

CHAPTER XVII  
ZONING

Article

- 1 Authority, Purpose and Definition
- 2 Jurisdiction and General Provisions
- 3 Zoning Districts
- 4 Area Requirements
- 5 Yard Requirements
- 6 Height Requirements
- 7 Parking
- 8 Mobile Home Districts
- 9 Enforcement
- 10 Board of Adjustment

CHAPTER XVII  
ZONING

Article 1  
Authority, Purpose and Definition

**17.0101 Authority**

The authority for this chapter is granted by Chapters 40-47 and 40-48 of the *North Dakota Century Code*.

05/05/80

**17.0102 Purpose and Intent**

The purpose of these regulations is to conserve and stabilize the value of property; to provide adequate open space for light and air; to secure safety from fire, panic and other dangers; to prevent undue concentration of population; to lessen congestion on streets, roads and highways; to facilitate adequate provisions for utilities and facilities, such as transportation, water, sewage, schools, parks and other public requirements; to promote health, safety, morals and general welfare.

05/05/80

**17.0103 Severability**

If any section, provision or portion of these regulations are adjudged invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

05/05/80

**17.0104 Repeal**

All other ordinances or parts of ordinances of the City inconsistent or in conflict with these regulations, to the extent of inconsistency or conflict only, are hereby repealed.

05/05/80

**17.0105 Definitions**

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

1. Accessory Use or Building - A subordinate use of building customarily incident to and located on the same lot with the main use of building.
2. Alley - A public or private thoroughfare which affords only a secondary means of access to property abutting thereon.
3. Alteration - As applied to a building or structure, is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

4. Basement - A story having part, but not more than one-half ( $\frac{1}{2}$ ) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes other than a janitor employed on the premises.
5. Building - A structure designed, built, or occupied as a shelter or roofed enclosure for persons, animals or property, including tents, lunch wagons, dining cars, camp cars, trailers, and other roofed structure on wheels or other supports used for residential, business, mercantile, storage commercial, industrial, institutional, assembly, educational, or recreational purposes. For the purposes of this definition "roof" shall include an awning or other similar covering, whether or not permanent in nature.
6. Building Line - The line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this chapter, may be erected above the grade level. The building line is considered a vertical surface intersecting the ground on such line.
7. Building Height of - The vertical distance from the grade to the highest point of the coping of a flat roof or the deck line of a mansard roof or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.
8. Board of Adjustment - The body authorized by the City Council to hear appeals on the enforcement of the provisions of these regulations.
9. Co-Location of Wireless Communication Facilities - Two (2) or more providers place their transmitting facilities together on the same wireless communication tower.
10. Commercial - Activity involving the sale of goods or services carried out for profit.
11. Council - The City Council.
12. Dwelling - A building designed or used as the living quarters for one or more families.
13. Dwelling House - A detached house designed for and occupied exclusively as the residence of not more than two families each living as an independent housekeeping unit.
14. Dwelling Unit - One or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping and eating.
15. Dwelling - Single Family - A building having accommodations for and used

exclusively by one family.

16. Dwelling - Multi Family - A dwelling or group of dwellings on one plot containing separate living units for three or more families, but which may have joint services or facilities for both.
17. Family - A single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage, or other domestic bond as distinguished from a group occupying a board house, lodging house, club, fraternity or hotel.
18. Garage, Private - A building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.
19. Lattice Tower - A framework or structure of crossed metal strips typically resting on three (3) members constructed vertically to which antennae are affixed, and may include accessory transmission and receiving equipment stored in an equipment building.
20. Lot - A parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.
21. Mobile Home - A structure, able to be transported in one or more sections, to be used as a dwelling with or without a permanent foundation.
22. Mobile Home Park - A tract of land designed and developed to accommodate mobile homes on lots on a purchase, lease or rental basis.
23. Monopole - A single, slender and typically cylindrical, vertical structure to which antennae or antenna support structures are affixed, and may include accessory transmission and receiving equipment stored in an equipment building.
24. Parking Space - An area enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.
25. Setback - The distance between the lot line and the building line, and/or any projection of the building thereof.
26. Setback Building Line - A building line back of the street line.

27. Street - All property dedicated or intended for public or private street, highway, freeway or roadway purpose or subject to public or private easement therefor.
28. Store - That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, then the space between the floor and ceiling next above it.
29. Structure - Anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.
30. Use - The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.
31. Wireless Communication Antenna - An antenna system designed to transmit and/or receive communication signals, and are typically mounted upon a structure (i.e. buildings, towers).
32. Wireless Communications Equipment Building - The structure in which the receiving and/or relay equipment for a wireless communications facility is housed.
33. Wireless Communication Facility - A facility consisting of the equipment and structures involved in sending or receiving communications signals.
34. Wireless Communication Tower - A tower including, but not limited to, self-supporting lattice and monopole, which elevates a wireless communication antenna and parabolic antenna, and may include accessory transmission and receiving equipment stored in an equipment building.
35. Yard - An open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.
36. Yard, Front - An open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot.
37. Yard, Rear - An open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.
38. Yard, Side - An open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a lot line.

Article 2  
Jurisdiction and General Provisions

**17.0201 Jurisdiction**

The jurisdiction of these regulations shall include all lands within the corporate limits of the City and an area extending one-half (1/2) mile in all directions from the corporate boundaries of the City.

05/05/80

**17.0202 Amendments**

The City Council may from time to time on its own motion or on petition or by recommendation of the Planning and Zoning Commission, amend, supplement or repeal provisions of these regulations after public hearing.

05/05/80

**17.0203 Maps and Boundaries**

The boundaries of these districts are hereby established as shown on a map of the City which is on file in the office of the City Auditor which map with all explanatory matter thereon shall be deemed to accompany, be, and is hereby made a part of this chapter.

05/05/80

**17.0204 Annexed Property**

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

05/05/80

**17.0205 Application of Regulation**

Except as provided in this chapter:

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

included as a part of the yard, court or open space similarly required for any other building, structure or dwelling under this chapter.

05/05/80

### **17.0206 Non-Conforming Uses**

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

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

until said permit or license has been approved by the Zoning Commission.

7. District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any non-conforming uses existing therein.

05/05/80

**17.0207 Development**

The following activities or uses shall constitute development:

1. A change in the type of use of a building, structure or land.
2. A reconstruction or alteration of the size of a building, structure or land.
3. A material increase in the intensity of use of land, such as an increase in the number of businesses, offices or dwelling units in a structure or parcel of land.
4. Commencement of extraction or excavation on a parcel of land.
5. Demolition of a structure.
6. Deposit of refuse, solid or liquid waste or fill on a parcel of land.
7. Alteration of a use which has been abandoned for a period of one year.
8. Alteration or cuts in existing street curbs.

The following activities or uses do not constitute development:

1. The maintenance or improvement of a public road or railroad tract not involving substantial engineering redesign if the work is carried out on land within the boundaries of the right-of-way.
2. Work by any utility not involving substantial engineering redesign for the purpose of inspection, repair, renewal or construction on established rights-of-way of any streets, mains, pipes, cables, powerlines, towers, poles, tracts, or the like.
3. Work for the maintenance, renewal improvement of any building or structure, if the work affects only the interior or the decoration of the exterior of the building or structure.

05/05/80



**17.0208 Water and Sewage Facilities**

To protect the subsurface water supply from pollution and to protect the public health and abate nuisance and odor, construction of privies and cesspools shall be prohibited, in the corporate limits of the City, unless otherwise permitted by the City Council.

05/05/80

**17.0209 Conditionally Permitted Uses**

Applications for approval of a conditional use shall be submitted to the Planning and Zoning Commission.

The Planning and Zoning Commission shall hold a public hearing before action is taken on the application for approval of a conditionally permitted use. Notice of said hearing shall be published in the official newspaper of general circulation at least one week prior to the hearing.

No application for a condition use shall be granted unless the Planning and Zoning Commission shall find all of the following conditions present:

1. The conditional use will not be detrimental to or endanger the public health, safety or general welfare.
2. The existing permitted uses in the neighborhood will not in any manner be substantially impaired or diminished by the establishment of the conditional use.
3. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The conditional use shall conform to all applicable regulations of the district in which it is located.
7. Based upon the Planning and Zoning Commission's findings of the above listed conditions, the City Council shall grant or deny a conditional use. If the City Council does not adhere to the Planning and Zoning recommendations then the Council needs a two-thirds (2/3) to override the Planning and Zoning Commission's recommendations.

05/05/80

**17.0210 Land Suitability**

No land shall be divided, subdivided or developed for a use which is not deemed suitable by the Planning and Zoning Commission for reasons of soil limitations, inadequate drainage or any other condition likely to be harmful to the health, safety or welfare of the future residents of the area or harmful to the overall community.

The subdivider or developer as a part of the preapplication procedure for subdivisions must request a determination of land suitability providing that he shall provide all necessary maps, data and information for such a determination to be made.

The City Council shall deny or approve the recommendations made by the Planning and Zoning Commission in regard to land suitability.

**17.0211. Wireless Communication Towers and Antennas**

1. Purpose. To establish general guidelines in the siting of, and to minimize any possible adverse impacts caused by, wireless communication towers and antennae.
2. Procedure:
  - (A) Any request for the placement of wireless communications equipment which may involve construction of a new tower or placement of an antenna upon an existing structure shall require a pre-application meeting with the City Council. This meeting is intended to provide significant preliminary information on the project, discuss development alternatives, and determine the appropriate review procedure.
  - (B) Any decision to deny a request to place, construct or modify a wireless communication antenna and/or tower shall be in writing and supported by substantial evidence contained in a written record from the City Council meeting(s) so as to be in compliance with the Federal Telecommunications Act of 1996.
  - (C) Application Requirements
    1. Applications for the placement of a wireless communications antenna shall include the following:
      - (a) A complete set of plans and specifications including a report outlining the proposal.
      - (b) Written certification from a registered engineer that a commercially utilized antenna to be constructed is in

compliance with all applicable federal, state and local regulations.

- (c) Proof of ownership of the proposed site or authorization to utilize it.
- (d) Additional information may also be required, such as site line diagrams and color samples, as needed to complete the review of the project.

2. Applications for the placement of a wireless communications tower shall include the following:

- (a) A complete set of plans and specifications including a report with a description of the tower with technical reasons for its design.
- (b) Documentation establishing the structural integrity for the tower's proposed uses, the general capacity of the tower.
- (c) Written certification from a registered engineer that the tower is to be constructed in compliance with all applicable federal, state and local regulations pertaining to the construction.
- (d) An affidavit stating that any existing space on a proposed tower to be utilized for commercial purposes will be made available for the Co-location of wireless communication facilities, and that all requests for co-location of wireless communication facilities will be responded to within thirty (30) days from the date of receipt of written request.
- (e) Proof of ownership of the proposed site or authorization to utilize it.

3. General Requirements:

(A) The City Council shall consider and the applicant shall demonstrate compliance with the following standards in determining whether to approve an application for a wireless communication antenna and/or tower:

- 1. Exemption from co-location requirement. Wireless communication towers serving as an accessory use, and which do not exceed thirty (30) feet above the maximum building height as per Zoning District Regulation, shall be exempt from all co-location requirements.

2. Co-location of wireless communication facilities. As a condition of issuing a permit to construct and operate a wireless communication tower utilized for commercial purposes within the City's zoning jurisdiction, the applicant is required to demonstrate that a suitable location is not available for the placement of an antenna on any of the existing structures within the geographic area to be served. The City may request any feasibility studies associated with the said application which demonstrate that locations on existing structures have been explored as the preferred siting alternative. If another tower has been determined to be technically feasible by either the applicant or the City, the applicant must show that it has requested to Co-locate on the said tower and provide a letter from the owner/operator of the facility stating reasons for not permitting the co-location of wireless communication facilities. In the event that a owner/operator of a tower has not responded to the said request, City Council may defer the said application until the co-location issue is resolved. In all cases, it shall be the intent of the City to encourage the co-location of wireless communication facilities.
3. Response to co-location request. In all circumstances, owners of existing towers being utilized for commercial purposes shall respond to a request for co-location of wireless communication facilities within thirty (30) days from the date of receipt of a written request.
4. As a condition of issuing a permit to construct and operate a tower to be utilized for commercial purposes in the City, the owner/operator of the tower is required to allow co-location until said tower has reached full antenna capacity. Thus the applicant is required to submit an affidavit stating that space on the proposed tower will be made available to future users when technically possible. Applicants cannot be denied space on a tower unless mechanical, structural, or regulatory factors prevent sharing. Agreement to this provision must be included in the lease by the landowner, if different from the owner/operator of the tower. Written documentation must be presented to the City Council evidencing that the landowner of the property on which the tower is to be located has agreed to the requirements, regulations, and standards established in this Section. As an additional condition of issuing the permit to construct and operate the tower within the City's zoning jurisdiction, the owner/operator of the tower is required to sign a statement that all disputes with future providers concerning co-location and the terms and conditions of co-location shall be submitted to commercial arbitration under a system selected by the parties but if the parties are unable to agree, then under the auspices of the Commercial

Arbitration Provisions of the American Arbitration Association.

5. As a condition of issuing a permit to place a commercially utilized antenna in a Residential Zoning District, the applicant is required to provide proof that no suitable locations exist for a tower or antenna facility within any other "permitted use" or "conditional use" areas in the local code.

(B) All wireless communication towers, antennas and associated equipment facilities shall meet the following applicable requirements:

1. Height and setback requirements:

- (a) Wireless communication antennas located outside a Residential Zoning District and utilized for commercial purposes shall be setback a minimum of two hundred (200) feet from any Residential Zoning Districts.
- (b) Wireless communication towers shall only be constructed to the least height that is technically feasible to service the geographical service area of the applicant while still allowing adequate space for co-location of at least two other users.
- (c) Wireless communication towers being utilized for commercial purposes shall be setback a minimum of five hundred (500) feet from any R-1, R-2, R-3 or RMH zoning districts.
- (d) Wireless communication towers, with the exception of guyed towers, shall have front, side, and rear yard setbacks as required by the appropriate zoning regulations.
- (e) Guyed wireless communication towers shall be setback from the lot line according to the following distance ratios:

Number of Levels of Guy Along Height	Ratio of Height of Tower to Distance of Base to Property Line
2 or less	1:1
3	3:2
4	2:1
5	5:2
6 or more	3:1

2. When guyed wireless communication towers are used, all anchor points from the guys are required to be on the same property as the tower, or written permission obtained from landowners whose

property the guy wire crosses or anchors.

3. Within Commercial Districts wireless communication towers shall only be permitted as monopoles, lattice towers and guyed towers shall be prohibited.
4. Within R-1, R-2 R-3 or RMH Zoning Districts, communication antennas being utilized for commercial purposes shall only be situated either within existing high-tension lattice towers or as architectural components upon non-residential buildings.
5. Wireless communication towers being utilized for non-commercial purposes shall be prohibited from locating in a front-yard or in the front half of a side-yard within a Residential Zoning District.
6. Wireless communication antenna and/or tower design shall utilize colors and materials that effectively reduce their visual impact.
7. Wireless communication towers utilized for commercial purposes shall be designed to have sufficient structural capacity to allow for three (3) providers to be located on the structure. The wireless communication facility shall also be designed to show that the applicant has sufficient space on its site plan for an equipment building large enough to accommodate three (3) users. If an equipment building is initially constructed to accommodate only one (1) user, space shall be reserved on site for equipment building expansions to accommodate three (3) users.
8. Screen fencing shall be required for aesthetic and public safety reasons. A chain linked or a solid wood fence at least six (6) feet in height shall be erected entirely around any communication tower and any related support facilities being utilized for commercial purposes. "No Trespassing" signs shall be posted around the wireless communication facility with a telephone number of a person to contact in the event of an emergency.
9. Any wireless communication facility that is no longer needed and its use is discontinued shall be reported immediately by the owner and/or service provider to the City Council. Any antenna or tower that is not operated for a continuous period of twenty-four (24) months shall be considered abandoned, and the owner of such antenna or tower shall agree to remove the same within ninety days of a receipt of notice. If such antenna or tower is not removed within said ninety days, the governing authority may remove such antenna

or tower at the owner's expense.

10. Except as required by law, an antenna and/or tower shall not be illuminated and lighting fixtures or signs shall not be attached to the antenna or tower. If lighting is required by FAA regulations, white strobe lights shall not be permitted at night unless no other alternative is permitted by the FAA and all lights shall be oriented inward so as not to project onto surrounding property. Lighting for security purposes shall be permitted at the wireless communication facility with a prior approval of the Planning and Zoning Commission.
  11. All wireless communications antennas and/or towers shall maintain compliance with the (FCC) at all times, including current radio frequency emissions standards and maintenance of all equipment at the tower site.
  12. Airspace. Wireless communication towers shall be located or installed in compliance with the regulation of the airport approach zones and federal aviation regulations for clearance around VOR and DVOR stations.
  13. No advertising shall be permitted on any wireless communications facility.
4. Permits:
- (A) Prior to receiving a building permit, all applicable licenses, including FCC and Federal Aviation Administration (FAA), needed to construct a wireless communication tower, shall be submitted to the City Inspector.
  - (B) Prior to receiving final inspection, documented certification certifying that the wireless communication facility complies with all current FCC regulations for non-ionizing electromagnetic radiation shall be submitted to the City Council and City Inspector.
  - (C) No wireless communication antenna and/or tower shall be erected, constructed, or altered on any lot or structure within the City's zoning jurisdiction without having first secured a permit for such antenna and/or tower from the City Inspector.
5. Certification of Registered Engineer. The City may require a review by an independent registered engineer engaged by the City and paid for by the applicant for the construction of wireless communication towers. Among other things, the Engineer may review and approve the written certification of the applicant's

Engineer and may review and approve the applicant's studies showing the necessity for and location of the tower; and may review and approve the structural integrity, electrical integrity and electrical safeness of the wireless communication facility in its projected uses so as to assure the protection of the health, safety and welfare of the citizens of Emerado.

- 6. Violations. Any violation of this section is hereby declared to be a nuisance and shall be abated in the manner as provided by law.
- 7. Those applicants which are denied approval by City Staff may request an appeal by the City Council.

09/13/99

ARTICLE 3  
Zoning Districts

**17.0301 Zoning Districts**

The city is hereby divided into the following Zoning Districts to be known as:

- R-A Agricultural Residence
- R-1 Residential Districts, Single-Family
- R-2 Residential Districts, Two-Family
- R-3 Residential Districts, Multi-Family
- RMH Residential Mobile Home Districts
- C Commercial Districts
- I Industrial Districts

05/05/80

**17.0302 Agricultural Residence Districts (R-A)**

In an Agricultural Residence District the following buildings and uses are permitted:

- 1. Dwelling houses occupied by not more than one family.
- 2. Publically owned and operated buildings.
- 3. Churches and parish houses.



4. Hospitals.
5. Nursing and rest homes.
6. Homes for the aged.
7. Playgrounds and parks.
8. Cemetery.
9. Agricultural farming and truck gardening, except kennels, animal or poultry farms operated for commercial purposes.
10. Wireless communication towers and antennae, as regulated by Section 17.0211.

09/13/99

**17.0303 Residential District (R-1)**

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

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

05/05/80

**17.0304 Residential District - Two Family (R-2)**

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

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

05/05/80

**17.0305 Residential District - Multi-Family (R-3)**

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

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

05/05/80

**17.0306 Accessory Uses in Residential Districts**

1. Offices of professional persons and home occupations when such use does not exceed one-third of the main floor space of the dwelling, and is conducted in the principal building not in an accessory building, and does not employ and persons not residing on the premises.
2. Private garages.
3. Wireless communication antennae as regulated by Section 17.0211.
4. Any other accessory use customarily incident to a use not authorized in a residential district.

09/13/99

**17.0307 Commercial District**

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

1. Retail stores and shops.
2. Service establishments.
3. Business and professional offices.
4. Eating establishments.
5. Funeral homes and mortuaries.
6. Transportation services.

7. Amusements and recreation.
8. Wholesale businesses.
9. Storage buildings and warehouses.
10. Wireless communication towers and antennae as regulated by Section 17.0211.
11. Indoor paintball ranges as permitted and regulated by Chapter 10, Article 7 of the Emerald City Code.
12. Any other building or use similar to those uses herein listed for the types of services or goods sold.
13. Any accessory use customarily incident used to a use herein listed.

01/09/06

**17.0308 Industrial Districts**

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

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

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

05/05/80

ARTICLE 4  
Area Requirements

**17.0401 Area Regulations**

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

- R-A not less than 11,000 square feet
- R-1 One-family - not less than 10,000 square feet
- R-2 Two-family - not less than 11,000 square feet
- R-3 Multi-family - not less than 12,000 square feet

and the following minimum lot widths:

- R-A not less than 60 feet of lot width measured along the front building line.
- R-1 One-family - not less than 60 feet of lot width measured along the front building line.
- R-2 Two-family - not less than 60 feet of lot width measured along the front building line.
- R-3 Multi-family - not less than 60 feet of lot width measured along the front building line.

and the following minimum floor area ratios:

- R-A not over 40% of the lot area
- R-1 One-family not over 40% of the lot area.
- R-2 Two-family not over 40% of the lot area.
- R-3 Multi-family not over 40% of the lot area.

05/05/80

ARTICLE 5  
Yard Requirements

**17.0501 Yard Requirements**

R-A Agricultural Residential District there shall be:

1. A front yard of not less than 25 feet.
2. A side yard on each side of not less than 5 feet.
3. A rear yard of not less than 25 feet.

R-1 One-family districts there shall be:

1. A front yard of not less than 25 feet.
2. A side yard on each side of not less than 5 feet.
3. A rear yard of not less than 25 feet.

R-2 Two-family districts there shall be:

1. A front yard of not less than 25 feet.
2. A side yard on each side of not less than 5 feet.
3. A rear yard of not less than 25feet.

R-3 Multi-family districts there shall be:

1. A front yard of not less than 25 feet.
2. A side yard on each side of not less than 5 feet.
3. A rear yard of not less than 25 feet.

05/05/80

ARTICLE 6  
Height Requirements

**17.0601 Building Height Limit**

In any use district no building shall hereafter be erected or structurally altered to exceed the following height limitation:

1. One and two family units - two and one-half (2½) stories, but not to exceed thirty-five (35) feet in height.
2. Multi-family and commercial district - four (4) stories but not to exceed fifty (50) feet.
3. Industrial district - four (4) stories or fifty (50) feet except such limitation does not apply to buildings used for grain storage.

05/05/80

ARTICLE 7  
Parking

**17.0701 Minimum Size Regulations**

Each space shall contain a minimum area of not less than three hundred (300) square feet including access drives of width of not less than eight and one-half (8½) feet and depth of not less than twenty (20) feet. Each space shall be adequately served by access drives. Each loading space shall contain a minimum area of not less than five hundred (500) square feet. Churches and parish houses shall provide a minimum of fifty (50) feet in all directions surrounding the facility.

08/04/86

**17.0702      Reduction and Use of Parking and Loading Spaces**

Off street parking facilities existing at the effective date of this ordinance shall not subsequently be reduced to an amount less than that required under this ordinance for a similar new building or use. Off street parking facilities provided to comply with the provisions of this ordinance shall not subsequently be reduced below the requirements of this ordinance. Such required parking or loading space shall not be used for storage of goods or for storage of vehicles that are inoperable or for sale or rent.

05/05/80

**17.0703      Yards**

Off-street parking and loading facilities shall be subject to front yard regulations for the use in which the parking is located, except in classes of business districts and classes of industrial districts. In all districts, no off-street parking or loading shall be located within ten (10) feet of any property line which abuts a residential district.

05/05/80

**17.0704      Computing Requirements**

In computing the number of such parking spaces required the following rules shall govern:

1. Floor space shall mean the gross floor area of the specific use.
2. Where fractional spaces result the parking spaces required shall be construed to be the nearest whole number.
3. The parking space requirement for a use not specifically mentioned herein shall be the same as required for a use of similar nature as determined by the City Planning Commission.

05/05/80

**17.0705      Fences and Planting Screens**

1. Off-street parking and loading areas near or adjoining Residence Districts shall be screened by a fence of adequate design or a planting buffer screen; plans of such screen or fence shall be submitted before approval as a part of the application for a building permit and such fence or landscaping shall be installed as a part of the initial construction.
2. All commercial firms, corporations and businesses located within the city limits shall provide a screening fence or wall around garbage, refuse, and rubbish holding areas of sufficient height to retain any overflow.

08/04/86

**17.0706      Access**

1. Parking and loading space shall have proper access from a public right of way.
2. The number and width of access drives shall be so located as to minimize traffic congestion and abnormal traffic hazard.
3. Vehicular access to business or industrial uses across the street from property in R-A, R-1, R-2, R-3, Residence Districts shall be prohibited.
4. No dwelling shall hereafter be erected or altered unless there is direct access to it from a street or highway through an open space at least as wide as the dwelling and on the same lot. No building shall hereafter be erected or altered so as to close the present means of access to an existing dwelling or so as to diminish this means of access to a width less than the width of the existing dwelling.

05/05/80

**17.0707 Location of Parking Facilities**

Required off-street parking space shall be provided on the same lot as the principal building or use, except where otherwise provided for in this section.

05/05/80

**17.0708 Combined Facilities**

Combined or joint parking facilities may be provided for one (1) or more buildings or commercial uses in R-2 and R-3 Residence Districts, in Commercial Districts, and in Industrial Districts, provided that the total number of spaces shall equal the sum of the requirements for each building or use and provided such space is within five hundred (500) feet of the principal use, and provided the Board of Adjustments deems it impractical to provide parking on the same lot.

05/05/80

**17.0709 Construction and Maintenance**

1. In R-3 Residence Districts, in Commercial Districts, and Industrial Districts, parking areas and access drives shall be covered with a dust-free, all weather surface with proper surface drainage as required by the City Engineering Department.
2. The operator of the principal building or use shall maintain parking and loading areas, access drives, and yard areas in neat and adequate manner.

05/05/80

**17.0710 Lighting**

Lighting shall be directed away from the public right of way and nearby or adjacent Residential Districts.

05/05/80

**17.0711 Required Site Plan**

Any application for a building permit or for a certificate of occupancy shall include a site plan or plot plan showing off-street parking and loading space to be provided in compliance with this Ordinance.

05/05/80

**17.0712 Application of Parking and Loading Regulations**

Off-street parking and loading regulations shall apply to all buildings, and uses of land established after the effective date of this ordinance.

05/05/80

**17.0713 Required Number of Off-Street Parking Spaces**

Off-street parking areas of sufficient size to provide parking for patrons, customers, suppliers, visitors, and employees shall be provided on the premises of each use. Unless otherwise specified in the various use zone classifications, the minimum number of required off-street parking spaces for the following uses shall be as follows:

1. Single Family Dwelling. One (1) parking space. No garage shall be converted into living space unless other acceptable off-street parking space is provided.
2. Two Family Dwelling. One (1) parking space for each family or dwelling unit.
3. Multiple Dwelling. One and one-half (1½) parking spaces for each family or dwelling unit.

05/05/80

**17.0714 Required Loading Areas**

Loading and unloading areas for goods, supplies, and services shall be sufficient to meet the requirements of each use.

05/05/80

ARTICLE 8  
Mobile Home Districts

**17.0801 Permitted Uses**

1. Independent mobile homes located in a well drained area.
2. Parking and playgrounds.
3. Mobile home service buildings such as coin operated washers and dryers, for use of residents of the mobile home park.
4. Office for manager of the mobile home park.



5. Storage building used for storage of vehicles used to tow mobile homes.
6. Storage buildings for blocks, skirts, pipe and other material and equipment required to set up a mobile home.
7. Accessory uses and buildings including swimming pools, bath houses, patios, etc., for use of mobile home residents.

05/05/80

**17.0802 Mobile Home Park Requirements**

1. Mobile home parks shall contain a minimum of five (5) acres of land and a maximum of eight (8) mobile homes per gross acres.
2. A minimum of ten (10) percent of the gross site area shall be devoted to an open space and recreational facilities.
3. Each mobile home space shall be at least 40 feet wide and an area of 5,000 square feet.
4. There shall be a minimum of fifteen (15) feet between structures.
5. No building shall exceed 35 feet in height.
6. Underground utility hookups shall be provided to each lot in the park. These utilities shall include water, sewer, electricity, telephone and either gas or fuel oil for heating purposes.
7. Off-street parking of one parking space for each mobile home unit shall be provided.
8. All lots in the park shall be accessible at all times to emergency vehicles.
9. Each mobile home shall have a setback of a minimum of ten (10) feet within the park and twenty-five (25) feet setback from other public roads adjoining the mobile home park.
10. Where the park is served by private streets, those streets shall conform to the following:
  - a. Where parking is to be allowed on both sides of the street, a driving surface of thirty-four (34) feet within a forty (40) feet right-of-way shall be provided.
  - b. Where parking is prohibited on both sides of the street, a driving surface of twenty-four (24) feet within a thirty (30) feet right-of-way shall be provided.

11. Each mobile home space shall be provided with garbage stands and cans.
12. All regulations of North Dakota Regulatory Agencies and Departments relating to mobile homes shall be complied with.
13. All mobile homes brought into the Corporate Limits of the City of Emerado shall meet minimum requirements for construction pursuant to HUD guidelines, as amended, and shall be no older than 10 years. A penalty of \$500.00 per day shall be assessed against the owner of any mobile home for each day during which a mobile home remains within the corporate limits of the City of Emerado in violation of this section.

06/01/98

**17.0803 Use of Mobile Homes and Trailers**

It shall be unlawful for any person, firm, association or corporation to move into the City, to park in the City, or to place within the City, any mobile home or trailer for the purpose of utilizing the same for residential purposes, for business purposes or for outbuildings, within the corporate limits of the City, except as provided by this section:

1. An emergency or temporary stopping or parking of a mobile home or trailer is permitted on any street, avenue, alley or highway for not longer than three (3) hours, subject to any and other further prohibitions, regulations or ordinances for that street, avenue, alley or highway.
2. Occupation of a mobile home park or trailer is permitted in an approved mobile home park or trailer park.
3. A mobile home or trailer used on a temporary basis as a construction office or similar use is permitted, provided that a permit for such use is obtained from the City and provided that no living or sleeping quarters are maintained in said office.
4. This restriction is applicable to mobile homes and trailers. Modular homes, prefabricated homes (Wausau homes), and stick built homes that are built on a foundation are not considered to be mobile homes and shall be treated as houses and building permits shall be requested before construction of the same. All such modular, prefab and stick built buildings must meet the building code and shall have a minimum of 2x4 studs in the walls with drywall.

05/05/80

ARTICLE 9  
Enforcement

**17.0901 Administrative Official**

1. Administrative Official. Except as otherwise provided herein, the zoning

administrator shall administer and enforce the provisions of this chapter, including the receiving of applications, the inspection of premises and the issuing of building permits. No building permit or certificate of occupancy shall be issued by him except where the provisions of this chapter have been complied with.

2. **Building Permit Required.** No building or structure shall be erected, added to, or structurally altered until a permit therefor has been issued by the zoning administrator. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the Board of Adjustment, no such building permit or certificate of occupancy, shall be issued for any building where said construction, addition, or alteration or use therefor would be in violation of any of the provisions of this chapter.

- a. **Matter Accompanying Application.**

There shall be submitted with all applications for building permits two copies of a layout or plot drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this ordinance.

- b. **Payment of Fee.**

One copy of such layout or plot plan shall be returned when approved by the zoning administrator together with such permit to the applicant upon the payment of a fee as outlined in 8.0103 of this code.

3. **Certificate of Occupancy**

- a. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the zoning administrator, stating that the building or proposed use thereof complies with the provisions of this chapter.
- b. No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the zoning administrator therefor.
- c. All certificates of occupancy shall be applied for co-incident with the application for a building permit. Said certificate shall be issued within 30 days after the erection or alteration shall have been approved.
- d. The zoning administrator shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or

tenancy interest in the building affected.

- e. No permit for excavation for, or the erection or alteration of or repairs to any building shall be issued until an application has been made for the certificate of occupancy.
- f. Under such rules and regulations as may be established by the Board of Adjustment and filed with the zoning administrator, a temporary certificate of occupancy for not more than thirty days for a part of a building may be issued by him.

05/05/80

ARTICLE 10  
Board of Adjustment

**17.1001      Creation of Board**

- 1. Creation, Appointment and Organization. A Board of Adjustment is hereby created. Said Board shall consist of five members for three year terms. The Board shall elect a chairman from its membership, shall appoint a secretary, and shall prescribe rules for the conduct of its affairs.
- 2. Powers and Duties. The Board of Adjustment shall have all the powers and duties proscribed by law and by this chapter, which are more particularly specified as follows:
  - a. Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
  - b. Variances. To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep loss, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. In granting any variance, the Board of Adjustment shall prescribe any conditions that it deems to be necessary or desirable. However, no variance in the strict application of any provision of this chapter shall be granted by the Board of Adjustment unless it finds:
    - 1. That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in

the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.

2. That, for reasons set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose.
3. That the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of adjoining buildings and those in the vicinity, the Board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity.
3. Procedure. The Board of Adjustment shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the ordinance involved and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that it applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board of Adjustment shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the city auditor.
4. Notice and Hearing. No action of the Board shall be taken on any case until after due notice has been given to the parties and public hearing has been held.

05/05/80

#### **17.1002 Amendments**

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

1. Report by City Zoning Commission-Public Hearing. The governing body shall require a report from the city zoning commission on a proposed amendment before taking a final action thereon. The city zoning commission shall thereupon make a tentative report and hold a public hearing thereon with notice the same required for

a public hearing by the governing body before submitting its final report. Such final report shall be submitted within 90 days after the time of referral of the proposed amendments to the city zoning commission unless the governing body is agreeable to an extension of time.

2. Action by Governing Body - Public Hearing. After the receipt of the required final report on any amendment from the city zoning commission, or in the event of the failure of the city zoning commission to so report within 90 days following the time of referral of the proposed amendment to the city zoning commission, the governing body shall hold a public hearing, after which the proposed amendment may be passed. Not less than 15 days notice of the time and place of holding such public hearing shall first be published in the official newspaper. A hearing shall be granted to any person interested, and the time and place specified.
3. Vote After Protest. If a protest against a change, supplement, modification, amendment or repeal is filed and signed by owners of 20 percent or more:
  - a. Of the area of the lots included in such proposed change; or
  - b. Of those immediately adjacent in the rear thereof extending 150 feet therefrom; or
  - c. Of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.

The amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body.

05/05/80

### **17.1003 Enforcement**

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

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
2. To restrain, correct or abate such violation;
3. To prevent the occupancy of the building, structure or land; or

4. To prevent any illegal act, conduct, business or use in or about such premises.

A violation of any provision of this article or a violation of or referral or failure to comply with any regulation order, requirement, decision or determination made under authority conferred by this article shall be punishable as provided in the chapter entitled "Ordinances."

05/05/80