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CHAPTER NINE
ZONING ORDINANCE

ARTICLE 1 - INTRODUCTION

9.0101 - Title

This Ordinance shall be entitled “The Zoning Ordinance for the City of New England, North Dakota.”

9.0102 - Purpose and Intent

The purpose of this ordinance is to promote the health, safety, and welfare of the people of the City of New England; to promote the sound and desirable use of land; and to guide the development with efficient provision of public improvements.

9.0103 - Authority

This ordinance is adopted under the authority granted by Chapters 40-47, 40-48 and 40-50 of the North Dakota Century Code (NDCC).

9.0104 - Severability

If any section, provision or part of this ordinance is adjudged invalid by a court of competent jurisdiction, the remainder of this code shall not be affected.

9.0105 - Repeal

All other regulations or parts of regulations of the City of New England inconsistent or in conflict with this ordinance to the extent of inconsistency or conflict are hereby repealed.

9.0106 - Effective Date

This ordinance shall be effective after a public hearing and adoption by the City of New England.

9.0107 - 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.

ARTICLE 2 - RULES AND DEFINITIONS

9.0201 - Compliance

1. 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 permit, and the same shall be in compliance with this ordinance.
2. All property measurements, setbacks, and easements already existing at the time of the adoption of this ordinance remain in effect. Except for new construction, expansion, or development.

9.0202 Word - Use

1. In the construction of this ordinance, the following words, rules, and definitions shall be observed and applied except when the context clearly indicates otherwise.
 - a. Words used in the present tense shall include the future.
 - b. Words used in a singular number shall include the plural number and the plural the singular.
 - c. Shall is a mandatory word and not discretionary.
 - d. May is a permissive word
 - e. The word “lot” shall also mean “parcel”, “piece”, and “plat”.
 - f. The word “building” includes all structures and “structure” includes buildings.
 - g. “City Council” and “governing body” are interchangeable terms

9.0203 - 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 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 Center:** An adult bookstore, adult cinema, adult entertainment facility, or any combination thereof.

6. **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.
7. **Alley:** A public way which affords only secondary access to abutting property.
8. **Allowed Uses:** Those uses, buildings or structures which comply with the provision 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 City Council.
9. **Alteration:** As applied to a building or structure, is a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height or depth, or the moving from one location or position to another.
10. **Amendment:** Any change, revision or modification of the text of the ordinance or the Zoning District Map.
11. **Animal Hospital or Kennel:** A building or premises set up for treatment and boarding of domestic animals including veterinary facilities.
12. **Apartment:** A part of a building consisting of a room or suite of rooms which is designed for , intended for, or used as a residence for one (1) family and is equipped with cooking and sanitary facilities.
13. **Basement:** A story, partly underground with more than one-half of its height below grade.
14. **Bed and Breakfast Inn:** An establishment that 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.
15. **Block:** A segment of the city bounded by rights-of-way, intersecting streets and/or railroads.
16. **Board of Adjustment:** The body appointed by the City Council to hear appeals on the enforcement of the provisions of this ordinance and to grant variance.
17. **Buildable Area:** The portion of a lot remaining after required yards have been provided.
18. **Building:** Any structure designed or intended for shelter or protection of persons or property.
19. **Building Area:** That portion of the zoning lot that can be occupied by the principal use, excluding the front, rear and the side yards.

20. **Building Height:** The vertical distance from the grade to the highest point of the roof.
21. **Building Line:** A line establishing the minimum distance which structures may 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.
22. **Certificate of Occupancy:** A certificate stating compliance with the provisions of the ordinance.
23. **Club:** A private club or lodge which is a nonprofit association of persons for the purpose of gatherings and entertaining members including consumption of food and beverages.
24. **Commercial Building:** Any structure which is not used for residential, medical, religious, or instructional purposes and which is constructed in compliance with the adopted building code.
25. **Commercial District:** The areas designated by the City Council of New England on the District Zoning Map which provides for the grouping of retail merchandising and service activities.
26. **Community Garage:** A group of private garages located jointly on any lot or premises of two or more adjacent premises having no shop or service in connection therewith, providing the storage space includes at least two hundred and fifty (250) square feet for each vehicle.
27. **Comprehensive Plan:** A statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.
28. **Conditional Use:** Use of a special nature not automatically permitted in a zoning district and which requires review and approval by the New England City Council after a public hearing. 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 City Council and only when the City Council finds that such use meets all of the requirements applicable to it as specified in the city codes including these regulations.
29. **Conforming Building or Structure:** A building or structure which complies with all requirements of this ordinance and other regulations adopted by the city.
30. **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.
31. **Development Permit or Building Permit:** Form used to verify formal approval and authorization of building plans to proceed with the construction or

reconfiguration of a specific structure or property at a particular site, in accordance with the approved drawings and specifications.

32. **Development or Building Plan:** A document containing maps and data for physical development of an area as provided by this ordinance including erosion controls and city services.
33. **District Zoning:** A section or sections of the City of New England 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.
34. **Dwelling:** Any building or portion thereof, used exclusively for human and other temporary occupancy habitation including single family and multiple family units but not including hotels or motels, or vehicles designed for camping, such as vacation vehicles.
35. **Dwelling, Manufactured Home:** A structure transportable in one or more sections which is a minimum of eight body feet in width and is thirty-two body feet or more in length and is built on a permanent metal chassis and designed to be used as a dwelling with or without a permanent foundation and additions when connected to the required utilities and includes the plumbing, heating, and air conditioning and electrical systems contained therein.
36. **Dwelling, Multiple-Family:** A single building, or portion thereof, containing two (2) or more dwelling units.
37. **Dwelling, Single-Family:** A building containing one (1) dwelling unit only.
38. **Dwelling Unit:** One or more rooms in a dwelling or apartment hotel designed for occupancy by one family for living purposes and having its own permanently installed cooking, sleeping and sanitary facilities.
39. **Easement:** The right granted by deed or contract entitling its holder to specific use and enjoyment of a part or all of a parcel of land which is owned by another person, firm, corporation or unit of government.
40. **Encroachment:** Any fill, building, structure or use including accessory uses projecting into the adjacent yard areas or public and private properties.
41. **Establishment:** A place of business for processing, production, assembly, sales, service of goods and materials.
42. **Extraterritorial Jurisdiction:** The area outside of the corporate limits of the City of New England over which the city claims authority for zoning purposes as established by the North Dakota Century Code.
43. **Family:** Persons related by blood or marriage in a domestic relationship, relatives or kinfolk.
44. **Flood Insurance Rate Map (FIRM):** The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

45. **Flood Insurance Study:** The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.
46. **Garage, Private:** An accessory building designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is an accessory.
47. **Garage, Public:** Any building or premises used for equipment , repairing, hiring, selling, or storing motor-driven vehicles, not including show rooms for the display of the cars.
48. **Grade:** The surface of the ground, court, lawn, yard or sidewalks adjoining a building; the established grade is the grade of the street, curb lines fixed by the City of New England; the natural grade is the undisturbed natural surface of the ground, court, lawn, or yard after filling or grading to desired elevation or elevations around a building or structure; but where the finished grade is below the level of the adjoining street, the established grade shall be deemed the finished grade.
49. **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.
50. **Hotel or Motel:** A building with lodging accommodations, either with or without meals, which are provided for compensation.
51. **Hunting Lodge:** A building containing basic amenities providing sleeping accommodations and reserved for hunters during the hunting season.
52. **Improvements:** Street grading and surfacing including but not limited to: curbs, gutter, sidewalks, crosswalks, water mains, sanitary and storm sewers, culverts, bridges, streets and landscaping.
53. **Industrial District:** The areas designated by the City Council of New England on the District Zoning Map which provide for the grouping of manufacturing, assembly, and heavy commercial activities.
54. **Industrial Waste:** All waste resulting from an industrial, manufacturing, or commercial activity that is managed as a separate waste stream and as defined by NDCC 23-29-03.
55. **Inert Waste:** Non-putrescent solid waste which will not generally contaminate water or form a contaminated leachate. 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.
56. **Junk or Salvage Yard:** Land or buildings where waste, discarded or salvaged materials are bought, sold, stored, exchanged, cleaned, packed, disassembled or handled including but not limited to scrap metal, rags, paper, hides, rubber products,

glass products, lumber products and products resulting from the wrecking of automobiles or other vehicles.

57. **Kennel:** Any premises where dogs, cats, and other household pets are boarded, bred, and maintained for compensation (not including animal hospitals or veterinary clinics).
58. **Land Use Administrator:** The officer appointed by the City Council of New England to administer the zoning affairs of the City of New England.
59. **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.
60. **Lot Area:** The total area within the boundary lines of the lot or parcel of land excluding public right-of-way.
61. **Lot, Corner:** A lot abutting on two or more streets other than an alley at their intersection.
62. **Lot, Depth:** The mean horizontal distance between the front and rear lot lines.
63. **Lot, Line:** The property line bounding a lot.
64. **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 Hettinger 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.
65. **Lot, Width:** The horizontal distance between the side lot lines measured at setback line.
66. **Master Plan:** The Comprehensive Plan, or any portion thereof, made and adopted by the City Planning and Zoning Commission in accordance with the laws of the state of North Dakota and regulations of the City of New England 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.
67. **Mobile Home (Manufactured Home):** A factory built structure, transportable in one or more sections and 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. The mobile home 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 travel trailer is not a mobile home.
68. **Mobile Home (Manufactured Home) District:** The area designated by the City Council of New England on the District Zoning Map for development of mobile home residential dwelling units.

69. **Mobile Home Park:** A tract of land designed and developed to accommodate mobile homes (manufactured homes), each occupying a portion of the site of a purchased, leased or rental basis and each provided with the necessary utilities and other amenities so that the total development serves as a suitable environment for long-term residential occupancy.
70. **Modular Home:** A factory-built dwelling unit, which is not constructed or equipped with a hitch or other device allowing it to be moved other than to a permanent site and which does not have attached to its body or frame any wheel or axle 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. **NDCC:** North Dakota Century Code
72. **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 ordinance.
73. **Nonconforming Use:** Any principal use of land or building which does not conform to any or all parts of this ordinance but existed at the time of the adoption of this ordinance.
74. **Parking Space:** An off-street area designated for parking of automobiles accessible from a public street or alley.
75. **Permanent Foundation:** A continuous 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.
76. **Permitted Use:** Any use which complies with the requirements of a zoning district.
77. **Person:** Any individual, firm, corporation, association, partnership, or legal entity.
78. **Plat:** A map of a subdivision.
79. **Preliminary Plat:** The preliminary plan of a subdivision and any accompanying material prepared in accordance with the requirements of this ordinance.
80. **Prohibited Use:** Any use or structure which is not allowed in a particular district. Any use not identified explicitly in this ordinance shall be considered prohibited and shall not be allowed until incorporated through the amendment procedure.
81. **Public Utility:** Any business which furnishes the general public the following, including but not limited to, telephone, telegraph, electricity, natural gas, or water service, and any other business so affecting the public interest as to be subject to the supervision or regulation by an agency of the State.
82. **Public Way:** Any dedicated and recorded right-of-way including alleys, bikeways, sidewalks, streets, roads or highways.
83. **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.

84. **Recreational Vehicle Park:** A lot which is operated on a fee or other basis as a place for the parking of occupied recreational vehicles.
85. **Regional Flood:** A flood baseline determined by the state and Federal Emergency Management Agency which is representative of large floods known to have occurred in Hettinger County, North Dakota.
86. **Residential District:** The areas designated by the City Council of the City of New England on the District Zoning Map for development of residential dwelling units.
87. **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 and brown water systems.
88. **Rooming House (Boarding House):** Any dwelling in which more than three (3) persons, either individually or as families, are housed or lodged for hire, with or without meals.
89. **Setback:** The line within a property defining the required minimum distance between the front lot line and the building line.
90. **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, public information and traffic signs.
91. **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.
92. **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 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.
93. **Street:** A public way for pedestrian and vehicular traffic.
 - a. **Major Street:** Street which gathers and distributes traffic from and to minor streets and adjacent lands.
 - b. **Minor Street:** Street which is designed for low traffic volume and provides access to major streets.

94. **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.
95. **Structure:** Anything constructed or erected which requires permanent location on the ground excluding fences under five (5) feet in height.
96. **Subdivision:** The division of a lot, parcel of land, or tract, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale 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.
97. **Substantial Improvements:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (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.
98. **Temporarily Permitted Use:** A conditionally permitted use which has a definite time period as one of its conditions.
99. **Temporary:** Means one year or less.
100. **Variance:** A relaxation of the terms of this ordinance 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, and where the literal enforcement of the ordinance would result in unnecessary and undue hardship.
101. **Yard:** A required open space on the same lot with the principal building or structure.
102. **Yard, Front:** A yard that extends across the full width of the lot, as the least distance between the front lot line and the front building line. On corner lots the front yard shall be on the side of the structure containing the main entrance to the building.
103. **Yard, Rear:** The least distance between the rear lot line and the rear of the principal building.
104. **Yard, Side:** The least distance between the sides of principal building and the side lot line.
105. **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).

106. **Zoning Commission: (Planning and Zoning Commission)** The body appointed by the City Council of New England to conduct the zoning affairs of the city.
107. **Zoning District Map:** The map showing the zoning districts of the City of New England officially adopted by the City Council of the City of New England.

ARTICLE 3 - GENERAL PROVISIONS

9.0301 - Jurisdiction

These regulations shall apply in all incorporated parts of New England and areas within the city's extraterritorial zoning jurisdiction as authorized by NDCC, Section 40-47-01.1.

9.0302 - Compliance with Ordinances, Statutes, Regulations and Plans

Any person, firm or corporation developing land shall comply with the requirements of these regulations and:

1. The provisions of the North Dakota Century Code (NDCC).
2. The rules of the North Dakota State Health Department, North Dakota Highway Department and other North Dakota state agencies.
3. City of New England Comprehensive Plan.

9.0303 - Amendments

1. The City Council may from time to time on its own motion or on petition or recommendations of the City Planning and Zoning Commission amend, supplement or repeal provisions of this ordinance after a public hearing.
2. Any person, firm or corporation which owns land within the city's jurisdiction is entitled to submit an application for amendment to the Zoning District Map.
3. Procedure for Amendments:
 - a. Applications for amendments shall be filed with the City Auditor.
 - b. The City Auditor shall present the application to the City Planning and Zoning Commission at its next regularly scheduled meeting.
4. Notice of Amendment Hearings:
 - a. Upon receipt of an application for amendment, The City Auditor shall schedule a hearing on the application before the City Council.
 - b. Upon scheduling the hearing, the City Auditor shall notify the applicant of the date, time, and place of the hearing.
 - c. Notice of the time and place of the hearing shall be published in the newspaper of record once a week for two consecutive weeks prior to the hearing. Such notice shall contain the following items:

- i) The time and place of hearing.
- ii) The description of the property involved and any zoning change, by street address of streets that have been platted or designated in the affected area.
- iii) The description of the nature, scope, and purpose of the proposed regulation, restriction or boundary.
- iv) A statement of the times in which it will be available at the office of the City Auditor to the public for inspection and copying.

5. Notification to Adjacent Property Owners

The owners of property within one hundred fifty (150) feet of the property for which the zone boundary change has been requested, shall be notified in writing of the hearing on an amendment to a zone boundary. The applicant shall provide proof of notification. The notice of hearing shall be given to the paper of record at least ten (10) days prior to the date of the hearing. Proof of the publication of the notice of hearing shall be filed with the City Auditor.

6 Public Hearing:

- a. Following a public hearing conducted by the City Planning and Zoning Commission, said Commission shall submit its recommendations concerning the proposed amendment or development to the City Council.
- b. Upon receipt of the City Planning and Zoning Commission's recommendations, the City Council shall hold a hearing for the proposed amendment or development.
- c. Following the hearing, the City Council shall approve or disapprove the proposed amendment or development.

7. Protests to Amendments:

If a protest against an amendment is signed by the owners of twenty (20) percent or more:

- a. of the area of the lots included in such proposed change; or
- b. of the area adjacent, extending one hundred and fifty (150) feet from the area to be changed, excluding the width of streets, the amendments shall not become effective except by the favorable vote of three-fourths (3/4) of all the members of the City Council of New England.

8. Recording of Amendment:

Upon adoption of an amendment by the City Council, a certified copy of the adopted amendment shall be filed with the City Auditor and the same shall be published in the official newspaper of the City. A certified copy of the amendment shall also be filed with the County Recorder for Hettinger County. The City Auditor shall ensure the official Zoning map and/or Ordinance text is updated in accordance with the changes.

9. Appeals

Any person aggrieved by the decision of the City Council may appeal to the Board of Adjustment as provided by Section 40-47-08, NDCC.

9.0304 - Land Suitability

No land shall be divided for a use which is held unsuitable by the city and the City Planning and Zoning Commission for the reason of flooding, potential flooding, soil limitations, inadequate drainage, incompatible surrounding land use or any other condition likely to be harmful to the health, safety or welfare of the city.

9.0305 - Non-Conforming Uses

Any use of land or structure that is not permitted by the current zoning ordinance but existed at the time of the adoption of the zoning ordinance. The lawful use of a building or premises may be continued even though such use does not conform to the provisions of these regulations. The total structural alteration in such a non-conforming building, structure or use shall not, during its life, exceed fifty (50) per cent of the fair market value of the property as of the date of adoption of this ordinance; provided further, however, that such alteration shall not include any physical expansion or enlargement of such building, structure or use. If a non-conforming use is discontinued or the premises are abandoned for a period of 12 months, the future use of the premises shall conform to this ordinance.

If a non-conforming use has existed continually and has not been the subject of a public health or safety violation or other action relating to activity occurring on the property or condition of the property, a nonconforming use certificate can be issued to allow continued legal use of the premises.

The non-conforming use certificate does not allow a structure to be rebuilt if destruction exceeds two-thirds of the total floor area of any structure or two-thirds the total area of the property. Only a variance of use and a rezoning may allow a 100% rebuild of a property after total destruction occurs. A rezoning sometimes does not permit a 100% rebuild, because non-conforming development standards (like setbacks or district rules) may not be replicated.

9.0306 - Conditionally Permitted Uses

1. 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 allowed use, under this ordinance, and exists at the date of the adoption of this ordinance, it shall be considered a non-conforming use.
2. Application for a conditional use permit shall be submitted to the Planning and Zoning Commission or the governing body.
3. The City Planning and Zoning Commission shall hold a public hearing on the application. Notice of said hearing shall be published in the newspaper of record at least one week prior to the hearing.

4. No application for a conditional use permit shall be granted unless the City Planning and Zoning Commission shall find all of the following conditions present:
 - a. The conditional use shall not be detrimental to or endanger the public health, safety or general welfare.
 - b. The conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.
 - c. The conditional use shall not impede the normal and orderly development of the surrounding property.
 - d. Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided.
 - e. Adequate measures will be taken to provide ingress and egress to the property without adverse effects on the neighboring properties and traffic congestion in the public street.
 - f. The conditional use shall conform to all applicable regulations of the district within which it is located.
 - g. The owners of property within one hundred fifty (150) feet of the property for which the conditional use has been requested, shall be notified of the hearing. The applicant shall provide proof of notification of the adjacent property owners.
5. The City Planning and Zoning Commission may stipulate conditions and restrictions upon the establishment, location, construction and operation of the proposed use in order to promote and protect public health, safety and general welfare. In all cases in which conditional uses are granted, the City Planning and Zoning Commission shall require evidence of compliance with these provisions and with the conditions set forth.
6. The City Planning and Zoning Commission, finding that the conditions or restrictions set forth are not being complied with, may recommend to the City Council revocation of the conditional use permit after a public hearing.
7. In any case where a conditional use permit has not been instituted within one year of the date of approval, the permit shall be null and void.
8. Any use for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use of the building or premises shall be in conformity with these regulations.
9. Unless otherwise specified, all conditional use permits shall be reviewed on an annual basis for renewal.

9.0307 - Building Permit and Procedures

1. The City Auditor shall charge and collect a fee according to the resolution of fees and schedules established by the city.
2. The applicant for a conditional use permit and amendment to the zoning ordinance, or building permit, shall be liable for and pay to the City Auditor sufficient sums of money to pay for and cover costs incurred by the City for the processing of such application, including, but not limited to: publication costs, attorney's fees, mileage, copy expense, etc. No permit shall be issued until such costs have been paid by the applicant, unless the City Council has otherwise provided by resolution for a particular case.
3. Building Permit

No structure, land, and building shall be used and no structure or part thereof shall be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a building permit in the City of New England and shall meet with the provisions of the rules and regulations according to Chapters 40-47 of the North Dakota Century Code which are hereby made part of this chapter by reference with the exception of the sections affecting local conditions in the city, which are amended, deleted, or added to, for use and application in the city

- a. It shall be unlawful for any person to commence any construction or development without obtaining a building permit, except buildings and activities directly used in connection with farming operations.
- b. Any permit issued pursuant to these provisions shall expire one year from the date of issuance, but may be extended for up to six (6) months at the discretion of the Zoning Commission or governing body.
- c. Building Permits are acquired by application to the Zoning Commission or governing body, and shall be valid only after approval by either of the above.
- d. Applicant shall be required to submit the following information:
 - i. Blue prints, designs or drawing of proposed construction.
 - ii. Estimated cost of said construction to include materials and contract labor.
 - iii. Diagrams of property layout and distances or set-backs from the property lines to streets adjacent properties, easements, and any other information needed to facilitate a decision on the application.
 - iv. Type of construction and materials that will be used in construction.

- e. Any variation to the original plans for which the permit was issued, must be submitted to the Zoning Commission or governing body for review and approval of the changes prior to execution of the changes. The review may not require additional fees to the permit.

4. Building Permit Required

A building permit is required for all construction that alters the structure or layout of all buildings on the property, or the property itself. Included, but not limited to:

- a. Siding: Permits are required for replacement of siding if frame structure is altered.
- b. Windows: Permit is required for all window replacement if existing frame structure is altered. This includes homes and outbuildings.
- c. Doors (swinging and sliding): Permit is required for all new installation and all must be of a permanent nature. Does not include replacement of existing doors.
- d. Roof Design: Permit is required for any change of roof design on all structures.
- e. Fireplaces-Chimneys: Permit is required for all new installation and all must be of a permanent nature. This includes permanent firepits and food grills.
- f. Interior Walls: Permit is required for relocating, altering, or adding any interior walls.
- g. Basement: Permit is required for replacement of any exterior basement walls.
- h. Additions: Permit is required to add any enclosed addition to any existing structure.
- i. Driveways and aprons: Permit is required for all concrete and asphalt driveways located on city right-of-way or city property.
- j. Accessory Buildings: Permits are required for any temporary or movable building that is 120 square feet (10x12) or larger, or permanent building of any size.
- k. Fences: Permit is required for all permanent fences enclosing the perimeter of the property or section thereof within the city limits.
- l. Handicap Ramps: Permit is required.

- m. Decks: Permits are required for all new or altered wood construction decks. Permit is required for a concrete patio.
- n. Swimming Pools: No permit is required for an above ground pool under 5000 gal capacity. Permit is required for pools over 5000 gal capacity, or any in-ground pool. Any decks or walkways will be treated as decks.
- o. Wood Basements: Wood basements cannot be installed to exceed four feet in depth in the ground and must be installed on proper concrete footings.
- p. Demolition and Moving: A permit is required for the demolition or moving of any building within, to, or from the City of New England. Any person wishing to demolish or move a building may be required to file a refundable deposit to insure

9.0308 - 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 road. Accessory buildings shall be limited to fifteen (15) feet in height and be located at least five (5) feet from all lot lines.

9.0309 - Dedication of Land for Streets

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

9.0310 - On-Site Sewer System

To protect the public health, to control water pollution, and to reduce nuisance and odor, all new development within the city and its extraterritorial jurisdiction shall be connected to an approved on-site sewage system. Construction and use of privies, outhouses, and cesspools is prohibited within the city.

ARTICLE 4 - ZONING DISTRICTS

9.0401 - District Map

For the purposes of this Ordinance the City of New England is divided into the following zoning districts:

- R Residential District
- MH Mobile Home District
- C Commercial District
- I Industrial District
- A Agricultural District
- RC Recreational District

F Floodplain Overlay District

9.0402 - Zoning Map

1. A copy of the Zoning District Map is on file in the office of the Code Administrator and shall be updated regularly to reflect any amendments to the zoning districts.
2. Where uncertainty exists with respect to the boundaries of the various districts hereby established and as shown on the Zoning District Map, the following rules shall apply:
 - a. The district boundaries are the center lines of streets or alleys, unless otherwise shown.
 - b. Where the district boundaries are not center lines of streets or alleys and where the land has been or may hereafter be divided into lots or blocks and lots, the district boundaries shall be construed to be lot lines.
 - c. Where land has not been subdivided into lots or blocks and lots, the district boundary lines on the Zoning District Map shall be determined by the Board of Adjustment.

9.0403 - Residential District (R)

1. R-1: It is the intent of this district to provide for low density residential use.
 - a. Permitted Uses:
 - i. Single-family dwellings and accessory buildings
 - ii. Public parks, playgrounds and other public buildings and structures
 - iii. Public, private and parochial schools
 - iv. Churches and related facilities
 - v. Home occupations
 - vi. Libraries, museums, and community centers
 - vii. Bed and breakfast establishments
 - b. Conditionally Permitted Uses:
 - i. Single family dwelling units; a single building or portion thereof, containing two (2) or more dwelling units

- ii. Owner occupied manufactured homes on permanent type foundations on platted lots with a minimum square footage of twelve hundred (1,200) square feet. Pre-manufactured and mobile homes are allowed provided that they are placed on a permanent foundation, permanent or properly anchored basement made of concrete, or pier and post foundation. Loose blocks shall not constitute a permanent foundation. Wheels and hitches must be removed.
 - iii. No owner occupied manufactured home shall be placed on the owner's lot or lots as a dwelling without the written consent of 2/3 of the owners of record of lands of neighbors within three hundred (300) feet of the proposed dwelling. If 2/3 of such neighbors fail to give written consent of the proposed dwelling, then upon appeal the Board of Adjustment may determine whether the failure of written consent of the requisite number of neighbors was exercised with reasonable consideration with a view to conserving the value of buildings and encouraging the appropriate use of land throughout the City.
 - iv. Daycare facilities
 - v. Public facilities including public water and sewage treatment lagoons
 - vi. Wind generating tower
 - vii. Long-term care and group home facilities
- c. Area Requirements (New Construction)
- i. Minimum width: 75 feet
 - ii. Minimum area: 11,250 square feet
 - iii. For single family units the principal building and all accessories shall not cover more than fifty (50) percent of the lot.
- d. Yard Requirements
- i. Yard measurements are the distance to the closest point of a structure, including soffits and overhangs.
 - ii. Front yard: A minimum depth of twenty (20) feet from the property line
 - iii. Rear yard: A minimum depth of twenty (20) feet from the rear property line. Accessory buildings with a vehicle entry door facing an alley or street twenty (20) feet, otherwise five (5) feet from the property line.

- iv. Side yard - minimum width of five (5) feet from the property line.
- e. Height requirements:
 - i. No building shall exceed thirty-five (35) feet or two (2) stories in height.
- f. Off-Street Parking:
 - i. For residential uses, two parking spaces for each dwelling unit
 - ii. For all other uses, one parking space for each 400 square feet of building space shall be provided.
 - iii. A concrete driveway for passenger vehicles or larger must be at least six (6) inches deep three (3) feet in from the city street. Concrete driveways and aprons must have wire mesh rebar, or concrete consisting of fiber mesh. An asphalt driveway must be at least three and one-half (3½) inches deep three (3) feet from the city street, and must match adjacent and adjoining construction.
- g. Fences and Retaining Walls:
 - i. Walls and retaining walls up to forty-eight (48) inches in height shall be permitted so as not to interfere with traffic visibility. Barbed wire or sharp-point metal fences or electrically charged fences shall not be permitted.
 - ii. Fences can be made of wood, steel, or plastic. (no fence shall be made of concrete or concrete block without having the proper concrete footings. Corrugated or pro-rib steel type of roofing or siding is prohibited. Any non-porous wind break material of any type is prohibited.
 - iii. Chain link fences and other type fences which do not limit the visibility may be allowed up to a height of six (6) feet subject to front line setback requirements upon approval of the Planning and Zoning Commission. Privacy slats or foliage of over thirty (30) inches in height are not permitted in the front twenty (20) foot setback. Trees will be allowed on the boulevard with permission from the city council and must be trimmed up to twelve (12) feet. No shrubs or hedges can be planted on the boulevards. No fences can be constructed on the boulevards.
 - iv. When required, property lines shall be located at the property owner's expense prior to installing the fence. Property owners of adjacent

property must all be in agreement as to the location of property lines, and placement of the fence if closer than 12” to the property line.

- v. No fence shall be built on utility easement unless they are removable in sections including posts for immediate access by the utility company or city. All fence posts are to be solid upon inspection. No fence in residential or commercial areas shall be higher than 6'.

h. Accessory Buildings

Any permanent building 120 square feet (10x12) or more must have a concrete slab or if the building has a treated wood floor then concrete footings 8” wide by 12” deep can be used instead of a concrete slab. Pole Buildings, new and existing, require pressure treated skirt boards to extend 12 inches below grade on the outside perimeter of the building.

2. R-2: It is the intent of this district to provide for moderate and high density residential use.

a. Permitted Uses:

- i. All uses permitted in R-1 district
- ii. Multi-Family dwellings
- iii. Community garages and storage units
- iv. Hospitals, clinics, and nursing homes
- v. Modular homes if placed on a foundation as required herein.

b. Conditionally Permitted Uses

- i. Same as R-1 above.

c. Area Requirements:

- i. Minimum width: seventy-five (75) feet.
- ii. Minimum area: eleven thousand two hundred and fifty (11,250) square feet.
- iii. Each additional unit (up to four units) three thousand (3,000) square feet
- iv. One thousand (1,000) additional square feet for each unit over four (4)

- v. The structures shall not cover more than sixty (60) percent of the net buildable area of interior lots or forty-five (45) percent on corner lots.
- d. Setback Requirements:
 - i. Front Yard: Twenty-five (25) feet.
 - ii. Side Yard: Ten (10) feet.
 - iii. Rear Yard: Forty (40) feet

9.0404 - Mobile Home District (MH)

- 1. MH-1 Mobile Home Parks - It is the intent of this district to provide for an area for an area for a mobile home park to be developed for long-term residential use subject to the following requirements:
 - a. Permitted Uses:
 - i. Mobile Homes
 - ii. Accessory Uses
 - b. Area Requirements:
 - i. Minimum Lot Size:
 - (1) Width: Fifty (50) feet
 - (2) Area: Seven thousand five hundred (7,500) square feet
 - c. Setback Requirements:
 - i. Front: Twenty-five (25) feet.
 - ii. Side: Ten (10) feet.
 - iii. Rear: Forty (40) feet
- 2. MH-2 Manufactured & Prefabricated Home Parks - It is the intent of this district to provide an area for mobile home parks to be developed for long-term residential use subject to the following requirements:
 - a. Manufactured home parks shall contain a minimum of five (5) acres of land and contain a maximum of seven (7) mobile homes per gross acre.

- b. A minimum of twelve (12) percent of the gross area of the project shall be devoted to parks and playgrounds.
- c. Each manufactured home shall be placed within a lot at least sixty (60) feet wide, one hundred (100) feet in depth and with a minimum area of six thousand (6,000) square feet.
- d. Each unit shall have a minimum front setback of twenty (20) feet, a minimum rear setback of twenty (20) feet and a minimum side setback of fifteen (15) feet. Permitted encroachments on setback space include carports, outdoor terraces or patios without roofs or walls, and encroachments may project eight (8) feet into any setback space. No unit shall be located closer than thirty (30) feet to any other unit.
- e. Underground utility, including water, sewer, gas, electricity and telephone, shall be provided to each lot in the park.
- f. All lots and streets in the park shall be accessible at all times to emergency vehicles and streets shall be so designed as to permit a minimum number of ingress and egress points to control traffic movement from the park. Each lot must be clearly marked with a reflective address sign.
- g. Where the park is served by private streets, those streets shall conform to the design standards recommended by the city and streets and parking areas shall be surfaced for all weather travel.
- h. Each manufactured home shall be placed upon a stand which shall be surfaced in the same manner as herein required for streets, and which stand shall also provide a satisfactory method of anchoring mobile home tie-downs.
- i. All units in the park shall be served with public sewer and a water supply approved by the North Dakota State Department of Health.
- j. The entire manufactured home park shall be landscaped, excluding hard-surfaced areas.
- k. Application for the establishment of a manufactured home park shall include a plot plan as to location and legal description and which plan shall set forth the foregoing requirements in detail.
- l. There shall be two off-street parking spaces per unit.

9.0405 - Commercial District (C)

- 1. This district and these regulations provide for the grouping of retail merchandising and service activities into a central area.

2. Permitted uses

- a. Residential dwelling units in apartments to the rear, second stories, or basements, of commercial buildings. Seventy-five (75) percent of the main level of the structure must be dedicated to the commercial use
- b. Retail service uses including, but not limited to grocery, pharmacies, hardware, clothing, bakeries, eating and drinking places, automobile service station, print shop, and repair shops
- c. Personal service uses including, but not limited to offices and clinics, barber and beauty shops, hotels and motels, financial institutions, bowling alleys and amusement centers, theaters, dry cleaners, laundries and tailor shops
- d. Educational, governmental, philanthropic, or charitable institution
- e. Sales and servicing of motor vehicles and farm implements
- f. Amusement places including bowling alleys, athletic clubs, pool halls and similar indoor facilities
- g. Automobile dealerships
- h. Hotels and motels
- i. All activities requiring a business or professional license, and/or a state sales tax permit

3. Off-street parking and loading facilities

- a. Provide off-street parking for all on duty employees and all rolling equipment at a ratio of one-to-one; for visitors and customers, at a ratio of one-to-employee.
- b. For residential uses there shall be two parking spaces per unit.
- c. Adequate loading-unloading facilities shall be provided and shall be located on the same lot as the principal use.

4. Conditionally Permitted Uses

- a. Contractor's yard and operations
- b. Processing and packaging of materials

- c. Warehouses and wholesale dealerships
 - d. Commercial grain bins or related activity
 - e. Animal hospitals and veterinary clinics
 - f. Rooming house (boarding house)
5. Commercial Development Submission Requirements
- a. Any application for a permit for construction or development within a commercial district must include construction documents prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed.
 - b. **Exception:** The Code Administrator or building official is authorized to waive the requirement that such documentation be prepared by a registered design professional if it is determined that the nature of the work applied for is such that a review of the construction documents is not necessary to obtain compliance with this ordinance.

9.0406 - Industrial District (I)

- 1. It is the intent of these district regulations to provide for the best location of heavy commercial and industrial uses which would be incompatible with other uses.
- 2. Permitted uses
 - a. Commercial district uses except residential uses in Section 9.0405 2(a)
 - b. Grain and feed elevator or mill
 - c. Heavy equipment sales, service, or repair
 - d. Lumber yard
 - e. Vocational Training Schools
 - f. Solid waste landfill and transfer stations
 - g. Trucking or freight terminal
 - h. Warehouses
 - i. Agriculture

- j. Animal hospitals and veterinary clinics
 - k. Any industrial or manufacturing operation providing that:
 - i. dust, fumes, odors, smoke, vapor, noise, lights, and vibrations shall be confined within the industrial district, and
 - ii. outdoor storage, equipment and refuse areas shall be concealed from view of abutting rights-of way.
3. Conditionally permitted uses
- a. Sewage treatment facilities
 - b. Salvage and junk yards
 - c. Fuel and explosive material storage tanks and terminals
 - d. Adult entertainment centers
 - e. Noxious waste disposal sites
 - f. Chemical and chemical fertilizer plants
 - g. Solid waste landfill and transfer stations
4. Performance standards
- a. A buffer strip consisting of a solid fence, wall, trees or shrub rows with a potential of at least eight (8) feet in growth height shall be provided when an industrial use is abutting a Residential District. If the buffer strip provided consists of tree rows, a minimum of three rows of trees and/or shrubs with a total minimum depth of twenty-five (25) feet shall be required.
 - b. The open storage of materials, other than waste products or salvage, may be permitted when located at least one hundred (100) feet from any Residential District and at least thirty (30) feet from any street right-of-way or other lot line. All material shall be handled so as to effectively control dust. All combustible material shall be stored in such a way as to permit free access to fire-fighting equipment.
5. Lot Area, Width, and Yard Requirements
- a. The minimum lot area for the industrial district shall be two (2) acres
 - b. The minimum lot width shall be two hundred fifty (250) feet.

- c. There shall be at least a one hundred (100) feet setback from the centerline of the front public road or access.
- d. The minimum rear building line, measured from the rear lot line, shall be fifty (50) feet.
- e. The minimum side building line, measured from the side lot line, shall be fifty (50) feet.
- f. No building or structure shall be located within one thousand (500) feet from the boundary of residential districts.

9.0407 - Agricultural District (A)

- 1. This district and these regulations are established to provide for agricultural uses of land without conflicting with other uses allowed in the City.
- 2. Permitted Uses:
 - a. General farming activities including grazing and raising of farm animals excluding commercial feed lots.
 - b. Structures and operation incidental to the operation of a farm
 - c. Churches and related facilities
 - d. Public parks, playgrounds, public buildings and structures
 - e. Public, private, and parochial schools
 - f. Temporary structures incidental to construction work
 - g. Utility lines and facilities for public service
 - h. Home Occupations
 - i. Detached single family dwellings that are used in connection with a farm operation.
- 3. Conditionally Permitted Uses:
 - a. Cemeteries
 - b. Animal hospitals and veterinary clinics

- c. Grain elevator
- d. Airports
- e. Radio and television towers and accessory building
- f. Sanitary landfill operation and sewage treatment facilities
- g. Skeet, trap and shooting ranges
- h. Tourist and trailer camps---recreational vehicle campgrounds:
 - i. Campground shall contain a minimum of ninety (90,000) square feet and a maximum of fifteen (15) campsites per gross acre.
 - ii. The site plan showing location of all facilities, drives and campsites shall be approved by the city.
 - iii. Water and sanitary facilities shall meet the requirements of the North Dakota State Health Department, evidence of which shall be presented to the city on or before the hearing
- i. Non-farm single family dwellings on three (3) acres or more.
- j. Wind generating tower.

9.0408 - Recreational District (RC)

1. This district and these regulations are established to preserve areas for developed recreational activity and residency around rivers and other water courses where development is controlled in order to maintain the quality of the environment and to provide for general recreational activities.
2. Permitted Uses:
 - a. Agriculture
 - b. Public parks including golf courses and outdoor recreation facilities
 - c. Churches, schools and related facilities
 - d. The raising of game animals, waterfowl and fish
 - e. Communication and power transmission lines and other public utility lines

- f. Accessory buildings or structures to any permitted uses including residences for maintenance personnel
 - g. Golf driving range, miniature golf course, go-cart track, or race track provided:
 - i. The same not to be constructed within 500 feet of a residential district.
 - ii. 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.
3. Conditionally Permitted Uses:
- a. Recreational parks, tourist, RV, and trailer camps
 - i. The minimum area for campground shall be ninety (90,000) square feet and maximum number of recreational trailers shall be fifteen (15) units per gross acre.
 - ii. A site plan showing the boundary of property, topographic information with contour intervals of no more than five (5) feet; arrangement of streets, drives and access roads; location of service buildings; location and dimension of camp sites; location of sanitary facilities; and location of water supply.
 - iii. Proof of compliance with the requirements of North Dakota State Health Department and North Dakota State Laboratories Department.
 - b. Single family dwelling units
 - c. Places of amusement (parks)
 - d. Refreshment stands
 - e. Restaurants, including all types of eating and drinking establishments
 - f. Setback Requirements:
 - i. A minimum of thirty (30) feet shall be maintained between all structures or recreation vehicle campsites and the natural shoreline of streams, rivers, lakes, reservoirs, or other water areas. No structures will be allowed in Flood Plain Zone.
 - ii. Maximum height requirements: No building shall exceed thirty-five (35) feet or two (2) stories in height.

9.0409 - Floodplain District

1. The purpose of this district is to minimize private and public losses due to flood conditions.
2. Land to Which Ordinance Applies

The floodplain district consists of the lands which have been or may be covered by flood waters as delineated on maps of New England, North Dakota prepared by the Federal Emergency Management Agency (FEMA) for administration of the National Flood Insurance Program or other maps and information provided by the State of North Dakota. The areas delineated as floodplain shall be an overlay for all zoning districts.

3. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas shall be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of New England, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

4. Permitted Uses

- a. General building uses including general farming, pasture, and grazing and related uses provided that the buildings and structures for residential use are flood-proofed above the 100-year floodplain as established by FEMA.
- b. Non-structural uses including ponding of run-off water and treated waste water.
- c. Public utilities including railroads, roads and highways, channels, and pipelines.
- d. Outdoor recreational uses including golf courses, bicycle trails, picnic areas, rodeo grounds, ball parks, and boat launching ramps.

5. Conditional Uses

Temporary buildings and structures not related to flood control and farming such as stands, fences, shelters, signs, and temporary parking.

6. Additional Permit Requirements

Before construction or development begins within any area of special flood hazard, a permit shall be obtained from the Code Administrator. The permit shall include:

- a. Elevation in relation to mean sea level of the lowest floor (including basement) of all proposed structures;
- b. Elevation in relation to mean sea level to which any structure will be flood proofed;
- c. Certification by a registered professional engineer or architect that the flood-proofing methods for any non-residential structure meet the flood-proofing criteria; and
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

7. General Standards

In all areas of special flood hazards the following standards are required:

- a. Anchoring
 - i. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
 - ii. All mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
 - (1) over-the-top ties be provided at each of the corners of the mobile home, with two additional ties per at intermediate locations, with mobile homes less than fifty (50) feet long requiring one additional tie per side;
 - (2) frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points, with mobile homes less than fifty (50) feet long requiring four additional ties per side;
 - (3) all components of the anchoring system be capable of withstanding a force of 4,800 pounds and;
 - (4) any additions to the mobile homes be similarly anchored.
- b. Construction Materials and Methods

- i. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - ii. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
 - c. Utilities
 - i. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - ii. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
 - iii. On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.
 - d. Subdivision Proposals
 - i. All subdivision proposals shall be consistent with the need to minimize flood damage;
 - ii. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
 - iii. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
 - iv. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).
 - e. Encroachments

The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.

8. Specific Standards

In all areas where base flood elevation data is available, the following provisions are required:

- a. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

b. Non-residential Construction

New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement elevated to the level of one (1) foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- i. be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- ii. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- iii. be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official Land Use Administrator.

c. Mobile Homes

- i. Mobile homes shall be anchored in accordance with Section 9.0409 7(a).
- ii. For new mobile home parks and subdivisions; for expansions to existing mobile home parks and subdivisions; for existing mobile home parks and subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for mobile homes not placed in a mobile home park or subdivision, require that:
 - (1) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
 - (2) adequate surface drainage and access for a hauler are provided; and,
 - (3) in the instance of elevation on pilings, that:
 - (4) lots are large enough to permit steps,

- (5) piling foundations are placed in stable soil no more than ten (10) feet apart, and
- (6) reinforcement is provided for pilings more than six (6) feet above the ground level.

d. Crawlspace

New construction and substantial improvement of any below-grade crawlspace shall:

- i. Have the interior grade elevation that is below base flood elevation no lower than two (2) feet below the lowest adjacent grade;
- ii. Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not exceed four (4) feet at any point;
- iii. Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood;
- iv. Be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads;
- v. Be constructed with materials and utility equipment resistant to flood damage;
- vi. Be constructed using methods and practices that minimize flood damage;
- vii. Be constructed with electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- viii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

- (2) The bottom of all openings shall be no higher than one (1) foot above grade;
- (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

9. Flood Proofing Measures

Permitted and conditional uses proposed for the Floodplain District that incorporate Flood proofing techniques must comply with Section 209 through 1406 of the 1972 Edition of "Flood Proofing Regulations" (FPR), as developed by the Office of the Chief of Engineers, U.S. Army, Washington, DC, a copy of which is here by incorporated herein and declared to be a part of this ordinance. Where definition of terms as set forth in Section 301 of FPR conflict in meaning with the definition of terms as set in this ordinance, the latter shall prevail. Appropriate conditions may be attached to the granting of a Conditional Use Permit, including, but not limited to, the following:

- a. Anchorage to resist flotation and lateral movement.
- b. Installation of watertight doors, bulkheads, or similar methods of construction.
- c. Reinforcement of walls to resist water pressure.
- d. The usage of paints, membranes, or mortar to reduce the seepage of water through walls.
- e. The construction of water supply and waste treatment systems which will prevent the entrance of flood waters.
- f. The addition of mass or weight to structures to reduce flotation.
- g. The installation of pumps to lower water levels in structures.
- h. The location of all electrical equipment, circuits, and installed appliances in a manner which will insure they are not subject to flooding and to provide protection from inundation by the regional flood.
- i. The location of all structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids or other toxic materials which could be hazardous to public health, safety, and welfare above the flood protection elevation or the provision of adequate flood-proofing to prevent flotation of storage containers which could result in the escape of toxic materials into flood waters.

ARTICLE 5 - SUBDIVISION REGULATIONS

9.0501 - Intent

1. To insure the orderly development of the city and its unincorporated planning area.
2. To provide for proper arrangement of streets in relation to other existing and planned streets.
3. To provide for adequate and convenient open spaces for traffic, utilities, fire-fighting, recreation, light and air.
4. To facilitate adequate provisions for access, placement of public non-profit and for profit utilities, schools, and public open spaces.
5. To avoid development of unsuitable areas because of soil, drainage and other physical limitations.
6. To facilitate subdivision of larger parcels into smaller parcels and lots.
7. To implement the Comprehensive Plan of the city.

9.0502 - Compliance with Chapter

All subdivisions made within the city or its extra-territorial jurisdiction shall be subject to and shall conform to the three-step requirements of this chapter.

9.0503 - Minor Subdivision

Where a proposed subdivision does not entail the establishment of any required street or road easements nor does it require any utility easements nor does the subdivision require any grading or re-contouring of the land surface, then said subdivision may be defined as a minor subdivision and may follow the guidelines of these regulations developed for minor subdivisions.

9.0504 - Sketch Plan

1. Submission
 - a. Prior to the filing of an application for tentative approval of the preliminary plat, the subdivider shall submit a sketch plan for review by the Planning and Zoning Commission.
 - b. Such sketch plans will be considered as submitted for informal discussion between the subdivider and the Planning and Zoning Commission. Submission of a subdivision sketch plan shall not constitute formal filing of a plat.

- c. Prior to presentation of the sketch plan to the Planning and Zoning Commission, the subdivider should contact the Code Administrator to ensure that the proposed subdivision conforms to the design standards of this chapter, the city comprehensive plan, street or utility master plans, and discuss any possible modifications necessary to ensure conformance.
2. Data Required for Sketch Plan
 - a. Tract boundaries
 - b. North point
 - c. Description of nature and purpose of street(s) on and adjacent to the tract
 - d. Proposed general street layout
 - e. Significant topographical and physical features
 - f. Proposed general lot layout
 - g. Existing and proposed land use

9.0505 - Preliminary Plat

The preliminary plat shall be prepared by a registered land surveyor and shall be submitted to the Planning and Zoning Commission for review and recommendation to the City Council. The preliminary plat shall cover the entire contiguous area owned or controlled by the subdivider if it is under twenty (20) acres even though only a small portion of it is proposed for the development at the time. The subdivider may be required to submit a development plan if he/she owns or controls more than twenty (20) contiguous acres of land.

1. Preliminary Plat Content

The preliminary plat shall include the following requirements, data and information.

- a. The preliminary plat drawn at a scale of not smaller than one inch representing one hundred feet (1" = 100')
- b. Name and location of the subdivision
- c. Date, graphic scale and North point
- d. Boundary line of the proposed subdivision indicated by a solid heavy line, accurately drawn to scale and showing distances and bearings
- e. Total acreage within the subdivision

- f. Location, right-of-way width and names of any existing or proposed streets including type and width of surfacing or public ways, easement, railroad, utility right-of-way, parks and other public open spaces, permanent buildings or structure, corporate boundaries and section lines within or adjacent to the subdivision
 - g. Location of existing property lines, buildings, drives, streams, watercourses, wooded areas and drainage ways
 - h. Existing water mains, storm sewers, sanitary sewers, culverts, bridges and other utility structures within the tracts, indicating pipe size, grades and location as obtained from public records
 - i. Existing zoning of the proposed subdivision and the zoning of the adjacent tracts of land
 - j. Boundary line of adjacent tracts of land or lots showing owner's name
 - k. Contour at vertical intervals of not more than two (2) feet
 - l. Location and dimension of any site to be reserved or dedicated for public uses including drainage ways, parks and open spaces
 - m. Layout of the proposed streets, alleys, crosswalks and easements, showing widths and street names
 - n. Layout, number and dimensions of all lots and blocks
 - o. Parcels of land intended to be dedicated or reserved for public use or set aside for the use of property owners within the subdivision
 - p. Building setback lines, showing dimensions
2. Preliminary Plat Submission Requirements
- a. The subdivider shall apply to the Planning and Zoning Commission on appropriate forms provided by the Code Administrator at least two weeks prior to its regularly scheduled meeting.
 - b. The subdivider shall submit two (2) prints of the preliminary plat to the Code Administrator at the time the application is made. The plat shall comply with the provisions of this ordinance.
 - c. The subdivider may submit any instrument whereby he/she proposes to regulate land use in the subdivision for protecting the proposed development.

- d. The subdivider shall provide other data related to drainage, soil suitability, financing of improvement and other related information which the Planning and Zoning Commission requests.

3. Development Plan

Where a development plan is required for a tract of land, the following shall be included in the plan.

- a. Location of existing property lines, buildings, drives, streams, wooded areas and other significant natural features
- b. General layout of proposed streets and location of blocks for designated uses
- c. Location of open spaces and facilities for public uses
- d. Existing drainage pattern based on the available topographic information from the U.S. Geological Survey maps and other similar information
- e. The development plan shall be drawn at a scale of one inch representing four hundred (400) feet
- f. The Planning and Zoning Commission may require other information as a part of the development plan

4. Review Process

- a. The Planning and Zoning Commission shall review the preliminary plat and may request additional information before it takes action.
- b. The conditional approval of a preliminary plat shall clearly state the nature and extent of the conditions which shall be met before a final plat is submitted for review and approval. Tentative approval of a preliminary plat by the Planning and Zoning Commission is not an acceptance of a subdivision plat, but is an expression of approval of a general plat as a guide to preparation of a subdivision for final plat review and approval.
- c. The Planning and Zoning Commission may require the subdivider to submit a revised preliminary plat before the subdivider proceeds with the preparation of the final plat.
- d. Approval of the preliminary plat shall be effective for a period of two (2) years within which a final plat shall be prepared. If the final plat is not submitted within this time period, the City Council may require the subdivider

to resubmit the preliminary plat for review and approval, unless the developer had provided a detailed timetable for the preparation of the final plat(s).

9.0506 - Data Omitted on Minor Subdivision Plats

The following may be omitted from any preliminary plat for a minor subdivision:

1. Location and approximate sizes of sidewalks, curbs, and gutters
2. Topographic contours at a two foot interval or a maximum interval of five feet if the latter is acceptable to the reviewing authority
3. Location and extent of problem soil types and results of all percolation tests, if requires
4. Location, widths and functions of all alleys, pedestrian walkways, easements and other areas to be dedicated for public purposes
5. Layout of public and private utility service lines and easements to include sewer and water, gas, electric, and telephone
6. Stream and drainage structures, sedimentation basins, altered drainage profiles and culvert or bridge specifications

9.0507 - Final Plat

The final plat shall cover the area which is designated for transfer or sale of lots.

1. Final Plat Content

The final plat shall conform to all provisions of this ordinance and conditions set forth by the City Council.

- a. Name of subdivision and date of tentative approval by the City Council
- b. Location by section, township and range, or other legal description
- c. Names of owners and surveyor or other professional person preparing the plat
- d. Plat map with scale of one inch representing one hundred (100) feet or less
- e. Date, graphic scale and North point
- f. Boundary line of subdivision based on an accurate traverse, showing distances and bearings

- g. Exact location, width and name of all streets within and adjoining the subdivision, and the exact location of all alleys and crosswalks
- h. True bearing and distances to the nearest established street lines or official monuments, which shall be accurately described on the plat
- i. City, township, county or section lines accurately tied to the boundary lines of the subdivision by bearing and distance
- j. Radii, internal angles, points of curvature, tangent bearings and lengths of all arcs
- k. All easements for rights-of-way provided for public services and public utilities
- l. All lot numbers and lot lines, with accurate dimensions in feet and hundredths
- m. Accurate location of all monuments, which shall be of material size in accordance with the standards of the city, the county, and the state
- n. Accurate outlines and legal descriptions of any areas (not including streets, alleys or public utility easements) to be dedicated or reserved for public use, with the purposes indicated thereon, and of any area to be reserved by deed covenant for common use of all property owners
- o. Where required, detailed engineering drawings, cross-sections or profiles of streets, utility lines, catch basins or other installations of improvements as installed
- p. Building or property covenants
- q. Certification by registered surveyor to the effect that the plat represents a survey made by him/her, and that the monuments shown thereon exist as located and that all dimensional and geodetic details are correct
- r. Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines and other improvements and of streets and other public areas

2. Final Plat Submission Requirements

The subdivider shall apply on appropriate forms to the Planning and Zoning Commission for approval of the final plat, if he/she holds a valid approval of the preliminary plat.

- a. The subdivider shall submit the final plat to the Planning and Zoning Commission at least two (2) weeks before the regularly scheduled meeting of the Planning and Zoning Commission.
- b. The final plat shall comply with all provisions of this ordinance and conditions and requirements set forth as a part of review and approval of the preliminary plat. All filing fees shall be paid to the city at the time of filing the final plat for approval.
- c. The Planning and Zoning Commission may require the subdivider to submit detailed drawings for grading of the lots, blocks, streets, detailed drawings for pavement, curb, gutter and sidewalk, drawings for installation of water, sanitary and storm sewer facilities.

3. Review Process

- a. If the Planning and Zoning Commission, after a public hearing, finds the final plat in conformance with the stipulations as presented in the preliminary plat, it shall make a recommendation for action to the City Council.
- b. The subdivider shall prepare an estimate of the cost of providing the required improvements based on the city design standards for street, curb, gutter, sidewalk, sanitary sewer, storm sewer and water lines.
- c. After receiving recommendations from the Planning and Zoning Commission, the City Council shall review the recommendations and the final plat and approve or disapprove the proposed subdivision.
- d. Within thirty (30) days after the final plat approval is granted, the final plat of record shall be filed with the County Recorder for Hettinger County.

4. Amendment of Any Project Development Plan

Upon final approval of a subdivision involving the creation of new streets, the widening, decreasing or vacation of existing streets or alleys, or the creation, enlargement or decrease of other lands devoted to public use, the City Council and/or Planning and Zoning Commission shall approve such change in streets, alleys or public lands as an amendment to any project development plan, as it finds appropriate.

5. Filing of Subdivision Plat

The subdivider, upon approval of the final plat, shall file the plat with the County Recorder of Hettinger County. Sale of any lot prior to filing of the final plat is in violation of this ordinance.

6. Design Standards — Conformance

The subdivider shall prepare the preliminary and final plat in conformance with the standard set forth herein.

7. Street Design

- a. The arrangement, character, classification, extent, width, grade, and location of all streets shall be designed in relation to existing and planned streets, topographic conditions, existing natural features, public convenience and safety, and the proposed uses of land served by such streets and to the most advantageous development of adjoining uses.
- b. Where it is not shown on the development plan, the arrangement of streets in a subdivision shall either provide for the continuation or appropriate projection of existing streets in surrounding areas or conform to a plan approved by the Planning and Zoning Commission to meet a particular situation.
- c. Where a subdivision abuts or contains an existing or proposed major street or highway, the Planning and Zoning Commission may require service streets, reverse frontage lots with screen planting in a reservation strip along the rear property line, deep lots with rear service alleys abutting the primary street or highway, or such other treatment as may be necessary for adequate protection of residential properties and for separation of through and local traffic.
- d. Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the Planning and Zoning Commission may require a street approximately parallel to and on each side of the right-of-way, at a distance suitable for the appropriate use of the intervening land. Such distances shall be determined with due regard for the requirements of approach grades and future grade separations.
- e. Reserve strips in private ownership controlling access to streets are prohibited.
- f. Street with centerline offsets of less than one hundred fifty (150) feet shall be avoided.
- g. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on major streets.
- h. When connecting street lines deflect from each other at any one point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to insure a sight distance of not less than four hundred (400) feet for local and collector streets, and of such greater radii as the Planning and Zoning Commission shall determine for special cases.

- i. Streets shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at less than eighty (80) degrees.
- j. Curb radii on all block corners shall be ten (10) feet and a five (5) foot radius shall be used at intersections of streets and alleys.

k. Street rights-of-way shall be not less than the following table:

Street Type	Minimum Width Right-of-Way (lot line to lot line)	Minimum Roadway Width	Maximum Gradient	Minimum Gradient
Aterial Streets	100 feet	48. feet	4	0.7%
Collector & Industrial Use Streets	66. feet	40. feet	6	0.7%
Local Streets	66. feet	34. feet	10	0.5%

- i. Alleys, residential district, twenty (20) feet.
 - ii. Sidewalks, five (5) feet, or matching adjoining or existing sidewalks.
 - iii. Bike paths (per DOT standards).
- l. Half-streets are prohibited except where essential to the reasonable development of the subdivision and in conformity with the other requirements of this ordinance and where the Planning and Zoning Commission finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever an existing half-street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.
- m. Cul-de-sacs are prohibited.
 - n. General considerations for intersection design are that:
 - i. Intersections of more than two (2) streets at a point shall not be permitted.
 - ii. Alleys shall be discouraged in residential districts but may be provided in commercial and industrial districts.
 - o. Dead-end streets without a suitable turnaround are prohibited.

8. Block Design

The length, width, and shape of blocks shall be suited to the planned use of land, zoning requirements, needs for convenient access, control of safety of street traffic, and the topographic conditions.

- a. Residential block length shall not exceed nine hundred (900) feet. The length of blocks is considered to be the distance from one street centerline to opposite street centerline and is measured through adjacent back lot lines or through the center of the block.
- b. Pedestrian crosswalks not less than ten (10) feet wide may be required in blocks longer than six hundred (600) feet where the crosswalks are deemed by the Planning and Zoning Commission to be essential to provide circulation, or access to schools, playgrounds or other community facilities, handicap access (curb cuts) required.
- c. The width of blocks shall generally be sufficient to allow two (2) tiers of lots and shall be at least two hundred and fifty (250) feet wide.
- d. Blocks intended for commercial and industrial use shall be specifically designated for such purposes with adequate space set aside for off-street parking and delivery facilities. The Planning and Zoning Commission may require service drives or frontage roads along major streets for commerce and industry.

9. Lot Design

- a. The shape, size and orientation of the lots shall be appropriate for the location of the subdivision. Residential lot dimension within the city shall be subject to Sections 9.0403 1(c) and 1(d).
- b. Residential lots abutting major streets shall have extra depth of at least twenty (20) feet to allow for proper setbacks.
 - i. All lots shall front a public street.
 - ii. Side lot lines shall be substantially at right angles.
- c. Residential corner lots shall have an extra width of ten (10) feet to permit adequate building setbacks from the side streets.
- d. Double frontage lots shall be avoided except where essential to provide separation of development from arterial streets.
- e. Depth and width of lots reserved or laid out for commercial or industrial uses shall be adequate to provide for off-street parking and service facilities required by the type of use a development and the provisions of the appropriate zoning district.

10. Street Names

- a. The Planning and Zoning Commission may disapprove of the name of any street shown on the plat which does not conform to existing naming patterns, has already been used elsewhere in the area, or because of a similarity that may cause confusion.
- b. Where a street maintains the same general direction, except for curvilinear changes for a short distance, the same name shall continue for the entire length of the street.

11. Utility Easements

- a. Easements across lots or along rear or side lot lines shall be provided for utilities where necessary and shall be a minimum of five (5) feet wide on each side of the lot line and shall be designated as “utility easement”.
- b. All lots shall be served by underground electric, cable television, natural gas and telephone lines unless waived by the Planning and Zoning Commission due to topographic conditions or excessive costs.
- c. All utility lines for electric power, cable television and telephone services carried overhead shall be placed in utility easement.
- d. Utility lines installed in the utility easement shall not be closer than one foot to the property line or three (3) feet to any survey monument.

12. Grading and Drainage

- a. When required, the subdivider shall provide a detailed grading and drainage plan showing the grades of streets and drainage improvements.
- b. The drainage shall not discharge into any sanitary sewer facility.
- c. The drainage facilities shall be located in street right-of-way or in drainage easements.
- d. All developers should submit a management plan for storm surface (run-off) water.
- e. The grading and drainage system shall be approved by the Planning and Zoning Commission.
- f. Grading established in any subdivision shall not be changed without approval of the Planning and Zoning Commission.

13. Drainage Way Easement

Where a subdivision is traversed by a water course or drainage way, an adequate grading of such easement shall be set by the Planning and Zoning Commission to accommodate the anticipated discharge from the property being subdivided and also the anticipated run-off from the adjoining properties.

14. Tree Planting

The planting of trees of an appropriate species and at appropriate locations may be required by the Planning and Zoning Commission.

15. Street Lights

Street lights and their location shall be in accordance with the minimum standards to be established by the Planning and Zoning Commission.

16. Required Improvements

Before installation of improvements in any subdivision, the Planning and Zoning Commission shall make a determination for improvements required, based on a schedule of improvements including the standards and class of construction.

a. Completion Assurance

To cover the cost of improvements, as determined by the Planning and Zoning Commission, the subdivider may be required to post a bond or submit a letter of credit from an acceptable financial institution in an amount sufficient to construct such improvements and submit a plan of financial responsibility of unpaid improvement assessments.

b. Survey Monuments

The subdivider shall install survey monuments in all lot and block corners in the subdivision in accordance with the requirements of the State of North Dakota.

c. Public Water

- i. Where appropriate, water mains shall be installed so as to provide individual service to each lot within the subdivision.
- ii. Water mains shall extend to the boundary of the subdivision, except where in the opinion of the Planning and Zoning Commission it is deemed impractical.
- iii. A rural water supply shall comply with the requirements of the State of North Dakota.

17. Sanitary Sewer

- a. All subdivisions shall be provided with sanitary sewers to each lot. On an individual case review, an on-site sewage system may be allowed.
- b. Private septic systems may be approved by the city sanitarian on lots of a minimum of one (1) acre.
- c. Sanitary sewer shall be extended to the boundary of the subdivision, except where in the opinion of the Planning and Zoning Commission it is deemed impractical.
- d. All sanitary systems shall be reviewed and approved by city sanitarian or Health District.

18. Storm Sewer

The storm sewer drainage facilities shall be installed in accordance with the plans and specifications approved by the Planning and Zoning Commission.

19. Grading and Surfacing

The full width of all rights-of-way shall be graded in accordance with the New England City street standards.

20. Curbs, Gutters and Sidewalks

Concrete curb and gutters, where appropriate, may be installed in all subdivisions in accordance with the city standards. Where the city requires construction of a sidewalk, it shall be in accordance with the design standards established by the Planning and Zoning Commission.

21. Installation of Improvements

Construction of all improvements is contingent on approval by the Planning and Zoning Commission. The subdivider shall be responsible for furnishing the necessary data required for such approval.

- a. Duly completed and executed surety bond in an amount sufficient to complete the work with surety satisfaction to the city.
- b. Other arrangements satisfactory to the city to complete the work.
- c. Dedication of Streets

Whenever a parcel of land is to be divided as a subdivision or as a land division, all streets and public ways shall be dedicated to the public upon approval of the plat of subdivision.

22. Dedication of Public Lands

a. Purpose

Because new residential development increases population and therefore demand upon public services, it is required that an original subdivision plat of residential property dedicate land for the purpose of providing public uses and facilities for the future residents of such subdivision.

b. Minimum Dedication

The subdivider shall dedicate five (5) percent of the total surface area to be subdivided for public use for the development of parks, playgrounds, school sites or public facilities.

c. Character of Land Dedicated

Any land to be dedicated as a requirement of this section shall be reasonably suitable for public use and shall be at a location convenient to the people to be served. Land to be dedicated shall normally form a unified parcel, be shaped for sufficient public activities, shall have public access either through easements or by frontage on an improved street, shall have sufficient topography and geology to be used for the particular public use, and shall be of such character as to be safely used by the residents of the subdivision. Land that does not meet these criteria shall not be accepted for dedication.

d. Deed to Land Dedicated

Prior to the approval of the final plat by the City Council, the subdivider shall tender a deed of the dedicated land to the public entity that is to receive the land. If the plat is not approved, the deed will be returned to the applicant. The transfer of the deed is only final upon the final approval of the plat.

e. Cash Payment In-Lieu of Land Dedication

Where the proposed subdivision does not contain land consistent with the requirements of this section, or where the applicant can demonstrate a compelling reason why he/she should not comply with the requirements of this section, cash may be offered in-lieu of the land required for public dedication. The cash shall be used for land for public parks or other public land uses such as schools and must be used for land in the vicinity of the proposed subdivision. The amount required shall be determined by the City

Council and shall be consistent with the value of the land which would otherwise be offered for public dedication.

ARTICLE 6 - SPECIAL PROVISIONS

9.0601 - Parking

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

9.0602 - Special Parking Requirements

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

1. Business, professional or public office building, studio, bank , medical or dental clinic: 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.
2. Private club or lodge: two parking spaces for each two hundred (200) square feet of service area.
3. Restaurant, eating and drinking establishment: one parking space for each three (3) seats.
4. For industrial uses there shall be one off-street parking space for each on duty employee.

9.0603 - Collection of Solid Waste

No person may collect or transport waste materials for a fee without obtaining a permit from the City of New England. 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.

9.0604 - Recycling Facilities

Recycling facility by definition is the 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 permits are required. The following are required to obtain a permit:

1. The facility does 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.

9.0605 - Public Nuisances

The maintenance of public nuisances shall be subject to the provisions of the city ordinances.

9.0606 - Noise

Sustained noise in excess of that allowed by city ordinance is prohibited.

9.0607 - Home Occupations, Standards for Approval

1. 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, but not including basement or garage floor space, which may be used as accessory to the occupation.
2. Structural changes shall not be made in the dwelling, unless a building permit is obtained.
3. Employees are limited to two full-time or four part-time besides owners without a special use permit.
4. No sign may be permitted larger than eight (8) square feet.
5. Evidence of the occupation shall not be visible from the road.
6. The occupation shall not adversely affect the character of the uses permitted in the district in which it is located.

9.0608 - Adult Entertainment Centers

1. An adult entertainment center shall not be located within one (1) mile of any religious institution, cemetery, school, park, or recreation area. They shall be located in an Industrial Zoning District.

2. An adult entertainment center shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises.
3. An adult entertainment center shall not be located within 1,250 of any other adult entertainment center.
4. An adult entertainment center must prohibit entrance by persons less than 18 years of age.
5. 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.
6. No material depicting specified sexual activities or specifies anatomical areas shall be visible from the exterior of an adult entertainment center.
7. 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.

9.0609 - Exceptions to Maximum Height Requirements

1. The following shall be exempt from maximum height requirements in all district regulations:

Antennas, belfries, chimneys, cupolas, flag poles, ventilators, water tanks, or other appurtenances usually required to be placed above roof level and not intended for human occupancy.
2. Towers may be erected to any height provided the same shall not exceed one-quarter (1/4) the area of the lot upon which the principal building is located, and shall not exceed two thousand five hundred (2,500) square feet in area, and shall be a minimum of twenty-five (25) feet at every point from any adjoining property line. Wind towers must be setback from lot lines a distance not less than two and one half (2.5) times the rotor diameter of the wind turbine.

9.0610 - General Exception to Lot Size Requirements

If a property ownership, consisting of the entire contiguous land holdings held in a single ownership at the time of passage of this ordinance, has an area of dimension which does not meet the lot size requirements of the district in which the property is located, the holdings maybe occupied by a use permitted in the district subject to the other requirements of the district, provided that if there is an area deficiency, residential use shall be limited to a single family

dwelling or to the number of dwelling units consistent with the intensity requirement of the district. The record of ownership as recorded in the office of the County Recorder at the time of the passage of this ordinance shall be the basis for application of this exception unless the owner submits proof that a different ownership existed at the time the provisions of this ordinance becomes applicable to the land concerned.

9.0611 - Uses by Temporary Permit:

1. The following uses (including but not limited to) require a temporary permit from the Code Administrator:
 - a. Bazaars, carnivals, or fairs
 - b. Musical events
 - c. Racing events
 - d. Rodeos
 - e. Public gatherings for a single-purpose event
 - f. Temporary building or yard for construction materials and/or equipment incidental and necessary for current construction in the immediate surrounding area.
 - g. Temporary office incidental and necessary for the construction, sale, or rental of the property in the immediate surrounding area.
 - h. Bonfires used for gatherings of 25 people or more
2. Permits shall be valid for such period of time as determined by the Zoning Commission or City Council and shall be renewable at the discretion of the Zoning Commission or City Council.

9.0612 - Crew Camp Housing

Crew Camp Housing or Temporary Workforce Housing shall not be allowed within the city or the extraterritorial jurisdiction of the City of New England.

9.0613 - Demolition and Structural Movement

1. Demolition permits may be issued only when the following conditions are met
 - a. Sewer and water connections must be disconnected from the city water and sewer systems and marked for later location, such marking to be made at or

above ground level. This condition is subject to approval of the Zoning Commission or governing body.

- b. Adjacent streets, sidewalks, and alleys must be protected by fences and scaffolds, and all pedestrian traffic must be rerouted with approval of the Zoning Commission or governing body.
 - c. All debris, rubbish, foundation material, and combustible material must be removed from the premises upon completion of the demolition project. The site must then be filled with earth, leveled, and compacted to conform with the grade of the adjacent properties. Restoration of the demolition site must be approved by the Zoning Commission or governing body.
2. Moving permits may be issued only when the following documentation is presented:
- a. The route by which the owner of the house or building proposes to move said structure.
 - b. All requirements for construction, alteration, and repairs are met in order for the moved structure to comply with the building code and any other relevant City ordinance.
 - c. When demolishing or moving off property, the property owner shall agree, in writing, to remove all debris, rubbish, foundation materials, and combustible materials from the site and to fill with earth, level, and compact the excavation site to conform with the grade of the original site. The owner shall also agree to plug the sewer line and to shut off the water service to the satisfaction of the Zoning Commission or governing body. The property owner shall mark the sewer and water lines at or above ground level to facilitate future location.
 - d. The property owner must ensure that the moving of the structure will not obstruct the orderly flow of traffic
 - e. The axle loading of the vehicle and equipment used to move the structure must comply with the legal limit for the streets over which they will pass
 - f. Moving the structure will not cause any damage to trees within a public right-of-way and the property owner pays for any necessary tree maintenance or trimming
 - g. The property owner must post a performance bond or proof of liability coverage with the New England City Auditor, in an amount to be determined by the Zoning Commission or governing body, conditioned upon compliance with all of the requirements of this Ordinance as well as all relevant building codes and other ordinances

- h. The property owner filed with the New England City Auditor a bond or security deposit, in cash or be certified check or cashier's check, of an amount to be determined by the New England City Council, such amount not to exceed \$10,000.00, conditioned on the following:
 - i. The property owner will pay the cost of any and all damages to the city or any person living in the city or lawfully upon the public streets or alleys of the city, whether such damage be to person or property and whether caused by the owner of the property, his agents, or his employees.
 - ii. The structure shall be moved within thirty (30) days after the permit is issued.
 - iii. The property owner shall hold the City of New England harmless against all liability, judgments, costs, and expenses which may accrue against the City of New England as a result of the acts of the property owner, his agents, or employees while moving the structure.
 - iv. Compliance with the permit, the laws of North Dakota, and the ordinances of the City of New England.

9.0614 - Wells

Building permits may be issued to property owners for a water well for domestic use as stated in Section 61-04-01.1(4) of the North Dakota Century Code. All rules, regulations, and conditions established by the Zoning Commission and City Council shall be adhered to. (Source: Section 61-04-02 of the North Dakota Century Code)

9.0615 - Open Fire

Any open fire within the city limits of New England is prohibited, unless allowed by permit or for recreational or food preparation under the following conditions.

1. The fireplace or firepit must be constructed of non-combustible materials which are fastened together and in good condition.
2. The location of the fireplace or firepit shall be at least ten (10) feet from any overhanging branches, stumps, logs, and trees.
3. The fireplace or firepit site shall have an area clear of combustible material of no less than five (5) feet in all directions.
4. The fireplace or firepit pad will consist of non-combustible material or mineral soil and/or covered with gravel or concrete.

5. The fireplace or firepit must consist of at least 3 (sides) or be circular with sides not less than ten (10) inches in height.
6. Bonfires are prohibited within city limits during burn ban periods, or with winds over 10 mph.
7. A special permit is required for bonfires used in celebrations or gatherings of more than 25 people.
8. When permitted, bonfires shall only be placed on a non-flammable surface with a radius twice that of the bonfire, and shall not be left unattended until extinguished.

9.0616 - Recreational Vehicles

1. Recreational vehicles shall follow the same rules as passenger vehicles when operated or parked on public streets
2. Recreational vehicles shall not be configured for occupancy while on public streets or on easements abutting public streets.
3. Recreational vehicles shall not be used for occupancy in residential or commercial areas. Except, where allowed by conditional use or temporary permit issued by the governing body.
4. Recreational vehicles may be used for occupancy on public streets on a temporary basis for celebrations, sales, or service by special permit issued by the governing body.

ARTICLE 7 - ADMINISTRATION AND ENFORCEMENT

9.0701 - Administration

The administration and enforcement of this ordinance is hereby vested in the City Council, City Zoning Commission, the Board of Adjustment, and the Code Administrator.

9.0702 - City Council

Duties

1. The City Council shall review and take action on all amendments to these regulations after a public hearing held by the City Planning and Zoning Commission.
2. The City Council shall investigate all violations from the provisions of these regulations and take action.

3. The City Council shall decide conditional use requests.
4. The City Council shall decide Change of Use requests.
5. The City Council shall hold all hearings as required herein and as required by statute.

9.0703 - Planning and Zoning Commission

1. Membership

The Commission shall consist of five (5) members appointed by the City Council in accordance with Chapters 40-47 of the NDCC.

2. Duties

- a. The Commission shall hold public hearings on all applications for amending this ordinance.
- b. The Commission shall report and make recommendations to the City Council on all zoning variances, amendments, and land subdivisions for approval, denial or modification of applications.
- c. The Commission may investigate violations and report to the City Council for appropriate action.
- d. Review applications for Variances and make recommendations to the Board of Adjustment.
- e. Review applications for Change of Use and make recommendations to the City Council. Change of Use must be permitted or conditionally permitted uses within the district where the property is located.

9.0704 - Board of Adjustment

1. Establishment. A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided in this section.
2. The Board shall consist of five members and one (1) alternate member appointed by the City Council.
3. Duties.
 - a. Hear appeals of any person, firm, or organization aggrieved by the decision of or ruling of the Code Administrator or City Zoning Commission.

- i. The Board shall fix a reasonable time for the hearing of an appeal and shall decide the appeal within thirty (30) days of the date of a public hearing.
 - ii. Notice of the scheduled hearing must be published in the official newspaper at least one week prior to the hearing date. The notice of hearing shall include:
 - (1) the time and place of hearing;
 - (2) description of the property by street address for platted lands and clearly identifiable location for unplatted lands;
 - (3) the proposed use and requested zoning district change; and
 - (4) time and place for public inspection of the documents before the hearing.
 - b. Hear requests for variances from the strict application of this ordinance, as submitted after review by the Zoning Commission.
4. Requirements for granting a variance
 - a. Strict application of the ordinance will produce an undue hardship.
 - b. The hardship is unique to the property affected and not generally shared by other properties within the same zoning district.
 - c. The purpose of the variance is based upon a demonstrable and exceptional hardship and not for convenience or economic gain.
 - d. The granting of the variance will not cause substantial detriment to the public welfare nor substantially impair the intent and purpose of this ordinance.
5. Conditions for granting of variance
 - a. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permitted under the terms of this ordinance.
 - b. No non-conforming use of neighboring lands, structures, or buildings in the same district or other districts shall be considered grounds for the issuance of a variance.
 - c. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of

such conditions or safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 9.0707.

6. Data Submission Requirements. Applications for variances shall be submitted with the following data
 - a. Legal description of the property.
 - b. A map showing the existing land uses and zoning district classification of the area.
 - c. The reason for the variance request.
 - d. The type of variance requested and an explanation of whether the hardship is unique to the applicant's property.
 - e. Proof of notification to owners of property within one hundred fifty (150) feet of the property for which the variance has been requested.
 - f. Any other information that the City Planning and Zoning Commission deems necessary.
 - g. A fee, the amount of which shall be determined by the City Council, plus additional costs incurred by the City in processing the applications, may be charged to offset administrative costs.

7. Appeal from Board of Adjustment Determination
 - a. A decision of the Board of Adjustment may be appealed to the City Council.
 - b. The appeal must be filed with the City Auditor within fifteen (15) days of the notice of the decision of the Board of Adjustment.
 - c. The City Council shall set a time and place for hearing the appeal within thirty (30) days of receipt of an appeal giving due notice of the hearing to the parties involved.
 - d. A decision of the City Council on an appeal from a decision of the Board of Adjustment may be appealed to the District Court in the manner provided in Section 28-34-01, NDCC.

9.0705 - Code Administrator

1. Appointment

- a. The Code Administrator shall be appointed by the City Council.
- b. The Zoning Commission and Its members may be designated to serve as the Code administrator by the City Council

2. Duties

- a. Receive and file all applications for plats of subdivisions, amendments to this ordinance, maintaining the Zoning District Map, and development permits.
- b. Maintain the records of the Planning and Zoning Commission and maintain a history of all changes to this ordinance and zoning districts with a listing of the date of change and type of change or amendment enacted.
- c. Issue Building Permits.
- d. Report all complaints to the City planning and Zoning Commission.
- e. Report all zoning violations to the City Planning and Zoning Commission and the City Council for appropriate action.
- f. In the area of special flood hazard:

- i. Permit Review

- (1) Review all permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
 - (2) Review all permits to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard. For purposes of this ordinance, "adversely affect" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one (1) foot at any point.

- ii. Use of Other Base Flood Data

When base flood elevation data has not been provided, the Code Administrator shall obtain, review and reasonably utilize any base flood elevation data available from a Federal, State or other source.

- g. Prepare and publish notices and notify adjoining property owners.

- h. Notify, in writing, the property owner or uses upon finding a violation of this ordinance and cite the nature of the violation clearly, require compliance and provide a report of the findings to the City Council.
 - i. Receive, file, and forward to the City Planning and Zoning Commission all applications for preliminary and final plats and the supporting documents.
- 3. Information to be Obtained and Maintained.
 - a. Obtain and record the actual elevation (in relation to the mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
 - b. For all new or substantially improved flood-proofed structures:
 - i. verify and record the actual elevation (in relation to mean sea level), and
 - ii. maintain the flood-proofing certifications.
 - c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

9.0706 - Violations and Penalties

- 1. Violation of this ordinance is an offense punishable by law as provided by Chapters 40-47 and 40-48 of the NDCC.
- 2. All complaints for violation shall be filed with the Code Administrator who shall investigate such violation and report to the City Planning and Zoning Commission and the City Council.
- 3. 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 these ordinances, the proper city authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceeding:
 - a. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
 - b. To restrain, correct, or abate such violations;
 - c. To prevent the occupancy of the building, structure, or land; or
 - d. To prevent any illegal act to conduct business or use in or about such premises.

4. 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.
5. The fine for any violation shall be a minimum of Fifty Dollars (50) and no more than 100% of the fee, in total, charged for their permit.

9.0707 - Building Code

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the City of New England shall conform to the provisions of the rules and regulations of the State adopted building code(s) and any future updates and amendments to that code, with the exception of any sections hereinafter set forth affecting local conditions in the City of New England, which are amended, for use and application in the City of New England, North Dakota.

State of North Dakota building codes are as follows: 2012 International Building Code (IBC); 2012 International Residential Code (IRC) (including appendixes E & J); 2012 International Mechanical Code (IMC); 2012 International Fuel Gas Code (IFGC); National Electrical Code - Wiring Standards of North Dakota; North Dakota State plumbing Code (defined as, the 2009 edition of the Uniform Plumbing Code, including appendixes A, B, D, E, I, and L, published by the international association of plumbing and mechanical officials.

One copy of each along with all deletions, modifications, or amendments shall be kept of file s in the City Auditor's office.

9.0708 - Amendments, Appointments, and Fees

1. All amendments to this ordinance shall be listed with Article, Section, all sub-Sections, date of change and description by attachment after the last page of this chapter.
2. All appointments to the Planning and Zoning Commission, Board of Adjustment, and Code administrator shall be listed by attachment after the last page of this chapter, showing the name and term of the individuals.
3. All fees within this ordinance shall be set by resolution of the city council shall be listed with Article, Section, all sub-Sections, date of change, amount, and description by attachment after the last page of this chapter.

Adopted this 6th day of May, 2013.

City of New England

By: Marty Oplahl
Mayor

By: Jason Jung
City Auditor

