

BILLINGS COUNTY

NORTH DAKOTA

ZONING ORDINANCE

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ARTICLE I

INTRODUCTION

1.1 Title

This ordinance shall be known as "Zoning Ordinance, Billings County, North Dakota."

1.2 Authority

This ordinance is adopted under the authority granted by Chapter 11-33 and 11-33.2 of the North Dakota Century Code.

1.3 Purpose and Intent

The purpose of these regulations is to promote public health, safety, and the general welfare of the citizens of Billings County; to promote the orderly development of the county and to prevent conflict among land uses and structures; to regulate the use and division of land within the county and unincorporated territorial jurisdiction; to facilitate adequate provisions for water, sewer, transportation and other customary services to its county unincorporated communities; to protect existing properties against nuisances that interfere with the use and enjoyment of property, endanger personal health and safety, or is offensive to the senses; and to conserve and develop resources.

1.4 Interpretation

These regulations shall be held to be the minimum requirements. Whenever these requirements are at variance with other requirements, rules, regulations, deed restrictions, or covenants, the most restrictive shall govern, unless otherwise specifically stated.

1.5 Severability

If any part of these regulations is found to be invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected.

1.6 Repeal

The existing zoning ordinance together with any amendments thereto is hereby repealed.

1.7 Effective Date

This ordinance shall be effective thirty (30) days following its adoption by the County Commission of Billings County.

ARTICLE II

RULES AND DEFINITIONS

2.1 Compliance

No structure, land and building shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a building application, and the same shall be in compliance with this ordinance.

2.2 Word Use

In the construction of this ordinance, the following words, rules, and definitions shall be observed and applied except when the context clearly indicates otherwise.

2.2.1 Words used in the present tense shall include the future.

2.2.2 Words used in a singular number shall include the plural; words used in the plural shall include the singular.

2.2.3 Shall is a mandatory word and not discretionary.

2.2.4 May is a permissive word.

2.2.5 The word "lot" shall also mean "parcel", "piece", and "plat".

2.2.6 The word "building" includes all structures and "structure" includes buildings.

2.3 Definitions

- 1) **Access** – The place or way by which pedestrians and vehicles have safe and suitable entrance and exit to a property.
- 2) **Accessory Building and Uses** – A subordinate building or portion of the main building the use of which is clearly incidental to and serves exclusively to the principal building or principal use and shall be located on the same zoning lot.
- 3) **Adult Bookstore** – An enclosed building having as a substantial or significant portion of its stock in trade books, magazines, or other periodicals that are distinguished or characterized by their emphasis on

matter depicting or describing sexual activities or anatomic areas, such as genitals, breasts or buttocks.

- 4) **Adult Cinema** – An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of sexual activities or specified anatomical areas, such as genitals, breasts, or buttocks for observation by patrons in return for the payment of consideration, irrespective of the number of persons who may be able to view the presentation at one time.
- 5) **Adult Entertainment Facility** – An enclosed building wherein an admission is charged for entrance, or food or non alcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas, such as genitals, breasts, or buttocks.
- 6) **Adult Entertainment Center** – An adult bookstore, adult cinema, adult entertainment facility, or any combination thereof.
- 7) **Affected Area** – An area having a radius of one mile from a proposed change.
- 8) **Agriculture** – The process of producing food and fiber customary to the family farming operation with a minimum of 40 acres in area, excluding commercial feed lots and the processing and manufacturing of farm-based products.
- 9) **Alley** – A public way which affords only secondary access to abutting property.
- 10) **Allowed Uses** – Those uses, buildings or structures which comply with the requirements of specific zoning districts because of the similarities in nature and relationship to each other. Allowed uses are distinct from conditional uses in that they are authorized only if certain requirements of this ordinance are met after a public hearing and approval by the County Commission.
- 11) **Alteration** – As applied to a building or structure, a change, re-arrangement, relocation, or enlargement in the structural parts or in the existing facilities, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

- 12) **Amendment** – Any change, revision or modification of the text of these regulations and the zoning district map.
- 13) **Animal Hospital or Kennel** – A building or premises set up for treatment and boarding of domestic animals including veterinary facilities.
- 14) **Animal Unit Equivalent** – A unitless number developed from the nutrient and volume characteristics of manure from a specific livestock type. The term animal unit is used to normalize the number of animals (e.g. head) for each specific livestock type which produce comparable bulk quantities of manure.
- 15) **Area of Special Flood Hazard** – The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.
- 16) **Basement** – That level of a building, partly underground with more than one-half of its height below grade.
- 17) **Base Flood** – The flood having a one percent chance of being equaled or exceeded in any given year.
- 18) **Bed and Breakfast Inn** – An establishment which provides overnight lodging to the public for compensation; caters to the traveling public; is located in the proprietor's residence; and serves only a limited breakfast to registered guests.
- 19) **Block** – A part of the platted area bounded by rights-of-way, intersecting streets and/or railroad.
- 20) **Building** – any structure designed or intended for shelter or protection of persons, animals or property.
- 21) **Building Area** – That portion of the zoning lot that may be occupied by the principal use, excluding the front, rear and the side yards.
- 22) **Building Envelope** – That portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages.
- 23) **Building Height** – The vertical distance from the grade to the highest point of the roof.

- 24) **Building Line** – A line establishing the minimum distance from which structures must be placed from the lot lines or street right-of-way. For the purposes of this ordinance the building line is the same as the setback line.
- 25) **Certificate of Compliance** – A certificate stating compliance with this ordinance.
- 26) **Club** – A facility at which any private branch, lodge, or chapter of a nonprofit association of persons gathers for the purpose of its members.
- 27) **Commercial Building** – Any structure which is not used for residential, medical, religious, industrial, or instructional purposes and which is constructed in compliance with the adopted building code.
- 28) **Commercial Feed Lot** – Any building, structure, enclosure, or premises used, designed or intended for the commercial feeding of 300 animals which is operated as a separate pursuit and not as incidental to farming on a given piece of land regardless of its size.
- 29) **Comprehensive Plan** – The Billings County Comprehensive Plan.
- 30) **Conditional Use** – A use of a special nature not automatically permitted in a zoning district and which requires a public hearing and review and approval by the County Zoning Administrator, the Planning and Zoning Board, or County Commission. It is a use which would not be appropriate in a particular zoning district, but which if controlled as to the number, location, or relation to the surrounding uses and the area, would be consistent with the purpose and the intent of these zoning regulations. A conditional use is permitted in a district specifically permitting it, subject to the approval of the County Commission and only when the commission finds that such use meets all applicable, including but not limited to those contained in this ordinance.
- 31) **County** – The Board of County Commissioners.
- 32) **Conforming Building or Structure** – A building or structure which complies with all requirements of this ordinance and other regulations adopted by the county.
- 33) **Development** – Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings, structures, or accessory structures, the construction of additions or alterations to buildings or structures, ditching, dredging, paving, excavation or drilling operations.

- 34) **Development Plan** – A document including maps and data for physical development of an area as provided by this ordinance.
- 35) **District Zoning** – A section or sections of Billings County for which regulations governing the use of building and premises, the building heights, the size of yards, lot area, lot width, and the use thereof are uniform.
- 36) **Dwelling** – Any building or portion thereof, used exclusively for human and other temporary occupancy habitation including single family units of no less than 900 square feet and multiple family units but not including hotels or motels, or vehicles designed for camping, such as vacation vehicles.
 - 36.1) **Dwelling, Recreational, i.e. Cabins** – A building used exclusively for temporary human living quarters of no less than 400 square feet and no greater than 900 square feet, but not including hotels, motels, mobile homes, or recreational vehicles as herein defined. Structures contain one (1) dwelling unit only and generally fit the appearance of a small single family dwelling, but are often modular structures and may be designed to be transported to the site.
- 37) **Dwelling, Multiple Family** – A single building or portion thereof containing two (2) or more dwelling units.
- 38) **Dwelling, Single Family** – A building containing one (1) dwelling unit only.
- 39) **Dwelling Unit** – One or more rooms in a building designed for occupancy by one family for living purposes and having its own permanently installed cooking and sanitary facilities.
- 40) **Easement** – A right to the use of land for specific purposes, such right being held by someone other than the owner who holds title to the land.
- 41) **Encroachment** – Any fill, building, structure or use including accessory uses projecting into the required yard areas or public and private properties.
- 42) **Establishment** – A place of business for processing, production, assembly, sales, service of goods and materials.
- 43) **Extraterritorial Jurisdiction** – The extension of a city's zoning regulations to any quarter quarter section of unincorporated area within one-half mile of the corporate limits of the cities of Billings County subject to the provisions of NDCC 40-47-01.1.

- 44) **Family** – A group of one or more persons occupying premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house, or hotel as herein defined.
- 45) **Farm** – A zoned area of Billings County containing at least forty (40) acres, which is used for the production of agricultural crops or livestock, or raising, feeding or producing livestock, poultry, milk, or fruit. The term does not include the production of timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services. Feedlots which are operated as a separate pursuit shall be deemed commercial feed lots and shall not be construed as farming or incidental to a farming operation.
- 46) **Farmer**- In order to be considered a farmer for the purposes of this code, the owner or tenant of the farm shall earn fifty-one (51) percent or more of his or her annual income from the operation of the farm.
- 47) **Flood or Flooding** – A general and temporary condition of partial or complete inundation of normally dryland areas from the overflow of rivers or streams and/or the unusual and rapid accumulation or runoff of waters from any source.
- 48) **Garage** – A building used as an accessory to a main building permitted in a residential district and providing for the storage of motor vehicles and in which no business, occupation or service for profit is conducted.
- 49) **Grade** – The land elevation at the horizontal intersection of the ground and the building.
- 50) **Gravel Pit** – Any mining and extraction of earth minerals for commercial or private sale.
- 51) **Highway** – Any public right-of-way designated as a state highway or a county road or highway.
- 52) **Home Occupation** – Any occupation which: (a) is carried on in a dwelling unit by members of the family; (b) is clearly secondary to the use of the residential dwelling units; and (c) does not create a nuisance, excessive noise, traffic, or conflict with adjoining uses.
- 53) **Hotel or Motel** – A building with lodging accommodations, either with or without meals, which are provided for compensation.

- 54) **Improvements** – Street grading, surfacing, installation of sidewalks, curb, gutter, water, sanitary and storm sewer systems, culverts, bridges, and trees as may be required by the county.
- 55) **Industrial Districts** – The areas designated by the Billings County Commission to the District Zoning Map which provides for the grouping of manufacturing, assembly and heavy commercial activities.
- 56) **Industrial Waste** – All waste resulting from an industrial, manufacturing service or commercial activity that is managed as a separate waste stream and as defined by N.D.C.C. 23-29-03.
- 57) **Inert Waste** – Non-putrescent solid waste which will not generally contaminate water or form a contaminated lechate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to construction and demolition material, such as metal, wood, brick, masonry, and concrete, asphalt concrete, tires and tree branches.
- 58) **Junk or Salvage Yard** –A business establishment or a place which is maintained, operated, or used for placing, storing, keeping, buying, or selling junk, including old or scrap paper, copper, brass, rope, rags, batteries, paper trash, rubber, debris, or waste or junked, dismantled, or wrecked automobiles or parts thereof or iron, steel, and other old or scrap ferrous or nonferrous material, or for the maintenance, use, or operation of an automotive graveyard.
- 59) **Kenel** – Any premises where dogs, cats, and other household pets are boarded, bred, and maintained for compensation.
- 60) **Landfill** – Specially selected, designed, and operated sites for disposal of solid waste in accordance with N.D.C.C. 23-29-03 and the provisions of this ordinance.
- 61) **Livestock** – Domestic animals customarily raised or kept on farms for profit or other purposes including fur bearing animals.
- 62) **Lot** – A parcel of land occupied or intended for occupancy by one main building together with its accessory buildings, and having its principal frontage upon a street or road, together with such open spaces and yards as required by this ordinance
- 63) **Lot Area** – The total horizontal area within the lot lines exclusive of streets, roads, and highways.

- 64) **Lot, Corner** – A lot abutting on two or more streets other than an alley at their intersection.
- 65) **Lot, Depth** – The mean horizontal distance between the front and rear lot lines.
- 66) **Lot, Double Frontage** – A lot having frontage on two non-intersecting streets as distinguished from a corner lot.
- 67) **Lot, Line** – The property line bounding a lot.
- 68) **Lot of Record** – A lot which is part of a subdivision, the map of which has been recorded in the office of the County Recorder of Billings County, or a parcel of land, the deed to which was recorded in the office of the County Recorder prior to the adoption of these regulations.
- 69) **Lot Width** – Any average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.
- 70) **Modular Home (formerly manufactured home)** – A factory built dwelling unit, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site and which does not have permanently attached to its body or frame any wheel or axel and bears a label certifying that it was built in compliance with the latest standards adopted by the U.S. Department of Housing and Urban Development.
- 71) **Master Plan** – The comprehensive plan, or any portion thereof made and adopted by the planning commission in accordance with the laws of the state of North Dakota and regulations of the County of Billings indicating the general or specific locations recommended for streets, parks, public buildings, zoning districts and all other public improvements to include local policies and standards.
- 72) **MET Tower** – Temporary and permanent meteorological towers used for the measurement of wind speed.
- 73) **Mobile Home** – A structure which is: 1) eight body feet or more in width and thirty-two body feet or more in length; 2) transportable in one or more sections; 3) built on a permanent metal chassis; and, 4) designed to be used as a dwelling, with or without a permanent foundation and additions, when connected to the required utilities, including plumbing, heating, air conditioning and electrical systems. This term includes any manufactured home or factory built structure, transportable in one or more sections, which has at least 720 or more square feet and is designed as a year-round

dwelling unit to be placed on a secure or a permanent foundation or basement. All mobile homes and manufactured homes must comply with the latest Manufactured Home Safety Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development. A recreational vehicle is not a mobile home.

- 74) **Mobile Home District** – The area designated by the Billings County Commission on the District Zoning Map for development of mobile home residential dwelling units.
- 75) **Mobile Home Park** – A tract of land designed and developed to accommodate mobile homes, each occupying a portion of the site which is purchased, leased or rented and each provided with the necessary utilities and other amenities so that the total development serves as a suitable environment for permanent residential occupancy.
- 76) **NDCC** – North Dakota Century Code.
- 77) **Nonconforming Building** – Any building or structure which does not conform to any or all of this ordinance but existed at the time of the adoption of this code.
- 78) **Nonconforming Uses** – A use, building or structure existing at the time of the passage of these regulations or amendments thereto, which does not conform to these provisions.
- 79) **Outlot** – A plot of land devoted to and recorded as a single principal use which has proper road and utility access.
- 80) **Parking Space** – An off-street area designated for parking of automobiles accessible from a public street or alley and which shall be no less than nine (9) feet by twenty (20) feet.
- 81) **Permanent Foundation** – A wood or masonry foundation which extends below ground level and is set on footings. The footings may be concrete or gravel depending on soil conditions.
- 82) **Permitted Use** – Any use which complies with the requirements of a particular zoning district and does not require a conditional use permit.
- 83) **Permittee** – An individual, group of individuals, corporations, partnerships, joint venture, owners, or any other business entity, or combination thereof, that leases or owns the wind rights, wind turbines and the associated improvements, and all subsequent assignees and/or transferees of these

rights, and that submits a Wind Energy Facility Siting Permit application, develops the Wind Energy Facility, and subsequently operates such facility.

- 84) **Person** – Any natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, or government.
- 85) **Planning and Zoning Board** – The Billings County Planning and Zoning Board.
- 86) **Prohibited Use** – Any use or structure which is not allowed in a particular district. Any use not identified explicitly in this code shall be considered prohibited and shall not be allowed until incorporated through the amendment procedure.
- 87) **Public Way** – Any dedicated and recorded right-of-way including alleys, bikeways, sidewalks, streets, roads or highways.
- 88) **Recreational Vehicle** – A vacation trailer or other vehicular or portable unit which is either self-propelled or towed and which is intended for human occupancy and is designed for vacation or recreational purposes but not permanent residential use.
- 89) **Recreational Vehicle Park** – A lot which is operated on a fee or other basis as a place for the parking of occupied recreational vehicles.
- 90) **Regional Flood** – A flood determined by the state and Federal Emergency Management Agency which is representative of large floods known to have occurred in Billings County, North Dakota.
- 91) **Residential District** – The areas dedicated by the County Commission on the District Zoning Map for development of residential dwelling units.
- 92) **Right-of Way** – A strip of land designated or dedicated for public way, including streets, sidewalks, railroads, electric transmission lines, telephone and telecommunications lines, oil or gas pipelines, sanitary sewer, storm sewer, or water.
- 93) **Rotor Diameter** – The diameter of the circle formed by the swept area of the Wind Turbine's blades.
- 94) **Service Station** – Any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.

- 95) **Setback** – The line within a property defining the required minimum distance between the front lot line and the building line.
- 96) **Sign** – Any emblem, name, identification, description or illustration which is used for outdoor advertising having a permanent location on the ground or attached to or painted on a building including bulletin boards, poster boards and billboards, but excluding real estate for sale signs, political campaign signs, and public information and traffic signs.
- 97) **Site Plan** – A detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in this ordinance.
- 98) **Solid Waste** – Any garbage, refuse, sludge from a waste treatment plant, water treatment plant, or air pollution control facility and other discarded waste material, including solid, liquid, semi solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. The term does not include 1) agricultural waste, including manures and crop residues returned to the soil as fertilizers; or 2) solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to Permit Section 402 of the Federal Water Pollution Control Act, as amended, or source, special nuclear or the by-product material as defined by the Atomic Energy Act of 1954, as amended.
- 99) **Stable, Private** – A building used for the housing of animals for private recreational use.
- 100) **Stable, Public** – A building used for the housing of animals for sale to or use by the public for recreational purposes.
- 101) **Street** – A public right-of-way for vehicular and pedestrian traffic.
- 102) **Structure** – Anything constructed or erected, which requires permanent location on the ground excluding fences.
- 103) **Structural Alterations** – Any change in the supporting elements of a building or structure including bearing elements, partitions, columns, beams, girders, roofs, exterior walls and embankment.
- 104) **Subdivision** – The division of a lot, parcel of land, or tract , creating two or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale, rent, or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from any such lot,

tract or parcel, and the creation of new or enlarged parks, playgrounds, plaza, or open spaces.

- 105) **Substantial Improvements** – 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 purpose 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.
- 106) **Temporarily Permitted Use** – A conditionally permitted use which has a definite time period as one of its conditions.
- 107) **Temporary** – Means one year or less, but may be greater than one year if warranted by the Board of County Commissioners.
- 108) **Total Height** – When referring to a Wind Turbine, the distance measured from the ground level to the blade extended at its highest point.
- 109) **Variance** - A relaxation of the terms of these regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, the literal enforcement of these regulations would result in unnecessary and undue hardship.
- 110) **Yard** – The required open space on the zoning lot which is unoccupied or unobstructed by any portion of a structure from the ground upward.
- 111) **Yard, Rear** – A yard that extends across the full width of the lot, as the least distance between the rear lot line and the rear building line.
- 112) **Yard, Side** - A yard between the front and rear yards, as the least distance between the side of the principal building and the side lot line.
- 113) **Utility** - The basic facilities for public use such as water, sanitary and storm sewers, electricity, gas and telephone lines.
- 114) **Wind Energy Conversion System** – Any device that is designed to convert wind power to another form of energy such as electricity, mechanical or heat (also referred to by such common names as wind charger, wind turbine, and wind mill).

- 115) **Wind Energy Facility** – A facility directly generating electricity or indirectly generating electricity or energy through production of hydrogen, compressed air or other energy carrier from conversion of wind to energy and consisting of one or more wind turbines under common ownership or operating control, and includes substations, temporary and permanent MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity directly, or through wind energy conversion to another form of energy, to off-site customer(s).
- 116) **Wind Energy Facility Perimeter** – The boundary of the Wind Energy Facility as defined by the external property lines of landowners who have a contractual relationship with the Permittee and who will receive Wind Energy compensation payments or other forms of revenue derived from wind turbine sited within such Wind Energy Facility.
- 117) **Wind Energy Facility Siting Permit** – A construction and operating permit granted in accordance with the provisions of this Ordinance.
- 118) **Wind Turbine** – A wind energy conversion system which converts wind energy into electricity, hydrogen, compressed air, or some other energy carrier and includes the turbine, blade, tower, base and pad transformer, if any; provided that such a system shall only be a wind turbine for the purposes of Section 6.12, if it has a nameplate capacity of 100 kilowatts or greater. Wind turbines of less than 100 kilowatts will be regulated as a utility.
- 119) **Zoning District** – Those areas of the county to which regulations governing the use of lands, buildings, and structures, including the height of buildings, the size of yards, lot area, lot width, uniformly apply.

ARTICLE III
GENERAL PROVISIONS

3.1 Jurisdiction

These regulations shall apply to all unincorporated areas of Billings County except those areas where the incorporated cities have elected to exercise extraterritorial zoning as authorized by Section 40-48-18, NDCC.

3.2 Compliance with Ordinances, Statutes, Regulations and Plans

No building, structure or land shall hereafter be occupied unless in conformity to this ordinance and:

- 1) The provisions of the North Dakota Century Code.
- 2) The North Dakota Administrative Code; and
- 3) The Comprehensive Plan of Billings County.

This ordinance shall not prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

3.3 Exceptions

These regulations shall not apply to the land and buildings for agricultural uses, as herein defined, except for setbacks from roads and flood plain regulations.

3.4 Non-Conforming Uses

The lawful use of a building or premises on or before the date of the adoption of this ordinance may be continued. Where a non-conforming use is discontinued for a period of more than eighteen (18) consecutive calendar months any subsequent use or occupancy of such premises shall conform to this ordinance. Whenever a building is destroyed or damaged by fire or other casualty to the extent of more than fifty (50) percent of its market value, it shall not be restored unless such building shall conform to the provisions of the district in which it is located. Non-conforming uses shall not be expanded to occupy a larger area of land than existed at the date of the adoption of this ordinance unless there is an undue hardship and such expansion is approved by the Commission.

3.5 Land Suitability

No land shall be used for seasonal or permanent non-farm uses because of inadequate drainage, soil limitation, flooding or incompatible land use, or any other condition likely to be harmful to the health and safety of the area residents and the public.

3.6 Conditional Uses

Where a use is classified as a conditional use under this ordinance and exists at the date of the adoption of this ordinance, it shall be considered an allowed use. Where a use is not allowed as a conditional use or permitted use, under this ordinance, and exists at the date of the adoption of this ordinance, it shall be considered non-conforming and shall be subject to the provisions of Section 3.4.

3.7 Highway Access

- 1) The points of access to any highway shall be limited to four (4) per mile per side of the highway.
- 2) Additional access points may be provided via frontage roads where the landowner shall dedicate a suitable right-of-way by deed or easement.

3.8 Highway Setbacks

- 1) The minimum set back for buildings from the centerline of all section lines and the center line of county roads shall be one hundred three (103) feet.
- 2) The minimum setback for buildings from the centerline of all state highways shall be two hundred fifty (250) feet.
- 3) The minimum set back for tree plantings from all section lines and the center line of county roads shall be one hundred three (103) feet.

3.9 Residential Development

No lot shall contain more than one principal single family residential building, and no dwelling unit shall be built on a lot which does not abut a dedicated public right-of-way. Accessory buildings shall be smaller than the principal building and shall be limited to fifteen (15) feet in height and be located at least ten (10) feet from all lot lines.

3.10 Dedication of Land for Streets

Whenever a parcel of land to be subdivided as a subdivision contains a street or public right-of-way, such street or public right-of-way shall be dedicated to the public at the location and details shown on the final plat. All non-section line rights-of-way shall be the responsibility of the subdivision.

3.11 On-Site Sewer System

To protect the public health, to control water pollution, and to reduce nuisance and odor, all new subdivision development within the county shall be connected to an approved on-site sewage system.

ARTICLE IV

ZONING DISTRICTS

4.1 Zoning Districts

The following zoning districts are hereby established to carry out the purposes of this ordinance:

- 5.1 Agricultural District
- 5.2 Residential District
- 5.3 Recreation District
- 5.4 Commercial District
- 5.5 Industrial District
- 5.6 Hillside and Ridgeline Overlay District

4.2 Zoning Map

The location and boundaries of the zoning districts are hereby established as shown on the map entitled "Zoning District Map" on file in the office of the County Auditor. The County Zoning Administrator shall regularly update the map to show any changes in the zoning district boundary line resulting from amendments.

4.3 Location of District Boundaries

The following rules shall apply to the boundaries of the zoning districts as shown on the Zoning District Map.

- 1) Where zoning district boundary lines follow streets, highways, roads, railroad right-of-way, alleys, and extensions thereof, such boundary lines shall be the center lines, streets, highways, roads, railroad rights-of-way or alleys unless clearly shown to the contrary.
- 2) Where a zoning district boundary line coincides approximately, but not exactly, with a lot line, the zoning district boundary shall be construed to be the lot line at that location. All section lines, quarter section lines, and quarter quarter section lines may be construed as the property lines.
- 3) Where any uncertainty exists as to the exact location of zoning district boundary lines, the Commission shall determine the location of such boundary lines.

ARTICLE V

ZONING DISTRICT REGULATIONS

5.1 Agriculture District - Purpose

The Agricultural District is established to encourage preservation and protection of agricultural lands and to discourage uses incompatible with agricultural operations or detrimental to agricultural lands.

5.1.1 Permitted uses

- a) All types of farming and ranching operations including dairying, livestock, poultry raising, apiaries, fur farming, and truck gardening.
- b) Truck gardening, nurseries, greenhouse and roadside stands offering for sale only those farm products which have been grown on the premises.
- c) Accessory buildings and structures necessary to the operation of farms or ranches.
- d) Animal hospitals and clinics, provided they are not located nearer than five hundred (500) feet from any residence except the residence of the owner-operator.
- e) Cemeteries.
- f) Churches and related facilities.
- g) Grain elevators and accessory structures.
- h) Home occupations.
- i) Public parks and recreational facilities, wildlife and game management areas and refuges.
- j) Public and parochial schools.

k) Oil and Gas Exploration

No person, partnership, association, corporation shall engage in the exploration for oil or gas within the County without first providing to the Zoning Administrator evidence of compliance with the provisions of NDCC Chapters 38-08 and 38-08.1

l) Oil and Gas Drilling and Production

Oil and gas drilling and production is a permitted use in the Agricultural District provided the person engaged in such oil and gas drilling and production has met the following requirements:

- 1) Provide the County Zoning Administrator with evidence of approval by the North Dakota Industrial Commission of all permits required by NDCC chapters 38-08 and 38-08.1, including but not limited to, drilling permits of any kind, underground injection permits, tank cleaning permits, waste storage permits, and treating plant permits.
- 2) Provide the County Zoning Administrator with evidence of approval by the North Dakota Industrial Commission of a surety bond or cash bond, or alternative form of security, where such security is required by the North Dakota Industrial Commission.
- 3) Obtain a County Road Approach Permit from the County Zoning Administrator.
 - a. The County Zoning Administrator shall charge each applicant for a County Road Approach Permit a fee, the amount of which is to be determined by the Commission, to cover processing and administrative expenses, plus any mileage and expenses of the County Zoning Administrator at the rate allowed county officials by state law, should it be deemed necessary to conduct on-site inspections. Said fee or expenses, if any, must be paid prior to the approval and issuance of the County Road Permit.
 - b. The County Zoning Administrator, in reviewing any application for a County Road Approach Permit, shall consider all relevant criteria, including the proposed use and the condition of the county roads and bridges at the time of the application, public safety concerns, maintenance costs to the county, weather conditions, etc.

5.1.2 Conditionally Permitted Uses

- a) Commercial feedlots subject to the provisions of Section 6.3.
- b) Commercially operated air landing strip and landing field.
- c) Manufacturing and processing of agricultural resources and products indigenous to the County but not including rendering plants, fertilizer plants and the like.
- d) Solid waste disposal facilities subject to the provisions of Section 6.4.
- e) High voltage transmission lines and accessory buildings used for the primary purpose of transmission of electrical energy from one area to another. These provisions shall not apply to those transmission lines which directly serve the county.
- f) Transmitting towers, relaying stations and pipelines.
- g) Coal Exploration.

An applicant for a coal exploration conditional use permit shall meet the following requirements:

- 1) Provide the County Zoning Administrator with evidence of approval by the North Dakota State Industrial Commission and the State Geologist of a permit for coal exploration.
 - 2) Provide the County Zoning Administrator with evidence of approval by the North Dakota Industrial Commission and the State Geologist of a surety bond or cash bind, or alternative form of security, where such security is required by the North Dakota Industrial Commission.
 - 3) Upon completion, the operator shall file with the County Recorder, the actual location of the testing.
 - 4) The duration of the conditional use permit for coal exploration shall not exceed 90 days.
- h) Coal Mining

The provisions of this section shall not apply to excavation or mining of coal by the County.

An applicant for a coal mining conditional use permit shall meet the following requirements:

- 1) Provide to the County Zoning Administrator a copy of all non-confidential information that was submitted to the North Dakota Public Service Commission concerning site operations, locations, ownership patterns and site reclamation.
- 2) Provide the County Zoning Administrator with evidence of approval, where approval is required by state law, by the North Dakota Public Service Commission of the proposed mining operations.
- 3) Conform to all state and federal laws relating to the preservation, removal or relocation of historical or archaeological artifacts and to reclamation of strip-mined lands.
- 4) Post performance bond for reclamation of the site, with the County Auditor, if not already posted with the state.

i) Other Subsurface Mineral Exploration

An applicant for a subsurface mineral exploration conditional use permit shall meet the following requirements:

- 1) Provide to the County Zoning Administrator evidence of approval by the North Dakota State Industrial Commission and the State Geologist of the proposed subsurface mineral exploration.
- 2) Provide to the County Zoning Administrator with evidence of approval by the North Dakota State Industrial Commission and State Geologist of any surety bond or cash bond, or alternate form of security, where such security is required by the North Dakota Industrial Commission.
- 3) The duration of a subsurface mineral exploration conditional use permit shall be no more than 90 days.
- 4) Upon completion of the operations, the operator shall file with the County Recorder the actual location of testing.

j) Other Subsurface Mineral Mining

An applicant for a subsurface mineral mining conditional use permit shall meet the following requirements:

- 1) Provide the County Zoning Administrator with a copy of all non-confidential information that was submitted to the North Dakota Industrial Commission and the State Geologist concerning site operations, site reclamation, location, and ownership patterns.
- 2) Provide the County Zoning Administrator with written evidence of approval by the North Dakota Industrial Commission and the State Geologist for the proposed mining or excavation operation, if such approval is required by state law.
- 3) Conform to all state and federal laws relating to the preservation, removal, or relocation of historical or archaeological artifacts and to reclamation of strip-mined lands.
- 4) Post a performance bond for reclamation of the site, with the County Auditor if not already posted with the State.

k) Excavation and Mining of Sand, Gravel, Rock, Stone, Scoria, and Clay

All mining and excavation sites shall be located so as to protect and preserve agricultural land and to minimize the traffic, noise, dust, fumes, vibration impact on adjoining uses, and disruption of known water sources. The provisions of this section shall not apply to any excavations for agricultural purposes or for uses requiring less than 5,000 cubic yards of aggregate.

An applicant for a conditional use permit to excavate or mine sand, gravel, rock, stone, scoria, or clay shall meet the following requirements:

- 1) Provide the County Zoning Administrator with a site plan for operation and reclamation of the mined land, including maps showing the location of the land to be mined; the location of roads and points of access to the site; maps showing the

existing and proposed contours after the land is mined; and a timetable for operation of the site.

- 2) Provide the County Zoning Administrator with evidence of written agreement between the applicant and property owner that excavation or processing shall not take place within three hundred (300) feet of an adjacent property line or within five hundred (500) feet of an existing residence.
- 3) Conform to all requirements regarding preservation, removal or relocation of historical or archaeological artifacts.
- 4) Demonstrate compatibility with the existing landform including the vegetation, surface, and ground water resources.
- 5) All mining and excavation sites must have at least a 1-to-3 slope.
- 6) Provide the County Zoning Administrator with written evidence of a reclamation agreement between the applicant and the surface owner.
- 7) Reclamation of the site shall be completed within one year of the resource being exhausted, abandoned, or closure of the operation of the site. All top soil shall be replaced and planted to natural protected vegetation.

- 8) Post bond as follows:

0 - 19 acres	no bond
20 – 39 acres	\$ 50,000
40 + acres	\$100,000

- I) Mobile Homes (Manufactured Homes)

- 1) Mobile homes on permanent type of foundations on five acres or more.
- 2) Temporary mobile homes belonging to less than full time or non-farm employees provided the mobile home is located within the proximity of an occupied farmstead and is attached to the farmsteads existing sewer and water systems.

- m) Single family non-farm residence on 5 (five) acres or more.
- n) Wind energy facilities.
- o) Hotels, motels, and hunting lodges.
- p) Bed and Breakfast inns.
- q) Restaurants.
- r) Up to two (2) cabins may be allowed as accessory buildings in an Agricultural District on lots with five (5) acres or more
- s) Compassion centers classified as medical marijuana manufacturing facilities
- t) Temporary use permits for social events, including, but not limited to
 - 1) Bazaars, Carnivals, or Fairs;
 - 2) Musical Festivals or Events;
 - 3) Racing Events;
 - 4) Rodeos;
 - 5) Public gatherings for a single-purpose event.
- u) Temporary uses pursuant to Ordinance 6.17 for construction projects for roads, pipelines, electric transmission, telecommunications, or other public infrastructure including but not limited to
 - 1) Lay down yard for construction materials and/or equipment incidental and necessary for current construction in the immediate surrounding area;
 - 2) Temporary office(s) incidental and necessary for the construction, sale, or rental of the property in the immediate surrounding area;
 - 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;

- 4) Temporary operations for road improvement projects, including temporary asphalt plant or crushing plant;
- v) Temporary uses pursuant to Ordinance 6.17 for oil and gas support services on privately owned tracts that are not permitted by the NDIC as oil and gas locations including but not limited to
 - 1) Lay down yard for construction materials and/or equipment incidental and necessary for current oil and gas exploration, drilling, and production in the immediate surrounding area;
 - 2) Temporary office incidental and necessary for oil and gas exploration, drilling, and production in the immediate surrounding area;
 - 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;
 - 4) Temporary storage of rig and oil field equipment;

5.1.3 Lot Area and Yard Requirements

- a) The minimum lot area for the Agriculture District shall be five (5) acres
- b) Each front yard must have a minimum depth of 75 feet
- c) Each side yard must have a minimum width of 25 feet
- d) Each rear yard must have a minimum depth of 25 feet
- e) The minimum lot width and minimum lot depth is that size which allows all applicable highway setbacks, lot area, and yard requirements to be met

5.2 Residential District - Purpose

The residential district is established to promote a suitable residential environment uninterrupted by conflicting uses and incompatible activities in unincorporated communities.

5.2.1 Permitted Uses:

- a) Single family dwelling units.
- b) Churches, schools and related facilities.
- c) Public parks and playgrounds.
- d) Public libraries, museums, and community centers.
- e) Fire and police stations.
- f) Home occupations.
- g) Childcare facilities.

5.2.2 Conditionally Permitted Uses:

- a) Multi-family dwelling units provided that public water and sewer systems are available or the dwelling units are within the existing platted areas where public water and sewer systems are likely to be installed.
- b) Mobile home parks, provided the following requirements are satisfied:
 - 1) The applicant has submitted a site plan showing the location of streets, utilities, off-street parking, driveways, walkways, blocks, lots, playground and park area, accessory buildings to be used for all mobile home park residents.
 - 2) The mobile home park contains a minimum of 5 acres of land.
 - 3) The maximum number of mobile homes in a mobile home park shall be no more than 5 units per gross acre.

- 4) The Commission approves access to and from the mobile home park via county roads.
 - 5) Each mobile home is placed on a lot at least 60 feet wide and has a minimum area of 6,000 square feet.
 - 6) A minimum of 12 percent of the mobile home park area shall be allocated for open space and recreational facilities.
 - 7) Each unit is firmly anchored to avoid accidental movement and overturning.
 - 8) All lots in the mobile home park are accessible to emergency vehicles.
 - 9) Each unit lot shall have a minimum setback of 10 feet within the park and 50 feet from public roads outside of the park.
 - 10) Each unit lot shall have a minimum side yard of 10 feet.
 - 11) Where the mobile home park is served by private streets those streets shall conform to the design standards recommended by the Commission.
 - 12) Evidence of compliance with the rules and regulations of North Dakota Department of Health.
 - 13) All units in the mobile home park are served by underground utilities unless waived by the Commission.
 - 14) There shall be two off-street parking spaces per unit.
- c) Mobile homes on permanent type foundations on platted lots, provided they are placed on a permanent foundation or properly anchored basement made of concrete and wheels and hitches must be removed. Loose blocks shall not constitute a permanent foundation.
 - d) Public facilities including public water and sewage treatment lagoons.
 - e) Bed and Breakfast inns.
 - f) Recreational vehicles or mobile homes to be temporarily used as a residence during the construction of a residence upon a site,

provided no recreational vehicle or mobile home is used as a temporary residence for longer than one year from the date of the issuance of the building permit.

- g) Long-term care and group home facilities.

5.2.3 Lot Area and Yard Requirements

- a) The minimum lot area for the Residential District shall be five (5) acres. For lots platted prior to November 5, 2013, a single-family dwelling and accessory buildings may be erected on a lot having a minimum lot area of 40,000 square feet provided said lot meets the minimum standards for on-site sewage disposal by the Southwest District Health Unit or North Dakota State Health Department.
- b) Each front yard must have a minimum depth of 75 feet.
- c) Each side yard must have a minimum width of 10 feet.
- d) Each rear yard must have a minimum depth of 25 feet.
- e) The minimum lot width and minimum lot depth is that size which allows all applicable highway setbacks, lot area, and yard requirements to be met

5.2.4 Lot Area and Yard Requirements – for Major Subdivisions

- a) The minimum lot area for single family dwelling units, in areas where public water and sewer are not available, shall be 65,000 square feet provided that the site meets the minimum standards for on-site sewage disposal by the Southwest District Health Unit or the North Dakota State Health Department. The minimum lot width shall be one hundred (100) feet and lot depth two hundred (200) feet. For lots platted prior to November 5, 2013, a single-family dwelling and accessory buildings may be erected on a lot having a minimum lot area of 40,000 square feet provided said lot meets the minimum standards for on-site sewage disposal by the Southwest District Health Unit or North Dakota State Health Department.
- b) The minimum lot area for single family dwelling units in areas where public water and/or sewer are available shall be 12,750 square feet provided the lot has a minimum lot width of eighty-five (85) feet.

- c) The minimum lot area for multi-family units shall be the same as those for single family units, provided however, that an area of not less than 2,500 additional square feet shall be required for each dwelling unit over one in number in multi-family structures.
- d) Each front yard must have a minimum depth of 75 feet. With the following exception:
 - 1) Lots within Original Fryburg or the Updike Addition to Fryburg shall have a minimum front yard depth of 25 feet.
- e) Each side yard must have a minimum width of 10 feet.
- f) Each rear yard must have a minimum depth of 25 feet.

5.2.5 Off-street Parking:

- a) For residential uses two parking spaces for each dwelling unit.

5.3 Recreational District - Purpose

The Recreational District is established to preserve areas for developed recreational activity and residency around rivers, lakes, and other water courses and mountain or butte areas where development is controlled in order to maintain the quality of the environment.

5.3.1 Permitted Uses:

- a) Public parks and outdoor recreation facilities.
- b) Churches, schools and related facilities.
- c) Hunting, fishing and trapping.
- d) Game animals, waterfowl, and fish farms.
- e) Harvesting of any natural crops.
- f) Ski slopes and resorts.
- g) Public utility and other transmission lines.
- h) Accessory buildings or structures to any permitted uses.
- i) Golf course, golf driving range, miniature golf course, go-cart track, or race track provided:
 - i) The same not be constructed within 500 feet of a residential district; and
 - ii) Any floodlights used to illuminate the premises are so directed and shielded as not to be an annoyance to any developed residential property, highways and streets.

5.3.2 Conditionally Permitted Uses:

- a) Recreational vehicle parks, and campgrounds.

The applicant shall meet the following requirements to obtain a permit:

- 1) The minimum area for a campground shall be five (5) acres and maximum number of recreational vehicles per gross acre shall be fifteen (15) units.
 - 2) Submit a site plan showing the boundary of property, topographic information with contour intervals of no more than 5 feet; arrangement of streets, drives and access roads; location of service buildings; location and dimension of camp sites; location of sanitary facilities; location of water supply.
 - 3) Submit proof of compliance with any applicable requirements of North Dakota Department of Health.
 - 4) Obtain approval from the Commission for ingress and egress to the property.
- b) Single family dwelling units, cabins and summer residences on a minimum of 5 acres of land.
 - c) Amusement parks.
 - d) Refreshment stands.
 - e) Commercial campgrounds and recreational vehicle parks.
 - f) Restaurants.
 - g) Agriculture
 - h) Temporary use permits for social events, including, but not limited to
 - 1) Bazaars, Carnivals, or Fairs;
 - 2) Musical Festivals or Events;
 - 3) Racing Events;
 - 4) Rodeos;
 - 5) Public gatherings for a single-purpose event.

5.3.3 Lot Area and Yard Requirements

- a) The minimum lot area for the Recreational District shall be five (5) acres
- b) Each front yard must have a minimum depth of 75 feet
- c) Each side yard must have a minimum width of 25 feet
- d) Each rear yard must have a minimum depth of 25 feet
- e) The minimum lot width and minimum lot depth is that size which allows all applicable highway setbacks, lot area, and yard requirements to be met

5.4 Commercial District - Purpose

The Commercial District is established to accommodate the concentration of commercial and related uses. Commercial uses must be compatible with adjoining uses and shall not negatively affect the adjoining properties.

5.4.1 Permitted Uses:

- a) Dry Cleaning, pressing, tailor shops and laundromats.
- b) Electrical and plumbing shops.
- c) Lumber yards.
- d) Professional offices including banks, insurance offices, real estate offices, medical clinics, newspapers and law offices.
- e) Retail and service establishments, including but not limited to, grocery, pharmacies, hardware stores, clothing stores, furniture stores, bakeries, restaurants, taverns, automobile service station, used and new car lots, print shops, barber and beauty shops, and sales and service of appliances.
- f) Sales and service of farm implements.
- g) Amusement places including bowling alleys, athletic clubs, pool halls and similar indoor facilities.
- h) Automobile dealerships.
- k) Hotels and motels.

5.4.2 Lot Area and Yard Requirements

- a) The minimum lot area for the Commercial District shall be five (5) acres. For lots platted prior to November 5, 2013, commercial buildings and structures may be erected on a lot having a minimum lot area of 40,000 square feet provided said lot meets the minimum standards for on-site sewage disposal by the Southwest District Health Unit or North Dakota State Health Department.
- b) Each front yard must have a minimum depth of 75 feet.
- c) Each side yard must have a minimum width of 50 feet

- d) Each rear yard must have a minimum depth of 50 feet
- e) The minimum lot width and minimum lot depth is that size which allows all applicable highway setbacks, lot area, and yard requirements to be met

5.4.3 Off-street parking

Each commercial establishment shall provide off-street parking as follows:

- a) A ratio of one-to-one for rolling equipment.
- b) One per employee.

5.4.4 Conditionally Permitted Uses

- a) Residential uses only in areas not fronted by a state highway.
- b) Contractor's yard and operations.
- c) Processing and packaging of materials and agricultural products.
- d) Warehouses and wholesale dealerships.
- e) Commercial grain bins or related activity.
- f) Private membership clubs and lodges.
- g) Small animal veterinary hospitals and kennels.
- h) Dairy, locker plant.
- i) Recycling facilities.
- j) Temporary uses pursuant to Ordinance 6.17 for construction projects for roads, pipelines, electric transmission, telecommunications, or other public infrastructure including but not limited to
 - 1) Lay down yard for construction materials and/or equipment incidental and necessary for current construction in the immediate surrounding area;

- 2) Temporary office(s) incidental and necessary for the construction, sale, or rental of the property in the immediate surrounding area;
 - 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;
 - 4) Temporary operations for road improvement projects, including temporary asphalt plant or crushing plant;
- k) Temporary uses pursuant to Ordinance 6.17 for oil and gas support services on privately owned tracts that are not permitted by the NDIC as oil and gas locations including but not limited to
- 1) Lay down yard for construction materials and/or equipment incidental and necessary for current oil and gas exploration, drilling, and production in the immediate surrounding area;
 - 2) Temporary office incidental and necessary for oil and gas exploration, drilling, and production in the immediate surrounding area;
 - 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;
 - 4) Temporary storage of rig and oil field equipment;

5.5 Industrial District - Purpose

The Industrial District is established to provide convenient access for the manufacturing and processing of the natural resources of the County and also to accommodate those uses which because of land requirements or unique features are most suitable in unincorporated areas.

5.5.1 Permitted Uses:

- a) Lumber yards.
- b) Manufacturing of clay and concrete products.
- c) Repair and storage of heavy equipment and machinery.
- d) Sewage treatment facilities.

- e) Truck or freight terminal.
- f) All uses permitted in commercial district except residential.
- g) Public utility buildings including water and wastewater facilities and accessories.
- h) Petroleum storage facilities.
- i) Warehouses.
- j) Cement and ready mix facilities.
- k) Any industrial or manufacturing operation providing that: (a) dust, fumes, odors, smoke, vapor, noise, lights, and vibrations shall be confined within the industrial district, and (b) outdoor storage, equipment and refuse areas shall be concealed from view of abutting rights-of way.
- l) Recycling facilities.

5.5.2 Conditionally Permitted Uses

- a) Coal gasification and liquefaction plants.
- b) Electric power generating plants, transmission lines and accessory structures.
- c) Exploration, drilling, excavation and mining for coal, sand, gravel, clay and other subsurface minerals as provided by Sections 5.1.2, subsections g, h, l, and k respectively of this ordinance.
- d) Fuel and bulk storage plants.
- e) Oil refineries and petrochemical plants.
- f) Radio, television and microwave towers.
- g) Salvage and junk yards.
- h) Adult entertainment centers.
- i) Noxious waste disposal sites.

- j) Wind energy facilities.

5.5.3 Off-Street Parking

Adequate off-street parking shall be provided for employees and customers of establishments in the Industrial District.

5.5.4 Performance Standard

- a) A buffer strip acceptable to the Commission, consisting of fences, trees, and/or bushes, shall be provided between districts and establishments in the district.
- b) The open storage of material, including waste products or salvage shall not be permitted closer than one hundred (100) feet from any residence. All combustible material shall be stored in such a way to permit free access to firefighting equipment.

5.5.5 Lot Area and Yard Requirements

- a) The minimum lot area for the Industrial District shall be five (5) acres.
- b) The minimum setback from the centerline of all section lines and the front public road or access shall be 250 feet.
- c) Each front yard must have a minimum depth of 150 feet
- d) Each side yard must have a minimum width of 100 feet
- e) Each rear yard must have a minimum depth of 100 feet
- f) The minimum lot width and minimum lot depth is that size which allows all applicable highway setbacks, lot area, and yard requirements to be met.
- g) No Industrial District boundary shall be located within 1,250 feet from the boundary of any Residential District.

5.6 Hillside and Ridgeline Overlay District – Purpose

The Hillside and Ridgeline Overlay District is established to preserve the natural character, visual quality and aesthetic value of ridgelines and hillsides and to protect the residents and visitors to the county from the potential hazards of unregulated development on hillsides. The requirements of this Section are in addition to those established for the underlying zoning district in which a parcel is located, including permitted and conditional use restrictions.

5.6.1 Applicability of Hillside and Ridgeline Guidelines.

The provisions of this section shall apply to any application for a land use permit or subdivision on land that meets either of the following two conditions:

- (1) Any portion of the building envelope that includes slopes in excess of fifteen (15) percent;
- (2) Land that is located on or within fifty (50) vertical feet of the elevation of any prominent ridgeline. Lands that meet either of these two provisions are herein referred to as hillside land or ridgeline land, respectively.

5.6.2 Prominent Ridgeline Defined

A prominent ridgeline shall be defined as any ridgeline, as viewed from any point along a designated major roadway corridor which create a silhouette with the sky. The currently designated roadway corridors are Interstate 94, including all business loops and US Highway 85, and all county roadways. Other potential major roadway corridors from which to identify prominent ridgelines, whether existing or proposed at the time a subdivision or land use permit application is submitted, may be designated by the Planning and Zoning Board during the development review process. These new major roadway corridors shall then establish view points from which to identify prominent ridgelines.

5.6.3 Determination of Prominent Ridgeline

The determination of prominent ridgelines and any major roadway corridor in addition to currently designated major roadways shall be made by the Planning and Zoning Board. The presence of a prominent ridgeline or the designation of additional major roadways may influence the planning and design of a development proposal. For this reason, applicants are strongly

encouraged to request such determinations prior to submitting subdivision pre-application plans and land use permit applications.

- a) A request for a staff determination of prominent ridgelines or additional major roadway corridors shall be made by the applicant and shall be accompanied by a survey, U.S.G.S. Topographic Map or other graphic information as necessary to indicate the general location of the proposed development. The Planning and Zoning Board shall make its determination based on material submitted by the applicant and a site visit to the proposed development site. In the event that prominent ridgelines or additional major roadway corridors are identified by the staff, such ridgelines or roadway corridors shall be indicated on the graphic material submitted by the applicant. Appeals of any staff decisions may be made in accordance with procedures outlined in this Ordinance.

5.6.4 Slope Defined

Slope shall mean the inclination of land determined by dividing the horizontal run of the slope into the vertical rise of the same slope and converting the resulting figure into a percentage. The presence of slopes in excess of fifteen (15) percent shall be determined based on a slope analysis of the subject parcel completed by the applicant. The presence of slopes in excess of fifteen (15) percent may influence the planning and design of a development proposal. For this reason, applicants are strongly encouraged to complete a slope analysis of the subject parcel prior to submitting subdivision sketch plan applications or land use permit applications.

5.6.5 Setbacks on Hillside Property

The required setbacks for existing parcels as of the date of the adoption of this ordinance within any given district may be waived if it is determined by the County Zoning Administrator that no suitable building site is available due to the presence of slopes in excess of fifteen (15) percent. Any request for waive of a required setback must be accompanied by proof of slopes in excess of fifteen (15) percent and justification provided by the applicant that all reasonable efforts have been made to design a structure which complies with setback requirements.

5.6.6 Application for Land Use Permits on Hillside and Ridgeline Land

The following review process, design standards, review criteria and variance provisions shall apply for all land use permit applications for hillside or ridgeline land.

- a) Review Process for Land Use Permits on Hillside and Ridgeline Land. The review of land use permit applications will be administered by the Planning and Zoning Board in accordance with this Ordinance. Upon submittal of a land use permit application on hillside or ridgeline land, the Planning and Zoning Board shall review the application for compliance with design standards and review criteria outlined in this section, Appeals of staff decisions shall be considered in accordance with the procedures outlined in the Administration section of this Ordinance.
- b) The following material shall be submitted in conjunction with a land use permit application on a hillside or ridgeline land:
 - 1) Topographic survey of the building envelope prepared by a land surveyor. The building envelope shall be defined to include that portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages. Decks, patios, terraces, retaining walls, fences, recreational facilities and site access may be located outside of the building envelope. The topographic survey shall be drawn at a scale of 1":20' or greater and the contours shall be indicated at two-foot intervals. The survey shall also indicate easements, existing drainages, mature stands of trees with eight inch or greater caliper and approved building envelope (if applicable).
 - 2) Slope analysis indicating the percent slope of the portion of the lot on which all development and site improvements are located.
 - 3) Site plan at a scale of 1":20' or greater indicating the location of all proposed structures, site access, retaining walls and other site improvements.
 - 4) Building elevations indicating exterior wall materials roof material, heights of roof ridges, and existing grades, and proposed finished grades around all structures.
 - 5) Construction/site disturbance plan indicating proposed limits of construction, methods for protecting existing vegetation and locations for storage of construction material and equipment, trailers, dumpsters and sanitary facilities.
 - 6) Grading and drainage plan drawn at the same scale as the site plan indicating all proposed re-grading, cross-sections of

all proposed cuts and fills, heights of all proposed retaining walls, and proposed site drainage.

- 7) Erosion control plan indicating all proposed measures to control surface water run-off, retain eroded soil material during construction and permanently stabilize disturbed slopes and drainage features upon completion of construction.
 - 8) Photo overlays or other visual tools to demonstrate the visual impact of the proposed development.
- c) The extent of the areas indicated on the topographic survey, slope analysis, landscape plan, grading and drainage plan, erosion control plan and construction plan may be limited to only those portions of the building envelope where development and site improvements are proposed. At a minimum, such plans shall include portions of the site within one hundred (100) feet of all proposed development and site improvements and any other portion of the site as may be necessary to evaluate the land use permit.
 - d) If warranted by the nature of the proposed development, the presence of unique site characteristics or other considerations, the Planning and Zoning Board may modify or waive any of the submittal requirements listed above.

5.6.7 Design Standards for Land Use on Hillside Land

All development and site modifications proposed on the land use permit application on hillside land shall comply with each of the following design standards:

- a) No buildings shall be located on portions of a lot in excess of 25 percent slope.
- b) Building height shall not exceed 33 feet on buildings with a sloping roof and 30 feet for buildings with a flat roof, as measured vertically from the average elevation of the proposed finished grade at the front of a building to the highest point of a flat roof, the deck line of a mansard roof and the mean height between the eaves and ridge for gable, hip and gambrel roofs.
- c) All buildings shall be located within an approved building envelope (if applicable).

5.6.8 Review Criteria for Land Use Permits on Hillside Land and Ridgeline Land

The following design criteria shall be used by the Planning and Zoning Board to evaluate land use permit applications on hillside land. It shall be the burden of the applicant to demonstrate that proposed development complies with the following criteria, that one or more of the criteria are not applicable, or that a practical solution consistent with the purpose of this section has been achieved. The Planning and Zoning Board shall act on applications by either approving, approving with conditions or denying the application based on compliance with the following criteria:

- a) Buildings, site improvements and driveways shall be sited and designed to minimize the loss of vegetation and the need for site grading, cuts and fills, and retaining walls.
- b) Buildings shall be designed to bench into hillsides and building level changes shall be accomplished by stepping the building with the natural contours of the site.
- c) Existing vegetation and natural topography of a site shall be incorporated into the design and siting of buildings, site improvements and driveways in order to minimize their visibility from roadways within the district and to integrate improvements with the natural characteristics of the site.
- d) Site grading shall be designed to blend with the natural contours of the site by feathering all cuts and fills into existing natural grades. Overlot grading of a site to create a flat building site is not permitted.
- e) If warranted by site conditions, the use of retaining walls is encouraged in order to minimize grading, preserve existing plant materials and reduce overall site disturbance. Retaining walls visible from roadways or adjacent properties shall not exceed six feet in height. Retaining cuts in excess of six feet shall be accomplished by two or more retaining walls. In such cases, retaining walls shall be separated by a minimum of two feet in order to allow for the introduction of landscape materials.
- f) Driveways shall be constructed in such a fashion to allow access (ingress and egress) to all emergency vehicles. Driveways shall be designed follow existing contours to the extent possible and be designed to minimize the loss of vegetation and the need for grading and cuts and fills. Appropriate driveway standards may

vary depending on site specific considerations. Generally, driveways should not exceed 10 percent slope and 14 feet in width. In order to facilitate re-vegetation, cut and fill slopes should be re-graded to no more than a 3:1 slope. Re-graded slopes in excess of 3:1 slope may be approved if steeper slopes will minimize site disturbance and preserve existing vegetation.

- g) It is recommended that the color of exterior walls, roofs and retaining walls shall be limited to muted earth tones. Such colors should be selected to blend buildings and improvements with the terrain and vegetation of the surrounding landscape. All roofs shall be constructed of non-reflective materials.
- h) Exterior lighting shall include horizontal cutoffs and be designed and located in a manner that minimizes the impact of direct light sources on adjacent properties, rights-of-way and roadways. Lighting shall be limited to low-level down lighting necessary to illuminate driveways, walks and entryways for safety and security purposes. Up-lighting of trees or structures is not permitted.
- i) The re-vegetation and erosion control plans shall provide appropriate measures for short-term soil stabilization and control of site drainage and the long-term restoration of disturbed areas of the site.
- j) Structures and site improvements shall be designed in accordance with soils and slope suitability analyses (if applicable).
- k) The construction/site disturbance plan shall limit site disturbance to an area of the site no larger than necessary to develop the site in accordance with approved plans and shall include on-site measures necessary to limit disturbance of the site and protect existing vegetation.

5.6.9 Design Standards for Land Use Permits on Ridgeline Land

All development and site modifications proposed by the land use permit application on ridgeline land shall comply with each of the following design standards:

- a) No part of any structure or site improvement shall break the silhouette created by the prominent ridgeline and the sky. For the purposes of these guidelines, a canopy of existing trees located on the top of a ridgeline shall be considered a part of the prominent ridgeline.

- b) Building height shall not exceed 33 feet on buildings with a sloping roof and 30 feet for buildings with a flat roof as measured vertically from average elevation of the existing grade or finished grade (whichever is the more restrictive), at the front of a building to the highest point of a flat roof, the deck line of a mansard roof and the mean height between eaves and ridge for gable, hip, and gambrel roofs.
- c) All buildings shall be located within an approved building envelope (if applicable).

5.6.10 Variances for Land Use Permits on Hillside Land

Variances to Section 5.6.7 Design Standards for Land Use Permits on Hillside Land shall be considered by the Planning and Zoning Board in accordance with the procedures outlined in this Ordinance. Prior to approving a variance request, the Planning and Zoning Board and the Commission shall make one or more of the following findings:

- a) Compliance with one or more of the design standards would deprive an owner of the reasonable use of its property;
- b) There are no practical alternatives to locating buildings on portions of the site that exceed 25 percent slope. Prior to approving a variance to build on portions of a site in excess of 25 percent, the applicant shall demonstrate that soil and or geologic conditions of the site are such that the proposed development does not pose a danger to the public health and safety, or that any potential hazard can be reduced to a reasonable level with corrective engineering or other mitigating measures. All building foundations, retaining walls, roads and utilities shall be designed by a licensed engineer in accordance with the recommendations of soil and/or geotechnical studies.
- c) The proposed variance will result in greater compliance with the overall intent by preserving the natural character, visual quality and aesthetic value of hillsides in a manner that would not otherwise be possible by the strict adherence to Section 5.6.6 Design Standards for Land Use Permits on Hillside Land.
- d) Additions or remodels of existing structures on hillside land shall be exempt from the provisions of Section 5.6 provided the square footage of such addition does not exceed 50 percent of the square footage of the existing structure.

5.6.11 Proposed Subdivision of Hillside and Ridgeline Land.

The design standards, review criteria and variance and exemption provisions of this section shall apply to all minor and major subdivision applications on hillside or ridgeline land.

- a) **Applicability of Zoning Requirements to Subdivision Process.** Design standards and review criteria outlined in this Section shall be used by the Commission in conjunction with applicable subdivision review criteria to evaluate the proposed subdivision of hillside or ridgeline land. In the event of any conflicts between these design standards and subdivision review criteria, the most restrictive provision shall apply.

Submittal material shall include all material required by the subdivision regulations for minor or major subdivisions and photo overlays, visual simulations, field staking or other visual techniques to demonstrate the location and visual impact of proposed development sites.

If warranted by the nature of the proposed development, the presence of unique site characteristics or other considerations, the Planning and Zoning Board may modify or waive any of the submittal requirements listed above.

5.6.12 Design Standards for the Subdivision of Hillside Land and Ridgeline Land

Notwithstanding any language to the contrary in the Billings County Subdivision Regulations, subdivision applications on hillside land and ridgeline land shall comply with each of the following design standards:

- a) Building envelope defines the portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages. Decks, patios, terraces, retaining walls, fences, recreational facilities and site access may be located outside of the building envelope.
- b) No portion of a building envelope shall exceed 25-percent slope.
- c) Any portion of a site in excess of 40-percent slope shall not be considered in the calculation of allowable density on land

zoned or proposed to be zoned for densities greater than one unit per 20 acres.

- d) Building envelopes on ridgelines shall be sited such that the future development of the building envelope can be accomplished without breaking the natural silhouette created by the prominent ridgeline and the sky. For the purposes of these guidelines, a canopy of existing trees located on the top of a ridgeline shall be considered a part of the prominent ridgeline.

5.6.13 Review Criteria for the Subdivision of Hillside and Ridgeline Land

The following design criteria shall be used by the Planning and Zoning Board and the Commission to evaluate subdivision applications on hillside land and ridgeline land. It shall be the burden of the applicant to demonstrate that the proposed subdivision complies with each of the following criteria, that one or more of the criteria are not applicable, or that a practical solution consistent with the purpose of this section has been achieved.

- a) Building envelopes shall be sited to utilize existing vegetation and natural topography of the site in order to integrate the building with the site and to minimize the visibility of the building from the roadway corridor.
- b) Building envelopes shall be sited such that future access to the envelope can be integrated with the natural characteristics of the site in a manner that will require a minimal amount of site grading, cuts and fills, retaining walls and loss of vegetation.

5.6.14 Variances to 25 Percent Slope Limitation for New Building Envelopes on Hillside Land

It is the intention of these regulations that no portions of new building envelopes exceed 25 percent slope. However, if properly sited, designed and engineered, construction on slopes between 25 to 40 percent can be accomplished while mitigating potentially adverse visual and safety impacts commonly associated with development on steep slopes. The purpose of this Section is to establish criteria for reviewing proposed subdivisions that include building envelopes with slopes between 25 to 40 percent.

Review procedures and submittal requirements for variance requests to the 25 percent slope limitation for proposed building envelopes shall be as outlined in this Section. The burden of proof shall be on the applicant to demonstrate that the proposed building envelopes are in compliance with all applicable guidelines and development standards. The following submittal material shall also be provided by the applicant:

- a) Specific design guidelines and standards proposed by the applicant that demonstrate how the proposed development of said building envelopes will comply with all applicable review criteria.
- b) Design Standards. In addition to design standards and review criteria outlined in the subdivision regulations, subdivision applications for variances to the 25-percent slope limitation for proposed building envelopes on hillside land shall comply with each of the following design standards:
 - 1) Building envelopes shall be required for all proposed lots. The building envelope defines the portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages. Decks, patios, terraces, retaining walls, fences, recreational facilities and site access may be located outside of the building envelope.
 - 2) No portion of the proposed building envelope shall be located on slopes in excess of 40 percent and no access or site improvements shall be permitted on portions of a site that exceed 40 percent slope.
 - 3) All building foundations, retaining walls, roads and utilities shall be designed by a licensed engineer in accordance with applicable soil and/or geotechnical studies.
- c) Review Criteria. The following review criteria shall be used by the Planning and Zoning Board for evaluating proposed variances to the 25 percent slope limitation for new building envelopes:
 - 1) Submittal material and design guidelines and standards prepared by the applicant shall clearly

demonstrate that locating building envelopes on land with slopes in excess of 25 percent will lessen the visual impacts and improve the overall environmental and aesthetic quality of the proposed subdivision in a manner that would not otherwise be possible by the strict adherence to Section 5.6.7.

- 2) Soils analysis and geotechnical studies shall clearly demonstrate that the development of the proposed subdivision and lots does not pose a danger to the public health and safety or that any potential hazard can be reduced to a reasonable level with corrective engineering or other mitigating measures, and that any necessary mitigating measures shall be incorporated into the development of the subdivision and the subsequent development of proposed building envelopes.
- 3) Building envelopes are sited to utilize existing vegetation and natural topography of the site in order to integrate the building with the site and to minimize the visibility of the building from the designated roadway corridor.
- 4) Building envelopes are sited such that future access to the envelope can be integrated with the natural characteristics of the site in a manner that will require minimal amount of site grading, cuts and fills, retaining walls and loss of vegetation.

ARTICLE VI

SPECIAL PROVISIONS

6.1 Off-Street Parking

6.1.1 General Requirements

- a) An off-street automobile parking space shall be at least nine (9) feet wide and twenty (20) feet long, exclusive of access drives.
- b) All open off-street parking areas with four (4) or more spaces and all loading berths shall be: (a) gravel, concrete, or asphalt surfaces; (b) graded to dispose of all surface water run-off but not be diverted to adjoining properties.

6.1.2 Special Requirements

No building shall be erected or enlarged without meeting the following parking requirements:

- a) Businesses, professional or public office buildings, studios, banks , medical or dental clinics: three (3) parking spaces plus one additional space for each four hundred (400) square feet of floor space over one thousand (1,000) square feet.
- b) Private clubs or lodges: two parking spaces for each two hundred (200) square feet of service area.
- c) Restaurants and other eating and drinking establishments: one parking space for each one hundred (100) square feet of floor area.
- d) Industrial uses: one off-street parking space for every one and one-half employees.

6.2 Junk or Salvage Yards

6.2.1 Site Approval Requirements

All sites for salvage and junkyards require approval by the Commission.

6.2.2 Location Standards

- a) No salvage or junk yard shall be located within one thousand (1,000) feet of a residential district or within two hundred (200) feet of commercial buildings and structures.
- b) No salvage or junk yard shall be located in areas, which due to high water table, flooding, and soil conditions may affect the quality of surface or ground water.
- c) No salvage or junk yard shall be located nearer than five hundred (500) feet off all road and highway rights-of-way.
- d) All salvage yard or junk yard operations shall be screened from public view. Such screening shall be by natural vegetation, fences of at least ten (10) feet in height, building and or land form.
- e) Storage items shall not be higher than fences or screens.

6.3 Commercial Feed Lots

6.3.1 Purpose

These regulations are designed to allow feedlots for feeding of livestock, furbearers, and poultry at the same time to protect the adjoining uses from odor, run off, and other incompatible or undesirable characteristics associated with feedlots.

6.3.2 General Requirements

- a) All feed lots as defined by this Ordinance are permitted as conditional uses subject to the provisions of this Ordinance, the requirements of the North Dakota Health Department, and approval by the Commission.
- b) All commercial feed lots shall be designed and constructed with all reasonable preventative measures to avoid surface run-off including construction of sealed collection and retention ponds.
- c) Where appropriate, there shall be sufficient drainage to avoid pollution of the ground and surface water from the standing effluents.
- d) Commercial feedlots shall not be placed in the floodplains.

- e) An applicant, as part of the site approval application, shall submit a plan for removal and disposal of the liquid solid waste generated by the commercial feedlot.
- f) An “animal unit equivalent” is a unitless number developed from the nutrition and volume characteristics of manure for a specific livestock types. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific livestock type which produce comparable bulk quantities of manure. The animal equivalent units for types of livestock and the number of livestock for facility size thresholds of 300 animal units (AUE), and so forth, are listed in the following table.
- g) No feed lot shall be located nearer than .5 (one-half) miles from a residence other than the owner/operator’s, residential development in an unincorporated area or city limits in the county, park, cemetery, church, or school.

6.3.3 Water Resource Setbacks

An applicant of a new commercial feedlot operation that has more than 300 animal units shall not locate or establish that operation:

- a) Within a delineated source water protection area for a public water system.
- b) Within 1,200 feet of a private ground water well which is not owned by the operator or within 1,500 feet of a public ground waterwell which does not have a delineated source water protection area.
- c) Within 1,000 feet of surface water which is not included in a source water protection area.

Equivalent Numbers of Livestock (hd)

For Four Sizes (a.u.) of Animal Feeding Operations

Livestock Type Equivalent	Animal Unit	300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2	200 hd	666 hd	1,333 hd	3,333 hd
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef	1.0	300	1,000	2,000	5,000
1 beef feeder-finishing	1.0	300	1,000	2,000	5,000
1 beef feeder-backgrounding	.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine>55 lbs	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 turkey	0.018	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	300,000

Setback Distances for Animal Feeding Operations

Number of Animal Units	Hog Operations	Other Operations
100-299	1 mile	0.50 mile
300-999	2 miles	1 mile
1,000 or more	3 miles	2 miles

6.3.4 Application Procedure and Requirements

The application for a conditional use permit to operate a facility for a commercial feeding operation shall include a scaled site plan. If the facility will handle more than 300 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer, or other person having comparable experience or qualifications. The application shall also list or provide:

- a) The proposed number of animal units.
- b) Total acreage of the site of the facility.
- c) Existing and proposed roads and access ways within and adjacent to the site of the facility.

- d) Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
- e) A copy of the permit application submitted by the applicant to the North Dakota State Department of Health.

6.4 Sanitary Landfills and Solid Waste Sites

6.4.1 Solid Waste Disposal Facility

Solid waste disposal facilities as regulated by this Section shall include all facilities for the incineration of disposal of solid waste or solid waste residue which are required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories. A solid waste disposal facility may be allowed in any Agricultural District as a conditionally permitted use provided:

- a) It is located at least one-half (1/2) mile from any residence or residential zone area unless written approval is obtained from the owner of any residence within this area.
- b) It is continuously licensed and approved by the North Dakota Department of Health as to location and operation.
- c) There is no substantive evidence that the facility will endanger the public health or the environment.
- d) The conditional use permit will be valid for a period of time set by the Commissioners.
- e) For the permit to be approved, sixty percent (60%) of all property owners within one-half (1/2) mile of the proposed location must approve of the proposed facility.

6.4.2 County Code and Procedures

The County hereby adopts solid waste provisions of NDCC 11-33-20, to assure meeting the purposes of this Ordinance and the Comprehensive Plan.

6.4.3 Site Approval Requirements

All solid waste sites require on-site reviews prior to approval by the Commission.

6.4.4 Collection of Solid Waste

No person may collect or transport waste materials for a fee without obtaining a permit from the County. Storage of solid waste materials shall be confined to buildings and structures designed specifically for such purpose and shall be secured by appropriate fences and gates. The openings to the buildings and structures, including but not limited to conveyors, doors, ramps, and other points of access for use by transport or moving vehicles when not in use shall be closed air tight to minimize the impact from odor and concentration of insects and rodents.

6.5 Recycling Facilities

A recycling facility by definition is a place where any material including yard waste, oil, glass, metal, plastic, paper, or cardboard is processed for an end use. Because of the nature of the recycling facilities as permanent structures, zoning approval and a conditional use permit is required. The following are required to obtain a conditional use permit:

- 1) The facility shall not abut residential and public uses.
- 2) The facility will be screened from the public right-of-way.
- 3) The facility shall not be placed in the floodplain.
- 4) The site shall be free of litter and other undesirable materials. Containers shall be clearly marked to identify the type of material that may be deposited.
- 5) There shall be pest control plan for review and approval.

6.6 Public Nuisances

The maintenance of public nuisances including, but not limited to noxious weeds, smoke, gases, radio interference, blighted structures or buildings, accumulation of junk, trash, rubbish, automobiles, dead or diseased trees shall be prohibited.

6.7 Noise

Sustained noise of over 80 decibels (dB) during the day and 70 decibels (dB) at night is prohibited.

6.8 Fences

- 1) No site-obscuring fence over 48 inches (48) in height shall be erected within the front yard of any lot used for residential purposes.
- 2) No permanent fence shall be constructed on a road right-of-way or within the confines of the ditch backstop.
- 3) Electrical fences shall conform in all respects to the State of North Dakota regulations for electrical wiring and shall be energized only with Underwriters Laboratories approved equipment.

6.9 Home Occupations

6.9.1 A home occupation in an unincorporated community:

The following requirements must be satisfied in order for a home occupation located in an unincorporated areas within the County to constitute a conforming use in any zoning district where such uses are authorized:

- a) The occupation shall be limited to the dwelling and the area of the occupation shall not exceed twenty-five (25) percent of the main floor area, excluding any basement or garage floor space.
- b) Structural changes shall not be made in the dwelling, unless a certificate/ application is first obtained.
- c) Employees are limited to two full-time or four part-time besides the owners.
- d) No sign may be permitted larger than four (4) square feet.
- e) Evidence of the home occupation shall not be visible from the road.
- f) The home occupation shall not adversely affect the character of the uses permitted in the zoning district in which it is located.

6.9.2 Rural Home Occupations:

Rural home occupations shall conform to the requirements for suburban homes except:

- a) Rural home occupations may be located in a separate non-residential or farm building provided any building principally used for the home occupation shall not exceed one thousand two hundred eighty (1,280) square feet. The minimum lot size for a separate non-residential building shall be one (1) acre.
- b) Employees are limited to two full-time or four part-time personnel.
- c) Structural additions may be made to a dwelling provided the applicant obtains approval from the Commission and the alterations shall not exceed twenty-five (25) percent of the main floor area of the dwelling, but not including basement or garage floor area.

6.10 Adult Entertainment Centers

- 1) An adult entertainment center shall not be located within 1,250 feet of any religious institution, cemetery, school, park, or recreation area.
- 2) An adult entertainment center may be located only in an industrial zoning district
- 3) An adult entertainment center shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises.
- 4) An adult entertainment center shall not be located within 1,250 of any other adult entertainment center.
- 5) An adult entertainment center must prohibit entrance by persons less than 18 years of age.
- 6) An adult entertainment center may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, as an adult book store, adult entertainment facility, adult cinema, or combination thereof.
- 7) No material depicting specified sexual activities or specifies anatomical areas shall be visible from the exterior of an adult entertainment center.

- 8) The business premises of an adult entertainment center that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

6.11 Wind Energy Facility

The purpose of these regulations is to provide a regulatory framework for the siting, construction and operation of Wind Energy Facilities in the County, subject to reasonable restrictions, that will preserve the safety and well-being of the residents of the county, while allowing equitable and orderly development of Wind Energy Facilities.

6.11.1 Regulatory Framework

- (a) Zoning

Wind Energy Facilities may be constructed within the county, subject to the restrictions and conditions of this Ordinance.

- (b) Principal or Accessory Use

A different existing use or an existing structure on the same parcel shall not preclude the installation of a Wind Energy Facility or a part of such facility on such parcel. Wind Energy Facilities that are constructed and installed in accordance with the provisions of this Ordinance shall not be deemed to constitute expansion of a nonconforming use or structure.

- (c) Applicability

The requirements of this ordinance shall apply to all Wind Energy Facilities with one or more wind turbines rated at one hundred (100) kilowatts nameplate capacity or larger constructed after the effective date of this Ordinance. No operation of an existing Wind Energy Facility shall be allowed without full compliance with this Ordinance and its Wind Energy Facility Siting Permit, and no modification or alteration of an existing Wind Energy Facility shall be allowed without issuance of a new Wind Energy Facility Siting Permit pursuant to Section 6.11.3.

6.11.2 Wind Energy Facility Siting Permit

a) Application for Permit

No work, except for wind monitoring, soil testing and other survey work, may commence on a Wind Energy Facility until a Wind Energy Facility Siting Permit ("Permit") has been issued by the Commission. An applicant for a Wind Energy Facility Siting Permit must submit an application Planning and Zoning Board. The application shall be signed by an authorized representative of the applicant, include a fee to be determined by the Commission for each proposed Wind Turbine, and includes the following information:

- 1) The complete name, legal address and phone number of the applicant and responsible contact person.
- 2) A USGS topographical map of the Wind Energy Facility and 500 feet of all adjoining properties adjoining the Wind Energy Facility Perimeter. The map must show all existing features, including property boundaries, structures, improvements, roads, utility lines, public facilities and natural features. The map must also show the location of all proposed improvements for the Wind Energy Facility, including wind turbines, MET Towers, electrical lines and roads. Each proposed Wind Turbine shall be numbered and fully described in technical details, including rotor diameter, model, and manufacturer, and distances, measured in feet, from property lines and from existing improvements for each proposed wind turbine.
- 3) Details as to how the applicant will comply with each item in Section 6.11.5.
- 4) A schedule for the proposed start and completion of construction of the Wind Energy Facility.
- 5) Copies or signed summaries of all leases and easements for Wind Turbines and associated equipment and infrastructure to be sited within the county and copies of any written agreements between the applicant and affected parties holding associated wind rights on adjoining properties.

6.11.3 Public Hearings

Upon receipt of the application, the Planning and Zoning Board along with any experts it may retain, shall review the permit application and, in its discretion, may hold a public hearing on the application within no more than forty-five (45) days from receipt of the application, providing at least fifteen (15) days notice prior to the hearing in the official newspaper of the County and mailing written notice to property owners within five hundred (500) feet of the proposed Wind Energy Facility perimeter.

If the Planning and Zoning Board finds that the applicant for the Wind Energy Facility Siting Permit has satisfied all applicable requirements, it shall recommend approval by the Commission. The Commission must approve, approve with conditions, or deny the application within sixty (60) days of the date of the submission of the application, or, when held, the date of the public hearing.

6.11.4 Demonstration of Compliance

A Wind Energy Facility Siting Permit issued pursuant to Section 6.11.3 shall be contingent upon the applicant's final demonstration of compliance with the requirements of the permit following completion of construction of the Wind Energy Facility. Within 90 (ninety) days of Wind Energy Facility construction, the Permittee shall submit to the Planning and Zoning Board an updated and final USGS topographical map, or survey if available, providing all information pursuant to Section 6.11.2.1(2) and demonstrating actual compliance with the requirements and conditions of the permit.

6.11.5 General Requirements for Wind Energy Facilities

- a) Appearance, Lighting, Facility Footprint, Agricultural Operations, Roads and Power Lines
 - 1) Wind turbines shall be painted a non-reflective, non-obtrusive color.
 - 2) Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy Facility.
 - 3) Each wind turbine shall be marked with a visible identification number to assist with provision of emergency services, and a Permittee shall file with local fire

departments, law enforcement and the county emergency management coordinator a Wind Energy Facility map identifying Wind Turbine locations and numbers.

- 4) Wind Turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
- 5) At Wind Energy Facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the Wind Energy Facility to the natural setting and existing environment.
- 6) At Wind Energy Facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the county.
- 7) A Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the Wind Energy Facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.
- 8) A Permittee shall ensure that, following completion of construction of a Wind Energy Facility, county roads will be repaired or restored to a condition at least equal to the condition prior to construction of such Facility.
- 9) A Permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. [This paragraph does not apply to feeder lines.]
- 10) A Permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or a Permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public rights of way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the Permittee

shall place the feeder in accordance with the easement negotiated with the affected landowner.

(b) **Setbacks**

The following setbacks and separation requirements shall apply to all wind turbines in a Wind Energy Facility.

- 1) **Occupied Structures and Facilities:** Each wind Turbine shall be set back from the nearest occupied dwelling, commercial building or publicly-used structure or facility at a distance not less than 2,640 feet (one-half mile).
- 2) **Public Roads and Above Ground Communication and Electrical Lines:** Each wind turbine shall be set back from the nearest public road or above ground communication and electrical lines at a distance not less than two hundred (200) feet, determined from the center of the existing right-of-way.
- 3) **Wind Energy Facility Perimeter:** Each wind turbine shall be set back from the Wind Energy Facility Perimeter at a distance not less than two and one-half (2.5) times the rotor diameter of the wind turbine. A variance may be granted if an authorized representative or agent of the Permittee and those affected parties on adjoining properties with associated wind rights signs a formal and legally-binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.

6.11.6 Minimum Ground Clearance

The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

6.11.7 Restoration of Property

Within one hundred and eighty (180) days of termination or abandonment of leases or easements for a Wind Energy Facility in the county, the Permittee shall cause, at its own expense, removal of all structures to a depth of four feet below pre-construction grade.

6.11.8 Transfer of Wind Energy Facility Siting Permit

In the event of a change in ownership or controlling interest in a Wind Energy Facility and the transfer of a Wind Energy Facility Siting Permit, any successors and assigns of the original Permittee shall comply with the requirements and conditions of such Permit for the duration of operation of a Wind Energy Facility permitted in the county. Within thirty (30) days of such change in ownership or controlling interest of any entity owning a Wind Energy Facility, the parties to the transaction shall notify the Commission by letter and provide information pursuant to Section 6.1.3. The letter shall be signed by the authorized representatives or agents of both the original Permittee and the entity to which the Permit is being transferred.

6.12 Signs

The purpose of regulating signs in the County is to provide for a visually pleasant environment and minimize potentially unsafe conditions, while also offering opportunities for public and private information and advertising.

6.12.1 General Requirements

- 1) Signs providing directions for permitted uses shall not be larger than twenty (20) square feet in area.
- 2) Signs providing directions for conditional uses shall not be larger than forty (40) square feet.
- 3) Advertising signs shall not be larger than ninety-six (96) square feet.

6.12.2 Special Requirements

- 1) Signs in a Residential District shall be limited to: (a) one sign per dwelling structure not exceeding twelve (12) square feet in an area which may be wall, pedestal, ground or projecting type; (b) One temporary sign such as "For Sale", or "For Rent", not exceeding twenty (20) square feet in area.
- 2) Signs in the Commercial and Industrial Districts shall be limited to: (a) one general identification sign per business not exceeding fifty (50) square feet in area which may be wall, pedestal, ground, or projecting type; (b) temporary signs including "For Sale", political campaign signs, greeting signs, and rally signs not exceeding fifty (50) square feet in area; (c) Directory and advertising signs in the Agricultural, Commercial, and Industrial districts shall not be larger than ninety-six (96) square feet in area and placed nearer than six hundred (600) feet apart.

- 3) The placement of all signs shall be subject to the setback requirements of the district in which they are located and in no event upon a county roadway or right of way.
- 4) No flashing or bare bulb signs are allowed.
- 5) Signs if allowed in Residential Districts are limited to ten (10) feet in height.
- 6) Signs in Agricultural, Commercial, and Industrial Districts shall be limited to twenty-five (25) feet in height.

Amendment

6.13 Temporary Crew Housing

6.13.1 Definitions

Temporary Crew Housing (work camp housing):

Modular residential structures used to house workers on a temporary basis for a specified period of time. It may include one or more lodging units which are not mobile homes, as defined in NDCC Section 57- 02-04, and are not mobile homes as defined in NDCC Section 57-55-01.

Crew Housing Permit: A right granted by the County to locate a crew housing facility within the jurisdiction of the County and to enjoy attendant services and facilities provided by the County.

Skid Units: A structure or group of structures, either single or multi-sectional, which is not built on a permanent chassis and is ordinarily designed for human living quarters, or a place of business, on a temporary basis.

6.13.2 Conditional Use Permit

A Temporary Crew Housing Permit authorizes a conditional use, the issuance of which is subject to the procedures contained within Section 7.3 of the Billings County Zoning Ordinance. It is allowable as a conditional use in Commercial and Industrial Districts.

6.13.3 Application Procedure:

An application for a Temporary Crew Housing Permit shall be signed by the applicant or authorized representative and shall include the following information:

- a) A description of the units together with numbering system.
- b) A description of how the proposed units are set/and or anchored.
- c) A statement that roads to be constructed within the facility meet county specifications.
- d) The name and address of the applicant and contact information.

- e) The name and address of the onsite manager and contact information.
- f) A copy of lease (if applicable).
- g) An occupancy list to be maintained and provided to the county 911 emergency coordinator on a current basis.
- h) Plot plans drawn to scale showing housing units, additional structures, setbacks, utilities, drainage, ingress and egress, parking plans, screens, buffers, and fencing.
- i) Unit spacing adequate to accommodate emergency services.
- j) List of house rules and regulations.
- k) On site security plan.
- l) Fire and emergency evacuation plan.
- m) Copy of permit, or approval, issued by the North Dakota State Health Department, Southwest Water Authority and Southwest District Health Unit including fresh water, refuse disposal plan, and septic or sewer discharge plan.
- n) Pay a Planning and Zoning Fee in the amount of fifty (50) cents per square foot, per year, of the area encompassing the crew housing units.
- o) A copy of the closure plans.
- p) Submit a surety bond for clean-up purposes using the following schedule:
 - 0-50 person camp - \$ 20,000
 - 51-100 person camp - 30,000
 - 101-250 person camp - 50,000
 - 251-500 person camp - 100,000
 - 501-1200 person camp - 250,000
- q) Off-street parking shall be provided on a one-to-one ratio, one parking space per bed and one per employee.
- r) Any additional information deemed necessary by the Zoning

Administrator, the Planning and Zoning Board, or the County Commission.

6.13.4 Prohibited Housing Types

Recreational vehicles, campers, and mobile homes are prohibited as units in a crew housing facility.

6.13.5 Prohibited Activities

No alcoholic beverages, illegal substances or animals are allowed on the premises of a crew housing facility. No parking will be allowed between units. The site is to be maintained free of garbage and junk.

6.13.6 Termination of Crew Housing Permit

A Crew Housing Permit is a conditional use permit subject to review by the Planning and Zoning Board at any time. The permit may be revoked, pursuant to Section 7.3 of the Billings County Zoning Ordinance, by the County Commission anytime the applicant is in non-compliance with any of the conditions set by the Planning and Zoning Board or the County Commission for the issuance of the permit.

6.13.7 Renewal of Conditional Use Permit

Any Temporary Crew Housing Permit granted in accordance with this section shall expire one year from the date of issuance. The permit may be extended by the Planning and Zoning Board upon written application of the owner of the property or authorized representative provided that the extension is for the same use as specified in the original permit and that the applicant is in compliance with the terms and conditions specified in the original permit.

Adopted this 15th day of July, 2011

Mike E. Kasian
Vice Chairman, Billings County Commission

**AMENDMENT TO
BILLINGS COUNTY ZONING RESOLUTION NO. 1**

6.14 Recreational Vehicles as Temporary Housing

6.14.1

A Recreational Vehicle (“RV”) may be used as a temporary residence:

- 1) If located in a licensed Recreational Vehicle Park pursuant to Section 5.3.2(a) of the Billings County Zoning Ordinance, NDCC Chapter 23-10, and NDAC Chapter 33-33-02; or
- 2) As a Conditional Use in a Residential District pursuant to Section 5.2.2(f) of the Billings County Zoning Ordinance; or
- 3) If the conditions outlined in this section are met.

6.14.2 Conditional Use Permit

The issuance of the Conditional Use Permit is subject to the procedures contained within Section 7.3 of the Billings County Zoning Ordinance.

6.14.3 Criteria for a Conditional Use Permit

- 1) Up to two (2) RV’s may be located on a property with a permanent occupied dwelling.
- 2) The owner of the property must occupy the main dwelling on the property.
- 3) The RV(s) must be connected to a utility pole and connected to a septic system (with approval from the Southwest District Health Unit), and water must be supplied by a potable water source.
- 4) The RV(s) must be located a minimum of 20 feet from all other structures on the property and must meet the required setbacks from property lines, section lines, roads, and highways for the district in which it is located.
- 5) The RV(s) may not be used as a rental property, the intent of this section being only to allow occupancy of an RV as a residence where necessitated by financial hardship, and the charging of rent to the occupant(s) being inconsistent with this purpose.
- 6) The RV(s) must be spaced to adequately accommodate emergency services.

- 7) An occupancy list to be maintained and provided to the county 911 emergency coordinator on a current basis.

6.14.4 Allowable Districts

A permit may be granted in a Residential District or in an Agricultural District only if the property has a minimum of five (5) acres.

6.13.5 Termination of Conditional Use Permit

A Conditional Use Permit granted in accordance with this section is subject to review by the Planning and Zoning Board at any time. The permit may be revoked, pursuant to Section 7.3 of the Billings County Zoning Ordinance, by the County Commission anytime the applicant is in non-compliance with any of the conditions set by the Planning and Zoning Board or the County Commission for the issuance of the permit.

6.13.6 Renewal of Conditional Use Permit

Any Conditional Use Permit granted in accordance with this section shall expire one year from the date of issuance. The permit may be extended by the Planning and Zoning Board upon written application of the owner of the property or authorized representative provided that the extension is for the same use as specified in the original permit and that the applicant is in compliance with the terms and conditions specified in the original permit.

6.14.7 Exception

The requirements of this Section 6.14 do not apply if the RV is occupied for less than thirty (30) total days in a 12-month period.

The above Amendment was approved by the Billings County Board of County Commissioners on the 2nd day of October, 2012.

By: _____
James R. Arthaud, Board Chairman

Attest: _____
Joan Jurgens, County Auditor/Treasurer

**AMENDMENT TO
BILLINGS COUNTY ZONING RESOLUTION NO. 1**

6.15 Supplemental Design Standards

6.15.1

Applicants for zoning permits shall demonstrate compliance of their proposed use and development with the following design standards in the application and shall continue to meet these standards if approved:

- 1) Adequate water service in terms of quality, quantity, and dependability is available to the site to serve the uses permitted
- 2) Adequate sewer service is available
- 3) Adequate fire protection measures are available
- 4) All parking and loading and vehicle storage activities shall take place on the site and no parking shall be permitted within any public right-of-way except in approved residential areas
- 5) An access and traffic management plan shall be provided which identifies anticipated traffic volumes and provides appropriate access locations and circulation patterns within the site. The County may require service roads, acceleration and deceleration, and turning lanes to facilitate the safe and expedient movement of traffic
- 6) Any proposal which involves truck traffic must have an approved dust control plan
- 7) Responsibility for maintenance of the land being developed and a standard for the control of invasive and noxious weeds shall be established as prescribed by the ND Century Code and the Billings County Weed Control Management Plan.

6.15.2

Applicants for zoning permits may demonstrate compliance of their proposed use and development with the following design standards in the application and shall continue to meet these standards if deemed necessary by the board of county commissioners:

- 1) Compliance with the following stormwater management standards:

- a) Onsite retention facilities designed to retain stormwater runoff from the fully developed site from a 100 year storm shall be provided except that a CAFO must meet all applicable County, State, and Federal requirements
 - b) Drainage facilities must be designed by a North Dakota licensed engineer to protect downstream areas from erosion and inundation and must meet all requirements of North Dakota law
- 2) Berms or trees and bushes to screen the development from surrounding areas and which helps to blend the development into the rural landscape

6.16 Medical Marijuana - Compassion Centers

6.16.1 Purpose and Intent

The 2017 North Dakota Legislature enacted Senate Bill 2344, relating to the implementation of the North Dakota Compassionate Care Act. NDCC § 19-24.1 and NDAC § 33-44-01 regulates medical marijuana dispensaries and manufacturing facilities for the cultivation, propagation, and distribution of medical marijuana in North Dakota.

All persons, entities, or organizations wishing to establish a Medical Marijuana Compassion Center within Billings County must apply for and be granted a conditional use permit for said use and have a license from the North Dakota Department of Health, Division of Medical Marijuana.

- a) Marijuana is classified as a Schedule I Controlled Substance by both North Dakota and federal law and the use, cultivation, manufacturing, production, distribution, possession and transportation of marijuana remains illegal under state and federal law;
- b) The county commission does not have the authority to, and nothing in this chapter is intended to, authorize, promote, condone or aid the production, distribution or possession of medical marijuana in violation of any applicable law;
- c) The county commission intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with North Dakota statutes. The regulations are intended to apply to all medical marijuana operations in the county by any medical marijuana business permitted under state law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit state-licensed Medical Marijuana Manufacturing Facilities where they will have a minimal negative impact;
- d) To the extent that Compassion Centers are registered and authorized by the State of North Dakota, this commission desires to provide for their licensing and regulation to protect the public health, safety and general welfare of the citizens of Billings County;
- e) This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a compassion center is a revocable privilege and not a right in the county. There is no property right for an individual or business to have medical marijuana in the county;

- f) Medical marijuana is a heavily regulated industry in the state and county, and the county has a zero tolerance policy for violations of this chapter;
- g) The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the county by prescribing the manner in which medical marijuana businesses can be conducted in the county. Further, the purpose of this chapter is to:
 - 1) Provide for a means of cultivating, manufacturing and distributing of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by state law.
 - 2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
 - 3) Impose fees to cover the cost to the county of licensing medical marijuana businesses in an amount sufficient for the county to cover the costs of the licensing program.
 - 4) Create regulations that address the particular needs of the facilities, patients and residents of the county and comply with laws that may be enacted by the state regarding medical marijuana.

6.16.2 Permitted Districts and Excluded Districts

- a) Compassion centers classified as medical marijuana manufacturing facilities may be allowed as a conditionally permitted use in the following non-residential zoning districts:
 - 1) Agricultural District
 - 2) Industrial District
- b) Compassion centers classified as medical marijuana dispensaries are NOT a permitted use in any zoning district under the authority of Billings County.

6.16.3 Annual Permit Fee

As authorized by the Board of County Commissioners, the Planning and Zoning Director is to establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and/or regulating medical marijuana facilities involved in the cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale or handling of Medical Marijuana. No portion of the fee is refundable if a permit is denied or operation of the compassion center is discontinued for any reason.

6.16.4 Definitions

The definitions contained in NDCC § 19-24.1 Medical Marijuana, NDAC § 33-44-01 Medical Marijuana, and any regulations administered by the North Dakota Department of Health Division of Medical Marijuana, as amended from time to time, are incorporated into this Section by reference. All other applicable definitions are defined in Section 2.3 of this Ordinance and below:

- 1) **Advertising** – the act of providing consideration for the publication, dissemination, solicitation, or circulation, of visual, oral, or written communication; to induce directly or indirectly any person to patronize a particular Compassion Center, or to purchase a particular Medical Marijuana Product, Medical Marijuana Cannabinoid Product, Marijuana Strain, etc. “Advertising” includes marketing, but does not include packaging and labeling. “Advertising” proposes a commercial transaction or otherwise constitutes commercial speech.
- 2) **Alarm Installation Company** – a person engaged in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing a Security Alarm System in a Licensed Premises.
- 3) **Child Care Center** – an entity that regularly provides child day care and early learning services for a group of children for periods less than twenty-four hours licensed by the North Dakota Department of Human Services.
- 4) **Child - Resistant** – special packaging that is:
 - a) Designed or constructed to be significantly difficult for children to open and not difficult for normal adults to use properly.
 - b) Opaque so that the packaging does not allow the product to be seen without opening the package material;

- c) Resealable for any product intended for more than a single use containing multiple servings.
- 5) **Compassion Center Agent** – a principal officer, board member, member, manager, governor, employee, volunteer, or agent of a compassion center.
- 6) **Container** – a sealed, hard or soft bodied receptacle in which usable marijuana is placed.
- 7) **Contaminated** – made impure or inferior by extraneous substances.
- 8) **Edible Medical Marijuana – Infused Product** – any Medical Marijuana-Infused Product that is intended to be consumed orally, including, but is not limited to, any type of food, drink, or pill.
- 9) **Elementary School** – a school for early education that provided the first four to eight years of basic education and recognized by the North Dakota state superintendent of public instruction.
- 10) **Enclosed, locked facility** – a closet, room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access limited to individuals authorized under this chapter or rules adopted under this chapter.
- 11) **Flammable Solvent** – A liquid that has a flash point below 100 degrees Fahrenheit.
- 12) **Flowering** – the reproductive state of Cannabis in which the plant is in a light cycle intended to stimulate production of flowers, trichomes, and cannabinoids characteristic of marijuana.
- 13) **Greenhouse** –An enclosed structure with transparent or translucent, rigid glazing on walls and roof used for growing plants and vegetation under a controlled environment.
- 14) **Grow Room** – a designated fully enclosed, locked, interior space within a Compassion Center used for propagating, cultivating, or growing medical marijuana.
- 15) **Hazardous Waste** – the same as defined in North Dakota Century Code chapter 23-20.3.
- 16) **Immature Plant** – A nonflowering Medical Marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting,

clipping, or seedling and that is in a growing container that is no larger than two inches wide and two inches tall that is sealed on the sides and bottom.

- 17) **Laboratory** – a laboratory selected by the North Dakota Department of Health, Division of Medical Marijuana in accordance with NDAC § 33-44-01-36 to sample and conduct tests in accordance with these rules.
- 18) **Licensed Premises** – the premises specified in an application for a license pursuant to NDAC § 33-44-01 that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, store, transport, or test Medical Marijuana in accordance with the provisions of the state statutes and these rules.
- 19) **Licensee** – any person licensed or registered by the North Dakota Department of Health, Division of Medical Marijuana pursuant to NDAC § 33-44-01.
- 20) **Limited Access Area** – a building, room, or other contiguous area upon the Licensed Premises where the Medical Marijuana is grown, cultivated, stored, dried, weighed, trimmed, extracted, packaged, sold, or processed for sale, under control of the Licensee.
- 21) **Marijuana** - any species in the genus Cannabis, including but not limited to Cannabis sativa, Cannabis indica, and Cannabis ruderalis. Means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.
- 22) **Marijuana Strain** – a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, or potency.
- 23) **Mature Plant** – A Medical Marijuana plant that is taller than eight inches and is in a vegetative or flowering cycle.
- 24) **Medical Cannabinoid Product** – a product intended for human consumption or which contains cannabinoids.
 - a) Medical cannabinoid products are limited to the following forms:
 - (1) Cannabinoid tincture;
 - (2) Cannabinoid capsule;

- (3) Cannabinoid transdermal patch; and
 - (4) Cannabinoid topical.
- b) “Medical cannabinoid product” does not include:
 - (1) A cannabinoid edible product;
 - (2) A cannabinoid concentrate by itself; or
 - (3) The dried leaves or flowers of the plant of the genus cannabis by itself.
- 25) **Medical Marijuana** - Means a product intended for human consumption or use which contains cannabinoid concentrate containing, derived from, or containing a derivative of Marijuana in any form, including but not limited to plants, seeds, and resins or any Medical Marijuana Product.
- 26) **Medical Marijuana Compassion Center** – means a manufacturing facility or dispensary, any facility engaged in the cultivation, manufacturing, acquiring, possession, storage, delivery, transfer, transport, sale, supply, or dispensing of Medical Marijuana or related products to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver, including but not limited to a Medical Marijuana Cultivation and/or Manufacturing Facility and a Medical Marijuana Dispensary.
- 27) **Medical Marijuana Dispensary** – an entity registered with the North Dakota Department of Health under this chapter to acquire, possess, store, deliver, transfer, transport, sell, supply, or dispense Medical Marijuana or related products and educational materials to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver.
- 28) **Medical Marijuana Manufacturing Facility** - an entity registered with the North Dakota Department of Health to acquire, possess, cultivate, or transport Medical Marijuana for the purpose of manufacturing Medical Marijuana or for the delivery, supply, or sale of Medical Marijuana to a Medical Marijuana Dispensary. Facilities may be indoor, outdoor, or a combination of both.
- 29) **Medical Marijuana Indoor Production or “Indoor Grow”** – producing marijuana in any manner utilizing artificial lighting on mature marijuana plants; or, production other than “outdoor production”.

- 30) **Medical Marijuana Outdoor Production or “Outdoor Grow”** – producing marijuana in an expanse of open or cleared ground; or, in a greenhouse, hoop-house, high-tunnel, membrane structure or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources.
- 31) **Medical Marijuana Processing** – or “process” means the compounding or conversion of marijuana into a medical marijuana product.
- 32) **Medical Marijuana Product** – a cannabinoid concentrate or a medical cannabinoid product.
- 33) **Medical Marijuana Registered Designated Caregiver** - an individual who is registered with the North Dakota Department of Health who agrees to manage the well-being of a Medical Marijuana Qualifying Patient with respect to the Medical Marijuana Qualifying Patient's medical use of Marijuana.
- 34) **Medical Marijuana Transporter** – a person that is licensed to transport Medical Marijuana, Medical Marijuana Products, and Medical Cannabinoid Products from the Medical Marijuana Manufacturing Facility to a Medical Marijuana Dispensary in North Dakota, but is not authorized to sell, give away, buy, or receive complimentary Medical Marijuana, Medical Marijuana Products, or Medical Cannabinoid Products, or any other medical marijuana-infused products under any circumstances.
- 35) **Medical Marijuana Qualifying Patient** - a person who has been diagnosed with a debilitating medical condition by a physician licensed to practice medicine in the State of North Dakota and who has in that person’s possession a current, valid photo identification issued by the State of North Dakota or the United States of America and a current, valid document issued by the North Dakota Department of Health to that person and authorizing that person to possess and use Medical Marijuana
- 36) **Medical Marijuana Waste** – unused, surplus, returned, or out-of-date usable marijuana; recalled usable marijuana; contaminated marijuana; or plant debris of the plant of the genus cannabis, including dead plants, trimmings, and all unused plant parts and roots.
- 37) **Monitoring** – the continuous and uninterrupted attention to potential alarm signals that could be transmitted from a Security Alarm System located at a Compassion Center, for the purpose of summoning a law enforcement officer to the premises during alarming conditions.

- 38) **Paraphernalia** – items used for storage or use of usable marijuana, marijuana concentrates, or marijuana infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongs, and storage containers. Items within a compassion center used for growing, cultivating, and processing medical marijuana, such as, but not limited to butane, lights, and chemicals are not considered “paraphernalia.”
- 39) **Pesticide** – a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; except that the term “pesticide” shall not include any article that is a “new animal drug” as designated by the United States Food and Drug Administration.
- 40) **Plant Canopy** – the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for storage of fertilizers, pesticides, or other products, quarantine, office space, etc. Plant canopy is measured from the perimeter dimensions of the area encompassing the plant vegetation.
- 41) **Playground** - a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.
- 42) **“Producing,” “produce,” or “production”** - the planting, cultivating, growing, trimming, or harvesting of the plant of the genus cannabis or the drying of the leaves or flowers of the plant of the genus cannabis.
- 43) **Propagation** – the reproduction of Medical Marijuana plants by seeds, cutting, or grafting.
- 44) **Public Park** – an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a charitable nonprofit organization, city, county, state, federal government, or other park district.
- 45) **Recreation Center or Facility** – a supervised center that provides a broad range of public activities and events owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government or other park district.
- 46) **Secondary School** – a high and/or middle school: A school for students who have completed their primary education, usually attended by children

in grades seven to twelve and recognized by the North Dakota state superintendent of public instruction.

- 47) **Security Alarm System** – a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).
- 48) **Shipping Container** – a hard sided container with a lid or other enclosure that can be secured in place, and the container is used solely for the transport of Medical Marijuana or Medical Marijuana-Infused Product in bulk, or in a quantity for other Medical Marijuana Businesses.
- 49) **THC** – tetrahydrocannabinol
- 50) **THCA** – tetrahydrocannabinolic acid
- 51) **Unrecognizable** – marijuana or Cannabis plant material rendered indistinguishable from any other plant material.
- 52) **Vegetative** – the state of the Cannabis plant during which plants do not produce resin or flowers and are bulking up to a desired production size for Flowering.

6.16.5 Compassion Centers - General Requirements

In addition to the requirements applicable to all Conditional Use Permit applications, an application for a Conditional Use Permit for a Compassion Center must include the following:

- a) Proof of insurance:
 - 1) The minimum amount of third-person insurance coverage for a Compassion Center shall be one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage arising out of licensed activities and one million dollars (\$1,000,000.00) products and completed operations aggregate, commercial automobile coverage

in a minimum of one million dollars (\$1,000,000.00) and excess liability in a minimum of three million dollars (\$3,000,000.00).

- 2) Additional insured: The County shall be named as an additional insured on all general liability, umbrella, and excess insurance policies required under this section. All insurance policies required under this section shall be primary over any other valid and collectible insurance.
- b) List of all persons and entities with an ownership interest in the compassion center including all shareholders that hold any share in stock in the compassion center.
 - c) A security plan depicting the location and configuration of the security cameras and surveillance equipment.
 - d) The Billings County Sheriff's Department shall conduct an initial review of the application and security plan and provide a recommendation to the Planning & Zoning Board and Board of County Commissioners regarding the risk of crime or violence associated with the location and operation of the proposed compassion center.
 - e) The Billings County Fire Chief shall conduct an initial review of the application and provide a recommendation to the Planning & Zoning Board and Board of County Commissioners regarding the risk and response of fire associated with the location and operation of the proposed compassion center.
 - f) All electricity associated with the compassion center shall be grid connected and compliant with state and national electrical codes. All electrical work shall be certified by a North Dakota licensed electrical contractor. Use of generators for production of electricity for the compassion center is prohibited, with the exception of back-up generators connected to the security alarm system and surveillance system only.
 - g) The estimated amount of electricity needed annually, reported in kilowatt hours (KWH), for the growing, manufacturing, and processing of medical marijuana and pre-authorization from a utility company or rural electric cooperative verifying that the site for the compassion center has or will have adequate electrical service and will not negatively affect the electrical service to other properties in the area.
 - h) A complete description of the products and services to be produced or sold by the Medical Marijuana Compassion Center.

- i) A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota and the laws and regulations of the county applicable thereto concerning the operation of a Compassion Center. The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the county, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any legal proceeding relating to such Compassion Center by federal authorities, may render the license subject to immediate suspension or revocation.
- j) A notarized statement that the applicant will hold harmless, indemnify, and defend the county against all claims and litigation arising from the issuance of license and/or a conditional use permit including any claims and litigation arising from the Compassion Center, or operation or ownership of the Compassion Center.
- k) A notarized acknowledgement that the applicant is seeking a Medical Marijuana Compassion Center Conditional Use Permit and that the applicant understands and acknowledges that the burden of proving qualifications to receive such a Conditional Use Permit is at all times on the applicant; that the granting of a Conditional Use Permit for a Medical Marijuana Compassion Center is at the discretion of the county commission; and that the applicant agrees to abide by the decision of the county commission.
- l) All applicable state standards and requirements shall apply in the design and operations of any Compassion Center.
- m) The Planning and Zoning Director may require additional plans, documents, or other information prior to deeming the application complete.
- n) Property that is leased or purchased by the applicant for a Compassion Center must include a surveyed plat that conforms to the provisions for a Minor Subdivision in the Billings County Subdivision Ordinance.
- o) A Conditional Use Permit for a compassion center is considered temporary and shall be reviewed annually by the Board of County Commissioners for renewal. A permit renewal application must be submitted to the county not less than 30 days prior to the expiration of the permit.
- p) If the State of North Dakota or its electorate repeals the Compassionate Care Act or the act is otherwise declared void, all Medical Marijuana

Compassion Center Conditional Use Permits issued by the county commission will be deemed to have immediately expired.

- q) Once a conditional use permit is obtained for a Compassion Center, any change in operation of the facility or in ownership shall require prior approval of the Board of County Commissioners.
- r) Any building modifications or alterations must be approved by the Planning and Zoning Director.
- s) Annual inspection – An annual inspection of the compassion center shall be conducted by the Billings County Planning & Zoning Department, Billings County Sheriff's Department and the Billings County Fire Chief prior to the annual renewal of the Conditional Use Permit.
- t) Evidence of a letter of credit in the amount of \$50,000 to be on file and renewed annually with the Planning and Zoning Department until close of business.

6.16.7 Compassion Centers - Specific Requirements and Design Standards

In addition to the requirements of the underlying zoning district, a compassion center shall meet the following specific requirements and design standards. Where the requirements of the applicable zoning district differ from the special provisions, the more stringent rules will apply.

- a) Compassion centers utilizing Indoor Medical Marijuana Production shall have a minimum lot size of five (5) acres, and structures shall conform to the Industrial District setback and yard requirements outlined in Section 5.5.5 of this Ordinance. Driveways, parking areas, on-site sewage systems, wells, stormwater facilities, and other associated utilities are exempt from this setback.
- b) Compassion centers utilizing Outdoor Medical Marijuana Production shall only be allowed in Agricultural Districts on lots of forty (40) acres or more, and structures and outdoor grows shall have a minimum setback of five hundred (500) feet from each adjacent property line. Driveways, parking areas, on-site sewage systems, wells, stormwater facilities, and other associated utilities are exempt from this setback.
- c) Setback Requirements - The following setback distances shall be measured from the parcel property line to the property line of the protected use:

- 1) Compassion centers must be located a minimum of 2,640 feet (1/2 mile) from a public or private preschool, kindergarten, elementary, secondary or high school, public park, playground, public community center, dependent care facility, homeless shelter, recreation center, child care center, youth center, or place of worship.
 - 2) Compassion Centers must be located a minimum of 2,000 feet from any residential district, or any residential dwelling, trailer, recreational vehicle or recreational district.
 - 3) Compassion Centers must be located a minimum of 2,000 feet from any federally owned properties, such as lands under the management of the US Forest Service, National Park Service, Bureau of Land Management, etc.
- d) Home occupation - A compassion center is prohibited as a home occupation. Marijuana may not be sold from any dwelling unit nor shall marijuana be grown, produced, or processed in a dwelling unit with the intent to sell. No compassion center shall be permitted within a building physically attached to a dwelling unit.
- e) Rural Home occupation - A compassion center is prohibited as a rural home occupation. Marijuana may not be sold from any dwelling unit nor shall marijuana be grown, produced, or processed in a dwelling unit with the intent to sell. No compassion center shall be permitted within a building physically attached to a dwelling unit.
- f) Hours of Operation - A compassion center may open no earlier than 8:00 a.m. and shall close no later than 7:00 p.m. on the same day, Monday through Saturday. A compassion center may open no earlier than 12:00 p.m. and shall close no later than 7:00 p.m. on Sunday.
- g) Medical Marijuana Production:
- 1) Medical marijuana indoor production and processing shall be located entirely within one or more detached, fully enclosed, locked facilities.
 - 2) Medical marijuana outdoor production shall take place within a fully enclosed, locked greenhouse with rigid walls, roof, and doors. Polycarbonate panels or other rigid translucent material shall be used for glazing. Glass, polyethylene sheets, or other non-rigid cloth or plastic-based materials are prohibited for greenhouse glazing.

- 3) Hoop-houses, high-tunnels, or other similar structures with glazing made of polyethylene sheets or other non-rigid plastic-based materials may only be allowed for temporary outdoor production of medical marijuana for a period of two (2) years from the date when all applicable local and state permits and licenses have been obtained. After this time, the structures must be removed and replaced with an indoor production facility or a greenhouse as described in the section above.
- h) Grow rooms, lighting and other electrical requirements:
- 1) Grow rooms for medical marijuana indoor production or enclosed medical marijuana outdoor production shall have a maximum mature plant density of 1 plant per 10 square feet of floor area to allow for adequate ingress and egress.
 - 2) The plant canopy may not exceed more than 50% of the grow room area. The area of the plant canopy is measured from the perimeter dimensions of the area encompassing the plant vegetation.
 - 3) Grow light fixtures for indoor medical marijuana production shall have a maximum electrical power rating of 1000 watts.
 - 4) Light cast by grow light fixtures inside any building used for medical marijuana production or processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
 - 5) Grow rooms for medical marijuana indoor production or outdoor production shall have electrical service metered separately from office areas and other accessory uses.
- i) Fencing:
- 1) Fencing shall be finished in a muted tone that blends with the surrounding natural landscape and shall not be constructed of repurposed materials such as tires, crates, pallets, rubbish etc. or temporary materials such as plastic sheeting, hay bales, tarps, etc.
 - 2) Outdoor marijuana production must be enclosed by a sight-obscuring wall or fence at least eight feet (8') high.
 - 3) Outdoor marijuana waste receptacles and compost piles must be enclosed by an eight feet (8') high solid, secured, non-combustible fence, constructed with materials such as concrete, concrete

blocks, concrete masonry units (CMUs), or insulated concrete forms (ICFs).

- j) The security plan shall be approved by the County Sheriff's Department. The Plan shall include, but is not limited to, the following:
 - 1) The location of all surveillance cameras and surveillance recording equipment including specifications.
 - 2) The maintenance plan and monitoring records of the surveillance cameras and surveillance recording equipment certifying the equipment, technology, and software associated with the surveillance cameras and recording equipment are installed and maintained in good working condition, and used in an on-going manner.
 - 3) The maintenance plan and monitoring records of the security alarm system certifying the equipment, technology, and software associated with the security alarm system are installed and maintained in good working condition and used in an on-going manner. The annual review of the plan shall also include the dates, times, and locations of all tests and alarm activations.
- k) Parking Requirements:
 - 1) One space per 250 square feet of floor area used for office, sales, or personal service operations.
 - 2) One space per 1,000 square feet of floor area used for cultivating, processing, storage, research and development, and/or testing facilities.
- l) Loading requirements - One loading space for every 10,000 square feet of floor area. One loading space minimum for medical marijuana manufacturing facilities.
- m) No drive-through, drive-up, or walk-up facilities shall be permitted.
- n) On-site consumption prohibited – Marijuana, alcohol, and other intoxicants must not be consumed, ingested, inhaled, and/or topically applied anywhere on the premises of the compassion center.
- o) No outdoor storage of usable medical marijuana or medical marijuana products on-site shall be permitted.

- p) Ventilation – Medical marijuana manufacturing facilities must ensure there is no emission of dust, fumes, vapors, or odors into the environment. It is the intent of this ordinance that no odor shall be detectable by a person with a normal sense of smell outside of any building or structure where marijuana is present. As used in this subsection, building means the building, or portion thereof, used for marijuana cultivation, production or processing.
- 1) The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 - 2) The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - 3) The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every six (6) months or as manufacturer recommended.
 - 4) Negative air pressure shall be maintained inside the building.
 - 5) Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
 - 6) An alternative odor control system is permitted if the applicant submits and the county accepts a report by a mechanical engineer licensed in the state of North Dakota demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required. The county may hire an outside expert at the applicant's expense, to review the alternative system design and advise as to its comparability and whether in the opinion of the expert it should be accepted.
- q) Signage – Compassion centers may have up to two (2) signs identifying the facility by its licensed business name or trade name only. Advertising of the goods and/or services or images of paraphernalia are not permitted.
- r) Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals or window signage of any kind are prohibited.

- s) Disposal – Medical marijuana waste shall be rendered unusable and unrecognizable and stored, secured, and managed in accordance with the North Dakota Department of Health, Division of Medical Marijuana and to these provisions:
 - 1) Burning of medical marijuana waste is prohibited.
 - 2) Medical marijuana waste may be composted on site, provided the area is designated as a limited access area, securely fenced to prevent public access, obscured from public view, and the compost piles are monitored and maintained regularly to prevent foul odors, pest infestation, and combustion hazards.
- t) All medical marijuana products sold in Billings County must be packaged in child-resistant packaging.
- u) Upon approval by the North Dakota Department of Health, an applicant with an approved Conditional Use Permit to operate a compassion center in Billings County must submit a copy of the entire application and all documentation of approval by the North Dakota Department of Health to the Billings County Planning and Zoning Department before authorization will be granted to begin construction or operation of said compassion center.

6.16.8 Severability, Exclusions, and Exceptions

- 1) The provisions of this chapter do not waive or modify any other provision of this ordinance with which the Medical Marijuana Compassion Center is required to comply. Nothing in this section is intended to authorize, legalize or permit the Compassion Center, operation or maintenance of any facility, building or use which violates any County ordinance or statute of the State of North Dakota regarding public nuisances, Medical Marijuana, or any federal regulations or statutes relating to the use of controlled substances.
- 2) This chapter shall be null and void if any determination is made, after the adoption of the ordinance enacting this chapter, by any court of competent jurisdiction, that NDCC § 19-24.1, is invalid, or shall be null and void to the extent any portion of such section is held invalid.
- 3) Should any section, subsection, clause or provision of this chapter for any reason be held to be invalid or factually unconstitutional, such invalidity or

unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter, it being hereby expressly declared that this chapter, and each and every section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases of this chapter be declared invalid or unconstitutional.

6.17 Temporarily Permitted Uses

6.17.1 Temporarily Permitted Uses – Purpose

There are certain uses which because of their unique impermanent characteristics cannot be classified as unrestricted permitted uses in any particular district or districts without consideration in each particular case of the impact of those temporary uses upon adjoining lands or public facilities. Such uses, nevertheless, may be necessary or desirable in a particular district provided that due consideration is given to location, development, operation, and closure of such temporary uses.

Permits shall be valid for such period of time as determined by the County Commission and may be renewable at the discretion of the County Commission.

Temporary use permits shall apply to the structures and uses identified as appropriate under each district, and any other activities or uses considered by the Planning and Zoning Commission to warrant limitations on the length of time the land can be occupied by said use or activity. Unless otherwise provided, all temporary use permits are reviewable on an annual basis.

6.17.2 Temporary Use Permit - Application Procedure

An application for a Temporary Use Permit shall be requested and signed by the operator, lessee, or authorized representative of the operator or lessee of the proposed Temporary Use. The application for a temporary use permit shall contain the information required for a Conditional Use Permit in Section 7.3 of this Ordinance in addition to the following information:

- a) The name and address of the applicant and contact information;
- b) A copy of the lease;
- c) A surveyed description or plot plan with dimensions drawn to scale showing features of the proposed use, including, but not limited to,

structures, setbacks, distance to nearest residence, utilities, drainage, ingress and egress, parking plans, screens, buffers, fencing, and storage locations;

- d) A narrative describing the need for the temporary facility in the location proposed including the lack of suitably zoned land in the project area;
- e) Length of time requested by the applicant and a justification for the permit period requested by the applicant;
- f) Consultation with the Billings County Highway Superintendent for the adequacy of roads and access to the site, including the condition and construction of the roads. Obtain Right-of-Way Permits, Pipeline Permits, and Haul Road Agreements as necessary for the proposed use;
- g) A letter from licensed waste disposal facility(ies) stating that the facility(ies) is able and willing to receive sewage and/or refuse from the proposed use (if applicable);
- h) An emergency management plan (if applicable);
- i) A reclamation and re-vegetation plan. The reclamation and re-vegetation requirements may be modified if the operator or lessee has entered into an alternative agreement with the surface owner as stated in the lease;
- j) A temporary use permit fee shall be paid in an amount to be determined by the County Commission.

6.17.3 The following criteria apply to Temporary Use Permits:

- a) Dust shall be controlled on public roads as agreed upon with the Billings County Highway Superintendent;
- b) The use should be located so that existing topography, vegetation and/or distance minimize visibility from state and interstate highways and county roads;
- c) The facility must be located at least one-quarter mile (1,320) feet from an existing residence or Residential District unless a written waiver of this standard is obtained from the property owner;
- d) The facility must be located at least five hundred feet (500') from all road and highway rights-of-way, unless a written waiver of this standard is obtained from the Billings County Highway Superintendent;

- e) The grounds shall be kept free of weeds, junk and trash at all times;
- f) Wildlife-proof trash receptacles shall be used;
- g) Engines, compressors and motors shall be equipped with quiet design mufflers or equivalent. All mechanical equipment shall be placed and operated to contain vibration within the property boundary;
- h) Temporary structures such as skid shacks, office trailers, or hoop buildings that do not require a permanent foundation shall be closed-loop, self-contained structures for electrical, water, and sewer service;
- i) Temporary living quarters are not allowed unless permitted under Section 6.13 of this Ordinance for Temporary Crew Housing;
- j) A specific plan for containment and disposal of fuel and waste from heavy equipment maintenance shall be provided to meet state and federal regulations;
- k) The facility shall not be located in areas, which due to high water table, flooding, and soil conditions may affect the quality of surface or ground water;
- l) The site will be designed as a containment area and shall maintain a minimum distance from perennial or intermittent streams or drainages as recommended by the project engineer or geologist. The operator shall comply with all applicable state and federal regulations regarding protection of waters of the state; and
- m) Access roads shall be maintained at all times to allow emergency vehicles into the site as needed.

6.17.4 Prohibited Uses by Temporary Permit

- a) The storage of hazardous materials (HAZMAT);
- b) The storage of Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM); or
- c) The storage of any other material that may be detrimental to human health or requires specialized equipment or protections for removal from the site.

6.17.5 Time Limitations

Conditional Use Permit approvals for temporarily permitted uses are valid for a period of time as warranted by the Board of County Commissioners as stated on the application and within the minutes. The operator may submit a request for an extension of time before the end of the first period. The operator shall submit to the Director a written narrative describing the condition of the facility, its compliance with each of the County permit requirements, and demonstrate the continued need for the facility in accordance with this Section. Subsequent extensions may be applied for in the same manner.

6.17.6 Closure

When the need for the temporary use is finished, all equipment, materials, and structures must be removed within ninety (90) days of closure except as stipulated in the surface use agreement with the landowner. If the landowner desires that the structures remain on the property, the landowner must apply for the appropriate permit within thirty (30) days of closure of the facility. The County Zoning Administrator shall be notified at least ten (10) days prior to removal of improvements. Within ninety (90) days after the removal is completed, a reclamation report shall be submitted to the County indicating that the site was reclaimed as set forth in the approved reclamation plan.

ARTICLE VII

ADMINISTRATION AND ENFORCEMENT

The administration and enforcement of this Ordinance is hereby vested in the Commissioners and the County Zoning Administrator.

7.1 County Commission

7.1.1 Duties

- a) The Commission shall review and take action on all proposed to this Ordinance.
- b) The Commission or its designee shall review and decide all applications for zoning modifications.
- c) The Commission or its designee shall hear and decide all requests for variances or other relief from the provisions of this Ordinance.
- d) The Commission or its designee shall review all applications for conditional use permits.
- e) The Commission shall hear and decide all appeals of decisions of the Planning and Zoning Board.
- f) The Commission or its designee shall investigate all violations of the provisions of this Ordinance and shall determine and take appropriate remedial action.

7.2 Planning and Zoning Board

- 1) Membership - The Planning and Zoning Board shall consist of no more than seven members appointed by the Commission in accordance with Chapter 11-33 of the NDCC.
- 2) Duties
 - a) The Planning and Zoning Board shall hold public hearings on applications for all proposed amendments to this Ordinance and make written recommendations to the Commission for the approval or denial of such applications.
 - b) The Planning and Zoning Board shall hold public hearings on applications for conditional use permits and make written

recommendations to the Commission for the approval, denial, modification, and/or the imposition of conditions upon such applications.

- c) The Planning and Zoning Board shall hold public hearings on applications for variances from the provisions of this Ordinance and make written recommendations to the Commission for the approval, denial, modification, and/or the imposition of conditions upon such applications.
- d) The Planning and Zoning Board shall report all zoning violations to the Commission for appropriate action.

7.3 Conditional Use Permits

The development and administration of this Ordinance is based on the division of the County into districts within which the uses of land and buildings are mutually compatible. However, there are certain uses which, because of their unique characteristics cannot be classified as unrestricted permitted uses in any particular district or districts without consideration in each particular case of the impact of those uses upon adjoining lands or public facilities. Such uses, nevertheless, may be necessary or desirable in a particular district provided that due consideration is given to location, development and operation of such uses.

- 1) In order to promote and protect public health, safety and the general welfare, the Planning and Zoning Board may stipulate conditions and restrictions upon the establishment, location, construction and operation of the proposed use. In all cases in which conditional uses are granted, the Planning and Zoning Board shall prior to issuance of a certificate of compliance, require evidence of compliance with these provisions and with the conditions set forth.
- 2) No conditional use permit shall be recommended by the Planning and Zoning Board or approved by the Commission unless the applicant shall have met all the following criteria:
 - a) The establishment, maintenance, or operation of the conditional use shall not be detrimental to or endanger the public health, safety, comfort or general welfare.
 - b) The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.
 - c) The proposed conditional use shall not impede the normal orderly development of the surrounding property.

- d) Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided to accommodate the proposed conditional use.
 - e) Adequate measures will be taken to provide ingress and egress to the property without adverse effects on the adjoining properties and traffic congestion in the public street.
 - f) The proposed conditional use shall conform to all applicable regulations of the district within which it is located.
- 3) The Planning and Zoning Board shall hold a public hearing on any request for a conditional uses permit, a notice of which shall be published at least two weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include: 1) the time and place of hearing; 2) description of the property to be affected; 3) the proposed use; and 4) time and place for public inspection of documents prior to the hearing.
 - 4) The Planning and Zoning Board, following a public hearing, shall make recommendation to the Commission for the approval or denial, modification, and/or imposition of conditions of each application for a conditional use permit. Upon approval by the Commission, the Planning and Zoning Board shall issue such conditional use permit.
 - 5) If the Planning and Zoning Board finds that the conditions or restrictions set forth in a conditional use are not being complied with, it may revoke the conditional use permit after a public hearing.
 - 6) In any case where a conditional use has not been instituted within one year of the date of approval of the conditional use, the permit shall be null and void without further action of the Planning and Zoning Board or the Commission
 - 7) Upon the cessation or abandonment for a period of one year of any use, for which a conditional-use permit has been issued, such conditional use permit is deemed to have been terminated and any future use of the land, building(s), or premises shall be in conformity with this Ordinance.

7.4 Variance

- 1) Where a literal enforcement of the provisions of this Ordinance would result in great difficulties, unnecessary hardship, or injustice, the Commission may adjust the application and enforcement of these

regulations provided that such action shall not be contrary to the public interest or general purposes thereof. The authority for issuing variances may be delegated to the Planning and Zoning Board. No variance shall be approved unless the applicant shall have met the following conditions:

- a) The particular physical surroundings, shape or topographic condition of the specific property should result in unnecessary hardship.
- b) The purpose of the variance is not based on a desire for economic gain.
- c) The variance shall not be detrimental to the public welfare or injurious to other properties in the area;
- d) The unique character of the property upon which the request for variance is made is not the result of actions of the applicant, landowner, or prior landowners; and
- e) Use variances are prohibited. No variance shall be approved that has the effect of allowing a use that is not permitted in the subject zoning district or has the practical effect of rezoning property to a higher intensity of use than the district in which the property is located.

2) Public Hearing Notice

- a) The Planning and Zoning Board shall hold a public hearing, a notice of which shall be published at least two weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include: 1) the time and place of hearing; 2) description of the property to be affected; 3) the proposed use and requested variance; and 4) time and place for public inspection of the relevant documents before the hearing.
- b) Data Submission Requirements Applications for variances must include following data:
 - i) Legal description of the property;
 - ii) A map showing the existing land uses and zoning district classification of the area;
 - iii) The reason for the variance request;

- iv) The type of variance requested and an explanation of whether the hardship is unique to the applicant's property;
- v) Any other information that the Planning and Zoning Board deems necessary; and
- vi) A fee, the amount of which shall be determined by the Commission, plus any additional costs to be paid in accordance with the schedule established by the Commission.

7.5 County Zoning Administrator

7.5.1 Appointment

- a) The Commission shall appoint the County Zoning Administrator.

7.5.2 Duties

- a) Receive and file all applications for amendments to this Ordinance, the "Zoning District Map," and development permits.
- b) Make inspections upon Commission request and maintain records.
- c) Provide written report all zoning violations to the Planning and Zoning Board and the Commission for appropriate action.
- d) Prepare and publish required notices.
- e) Prepare written notices to property owners of any violation of this Ordinance, citing the nature of the violation and demanding compliance.
- f) Receive, file, and forward to the Planning and Zoning Board all applications for preliminary and final plats and the supporting documents.

7.6 Amendments

The Commission may from time to time on its own motion, by petition, or on recommendation of the Planning and Zoning Board, amend, supplement or repeal the provisions of this Ordinance following a public hearing.

Any person, firm or corporation which owns land is entitled to submit an application for amendment to the Zoning District Map.

7.6.1 Procedure for Amendments:

- a) Applications for amendment shall be filed with the County Zoning Administrator.
- b) Notice of a time, place, and purpose of the public hearing must be published once a week for two consecutive weeks in the official newspaper of the County.

- c) Upon receipt of the recommendations of the Planning and Zoning Board, the Commission shall approve, deny, approve with modification the proposed amendment or remand to the Planning and Zoning Board for further hearing.

7.7 Permits and Fees

7.7.1 Building Application

- a) It shall be unlawful for any person to commence construction, alteration, or conversion of any building or structure without first obtaining a building application from the County Zoning Administrator.
- b) This section does not apply to those buildings or structures directly used in connection with farming operations and constructed by farmers as defined herein.
- c) A building application issued pursuant to these provisions shall expire one year from date of issuance.

7.7.2 Fees

The County Zoning Administrator shall charge and collect a fee as follows;

The County Zoning Administrator shall charge and collect a fee according to the resolution of fees and schedules established by the Commission. The applicant for a conditional use permit, variance, or building application, shall be liable for and pay to the County Zoning Administrator sufficient sums of money to pay for and cover costs incurred by the County for the processing of such application, including, but not limited to: publication costs, attorney's fees, mileage, copying expense, etc. No permit shall be issued until such costs have been paid by the applicant, unless the County Zoning Administrator has otherwise provided for good cause shown.

7.8 Violations and Penalties

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or if any building, structure, or land is used in violation of this Ordinance, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceeding:

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

A violation of any provision of this Ordinance or the regulations and restrictions made herein shall constitute the maintenance of a public nuisance and shall be a Class B Misdemeanor.

7.9 Building Code

7.9.1 All buildings or structures or parts of structures used for residential or commercial purposes, and accessory structures thereto shall be designed and constructed, altered, equipped, and maintained in accordance with the North Dakota State Building Code, N.D. Admin. Code Sec. 108-01-01 et seq. and the same is hereby made a part of this resolution and incorporated therein as if set out at herein, and from the date this resolution takes effect the provisions thereof shall be controlling in the construction of all residential buildings and accessory buildings thereto.

7.10 Procedure for Hearing Notices:

In order to engage and poll the public that may be affected by requests and applications to the Planning & Zoning Board, in addition to the required Public Hearing Notice published in the official newspaper of the county, the County Zoning Administrator shall post the notice on county's website at <http://www.billingscountynd.gov> and mail copies of the notice under these provisions;

- 1) Mailed notices shall be sent for the following types of zoning requests:
 - Amendments to the Zoning District Map;
 - Conditional Use Permits;
 - Variances;
 - Major Subdivisions;
 - Minor Subdivisions;
 - All uses proposed in Commercial Zoning Districts;
 - All uses proposed in Industrial Zoning Districts

- 2) Copies of the Public Hearing Notice shall be postmarked and mailed at least ten (10) days prior to the day of the hearing to the property owners within 1/4 mile (1320 feet) of the parcel(s) for which a hearing is being held.
- 3) Parcel records maintained by the County Tax Director's office shall be used as the official record to determine the location, identity, and address of adjoining property owners.
- 4) Mailed notices are considered to be a courtesy to adjoining property owners. Failure to receive a copy of the notice does not invalidate any decision by the Planning and Zoning Board or by the Board of County Commissioners.

Adopted this 3rd day of August, 2010

By: James Arthaud
Chairman, Billings County Board of County Commissioner

By: Joan Jurgens
Billings County Auditor

Amendments Adopted On:

July 15, 2011

October 2, 2012

November 5, 2013

October 8, 2015

June 5, 2018

February 11, 2020

Ordinances Affected:

Section 6.13

Section 6.14

Sections 6.15, 5.1.3, 5.2.3, 5.2.4,
5.3.3, 5.4.2, 5.5.5, 2.3 (36.1),
5.1.2 (r)

Section 7.10

Section 6.16

Section 6.17
Sections 2.3(107), 5.1.2(t),
5.1.2(u), 5.1.2(v), 5.4.4(j),
5.4.4(k), 7.4(1)(d), 7.4(1)(e)