

**TOWNER COUNTY**

**NORTH DAKOTA**

**ZONING**

**REGULATIONS**

(Adopted 02/03/2014)

(Revised 06/18/2018)

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# **ARTICLE I INTRODUCTION**

## **1.1 Title**

This ordinance, its regulations, and the County Zoning Map shall be known and cited as the Towner County Zoning Ordinance.

## **1.2 Purpose and Intent**

1.2.1 To protect public health, safety, morals, comfort, convenience, prosperity and general welfare of Towner County, North Dakota.

1.2.2 To secure safety from fire, panic, noxious fumes, and other dangers.

1.2.3 To promote orderly development of the county's resources including, but not limited to, land, wind, and water resources, and to prevent conflict among land uses and structures.

## **1.3 Authority**

This zoning ordinance is developed and enacted under authority granted to Towner County in Chapter 11-33 of the North Dakota Century Code (NDCC).

## **1.4 Jurisdiction**

### **1.4.1 General**

This ordinance shall affect all unincorporated territory over which the Board of County Commissioners have jurisdiction in Towner County, North Dakota except as indicated below.

### **1.4.2 Extraterritorial Areas**

This ordinance shall not affect any property, real or personal, which is located within the zoning or subdivision authority of any township having lawfully enacted regulations as provided in Sections 58-03-11 through 58-03-15 of the North Dakota Century Code (NDCC), except where such township supervisors relinquish to the County their powers or any portion thereof, to enact zoning regulations. This ordinance shall not affect any property, real or personal, located within the zoning or subdivision authority of any city of this state, except that any such city may by resolution of its governing body relinquish to the county its authority, or any portion thereof, to enact zoning or subdivision regulations under Chapter 40-47 or 40-48 of the North Dakota Century Code, in which case such property shall be subject to the provisions of this ordinance.

## **1.5 Interpretation**

These regulations shall be held to be minimum requirements adopted for promotion of purposes cited in Section 1.2. Whenever the requirements of these regulations are at variance with the requirements of other lawfully adopted rules, regulations, ordinances, deed

restrictions or covenants, the most restrictive shall govern unless otherwise specifically stated.

### **1.6 Severability**

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

### **1.7 Effective Date**

These regulations shall be effective upon adoption by the Board of County Commissioners as provided by the North Dakota Century Code.

### **1.8 Non-restriction of farming**

No regulation or restriction contained in this ordinance shall be construed to prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

### **1.9 Disclaimer**

This ordinance shall not create liability on the part of Towner County, any officer or employee thereof, or the Federal Insurance Administration for any damage that results from reliance on this ordinance or any administrative decision lawfully made there under.

## **2 ARTICLE 2 RULES AND DEFINITIONS**

### **2.1 Rules**

In construction of these regulations, the rules and definitions contained in this section shall be observed and applied except when the context clearly indicates otherwise.

2.1.1 Words used in present tense shall include the future.

2.1.2 Words used in singular number shall include the plural number, and the plural the singular.

2.1.3 Shall is a mandatory word and not discretionary.

2.1.4 May is a permissive word.

### **2.2 Definitions**

The definition of specific terms used in this ordinance are:

- 2.2.1 “Accessory Building and Uses” means a subordinate building or portion of the main building the use of which is clearly incidental to and serves exclusively the principal building or principal use. The accessory building or use shall be located on the same zoning lot and it is established to contribute to the comfort, convenience or necessity of occupants of the principal building or principal use.
- 2.2.2 “Adjoining Properties” mean properties contiguous with the Wind Energy Facility Perimeter and external to such Perimeter.
- 2.2.3 “Agriculture” means the process of producing food and fiber including, but not limited to the land, facilities, structures, and buildings for operation and maintenance thereof. It includes all types of general farming, crop and vegetable farming, dairying, livestock and poultry raising, apiaries, fur farming, horticulture, pasturing, tree farming and related land based food and fiber producing facilities.
- 2.2.4 “Agriculture (Farming, Ranching)” means the art or science of cultivating the soil and activities incidental thereto; cultivating land for production of agricultural crops or livestock; raising, feeding, or producing livestock, poultry, milk, or fruit. The term shall include incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of vehicles of customers shall be furnished off the public right-of-way. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies, provides grain, harvesting grain, or other farm services. See also Section 11-33-02 of the North Dakota Century Code.
- 2.2.5 “Airport” means any area designated for the landing and take off of aircraft and any appurtenant areas which are used or intended for use for airport buildings and structures including runways, taxi-ways, aircraft storage and tie down areas, hangars and other related facilities and open spaces other than landing strips used for family purposes.
- 2.2.6 “Animal feeding operation” means a place where: livestock have been, are or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops or other vegetation are not normally managed or sustained for grazing during the normal growing season; and , animal waste or *manure* accumulates. This term does not include an *animal wintering operation*. Two or more feeding operations under common ownership shall be considered a single animal operation, if they use a common system for manure handling.
- 2.2.7 “Animal Feeding Operation Structure” means lagoon, formed manure storage, wash water storage structure, earthen manure storage basin, or any animal confinement building.
- 2.2.8 “Animal Hospital or Kennel” means a building or premises set up for treatment and boarding of domestic animals including veterinary facilities.
- 2.2.9 “Animal wintering operation” means 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. The term includes the weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 150 days and that are not retained for breeding purposes.

- 2.2.10 “Applicant” means an individual, corporation, group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more animal feeding operations.
- 2.2.11 “Aquifer” means a geologic formation, group of formations, or part of a formation capable of storing and yielding ground water to wells and springs.
- 2.2.12 “Building” means any structure designed or intended for shelter, housing, business, office, and accommodation of persons, animals, chattels or property.
- 2.2.13 “Building Area” means that portion of the zoning lot that can be occupied by the principal use, excluding the front, rear and side yards.
- 2.2.14 “Building Height” means vertical distance from the grade to the highest point of the roof.
- 2.2.15 “Building Line” means a line establishing the minimum distance that structures may be placed from the lot lines or highway right-of-way. For the purposes of these regulations the building line is the same as setback line.
- 2.2.16 “Building, Principal” means a building, the principal use of which is single family and multi-family dwellings, and offices, shops, stores and other uses.
- 2.2.17 “Certificate of Site Compatibility” means a certificate of site compatibility within the meaning of North Dakota Century Code chapter 49.22 or successor statute.
- 2.2.18 “Channel” means a natural or man-made water course for conducting the flowing water.
- 2.2.19 “Closure” means taking of those actions to close and reclaim a feedlot. Closure actions may include, but are not limited to, cleaning of buildings, disposal of manure, and demolition and/or removal of all manure storage structures.
- 2.2.20 “Club or Lodge” means a private club or lodge which is a nonprofit association of persons for the purpose of gatherings and entertaining members including consumption of food and beverages.
- 2.2.21 “Commission” means the County Zoning Commission.
- 2.2.22 “Comprehensive Plan” means a guide for management of the physical resources and development of the County as adopted by the County Commission.

- 2.2.23 “Conditional Use” means use of a special nature not automatically permitted in a zoning district and which requires review and approval of the Zoning Commission after public hearing.
- 2.2.24 “Conforming Building or Structure” means a building or structure which complies with all requirements of these regulations and other regulations adopted by the County.
- 2.2.25 “Development” means any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings, structures or accessory structures, the construction of additions or alternations to buildings or structures, ditching, lagooning, dredging, filling, grading, paving, excavation and drilling operations.
- 2.2.26 “Development Plan” means a document including maps and data for physical development of an area as provided by these regulations.
- 2.2.27 “District” means a section or sections of the county for which regulations governing the use of building and premises, the building heights, size of yards, lot area, lot width and the use are uniform.
- 2.2.28 “Due process” involves two essential elements; (1) notice and (2) an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.
- 2.2.29 “Dwelling” means any building or portion thereof, used exclusively for human habitation including single family and multiple family units but not including hotels or motels.
- 2.2.30 “Dwelling, Multiple Family” means a single building or portion thereof, containing two (2) or more dwelling units.
- 2.2.31 “Dwelling, Single Family” means a building containing one dwelling unit only.
- 2.2.32 “Earthen Manure Storage Basin” means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from an animal feeding operation and from which accumulated wastes from the basin are removed at least once a year.
- 2.2.33 “Encroachment” means any fill, building, structure or use including accessory used projecting into the required yard areas or public and private property.
- 2.2.34 “Established Residence” means any residence established by a personal presence, in a fixed and permanent dwelling with an intent to remain there.

- 2.2.35 “Establishment” means a place of business for processing, production, assembly, sales, service of goods and materials.
- 2.2.36 “Existing” means an animal unit handling facility in place on the date this ordinance is effective.
- 2.2.37 “FAA” means the Federal Aviation Administration.
- 2.2.38 “Farm” means a tract of land of not less than five acres which is devoted to agricultural activities.
- 2.2.39 “Farming” - see Agriculture (Farming, Ranching).
- 2.2.40 “Feedlot” means a parcel of land which contains a commercial operation for feeding or raising of 200 (two hundred) or more animals which is operated as a separate activity and not incidental to farming.
- 2.2.41 “Flood Plain” means lowland and relatively flat areas adjoining inland and coastal waters that are inundated by a one-hundred (100) year flood.
- 2.2.42 “Frontage” means the front part of a lot abutting a public right-of-way, or road or highway.
- 2.2.43 “Grade” means the land elevation at the horizontal intersection of the ground and the building.
- 2.2.44 “Ground Water” means water below the land surface in a geological unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
- 2.2.45 “Home Occupation” means any occupation carried on in a dwelling unit by a member or members of the family and which meets these requirements:
- That the occupation is conducted within the principal building and not in an accessory building.
- That no stock-in-trade is kept or commodities sold other than those produced on the premises.
- That no more than twenty five percent (25%) of the floor area of the dwelling is devoted to such home occupation.
- 2.2.46 “Hotel or Motel” means a building in which lodging accommodations, with or without meals are provided for compensation.
- 2.2.47 “Hub Height” means, when referring to a Wind Turbine, the distance measured from the ground level to the center of the turbine hub.
- 2.2.48 “Junk or Salvage Yard” means an open area where waste or scrap material, including parts of used motor vehicles, appliances and farm implements are

bought, sold, exchanged, stored, baled, parked, disassembled or handled.

- 2.2.49 “Kennel, Animal” means any premises where dogs, cats and other household pets are boarded, bred and maintained for compensation.
- 2.2.50 “Lagoon” means an impoundment made by excavation or earth fill for biological treatment of animal or other agricultural wastes. Lagoons can be aerobic, anaerobic or facultative, depending on their loading and design.
- 2.2.51 “Livestock” means any animal raised for food, raw materials or pleasure, including but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.
- 2.2.52 “Lot” means a piece, parcel, lot or area of land of continuous assemblage established by survey, plat or deed.
- 2.2.53 “Lot Lines” means the property lines bounding the lot.
- 2.2.54 “Lot Width” means the horizontal distance between the side lot lines of a lot measured at the front building setback line.
- 2.2.55 “Lot, Zoning” means a single lot, parcel, tract of land within a zoning district developed or to be developed.
- 2.2.56 “Manure” means fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater or snow melt that comes in contact with fecal material or urine.
- 2.2.57 “Marijuana” means any species in the genus Cannabis, including but not limited to Cannabis sativa, Cannabis indica, and Cannabis ruderalis. Means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.
- 2.2.58 “Medical Marijuana” means a product intended for human consumption or use which contains cannabinoid concentrate containing, derived from, or containing a derivative of Marijuana in any form, including but not limited to plants, seeds, and resins or any Medical Marijuana Product.
- 2.2.59 “Medical Marijuana Distribution Center” means an entity or facility registered with the North Dakota Department of Health to engaged in the acquiring, possession, storage, delivery, transfer, transport, sale, supply, or dispensing of Medical Marijuana or related products to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver as dictated by state law.
- 2.2.60 “Medical Marijuana Manufacturing Center” means an entity or facility registered with the North Dakota Department of Health for the cultivation, growing, cloning, manufacturing, acquiring, possession, storage, delivery,

transfer, transport, sale, supply of Medical Marijuana or related products to a North Dakota registered Medical Marijuana Distribution Center.

- 2.2.61 “Medical Marijuana Registered Designated Caregiver” means an individual who is registered with the North Dakota Department of Health who agrees to manage the well-being of a Medical Marijuana Qualifying Patient with respect to the Medical Marijuana Qualifying Patient's medical use of Marijuana.
- 2.2.62 “Medical Marijuana Qualifying Patient” means a person who has been diagnosed with a debilitating medical condition by a physician licensed to practice medicine in the State of North Dakota and who has in that person’s possession a current, valid photo identification issued by the State of North Dakota or the United States of America and a current, valid document issued by the North Dakota Department of Health to that person and authorizing that person to possess and use Medical Marijuana.
- 2.2.63 “MET Tower” means temporary and permanent meteorological towers used for the measurement of wind speed.
- 2.2.64 “Mobile Home” means a manufactured trailer intended for family residential occupancy.
- 2.2.65 “Mobile Home Park” means a parcel of land for which a detailed plan indicating the location of lots, blocks, streets, facilities and utilities exists.
- 2.2.66 “Nonconforming Building” means any building which does not comply with any or all of these regulations.
- 2.2.67 “Nonconforming Use” means any principal use of land or building which does not comply with any or all of these regulations.
- 2.2.68 “Nursing Home or Convalescent Home” means a home for the aged or infirm which unrelated persons are accommodated for compensation.
- 2.2.69 “Occupied Structures and Facilities” mean any occupied dwelling, commercial building or publicly-used structure or facility.
- 2.2.70 “Operator” means an individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling one or more animal feeding operations or animal wintering operations.
- 2.2.71 “Permitee” means an individual, group of individuals, corporation, partnership, joint venture, owners, or any other business entity, or combination thereof, that leases or owns the wind rights, Wind Turbines and associated improvements, and all subsequent assignees and/or transferees of these rights, and that submits a Wind Energy Facility Siting Permit application, develops the Wind Energy Facility, and subsequently operates such Facility.
- 2.2.72 “Permitted Uses” means those uses, buildings or structures which comply with the provisions of specific zoning districts because of the similarities in nature

and relationship to each other. Permitted uses are distinct from conditional uses that are authorized only if certain requirements of these provisions are met after a public hearing and approval by the Zoning Commission.

- 2.2.73 “Person” means any individual, firm, corporation, partnership or legal entity.
- 2.2.74 “Planned Development” means a grouping of buildings and structures on a site of five (5) or more acres in single ownership which is not limited by the yard or building height limitations but is based on a detailed development plan and recorded in the Office of the County Code Administrator upon approval by the County Commission.
- 2.2.75 “Pollution, Air” means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal, or plant life or which unreasonably interferes with the enjoyment of life or property.
- 2.2.76 “Pollution, Water” means manmade or man-induced alteration of the physical, chemical, biological integrity of any Waters of the State.
- 2.2.77 “Public Roadway or Public Way” means any dedicated and recorded right-of-way including alleys, sidewalks, streets, roads or highways.
- 2.2.78 “Regional Flood” means a flood determined by the state and Federal Emergency Management Agency which is representative of large floods known to have occurred in the County.
- 2.2.79 “Rotor Diameter” means the diameter of the circle formed by the swept area of the Wind Turbine’s blades.
- 2.2.80 “Service Station” means any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.
- 2.2.81 “Shall” means that the requirement is mandatory, rather than optional.
- 2.2.82 “Sign” means any emblem, name, identification, description or illustration which is used for outdoor advertising having permanent location on the ground or attached to or painted on a building including bulletin boards, billboards and poster boards, but excluding real estate for sale signs, political campaign signs, public information and traffic signs.
- 2.2.83 “Site Plan” means a detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in these regulations.
- 2.2.84 “Source-Water Protection Area” means a boundary which defines the surface and subsurface area surrounding a water well or a well field, which supplies a public water system and through which contaminants are likely to move toward and reach such water well or field.

- 2.2.85 “Stream” means any running body of surface water that ordinarily flows within a channel. This includes both perennial and intermittent streams.
- 2.2.86 “Structural Alterations” means any change in the supporting elements of a building or structure including bearing elements, partitions, columns, beams, girders, roofs, exterior walls and embankment.
- 2.2.87 “Structure” means anything constructed or erected, the use of which requires permanent location on the ground including advertising signs and billboards.
- 2.2.88 “Substantial Improvement” means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
- Before the improvement or repair is started, or
- If the structure has been damaged and is being restored, before the damages occurred. For the purposes of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling or floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- 2.2.89 “Surface water” means water of the state located on the ground surface such as lakes, reservoirs, rivers and creeks.
- 2.2.90 “Total Height” means, when referring to a Wind Turbine, the distance measured from the ground level to the blade extended at its highest point.
- 2.2.91 “County” means Towner County.
- 2.2.92 “Utilities” means installations for conducting water, sewage, gas, electricity, television, storm water and similar facilities providing service to and used by the public.
- 2.2.93 “Variance” means the relaxation of the terms of the zoning regulations in relationship to building height, size of the front, rear and side yards, where the literal enforcement of these regulations could create unreasonable hardship, but it is not contrary to the purposes of the County Comprehensive Plan and these regulations.
- 2.2.94 “Waters of the state” means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.
- 2.2.95 “Wind Energy Facility” means a facility directly generating electricity or indirectly generating electricity or energy through production of hydrogen,

compressed air or other energy carrier from conversion of wind to energy and consisting of one or more Wind Turbines under common ownership or operating control, and includes substations, temporary and permanent MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity directly, or through wind energy conversion to another form of energy, to off-site customer(s).

2.2.96 “Wind Energy Facility Perimeter” means the boundary of the Wind Energy Facility as defined by the external property lines of landowners who have a contractual relationship with the Permittee and who will receive Wind Turbine compensation type payments or other forms of revenue derived from Wind Turbines sited within such Wind Energy Facility.

2.2.97 “Wind Energy Facility Siting Permit” means a construction and operating permit granted in accordance with the provisions of this Ordinance.

2.2.98 “Wind Turbine” means a wind energy conversion system which converts wind energy into electricity, hydrogen, compressed air, or some other energy carrier and includes the turbine, blade, tower, base and pad transformer, if any; provided that such a system shall only be a Wind Turbine for the purposes of 6.11, if it has a nameplate capacity of 100 kilowatts or greater. Wind Turbines of less than 100 kilowatts nameplate capacity will be regulated pursuant to 6.7.

2.2.99 “Yard” means an open space on the zoning lot which is unoccupied or unobstructed by any portion of a structure from the ground upward.

2.2.100 “Zoning Commission” shall mean a body consisting of no more than five (5) members, of which not more than one (1) is a County Commissioner, with membership appointed yearly by the Commissioners during their annual County Commission meeting.

### **3 ARTICLE 3 GENERAL PROVISIONS**

#### **3.1 Compliance**

No building or land shall hereafter be used or occupied and no building shall be erected, moved, or altered unless in conformity with these regulations.

No person, firm or corporation shall erect, construct, make structural changes or move any structure without first obtaining a Zoning Permit. Application for a zoning permit shall be made to the County Code Administrator, who may issue said “permitted use” permit. Permits other than “permitted use” shall be brought to the Zoning Commission for action. No zoning permit shall be issued if the actions described in the application would constitute a violation of this ordinance.

If, for any reason, a “permitted use” zoning permit is initially denied by the County Code Administrator, the applicant shall be informed within seven days of the date of application. The applicant may then request a hearing before the Zoning Commission to appeal for a reversal of such denial or may reapply after making whatever changes in the application

deemed necessary by the County Code Administrator. If, for any reason, a zoning permit is initially denied by the Zoning Commission, the applicant shall be informed within seven days of the date of application. The applicant may then reapply after making whatever changes in the application deemed necessary by the Zoning Commission or appeal to a court of law.

The fee for a Zoning Permit is listed within this document.

3.1.1 Building Height, Lot Area and Yards

3.1.2 No building shall exceed the height, occupy larger part of lot area, and no lot shall be created smaller than the requirements of these regulations.

3.1.3 Substandard Lots

3.1.4 All existing lots at the date of adoption of these regulations shall be deemed buildable unless for the reasons of land suitability, flooding and other physical limitations contrary to the purpose of these regulations.

### **3.2 Amendments**

The County Commission may, from time to time, amend, supplement or repeal any part of these regulations after a public notice and hearing.

### **3.3 Comprehensive Plan**

These regulations are administered and enforced to implement the Comprehensive Plan of the County, a document adopted by the County Commission as a policy guide for protection of the county's natural resources and accommodating the type of development deemed appropriate including but not limited to the following objectives.

3.3.1 To conserve and enhance the taxable value of land and buildings in the county.

3.3.2 To encourage the most appropriate use of land in the county.

3.3.3 To protect the character and maintain the stability of farming activities and production.

3.3.4 To regulate and restrict the location and intensity of use of buildings and land not related to farming.

3.3.5 To separate and control unavoidable nuisance producing uses to minimize the adverse impacts on the surrounding areas or uses.

3.3.6 To facilitate traffic movement and promote development of compatible uses.

### **3.4 Non-conforming Uses**

The lawful use of a building or premises existing at the date of adoption of these regulations may be continued. Where a non-conforming use is discontinued for a period of more than twelve consecutive calendar months any subsequent use or occupancy of such premises shall conform to these regulations. Whenever a building is destroyed or damaged by fire or other casualty to the extent of more than sixty percent (60%) of its market value it shall not be restored unless said building shall conform to the provisions of the district in which it is located. Non-conforming uses shall not be expanded to occupy a larger area of land than existed at the date of adoption of these regulations unless approved by the Zoning Commission after a public hearing.

### **3.5 Land Suitability**

No land shall be used for a purpose which is held unsuitable for the reason of flooding, soil limitations, inadequate drainage, incompatibility with adjoining uses or any condition likely to be harmful to the health, safety or the welfare of the people in the area. The County Zoning Commission may require information and data to determine the land suitability. The County may consult with County and state agencies to assist in its determination.

### **3.6 Conditionally Permitted Uses**

Where a use is classified as a conditional use under these regulations and exists at the date of adoption of these regulations, it shall be considered a permitted use. Where a use is not allowed as a conditional use or permitted use, under these regulations, and exists at the date of adoption of these regulations, it shall be considered non-conforming and shall be subject to the non-conforming buildings and use provisions.

### **3.7 Road and Highway Access**

A permit for access to the county roads is required by the County Commission. In granting the access permit to the county roads, the County Commission may adopt rules and regulations as to the number of access points per mile, the width, construction and other features of the access to the adjoining properties. The County Commission may place conditions when granting a road access permit. Farm driveways and field access points are exempt from these provisions.

### **3.8 Road and Highway Setbacks**

All buildings and structures shall be placed at least 200 (two hundred) feet from county and state highway rights-of-way and at least 200 (two hundred) feet from the county road rights-of-way for the purpose of preventing hazardous accumulations of snow and to allow for future widening of public right-of-ways. Tree plantings and shelterbelts shall be planted at least 200 (two hundred) feet from center of all roads (North, South, West and East).

## **4 ARTICLE 4 ZONING DISTRICT BOUNDARIES AND MAP**

### **4.1 Zoning District**

In order to carry out the purposes and provisions of these regulations, the following zoning districts are hereby established.

- 4.1.1 A - Agricultural Zone
- 4.1.2 RR - Rural Residential Zone
- 4.1.3 RC - Residential Community Zone
- 4.1.4 C - Commercial Zone
- 4.1.5 I - Industrial Zone
- 4.1.6 R/O - Recreation/Open Space Zone

### **4.2 Zoning District Map**

#### 4.2.1 Zoning Districts

The location and boundaries of the zoning districts are hereby established as shown on the “Zoning District Map” on file in the Office of the County Code Administrator. The zoning district maps, together with all information shown thereon and all amendments thereto, shall be an integral part of these regulations.

#### 4.2.2 Public Roads and Highways as Boundary

Where zoning district boundary lines are indicated as following roads and highways or extensions thereof, such boundary lines shall be construed to be the center line of said roads and highways or extension thereof unless clearly shown to the contrary.

#### 4.2.3 Property Line as Boundary

Where a zoning district boundary line coincides approximately but not exactly with the property line, the zoning boundary shall be construed to be the lot line at that location. All section lines, quarter section lines and quarter quarter section lines may be construed as the property lines.

#### 4.2.4 District Description for Unsubdivided Lands

For unsubdivided property, zoning district boundaries are determined by metes and bounds description or by a legal description as deemed necessary.

#### 4.2.5 Vacated Areas

Where a public road or highway is vacated by the official action of the County Commission, the zoning district boundaries shall be extended to the center of the vacated public road or highway.

#### 4.2.6 Zoning District Boundary Interpretation

Where any uncertainty exists as to the exact location of the zoning district boundary lines, the County Commission shall determine the location of such boundary lines.

#### 4.2.7 Certification

The official zoning map shall bear a certificate with the signature of the County Commission and certification of the County Auditor and date of adoption of the zoning map as an integral part of these regulations.

## **5 ARTICLE 5 ZONING DISTRICT REGULATIONS**

### **5.1 A-1 Agricultural District**

#### 5.1.1 Purpose

The purpose of this district is to provide for preservation and protection of agricultural lands and to discourage uses incompatible with agricultural operations or detrimental to agricultural lands utilization.

#### 5.1.2 Permitted Uses

- 5.1.2.1 All types of farming and ranching operations including dairying, livestock and poultry raising, apiaries, fur farming, and harvesting and selling crops and forest products.
- 5.1.2.2 Accessory Buildings and Structures.
- 5.1.2.3 Cemeteries.
- 5.1.2.4 Churches.
- 5.1.2.5 Grain Elevators and Accessory Structures.
- 5.1.2.6 Home Occupations.
- 5.1.2.7 Parks, Playgrounds, and Conservation/Recreation Areas.
- 5.1.2.8 Public and Private Schools.
- 5.1.2.9 Public Buildings and Facilities Including County Garages.
- 5.1.2.10 Single Family Non-farm Residential Units subject to the details in these regulations.
- 5.1.2.11 Stock Piling of Sand and Gravel for Road Construction and maintenance.

- 5.1.2.12 Utility Lines and Pipe Lines Including Substations for Transformers, Pumping Stations and Lift Stations.
- 5.1.2.13 Wind Energy Facility with One (1) or More Wind Turbines of 100 Kilowatts Nameplate Capacity or Greater Subject to the Provisions of Section 6.11.
- 5.1.2.14 Veterinary Clinics, Animal Hospitals and Domestic Animal Kennels not Nearer than 500 (five hundred) Feet From Any Residence Except the Residence of the Owner or Operator.

### 5.1.3 Conditionally Permitted Uses

- 5.1.3.1 Livestock Sales Arenas, Livestock Feedlots and Slaughterhouses as previously defined, provided that: no livestock sales arenas, feedlot or slaughterhouse shall be located within 2,640 feet of any natural surface water body that contains water on an average of more than two months of any given year;
- 5.1.3.2 Commercially Operated Air landing Strip and Accessory Buildings.
- 5.1.3.3 Feedlots, subject to these regulations.
- 5.1.3.4 Voltage Transmission Lines and Accessory Structures.
- 5.1.3.5 Manufacturing and Processing of Agricultural Products Produced in the Area.
- 5.1.3.6 Radio, TV Stations and Towers.
- 5.1.3.7 Sale and Services of Agricultural Equipment and Machinery.
- 5.1.3.8 Salvage and Junk Yards Subject to Provisions of Section 6.6.
- 5.1.3.9 Sanitary Landfills Subject to the Provisions of Section 6.5.
- 5.1.3.10 Sewage Lagoons and Wastewater Treatment Facilities.
- 5.1.3.11 Golf Courses
- 5.1.3.12 Storage of Farm Related Chemicals.
- 5.1.3.13 Mining of Sand and Gravel Subject to Provisions of Section 6.4.
- 5.1.3.14 Mobile Homes
- 5.1.3.15 Public and Non-Profit Wildlife Management Areas
- 5.1.3.16 Skeet, Trap and Rifle Ranges if not Nearer than 1,000 (one

thousand) Feet from Any Residence.

5.1.3.17 Crew Housing Subject to the Provisions of Section 6.12

5.1.3.18 Medical Marijuana Manufacturing or Distribution Centers Subject to the Provisions of Section 6.13

#### 5.1.4 Lot Area and Lot Width

5.1.4.1 For non-farm residential uses the lot area shall not be less than 5 (five) acres.

5.1.4.2 For non-residential uses the lot area shall not be less than 5 (five) acres.

5.1.4.3 The lot width for any use in agricultural district shall not be less than 250 (two hundred fifty) feet.

#### 5.1.5 Yard Requirements

5.1.5.1 Minimum setback of non-farm structure shall be 200 feet from any public road right-of-way and 50 feet from any lot line of any lot of record.

## 5.2 Rural Residential (RR) Zone

The intent and purpose of the RR Zone is to allow the development of moderate-density residential areas in a manner that does not interfere with normal farming and business activities and is not unduly destructive to the infrastructure or environment of Towner County.

#### 5.2.1 Permitted Uses

- (a) Agricultural;
- (b) One and two family residences;
- (c) Schools, churches and cemeteries;
- (d) Public parks, playgrounds and open spaces;
- (e) Community meeting halls.

### 5.2.2 Conditional Uses

- (a) Medical care facilities and nursing homes;
- (b) Mobile home courts, provided that the provisions of Section 2.3 are met;
- (c) Animal hospitals or clinics;
- (d) Commercial dog kennels;
- (e) Government administrative, maintenance or research facilities;
- (f) Campgrounds;
- (g) Water treatment facilities, sewage lagoons and sediment ponds provided that: written proof that all water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any and all North Dakota State agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

### 5.2.3 RR Zone District Regulations

- (a) The minimum size of a RR District shall be 10 acres;
- (b) Minimum lot size shall be 20,000 square feet for lots served by public water or sewer and 1 acre for lots not served by public water or sewer;
- (c) Minimum setback of any structure shall be: 100 feet from any right-of-way & 50 feet from any lot line;
- (d) Any structure exceeding 35 feet in height shall require a Conditional Use Permit, with the exception of metal towers such as windmills and antennas;
- (e) The maximum intensity of buildings or other structures on any lot shall be 30% of the lot area;
- (f) Any two family residential structures shall include off-street parking space for at least two full size automobiles;
- (g) Points of ingress and egress from any public road shall be limited to one per 1/4 mile in or from any RR Zone properties. A frontage road shall be constructed as necessary to allow access to public roads via the allowable points of ingress and egress;
- (h) Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1<sup>st</sup> of any year shall be 100 feet from any public right-of-way.

## 5.3 Residential Community Zone (R-C)

The intent and purpose of the R-C Zone is to preserve the integrity and character of rural residential areas and incorporated or unincorporated cities and small towns in Logan County.

### 5.3.1 Permitted Uses

- (a) Agriculture;

- (b) Single -family residences;
- (c) Multi-family residences containing four units or less;
- (d) Public parks, playgrounds and open spaces;

#### 5.3.2 Conditional Uses

- (a) Campgrounds;
- (b) Keeping of livestock on lots of 30,000 square feet or more;
- (c) Water treatment facilities, sewage lagoons and sediment ponds provided that: written proof that all proposed water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any or all North Dakota State agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

#### 5.3.3 R/C Zone District Regulations

- (a) The minimum size of an R/C District shall be 40 acres;
- (b) Minimum lot size shall be 5,000 square feet for lots served by public water or sewer and 20,000 square feet for lots not served by public water or sewer;
- (c) Minimum setback of any structure shall be: 25 feet from any public right-of-way, 10 feet from any lot line;
- (d) Any structure exceeding 35 feet in height shall require a Conditional Use Permit with the exception of metal towers such as windmills and antennas;
- (e) The maximum intensity of buildings or other structures on any lot shall be 40% of the lot area;
- (f) Any two or more family residential structures shall include off-street parking space for at least one full-size automobile per housing unit.

### **5.4 Commercial (C) Zone:**

The intent and purpose of the C Zone is to provide areas in the county in which commercial sales and service establishments may be situated such that they compliment the surrounding land uses, economy and social structure.

#### 5.4.1 Permitted Uses

- (a) Agriculture, including any permitted use in an A Zone, as listed in Section 3.2;
- (b) Retail business;
- (c) Auction houses or stores, excluding livestock sales;
- (d) Automobile, motorized vehicle, boat, motor home and implement sales, including repair and storage facilities;
- (e) Business, professional and government offices;
- (f) Repair shops, upholstery shops, auto body shops and equipment retail shops;

- (g) Hotels, motels and seasonal campgrounds less than one acre in size;
- (h) Lodges, clubs, fraternal and community meeting halls;
- (i) Warehousing, not to include any outside storage;
- (j) Fabrication and manufacturing enterprises occupying not more than 100,000 square feet of floor space;
- (k) Commercial eating and drinking establishments;
- (l) Race tracks, drive-in theaters, movie houses, gun clubs, carnivals, circuses and other similar entertainment enterprises;
- (m) Animal hospitals or clinics;
- (n) Governmental research or maintenance facilities;
- (o) Communication towers, lines, equipment, maintenance facilities and offices.

#### 5.4.2 Conditional Uses

- (a) Residential dwellings of not more than four housing units;
- (b) Commercial dog kennels;
- (c) Medical care facilities and nursing homes;
- (d) Water treatment facilities, sewage lagoons and sediment ponds provided that: written proof that all water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

#### 5.4.3 C Zone District Regulations

- (a) Minimum lot size shall be 20,000 square feet for lots served by public water and sewer and 1 acre for lots not served by public water and sewer;
- (b) Minimum setback of any structure shall be 100 feet from any public road right-of-way and 10 feet from any lot line;
- (c) Any structure exceeding 35 feet in height shall require a Conditional Use Permit, with the exception of metal towers such as windmills and antennas;
- (d) Off-street parking shall be provided at the minimum rate of 2 spaces per management employee on the premises;
- (e) All loading docks, truck bays, etc., shall be located in such a manner that no public right-of-way is wholly or partially blocked during normal cargo loading or unloading procedures;
- (f) Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1<sup>st</sup> of any year shall be 33 feet from any public road right-of-way.

## 5.5 Industrial (I) Zone

The intent and purpose of the I Zone is to allocate specific locations for large-scale manufacturing, processing and/or related enterprises where such enterprises may utilize natural and manmade resources to their benefit while imposing minimal adverse effects on surrounding uses.

### 5.5.1 Permitted Uses

- (a) Agriculture;
- (b) Processing of food, fiber, agricultural products, petroleum and mineral resources;
- (c) Manufacturing and fabrication enterprises;
- (d) Railroad yards, including maintenance, storage, repair facilities, and offices;
- (e) Communication towers, lines, equipment, maintenance facilities, and offices;
- (f) Water treatment facilities, sewage lagoons and sediment ponds, provided that: written proof that all water treatment facilities, sewage lagoons and sediment ponds meet or exceed that approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative;
- (g) Rock, sand or gravel excavation, crushing and handling;
- (h) Truck and freight terminals, warehousing, bulk terminals involving dry, liquid and gaseous substances;
- (i) Concrete and concrete product plants.

### 5.5.2 Conditional Uses

- (a) Single-family residential dwellings;
- (b) Temporary work camps, provided that: such camps shall provide occupancy only for those persons directly involved in the construction of industrial facilities during such construction. No such camp shall be in existence for more than 18 months. All such camps must be approved prior to occupancy by the County Sanitarian;
- (c) Electrical generation facilities with greater than five megawatts (5 MW) rate output;
- (d) Livestock slaughter and meat processing operations, provided that: written proof shall be provided to the Logan County Planning and Zoning Commission that any livestock slaughter and/or meat processing operations meet or exceed State Health Department standards and are approved by the County Sanitarian shall be furnished prior to commencement of any such operations;
- (e) Wrecking, junk and salvage yards.

### 5.5.3 I Zone District Regulations

(a) All enterprises in the I Zone shall comply with all regulatory and legislative requirements set forth by any and all federal, state and local government agencies and offices. Written verification of such compliance shall be submitted to the Logan County Planning and Zoning Commission prior to commencement of operations in an I Zone.

(b) Minimum lot size in I Zone shall be 25,000 square feet;

(c) Minimum setback shall be 50 feet from any lot line and 100 feet from any public road right-of-way;

(d) Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1<sup>st</sup> of any year shall be 100 feet from any public road right-of-way.

## 5.6 Recreation/Open Space (R/O) Zone

The intent and purpose of the R/O Zone is to encourage the conservation of public and private lands to be used for outdoor recreation and to preserve natural features and wildlife habitat.

### 5.6.1 Permitted Uses

(a) Agriculture;

(b) Harvesting of natural crops;

(c) Raising of game animals, fowl and fish;

(d) Public parks, recreation areas, playgrounds, picnic areas and natural preserves;

(e) Flood water management structures;

(f) Historical structures and monuments;

(g) Structures and facilities used directly for the administration and/or management of lands in the R/O district.

### 5.6.2 Conditional Uses

(a) Residential dwellings, either seasonal or permanent;

(b) Commercial retail businesses related to recreation, such as marinas, bait shops and souvenir shops;

(c) Private docks, ramps and boat houses;

(d) Campgrounds.

### 5.6.3 Building Height

5.6.3.1 The building height for residential buildings shall not exceed two and one half stories or 35 (thirty five) feet except for farm buildings and structures.

- 5.6.3.2 The building heights for manufacturing of agricultural products and for construction and maintenance of livestock/ag waste systems shall be determined by the County Commission.
- 5.6.3.3 The building height, excepting the radio and TV towers, MET Towers, Wind Turbines, and church steeples for all other uses shall not exceed 35 (thirty five) feet.
- 5.6.4 For non farm uses the parking requirements shall be subject to the provisions of Section 6.2 of these regulations.
- 5.6.5 Sign requirements shall be subject to the provisions of Section 6.3 of these regulations.

## **6 ARTICLE 6 SPECIAL PROVISIONS**

### **6.1 Additional Use Provisions, Restrictions, and Requirements**

No use, whether permitted or conditional, shall be permitted if the use is deemed, by the County Commission, to be dangerous, obnoxious or offensive to persons residing in the vicinity thereof, or impair the use, enjoyment or value of any property.

### **6.2 Off-Street Parking**

#### 6.2.1 Purpose

The purpose of this section is to provide for the off-street parking regulations to:

- 6.2.1.1 Increase the safety and capacity of public roads by requiring off-street parking or loading facilities.
- 6.2.1.2 Minimize adverse effects of off-street parking and off-street loading facilities on the adjacent properties.
- 6.2.1.3 Lessen congestion and preventing the overtaxing of public roads by regulating the location and capacity of off-street parking or off-street loading facilities.

#### 6.2.2 General Requirements

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

### 6.2.3 Special Requirements

- 6.2.3.1 No building shall be erected or enlarged without meeting the following parking requirements.

Business; professional or public office building, studio, bank, medical or dental clinics, three (3) parking spaces plus one additional space for each four hundred (400) square feet of floor area over one thousand (1,000) square feet.

Hotels and motels; one parking space for each room plus one space for each two hundred (200) square feet of eating and drinking establishments or restaurants.

Private club or lodge; one parking space for each two hundred (200) square feet of service area.

Restaurant, eating and drinking establishment; one parking space for each one hundred (100) square feet of floor area.

## 6.3 Signs

### 6.3.1 Purpose

The purposes of regulating signs in the County is to provide for a visually pleasant environment and minimize potentially unsafe conditions for all age groups, but yet offer opportunities for public and private information and advertising.

### 6.3.2 General Requirements

- 6.3.2.1 No sign shall be located, erected, moved, reconstructed, extended, enlarged or structurally altered without obtaining a permit from the County Code Administrator.
- 6.3.2.2 Signs shall not be permitted within 300 (three hundred) feet of any road crossing which is measured from the point of intersection of the road center lines. For state and federal highways the state and federal sign requirements shall apply.
- 6.3.2.3 Directory signs shall not be larger than 20 (twenty) square feet in area for permitted uses.
- 6.3.2.4 Directory signs for conditional uses shall not be larger than 40 (forty) square feet.
- 6.3.2.5 Advertising signs shall not be larger than 96 (ninety-six) square feet.

## **6.4 Mining of Sand, Gravel and Excavation**

### 6.4.1 Purpose

The purpose of these provisions is to provide for mining and extraction of sand and gravel for commercial uses, and to protect and preserve agricultural land by guiding such operations, and to minimize the traffic, noise, dust, fume and vibration impact on the adjoining uses and the road network.

### 6.4.2 Site Approval Requirements

All sand and gravel mining, excavation site require approval by .  
County excepting those related to farming and Towner County road maintenance.

### 6.4.3 Data Submission Requirements

6.4.3.1 A site plan for operation and reclamation of the mined land including maps showing location of the land to be mined, location of roads and points of access to the site, maps showing the existing and proposed contours after the land is mined and a time table for operation of the site.

6.4.3.2 A guarantee that the reclamation of the site be completed within one year of the closure of the operation of the site.

6.4.3.3 Proof of compatibility with the existing land form including the vegetation, surface and ground water resources.

### 6.4.4 Proximity to Existing Uses

The operation of sand and gravel sites shall not be nearer than 500 (five hundred) feet from any residential uses or 300 (three hundred) feet from non-residential uses.

### 6.4.5 Permit Requirements

Any person who operates a sand and gravel operation shall obtain a permit from County before resuming any mining or excavation of the sand and gravel sites.

## **6.5 Sanitary Landfills and Solid Waste Sites**

### 6.5.1 Compliance with North Dakota State Laws and Rules

Any person who operates sanitary landfills or solid waste sites shall comply with all North Dakota state laws and administrative rules set forth by the state agencies.

### 6.5.2 Compliance with County Ordinances and Procedures

Where a County solid waste ordinance exists, any person who operates a sanitary

landfill or solid waste site shall comply with the County Ordinance, rules and procedures.

#### 6.5.3 County Ordinance and Procedures

The County hereby adopts solid waste provisions, subject to the provisions of NDCC 11-33-20, to assure meeting the purposes of these regulations and the county comprehensive plan.

#### 6.5.4 Purpose

The purpose of these provisions is to protect public health, ground and surface water, conflict with present land uses and preservation and protection of natural resources in the County.

#### 6.5.5 Site Approval Requirements

All solid waste sites require approval by County Zoning Commission.

#### 6.5.6 Locational Standards

6.5.6.1 No landfill, incinerator shall be located within 1,000 (one thousand) feet of residential uses, 500 (five hundred) feet of commercial buildings and structures.

6.5.6.2 No landfill shall be located in areas which due to high water table, flooding, or soil conditions may affect the quality of surface and ground water.

6.5.6.3 No landfill operation shall be located nearer than 200 (two hundred) feet of all road and highway rights-of-way.

#### 6.5.7 Data Submission Requirements

6.5.7.1 Maps of the area showing existing features such as roads, highways, vegetation cover, water courses, drainage way, soils, topography, depth of water table, wet lands, sloughs, existing uses, buildings and structures including the existing utility lines.

6.5.7.2 A plan for operation of the site including a descriptive text explaining consistency or inconsistency with the natural or man made environment.

6.5.7.3 Records of data and information submitted to the state of North Dakota appropriate agencies and the County as a part of application for state and County permits.

6.5.7.4 The Zoning Commission may require additional information if it deems it necessary.

### 6.5.8 Statement of Findings

Upon the public notification and a public hearing the Zoning Commission shall determine whether the proposed site meets the requirements of these regulations. The Zoning commission may place conditions for approval of the site.

## 6.6 Junk or Salvage Yards

### 6.6.1 Purpose

The purpose of these requirements is to preserve and protect the visual and other environmental amenities of the rural areas while allowing the salvage or junk yards as business places.

### 6.6.2 Site Approval Requirements

All sites for salvage and junk yards require approval by the County Zoning Commission.

### 6.6.3 Locational Standards

- 6.6.3.1 No salvage or junk yard shall be located within 500 (five hundred) feet of a residential district and 200 (two hundred) feet of commercial buildings and structures.
- 6.6.3.2 No salvage or junk yard shall be located in areas which due to high water table, flooding and soil conditions may affect the quality of surface and ground water.
- 6.6.3.3 No salvage or junk yard shall be located nearer than 200 (two hundred) feet of all road and highway rights-of-way.
- 6.6.3.4 All salvage yards and operations shall be screened from the public view unless the salvage material is placed 500 (five hundred) feet away from any highway right-of-way and screened by natural vegetation, building and land form.

## 6.7 Utilities

### 6.7.1 Purpose

The purpose of these provisions is to encourage orderly development of utilities in relationship to the agricultural and nonagricultural uses and to provide for the safety of the County residents.

### 6.7.2 General Requirements

- 6.7.2.1 The utilities include but not limited to electric power, electrical transmission lines, electrical towers and substations, natural gas

pipelines, the petroleum product pipelines, water and sewer lines, telephone lines and other above ground or underground communication and energy transfer lines and pipelines.

- 6.7.2.2 All new utility lines and pipelines require a permit from the Zoning Commission.
- 6.7.2.3 All new utility lines and pipelines are considered conditional uses and shall conform to the provisions of Section 8.2, Conditional Use Permits, of these regulations.
- 6.7.2.4 All pipelines, natural gas, petroleum pipelines and other energy transfer lines shall be placed deep enough in the ground so as to not interfere with or become hazardous to normal farming operations.
- 6.7.2.5 Excavation for tunneling of any pipelines under roads, farm drains, group drains and local drains shall be done by the company owning or leasing said pipelines and the cost of said excavation and damages to be born by the said company.

## **6.8 Wildlife Management and Mitigation Areas**

### 6.8.1 Purpose

These provisions are designed to address the need for Wildlife Management and Mitigated areas and at the same time preserve and protect the interest of the county for its tax lease and investment in construction and maintenance of public roads.

### 6.8.2 General Requirements

- 6.8.2.1 All wildlife management and mitigated areas established after adoption of these regulations require a conditional use permit subject to the provisions of Section 8.2 and permit fees.
- 6.8.2.2 If the area is leased for this purpose, the agency is required to provide the following as a part of the petition for a conditional use permit:
  - A road maintenance agreement specifying duties and responsibilities of the owner/lessee for access and through roads.
  - Duties and responsibilities of the owner/lessee for the control of noxious weeds in the wildlife management area.
- 6.8.2.3 If the land is purchased by a public agency for such a purpose, the public agency shall arrange for compensating the county for the loss of the property tax.
- 6.8.2.4 When a county road provides access to the wildlife management

area, a road maintenance agreement specifying the duties and responsibilities of the agency shall be a part of the conditional use permit.

## 6.9 Animal Feeding Operations

### 6.9.1 Purpose

These regulations are designed to allow commercial feedlots for feeding of livestock, fur bearers and poultry at the same time protect the adjoining uses against odor, run off and other incompatible characteristics associated with feedlots.

### 6.9.2 General Provisions

#### 6.9.2.1 Equivalent Animal Numbers

An “animal unit equivalent” is a unit-less number developed from the nutrient and volume characteristics of *manure* for a specific *livestock* type. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific *livestock* type which produce comparable bulk quantities of *manure*. The animal unit equivalents for types of *livestock* and the numbers of *livestock* for facility size thresholds of 300 animal units (a.u.), and so forth, are listed in the following table.

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0	150 hd	500 hd	1,000 hd	2,500 hd
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef	1.0	300	1,000	2,000	5,000
1 beef feeder - finishing	1.0	300	1,000	2,000	5,000
1 beef feeder - backgrounding	0.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine, > 55 lbs	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 swine, nursery	0.1	3,000	10,000	20,000	50,000

1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	500,000

### 6.9.3 Environmental Protection

The *operator* of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The *operator* of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each *operator* shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.

### 6.9.4 Enforcement

In the event of a violation of this ordinance or a judgement on a civil action by the North Dakota Department of Health, the local unit of government, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the *operator* corrects or abates the cause(s) of the violation. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the local unit of government, the permit may be revoked.

### 6.9.5 Severability

If any paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.

### 6.9.6 Setback Requirements

#### 6.9.6.1 Water Resource Setbacks

The *operator* of a new *animal feeding operation* that has more than 1,000 animal units shall not locate or establish that operation:

- 6.9.6.2 Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the *surface-water* intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface-water's shoreline.
- 6.9.6.3 Within 1,200 feet of a private ground water well which is not owned by the *operator* or within 1,500 feet of a public ground water well which does not have a delineated source water protection area.
- 6.9.6.4 Within 1,000 feet of surface water which is not included in a source

water protection area.

### 6.9.7 Odor Setbacks

The *operator* of a new facility for an *animal feeding operation* shall not locate that operation within the extra territorial zoning jurisdiction of an incorporated city.

An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide a separation distance from any *existing animal feeding operation*. The separation distances, or setbacks, are listed in the following table. An owner of property who is an *operator* may locate the owner's residence or business within the setbacks.

Setback Distances for <i>Animal Feeding Operations</i>		
Number of Animal Units	Hog Operations	Other Animal Operations
fewer than 300	none	none
300 – 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)
1001 or more	0.75 mi (1.207 km)	0.50 mi (0.805 km)
2001 or more	1.00 mi (1.609 km)	0.75 mi (1.207 km)
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)

The *operator* of a new *animal feeding operation* shall locate the site of that operation from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential so as to exceed the corresponding listed setback from these places.

If notified in writing by an *operator* of a planned future expansion of an *animal feeding operation*, the local unit of government may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

The county may increase or decrease a setback distance for a new *animal feeding operation* after consideration of the proposed operation's plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health, environmental or public welfare concerns.

### 6.9.8 Conditional Uses

#### 6.9.8.1 Permit Procedures

##### 6.9.8.1.1 Applicability

The operator of a new livestock facility or an existing livestock facility, which meets the definition of an animal feeding operation

and which is a conditional (or special) use of land as listed below, shall apply for and obtain a conditional (or special) use permit.

6.9.8.1.2 A new *animal feeding operation* that would be capable of handling, or that expands to handle, more than 1,000 animal units is a conditional (or special) use of land.

6.9.8.1.3 An *existing animal feeding operation* that expands to handle more than 1,000 animal units is a conditional (or special) use of land.

Whenever the capacity of an animal feeding operation is expanded to handle more than 2,000 or 5,000 animal units, the operator shall apply for a new conditional (or special) use permit.

#### 6.9.8.2 Procedure.

The local unit of government may practice any or all of the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.

6.9.8.2.1 Application for a conditional use (or special use) permit shall be submitted to the local unit of government for tentative approval. The local unit of government shall notify the Department of Health that it has received such application.

6.9.8.2.2 The local unit of government shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new animal feeding operation. This notification must occur within 21 days of receiving the application. The approval process utilized by the local unit of government may include at least one advertised public hearing.

6.9.8.2.3 Following tentative approval or denial of the application by the local unit of government, the applicant shall be notified by letter of the decision, including conditions imposed, if any.

6.9.8.2.4 The applicant shall then forward its application for a conditional (or special) use permit, together with the tentative approval by the local government, to the North Dakota Department of Health.

6.9.8.2.5 Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the local unit of government of its decision.

6.9.8.2.6 The conditional (or special) use permit will become

final following the granting of a permit by the Department of Health.

6.9.8.2.7 A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator may re-apply.

#### 6.9.8.3 Application Requirements.

The application for a conditional use (or special use) permit to operate a facility for an animal feeding operation shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The local unit of government may require any or all of the following elements, or require additional elements, in its site plan review process when needed to determine the nature and scope of the animal feeding operation.

6.9.8.3.1 Proposed number of animal units.

6.9.8.3.2 Total acreage of the site of the facility.

6.9.8.3.3 Existing and proposed roads and access ways within and adjacent to the site of the facility.

6.9.8.3.4 Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.

6.9.8.3.5 A copy of the permit application submitted by the applicant to the Department of Health.

#### 6.9.9 Ownership Change

An operator of a facility that includes an animal feeding operation having a permit granted by this ordinance shall notify the local unit of government of the sale, or the transfer of the ownership of that operation.

#### 6.9.10 Operating Change

An operator of a facility that includes an animal feeding operation having a permit granted by this ordinance shall notify the local unit of government of intent to include an alternate livestock type. The notice shall be given at least 120 days prior to the anticipated date of the change.

## **6.10 Geophysical Exploration Requirements**

Any persons intending to carry out geophysical (including seismic) exploration activities in Towner County shall obtain a Geophysical Exploration permit at least two weeks prior to commencement of such activities. In addition, a copy of the surety bond filed with the ND Industrial Commission shall be affixed to the permit. Only the County Zoning Commission may issue a Geophysical Exploration permit, it may also at its discretion suspend or revoke said permit, with or without prior notice to the permit holder or other parties. The fee for geophysical exploration shall be outlined in the fee schedule.

Suspension or revocation of a Geophysical Exploration Permit shall be accompanied by cessation of all activities at all sites covered by said permit, excepting those activities specifically allowed to continue, which shall be specified in written form. Notice of suspension or revocation of any Geophysical Exploration Permit shall be delivered to the permit holder or any of his agents at any site covered by the permit or at any office of the permit holder. Any damages, special meeting costs, or other costs associated with any Geophysical Exploration Permit or exploration activities which are incurred after issuance of said permit may be assessed against the permit holder.

Geophysical exploration activities are further required to be conducted in compliance with all State and Federal laws and regulations.

## **6.11 Wind Energy Facility**

### **6.11.1 Purpose**

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

### **6.11.2 Regulatory Framework**

#### **6.11.2.1 Zoning**

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

#### **6.11.2.2 Principal or Accessory Use**

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

### 6.11.2.3 Applicability

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

### 6.11.3 Wind Energy Facility Siting Permit

#### 6.11.3.1 Application for Permit

No work, except for wind monitoring, soil testing and other survey work, may commence to construct a Wind Energy Facility until a County Wind Energy Facility Siting Permit (“Permit”) has been issued by the County Commission. The prospective Permittee shall submit an application for said Permit to the County Zoning Commission. The application shall be signed by an authorized representative of the prospective Permittee, include a fee (see fee schedule) and the following information:

- 1) The complete name, legal address and phone number of the prospective Permittee and responsible contact person.
- 2) A USGS topographical map of the Wind Energy Facility and 500 feet of all Adjoining Properties along the Wind Energy Facility Perimeter, which map shall show all existing features, including property boundaries, structures, improvements, roads, utility lines, public facilities and natural features. The map shall also show location of all proposed improvements for the Wind Energy Facility, including Wind Turbines, Met Towers, electrical lines and roads. Each proposed Wind Turbine shall be numbered and fully described in technical details, including Rotor Diameter, model, and manufacturer, and distances, measured in feet, from property lines and from existing improvements for each proposed Wind Turbine.
- 3) Details as to how the prospective Permittee will comply with County, State and Federal regulations.
- 4) A schedule for the proposed start and completion of construction of the Wind Energy Facility.
- 5) Copies or signed summaries of all leases and easements for Wind Turbines and associated equipment and infrastructure to be sited within the County and any written agreements between the prospective Permittee and affected parties holding associated wind rights on Adjoining Properties established for the purpose of seeking a setback Variance(s).

#### 6.11.3.2 Public Hearings

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

#### 6.11.3.3 Deliberation and Decision

If the Zoning Commission finds that the prospective Permittee will comply with all requirements, it may, within no more than 30 (thirty) days after the hearing, issue a Permit.

#### 6.11.3.4 Demonstration of Compliance

The Permit issued shall be contingent upon the Permittee's final demonstration of compliance with the requirements of the Permit following completion of construction of the Wind Energy Facility. Within 90 (ninety) days of Wind Energy Facility construction, the Permittee shall submit to the Zoning Commission an updated and final USGS topographical map, or survey if available, providing all information and demonstrating actual compliance with the requirements and conditions of the Permit.

### 6.11.4 General Requirements for Wind Energy Facilities

#### 6.11.4.1 Appearance, Lighting, Facility Footprint, Agricultural Operations, Roads and Power Lines

- 1) Wind Turbines shall be painted a non-reflective, non-obtrusive color.
- 2) Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy Facility.
- 3) Each Wind Turbine shall be marked with a visible identification number to assist with provision of emergency services, and the Permittee shall file with local fire departments, law enforcement and the county emergency management coordinator a Wind Energy Facility map identifying Wind Turbine locations and numbers.
- 4) Wind Turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
- 5) At Wind Energy Facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use

materials, colors, textures, and location that will blend the Wind Energy Facility to the natural setting and existing environment.

6) At Wind Energy Facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the County.

7) The Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the Wind Energy Facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.

8) The Permittee shall ensure that, following completion of construction of a Wind Energy Facility, County roads will be repaired or restored to a condition at least equal to the condition prior to construction of such Facility.

9) The Permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for Wind Turbine access roads, unless otherwise negotiated with the affected landowner. [This paragraph does not apply to feeder lines.]

10) The Permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or the Permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public rights of way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the Permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

#### 6.11.4.2 Setbacks

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

1) Occupied Structures and Facilities: Each Wind Turbine shall be set back from the nearest occupied dwelling, commercial building or publicly-used structure or facility at a distance not less than 1.25 times its Total Height or one thousand five hundred (1500) feet, whichever is greater.

2) Public Roads and Above Ground Communication and Electrical Lines: Each Wind Turbine shall be set back from the nearest public road or above ground communication and electrical lines at a

distance not less than two hundred fifty (250) feet, determined at the center of the existing right-of-way.

3) Wind Energy Facility Perimeter: Each Wind Turbine shall be set back from the Wind Energy Facility Perimeter at a distance not less than five (5) times the Rotor Diameter of the Wind Turbine. A Variance may be granted if an authorized representative or agent of the Permittee and those affected parties on Adjoining Properties with associated wind rights sign a formal and legally-binding agreement expressing all parties' support for a Variance that waives or reduces the setback requirement.

#### 6.11.4.3 Minimum Ground Clearance

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

#### 6.11.4.4 Restoration of Property

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

#### 6.11.4.5 Transfer of Wind Energy Facility Siting Permit

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

### **6.12 Temporary Crew Housing (Workforce Temporary Housing)**

#### 6.12.1 Definitions

“Temporary Crew Housing (work camp housing)” means modular residential structures used to house workers on a temporary basis for a specified period of time. It may include one or more lodging units which are not real property as defined in N.D.C.C. Section 57-02-04 and are not mobile homes as defined in N.D.C.C. Section 57-55-01.

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

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

#### 6.12.2 Conditional Use Permit

A Temporary Closed Crew Camp Housing Permit authorizes a conditional use, the issuance of which is subject to the procedures contained within Section 5.6 of this ordinance. It is allowable as a conditional use in Industrial Districts and Agricultural Districts.

#### 6.12.3 Application Procedure

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

- 1) A description of the units together with an emergency 911 approved numbering system.
- 2) A description of how the proposed units are set/and or anchored.
- 3) A statement that roads to be constructed within the facility will meet county specifications as identified in the Conditional Use Permit.
- 4) The name and address and contact information of the applicant.
- 5) The name and address and contact information of the on-site manager.
- 6) A copy of lease (if applicable).
- 7) An occupancy list to be maintained and provided to the County 911 emergency coordinator on a current basis.
- 8) Plot plans drawn to scale showing housing units, additional structures, setbacks, utilities, drainage, ingress and egress, screens, buffers, and fencing.
- 9) Unit spacing adequate to accommodate emergency services.
- 10) List of house rules and regulations.
- 11) On-site security plan.
- 12) Fire and emergency evacuation plan.
- 13) Copy of permit issued by the North Dakota State Health Department and Southwest Health Department including fresh water, refuse disposal plan, and septic or sewer discharge plan.

- 14) Pay an annual Planning Fee in an amount to be determined by the County Commission.
- 15) A copy of the closure plan.
- 16) Submit a surety bond for clean-up purposes in an amount to be determined by the County Commission.
- 17) Off-street parking shall be provided on a one-to-one ratio, one parking space per bed.
- 18) Any additional information deemed necessary by the County Planning Director, the Planning Commission, or the County Commission.

#### 6.12.4 Prohibited Housing Types

Skid units, Modular structures and mobile homes are allowed as housing types. However, there shall be no mixed housing uses in a crew housing facility. The housing units chosen for a crew housing facility shall be of a homogeneous nature.

#### 6.12.5 Prohibited Activities

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

#### 6.12.6 Renewal of Conditional Use Permit

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

#### 6.12.7 Revocation of Permit

The County Commission may review the status of any permit issued pursuant to this ordinance and take appropriate action to suspend or revoke the same, as provided herein.

##### 1) Suspension or Revocation for Cause.

Any permit issued pursuant to this ordinance may be revoked or suspended for cause by the County Commission, which cause may include, among other ground, the following:

- a) The applicant being adjudged bankrupt.
- b) Applicant's falsifying of any statement or statements in the application process described herein.

- c) Applicant's conviction, or the conviction of an applicant's officers, directors or agents, of any felony crime under the laws of the United States of America or any state or municipality.
- d) The applicant's violation of any health or sanitary regulations of the County or the State of North Dakota.
- e) The applicant's conduct of business in a disorderly manner or in a manner deemed to be dangerous or detrimental to the public welfare, safety or morals.
- f) The applicant's, or any agent or employee of the applicant, violation of any term or condition of the permit or any provision of this ordinance.

2) Notice - Public Hearing

Sanctions or penalties under this ordinance may not be invoked without a public hearing if requested by the applicant. The County Auditor shall give written notification to the applicant that a penalty is being sought under this ordinance. The applicant may notify the County Auditor's office within ten (10) days of such written notification and request a hearing on the proposed penalty. Failure to request the hearing within 10 days of the date of such written notification will be deemed to be acceptance of the penalty without hearing. If a hearing is requested on the suspension or revocation of a permit, a hearing shall be scheduled by the County Commission with a notice specifying the time and place of hearing mailed to the applicant. The hearing shall be recorded electronically. If, after such hearing, the majority of the County Commission agrees that sufficient cause exists for the penalty sanctions, the Commission shall enter an order in accordance with the provisions of this ordinance. The Commission shall issue written findings, conclusion and order which will be mailed to the applicant.

3) No refunds on Revocation or Suspension

When any permit is revoked or suspended for any reason, no portion of the permit fee shall be returned to the applicant.

**6.13 MEDICAL MARIJUANA**

**6.13.1 Purpose and Intent**

The 2017 North Dakota Legislature enacted Senate Bill 2344, relating to the implementation of the North Dakota Compassionate Care Act, N.D.C.C 19-24 for the regulation of medical marijuana dispensaries and the cultivations and propagation of medical marijuana in North Dakota.

All persons, entities or organizations wishing to establish a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) within the County must apply for and be granted a conditional use permit for said use.).

- 1) The use, cultivation, manufacturing, production, distribution, possession and transportation of marijuana remains illegal under federal law, and marijuana

remains classified as a "controlled substance" by both North Dakota and federal law;

- 2) The county commission does not have the authority to, and nothing in this chapter is intended to, authorize, promote, condone or aid the production, distribution or possession of medical marijuana in violation of any applicable law;
- 3) The county commission intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with the North Dakota Century Code. The regulations are intended to apply to all medical marijuana operations in the county by any medical marijuana business permitted under state law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit state-licensed Medical Marijuana Manufacturing Center(s) or Distribution Center(s) where they will have a minimal negative impact;
- 4) To the extent that Medical Marijuana Manufacturing Center(s) or Distribution Center(s) are registered and authorized by the State of North Dakota to operate in the county, this commission desires to provide for their licensing and regulation to protect the public health, safety and general welfare of the citizens of the county;
- 5) This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the county. There is no property right for an individual or business to have medical marijuana in the county; and
- 6) Medical marijuana is a heavily regulated industry in the state and county, and the county has a zero tolerance policy for violations of this chapter.
- 7) The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the county by prescribing the manner in which medical marijuana businesses can be conducted in the county. Further, the purpose of this chapter is to:
  - a) Provide for a means of cultivating, manufacturing and distribution of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by state law.
  - b) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
  - c) Impose fees to cover the cost to the county of licensing medical marijuana businesses in an amount sufficient for the county to cover the costs of the licensing program.

- d) Create regulations that address the particular needs of the facilities, patients and residents of the county and comply with laws that may be enacted by the state regarding medical marijuana.

**6.13.2 Definitions**

Unless specified in this ordinance in section 2.2, all terms defined in N.D.C.C. § 19-24-02 or successors to that statute shall have the definitions provided therein.

**6.13.3 Annual Permit Fee**

As authorized by the Board of County Commissioners the Planning Director is to establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and/or regulating medical marijuana facilities involved in the cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale or handling of Medical Marijuana.

**6.13.4 Conditional Use Permit Requirements**

In addition to the requirements applicable to all Conditional Use Permit applications, an application for a Conditional Use Permit for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must include the following:

- 1) Proof of Insurance (see section 6.13.5 for insurance requirements).
- 2) List of all persons and entities with an ownership interest in the Manufacturing Center(s) or Distribution Center(s) including all shareholders that hold any share in stock in the Manufacturing Center(s) or Distribution Center(s).
- 3) A security plan depicting the location and configuration of security cameras and surveillance equipment.
- 4) A complete description of the products and services to be produced or sold by the Medical Marijuana Manufacturing Center(s) or Distribution Center(s).
- 5) A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota and the laws and regulations of the county applicable thereto concerning the operation of a Medical Marijuana Manufacturing Center(s) or Distribution Center(s). The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the county, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any legal proceeding relating to such Medical Marijuana Manufacturing

Center(s) or Distribution Center(s) by federal authorities, may render the license subject to immediate suspension or revocation.

- 6) A notarized statement that the applicant will hold harmless, indemnify, and defend the county against all claims and litigation arising from the issuance of license and/or a conditional use permit including any claims and litigation arising from the Manufacturing Center(s) or Distribution Center(s), operation or ownership of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s).
- 7) A notarized acknowledgement that the applicant is seeking a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permit and that the applicant understands and acknowledges that the burden of proving qualifications to receive such a Conditional Use Permit is at all times on the applicant; that the granting of a Conditional Use Permit for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) is at the discretion of the county commission; and that the applicant agrees to abide by the decision of the county commission.
- 8) The Planning Director may require additional plans, documents or other information prior to deeming the application complete.
- 9) A Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permit shall be reviewed annually by the county commission for renewal.
- 10) If the State of North Dakota or its electorate repeals the Compassionate Care Act or the act is otherwise declared void, all Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permits issued by the county commission will be deemed to have immediately expired.
- 11) Once a conditional use permit is obtained for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s), any change in operation of the facility or in ownership shall require prior approval of the Board of County Commissioners.
- 12) Any building modifications or alterations must be approved by the County Planning Director.

#### **6.13.5 Medical Marijuana Insurance and Bond Requirements**

- 1) The minimum amount of third-person insurance coverage for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) shall be one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage arising out of licensed activities and one million dollars (\$1,000,000.00) products and completed operations aggregate,

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

- 2) Additional insured: The County shall be named as an additional insured on all general liability, umbrella, and excess insurance policies required under this section. All insurance policies required under this section shall be primary over any other valid and collectible insurance.

#### **6.13.6 Medical Marijuana Design Standards**

- 1) Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located in a separate, permanent, stand-alone structure and have a minimum six (6) foot high perimeter fence encompassing the parcel boundary.
- 2) Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located a minimum of 2,640 feet from a public or private preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, youth center, or place of worship. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s) to the property line of the protected use.
- 3) Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located a minimum of 500 feet from any residential district, or any residential dwelling, trailer, recreational vehicle or recreational district. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s) to the property line or dwelling of the protected use.
- 4) No Medical Marijuana Dispensary shall have operating hours earlier than 8:00 AM or later than 7:00 PM.
- 5) The entire perimeter of a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) structure must be well lit (minimum 1 candle foot) to prevent concealment in shadows around the structure for a minimum of 15 feet around each structure that is part of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s). Further, everything within the fenced area shall have 24 hour surveillance cameras depicting the entire exterior of the Manufacturing Center(s) or Distribution Center(s) as well as cameras at the property entrance depicting vehicles and license plates of each vehicle entering the parking lot.
- 6) Each Medical Marijuana Distribution Center shall have at least 1 parking space per 250 sq. ft. of structure.

- 7) Each Medical Marijuana Cultivation and/or Manufacturing Facility shall have at least 1 parking space for every 1000 sq. ft. of plant cultivation area and 1 parking space for each 250 sq. ft. of all other areas of the structure.
- 8) With the exception of the specific Medical Marijuana Manufacturing Center(s) or Distribution Center(s) approved as part of a Conditional Use Permit, no other activity may occur within the facility or land parcel.
- 9) No outdoor storage on-site shall be permitted.
- 10) No drive-through, drive-up, or walk-up facilities shall be permitted.
- 11) Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must ensure there is no emission of dust, fumes, vapors, or odors into the environment.
- 12) Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals or window signage of any kind shall be strictly prohibited.
- 13) Each permittee shall obtain an inspection of the property from the county planning department or fire marshal prior to the annual renewal of the Conditional Use Permit.
- 14) All surveillance camera locations and surveillance recording equipment including specifications must be approved by the County Planning Director.
- 15) All applicable state standards and requirements shall apply in the design and operations of any Manufacturing Center(s) or Distribution Center(s).

**6.13.7 Serviceability, Exclusions and Exceptions:**

- 1) The provisions of this chapter do not waive or modify any other provision of this ordinance with which Medical Marijuana Manufacturing Center(s) or Distribution Center(s) is required to comply. Nothing in this section is intended to authorize, legalize or permit the Manufacturing Center(s) or Distribution Center(s), operation or maintenance of any facility, building or use which violates any County ordinance or statute of the State of North Dakota regarding public nuisances, Medical Marijuana, or any federal regulations or statutes relating to the use of controlled substances.
- 2) This chapter shall be null and void if any determination is made, after the adoption of the ordinance enacting this chapter, by any court of competent

jurisdiction, that Ch. 19-24, N.D.C.C., is invalid, or shall be null and void to the extent any portion of such section is held invalid.

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

## **7 ARTICLE 7 ADMINISTRATION AND ENFORCEMENT**

The Towner County Ordinance shall be administered and enforced by the Towner County Planning and Zoning Commission, the Towner County Land Use Administrator, the Towner County Auditor, the Towner County Board of County Commissioners and the Towner County States Attorney.

### **7.1 Towner County Planning and Zoning Commission**

#### **7.1.1 Authority**

The Towner County Planning and Zoning Commission was created by the Towner County Board of County Commissioners in accordance with the provisions of the North Dakota Century Code, Chapter 11-33.

#### **7.2.1 Duties**

- 1) Establish and administer rules and procedures for conducting the zoning affairs of Towner County.
- 2) Recommend approval or denial of applications and permits subject to final disposition by the Towner County Board of County Commissioners.
- 3) Conduct hearings on conditional uses and set conditions for certain uses.
- 4) Establish requirements and procedures necessary for submission of applications.
- 5) Conduct hearings on zoning amendments.
- 6) Publicize and post notice of zoning hearings and amendments as required by law.
- 7) Establish fee schedules and accounting thereof. Said scheduling and accounting shall be subject to the approval of the Towner County Board of County Commissioners.
- 8) Issue Certificates of Compliance
- 9) Regularly attend meetings of the Planning and Zoning Commission. Repeated absences that are unexcused shall be ground for dismissal from the Board.

## **7.2 Towner County Land Use Administrator and/or Towner County Auditor**

### **7.2.1 Authority**

The Planning and Zoning Commission may appoint a Land Use Administrator to carry out the directives and duties as assigned by the Planning and Zoning Commission. Said Land Use Administrator shall be responsible to the Planning and Zoning Commission and to the Towner County Board of County Commissioners.

### **7.2.2 Duties**

- 1) Attend all hearings conducted by the Planning and Zoning Commission.
- 2) Maintain current copies of the Towner County Ordinance and district map and have the same available to the public.
- 3) Keep copies of pertinent records.
- 4) Publicize and post notice of zoning hearings and amendments.
- 5) Make periodic inspections to determine compliance with the provisions of this Ordinance.
- 6) Carry out any other duties assigned by the Planning and Zoning Commission.
- 7) Issue Special Conditional Use Permits and Certificates of Zoning Compliance.

## **7.3 Towner County Board of County Commissioners**

### **7.3.1 Authority**

The Towner County Board of County Commissioners act as a Board of Adjustment.

### **7.3.2 Duties**

The Towner County Board of County Commissioners shall hear appeals from any person, party or organization aggrieved by the actions of decisions of the Planning & Zoning Commission, provided that the proper procedure in making such appeal has been followed by the aggrieved party.

## **7.4 Grievances**

Any person aggrieved by any provision or resolution adopted hereunder, or any amendment thereto, may, within thirty (30) days after the filing of the first publication of such resolution or amendment, petition for a separate hearing thereon before the Board of County Commissioners.

The petition shall be in writing and shall specify in detail the grounds for the objections. The petition shall be filed with the Towner County Auditor.

A hearing thereon shall be held by the Board no sooner than seven (7) days, nor later than thirty (30) days after the filing of the petition with the County Auditor, who shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take thereon.

The Board of County Commissioners, at their next regular meeting, shall rescind or affirm such resolution or amendment.

The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the Board of County Commissioners.

### **7.5 Right to Appeal**

Any person, or persons, jointly or severally, aggrieved by a decision made by the Board of County Commissioners under Chapter 11-33 of the North Dakota Century Code may appeal to the District Court in the manner provided by law.

### **7.6 Violations**

Any person may file a written complaint with the Land Use Administrator or the Towner County Auditor whenever a violation of this Ordinance occurs, or is alleged to have occurred. Such complaint shall state fully the cause and the basis of the complaint. The Land Use Administrator shall make a record of the complaint, inspect the site or structure complained thereof and present the complaint along with his or her findings to the Planning and Zoning Commission.

### **7.7 Remedies and Enforcement**

If it is determined that any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or if any building, structure or other property is used in violation of this Ordinance, the Land Use Administrator or the Towner County Auditor shall notify the Towner County States Attorney of such violation. The Towner County States Attorney shall then institute appropriate action to:

- 1) Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- 2) Restrain, correct, or abate such violations;
- 3) Prevent the occupancy of the building, structure, or land;
- 4) Prevent the illegal act, conduct, business, or use in or about the premises;
- 5) And/or impose the penalties provided under Chapter 11-33 of the North Dakota Century Code or under this ordinance.

### **7.8 Severability**

If any provision of this Ordinance or the application thereof to any persons or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of any other part of this Ordinance which can be given effect without the invalid provision or application and to this end, the provision of this Ordinance and the various applications thereof are declared to be severable.

### **7.9 Automatic Termination of Permit of Non-Use**

Unless an approved conditional use or zoning change has begun within one (1) year after final approval is given by the Towner County Board of County Commissioners, approved

conditional use permits and zoning changes will automatically expire. Thereupon the property will revert to pre-approval use or classification.

## **8 ARTICLE 8 PROCEDURE FOR AMENDMENTS, CONDITIONAL USES AND VARIANCES**

### **8.1 Zoning District Amendments**

#### 8.1.1 Public Hearing Notice

The Zoning Commission shall hold a public hearing, a notice of which shall be published at least one week prior to the hearing in the official newspaper of the county. The notice of hearing shall include (1) the time and place of hearing; (2) description of the property by street address for platted lands and clearly identifiable location for the unplatted lands; (3) the proposed use and requested zoning district change; and (4) time and place for public inspection of the documents in the county offices before the hearing.

#### 8.1.2 Public Hearing

The Zoning Commission, at the hearing, shall listen to all persons who may speak in support of or in opposition to the proposal. Upon the completion of its review, the Zoning Commission shall make approve, deny or modify the petition. The Zoning Commission may require additional information before it completes its findings and recommendations.

#### 8.1.3 Data Submission Requirements

Petitions for zoning district change and conditional uses shall be submitted with the following information:

- 8.1.3.1 Legal description of the area proposed to be rezoned, the name and addresses of all owners of property lying within such area.
- 8.1.3.2 A map showing the existing land uses and zoning district classification of the area.
- 8.1.3.3 A site plan showing buildings and uses and in the zoning district proposed to be changed and the requested zoning district classification.
- 8.1.3.4 A fee shall be paid in accordance with the schedule established by the County Commission.

#### 8.1.4 Deliberation and Decision

Following the hearing, the Zoning Commission, upon due deliberation, shall decision on the proposed amendment within thirty (30) days after the hearing. In making its finding, the Zoning Commission shall ascertain that the proposal for zoning district

amendment is consistent with the County Land Use Plan and meets all requirements of this ordinance and other regulations of the county.

## **8.2 Conditional Use Permits**

### 8.2.1 Purpose

The development of this ordinance is based upon division of the county into districts, within which district the use of land and building bulk and locations of building and structures are mutually compatible and substantially harmonious. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as permitted uses in any particular district without consideration, in each case, of impact of those uses upon neighboring premises. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses.

### 8.2.2 Public Hearing Notice

Shall be the same as the provisions set forth for public hearing for zoning district amendment in Section 8.1.2.

### 8.2.3 Public Hearing

Shall be the same as the provisions set forth for public hearing for zoning district amendments in Section 8.1.2.

### 8.2.4 Data Submission Requirements

Shall be the same as the provisions set forth for data submission requirements for zoning district amendment in Section 8.1.3.

### 8.2.5 Deliberation and Decision

Shall be the same as the provisions set forth for deliberation and decisions for zoning district amendment in Section 8.1.4.

### 8.2.6 Standards

No application for conditional use shall be recommended for approval unless the Zoning Commission finds that all of the following conditions are present:

8.2.6.1 That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

8.2.6.2 That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.

- 8.2.6.3 That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- 8.2.6.4 That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
- 8.2.6.5 That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- 8.2.6.6 That the conditional use shall substantial conform to all applicable regulations of the district in which it is located.

#### 8.2.7 Conditions and Guarantees

- 8.2.7.1 Prior to the decision on any conditional use, the Zoning Commission may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in Section 8.2.6. In all cases in which conditional uses are granted, the Zoning Commission shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.
- 8.2.7.2 No alteration of a conditional use shall be permitted unless approved by the Zoning Commission. Where the Zoning Commission has approved or conditionally approved an application for a conditional use, such approval shall become null and void within twelve (12) months of the date of the Zoning Commission action unless the use is commenced, construction is underway or the current owner possesses a valid zoning permit.

### **8.3 Variances**

Variance from the terms of this ordinance shall be granted provided that the applicant establishes proof of practical difficulty or undue hardship.

#### 8.3.1 Public Hearing Notice

The Zoning Commission shall hold a public hearing, a notice of which shall be published at last one week prior to the hearing in the official newspaper of the county. The notice of hearing shall include

- (1) the time and place of hearing;
- (2) description of the property by street address for platted lands and clearly identifiable location for the unplatted lands;
- (3) the proposed use and requested zoning district change; and
- (4) time and place for public inspection of the documents in the County Offices before the hearing.

### 8.3.2 Public Hearing

The Zoning Commission at the hearing shall listen to all persons who may speak in support of or in opposition to the proposal. Upon the completion of its review, the Zoning Commission will approve, deny or modify the proposal. The Zoning Commission may require additional information before it completes its findings and decision.

### 8.3.3 Data Submission Requirements

Petitions for variances or special use permits shall be submitted with the following information:

- 8.3.3.1 Legal description of the area proposed to be rezoned, the name and addresses of all owners of property lying within such area.
- 8.3.3.2 A map showing the existing land uses and zoning district classification of the area.
- 8.3.3.3 A site plan showing the existing buildings and uses and the requested changes.
- 8.3.3.4 A fee shall be paid in accordance with the schedule established by the County Commission.

### 8.3.4 Deliberation and Decision

In making its finding, the Zoning Commission shall ascertain that the request for variance is consistent with the County Land Use Plan and meets all requirements of this ordinance and other regulations of the county.

### 8.3.5 Standards

No application for variance or special use permit shall be approved unless the Zoning Commission finds that all of the following are present.

- 8.3.5.1 That special conditions and circumstances exist which are peculiar to the premises and which are not applicable to other premises in the same zoning district.
- 8.3.5.2 That literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the

same zoning district.

8.3.5.3 That the special conditions and circumstances have not resulted from actions of the applicant.

8.3.5.4 That granting the variance requested will not confer upon the applicant any special privileges that are denied by this ordinance to other premises.

### 8.3.6 Justification

8.3.6.1 That the reasons set forth in the application justify the granting of the variance.

8.3.6.2 The variance is the minimum, which would make possible a reasonable use of the premises.

8.3.6.3 That the granting of variance will be in harmony with the general purpose of this ordinance and will not be injurious to the surrounding premises, neighborhood or the county and will not be contrary to the land use plan and the purposes of this ordinance.

8.3.6.4 That there is practical difficulty or unnecessary hardship in use of the premises if the strict application of the regulations were to be carried out.

### 8.3.7 Authorized Variances

A variance shall not be granted for any yard or setback less than the yard or setback as required by this ordinance.

8.3.7.1 To reduce not by more than twenty percent (20%) the applicable requirements for lot area and lot width.

8.3.7.2 To reduce the applicable off-street parking or loading facilities by no more than fifty percent (50%) of the requirements.

8.3.7.3 To permit the use of lot of record if it is smaller than the minimum size required by this ordinance.

8.3.7.4 To permit roof alterations to provide additional windows, headroom or area for occupancy of third level.

8.3.7.5 To permit conversion of an existing building to a permitted residential use provided that it shall not conflict with the above standards cited in Sections 8.3.5 and 8.3.6.



## PERMIT FEE SCHEDULE

Application for Zoning Permit	\$50.00
Application for a Conditional Use Permit	\$500.00
Conditional Use Permit for Wind Energy Facility Siting	\$1,000 plus \$250 per wind turbine up to a maximum of \$10,000
Conditional Use Permit for Animal Feeding Operation	\$.50 cents per animal unit
Conditional Use Permit for Wildlife Management and Mitigation Areas	\$100 per acre for property transferred within Towner County. \$1,000 per acre for property transferred out of Towner County.
Conditional Use Permit for Temporary Housing	\$1.50 per square foot
Conditional Use Permit for Geophysical Exploration	\$100.00
Drilling Fee	\$50.00 per hole
After first 10 holes	\$10.00 per hole
Conditional Use Permit for the Mining of Sand and Gravel	\$500.00 if gravel stays in the County. Additional \$.50 cents per yard for gravel hauled out of the County
Conditional Use Permit for Utility Company to Cross a County Road	\$500.00 per crossing
Application for Road and Highway Access Permit	No Fee
Application for Zoning Amendment	\$50 plus incurred costs
Application for Variance	\$50 plus incurred costs