Contents of Application

An application for demolition or removal of a building shall disclose:

1. Location of such building
2. Estimate of present value
3. Amount of unpaid taxes, bonded indebtedness, and other assessments, including water, sewer, and garbage due on such premises
4. Proposed date of such demolition or removal
5. Name of person or firm which will conduct or supervise such demolition or removal
6. Indication of whether the building is served by City water or sewer services and if a water meter yet remains on such premises
7. Agreement by the applicant that he will, to the satisfaction of the City Council, completely remove all concrete, foundation, pipes, wires and other fixtures, completely fill in the basement excavation or other excavation caused by the removal of such building, and level off the lot from which such building is removed. Such application shall also contain an offer by the applicant that he will deposit with the City Auditor such sum as may be required by the City Council as a pledge or guaranty fund to protect the City against loss or damage to public or private property or expense for protecting such property against any damage that may be caused by the removal of such building, and to repay the City for the expense of removing any concrete, foundation, pipes, wires or other fixtures, and completely filling any basement or other excavation left after the removal of such building in the event the applicant fails to do so and the City is compelled to refill such basement or other excavation and level off such lot or lots.

In addition to the foregoing, the application shall be accompanied by a statement from any person or firm providing electrical service, propane, or fuel oil that such service or substance will be disconnected or removed prior to such demolition or removal.

A non-refundable fee of an amount determined by resolution of the City Council from time to time shall be paid at the time the application is received.

5.0903 Approval by City Auditor or Council

If it appears to the satisfaction of the City Auditor that the following provisions have been met, he shall issue such permit:

1. There are no delinquent taxes or assessments due on the premises.
2. All necessary electrical, fuel, propane, and water connections will be terminated so as not to present a threat to the public health and welfare.
3. The demolition or removal will be adequately supervised.
4. Agreement by applicant to the satisfaction of the City Council, remove the concrete, foundation, pipes, wires and other fixtures, completely fill in any excavation and level off lot.

In all other instances, the application must be submitted to the City Council for its consideration.

5.0904 Removing Concrete, Foundation, Pipes, Wires and Other Fixtures Required

After the removal or demolition of such building, any concrete, foundation, pipes, wires and other fixtures left at the site must be removed.

5.0905 Leveling Lot and Filling Excavation Required

After the removal or demolition of such building, any excavation left or caused by the removal of such building must be immediately filled in and the lot must be leveled off.

5.0906 Guaranty Fund

Whenever such an application may be filed with the City Auditor, the City Council shall decide from its examination of the application and from such other information as it may obtain the amount of the guaranty fund that shall be required for the ample protection of the City and public against probable damages and expenses that may be caused by the removal of such building, and are authorized to require the deposit of such sum as it may fix before granting a permit.

Where a permit for moving any such building has been granted and the required guaranty fund deposited with the City Auditor, and after all damages for injuries to public or private property, including the expense of protection to electric, telegraph and telephone wires caused or occasioned by the removal of such building, and including the cost of removing any concrete, foundation, pipes, wires and other fixtures and refilling any basement or other excavation left upon the premises after the removal of such building, have been paid and deducted from such guaranty fund, the balance remaining therein shall be refunded to the applicant.