**Zoning Ordinance**

**Underwood, North Dakota**

**Adopted April 21, 2014**

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# **Section 1**

## **1.1 INTRODUCTION**

### **1.11 Purpose of this Ordinance**

This is the Zoning Ordinance for the City of Underwood, North Dakota. The purpose of these regulations is to protect and preserve property values and to maintain the community character and quality of life of the residents of Underwood.

The Underwood Zoning Map shows the locations and boundaries of various zones. Each zone is for a separate type of land use such as residential, commercial and industrial. The regulations for each zoning district establish the types of land uses that are allowed and provide dimensional standards for development.

Each zoning district has a list of permitted uses. Permitted land uses are also known as “uses by right” and require no additional or special approvals by the City. For example, a single-family house is a permitted use in a residential district and a business is a permitted use in a commercial district.

Each zoning district also has a list of conditional uses. Conditional uses may or may not be appropriate for a proposed location. Special approvals by the City are required for a conditional use to be developed.

### **1.12 Historical Note**

In 1923, the North Dakota Legislature enacted the enabling legislation which gave North Dakota Cities the authority to exercise zoning controls. Chapter 40-47 of the North Dakota Century Code (NDCC) authorizes cities to . . . “regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.”

The City of Underwood’s first Zoning Ordinance was adopted in 1974. The Underwood ordinance was updated and readopted in 1998 and again in 2014.

### **1.14 Underwood’s Jurisdictional Authority and the Joint Jurisdiction Area of the**

### **ETA**

The land area which falls under the authority of the Underwood Zoning Ordinance is defined by NDCC 40-47-01.1. To provide for the orderly expansion and development of communities, North Dakota cities can exercise zoning and subdivision controls beyond their corporate boundaries (city limits). The area which is located outside the corporate boundary is known as the “extraterritorial area” or ETA.

1. City Jurisdiction beyond the City Limits

Underwood’s ETA extends one-mile beyond the corporate boundary but the outer half mile is an area of shared jurisdiction with McLean County. The City of Underwood will have sole zoning jurisdiction, subdivision authority and building permit authority over the area within one-half mile of the corporate boundary after holding the zoning transition meeting. As Underwood grows and as land is annexed, the ETA also moves outward.

1. City and County Joint Jurisdictional Area

* 1. The area of joint jurisdiction begins at one-half mile beyond Underwood’s corporate boundary and extends to one-mile beyond the corporate boundary. The joint jurisdiction involves zoning-related matters such as zoning changes, subdivisions, conditional use permits or variances.

* 1. Within this area of joint jurisdiction, for land-use related decisions made by McLean County to be final and in effect, the County must first give written notice to the governing body of the City of Underwood. If the City agrees with the County’s decision, they may respond accordingly or if Underwood does not respond, after 30-days of the notice, the County decision is final and in effect.

* 1. If the City disagrees with the County’s decision, the City has 30-days to request negotiation. If negotiation is requested it will trigger a mediation process and the dispute will be submitted to a committee. A governor-appointed mediator will preside over the committee and if they cannot achieve consensus, the dispute will be resolved by the County Commission.

## **1.2 ADMINISTRATION**

### **1.21 The Role, Membership and Terms of the Planning and Zoning Commission**

The Planning and Zoning Commission is a board which is advisory to the Board of City Commissioners. It is the role of the Planning and Zoning Commission to make recommendations on zoning matters and zoning regulations. The Planning and Zoning Commission meets to hear matters on zoning such as zoning changes, conditional use permits, subdivision plats, ordinance amendments and other land use issues. The Planning and Zoning Commission also serves as the Board of Adjustment.

Other duties of the Planning and Zoning Commission include:

* Recommending to the Board of City Commissioners, from time to time, programs for specific improvements and for the financing thereof.

* Consulting with and advising public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens relative to the carrying out of the plan.

Other powers of the Planning and Zoning Commission may include:

* Promoting the public interest in and understanding of the master plan, and for that purpose, it may publish and distribute copies of the plan or of any part thereof or of any report, and may employ such other means of publicity and education as it may determine.

* Accept and use gifts for the exercise of its functions. (NDCC 40-48-14)

* Exercise such other powers as may be necessary to enable it to fulfill its functions and carry out the provisions of NDCC 40-48.

When the Planning and Zoning Commission votes on an issue their decision takes the form of a recommendation which is forwarded to the Board of City Commissioners. The Board of City Commissioners makes the final decision. On requests presented to them, the Planning and Zoning Commission can vote to approve, approve with conditions, deny or table the item or continue the public hearing.

The Underwood Board of City Commissioners appoints all but one of the Planning and

Zoning commissioners. In addition to the members appointed by the Board of City Commissioners, the Planning and Zoning Commission includes one person who resides outside of the corporate limits of Underwood but within Underwood’s ETA.

The Planning and Zoning Commissioner who lives within Underwood’s ETA is appointed by the McLean County Board of County Commissioners, if such person is available and will serve on the City Planning and Zoning Commission. The County representative on Underwood’s Planning and Zoning Commission shall hold office for five years.

### **1.22 The Role, Membership and Terms of the Board of Adjustment**

The board of adjustment heretofore created by ordinance shall continue in full force and effect. The board of adjustment shall consist of seven (7) members, each to be appointed by the board of city commissioners for a term of three (3) years. The board of adjustment shall have all of the powers and duties imposed upon it by the statutes of the State of North Dakota and the ordinances of the City of Underwood.

1. Authority

Authority found in Section 40-47-07 of the North Dakota Century Code.

1. Duties
	1. The Board shall hear and decide appeals from and shall review any order, requirement, decision or determination made by the administrative official charged with enforcement of the provisions of this Ordinance. For more information on appeals, check under the “Procedures” section near the end of this ordinance.
	2. The Board shall make determinations on requests for variances. For more information on variances, check under the “Procedures” section near the end of this ordinance.

### **1.23 The Role and Duties of the Zoning Administrator**

A. Authority

The Board of City Commissioners shall appoint a Zoning Administrator to carry out the directives and duties as assigned by said Commission. The Administrator shall be directly responsible to the Board of City Commissioners.

A. Duties

1. Shall attend all hearings
2. Shall maintain updated copies of this Ordinance and the District Zoning map.
3. Shall keep copies of all records
4. Shall make inspection of land and/or structure to determine compliance with the provisions of this Ordinance
5. Shall carry out any other duties assigned by the Board of City Commissioners

## **1.3 HOW TO USE THIS ORDINANCE**

### **1.31 How to Determine Where a Specific Use May Locate**

To determine whether a proposed use is allowed at a specific location, first check the zoning map to determine the zoning district for the location in question. A zoning map may be obtained from the City Auditor. Once the zoning district is identified, reference the zoning district text to determine if the proposed use is listed as a permitted use or as a conditional use. If the proposed use is not listed as a permitted use or a conditional use within that zoning district, it is not allowed.

### **1.32 How to Determine the Zoning Requirements for a Property**

Each zoning district also contains dimensional standards for minimum lot size and lot coverage. Building heights, building setback distances from property lines and other standards are provided.

You may also wish to check the “General Provisions” section on page 27 for information on other types of development standards such as off-street parking requirements. Use the

“Definitions” section beginning on page 53 to determine the meaning for specific words. The Definitions section also contains regulatory language that may apply. Information on zoning changes, zoning text amendments, conditional uses, variances and nonconforming uses is located in the “Zoning Tools and Procedures” section on page 34.

# **Section 2**

## **2.1 ZONING DISTRICTS**

### **2.11 Zoning Map**

The City of Underwood is hereby divided into zones, or districts, as shown on the District Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this ordinance. A copy of said map is on file in the office of the City Auditor.

Where uncertainty exists with respect to the boundaries of the various districts hereby established and as shown on the District Zoning Map, the following rules shall apply:

1. The district boundaries are the center lines of streets or alleys, unless otherwise shown.

1. 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.

1. Where land has not been subdivided into lots or blocks and lots, the district boundary lines on the District Zoning Map shall be determined by the use of the scale of measurement shown on said map.

1. Where uncertainty may exist as to the exact boundary line of a district, the same shall be determined by the Board of Adjustment and a record kept thereof.

### **2.12 A Agricultural District**

The agricultural district is established as a district in which the predominant use of land is for general agricultural uses. The intent of the A Agricultural District is:

1. To encourage the continued use of land for agricultural uses.

1. To prohibit scattered commercial and industrial use of land, and to prohibit any other use which would interfere with an integrated and efficient development of the land for more intensive urban uses as the city expands.

1. To discourage any use, which because of its character or size, would create unusual requirements and costs for public services, such as police and fire protection, water supply and sewerage before such services could be expanded in an orderly and cost-effective manner.
2. Permitted Uses

* 1. The use of land or buildings for farming and ranching. This includes cultivating land for the production of agricultural crops or fruit, livestock, raising, feeding, or producing livestock, poultry and milk. Farming and ranching does not include Concentrated Animal Feeding Operations.2. Riding stable
	2. Horse boarding
	3. Beehives and bee keeping
	4. Roadside stand for sale of products grown on premises
	5. Single-family, non-farm dwelling (3-acre minimum)
1. Conditional Uses

* 1. Livestock sales pavilion
	2. Commercial pipeline
	3. Sand or gravel extraction and processing
	4. Sewage treatment plant
	5. Commercial greenhouse
	6. Tree, shrub or plant nursery
	7. Temporary asphalt and concrete batch plants
	8. Temporary Crew Housing Facility
	9. Communication towers or transmitting stations
1. Dimensional Standards

* 1. Minimum lot size:
		1. Minimum width: 200-feet
		2. Minimum lot area: 3-acres

* 1. Lot Coverage
		1. The principal building and all accessories shall not cover more than thirty five (35) percent of the lot

* 1. Setback Requirements
		1. Front yard – 40-feet
		2. Rear yard – 20-feet
		3. Side yard – 20-feet

* 1. Maximum Height Requirements
		1. No single family dwelling shall exceed forty (40) feet in height.
		2. No accessory building shall exceed twenty-five (25) feet in height.

1. Exceptions: The minimum lot size applies only to non-farm residential developments. Farm dwellings are occupied by farmers as defined herein. Platted lots recorded prior to April 21, 2014 are not subject to the minimum lot size.

### **2.13 R1 Residential District**

The R1 residential district is established as a district in which the principal use of land is for single-family dwellings. The specific intent of the R1 Residential District is:

1. To encourage the development of, and the continued use of the land for single family dwellings on urban lots.

1. To prohibit commercial and industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of single-family dwellings in the district.

1. To discourage the continuance of existing uses that would not be permitted as new uses under the provisions of this title.

1. To discourage any use which would generate traffic on local streets other than normal traffic to serve residents on those streets.

1. To discourage any use which because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family dwellings.
2. Permitted Uses
	1. Single-Family Dwellings
	2. Group Home for the Disabled
3. Conditional Uses
	1. Church
	2. School
	3. Park and Recreation Facility
	4. Bed and Breakfast
	5. Home Occupation
	6. Family Child Care
4. Dimensional Standards
	1. Minimum lot size:
		1. Minimum width - seventy-three (73) feet
		2. Minimum area - 9,928 square feet

* 1. Lot Coverage
		1. The principal building and all accessories shall not cover more than thirty (30) percent of an inside lot, nor more than thirty five (35) percent of a corner lot

* 1. Setback Requirements
		1. Front yard - Minimum depth of ~~thirty (30)~~ twenty-five (25) feet
		2. Rear yard - Minimum depth of ~~twenty-five (25)~~ twenty (20) feet
		3. Side yard - Minimum width of ten (10) foot

* 1. Maximum Height Requirements

No single family dwelling shall exceed forty (40) feet in height. No accessory building shall exceed fourteen (14) feet in height.

* 1. Fences

 No fence shall be located in a front yard.

### **2.14 R2 Residential District**

The R2 residential district is established as a district in which the principal use of land is for single-family dwellings and two-family dwellings. The intent of the R2 Residential District is:

1. To encourage the development of, and the continued use of the land for single family dwellings and two-family dwellings on urban lots.

1. To prohibit commercial and industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of single-family dwellings and two-family dwellings in the district.

1. To discourage the continuance of existing uses that would not be permitted as new uses under the provisions of this title.

1. To discourage any use which would generate traffic on local streets other than normal traffic to serve residents on those streets.

1. To discourage any use which because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family dwellings.
2. Permitted Uses
	1. Single-Family Dwellings
	2. Two-Family Dwellings
	3. Group Home for the Disabled
3. Conditional Uses
	1. Church
	2. School
	3. Park and Recreation Facility
	4. Bed and Breakfast
	5. Home Occupation
	6. Family Child Care
4. Dimensional Standards
	1. Minimum lot size:
		1. Minimum width - fifty (50) feet
		2. Minimum area - 3,500 square feet

* 1. Lot Coverage
		1. The principle building ~~and~~ combined with all ~~accessories~~ accessory buildings shall not cover more than thirty (30) percent of an inside lot, nor more than thirty-five (35) percent of a corner lot.

* 1. Setback Requirements
		1. Front yard - Minimum depth of twenty-five (25) feet
		2. Rear yard - Minimum depth of twenty (20) feet
		3. Side yard - Minimum width of six (6) feet

* 1. Maximum Height Requirements

No dwelling shall exceed forty (40) feet in height. No accessory building shall exceed fourteen (14) feet in height.

* 1. Fences

No fence shall be located within a front yard.

### **2.15 R3 Residential District**

The R3 residential district is established as a district in which the principal use of land is for multiple-family dwellings. The intent of the R3 Residential District is:

1. To encourage the development of, and the continued use of the land for multiple family dwellings on urban lots.

1. To prohibit commercial and industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of multi-family dwellings in the district.

1. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this title.

1. To discourage any use which would generate traffic on local streets other than normal traffic to serve residents on those streets.

1. To discourage any use which because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for multiple-family dwellings.
2. Permitted Uses
	1. Multi-Family Dwellings
	2. Group Home for the Disabled
3. Conditional Uses
	1. Church
	2. School
	3. Park and Recreation Facility
	4. Assisted Living Facility
	5. Basic Care Facility
	6. Home Occupation
4. Dimensional Standards
	1. Minimum lot size:
		1. Minimum width - one hundred (100) feet
		2. Minimum area - fourteen thousand (14,000) square feet

* 1. Lot Coverage

The principle building and all accessories shall not cover more than fifty (50) percent of an inside lot, nor more than fifty (50) percent of a corner lot.

* 1. Setback Requirements
		1. Front yard - Minimum depth of twenty-five (25) feet
		2. Rear yard - Minimum depth of twenty (20) feet
		3. Side yards - Minimum width of ten (10) feet
		4. For multi-family dwellings which are more than two stories tall, the rear and side-yard building setback distances shall be increased by 10-feet for each additional story over two. For example, a three-story building would have a rear yard setback of 30-feet and side-yard setbacks of 20-feet.

* 1. Maximum Height Requirements

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

* 1. Fences

 No fence shall be located in a front yard.

**2.15.1 R4 Residential District (Added by Amendment May 1, 2017)**

The R4 residential district is established as a district in which the principal use of land is for single-family dwellings. The specific intent of the R4 Residential District is:

1. To encourage the development of, and the continued use of the land for single-family dwellings on urban lots. All homes will be of new construction and built on site of new material or if built off site, dwelling is to be of new material throughout and must be moved on as one unit. Single-family MOBILE or MANUFACTURED home dwellings may not be moved onto any said tract of land or lot. All remodels shall be done of new material and maintain harmony within the neighborhood. All improvements to individual lots such as sewer, water, electricity, telephone, private approaches and driveways are the responsibility of the owner.
2. To prohibit commercial and industrial use of the land, no business shall be executed on any lot not listed in Permitted Uses or previously approved under Conditional Uses, no commercial or business equipment shall be stored or parked at/on any lot. To insure the use of the property for attractiveness of the property, and to maintain the desired tone of the subdivision.

1. To discourage the continuance of existing uses that would not be permitted as new uses under the provisions of this title.
2. To discourage any use which would generate traffic on local streets other than normal traffic to serve residents on those streets.
3. To discourage any use which because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for single-family dwellings.
4. Permitted Uses
5. Single-family dwellings
6. Group Home for the Disabled
7. Conditional Uses
8. Home Occupation
9. Family Child Care

 Dimensional Standards

1. Minimum lot size:
2. Minimum width – seventy-three (73) feet
3. Minimum area – 9,928 square feet
4. Lot Coverage
5. The principal building and all accessories shall not cover more than thirty (30) percent of an inside lot, nor more than thirty five (35) percent of a corner lot. No structure shall be erected, altered, or placed on any lot other than one single family dwelling not to exceed two (2) stories in height, with a minimum of 1,200 square feet for a single story dwelling or 900 square feet for a two or a one and a half story dwelling, it shall not preclude the erection, location, or maintenance of other customary or necessary structures accessory to the dwelling and as recreational use. All detached buildings shall be newly constructed on site not to exceed Fourteen (14) foot sidewall height measured from top of accessory building floor to top of wall sill and be no more than 1,680 square feet, and the exterior of such buildings shall match that of the residence. (Amended March 13, 2019)
6. Setback Requirements
7. Front yard – Minimum depth of thirty (25) feet
8. Rear yard – Minimum depth of twenty-five (20) feet
9. Side yard – Minimum width of ten (10) feet
10. Maximum Height Requirements

No single-family dwelling shall exceed forty (40) feet in height.

1. Fences

No fence shall be located in a front yard and shall be made of new materials harmonious and consistent with the contour of the land and buildings located on the lots and shall be maintained accordingly. All fences shall not exceed six (6) feet in height.

1. Variances

Variances for the R4 district shall be submitted for pre-approval to the Architectural Review Board prior to submission to the Board of Adjustments.

1. Off-street parking

The owner of each lot must make provisions for adequate off-street parking and provide for the construction and maintenance of the private driveway. All off-street parking areas shall be surface with impervious asphalt, concrete, or similar material approved by the City Commission.

1. Maintenance of Property

The lawn, shrubbery, trees, and landscaping shall be maintained in good, clean, attractive and sanitary condition, order and repair. All residences, garages, and accessory buildings shall be maintained in a reasonable state of repair. Only signs designating family property, or seasonal, temporary signs (i.e. school/team spirit) are allowed and only within setbacks displayed to the public view on any lot, or a sign offering the property for sale, or of builder during the construction phase. No lot, or any portion thereof, shall be used as a storage place for unsightly cares, construction materials, machinery, junk, trash, unlicensed vehicles, or any materials that may attract vermin or be in any manner unsanitary. Each owner shall secure refuse disposal and any animal waste must be periodically disposed of appropriately. (Amended May 1, 2017)

1. Grading and Storm water run-off

Neither grantee nor any person or persons claiming under him shall or will at any time raise the grade of any lot or lots herein conveyed above the grade established or to be established by the grantor. All lot owners shall provide and maintain proper facilities to control storm water run-off onto adjacent properties. Such storm water run-off shall be diverted into the natural drainage system. All lot owners shall insure that sediments do not impede the natural drainage system.

1. Trees

All trees and tree rows must be set back on each lot to prevent snow drifting on subdivision roads.

1. Pets

No animals, birds, or fowl shall be kept or maintained on any part of the property except dogs, cats, and pet birds which may be kept thereon in reasonable numbers as pets for the pleasure and use of the owner, but not for any commercial use or purpose. No dogs or cats shall be allowed to run at large.

### **2.16 RMH Residential Manufactured Home Park District**

The RMH residential district is established as a district in which the principal use of land is for single-family mobile home and single-family manufactured home dwellings located within manufactured housing parks. The specific intent of the RMH Residential Manufactured Home Park District is:

1. To encourage the development of and the continued use of land for single-family mobile and manufactured home dwellings located within manufactured home parks.

1. To prohibit commercial and industrial uses of the land.

1. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this title.

1. To discourage any use which would generate traffic on local streets other than normal traffic to serve residents on those streets.

1. To discourage any use which because of its character or size would create requirements and costs for public services, such as police and fire protection, water supply and sewerage, substantially in excess of such requirements and costs if the district were developed solely for manufactured housing.
2. Permitted Uses
	1. Single-family mobile home dwellings or manufactured homes with or without a permanent foundation when located within manufactured home parks.
	2. Group Home for the Disabled
3. Conditional Uses
	1. Family Child Care
4. What is a Mobile Home?

A mobile home is defined as a transportable, factory-built structure that was manufactured prior to June 15, 1976 or otherwise does not comply with the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401) and that is designed to be used as a single dwelling unit. A mobile home is: (1) constructed off-site, (2) equipped with the necessary utility service connections, (3) made so as to be readily movable as a unit or units on its own running gear, and (4) designed to be used with or without a permanent foundation. (Note: After June 15, 1976 no mobile homes have been constructed.)

Existing mobile homes currently located in Underwood are allowed to remain but the importation of any additional mobile homes built prior to June 15, 1976, may be allowed on a cases by case basis after review of the building permit application by the Underwood City Commission. ~~is not allowed because they do not meet the current housing code requirements.~~ See “Moving of Buildings and Structures” located in the Conditional Uses Section. (Amended April 23, 2018)

1. What is a Manufactured Home?

A manufactured home is defined as a federal housing and urban development (HUD) labeled structure, transportable in one or more sections that, in its traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty or more square feet [29.73 square meters]; that is built on a permanent chassis; that is designed to be used as a dwelling; that may or may not have a permanent foundation; that is connected to the required utilities; and that contains the plumbing, heating, air-conditioning, and electrical systems; except that such term shall include any structure that meets the size requirements and for which the manufacturer has voluntarily filed a certification required by the secretary of housing and urban development and that complies with the manufactured home construction and safety standards. This definition should not be interpreted to include any type of recreational vehicle that may equal or exceed the body length or width specified herein. ND Admn. Rules 108-03-01-03(10) Jan. 1, 2006

1. Installations

* 1. Home owners installing their own Manufactured Home must have the installation inspected by a certified inspector. Installer must notify inspector for inspection.

* 1. All manufacturers’ installation instructions shall be followed. Manufacture’s Installation Manual must be available for the inspection.

* 1. Where site conditions are different than those described in the manufacturer’s installation instructions, the installation must be designed by a registered professional engineer or architect to meet the same goals as those in the manufacturer’s installation. If Alternative Installation methods are used, the supporting documents must be available for the inspection.
1. Standards

* 1. Site Area. A residential manufactured home park must have a minimum site area of four (4) acres.

* 1. Density. The maximum allowable density for all manufactured home parks shall be ten (10) families per net acre.

* 1. Number of Spaces. A manufactured home park must have at least 20 mobile home spaces, with 10 spaces ready for occupancy before the first space may be occupied.

* 1. Minimum Space Size. Each dwelling space within the park must have a minimum area of 4,800 square feet, with a minimum width of 40 feet. A maximum of one dwelling may be placed on a mobile home space.

* 1. Building Coverage. No more than 35 percent of a dwelling space may be covered by structures.

* 1. Setbacks. Dwellings must be set back at least 20 feet from all streets and accessways within the manufactured home park and from all other mobile or manufactured homes.

* 1. Streets. Each mobile home space must abut and have access to a hard surfaced street or other accessway, with a minimum width of 26 feet. Surfacing must be constructed in accordance with the specifications of the City.

* 1. Drainage. All drainage structures must be designed and installed in accordance with a storm water management plan as approved by the City Engineer.

* 1. Utility Services. All manufactured housing parks or subdivisions must be provided with underground utilities such as electrical, telephone, and cable TV service cables. No overhead facilities are allowed.

* 1. Height Limits. No accessory building shall exceed fourteen (14) feet in height, nor shall any legal attachment to a principal building except the height of the principal building.

* 1. Parking. Two off-street parking spaces shall be provided for each dwelling.

* 1. Lighting. All entrances, exits, lanes and driveways between rows of manufactured homes shall be lighted to provide safety and visibility during nighttime hours.

* 1. Services. All provisions for water supply, sewage and fire protection to be provided in any manufactured housing park shall have been approved by the city engineer and shall meet City standards.

### **2.17 RVC Recreational Vehicle Campground District**

The RVC Recreational Vehicle Campground District is established as a district in which the principal use of land is for providing temporary accommodations for recreational vehicles and camping. The intent of RVC campground district is:

1. To encourage the availability of, and the continued use of land for recreational vehicles and campers.

1. To prohibit other residential, commercial and industrial uses of the land.

1. To encourage suitable and proper development of recreational vehicle campgrounds.
2. Permitted Uses
	* 1. Recreational vehicle parking
		2. Tent camping
		3. Office
		4. Retail establishment for convenience of guests
		5. Swimming pools
		6. Playgrounds
3. What is a Recreational Vehicle?

A recreational vehicular or RV is a recreational-type unit primarily designed as a temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by a vehicle. Common types of RVs include motorhomes, travel trailers, fifth wheels, pop-up tent campers, over-the-cab or on-board pickup campers. A recreational vehicle campground or facility is not a crew camp or Temporary Crew Housing Facility.

1. Standards

* + 1. A recreational vehicle campground is a designated area which is under single ownership or management and which has been planned, designed and improved to accommodate at least fifteen recreational vehicles. A recreational vehicle campground is open to the general public as temporary occupancy for recreational or vacation purposes.

* + 1. Designated spaces within the recreational vehicle campground are intended for the temporary occupancy of one recreational vehicle, tent, or other individual camping unit per space, on a temporary basis.

* + 1. It is the duty of the RVC campground owner or manager to keep a register of all occupants of the campground. The register shall contain the following information:

* + - 1. Name and home address of each occupant;
			2. License number and state issuing the license and owner of each recreational vehicle or towing vehicle;
			3. The dates of arrival and departure of each recreational vehicle.

* 1. The park shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of information contained in the register. The register records must be maintained for a period of three years following the date of registration.

* 1. The owner or person in charge of any dog, cat or other pet may not permit it to run at large or commit any nuisance within the limits of the recreational vehicle campground.

* 1. A RVC campground may not provide spaces for less than twenty recreational vehicles.

* 1. The minimum unit area for each recreational vehicle site is at least 1,500 square feet in area and each space must be marked or clearly defined at the site.

* 1. Each recreational vehicle space must be designed and constructed to allow for safe and efficient placement and removal of recreational vehicles. The space must be constructed to minimize the development of ruts or low spots by the vehicle tires. The site must be graded to provide drainage but shall not exceed three inches per ten feet across the width of the space.

* 1. The minimum widths of interior roads and driveways serving individual parking sites is twenty feet. All roads and driveways must be surfaced to City specifications. All roads must be well-drained. Turnarounds must be provided for all dead-end roads with a minimum internal radius of sixty feet.

* 1. Water supply and sanitary sewer provisions must meet requirements of the state plumbing code.

* 1. Each lot intended for use by recreational vehicles must be provided with an electrical system as required by the state electrical code.

* 1. An adequate supply of covered garbage containers must be provided in each park and located not more than 200 feet from any space. If cans are provided, they must be maintained in a sanitary condition and stored on racks as required.

* 1. The city building code applies to all buildings constructed within a RVC campground.

* 1. Swimming and bathing facilities must meet the requirements of the City Building Code.

* 1. Designated outdoor fire locations, if provided, must be in safe and convenient areas where they will not constitute fire hazards to vegetation, undergrowth, trees and recreational vehicles or tents.

### **2.18 CD Downtown Commercial District**

The CD Downtown Commercial District is established as a district in which the principal use of land is for light commercial activities. The intent of the CD Downtown Commercial District is:

1. To encourage the development of, and continued use of the land for retail, light commercial and service purposes;

1. To prohibit heavy commercial and industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of the commercial uses in the district and substantially depreciate the value of residential properties surrounding the CD Downtown Commercial District;

1. To discourage any use which, because of its character or size, would interfere with the use of the land in the district as a shopping and service center.

1. To prevent commercial encroachment on existing residential districts

1. To discourage any use, which because of its character or size, would create requirements and costs for public services, such as police and fire protection, water supply and sewerage substantially in excess of those necessary if the district were developed solely for downtown commercial uses.
2. Permitted Uses
	1. Storage Facilities which meet the following standards:
		1. The minimum front yard building setback distance is 40 feet.
		2. Garage doors or large loading entry doorways for vehicles shall not face the Lincoln Avenue street frontage.
	2. Sales-oriented businesses such as stores which sell, lease, or rent consumer, home and business goods including antiques, appliances, auto accessories, art, art supplies, baked goods, books magazines and newspapers, bicycles, butchery, cameras, candy, clothing, dry goods, electronic equipment, fabric, flowers, furniture, hardware, hobby items, music and musical instruments, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pharmacy, office supplies, pets, pet food, pharmaceuticals, plants, printed materials, shoes, stationary, sporting goods, videos and food sales
	3. Personal service-oriented businesses such as offices, restaurants, hotels, motels, banks, branch banks; clinics, emergency medical care; laundromats; dry cleaning; photographic studios; photocopy and blueprint services; hair, tailoring, seamstressing, tanning and personal care services; business, martial arts and other trade schools; dance or music classes; taxidermists; mortuaries; small animal veterinarian clinics; animal grooming; mortuary and funeral home
	4. Entertainment-oriented businesses such as restaurants, cafes, delicatessens, bars and taverns; indoor continuous entertainment activities such as bowling alleys, ice rinks and game arcades; pool halls; arcades, dance halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs and lodges
	5. Repair-Oriented businesses such as repair of televisions, bicycles, clocks, cameras, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; tailor; locksmith; and upholsterer
	6. Dwelling units, but only when located above or behind a storefront business and only when one off-street parking space is provided for each dwelling unit.
3. Exceptions
	1. Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are better suited for the CG General Commercial Zoning District.
	2. Repair and service of motor vehicles, automobiles, motorcycles, boats, recreational vehicles and light and medium trucks is better suited for the CG General Commercial Zoning District. Repair and service of industrial vehicles, heavy equipment and heavy trucks is better suited for the I Industrial Zoning District.
	3. Sales, rental, or leasing of motor vehicles, automobiles, light, medium and heavy trucks, heavy equipment, boats and recreational vehicles or sales of manufactured housing units are better suited for the CG General Commercial Zoning District.
	4. Hotels, restaurants and other services that are part of a truck stop are considered accessory to the truck stop which is better suited for the CG General Commercial Zoning District.
4. Conditional Uses:
	1. Temporary farm and garden produce sales.
	2. Filling station
	3. Seasonal nursery and bedding stock sales
	4. Church
	5. Assisted Living Facility
	6. Basic Care Facility
	7. Commercial child care center
	8. Retail liquor sales
5. Dimensional Standards:
	1. Minimum lot size:
		1. Minimum width – twenty-five (25) feet
		2. Minimum area – 3,500 square feet

* 1. Lot Coverage
		1. The maximum lot coverage is 100%

* 1. Setback Requirements
		1. Front yard - There is no minimum front yard setback. If the development site is between two existing buildings which are both setback from the front property line, the front yard setback may not exceed the average setback of the adjoining buildings. In no case shall a setback greater than 15 feet be allowed, and this area must be landscaped and/or incorporate streetscape elements.
		2. Rear yard - There is no minimum rear yard setback, unless the rear property line abuts residentially-zoned property, in which case the minimum rear yard setback shall be 10 feet.
		3. Side yard - There is no minimum side yard setback, unless the side property line abuts residentially-zoned property, in which case the minimum side yard setback shall be 6 feet.

* 1. Maximum Height Requirements

No building shall exceed seventy (70) feet in height.

* 1. Parking

No designated off-street parking spaces are required for businesses in the DC Downtown Commercial District other than the requirement for associated dwelling units, as mentioned above.

D. Performance Bond (Added by Amendment March 29, 2018)

 1. A performance bond equal to 10% of the construction cost is required for the permit to be approved.

E. Off-Street Parking (Added by Amendment March 29, 2018)

1. Off-street parking and loading shall be provided in such a manner that vehicles do not encroach on a public right-of-way.

2. Parking must be compatible with business purpose and with surfacing materials approved by the Underwood Planning and Zoning Board and The Underwood City Commission.

### **2.19 CG General Commercial District**

The CG General Commercial District is established as a district in which the principal use of land is for light and heavy commercial activities. The intent of the CG General Commercial District is:

1. To encourage the development of, and continued use of the land for retail, light and heavy commercial and service purposes;

1. To allow the storage and display of merchandise outside a building

1. To prohibit heavy industrial use of the land, and to prohibit any other use which would substantially interfere with development or continuation of the uses in the district and substantially depreciate the value of properties surrounding the CG General Commercial District;

1. To discourage any use which, because of its character or size, would interfere with the use of the land in the district as a commercial area.

1. To discourage any use, which because of its character or size, would create requirements and costs for public services, such as police and fire protection, water supply and sewerage substantially in excess of those necessary if the district were developed solely for general commercial uses.

1. Permitted Uses
	1. All permitted and conditional uses allowed in the CD Downtown Commercial District are allowed in the CG General Commercial District with the exception of residential uses. Storage facilities in the CG General Commercial District are not subject to the special restrictions of the CD District.
	2. Sales-oriented businesses such as stores which sell, lease, or rent automobiles, trucks, trailers, farm equipment and implements, farming and ranching supplies, lumber, recreational vehicles, campers, motorcycles, boats and manufactured homes.
	3. Service-oriented businesses such as repair and service of motor vehicles, automobiles, motorcycles, boats, recreational vehicles and light and medium trucks, tire repairs, filling station, truck stop and any restaurant or motel associated with the truck stop.
2. Exceptions
	1. Sales of livestock are better suited to the I Industrial District.
	2. Junkyards, wrecked automobiles, salvage yards and similar uses are better suited to the I Industrial District.
	3. Manufacturing, compounding, processing, packaging and treatment or assembly activities are better suited to the I Industrial District.
3. Dimensional Standards
	1. Minimum lot size:
		1. Minimum width – fifty (50) feet
		2. Minimum area – 7,000 square feet
	2. Maximum Height Requirements

 a. No building shall exceed seventy (70) feet ~~or four (4) stories~~ in height.

 3. Setback Requirements

 a. To be determined by the Underwood City Commission with recommendations from the Underwood Planning and Zoning Commission

D. Performance Bond (Added by Amendment March 29, 2018)

 1. A performance bond equal to 10% of the construction cost is required for the permit to be approved.

E. Off-street Parking (Added by Amendment March 29, 2018)

1. Off-street parking and loading shall be provided in such a manner that vehicles do not encroach on a public right-of-way.

2. Parking must be compatible with business purpose and with surfacing materials approved by the Underwood Planning and Zoning Board and The Underwood City Commission.

**2.19.1 II Commercial District (Outlot A,Outlot E, Outlot D) (Added by Amendment April 23, 2018)**

The II Commercial District is established as a district in which the principal use of land is for more for light and heavy commercial activities and light industrial activities. The intent of the II Commercial District:

1. To encourage the development of and the continued use of the land for light and heavy commercial and light industrial purposes.

1. No residential use.
2. Highway 83 frontage will be reserved for light commercial / retail businesses.

A. Permitted Uses

 1. All sales-oriented businesses which are allowed in the CG District such as stores which sell, lease, or rent automobiles, trucks, trailers, farm equipment and implements, farming and ranching supplies, lumber, recreational vehicles, campers, motorcycles, boats, manufactured homes.

 2. All service-oriented businesses which are allowed in the CG District such as repair and service of motor vehicles, automobiles, motorcycles, boats, recreational vehicles and light, medium and heavy trucks and equipment including tire repairs, filling station, truck stop and any restaurant or motel associated with the truck stop.

 3. Industrial service, vocational, and sales-oriented businesses engaged in the training, repair, servicing and sales of heavy equipment such as:

 a. Agricultural equipment

 b. Heavy construction equipment

 c. Industrial equipment

 d. Welding and metal fabrication shops

 e. Auto body shops

 f. Vocational Training Schools

 g. Experimental and testing laboratories

 h. Veterinarian Retail and Clinic, large and small animal.

 4. Manufacturing and production-oriented businesses which are involved in the manufacturing, processing, compounding, refining, fabrication, packaging, assembly and sales of goods such as:

 a. Grain and Feed Elevator or Mill

 b. Acetylene

 c. Alcohol

 d. Brick, tile or terra-cotta

 e. Linoleum

 f. Paint, shellac, turpentine, lacquer or varnish

 g. Paper or pulp

 h. Petroleum products

 i. Plastics

 j. Bottling Plant

 k. Manufacturing and storage of alcoholic beverages, including brewery.

 5. Storage, warehousing and freight-oriented businesses which are involved in the storage, movement, or sale and leasing goods and materials such as:

 a. Storage buildings and warehouses including refrigerated storage.

 b. Pipe storage yard

 c. Public utility service yard.

 d. Oil and gas well drilling equipment

 e. Sand and gravel storage and processing

 f. Concrete products, material storage and mixing and sales

 g. Storage of shipping containers, cargo containers, roll-off containers, semi-trailers

 h. Soft drink bottling plant.

 i. Contractors’ equipment storage yard

 j. Freight and truck terminal

 6. Wholesale sales-oriented businesses which are involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses such as:

 a. Feed or grain storage and sales

 b. Building materials sales yard, including the sale of rock, sand and gravel

 c. Contractors' equipment storage yard.

 d. Petroleum bulk plants.

B. Conditional Uses

 1. Cement, lime, gypsum, or plaster of paris manufacture.

 2. Drop-forge industry, manufacturing forgings with power hammer.

 3. Fertilizer manufacturing.

 4. Gas manufacture or utility regulating stations.

 5. Electric generating plant.

 6. Soap manufacture

 7. Stockyards and livestock sale pavilions

 8. Slaughter and packing of animals and meat products.

 9. Other conditional uses maybe considered based on business plan.

C. Dimensional Standards

 1. Minimum lot size:

 a. Minimum width – one hundred (100) feet

 b. Minimum area – 5,000 square feet

 2. Maximum Height Requirements

 a. No building shall exceed seventy (70) feet ~~or four (4) stories in height.~~

D. Re-purposing of existing structure(s) and / or lot(s).

 1. Owner/representative of the new venture shall come before the Zoning Board with written building plans and objectives for new business use for review and recommendation to the City Commission. Zoning Board approved plan will then be presented to the City Commission for decision.

 2. NDCC 42-01-13. Liability of successive owners of property for failure to abate nuisance. Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property created by a former owner is liable therefor in the same manner as the one who first created it.

E. Business plans/proposals must be provided to the Underwood Planning and Zoning Board and The Underwood City Commission for approval.

F. Building plans must be provided to the Underwood Building Permit Official, Underwood Planning and Zoning Board and Underwood City Commission for approval.

G. A performance bond equal to 10% of the construction cost is required for the permit to be approved.

H. Off-street parking.

 1. Off-street parking and loading shall be provided in such a manner that vehicles do not encroach on a public right-of-way.

 2. Parking must be compatible with business purpose and with surfacing materials approved by the Underwood Planning and Zoning Board and The Underwood City Commission.

### **2.20 I Industrial District**

The I Industrial District is established as a district in which the principal use of land is for more intensive, heavy commercial, manufacturing and industrial operations which, because they may be considered objectionable, are not compatible with light commercial or residential uses. The intent of the I Industrial District is:

1. To encourage the development of and the continued use of the land for heavy commercial and industrial purposes.

1. To protect heavy commercial, manufacturing and industrial operations from encroachment by lower intensity, incompatible uses.

A. Permitted Uses

1. All sales-oriented businesses which are allowed in the CG District such as stores which sell, lease, or rent automobiles, trucks, trailers, farm equipment and implements, farming and ranching supplies, lumber, recreational vehicles, campers, motorcycles, boats, manufactured homes.
2. All service-oriented businesses which are allowed in the CG District such as repair and service of motor vehicles, automobiles, motorcycles, boats, recreational vehicles and light, medium and heavy trucks and equipment including tire repairs, filling station, truckstop and any restaurant or motel associated with the truckstop.
3. Industrial service, vocational, and sales-oriented businesses engaged in the training, repair, servicing and sales of heavy equipment such as: a. Agricultural equipment
	1. Heavy construction equipment
	2. Industrial equipment
	3. Welding and metal fabrication shops
	4. Auto body shops
	5. Vocational Training Schools
	6. Experimental and testing laboratories
4. Manufacturing and production-oriented businesses which are involved in the manufacturing, processing, compounding, refining, fabrication, packaging, assembly and sales of goods such as: a. Grain and Feed Elevator or Mill
	1. Acetylene
	2. Alcohol
	3. Asphalt and bituminous products
	4. Asphalt and concrete batch plants
	5. Brick, tile or terra-cotta
	6. Linoleum
	7. Paint, shellac, turpentine, lacquer or varnish
	8. Paper or pulp
	9. Petroleum products
	10. Plastics 1. Bottling Plant

m. Manufacturing and storage of alcoholic beverages, including brewery.

1. Storage, warehousing and freight-oriented businesses which are involved in the storage, movement, or sale and leasing goods and materials such as: a. Storage buildings and warehouses including refrigerated storage
	1. Pipe storage yard
	2. Public utility service yard.
	3. Oil and gas well drilling equipment
	4. Sand and gravel storage and processing
	5. Concrete products, material storage and mixing and sales
	6. Storage of shipping containers, cargo containers, roll-off containers, semitrailers
	7. Soft drink bottling plant.
	8. Contractors’ equipment storage yard
	9. Junkyards, wrecked automobiles, salvage yards
	10. Freight and truck terminal
2. Wholesale sales-oriented businesses which are involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses such as:
	* 1. Feed or grain storage and sales
		2. Building materials sales yard, including the sale of rock, sand and gravel
		3. Contractors' equipment storage yard.
		4. Petroleum bulk plants.
3. Conditional Uses
	1. Cement, lime, gypsum, or plaster of paris manufacture.
	2. Drop-forge industry, manufacturing forgings with power hammer.
	3. Fertilizer manufacturing.
	4. Garbage, offal, bone or dead animal reduction.
	5. Gas manufacture or utility regulating stations.
	6. Electric generating plant.
	7. Smelting of tin, copper, zinc or iron ores.
	8. Soap manufacture
	9. Stockyards and livestock sale pavilions
	10. Slaughter and packing of animals and meat products.
	11. Tannery, curing or storing of raw hides.
	12. Sewage Disposal Plant
	13. Solid Waste Landfill and Transfer Stations
4. Dimensional Standards
	1. Minimum lot size:
		1. Minimum width – one hundred (100) feet
		2. Minimum area – 5,000 square feet
	2. Maximum Height Requirements
		1. No building shall exceed seventy (70) feet or four (4) stories in height.

D. Performance Bond (Added by Amendment March 29, 2018)

 1. A performance bond equal to 10% of the construction cost is required for the permit to be approved.

E. Off-street Parking (Added by Amendment March 29, 2018)

1. Off-street parking and loading shall be provided in such a manner that vehicles do not encroach on a public right-of-way.

2. Parking must be compatible with business purpose and with surfacing materials approved by the Underwood Planning and Zoning Board and The Underwood City Commission.

### **2.21 P Public Use District**

The P Public Use District is established as a district in which the predominant use of land is for public uses. Property within the P Public Use District is not necessarily owned by a public entity and may be under private ownership. The intent of the P Public Use District is:

1. To encourage the continued use of the land for public recreation, education and other government services.

1. To prohibit residential, commercial and industrial uses of the land, and to prohibit any use of the land which would diminish its value in serving the needs of the public.

1. Commercial retail establishments are allowed in the P Public Use District only when they are operated in conjunction with and for the convenience of a recreational use.
2. Permitted Uses
	1. Elementary school
	2. High school or junior high school
	3. Kindergarten
	4. Private or parochial schools offering a curriculum substantially equivalent to that offered by public schools
	5. Community Center
	6. Golf Course
	7. Museum
	8. Library
	9. Park
	10. Playground or athletic field
	11. Ice skating rink
	12. Water and sanitary sewage treatment plants
	13. City shops, garages, maintenance and office facilities
	14. County shops, garages, maintenance and office facilities, fairgrounds, race tracks
	15. State and federal facilities
3. Conditional Uses
	1. Airport
	2. Cemetery
4. Dimensional Standards
	1. Minimum lot size:

Minimum width – seventy-five (75) feet

Minimum area – 12,600 square feet

* 1. Lot Coverage

The principal building and all accessories shall not cover more than thirty (30) percent of an inside lot, nor more than thirty five (35) percent of a corner lot

* 1. Setback Requirements

Front yard - Minimum depth of thirty (25) feet

Rear yard - Minimum depth of twenty-five (20) feet

Side yard - Minimum width of ten (15) foot

* 1. Maximum Height Requirements

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

# **Section 3**

## **3.1 GENERAL PROVISIONS**

### **3.11 Clear Sight Triangle**

1. The purpose of the clear sight triangle is to allow unobstructed vision at the intersections of streets, alleys and driveways to ensure visibility for operators of motor vehicles, bicycles and pedestrians on intersecting streets, driveways and alleys. No buildings, fences, trees, shrubs, signs or other obstructions over three feet in height are allowed within the clear sight triangle. An exception to the restrictions of clear sight triangles could be made for lots with building setback distances that penetrate the clear sight triangle. The City may require a greater sight triangle than indicated above on a case-by-case basis when it is warranted based on the posted speed and traffic volumes on the adjacent roadway, topography, sight distances or any other traffic safety concern.

1. For use on a corner lot, the clear sight triangle is the triangle which is formed by measuring outward from the property corner, a distance of twenty-five feet in both directions along the property lines and then connecting the two end points of those lines. This area forms the clear sight triangle.



### **3.12 Utilities**

Public utilities are allowed in any zoning district. Public utilities are for the benefit of the public and for the safe and efficient operation, supply and conveyance of electrical, gas, water, sewerage, communications and other similar systems. "Public utilities" include any associations, persons, firms, corporations, limited liability companies, or agencies engaged or employed in any business enumerated in NDCC Title 49with the exception of wind energy conversion facilities.

### **3.13 Corner Lots**

Each corner lot shall be considered to have two front yards, each located along the street frontage.

### **3.14 Off-Street Parking**

A. Standards

1. Any structure or building hereafter erected or structurally altered or placed on a lot shall be provided with off-street vehicle parking spaces, not more than two hundred feet, at the nearest point, from the building served and to be used exclusively by the residents, patrons, or employees of said structure or building, according to the following table:

|  |  |
| --- | --- |
| **Use or Zoning District**  | **Number of Off-street Parking Spaces**  |
| Residential – R1, R2  | Two spaces per dwelling unit  |
| Residential R3  | One space for each one-bedroom unit Two spaces for each two-bedroom unit Three spaces for each three-bedroom unit  |
| Bed and Breakfast  | Two spaces per dwelling plus one additional space for each room available for guests  |
| Hotels and motels  | One space for each guest room  |
| Commercial eating & drinking places: Restaurants & Bars  | One space for each 60 square feet of gross floor area  |
| Places of public assembly: libraries, museums, community centers & similar  | One space for each 60 square feet of gross floor area  |
| Retail businesses: including service and repair shops in the CG District  | One space for each 300 square feet of gross floor area  |
| Retail businesses: including service and repair shops in the I Industrial District  | One space for each 500 square feet of gross floor area  |
| Office buildings: governmental and professional buildings  | One space for each 250 square feet of gross floor area  |
| Manufacturing and industrial:  | In addition to parking all company-owned vehicles and equipment, one space for each  |
|  | employee  |
| Schools  | One space for each employee plus one space for each 60 square feet of gross floor area of public assembly areas plus one space for every five high school students  |
| Wholesale, warehouses, and storage buildings  | One space for each 600 square feet of storage area  |
| Mortuary or funeral homes  | One space for each four seats for patron use or one space for each sixty square feet of building area, whichever is greater  |
| Commercial child care center (not including Family Day Care  | One space for each employee and one space for each ten (10) children  |
| Churches and other religious institutions  | One space for each sixty (60) square feet of gross floor area in the largest assembly area  |

1. For uses not specified above, the Planning and Zoning Commission shall determine the appropriate number of spaces required based on the requirements for a similar use
2. Off-street Parking Space Dimensional Standards: Each required parking space shall be at least nine (9) feet wide and at least eighteen (18) feet long.
3. Aisle Width Dimensional Standards: For parking lots arranged in rows, the interior aisles between rows shall be at least 25-feet wide for parking spaces oriented at 90-degrees to the aisle. For diagonal parking at 45-degrees, the aisle width shall be at least 16-feet.
4. Aisles used for one-way traffic shall be at least 16-feet wide. Aisles used for two way traffic shall be at least 22-feet in width.

### **3.15 Parking of Recreational Vehicles and Trucks**

1. Recreational Vehicles
	1. It is unlawful for any person to park a recreational vehicle on any street, alley, highway, or public place or on any tract of land owned by any person, occupied or unoccupied, within the city except as provided in this section.
	2. Emergency or temporary stopping or overnight parking is permitted on any street, alley or highway for no longer than 48 hours.
	3. Recreational vehicles may be used for temporary construction offices and sales rooms.
	4. Recreational vehicles may be parked upon private premises, if vacant and not used for human habitation. A recreational vehicle may not be occupied or used for human habitation unless located in a recreational vehicle park, or except for special events at designated locations approved by the City.
	5. Recreational vehicles may be allowed on parcels of land that are properly zoned and platted for such use as allowed in the zoning ordinance.

1. Trucks
	1. No commercial vehicle with a manufacturer's gross vehicle weight of ten thousand pounds or greater shall be parked within any residentially zoned parcel or in or on any city street or right-of-way unless actual loading or unloading of the vehicle is in progress; except that one truck-tractor only, without trailer or semi-trailer, may be parked on the driveway of a residence within any residential subdivision if the lot area meets or exceeds seven thousand (7,000) square feet.
	2. For purposes of this section, "commercial vehicle" includes truck-tractors, trailers, semi-trailers, motor trucks, straight trucks, bobtails, dromedaries, drays, trailer coaches, well-boring rigs and gantry trucks.
	3. No repair or maintenance shall be performed on any truck-tractor while parked within any residentially zoned property. "truck-tractor" means a motor vehicle designed and used primarily for drawing other vehicles (trailer) and not so constructed as to carry a load other than a part of the weight of the vehicle (trailer) and load so drawn.
	4. Agricultural vehicles may be parked in all agricultural districts.

### **3.16 Residential Garages, Accessory Buildings, Sheds, Patios and Fences**

1. Garages, Accessory Buildings, Sheds
	1. Residential garages are accessory to a residential use. Garages may be attached or detached. Total lot coverage of the house, garage(s), and any other accessory building(s) such as sheds, which are located in the R1, and R2 Residential Zoning Districts shall not exceed 30 percent of an inside lot or 35 percent of a corner lot.
	2. Detached ~~garages~~ structure may not exceed fourteen (14) feet sidewall ~~in~~ height, measured from the bottom plate of the wall to the top plate of the wall. (Amended May 1, 2017)
	3. Residential garages shall have the same siding as the dwelling.
	4. No portion of any structure may be located on any easement.
	5. The separation distance between a house and a detached garage shall meet building code and fire code standards.
	6. No accessory building, residential garage, shall exceed 1,680 square feet in size. (Amended March 13, 2018)
	7. Any accessory building, residential garage, not having a prebuilt floor is required to have a monolithic slab or four (4) foot frost wall foundation with a six (6) foot apron off of the paved street. (Amended March 13, 2019)
2. Patios

Patios are not above grade at any point and may extend into any minimum side or rear yard up to the lot line, and may also extend into any minimum front yard no more than 15 feet provided the patio is at least 10 feet from the front lot line.

1. Fences

No fence is allowed in any portion of a front yard. Fences that do not exceed 6-feet in height do not require a building permit. It is recommended that before installing any fence, the property owner confirm the location of the property line with a registered professional land surveyor. Fences shall be a minimum of six (6) inches from the property line so that all fence posts remain on the owner’s property. (Amended December 12, 2018)

### **3.17 Structures Excluded from Height Limits**

A building height limit set forth in this title shall not apply to belfries, chimneys, cupolas, domes, flagpoles, flues, monuments, communication towers, spires, tanks, water towers or similar structures or to bulkheads, elevators, water tanks or similar roof structures and mechanical appurtenances. No such structure shall have a total area greater than one third of the roof area of the building; nor shall such structure be used for any use other than a use incidental to the main use of the building.

### **3.18 Towers**

1. Wherever possible, all telecommunications facilities shall be placed on existing poles, tanks, towers, roofs, signs, or other existing manmade or natural features to make the equipment inconspicuous. Every reasonable effort shall be taken to design the equipment so as to minimize its visual impact. Whenever possible, natural terrain and hillsides shall be used to elevate equipment. Towers, antennae, poles, dishes and other equipment shall be the least size and height necessary to perform their intended functions and to maximize opportunities for co-locations, thereby minimizing new wireless telecommunications sites.

1. Towers shall be located, to the extent possible, to minimize any adverse impacts on residential property.

1. All antennas and towers shall be located and designed in a manner to minimize off-site visibility to the greatest extent possible and shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA).

1. The height of any building-mounted antennae or satellite dish, including its support structure, shall not exceed 30 feet above the highest point of the roof, and in no case shall the overall height of the building and tower together exceed the height limitations for the underlying zoning district.

1. Free-standing antennas and towers shall not exceed the height limitation for the underlying zoning district.

1. No signs, other than public safety warning or equipment information, shall be affixed to any portion of the structure or accessory equipment enclosure.

1. No artificial illumination, except when required by law or by a governmental agency to protect the public’s health and safety, shall be utilized.

1. Support buildings or enclosures which house switching and other equipment shall be constructed of materials compatible with the surrounding buildings.

### **3.19 Landscaping**

1. Within 300-feet of the US Highway 83 right-of-way, any commercial or industrial lot having any structure or building hereafter erected or structurally altered or placed thereon, such lot shall be provided with minimal landscaping.

1. No landscaping within a Clear Sight Triangle on a corner lot shall exceed three feet in height above the top of the curb. If no curb is present, landscaping shall not exceed three-feet in height above finish grade.

1. All parking lots shall provide perimeter landscaping between said off-street parking areas and access lanes and adjacent public rights-of-way.

1. Minimal landscaping includes one shade tree or ornamental tree and 5 shrubs for every 25 linear feet of street frontage.

1. A shade tree, at time of planting, shall not be less than 1.5 inches caliper measured 6 inches above the root collar and reach a minimum height at maturity of 20-feet.

1. An ornamental tree, at time of planting, shall not be less than 1 inch caliper measured 6 inches above the root collar and reach a minimum height at maturity of 15-feet.

1. Shrubs, at time of planting, shall have a minimum height of two-feet above finish grade or a minimum container size of two-gallons and reach a minimum height at maturity of three-feet.

1. All required landscaping shall be healthy and in-place as soon as grading or construction has been completed or within the next growing season (for fall and winter completions). The property owner shall be responsible for maintaining all landscaping in good condition in a way that presents a healthy, neat and orderly appearance. Dead plants must be promptly removed and replaced within the next growing season.

### **3.20 Accumulation of Certain Items Prohibited**

1. No person shall cause, permit, keep, accumulate or allow the accumulation of any commercial equipment, junk, refuse, surplus, scrap, salvage or other similar items outside of a closed building in any residentially-zoned district. The items for which accumulations are prohibited under this section may include one or more of the following but are not limited to: hazardous wastes, scrap metals, used or scrap lumber, household appliances, machinery, farm machinery, commercial equipment, new or used building materials, construction or demolition waste or salvage, abandoned or unlicensed vehicle(s), automotive or machinery parts, tires, used oil or solvents, garbage or rubbish of any kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items. The fact that an item or items has value or is operational shall not excuse conduct prohibited by this section. For the purposes of this section, residential districts shall include R1, R2, R3, RMH and RVC. Prior to signing a complaint under this section, the City Building Official must serve the property owner or tenant with a notice and order pursuant to the Enforcement provisions.
2. No person shall cause, permit, keep, accumulate or allow the accumulation of any junk, refuse, surplus, scrap, salvage or similar items outside of a closed building or opaque fencing in any commercially-zoned district. The items for which accumulations are prohibited under this section may include one or more of the following but are not limited to: hazardous wastes, scrap metals, used or scrap lumber, household or commercial appliances, used building materials or salvage, construction demolition waste or salvage, abandoned or unlicensed vehicle(s), automotive or machinery parts, used tires, used oil or solvents, garbage or rubbish of any kind, waste paper, used furniture or other household goods, barrels, rags, boxes, cardboard, or other similar items. The fact that an item or items may have value does not excuse the conduct prohibited by this section. The prohibitions contained in this section shall apply to properties zoned CD and CG. Prior to signing a complaint under this section, the City Building Official must serve the property owner or tenant with a notice and order pursuant to the Enforcement provisions.

# **Section 4**

## **4.1 ZONING TOOLS and PROCEDURES**

### **4.11 Zoning Change (zoning map amendment)**

1. A zoning change or rezoning is officially referred to as a zoning map amendment. To apply for a zoning map amendment, a completed application form and a fee is required. Application forms and information on fees are available from the City Auditor.

1. Once the completed application form and fee is submitted, the City Auditor will schedule a public hearing and publish a public notice.

1. The Planning and Zoning Commission will conduct the public hearing. Their decision will take the form of a recommendation and be forwarded to the Board of City Commissioners for final action.

1. Proposed zoning map amendments that satisfy the following criteria may be approved:

* 1. The requested zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;

* 1. The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development allowed by the new zoning classification at the time the property is developed;

* 1. The approval will not adversely affect the condition or value of property in the vicinity; and

* 1. The proposed amendment is consistent with the purpose of this Ordinance, and the applicable plans and adopted policies of the City.

### **4.12 Protests and Protest Petitions**

1. Zoning Map Amendments may be protested. In order to be deemed “valid,” a protest petition must be signed by the owners of 20 percent or more: (a) of the area of the lots included in the area proposed to be changed, or (b) of the area adjacent and extending 600 feet from the land area proposed to be changed, including the width of streets. “Valid” protest petitions must contain the printed or typed name and address and signature of each protesting property owner and the location of property owned by each protestor shall be shown on a map attached to the written petition.

1. If a valid protest petition is submitted to City Auditor before the scheduled public hearing of the Board of City Commissioners, approval of a zoning map amendment shall require a favorable vote of three-fourths (¾) of all the members of the Board of City Commissioners.

### **4.13 Appeals**

1. The Board of Adjustment hears appeals of decisions made by the City Official(s) responsible for the administration of this ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. Upon request of the board, the governing body shall have the right to appoint an alternate member of said board of adjustment, who shall sit as an active member when and if a member of said board is unable to serve at any hearing (NDCC 40-47-04).

1. Appeals of Board of Adjustment decisions are made to the Board of City Commissioners (note: this system requires the Planning and Zoning Commission to be the Board of Adjustment).

1. Appeals of Planning and Zoning Commission decisions are made to the Board of City Commissioners.

1. Appeals of the Board of City Commissioners’ decisions are made to District Court.

### **4.14 Zoning Ordinance Text Amendments**

The zoning ordinance is a living document and should be updated when changes are needed to keep pace with changing conditions.

1. Procedure for Making Ordinance Text Amendments
	1. Applications for Ordinance Text amendments shall be filed with the City Auditor.
	2. The City Auditor shall present such application to the City Planning and Zoning Commission at its next regular scheduled meeting.
2. Notice of Amendment Hearing
	1. The City Auditor shall notify applicant of the time and place of said hearing. Notice of the hearing will be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. The notice will contain a description of the nature, scope, and purpose of the amendment and state the times at which the proposed amendment will be available to the public for inspection and copying at the office of the city auditor.
3. Public Hearings by Planning and Zoning Commission and Board of City

Commissioners

* 1. Following a public hearing conducted by the Planning and Zoning Commission, said Commission shall submit its recommendations concerning the proposed amendment(s) to the Board of City Commissioners.
	2. Upon receipt of the Zoning Commission’s recommendations, the Board of City Commissioners shall set a final hearing date for the proposed amendment.
	3. Procedure for the notice of the final hearing shall follow that of the hearing conducted by the Planning and Zoning Commission.
	4. Following the final hearing, the Board of City Commissioners shall approve or disapprove the proposed amendment(s).

### **4.15 Variances**

1. The Board of Adjustment hears and makes determinations on requests for variances.

1. A variance is permission to depart from the literal requirements of this zoning ordinance. Approval of a variance grants a property owner relief from certain provisions of this zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance with the terms of the ordinance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

1. Variances are not for changes in land use. A zoning map amendment is the proper tool for land use changes.

1. Variances may be considered for approval if it can be demonstrated that:

* 1. The special conditions and circumstances which are peculiar to the land or structure and not applicable to other land or structures in the same district;

* 1. The special conditions and circumstances do not result from the actions of the applicant;

* 1. The literal interpretation of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the district;

* 1. The granting of the variance shall not confer any special privilege on the applicant that is denied by the Ordinance to others in the same district.

1. Application forms and information on fees are available from the City Auditor.

### **4.16 Nonconformities**

1. In some cases, older existing uses, buildings, structures, or lots may not meet the current ordinance standards. When they were first originated, nonconformities did comply with existing regulations. Because regulations are amended from time to time, something that was once allowed may not be allowed now due to an ordinance change. These types of nonconformities are legal but subject to limitations. The burden of establishing that a nonconformity lawfully exists is the owner’s burden, not the City’s.

1. It is the general policy of the City to allow uses, buildings, structures or lots that came into existence legally and in conformance with then-applicable requirements but that do not conform to all of the applicable requirements of this ordinance to continue to exist and be put to productive use, but to bring as many aspects of such use into conformance with current ordinance as is reasonably practicable, all subject to the limitations of this section. The limitations of this section are intended to recognize the interests of the property owner in continuing to use the property but to control the expansion of the nonconformity and to control re-establishment of abandoned uses and limit reestablishment of buildings and structures that have been substantially destroyed.

1. If a nonconforming situation under a previous regulation becomes conforming because of an amendment to this ordinance, then the situation will no longer be considered a nonconformity.

1. Non-Conforming Uses

* 1. Nonconforming uses shall not be enlarged upon, expanded or extended and no additional accessory use, building or structure may be established on the site of a nonconforming use.
	2. A building in which a nonconforming use is located, or a nonconforming building or any building on a nonconforming lot may be repaired or reconstructed without structural alteration, to the extent not greater than fifty (50) percent of the assessed value of the building exclusive of foundations; however, the combined cost of the alterations and repairs in any ten (10) year period shall not exceed the assessed valuation of the building at the time the last allowable building permit was applied for.
	3. If the damage or destruction represents 50 percent or less of the structure’s value prior to the damage, repair and restoration is allowed, provided that a building permit must be obtained within 6 months of the damage and restoration must begin within one year of the date of damage.
	4. If a nonconforming use is discontinued for a period of twelve consecutive months, any future use of such building or premises shall conform to the provisions of this Ordinance. No use that is accessory to a principal nonconforming use may continue after the principal use ceases or terminates.
	5. If a building housing a nonconforming use is destroyed of its assessed value, said use shall be discontinued.

### **4.17 Building Permits** (Amended June 1, 2015)

Building permits are required before construction occurs. Building permits will be issued for structures and uses that comply with zoning regulations, building codes, fire codes, plumbing codes, electrical codes or any other regulations or requirements of the State and will only be issued for buildings and structures to be located on platted lots.

1. No building permit shall be issued except upon written application accompanied by the fee set by the City Commission.
2. Building permit fees shall be established by resolution of the Underwood City Commission
3. Permits shall be obtained from the Building Permit official with final approval from the Underwood City Commission.
4. A building permit is required for all new construction, new additions, remodeling, alterations, or renovations with a materials and labor cost of $2,500.00 or more or when the square footage of a structure is increased.
5. Any permit issued pursuant to these provisions shall expire 12 months from the date of issuance.
6. Application for a building permit shall include the following information:
7. The entire lot as described in the legal description (Lot number, Block number, and Addition name).
8. The parcel number as assigned by the McLean County Tax Director.
9. Street Address within the city.
10. Actual property owners name and signature.
11. Phone numbers for all parties involved (Owners, occupants, contractors, etc.).
12. New Construction: A site plan with dimensions drawn to scale either in the space provided on the building permit or on an 8 ½ “x 11” sheet of paper, preferably a builder-provided floor plan that clearly illustrates dimensions of the structures.
13. Garage or Pole Building: dimensions will be adequate instead of a full floor plan, but finish details are necessary (i.e. concrete or dirt floor, side wall height, wired for electricity, plumbing, insulated and heated, interior finished area, intended use).
14. Location of all buildings and structures and gross square footage of each floor.
15. Existing right-of-ways and easements.
16. Proof that applicant has filed a “utility locate” request with the ND One Call service for any excavation.
17. Such other information as may be required or necessary for the enforcement of this Ordinance.

In addition to the above mentioned information, building permits for commercial and industrial uses shall contain the following information:

1. A comprehensive graphics plan drawn to scale showing the location, size, design, material, color and method of illumination of all exterior signs.
2. One exterior lighting plan drawn to scale, showing type, height and area of illumination.
3. Proposed off-street parking (number of spaces and dimensions).

 This permit creates no warranties with regard to construction or code compliance. Any inspections under this permit are for the benefit of the public and not the permit recipient, and any inspections do not create a duty to the permit recipient, the owner, or to a subsequent purchaser with regard to quality of construction or code compliance.

**New Construction:**

 Any self-supporting structure be it wood, metal, pole, frame, etc., with a materials and labor value exceeding $ 2,500.00. Materials value to include, but not limited to, foundations/slab, electrical, sheetrock, plumbing, ceiling materials, insulation, windows, siding, roofing, concrete, etc. When determining new construction value, labor costs must be included. Plastic garden sheds are considered personal property and will not require a building permit.

**New Addition:**

 Any structure attached to an existing structure be the structure made of wood, metal, pole, frame, etc., with a materials and labor value exceeding $ 2,500.00. Materials value to include, but not limited to, foundation/slab, sheetrock, plumbing, ceiling materials, insulation, windows, siding, roofing, concrete, etc. When determining new addition construction value, labor costs must be included.

**Remodeling:** (Amended

 ~~Remodeling without the construction or demolition of walls, floor, or ceiling does not require a building permit.~~ Remodeling involving ~~the construction or demolition of walls, floor, or ceiling and having a~~ combined materials and labor cost of ~~$ 2,500.00~~ $5,000.00 or more will require a building permit. Materials value to include, but not limited to, foundation/slab, sheetrock, plumbing, ceiling materials, insulation, windows, siding, roofing, concrete, etc. When determining remodeling construction value, labor costs must be included; labor done by the owner will equal the material costs. (Amended February 12, 2018)

**Cement/Pavement:**

 A permit shall be required for all ~~new~~ cement/pavement work that is designed to support vehicular traffic or pedestrians which has a combined materials and labor cost of $2,500.00. (To include but not limited to driveways and sidewalks). This is to ensure safety for emergency vehicles, personnel, and pedestrians. When determining concrete/pavement construction value, labor costs must be included.

**Electrical Upgrades:**

 A permit shall be required when adding service to an out building that will tie into an existing service when the combined materials and labor cost equals or exceeds $2,500.00. (i.e. wiring a garage or shed) No permit will be required outside of state regulations to upgrade an existing electrical service. When determining electrical upgrade construction value, labor costs must be included.

**Plumbing:**

 A permit shall be required when adding service to an out building that will tie into an existing service when the combined materials and labor cost equals or exceeds $1,000.00. (i.e. plumbing a garage or shed) No permit will be required outside of state regulations to upgrading an existing plumbing service. When determining plumbing upgrade construction value, labor costs must be included.

**Materials Cost Definition:**

 Materials cost will be based on current market value of said materials. A contractor may NOT “gift” the materials nor may the property owner claim no value to used materials. All material costs, new or used, must be calculated as is just purchased from a retailer.

### **4.18 Interpretations**

Upon any person’s request for review of an interpretation made by the Building Official or Zoning Administrator, the Board of Adjustment shall decide any question involving the interpretation of the provisions of this ordinance.

### **4.19 Conflicting Regulations – The More Restrictive Standard Applies (NDCC 40-47-13)**

1. If the Underwood Zoning Ordinance requires a greater building setback distance, or requires a lower height of building, or requires a greater percentage of lot to be left unoccupied, or imposes other higher standards than are required in any other statute or local ordinance or regulation, the Underwood Zoning Ordinance shall govern.

1. If the provisions of any other statute or local ordinance or regulation require a greater setback, or require a lower height of building, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the Underwood Zoning Ordinances, the provisions of such statute or local ordinance shall govern.

### **4.20 Conflict with Private Restrictions (covenants)**

It is not the intent of this ordinance to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this ordinance impose a greater restriction than imposed by a private agreement, the provisions of this ordinance will control. If the provisions of a valid, enforceable private agreement impose a greater restriction than this ordinance, the provisions of the private agreement will control. The City does not enforce private agreements or maintain a record of such agreements.

### **4.21 Publication and Legal Notice Requirements**

1. Public Notice
	1. Before decisions are made on zoning-related issues such as zoning changes, conditional use permits, subdivision plats, ordinance amendments and other land use matters, the public is informed by a notice of the public hearing which will be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the City.

* 1. The notice will state the time and place of the hearing, a description of the location of the subject property, a description of the nature, scope, and purpose of the subject and the days and hours it will be available for public review and copying at the City Auditor’s office.

* 1. A courtesy notice will also be mailed to the owners of property located within

300-feet of the subject property. The public hearings and decisions of the Board of City Commissioners or Planning and Zoning Commission are not contingent on all property owners receiving their courtesy notices. Due diligence will be exercised to notify all property owners within 300-feet of the subject property but failure to mail or receive a courtesy notice will not nullify any actions of the Planning and Zoning Commission.

1. Publication of Ordinances

The title and penalty clause of every ordinance imposing any penalty shall be published in one issue of the official newspaper (NDCC 40-11-06). A complete ordinance revision may be passed as a single ordinance and published in book form and be valid without publication (NDCC 40-11-09). Three years after the adoption of an ordinance it is conclusively presumed that it was adopted and published as required by law (NDCC 4011-09.1).

1. Vacation of Streets

If the city governing body finds that the petition for vacation of a street is in proper form and it is expedient to consider the petition, it shall order the petition to be filed with the city auditor who shall give notice of a hearing by publication in the official newspaper at least once each week for four weeks, the first notice to be at least thirty days before the hearing. (NDCC 40-39-06) Before a resolution declaring the vacation of a public ground, street or alley shall go into effect, it shall be published as in the case of ordinances. A transcript of the resolution shall be filed in the office of the county recorder. (NDCC 4039-08)

1. Zoning

No zoning regulation shall be effective until after a public hearing. Notice of the hearing shall be published once a week for two successive weeks prior to the time set for the hearing in the official newspaper. (NDCC 40-47-04)

1. Planning

Upon receipt of an attested copy of the master plan from the city planning commission, the city governing body shall hold a hearing thereon. At least ten days’ notice of such hearing shall be published in the official newspaper. (NDCC 40-48-11) After adoption of a master plan, the planning commission may make a map showing precisely the land that it recommends be reserved for future acquisition for public streets. A notice of the time and place for a hearing on the proposed map shall be given not less than ten days before the hearing by one publication in the official newspaper. (NDCC 40-48-28)

1. Annexation and Exclusion of Territory

The city governing body may not take final action on a petition for annexation or exclusion of territory until the petitioners have given notice of presentation of the petition by one publication in the official newspaper and the governing body has mailed a notice of the time and place of consideration of the petition to each owner of property in the area that did not sign the petition. (NDCC 40-51.2-05) If the annexation is by resolution of the city governing body, the governing body shall publish the resolution and a notice of the time and place of the hearing in the official newspaper once each week for two consecutive weeks and shall mail a notice to the owner of each parcel of property within the area to be annexed. (NDCC 40-51.2-07)

1. The Basis of Decisions to be Recorded

The Underwood Board of City Commissioners, the Planning and Zoning Commission and the Board of Adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the Commissions, or Board.

# **Section 5**

## **5.1 CONDITIONAL USES (GENERAL)**

In order to carry out the purposes of this Article, the City of Underwood finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed and authorized by the City prior to the granting of a building permit or certificate of occupancy.

1. No building permit shall be issued until the application for a conditional use permit has been reviewed and authorized by the City.

1. Conditional use permit applications shall be submitted to the Zoning Administrator at least twenty-one (21) days prior to the public hearing. The following items shall accompany the conditional use permit application:

* 1. A fee.

* 1. Three (3) copies of a scaled site plan (24” x 36”) containing all items required for each particular conditional use.

* 1. Supplementary site plans of 11”x17”, 8½”x11” or electronic (pdf) version of the site plan described above as specified by the Code Administrator.

1. Following submission of a complete application for a conditional use permit, the City Auditor shall set a time and place for a public hearing. Notice of the time and place of such public hearing shall be published in a newspaper of general circulation in the City once each week for two (two) consecutive weeks prior to the date of the hearing. The City may approve, approve with additional conditions, deny, table or continue the public hearing on the request for further consideration and study.

1. Before approving the issuance of a building permit or certificate of occupancy for a conditional use, the City shall find:

* 1. The proposed use in harmony with the purpose of these regulations and other adopted plans and policies of the City.

* 1. The proposed use will not adversely affect the health and safety of the public and the workers and residents, or farmers and ranchers in the area, and will not be detrimental to the use or development of adjacent properties or of the general neighborhood.

* 1. The proposed use will not impede the orderly development of surrounding property.

* 1. The proposed use will not substantially impair or diminish the value and enjoyment of surrounding property.

* 1. The proposed use will comply with all appropriate regulations for the zoning district in which it will be located.

* 1. The proposed use will comply with all conditional regulations established by this section and all additional conditions necessary for the sanitation, safety, and general welfare of the public.

1. The City is authorized to impose any conditions on the granting of a building permit or certificate of occupancy for a conditional use that it deems necessary for the protection of the neighborhood and the general welfare of the public.

1. The City is authorized to establish a term or time limit for the expiration and termination of a conditional use.

1. The City shall not authorize the location of a conditional use in any district from which it is prohibited.

1. The City shall refuse to authorize the issuance of a building permit or certificate of occupancy for any conditional use if they find that such conditional use would fail to comply with any of the requirements of this ordinance.

1. The City shall require the applicant to furnish any engineering drawings or specifications, site plans, operating plans or any other data they find necessary to appraise the need for or effect of such conditional use.

1. A conditional use granted under this article must be put into use within twelve (12) months or it shall lapse and the land owner must re-apply.

1. Failure to comply with any condition set forth as part of a conditional use permit shall be a violation of these regulations and is subject to the enforcement process. Continued non-compliance shall be grounds for revocation of the conditional use permit, as determined by the City following a public hearing on the issue.

1. When an authorized conditional use has been established and is discontinued for any reason for a period of one (1) year or longer, the conditional use shall be considered abandoned.

## **5.2 CRITERIA FOR SPECIFIC CONDITIONAL USES**

### **5.21 Home Occupations**

1. General Standards

* 1. Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations remain secondary to the allowed principal residential use and that the residential viability of the dwelling unit is maintained.

* 1. A home occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work, but in which no employees come to the site. Home Occupations allow up to four customers per day, with a maximum of 12 customers per week, only between the hours of 7:00 a.m. and 9:00 p.m. No more than one customer is permitted on the site at any given time. Examples include, but are not limited to, artists, crafts people, writers, professional consultants, personal care and grooming services, dog grooming services and employees of off-site businesses who work from their home.

* 1. Tutors, such as piano or other music teachers, are exempt from the limit of 12 customers and may provide lessons to no more than 20 students per week and shall not have non-resident employees coming to the site.

* 1. No more than one home occupation may be conducted on a single site.
1. Prohibited Uses

* 1. Vehicle and Large Equipment Repair: Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

* 1. Dispatch Centers: Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

* 1. Mortuaries: Mortuaries are not allowed as home occupations.

* 1. Animal Boarding Facilities: Animal boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities. Dog grooming services are allowed.

* 1. Firearms and Ammunition Sales: The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

* 1. Adult Entertainment Center Uses: Entertainment or sale of goods such as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center are not allowed as a home occupation.
1. Home Occupations

Home occupations may be allowed in the R1, R2 and R3 Residential Districts, subject to the following criteria:

* 1. Signs: No more than one sign shall be allowed on the site of a home occupation. The maximum size of the sign shall be one square foot. It may not be illuminated, and it must be attached to the dwelling unit.

* 1. Outdoor Activities: All activities and storage areas must be conducted in completely enclosed structures.

* 1. Exterior Appearance: There may be no change in the exterior appearance of the dwelling unit that houses the home occupation or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, paving of required setbacks, or adding commercial-like exterior lighting. There may be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot.

* 1. Operational Impacts: No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

* 1. Deliveries: Deliveries or pick-ups of supplies or products associated with business activities are allowed only between 8 a.m. and 6 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.

### **5.22 Rummage Sales**

Rummage sales, yard sales or garage sales will be permitted provided that no one location holds more than two such sales in any calendar year. Rummage, yard or garage sales may be of up to four consecutive days in duration but the two sales permitted under this section may not exceed a total of six days.

### **5.23 Temporary Asphalt and Concrete Batch Plants**

Temporary asphalt and concrete batch plants may be allowed within the A Agricultural District or I Industrial District subject to the following criteria:

1. The temporary asphalt or concrete batch plant is for a specific construction project and not for general sale of product to the public.

1. The site is located at least 1,320 feet (¼ mile) from any residentially zoned property.

1. A site plan is submitted showing the overall dimensions of the site, the location of specific activities, fences, parking areas and access roads.

1. A written narrative is submitted describing the operation of the facility, including fugitive dust management, run-off control, and spill containment, and explaining the length of time needed for the use.

1. A permit to operate is issued by the North Dakota Department of Health prior to operation of the facility, if required.

1. The County Engineer has approved the proposed access (ingress/egress) and routes for the operation.

1. The use is for a specified period of time, tied to the duration of the construction project, which shall be clearly stated in the approval of the temporary use permit.

1. The equipment must be removed from the site within sixty (60) days of the completion of the construction project, and the site restored to its original condition.

1. The City may impose such conditions of approval that are necessary to ensure compliance with the intent of the Zoning Ordinance.

### **5.24 Temporary Crew Housing Facility**

Temporary Crew Housing Facilities (also known as crew camps or man camps) may be allowed in the A Agricultural District and in the I Industrial District subject to the following criteria.

1. Definition

Temporary Crew Housing Facility: A TCHF is specifically designed to provide lodging for temporary workers. In many cases the TCHF will also offer, meals, limited recreational activities, and other services for the benefit and well-being of its residents. Most TCHFs will utilize pre-manufactured, individual housing units which are transported to the site. Some TCHFs will utilize skid units. Others will utilize premanufactured modular components to assemble a housing facility at the approved location. Allowed dwelling types in a TCHF include manufactured homes. The majority of tenants of a TCHF are typically nonresidents with jobs in cyclical or temporary industries such as the oil industry. A TCHF is not a conventional hotel, motel, recreational vehicle campground, manufactured housing, park, or campground. A TCHF is not a facility that provides parking and hookups for individually owned recreational vehicles, fifth wheels, camper trailers and pop-up campers, pickup trucks with on-board campers or similar units. A TCHF is not a conventional stick-built on-site residential structure or group of structures. A TCHF is not for long-term or permanent habitation.

1. Standards

* 1. The parcel upon which a TCHF is located will meet the lot area and width requirements of the zoning district in which it is located in.

* 1. The housing facility is located along, or shall have direct access to, an improved section line roadway or other roadway classified as an arterial. If the arterial roadway is not improved, the developer/operator is responsible for construction and paving costs of said roadway to City standards, if required, based on site location, prior to occupancy of the housing facility.

* 1. A minimum of two access points are required for TCHFs with occupancies of 25 or more residents. This is to allow for alternate emergency access.

* 1. To allow emergency service providers to pinpoint the location of a victim and to speed up their response time, each dwelling unit in the facility shall have a locator device deemed suitable by the local emergency service providers. Such device may be a colored flashing beacon or strobe light. Locations of the locator devices shall be near the doorways of individual sleeping quarters and at any other locations throughout the facility as deemed necessary by local emergency service responders.

* 1. Each structure in the facility shall have full 360-degree access around the structure for fire-fighting apparatus and emergency responders.

* 1. Roads to be constructed within the facility shall meet City specifications.

* 1. One off-street parking space is required for each resident and for each employee of the facility. No on-street parking is allowed.

* 1. Onsite structures must comply with the applicable zoning district setback requirements.

* 1. Spacing between individual units shall be in compliance with fire code and building code specifications.

* 1. A storm shelter must be provided onsite to provide adequate space for all residents and employees of the TCHF at maximum occupancy. Shelter design must be approved by the City Building Official.

* 1. A minimum of ten (10) percent of the gross area of the site shall be for a park as outdoor recreational and leisure space.

* 1. Required Facility Identification Signs. Up to sixty-four (64) square feet of sign area visible from external roadways and adjoining property is permitted onsite. No single sign shall exceed thirty-two (32) square feet in area. Signs shall not obstruct views of drivers. Signs shall be illuminated at night.

* 1. Storm Water Management. Storm water runoff must be controlled to ensure no net increase in runoff as compared to the site prior to development.

* 1. Water and Wastewater. Onsite water and wastewater systems must meet compliance with North Dakota State Health Department and Southwest Health District requirements.

* 1. For connections to an existing water supply or wastewater systems, agreements with service providers are required.

* 1. A traffic study is required for facilities with more than 100 residents. Roadway improvements (i.e. turn lanes) recommended by the traffic study shall be installed at the owner’s expense.

* 1. An owner of a TCHF has the duty to remove that housing and all related above grade and below-grade infrastructure within one hundred twenty eighty days after the TCHF is vacated. The City of Underwood may abate any public nuisance caused by vacated TCHFs within its jurisdiction. A TCHF owner shall provide the City with a surety bond, letter of credit, or other security instrument in the form and in an amount specified by the City. These funds must be used to cover actual expenses that may be incurred by the City in removal of the temporary work camp housing, including any above-grade or below-grade infrastructure. The owner is liable for any expenses that are reasonably incurred by the City which exceed the amount of the security.

* 1. If pets are allowed by the facility owner’s policy, the site must be fenced and gated to contain any animals on the site. Perimeter fencing must be at least six feet in height.

* 1. Each TCHF is subject to compliance with the State Building Code, the State Electrical Code, and the State Plumbing Code.

* 1. The City Building Official may conduct a nondestructive walkthrough inspection of previously used temporary work camp housing to ensure compliance with applicable codes, including the State Building Code, State Electrical Code, and State Plumbing Code. If the housing is found to be compliant with these codes, the Building Official may issue a limited certificate of inspection, which is effective for the term of the conditional use permit.

* 1. A third-party certificate of inspection or proof of compliance with the most current HUD standard is required for newly manufactured housing facilities.

* 1. Residents may not be permitted to move into or live in any previously used housing units unless the housing has a current limited certificate of inspection or has been found to meet all applicable codes and requirements by any code enforcement agency having jurisdiction.
1. Application Submittal Requirements

1. Site Plan, including the following:

a. Existing Conditions:

i. Vicinity map inset showing facility location in proximity to Underwood ii. Property lines

iii. Public rights-of-way and public and private access easements iv. Utility easements

v. Width and surfacing of existing roads serving the facility

b. Proposed Development

i. Location and use of structures ii. Building setback distances from property lines iii. Distances between structures

iv. Distance from structures to internal roads/streets v. Widths and surfacing of roads/streets vi. Off-street parking spaces vii. Location and size of any signage

viii. Location, size, and type of onsite recreational amenities ix. Onsite fencing location and detail x. Infrastructure locations

* + - * 1. Snow storage areas
				2. Outdoor recreation and leisure area

c. Storm Water Management Plan

i. Existing contours with existing drainage patterns ii. Existing culvert sizes and locations

iii. Proposed contours and directions of flows

iv. Proposed retention facilities

v. Calculations of proposed runoff and sufficient evidence to assure no net increase in offsite runoff

d. Any other information required by the Zoning Administrator or Building Official to allow the City to make an informed decision on the request.

1. Additional Submittal Items for TCHFs

Approvals of TCHFs are contingent upon the following additional submittal items being deemed satisfactory and provided prior to the issuance of a certificate of occupancy and use of the facility:

1. Letters of acknowledgement from local service providers:

* + - * 1. Fire protection
				2. Emergency medical services
				3. Law enforcement

* + 1. Copies of any permits required by other agencies such as the Custer District

Health Unit, the North Dakota Department of Health, the North Dakota State Water Commission, the rural water supplier, and North Dakota Department of Transportation.

* + 1. Traffic study (required for facilities of more than 100 residents).

* + 1. Agreements with water and sewer providers

* + 1. Proof of insurance

* + 1. Fire and emergency operations plan

* + 1. The name and contact information for the onsite manager

* + 1. Policies & rules for residents of the facility

* + 1. Compliance letter from Underwood’s city engineer stating the interior roadways, infrastructure, storm water drainage improvements and other features of the facility have been constructed properly and in accordance with sound engineering principles.
1. Noncompliance and Permit Revocation

A conditional use permit may be revoked at any time if the TCHF is found to be in violation of any of the rules of this or other sections of the Underwood Ordinance or in violation of any of the conditions imposed by the City of Underwood in granting the conditional use permit. The City may abate any public nuisance caused by a vacated TCHF within its jurisdiction.

### **5.25 Moving of Buildings and Structures**

The following moved-in buildings and structures that have been previously occupied and located for use elsewhere may be permitted in any zoning district, with the exception of the R4 Zone District, subject to the following criteria. (Amended May 1, 2017)

1. Principal buildings and structures. Existing mobile homes currently located in Underwood are allowed to remain but the importation of any additional mobile homes built prior to June 15, 1976, may be allowed on a cases by case basis after review of the building permit application by the Underwood City Commission. (Amended April 23, 2018)

1. ~~Accessory buildings and structures that are twelve hundred (1,200) square feet or larger in size~~. (Amended March 13, 2019)

The above described principal buildings and structures may be permitted, provided:

1. The moved-in building or structure is a permitted use and complies with all requirements of the zoning district in which it is to be located.

1. All provisions of the City Building Code, the Underwood Zoning Ordinance and if applicable, the Manufactured Home Construction and Safety Standards Act of 1974 (42 U.S.C. Sec.5401) have been complied with.

1. The moved-in building or structure shall be compatible with the surrounding neighborhood.

1. Photograph(s) of the building shall be provided in advance of the public hearing.

1. A building inspection report shall be provided in advance of the public hearing.

### **5.26 Bed and Breakfast**

Bed and breakfast uses may be allowed within the R1 and R2 residential districts subject to the following criteria:

1. Structures shall not be altered in a way that changes their general residential appearance.

1. A minimum of one off-street parking space shall be provided for each guest bedroom, plus spaces required for the principal residence. Additional parking shall be required if reception or party space is available. If four or more off-street parking spaces are provided, visual screening from adjacent residential uses shall be required.

1. One sign shall be allowed, with a size limit of two square feet. Internally illuminated signs are not allowed.

1. Receptions, private parties, or similar activities shall not be permitted unless expressly approved as part of the Conditional Use Permit.

1. No long-term rental shall be permitted. The maximum length of stay shall be five days.

1. All guest rooms shall be located within the principal structure.

1. Other than registered guests, no meals shall be served to the general public unless expressly approved as part of the Conditional Use Permit.

1. No cooking facilities shall be allowed in the guest rooms.

1. All bed and breakfast establishments must comply with Health Department Regulations.

1. All bed and breakfast establishments shall comply with Fire Code Requirements.

### **5.27 Family Child Care**

A family child care use may be allowed within the R1, R2 and R3 zoning districts subject to the standards listed below.

A. Definition

A family child care is a detached single family dwelling, which also serves as the primary residence of the operator/provider, offering care, maintenance and supervision for hire or compensation, for less than twenty-four (24) hours per day, for no more than twelve (12) children under the age of twelve (12) years, including any children of the operator/provider on the premises that are under the age of twelve (12) years, and licensed by the North Dakota Department of Human Services as an early childhood program. Family child care is considered an accessory use to the principal use of the property as single family detached residential dwelling.

B. Standards

Family Child Cares are subject to the following standards:

1. Child care shall be allowed only as an accessory use to a permitted detached single-family residential use which serves as the primary residence of the operator/provider.

1. Child care centers shall provide not less than thirty-five (35) square feet of interior recreation area per child. Work areas, office areas, and other areas not designed for use of the children may not be counted in this computation.

1. Child care centers shall provide an outdoor recreation area of not less than seventy-five (75) square feet per child. The recreation area shall be fenced, have a minimum width of twenty (20) feet, a minimum depth of twenty (20) feet, be located on the same lot or parcel of land as the facility it is intended to serve, and must be located behind the building setback lines.

1. For child care centers, adequate off street parking shall be provided at the following ratio: One space for each employee and one space for each ten (10) children.

1. Child care centers shall conform to all applicable requirements of building, housing, and fire codes, the North Dakota Department of Human Services and the North Dakota Department of Health.

# **Section 6**

## **6.1 DEFINITIONS**

### **6.11 General Terms**

1. Words used in the present tense include the future; the singular numbers include the plural and the plural shall include the singular. The word “person” includes a firm, association, partnership, trust, company, or corporation as well as an individual.

1. The words “shall,” “will,” and “must” are always mandatory. The words “may” and “should” are discretionary terms. Unless the context clearly suggests the contrary, conjunctions will be interpreted as follows: “And” indicates that all connected items, conditions, provisions or events apply; and “Or” indicates that one or more of the connected items, conditions, provisions or events may apply. These definitions are formal statements of the meaning of words used in this ordinance. Definitions can be regulatory and contain restricting or limiting language.

### **6.12 Specific Terms**

1. Accessory Building or Structure, or Use - A use or structure that:
	* 1. Is clearly incidental to and customarily found in connection with a principal structure or use;
		2. Is subordinate in area, extent and purpose to the principal building or use;
		3. Contributes to the comfort, convenience or necessity of occupants of the principal use; and
		4. Is located on the same lot and in the same zoning district as the principal use.
		5. Accessory buildings are detached structures such as garages, sheds, playhouses, storage buildings and other similar structures which are not to be used as sleeping quarters or living space and must be separated from the structure by a distance as required in the fire code or building code.
		6. Accessory uses, buildings or structures are allowed in all zoning districts.

1. Agricultural Land Use: The use of land for planting, growing, cultivating and harvesting crops for human or livestock consumption and pasturing or yarding of livestock.

1. Alley - A platted public right-of-way providing vehicular service access to the back or side of two or more properties.
2. Animal Feeding Operation – (see Concentrated Animal Feeding Operation)

1. Assisted Living Facilities - "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 2516 or section 50-11-01.4. (NDCC 23-09)

1. Auditor's plat – also known as a “Plat of Irregular Description” is a plat made for taxation purposes at the request of the County Auditor in accordance with NDCC 57-02-39. Such a County Auditor’s Plat is not platting pursuant to N D C C 40-50, but rather is made for the convenience of tax officials in describing property on the tax rolls.

1. Basic Care Facility - "Basic care facility" means a residence, not licensed under chapter 23-16 by the State Department of Health, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services and:
	1. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or
	2. Is kept, used, maintained, advertised, or held out to the public as an

Alzheimer's, dementia, or special memory care facility. (NDCC 23-09.301)

1. Bed and Breakfast Facility - "Bed and breakfast facility" means a private home that is used to provide accommodations for a charge to the public, with not more than two lodging units in addition to the private residence, in which no more than two family-style meals per day are provided. NDCC 23-09.1

1. Board of Adjustment~~s~~ - The body authorized by the Board of City Commissioners of Underwood to hear appeals on the enforcement of the provisions of this Ordinance and to grant or deny requests for variances.

1. Buildable Area - The portion of a lot remaining after the required front, side and rear yard setbacks have been excluded, also known as the building envelope.

1. Building – Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

1. Building Height - The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of a flat roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.

1. Building Permit - No permit for the erection of any new principal building or any new accessory building prior to the construction of the principal building shall be issued unless such building is to be located on a lot in a subdivision platted pursuant to NDCC 40-50.1

1. Clear Sight Triangle - For use on a corner lot, the clear sight triangle is the triangle which is formed by measuring outward from the property corner, a distance of twenty-five feet in both directions along the property lines and then connecting the two end points of those lines. This area forms the clear sight triangle.



1. Commercial District, General - The areas designated by the Board of City Commissioners of Underwood on the District Zoning Map which provides for the grouping of retail merchandising, light industry, and service activities.

1. Commercial District, Downtown – A separate commercial zoning district for Underwood’s downtown area which allows a residential dwelling to be located above or behind storefront business operations.
2. Concentrated Animal Feeding Operation - means any livestock feeding, handling, holding operation, or feed yard, where twenty (20) or more animal units are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term Concentrated Animal Feeding Operation does include Animal Wintering Operations which are defined as the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. Animal Wintering Operations include the weaned offspring of cattle and sheep, but it does not include: 1) breeding operations of more than twenty (20) animal units or; 2) weaned offspring which are kept longer than one hundred- twenty (120) days and that are not retained for breeding purposes.

 Animal Unit Equivalent

|  |  |  |
| --- | --- | --- |
| Livestock Type  | AUE  | Conversions to 20 Animal Units  |
| Horse  | 2.00  |  10  |
| Dairy Cow  | 1.33  |  15  |
| Mature Beef  | 1.00  |  20  |
| Beef Feeder-Finishing  | 1.00  |  20  |
| Beef Feeder-Backgrounding  | 0.75  |  27  |
| Mature Bison  | 1.00  |  20  |
| Bison Feeder  | 1.00  |  20  |
| Elk  | 1.00  |  20  |
| Swine, >55 lbs.  | 0.40  |  50  |
| Swine, Nursery  | 0.10  |  200  |
| Sheep  | 0.10  |  200  |
| Goose or Duck  | 0.20  |  100  |
| Turkey  | 0.0182  |  1099  |
| Chicken  | 0.01  |  200  |

1. Crew Camp – or Temporary Crew Housing Facility (TCHF) is specifically designed to provide lodging for temporary workers. In many cases the TCHF will also offer, meals, limited recreational activities, and other services for the benefit and well-being of its residents. Most TCHFs will utilize premanufactured, individual housing units which are transported to the site. Some TCHFs will utilize skid units. Others will utilize pre-manufactured modular components to assemble a housing facility at the approved location. Allowed dwelling types in a TCHF include manufactured homes. The majority of tenants of a TCHF are typically nonresidents with jobs in cyclical or temporary industries such as the oil industry. A TCHF is not a conventional hotel, motel, recreational vehicle park, mobile home park, or campground. A TCHF is not a facility that provides parking and hookups for individually owned recreational vehicles, fifth wheels, camper trailers and pop-up campers, pickup trucks with on-board campers or similar units. A TCHF is not a conventional “stick-built” on-site structure or group of structures. A TCHF is not for long-term or permanent habitation.

1. Curb Level - the ~~level~~ elevation established for the top of the curb in front of a building, measured at the center of such front. Where no curb level has been established, the City Engineer shall establish such curb level or its equivalent for the purpose of the Ordinance.

1. District - A section or sections of the City of Underwood and the designated area for which the regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

1. Dwelling- Mobile Home - A transportable, factory-built structure that was manufactured prior to June 15, 1976 or otherwise does not comply with the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401) and that is designed to be used as a single dwelling unit. A mobile home is: (1) constructed off-site, (2) equipped with the necessary utility service connections, (3) made so as to be readily movable as a unit or units on its own running gear, and (4) designed to be used with or without a permanent foundation. (Note: After June 15, 1976 no mobile homes have been constructed.)

Existing mobile homes currently located in Underwood are allowed to remain but the importation of any additional mobile homes built prior to June 15, 1976, may be allowed on a cases by case basis after review of the building permit application by the Underwood City Commission. See “Moving of Buildings and Structures” located in the Conditional Uses Section. (Amended April 23, 2018)

1. Dwelling-Group: see “Group Homes”

1. Dwelling – Modular Home - A dwelling unit which was constructed off site in a factory as separate modules which are joined together. The manufacturer of a modular residential or commercial structure shall contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the North Dakota Division of Community Services.

To be located in the City’s R1 or R2 zoning districts, a modular home must be installed on a permanent perimeter foundation.

1. Dwelling - Manufactured Home - A federal housing and urban development (HUD) labeled structure, transportable in one or more sections that, in its traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty or more square feet [29.73 square meters]; that is built on a permanent chassis; that is designed to be used as a dwelling; that may or may not have a permanent foundation; is connected to the required utilities; and that contains the plumbing, heating, air-conditioning, and electrical systems; except that such term shall include any structure that meets the size requirements and for which the manufacturer has voluntarily filed a certification required by the secretary of housing and urban development and that complies with the manufactured home construction and safety standards. This definition should not be interpreted to include any type of recreational vehicle that may equal or exceed the body length or width specified herein (see ND Administrative Rules 108-03-0103(10) Jan. 1, 2006).

To be located in the City’s R1 or R2 zoning districts, a manufactured home must be installed on a permanent perimeter foundation. To be located in the City’s RMH zoning district, a manufactured home must be installed in accordance with the manufacturers’ installation instructions.

A manufactured home can be installed by a certified installer or by the home owner.

Home owners installing their own Manufactured Home must have the installation inspected by a certified inspector. Installer must notify inspector for inspection.

All manufacturers’ installation instructions shall be followed. Manufactures Installation Manual must be available for the inspection.

Where site conditions are different than those described in the manufacturer’s installation instructions, the installation must be designed by a registered professional engineer or architect to meet the same goals as those in the manufacturer’s installation. If Alternative Installation methods are used, the supporting documents must be available for the inspection.

1. Dwelling - Multi-Family - A residential building designed for and occupied exclusively by more than two families.

1. Dwelling Single-Family - A building containing only one dwelling unit designed to be located on a permanent perimeter foundation and, if site built, constructed in accordance with the provisions of the applicable City codes governing construction; or, if manufactured off site, constructed in accordance

with either the City codes governing construction or the HUD Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280). All single-family dwellings shall be considered and taxed as real property, as provided by law. Each single-family dwelling shall have a minimum width of twenty (20) feet, a minimum depth of twenty (20) feet, and a minimum ceiling height of seven (7) feet, six (6) inches. A manufactured home that meets all of the requirements herein is classified as a single family dwelling.

1. Dwelling - Two-Family - A residential building designed for and occupied exclusively by two families.

1. Dwelling Unit - One or more habitable rooms which are designed to be occupied by one family with facilities for sleeping, cooking, eating and sanitation. Buildings with more than one set of cooking facilities are considered to be multi-family dwellings unless the additional cooking facilities are clearly accessory, such as an outdoor grill.

1. Easement - An easement is a property interest that allows the holder of the easement to use property that he or she does not own or possess. An easement does not allow the easement holder to occupy the land, or to exclude others from the land, unless they interfere with the easement holder's use.

1. Family - Any number of individuals, related by blood, legal adoption, or marriage, or a group of not more than three persons who need not be related by blood or marriage, living together in a dwelling unit as members of a single housekeeping unit.

In accordance with the provisions of NDCC 25-16-14(2.), a licensed group home for the disabled which serves six or fewer developmentally disabled persons is classified as a family in all single-family residential districts (R1, R2 and RMH), and a group home serving eight or fewer developmentally disabled persons is classified as a family in the R3 Residential Zoning District.

1. Family child care: A detached single family dwelling, which also serves as the primary residence of the operator/provider, offering care, maintenance and supervision for hire or compensation, for less than twenty-four (24) hours per day, for no more than twelve (12) children under the age of twelve (12) years, including any children of the operator/provider on the premises that are under the age of twelve (12) years, and generally licensed by the North Dakota Department of Human Services as an early childhood program. Family child care is considered an accessory use to the principal use of the property as single family detached residential dwelling.

1. Farmer - the term "farmer" means an individual who normally devotes the major portion of his/her time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty (50) per cent of his/her annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied, as a farmer, the premises.

1. Floor Area - The total square footage within a structure calculated by using the measurements from the exterior walls.

1. Frontage - See Lot, Frontage

1. Garage, Private -An accessory building or part of a principal building used primarily for the storage of motor vehicles customarily accessory to the principal use.

1. 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.

1. 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 Underwood; 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.

1. Group Home – Disabled - A group home for the disabled is a dwelling unit which is occupied as a single housekeeping unit in a family-like environment by up to 8 persons with disabilities plus support staff. Residents are supervised by a sponsoring entity or its staff which furnishes habilitative services to the group home residents. A group home is owned or operated under the auspices of a nonprofit association, private care provider, government agency, or other legal entity, other than the residents themselves or their parents or other individuals who are their legal guardians. The group home constitutes a single housekeeping unit where residents share responsibilities, meals, and recreational activities as in any family. The group home staff is specially trained to help the residents achieve the goals of independence, productivity, and integration into the community.

A group home for the disabled is not a clinic or hospital where treatment is the principal or essential service provided. Residency in a group home is long term relatively permanent and measured in years, not months or weeks. A group home can house people with developmental disabilities (mental retardation, autism, etc.), mental illness or physical disabilities as defined by NDCC 25-1614(1.)

A group home for the disabled is not a group home facility for drug and alcohol treatment, treatment of sex offenders; and alternative or post incarceration.

1. Group Home – Halfway House – A halfway house is characterized as the residential occupancy of a structure by a group of people, who have been individually convicted of a felony, that do not meet the definition of “family”. A halfway house is for drug and alcohol treatment, treatment of sex offenders; and alternative or post incarceration facilities. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly or longer basis. Generally, halfway houses have a common eating area for residents. Uses commonly associated with halfway houses are group treatment and/or training, offices, recreational activities, and parking of vehicles for occupants and staff.

 Exceptions to the halfway house definition include:

* + 1. Lodging where tenancy may be arranged for periods of less than 30 days

* + 1. Lodging where the residents meet the definition of “family” and where tenancy is arranged on a month-to-month basis or for a longer period.

* + 1. Facilities for people who are under judicial detainment and under the supervision of sworn officers.

* + 1. The person was a minor when he/she committed the offense and was not convicted as an adult.

* + 1. The person is a minor or ward under guardianship.

1. Home Occupation - A business, profession, occupation or trade conducted within a dwelling unit for gain by a resident of the dwelling unit. Home Occupations are allowed in the Residential Districts with approval of a Conditional Use Permit.

1. Hotel - A building where lodging with or without meals is provided and offered to the public for compensation. Hotel includes motels, but does not include Group Dwellings for the Disabled.

1. Improvements - Street grading and surface with or without curbs and gutter, sidewalks, crosswalks, water mains, sanitary and storm sewers, culverts, bridges, streets, and trees.

1. Industrial Districts - The areas designated by the Board of City Commissioners of Underwood on the District Zoning Map which provided for the grouping of manufacturing, assembly, and heavy commercial activities.

1. Land Use Administrator - the officer appointed by the Board of City Commissioners of Underwood to administer the zoning affairs of the City of Underwood, also known as Zoning Administrator.

1. Lot - A lot is part of a subdivision plat which has been recorded in the office of the County Recorder of McLean County. The word "lot" when used alone shall mean, unless the context clearly indicates otherwise, a "zoning lot" as defined below.

1. Lot-Zoning - A tract of land occupied or to be occupied by a principal building and its accessory buildings, together with such open spaces and yards as are required under the provisions of this article, having not less than the minimum area required by this ordinance for a zoning lot in the district in which such land is situated and having its principal frontage on a dedicated public right-of-way or a permanent, exclusive, unobstructed access easement to a dedicated public right-of-way which is not less than twenty feet wide. A lot is part of a subdivision, the map of which has been recorded in the office of the County Auditor and Register of Deeds of McLean County

1. Lot Line: The property line bounding a lot.

1. Lot Line, Rear: The rear lot line is opposite the front lot line as determined by the Building Inspector upon issuance of a building permit or the demarcation made on a final plat map.

1. Lot Line, Side: Any lot lines other than front lot lines or rear lot lines.

1. Lot, Coverage - The total area of building footprint expressed as a percentage of the total lot.

1. Lot, Depth of - The mean horizontal distance between the front and rear lot lines.

1. Lot, Frontage - the front of a lot shall be constructed to be the portion nearest the street. For the purpose of determining yard requirements, all sides of a lot adjacent to streets shall be considered frontage. Corner lots have two front yards.

1. Lot, Width - The distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the rear of the required front yard.

1. Motor Vehicle - Any vehicle requiring a motor vehicle license by the State of North Dakota.

1. Nonconforming building: A building that was established in accordance with all zoning regulations in effect at the time of its establishment, but which, because of amendments to the zoning regulations, no longer complies with the dimensional standards of the underlying zoning district.

1. Nonconforming lot: A lot that was legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of its creation, but which, because of amendments to the zoning regulations, no longer complies with the minimum lot size or other dimensional standards of the zoning district.

1. Nonconforming structure: A structure that was established in accordance with all zoning regulations in effect at the time of its establishment, but which, because of amendments to the zoning regulations, no longer complies with the dimensional standards of the underlying zoning district.

1. Nonconforming use: A use of land that was established in accordance with all zoning regulations in effect at the time of its establishment, but which, because of amendments to the zoning regulations, no longer complies with the use regulations of the underlying zoning district.

1. Parcel: a tract of land created by any means other than a subdivision platted pursuant to NDCC 40-50.

1. Parking Space - Also known as “off-street parking space”, the dimensional standards for each off-street parking space shall be at least nine (9) feet wide and at least eighteen (18) feet long.

1. Patio: An area consisting of natural or man-made material which is constructed at or near grade level and intended for family use as an open, outdoor area.

1. Perimeter Foundation - A perimeter foundation is a type of foundation that provides direct structural support for exterior building walls with a continuous foundation and footing installed not less than four feet below finish grade. Foundation walls shall be constructed of concrete, brick, or concrete block. Points of interior support may be provided by piers. Interior support piers or interior foundation wall shall be installed not less than four feet below finish grade.

1. Permitted Use - A use which is listed as a permitted use in a zoning district is also known as a “use by right” and is not subject to special reviews and

approvals by the City. Permitted uses are subject to the requirements of the zoning district in which it is listed.

1. Plat - Plat or subdivision plat refers to any subdivision platted pursuant to NDCC 40-50

1. Plat of Irregular Description: A plat made for taxation purposes at the request of the County Auditor in accordance with NDCC 57-02-39. Such a County Auditor’s plat is not platting pursuant to N D C C 40-50, but rather is made for the convenience of tax officials in describing property on the tax rolls. A plat of irregular description may also be referred to as an Auditor’s Plat.

1. Planning and Zoning Commission - The advisory board appointed by the Board of City Commissioners of Underwood to recommend the boundaries of the various zoning districts and appropriate regulations to be enforced therein. The Planning and Zoning Commission also makes recommendations to the Board of City Commissioners on zoning and land use planning matters such as development proposals. The Board of City Commissioners will not hold its public hearings or take action until it receives recommendations from the Planning and Zoning Commission.

1. Public Utility - "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in any business enumerated in NDCC Title 49.

1. Public buildings: structures principally of an institutional nature or serving a public need such as: governmental buildings, public hospitals, public schools, public libraries, public museums, post offices, police and fire stations, public utilities, and other public services that do not constitute a commercial enterprise.

1. Record Lot: Land designated as a separate and distinct lot on a legally recorded subdivision platted pursuant to Chapter 40-50 NDCC, also known as a

“zoning lot”.

1. Recreational Vehicle (RV) - A vehicular type unit primarily designed as a temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by a vehicle. Common types of RVs include motorhomes, travel trailers, fifth wheels, pop-up tent campers, over-the-cab or on-board pickup campers. A recreational vehicle campground or facility is not a crew camp or Temporary Crew Housing Facility.

1. Recreational Vehicle Campground - A designated area under single ownership or management which has been planned, designed and improved to accommodate at least twenty recreational vehicles and is open to the general public as temporary occupancy for recreational or vacation purposes.

1. Recreational Vehicle Space - A designated space within a recreational vehicle campground intended for the temporary occupancy of one recreational vehicle, tent, or other individual camping unit on a temporary basis.

73. Renovation/Remodeling – the act of improving by renewing and restoring; to restore to good condition’ make new or as if new again; repair; to reinvigorate; refresh; revive. (Added by Amendment September 17, 2018)

1. Residential Districts - The areas designated by the Board of City Commissioners of Underwood on the District Zoning Map for the development of ~~the~~ residential dwelling units.

1. Right-of-Way - The area, either public or private, over which the right of passage exists. The right-of-way shall not be considered as land area when computing lot size.

1. Setback - The distance between a building and the property line as defined by front, rear and side yards.

1. Setbacks from Public Easements - No accessory structure, other than a fence or wall, may be located within any recorded public easement or over any known public utility.

1. Sight Line - See Clear Sight Triangle

1. Sign - Any outdoor advertising having a permanent location on the ground or attached to or painted on a building, including bulletin boards, billboards, nameplates, and poster boards.

1. Spot Zoning – A zoning configuration where a segregated area is surrounded by dissimilar zoning. Requests for zoning changes that resemble spot zoning should generally be discouraged because approvals of spot zonings can create incompatibilities with existing uses on neighboring properties.

1. Storage Facilities: Also known as “self-storage units” or “mini-warehouses” these structures contain spaces, compartments or units which are individually rented or leased to clients for storage and retrieval of their goods. Storage Facilities are permanent structures, built on-site, with frost-protected foundation systems. Storage Facilities do not include shipping containers, cargo containers, roll-off containers, semi-trailers or other types of portable or non-permanent containers. Outdoor storage at Storage Facility sites is not allowed. Storage of fireworks or other flammable, combustible or hazardous materials is not allowed. Motor vehicles may be stored. Individual Storage Facilities may be used for storage of commercial goods but shall not be used for conducting any service, retail, merchandising, wholesale or light industrial business activities.

1. Street - A way for vehicular traffic designed as a street, highway, boulevard, thoroughfare, parkway, throughway, avenue, road, or court on the official

records and maps. Streets and highways are grouped into classifications according to the character of service they are intended to provide.

1. Street, Arterial: Intended to provide a high level of mobility with very limited access, connecting major activity centers and providing a continuous transportation system as they establish connections with other arterials.

1. Street, Collector: Functions to provide mobility out of residential neighborhoods and some limited lot access – intended as collectors and distributors of residential traffic to higher level streets and roads such as arterials.

1. Street, Local: The primary function of a local street is to access individual residential properties. Local streets carry traffic that has its destination or origin on that street or within the local neighborhood. Local streets define the character of neighborhoods.

1. Structural Alterations - Any Change in the Supporting members of a building such as bearing walls, partitions, column, beams or girders, excepting such alterations as may be required for the safety of the building.

1. Structure - A manmade object that is either permanently or temporarily placed on or into the ground or on another structure. Examples include buildings, decks, patios, decks, play structures, swimming pools, hot tubs, bridges, storage tanks, fences, towers, flag poles, utility poles, pipelines, transmission lines, smokestacks, and signs.

1. Subdivision - "Subdivision" means the division of a tract or parcel of land into lots 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 such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces (NDCC 40-48-01(2).

1. Use - The specific purpose for which land or a building is used.

1. Variance - A variance is permission to depart from the literal requirements of this zoning ordinance. Approval of a variance grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance with the terms of the ordinance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

1. Vehicle - See Motor Vehicle

1. Yard - A space on the same lot with the principle building or structure, open, unoccupied, and unobstructed by buildings or structures from the ground upward.

1. Yard, Front - A yard extending across the full width of the lot from side ~~lot~~ property lines, the depth of which is the least distance between the front ~~lot~~ property line and the front building line.

1. Yard, Rear - A yard extending across the full width of the lot from side ~~lot~~ property lines, the depth of which is the least distance between the rear ~~lot~~ property line and the rear of the principle building.

1. Yard, Side - A yard extending from the rear line of the required front yard to the rear ~~lot~~ property line, the depth of which is the least distance from the sides of principle building and side ~~lot~~ property line.

1. Zoning Commission – (or Planning and Zoning Commission) The body appointed by the Board of City Commissioners of Underwood to establish the zoning affairs of the City, to recommend the boundaries of the various original districts and recommend regulations to be enforced therein.

1. Zoning District Map - The map showing the zoning districts of the City of Underwood officially adopted by the Board of City Commissioners of the City of Underwood.

# **Section 7**

## **7.1 LEGAL FRAMEWORK**

### **7.11 Enforcement**

1. Withholding Permits

The City Building Official may deny or withhold all permits, certificates or other forms of authorization as to any applicant who proposes to construct, move or alter a building or structure that does not conform to zoning regulations or building codes, fire codes, plumbing codes, electrical codes or any other regulations or requirements of the State.

1. Action to Correct Violations

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this ordinance, the proper local authorities of the City, in addition to other remedies, may institute any appropriate action or proceeding:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
2. To restrain, correct, or abate such 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.
5. Notice and Order

Whenever a zoning or code violation is found, the City Building Official shall give written notification to the owner of the property that a violation has occurred and order the violation abated and the property, building or use brought into compliance with this title. A reasonable amount of time must be allowed for compliance.

1. Penalty

Any person, firm, or corporation violating any of the provisions of this Ordinance shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars ($100) or by imprisonment for not more than ninety (90) days, or by both fine and imprisonment. Each and every day that a violation of this Ordinance shall be continued shall constitute and be considered a separate offense.

1. Severability

If any section, subsection, sentence, or clause, or phrase of the above ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of said Ordinance. The Board of City Commissioners of the City of Underwood, North Dakota, hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

### **7.12 Repeal and Re-enactment**

All regulations, parts of regulations, existing ordinances, or resolutions in conflict with this Ordinance and its provisions are hereby repealed and the updated Underwood Zoning Ordinance, with new amendments is hereby re-enacted.

### **7.13 Compliance and Effective Date**

The regulations set by the provisions of this Zoning Ordinance shall apply uniformly within each district to each class or kind of structure or land and each new use shall be in compliance with the provisions of this Ordinance beginning on this, the 21st day of April, 2014.