

ORDINANCE # 327

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASSELTON, CASS COUNTY, NORTH DAKOTA.

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CHAPTER SIX

ZONING - LAND USE PLANNING

ARTICLE 1 – General Provisions

6.0101 Title

This Ordinance shall be known, cited and referred to as the “Casselton City 2002 Land Use Ordinance.” It may also be referred to by its Ordinance number 310. It and all subsequent amendments to it may be referred to in this document as “this Ordinance”.

6.0102 Authority

This Ordinance is enacted pursuant to authority granted in North Dakota Century Code Chapters 40-47, 40-48, and 40-50.1; and all subsequent Laws or amended Laws as provided for in the North Dakota Century Code.

6.0103 Jurisdiction

This Ordinance shall be effective throughout the city’s land use jurisdiction. The city’s land use jurisdiction shall include all areas within its corporate boundaries as well as any area which is or shall subsequent to the adoption of this ordinance be described by city ordinance as a part of the city’s extraterritorial subdivision or zoning jurisdiction. The City hereby includes in its extraterritorial jurisdiction the maximum allowed under North Dakota law. Any future extensions of extraterritorial jurisdiction shall be automatically incorporated into this ordinance.

6.0104 Severability

Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared invalid by any court of competent jurisdiction in a valid judgment or decree, such invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this ordinance.

6.0105 Purpose

The purpose of this Ordinance is to: ⁽¹⁾ protect the health, safety, morals, comfort, and general welfare of City of Casselton residents; ⁽²⁾ conserve, protect, and manage the use of natural resources within the Casselton land use jurisdiction; ⁽³⁾ promote well-managed and staged development of residential, commercial, recreational, public, and other areas; and ⁽⁴⁾ exercise any or all of the powers granted to the City of Casselton under state law.

6.0106 Effective Date

This Ordinance and all subsequent amendments to it shall be effective upon appropriate passage and publication by the City's governing body.

6.0107 Sewer and Water Regulations

To protect the public health, control water pollution and reduce nuisance and odor, all new developments within the city shall be connected to municipal sewer and water.

6.0108 Interpretation

The language set forth in the text of this Ordinance shall be interpreted in accordance with the following rules of construction:

1. The singular number includes the plural and the plural the singular.
2. The present tense includes the past and future tenses, and the future the present.
3. The word "shall" is mandatory, and the word "may" is permissive.
4. The masculine gender includes the feminine and neuter genders.
5. Whenever a word or term defined hereinafter appears in the text of this ordinance, its meaning shall be constructed as set forth in the definition section of this Ordinance. If no set definition is given in the Ordinance, the City's governing body shall interpret and define any word or section of the Ordinance after obtaining advice from the City Planning Commission. Any definition constructed, defined, and interpreted by the City's governing body shall be added to the definitions included in this ordinance, in order to assist consistent future application of the ordinance.
6. All measured distances, except required platting measurements noted elsewhere, shall be expressed in feet to the nearest tenth of a foot.
7. In event of conflicting provisions, the more restrictive provisions shall apply.
8. The provisions of this land use ordinance are to be interpreted as the minimum requirements necessary within the City of Casselton's land use jurisdiction. No building or structure may be erected, moved, converted, enlarged, reconstructed or altered, and no land use may occur except in accordance with all of the regulations established by this land use ordinance.

6.0109 Definitions

The following words and terms, whenever they occur in this Ordinance are defined as follows:

Accessory use or Accessory Structure: A use or structure incidental and subordinate to the principal use of the property and located on the same lot as the principal use. Examples include a garage, tool shed, decks, and car ports. No more than two accessory structures are permitted on a single lot.

Adjoining Property Owners: The adjacent area, extending one hundred fifty feet, excluding the width of the streets.

Alley: any public way intersecting a city block or portion thereof.

Agriculture: The use of land for agriculture, including the necessary buildings or structures for farm or farm labor use. Agriculture shall be limited to farming and the open grazing of livestock.

Amendment: Any change, revision or modification of the text of this ordinance or the zoning district map.

Block: A segment of the city bounded by rights-of-way, intersecting streets and/or railroads.

Building: Any structure designed or intended for shelter or protection of persons, animals or property.

Building Footprint: The area established by the perimeter of a building's anchor or contact points with the ground.

Certificate of Compliance: A certificate stating compliance with the provisions of this ordinance.

Conditional Use: A use not normally appropriate in a particular zoning district, but which, if controlled according to number, location and relationship to surrounding uses, may not detract from the character of the district. Specific conditions set forth in this ordinance or otherwise stipulated by the Planning & Zoning Commission are required to be met before the use may be approved.

Condominium: An estate in real property consisting of an undivided interest or interests in common in a portion of a parcel of real property together with a separate interest or interests in space in a structure, on such real property.

Daycare Facilities: Any facility used in part or wholly for the purposes of caring for children outside of their family residence.

Class A Home Daycare Facilities: A home child care facility lived in by the daycare provider that serves up to a maximum of twelve (12) children, and has no more than one non-resident employee. There must be enough off street parking spaces to accommodate the principal use of the residence, the non-resident employee, and allow for drop-off and

pick-up of children in the driveway. No sign allowed.

Class B Home Daycare Facilities: A state licensed home child care facility lived in by the daycare provider that serves more than twelve (12) children and up to a maximum of eighteen (18) children, or requires more than one non-resident employee. There must be enough off street parking spaces to accommodate the principal use of the residence, any non-resident employees and allow for drop-off and pickup of children in the driveway. One sign not larger than 24" x 24" is allowed if attached or within 24" of the building. A Class B Daycare Facility shall only be allowed by conditional use permit as provided in this ordinance, where neighbors within a 400 foot radius shall be notified of the number of children proposed and the number of non-resident employees proposed. The City may require the landowner to install a fence as part of the conditional use permit process after hearing concerns from neighbors within a 400 foot radius and considering any child safety issues. The proposed daycare facility must also be issued a Certificate of Occupancy from the City of Casselton building inspector prior to approval. Any grant of conditional use permit for a Class B Daycare Facility shall be reviewed by the City planning and zoning commission within 24 months from the date of the initial permit grant. The conditional use permit and certificate of occupancy shall be for the licensed operator only and are non-transferable to any other site or person.

Dwelling: A building or portion of a building occupied exclusively as living quarters for one or more families. This does not include vehicles designed for camping or other forms of temporary occupancy.

Dwelling Unit: A building or portion of a building occupied exclusively as living quarters for one family. This does not include vehicles designed for camping or other forms of temporary occupancy.

Dwelling, Multi-Family: Any building designed to be occupied by more than a single housekeeping unit.

Dwelling, Single-Family: Any building designed to be occupied by a single housekeeping unit except for a mobile home dwelling.

Family: A group of people acting as a single housekeeping unit in a non-institutional setting consisting of any number of related persons, but not more than 4 unrelated persons over the age of 18.

Feedlot: The use of land or buildings for the exclusive purpose of concentrated feeding or fattening of livestock for marketing.

Home Occupation: Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations remain subordinate to the

allowed principal use (household living) and that the residential viability of the dwelling unit is maintained. The home occupation must be an activity secondary to the principal function of a dwelling unit and must be conducted in completely enclosed structures and may include use of an accessory building (if Class B or Class C), and which occupies less than 25% of the floor space (including basements) of a single dwelling unit.

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

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

Home occupations are classified in the following categories:

Class A - No non-resident employees in the home; no external evidence of business and no use of an accessory building; parking or storage space needed does not exceed 1 garage stall (14'x20'), no sign allowed. The residence must have enough off street parking spaces to accommodate the home occupation and residence parking.

Class B - Not more than one non-resident employee; no external evidence of business; parking or storage space needed does not exceed 1 garage stall (14'x20'), one sign attached or within 24" of the building not larger than 24"x24". The residence must have enough off street parking spaces to accommodate the home occupation and residence parking. The home occupation may make use of an accessory structure.

Class C - Not more than two non-resident employees; external evidence of business does not exceed the equivalent of a 2 stall garage; one sign attached or within 24" of the building not larger than 24"x24". The residence must have enough off street parking spaces to accommodate the home occupation and residence parking. The home occupation may make use of an accessory structure.

The following uses are not allowed as home occupations:

- A. Auto sales or auto repair services;
- B. Mortuaries
- C. Animal Boarding facilities, including kennels and stables.

- D. Adult Entertainment Uses, including adult bookstore, adult cinema and adult entertainment facility

Horizontal Perimeter: The sum of the sides of a structure at its greatest horizontal extremities.

Junkyard: Any land or building used for storage, sale or dismantling of vehicles, junk or other machinery.

Land Use Jurisdiction: The land area within the municipal boundaries and in extraterritorial areas over which the City of Casselton has established zoning or subdivision controls by ordinance.

Lot: A parcel of land of a size sufficient to meet minimum requirements for use, yards and coverage within each zoning district. All lots shall front on a public street.

Lot Area: The horizontal area within the lot lines of the lot.

Lot, Auditor's: A lot of record which was established and classified by the Cass County Auditor.

Lot, Corner: A lot of which at least two adjacent sides abut for their full lengths upon a street, provided that the interior angle at the intersection of such two sides is less than 135 degrees.

Lot Coverage: The ratio of the area of the lot covered by building footprints and/or paved surfaces to the total lot area, expressed as a percentage of total lot covered.

Lot Depth: The average distance between front and rear lot lines.

Lot Line, Front: The property line adjoining a public or private right-of-way. In the case of a corner lot, all sides adjoining a public or private right-of-way shall be considered front lot lines.

Lot of Record: Is either

1. A parcel of land originally platted as a distinct lot; or
2. Contiguous land which is owned by the same person or entity on which a dwelling unit exists or existed or which land is of the minimum lot size for construction pursuant to the minimum lot requirements of this ordinance.
3. Notwithstanding the foregoing, a lot of record which does not meet the minimum lot size requirements may not be built upon without a variance obtained pursuant to section 6.0402-5 of this ordinance.

Lot Width: The average distance between the side lot lines measured parallel to the front lot line.

Lot, Zoning: A lot or contiguous lots under common ownership and located within a single zoning district which for purposes of determining conformity to zoning provisions of this ordinance may be considered a single lot of record.

Manufactured Home/Mobile Home: A factory built structure which is to be used as a place for human habitation, which is constructed or equipped with a hitch or other device allowing it to be moved to a site, which has attached to its body or frame any wheels or axles, and which bears a label certifying it was built in compliance with the Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280) which became effective June 15, 1976, promulgated by the United States Department of Housing and Urban Development. Manufactured homes moved into the city shall comply with most current HUD Code for safety and energy compliance standards. This includes any non-self-propelled vehicular structure built on a chassis, having a length of twenty-seven feet or more ordinarily designed for human living quarters, either on a temporary or permanent basis and used as a residence or place of business of the owner or occupant. Modular housing structures greater than 24 feet in width permanently attached to conventional structural foundations are not manufactured/mobile homes. Mobile home/manufactured homes shall be prohibited from being moved into the city if the HUD label manufacture date of the structure is prior to June 15, 1976.

Mobile Home Park: A tract of land designed and developed to accommodate 4 or more mobile homes on a lease or rental basis.

Modular Home: A pre-built home dwelling which is not a mobile/manufactured home dwelling in accordance with these regulations, and which meets the following criteria:

- (1) Constructed on a permanent foundation which provides a basement or crawl space which complies with the International Building Code and the City's Building Code;
- (2) Has a minimum front width of 24 feet and a minimum depth of 20 feet;
- (3) Has a predominantly double-pitched roof with a minimum vertical rise of 4 inches for every 12 inches of horizontal run and a minimum eave projection and roof overhang of 10 inches on at least two sides. Gutters shall be counted in calculating roof overhang.
- (4) Uses conventional framing, electrical, plumbing, mechanical, siding and roofing materials customarily used on site-built homes within the City of Casselton;
- (5) Has a minimum gross floor area of 960 square feet; and

- (6) Has a minimum ceiling height of 7 feet.
- (7) Does not have a permanent hitch, steel frame, axles, wheels, and does not display a HUD label
- (8) The exterior material shall be of a color, material and scale comparable with those existing in residential site-built single-family construction;
- (9) The home shall have a non-reflective roof material which is or simulates asphalt or wood shingles, tile or rock;
- (10) The home shall be located and installed according to the same standards for permanent utility connections and setback which would apply to a site-built single-family dwelling on the same lot.
- (11) The design, location and appearance of the home must be in harmony with existing adjacent properties within the subdivision, structures and locations.

Open space: A privately-owned area on the grounds of a premises outside of any Principal Building or parking area, that is set aside and intended for the outdoor enjoyment of occupants or visitors to the property, and which may but is not required to include such pedestrian-oriented improvements as landscaping, sidewalks, walkway paths, gazebos, bikeways, active recreation facilities or play equipment, and benches, and which may further include no more than 20% of its area in water bodies or other areas inappropriate for pedestrian use.

Parcel: Any area of contiguous land, which can be uniquely described.

Parking Space: A separately accessible space nine by twenty feet used for parking a vehicle. All references to parking shall mean off-street parking.

Setback: The minimum horizontal distance between a building and the lot line.

Story: That part of a building or structure between any floor and the floor next above, and if there is no floor above, then the ceiling above. A basement is a story if its ceiling is four and one half feet (4½) or more above the level from which the height of the building or structure is measured.

Structure: Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground, including but without limiting the generality of the foregoing, advertising signs, billboards, back stops for tennis courts, and pergolas, but excluding fences. This includes swimming pools and small storage sheds.

Structural Alteration: Any change in the supporting members or any substantial change in the roof or exterior walls of a building.

Substantial structure: anything that is built or constructed that requires location on the ground or is attached to something which is located on the ground and has a building footprint of more than 48 square feet or a horizontal perimeter of more than 28 linear feet.

Telecommunication antenna: A structure intended to radiate and/or receive a source of non-ionizing electromagnetic radiation (NIER) and accessory equipment related to broadcast services, private radio services, pagers, beepers, data and common carriers (as regulated by the FCC) including AM, FM, two-way radio, fixed point microwave, commercial satellite, cellular and PCS communication systems.

Telecommunication antenna, co-location of: The siting of two or more providers' wireless communication antennas on the same telecommunication tower.

Telecommunications Tower: A structure, either freestanding or constructed on another structure which is intended to support one or more telecommunication antennas.

Trailer Home Parks: A parcel of land which meets the Mobile Home Park District standards for a mobile home park.

Twin home: A structure containing exactly two dwelling units separated by a common, abutting or party wall where each dwelling unit is located on a separate lot, and ownership is independent of ownership of the other dwelling unit in the structure.

Use: Any purpose for which a building, structure, or tract of land may be designed, arranged, intended, maintained, or occupied.

Use, Accessory (structure): A use of a structure subordinate to the principal use of a building on the same zoning lot and serving a purpose customarily incidental thereto.

Use, Conditional: Any building, structure, and use designated as a conditional use in the zoning district regulations which would not generally be appropriate or without restriction throughout the zoning district but which, if controlled, would promote the health, safety or general welfare.

Use, Non-conforming: A building, structure or premises lawfully occupied at the time of the enactment of these regulations that does not conform with the provisions for the district in which it is located; also, such use resulting from changes in zoning districts or in textual provisions made hereafter.

Variance: A relaxation of the requirements of this ordinance where it can be shown that due to unusual conditions of a property, strict application of the regulations would result in undue hardship and where the variance will not be contrary to the public interest. A

granted variance expires one year from the date the variance is approved. If the action to which the variance relates (such as the commencement of the building of a structure) is not commenced within one year from the date of approval, the property owner must reapply for the variance.

Yard, Front: A yard that extends across the full width of a lot and is measured as the least distance between the front lot line and the front building line.

Yard, Rear: The least distance between the rear lot line and the rear of the principal building.

Yard, Side: The least distance between the side lot line and the sides of the principal building, including accessory structures.

ARTICLE 2 Zoning Requirements

6.0201 Permits Required

The use made of property may not be substantially changed, substantial clearing, grading, or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, demolished, moved or substantially altered except in accordance with and pursuant to one or more of the following permits:

1. A zoning permit issued by the zoning administrator.
2. A building permit issued by the building inspector.
3. A conditional use permit issued by the governing body of Casselton.
4. A Moving permit issued by the governing body of Casselton, if required.
5. Demolition permit issued by the building inspector.

No permit shall be issued without provision of all information pertaining to proposed change as deemed necessary by the zoning administrator. No permit involving drainage or grading changes shall be issued without the review and approval by the City Engineer. The building inspector may require a Knox box be installed related to any commercial construction permits.

6.0202 Zoning Districts

The following zoning districts and district requirements are hereby established:

1. RL - Large Lot Residential

Purpose - To provide for the development of new low density (not more than 3

dwelling units per acre) residential area with large boulevards and narrow local streets which promote the sense of quiet well kept single family neighborhoods.

Permitted Uses - Single family residences, Class A Home occupations, Class A daycare facilities

Conditional Uses - Class B Home occupations, Churches, Public & Private K-12 Schools, Class B Daycare facilities, parks and recreation areas, modular homes.

Standards

- Side yard setbacks:	8'
- Side yard setbacks on corner lots:	10'
- Front and rear yard setback:	25'
- Lot coverage:	40%
- Minimum lot width:	90'
- Minimum lot size:	13,500 s.f.
- Minimum roof slope:	1:6
- Minimum footprint:	1,600 s.f. (excludes attached garages and accessory structures)

2. RM - Mixed Use Residential

Purpose - To provide for the continued use of existing residential property and the development of new medium density (not more than 7 dwelling units per acre) residential uses which support the effective maintenance or rehabilitation of older neighborhoods and provide low cost alternatives for lower income home buyers. It is intended that this zoning district will provide the opportunity for cost effective development of limited multi-family residences while maintaining a single-family character.

Permitted Uses - Single family residences, twin homes, modular homes, Class A Home occupations, Class A daycare facilities

Conditional Uses - Two or three family residences, Condominiums, Class B Home occupations, Churches, Public & Private K-12 Schools, Class B Daycare facilities, temporary residential uses, parks and recreation areas.

Standards

- Side yard setbacks:	8'
- Side yard setbacks on corner lots:	10'
- Front and rear yard setback:	25'
- Lot coverage:	50%
- Minimum lot width:	75'
- Minimum twin home lot width:	40'
- Minimum multi-family lot width:	100'
- Minimum lot size, single family:	9,750 s.f.
- Minimum lot size, twin home:	5, 200 s.f.
- Minimum lot size, multi-family:	7,000 s.f. per unit

3. Small Lot Residential

Purpose – To provide for compact medium density neighborhoods which promote single family ownership to modest-sized lots to reduce the initial and long term costs of land and infrastructure, along with other activities compatible with residential development are permitted. The District is intended to provide a mix in lot sizes to encourage starter homes with medium-priced homes along the same street. The variety of housing types and character found in mixed-income neighborhoods will add to the neighborhood's appeal.

Permitted Uses - Single family residences, twin homes, two-unit townhouses, modular homes, Class A Home occupations, Class A daycare facilities

Conditional Uses - Two or three family residences, Condominiums, Class B Home occupations, Churches, Public & Private K-12 Schools, Class B Daycare facilities, temporary residential uses, parks and recreation areas.

Standards

- Side yard setbacks:	6'
- Side yard setbacks on corner lots:	10'
- Front and rear yard setback:	20'
- Lot coverage:	60%
- Minimum lot width:	60'
- Minimum twin home lot width:	40'
- Minimum multi-family lot width:	60'
- Minimum lot size, single family:	7,800 s.f.
- Minimum lot size, twin home:	5, 200 s.f.
- Minimum lot size, multi-family:	7,800 s.f. per unit

4. RH - High Density Residential

Purpose - To provide for high-density residential property in a manner which provides neighborhood green space while allowing densities up to 16 dwelling units per acre.

Permitted uses - Single family residences, Class A Home occupations, Multi-family residences up to 4 dwelling units per lot, Class A Daycare Facilities.

Conditional Uses - Condominiums, modular homes, Classes B and C Home occupations, Multi-family dwellings up to 32 units per lot, Churches, Public & Private K-12 Schools, Class B Daycare Facilities, Special Services Residences for up to 16 occupants, parks and recreation areas, temporary residential uses.

Standards

- Side yard setbacks:	8'
- Side yard setbacks on corner lots:	10'
- Front and rear yard setback:	25'

- Lot coverage: 60%
- Minimum lot width: 75'
- Minimum lot size: 8,712 s.f.

Multi-family parking standard - 1.5 off-street parking spaces/bedroom/building

5. RMH - Mobile Home Park District

Purpose - To establish and preserve individual areas within the city for mobile home parks, which will have minimal impact on the community, but which will provide ample room and necessary utilities for such development.

Permitted Uses - Mobile home parks, parks and outdoor recreation facilities, compatible accessory uses, home occupations as regulated in the RM District of these regulations.

Parking Standard - One off-street parking space for each unit shall be required.

Anchoring Standards on Mobile Homes:

1. Over the top ties at each of the corners, and two additional ties per side at intermediate locations if the home is 50 feet or longer. For mobile homes less than 50 feet, only one additional tie per side is required.
2. Frame ties at each of the corners with five additional ties per side on mobile homes 50 feet or longer; four additional ties per side if it is less than 50 feet.
3. The anchoring system must be capable of carrying a force of 4,800 pounds. This is equivalent to withstanding a wind force of 90 mph.

Utility Requirements - Municipal water and sewer service must be provided to all mobile homes within the incorporated boundaries of the city. Outside the municipal boundaries, all sewage and water facilities must meet the applicable State of North Dakota and Cass County standards.

Playground Requirements - an area equivalent to 1/2 lot per acre shall be developed as playground for the park.

- Standards
- Side yard setbacks: 10'
 - Side yard setbacks on corner lots: 10'
 - Front and rear yard setback: 25'
 - Front yard setback (private road): 10'
 - Minimum lot width: 50'
 - Minimum ROW (public street): 80'
 - Minimum ROW (private road): 50'
 - Minimum lot size: 5,000 s.f.

- Minimum park area: 43,560 s.f.

6. CG - General Commercial

Purpose - To provide for office, service and retail business activities which normally have substantial numbers of employees or generate substantial traffic, but not heavy equipment or truck traffic. These activities are intended to be placed where they can be served by streets and parking which are designed for the larger traffic volumes.

Permitted Uses - Retail sales, service and rental, financial, business, professional, medical or government services.

Conditional Uses - Self-service storage, temporary residential uses, single and multi-family residences and modular homes.

Standards

- Side and rear yard setbacks:	8'
- Side yard setbacks on corner lots:	10'
- Front yard setback:	15'
- Lot coverage:	75%
- Minimum lot width:	75'
- Minimum lot size:	14,520 s.f.

7. CA - Agricultural/Commercial

Purpose - To provide for agricultural service businesses and other types of commercial activities which are primarily oriented toward ⁽¹⁾ heavy equipment use, sale, or repair, and ⁽²⁾ heavy truck traffic.

Permitted Uses - Ag equipment sales and service, Lumberyards, Self- service storage, Commercial greenhouses

Conditional Uses - Grain elevators, feed mills, warehouse and freight movement, anhydrous ammonia or petrochemical storage, waste related uses, Animal Services and Enterprises, Agricultural and Aggregate Materials Storage.

Standards

- Side and rear yard setbacks:	8'
- Side yard setbacks on corner lots:	10'
- Front yard setback:	25'
- Lot coverage:	60%
- Minimum lot width:	100'
- Minimum lot size:	14,520 s.f.
- Minimum Residential Separation	1,320' minimum distance between nearest residentially zoned lot and CA zoned lots

8. HO - Historic Preservation Overlay District

Purpose - To promote the educational, cultural, economic, and general welfare of the community through the preservation and protection of buildings and places of historical interest.

Permitted Uses - same as CD District

Conditional Uses - same as CD District

District Restrictions - Existing structures may be maintained, preserved or renovated but all work must be done in such a manner as to preserve the original architecture. New structures shall be designed and built to conform to the original architecture of the District.

Standards - same as CD District

9. CD - Central Business District

Purpose - To provide for the development and maintenance of a public and business district which acts as an image maker, a community center, and a primary business location for the community. It is intended to be a pedestrian oriented place which provides for a wide variety of commercial activities that will result in the most intensive and attractive use of the City's historical business center.

Permitted Uses - Single family dwellings, Class A Home occupations

Conditional Uses -, Condominiums, Special Services Residences up to 16 occupants, Class B Home occupations, Churches, Class B Daycare facilities, Retail Sales, Rental & Service, Medical Facilities, Restaurants, Bars, and Nightclubs, Emergency Services, Public Facilities, parks and recreation areas.

<u>Standards</u>	- Side and rear yard setbacks:	0'
	- Front yard setback:	0'
	- Lot coverage:	100%
	- Minimum lot width:	25'
	- Minimum lot size:	n.a.

10. CH - Highway Commercial

Purpose - To provide for the careful and attractive development of highway oriented businesses which depend on non-local traffic for a substantial portion of their business and which create substantial negative impacts to city infrastructure if located in areas not adjacent to state and federal highways.

Permitted Uses - Temporary Residential uses, Vehicle Repair and Service,

Restaurants, bars, and nightclubs.

Conditional Uses - Recreation, Amusement and entertainment, Motor Vehicle Sales.

<u>Standards</u>	- Side and rear yard setbacks:	8'
	- Side yard setbacks on corner lots:	10'
	- Front yard setback:	45'
	- Lot coverage:	60%
	- Minimum lot width:	100'
	- Minimum lot size:	14,520 s.f.

11. IL - Light Industry

Purpose - To provide a place for uses which are generally considered industrial and benefit from specially designed or provided infrastructure. This district is intended to serve heavy truck traffic and assembly or distribution and warehousing functions.

Permitted Uses - Assembly plants not involving any external storage and which do not result in noise, odors, or other nuisances which are evident off-site.

Conditional Uses - Towers and related structures, Off-premises signs, Miscellaneous Product Services, Assembly.

<u>Standards</u>	- Side and rear yard setbacks:	8'
	- Side yard setbacks on corner lots:	10'
	- Front yard setback:	25'
	- Lot coverage:	60%
	- Minimum lot width:	75'
	- Minimum lot size:	14,520 s.f.

12. IH - Heavy Industry

Purpose - To provide a place for uses such as manufacturing and ag product processing, or any other use which is desirable to separate from public or residential or normal commercial activities due to safety, noise, or any other reasonable concerns.

Permitted Uses - Assembly plants not involving any external storage and which do not result in noise, odors, or other nuisances which are evident off-site, truck terminals, warehouses.

Conditional Uses - Manufacturing, Agricultural product processing, Assembly plants involving external storage or creation of nuisances external to the site, salvage yards, waste management facilities, Industrial Service, Warehouse and Distribution, Animal Services and Enterprises, Agricultural or Aggregate Materials Storage. These uses shall only be permitted in this district upon further review of the City Council as required in Section 6.0206 of this ordinance.

<u>Standards</u>	- Side and rear yard setbacks:	8'
	- Side yard setbacks on corner lots:	10'
	- Front yard setback:	25'
	- Total building coverage	25%
	- Impervious surface coverage	60%
	- Minimum lot width:	75'
	- Minimum lot size:	14,520 s.f.
	- Other Standards	Visual screening is required

Heavy Industry Zoning is also subject to the following:

1. *Special provisions.*
 - (A) Heavy Industry Districts shall have a minimum of 40 contiguous acres and shall be platted as per Article 3 of this ordinance.
 - (B) Required front yards shall be developed and maintained as landscaped greenspace.
 - (C) There shall be one required parking space provided for every employee on the largest shift.
 - (D) All buildings shall be required to incorporate durable/decorative building materials such as brick, glass, stone, architectural concrete, or other materials approved by the city on all wall surfaces fronting a public roadway..
 - (E) All materials and equipment shall be completely enclosed within buildings or be subject to commission review and approval provided that submitted site plans provide for proper screening, including fencing and or buffer strips.
 - (F) All vehicles and trailers stored on the property shall be currently licensed, adequately insured and roadworthy or must be stored within a building or removed from the property
2. *Prohibited uses.* Uses prohibited from the Heavy Industry district shall include:
 - (A) Residential dwellings.
 - (B) Any retail commercial activity.
 - (C) Manufacturing or sale of alcoholic beverages.
 - (D) The sale of vehicles, machinery, trailers, building materials, junk and scrap.
 - (E) Livestock feed lots, sale barns or slaughter of animals.
 - (F)
3. *Signs.* All signs must follow Casselton's sign ordinance.

13. PK - Parks and Recreational Areas

Purpose - To provide for areas of public recreation and outdoor activities which are consistent with the community's needs and values.

Permitted Uses - Publicly owned land set aside for park development or community recreational or service uses, parks, playgrounds, ball fields, golf courses, community recreation buildings, community meeting facilities and similar uses as established by

the Planning Commission.

Conditional Uses – none

Standards - Minimum size and other standards as determined by the Casselton Parks and Recreation District

14. AG – Agriculture

Purpose - To provide for farming and the normal incidents of farming and to provide for limited residential development not to exceed 4 residences per quarter-quarter section of land.

Permitted Uses - Farming and the normal incidents of farming, single-family residences which do not result in a density greater than 4 residences per quarter-quarter of land.

Conditional Uses - Manufacturing, Agricultural product processing, Assembly plants involving external storage or creation of nuisances external to the site, salvage yards, waste management facilities, Industrial Service, Warehouse and Distribution, Animal Services and Enterprises, Agricultural or Aggregate Materials Storage.

<u>Standards</u>	- Side and rear yard setbacks:	8'
	- Side yard setbacks on corner lots:	10'
	- Front yard setback:	25'
	- Lot coverage:	60%
	- Minimum lot width:	75'
	- Minimum lot size:	14,520 s.f.

Prohibited Use - Feedlots are not allowed

6.0203 Zoning Map

There shall be a map known and designated as the Official Zoning Map which shall show the boundaries of all zoning districts within the City's Planning Jurisdiction. This map shall be so designated by bearing the original signatures of the City's mayor and auditor upon approval by the City's governing body and the date of said approval by the governing body.

All changes to zoning districts or their boundaries within the City's planning jurisdiction which are approved by the city's governing body shall be made to the Official Zoning Map, and shall bear the date of the amendment and the original signatures of the auditor and the mayor in the same manner as the original Official Zoning Map.

The City Auditor shall keep all superseded Official Zoning Maps for historical reference.

6.0204 Supplemental Standards

1. **Manufactured/Mobile Home Requirements.** The following general regulations pertain to manufactured homes, and all manufactured homes must meet the following standards:
 - a. The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.
 - b. The design, location and appearance of the home must be in harmony with existing adjacent properties within the subdivision, structures and locations; and
 - c. Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.
2. **Telecommunication Towers Requirements:** The following requirements are established to provide appropriate regulation of telecommunications towers and tower site development which addresses aircraft safety, negative visual impact to the natural and built environments, obsolescence, and minimizes the number of sites and towers located in Casselton or within Casselton's extra-territorial jurisdiction.
 - a. **Tower Location Requirements:**
 - i. **Relationship to zoning districts.** Towers shall only be allowed in Commercial, Industrial, or Agricultural zoning districts.
 - ii. **Conditional Use Permit:** A conditional use permit shall be required for all proposed towers. The permit shall only be granted when the administrative body has established on the basis of the applicant's submitted information and any additional information determined at the public hearing, that the following criteria have all been met:
 - (1) Legal description and site plan demonstrate no potential adverse impact to existing land uses
 - (2) Application is complete.
 - (3) Applicant has demonstrated available space on tower for at least four competitors and shown that applicant's potential use of the site will still be possible.
 - iii. **Co-location:** Towers may only be granted CUP's when the applicant provides written proof that the tower owner and successors in ownership will grant use of the tower and related facilities for up to four competitors at a rate this is consistent with the rate being charged for space on similar towers in western Minnesota or eastern North Dakota.

- iv. Comprehensive location planning: The applicant will provide information regarding its network and other towers located within 10 miles from the proposed site.
- b. Tower Construction Requirements: All towers and facilities granted approval by CUP must meet all applicable local, state, and federal building codes, and other standards for construction and connections to the structure.
- c. Tower Site and Facility Standards:
 - i. Time Limits
 - (1) All conditional use permits are void one year after the tower ceases to be used in a manner consistent to its original application. It shall be removed from the site and the site restored to a condition matching that of the surrounding land use within one year.
 - (2) The conditional use permit on towers with an effective range of less than nine miles shall be limited to a five-year permit from the date of approval. New permits after the five-year period shall be granted only if the administrative body determines that the tower is still consistent with the City's land use development plans.
 - (3) The conditional use permit on towers with an effective range of nine or more miles shall have no time limits, but is still subject to the requirement that a tower be removed within one year of its cessation of use.
 - ii. Setbacks:
 - (1) All towers shall be situated so as to be located entirely within a single tract of land.
 - (2) All towers shall be sited so as to be located a distance from any building equal to the height of the tower.
 - (3) All towers shall be located a distance from any public roadway at least equal to the height of the tower.
 - iii. Visibility: All towers shall be designed to maximize the visibility of said towers to aircraft and shall submit a plan for providing such visibility with the CUP application. The Planning Commission shall determine the sufficiency of the plan, and if said plan is determined to be sufficient, shall require implementation of such plan as a condition of approval.
- d. Conditional Use Permit Application Details shall include:

- i. Site Plan Licensee(s)
 - iii. Licensee Countywide plan
 - iv. Bond guarantee for tower
 - v. Certification of structural and electrical design standards
 - vi. Visibility plan
- 3. Accessory Structures: No more than two accessory structures shall be allowed to exist or be constructed on a single zoning lot.
- 4. Fences, Walls and Hedges: Fences, walls and hedges may be permitted in any yard, or along the edge of the yard. No fence or wall may be erected without a permit issued from the City, the requirements and terms of which may be set by city council policy. No fence, wall or hedge along the sides or front edge of any front yard shall be over 2.5 feet in height. No residential fence, wall or hedge shall exceed 6 feet in height. Unless otherwise agreed to by adjacent property owners, fences shall be constructed so that the finished side is oriented toward adjoining lots or the public.
- 5. Residential Development
 - a. No lot shall contain more than one primary residential building.
 - b. No dwelling unit shall be built on a lot that does not abut a dedicated public street.
 - c. No residential building shall exceed a height of 35 feet, including apartments, sleeping rooms and residences located above commercial, service, and trade establishments.
 - d. The tallest point of accessory structures shall not exceed the following: 1) an accessory structure may not exceed a height of 15 feet if the primary structure is fifteen feet high or less; and 2) where the primary structure is more than fifteen feet high, the maximum height of an accessory structure shall not exceed 80% of the height of the primary structure if the result is greater than 15 feet, and if not, the maximum height shall be 15 feet. In no instance may the height of an accessory structure exceed 20 feet; and accessory structures shall be located at least 3 feet from the side lot lines, 25 feet from the front lot line, and 3 feet from the rear lot lines.
 - e. The square footage of any individual accessory structure shall not exceed 1,000 square feet. The square footage of any two accessory structures related to one primary residence shall not exceed 1400 square feet. . All accessory structures must also comply with all other zoning requirements.
 - f. Each dwelling of a twin home must be wholly located on a platted parcel meeting the minimum twin home lot standards within the applicable zoning district.

6. **Parking Lot Design:** The following standards are required as noted, and are intended to provide a consistent and pleasing visual impact to passersby, and a visual buffer for neighboring properties.
 - a. All parking lot surfaces in Residential and Neighborhood Commercial Districts shall be set back a distance equal to front and side yard setbacks unless provided with at minimum 4 foot wide buffer of flowerbeds, shrubbery, or lawns with deciduous trees.
 - b. No parking lot surfaces in these Districts shall be closer than 4 feet to either the sidewalk or the lot boundary, whichever is the greater distance. Residential Boulevard (city right-of-way) property having a parking lot/driveway shall comply with all of the following regulations: 1) on the lot side with the driveway/parking lot, the driveway shall not exceed 70% of the linear feet at the curb ; 2) the width of the driveway shall not be wider than the front width of the garage it relates to, or if no garage, no wider than 24 feet; 3) in no case shall the driveway be wider than 36 feet at the curb. A variance shall be required for a second or additional driveway per residence.
 - c. All parking lots in Highway Commercial, General Commercial, and Light Industrial Districts shall provide a minimum 8 foot buffer at the lot boundary on street side yards and front yards. This buffer area shall be maintained in accordance with a parking lot design which is approved by the Planning Commission prior to issuance of a building permit for the lot.
 - a. All parking lots in Heavy Industrial areas shall be screened by a fence or shrubbery or some other buffer as approved by the Planning Commission prior to issuance of a building permit for the lot.
7. **Vegetation Requirements:** The following standards are required as noted, and are intended to provide the city with hardy and diverse plant species in public areas, and to minimize loss of trees due to disease.
 - a. A tree planting fee shall be paid to the city of Casselton prior to the issuance of a building permit for residential construction. Such fee shall cover the cost of planting trees on the boulevard of the size, number and species as required below.
 - i. For all lots, the size of the tree shall be not less than one and one-quarter inch in diameter, one (1) foot above the ground, with the lowest branch not being over nine and one-half (9½) feet above ground.
 - ii. Trees shall be planted twelve (12) feet from driveways and alleyways. Spacing shall be at least twenty-five (25) feet from existing trees. On corner lots, the trees shall be planted forty (40) feet from the point of intersection of the curbs. The City Forester shall have the right to approve variances from the above requirements where conditions necessitate.
 - iii. For residential lots there shall be a minimum of two trees for every seventy-five (75) feet of street frontage. The Building Inspector shall notify the City Auditor of the number of trees required on each building permit.

- iv. The species of trees to be planted shall be of a variety as approved by resolution of the City Council. The applicant shall pay to the City that amount which is necessary to purchase and plant trees of the number and species as required by the city. If alternative species are available for selection, the applicant may choose from those species but in no case more than forty (40) percent of one species may be planted within a subdivision. After construction is complete, the applicant or owner shall inform the city auditor or his designee that the trees may be planted. The trees shall be planted as soon as possible after said notice, but in no event shall trees be planted at times or under weather conditions in which trees are not normally planted in this area. In the event that the original purchaser of the tree planting permit does not plant trees, any successor owner of the property becomes the owner of the tree planting permit.
- v. All boulevards in Residential Zoning Districts shall have at least two trees planted which are consistent with the purpose of the vegetation requirements. If a boulevard tree is removed and the property has less than two boulevard trees after removal, the tree must be replaced within two growing seasons. The growing season shall be considered from May 1 to September 30. If a tree is removed during a growing season, the next growing season will be counted as the first growing season for purposes of this provision. The City may contribute to the removal and replacement of boulevard trees in an amount to be set by city policy. This replanting requirement may be waived by the city forester.
- vi. To the maximum extent possible, trees shall be planted in Residential Zoning Districts with a spacing of 40 feet.
- vii. Trees shall be planted at least 5 feet from the street curb of all streets.
- viii. All trees species planted in boulevards or public rights-of-way shall be from a list of hardy species approved by the city forester after consultation with an arboricultural expert.

8. Sign Requirements.

The objective of sign requirements is to provide consistent guidelines for properties requiring signage while reducing the visual clutter often associated with uncontrolled signage.

Home occupation signs shall not be sized greater than 24"by 24". Such signs may not be separate illuminated and shall be attached to the principal or accessory structure, or shall be parallel to, and not more than 24" from the house.

9. Temporary Living Quarters

It shall be a violation of this ordinance to live in temporary living quarters for more than seven days during any six month period without a conditional use permit, unless it is within a lawful campground. Temporary living quarters is defined as any living circumstance other than a Dwelling as defined herein, and includes, but is not limited

to the following living quarters: trailers, vehicles, truck campers, travel trailers, and tenting or camping of any kind. A person will be deemed to be living in a place if the person spends four hours or more per day there.

10. Mobile food sales, including a food truck, trailer, cart, table stand shall be allowed only as follows:

- a. No permit required: Mobile food sales are allowed without a permit 1) on private property zoned non-residential and which has no residence within 150 feet; or 2) when streets are blocked off for city events (such as Summerfest), as long as all other requirements of mobile food sales are complied with.
- b. Conditional Use Permit required: Mobile food sales on city property, city right-of-way, on residential zoned property or property where a residence is located within 150 feet is allowed only with a conditional use permit.
- c. Conditional Use Permit: A conditional use permit shall have the following requirements
 - i. Adjoining property owners within 400 feet of the proposed location must be notified in writing;
 - ii. A conditional use permit shall be valid for up to twelve months, but all permits shall expire on December 31 of each year regardless of when a person obtains a permit;
 - iii. The conditional use applicant must provide
 - 1) a copy of the license obtained from the North Dakota Department of Health (NDDOH) to operate as a mobile food unit
 - 2) describe specifically where the food sales will be located; and
 - 3) the proposed hours of operation.
- d. All mobile food sales must comply with the following regulations:
 - i. The food provider must have a license obtained from the NDDOH or their local regulatory authority to operate as a mobile food unit and must comply with all NDDOH and all other applicable regulatory agency requirements, including, but not limited to the requirements for food service;

- ii. Any act or failure to act which creates a public nuisance or which violates the requirements here allows the City to revoke the permit and/or bar the food seller from selling in Casselton.
- iii. A mobile food seller does not have an exclusive right to a location;
- iv. A mobile food seller may not operate in congested areas where such operation might impede or inconvenience the public use. For the purpose of this item, the judgment of a police officer or city official shall be deemed conclusive;
- v. A food truck must obey all state and local parking and traffic regulations.
- e. Ice Cream Truck Exception: A truck selling frozen treats is allowed without a permit during daylight hours as long as it complies with subsection (d) above.

6.0205 Nonconforming Situations

Whenever a non-conforming lot or use is determined to exist, the following regulations shall apply:

1. Nonconforming Lots

- a. Single family residences located on residentially zoned and platted lots which do not meet current platting regulations because they are less than the minimum lot width for the zoning district, but are at least 50 feet in width (where the owner does not own adjoining property as provided in 1(b)), may be rebuilt under the following circumstances. If the existing residence is removed by the owner or is damaged equal to or more than 50% of its assessed value, the residence may be rebuilt if construction is commenced within two years from the date of the damage or removal of the residence and construction follows all current zoning rules, including but not limited to lot coverage and setbacks, but not including regulations related to lot size. In all other cases (including but not limited to 1(b)) involving residentially zoned and platted lots which do not meet current zoning regulations because they are less than the minimum lot width for the zoning district but are at least 50 feet in width, the owner may apply for a conditional use permit under this ordinance to build a residence on the non-conforming lot.
- b. If a non-conforming lot is owned by a property owner who also owns an adjoining lot, the lots shall be considered as a single zoning lot for the purposes of this Ordinance. This section does not apply to circumstances where a property owner

owns two adjacent parcels with residences on both parcels.

- c. If a non-conforming lot is not owned by a property owner who also owns an adjoining lot, no use shall be allowed unless said use is treated as a conditional use and is approved under the conditional use process applicable to the zoning district in which it is located.
- d. No lot splits shall be approved which create non-conforming lots.

2. Nonconforming Uses and Structures

- a. If a non-conforming structure is damaged beyond 60% of its assessed value at the time the damage is sustained, the structure may not be repaired or reconstructed except in conformance with this Ordinance.
- b. If a non-conforming structure is damaged less than or equal to 60% of its assessed value at the time the damage was sustained, it may be repaired or reconstructed so long as the non-conformity is not increased.
- c. Any non-conforming use may be continued unless said use is discontinued for more than 365 consecutive days.
- d. If a non-conforming use is discontinued for more than 365 days, such use may not be initiated after it is discontinued.

- 3. “Sunset” Standards. When the governing body of the City of Casselton determines that a non-conforming use is inconsistent with the City’s Comprehensive Plan and poses a significant hindrance to the implementation of the Comprehensive Plan, it may impose a “sunset” requirement on the non-conforming use. This “sunset” requirement shall require conformance with this Ordinance within a given timeframe so long as that timeframe gives adequate time for the owner of the property and the use to recover the value of their investment in the site.

6.0206. Conditional Use Permits.

Subsections:

- 1. Intent.
- 2. Who May Apply.
- 3. Application Required.
- 4. Public Hearing and Notification.
- 5. Planning Commission Consideration.
- 6. Recommendation to City Council.
- 7. Council Action.
- 8. Amended Conditional Use Permits.

1. Intent.

The provisions of this section are intended to permit certain land uses which, under special conditions and review, can be compatible with the uses permitted by right in a zoning district, and desirable to the development of the City as a whole. Only those uses identified in the zoning district regulations are eligible for a conditional use permit under the procedure described below. A conditional use permit shall not be granted unless it meets the minimum standards and requirements of the applicable zoning district where permitted.

2. Who may apply?

Either the Planning Commission or City Council may initiate a conditional use permit. A property owner or representative of the property owner may request a conditional use permit if it applies to his/her property.

3. Application Required.

To request a conditional use permit, a property owner or his/her representative shall fill out an application, copies of which are available in the City auditor's office. No application for a conditional use permit of a particular piece of property shall be accepted more than once in any twelve (12) month period. The application shall be filed with the City Auditor who shall determine whether the application meets all the submission requirements within thirty (30) days and if complete shall refer the application together with his/her comments thereon to the Planning Commission. The Planning Commission may require additional information when considering an application.

4. Public Hearing and Notification.

No conditional use permit may be issued until after it is afforded a public hearing. In addition to this, the owners of all property situated wholly or partly within 400 ft. of the property lines in question shall be mailed or served notice at least ten (10) days in advance of the hearing. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested and made part of the records of the proceedings. A failure of any property owner to receive notice or failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with all notice requirements.

5. Planning Commission Consideration.

Provided the applicant has furnished all information as requested by the City, the

Planning Commission shall consider the application at its next meeting provided the prescribed notification requirements can be met. The Planning Commission shall arrive at a recommendation within ninety (90) days of receipt of an application which meets all submission requirements. Before making a recommendation, the Planning Commission shall review the application for a conditional use permit to assure compliance with the specific standards governing individual conditional uses, and that satisfactory provision and arrangement has been made concerning the following, where applicable:

- a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - b. Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, lighting/glare, dust and odor effects of the special exception on adjoining properties and properties generally in the district. Applicant must comply with Chapter 33-15-16 of the North Dakota Administrative Code.
 - c. Refuse and service areas, with particular reference to the items in (a) and (b) above.
 - d. Utilities, with reference to locations, availability, and compatibility.
 - e. Screening dimensions, and buffering, with reference to type, and character.
 - f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
 - g. Required yards, other open space and required landscaped greenspace(s).
 - h. Soil conditions, as they relate to on-site sewage disposal, water supply, basement excavating, road construction and related land use.
 - i. General compatibility with adjacent properties and other properties in the district.
6. Recommendation to City Council.

The Planning Commission shall make its recommendation to the City Council. This recommendation shall be forwarded for consideration at the Council's next regular meeting.

7. Council Action.

The City Council shall arrive at a decision within sixty (60) days of the meeting at which the conditional use application was first considered by the Planning

Commission. When it has been determined by the City Council that such conditional use will promote the public health, safety, and welfare, and that such proposal is in general compatibility with adjacent or nearby land uses, the zoning code, and the City's comprehensive plan, the City Council may authorize the Administrative Official to issue a conditional use permit. In authorizing this permit, the City Council may impose such conditions it deems necessary, i.e. landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, signage, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, parking requirements, or other requirements, to fulfill the purpose and intent of this ordinance. Any conditions imposed shall be attached to the conditional use permit and failure to comply with any condition in a conditional use permit shall be a violation of this ordinance.

8. Amending a Conditional Use Permit.

An amended conditional use permit may be applied for and administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include reapplications for permits that have expired or have been denied, requests for substantial changes in conditions or expansions of use, and as otherwise described in this Ordinance.

Applications for conditionally permitted uses which consist of multiple structures to be developed on the property shall include a conceptual development plan showing the structures proposed.

The conditional use permit is approved for the use of the property which does not require an amendment each time a structure is proposed; however, once proposed development exceeds the approved conceptual development plan or if the characteristics of use change, an amended application shall be submitted for consideration.

9. Review and Revocation of Conditional Use Permit.

If it is found or believed that a recipient of an approved conditional use permit is in violation of any condition of approval, in whole or in part, the permit holder is subject to a compliance review by the City which may lead to revocation.

A conditional Use Permit may be revoked if the Administrative Official finds any of the following:

- a. The conditional use permit was obtained by misrepresentation or fraud.
- b. The use for which the permit was granted is not being exercised.
- c. The use for which the use permit was granted has ceased or has been suspended

for twelve (12) months.

- d. The conditions imposed upon said use permit have not been complied with.
- e. The use is detrimental to the health, safety, or general welfare of persons residing in the vicinity or injurious to property in the vicinity. A change in the market value of real estate shall not be considered an injury to property.
- f. The conditional use has been materially altered or expanded beyond the scope of the use originally authorized. Factors such as, but not limited to, increased number or size of structures, finding that a nuisance exists, or alteration of the approved project plan may be cause for modification or revocation of a conditional use permit.
- g. If it is deemed an emergency due to extreme detriment to the health, safety or general welfare of any citizen(s), the conditional use permit may be temporarily revoked by the City Council at any time and requiring all injurious operations to cease immediately. If the City Council temporarily revokes a conditional use permit the Administrative Official must conduct a compliance review to determine if violations exist.

10. Process for Compliance Review.

- a. The City Council on its own motion or upon a staff recommendation or receipt of a verified complaint, shall authorize a review upon the question of violation of a Conditional Use Permit.
- b. A detailed notice of potential violation shall be given to the conditional use permit holder outlining approved condition(s) that are to be reviewed. Notice shall include a reasonable timeline to remedy any conditions found to be in violation as approved by the City Council.
- c. If the conditional use permit holder is found to be in violation of approved conditions a show cause hearing shall be scheduled in front of the City Council. The city's Enforcement Officer shall present findings of fact that constitute a violation of the approved conditional use permit. The conditional use permit holder must be given equal time and consideration.
- d. If it is found that the permit holder is in violation, reasonable time must be allowed to gain compliance. The permit holder may request, and the city may allow extended time to gain compliance if progress towards compliance can be shown.
- e. If permit holder does not gain compliance the City Council, at a regular or special meeting, may revoke the conditional use permit. The permit holder must cease all aspects of operations requiring the conditional use permit.

ARTICLE 3 Platting Requirements

6.0301 Platting Required

1. Any division of land within the City's planning jurisdiction shall be required to be platted unless one of the following exemptions apply:
 - a. Simple lot split - where an existing platted lot does not have any contiguous parcels owned by the same party and a division of a single lot will result in no new parcels which are by themselves a buildable lot
 - b. Correction of a previous plat - where a prior mistake in a plat has been corrected and said correction will not result in any new buildable lots
 - c. Utility service - where local utility distribution system(s) require small areas for service lines and junctions
2. A plat will also be required in the following cases:
 - a. Where existing parcels are being consolidated in order to provide adequate space for new construction or a substantial improvement to an existing structure.
 - b. Prior to annexation of a parcel or parcels
 - c. A property owner or proposed owner may make application to the Planning and Zoning Commission to have two or more lots treated as one lot for all purposes, without re-platting. The Planning and Zoning Commission shall have a hearing on the matter and after reviewing the property and neighborhood and all other relevant factors and hearing from the applicant, shall either grant or deny the application

6.0302 Official Map

1. Any division of land within the City's planning jurisdiction shall be required to be consistent with any Official Maps or Master Street Plans approved by the City Planning Commission. Such maps may identify locations for arterial and collector roadways, parks and other public land uses, drainage ways, and future land uses for specified areas within the City's planning jurisdiction.
2. Such Official Maps or Master Street Plans shall be prepared for each section of land for which any proposed zoning amendment is initiated and for which any proposed building permit is requested for a new structure and for which any proposed plat is initiated.

3. Any Official Map or Master Street Plan may be amended upon review by the City Planning Commission and City Council when a determination is made that the amendment is consistent with the Master Plan of the City. Such amendment shall be prepared for review by the Planning Commission and public hearings shall be held by the Planning Commission and the City Council prior to the amendment being enacted.

6.0303 Platting Review Requirements

All proposed subdivisions in the land use jurisdiction of Casselton must meet final plat requirements as specified in these regulations prior to final plat approval by the City Council. Additionally, proposed major subdivisions must first obtain a preliminary plat approval and final plat approval from the Planning Commission. The preliminary plat shall meet preliminary plat requirements as specified in these regulations prior to submission for review by the Planning Commission.

6.0304 Final Plat Information Required

The final plat shall contain the following information:

1. Subdivision title.
2. Geographic scale.
3. North arrow.
4. Date of plat.
5. Name and signature of owner, applicant, land surveyor, and engineer.
6. Dimensions and bearings of boundary lines of property.
7. Location by section, township, range, county.
8. Location, right-of-way widths and names of existing and proposed streets and railways.
9. Location, right-of-way, and names of all dedicated roads.
10. Location and widths of existing and proposed utility and drainage easements. A letter of Approval from utility companies must be submitted as proof that agreement has been reached for placement of various utilities.
11. Location and names of existing and proposed parks and other open space.
12. Location, description, and size of all monuments.
13. Lot lines with dimensions to hundredth of a foot.
14. Identification system for lots and blocks.
15. Out lot numbers or designations.
16. Names of all adjacent subdivisions.
17. Exact radii and arc length of all curves.
18. Location of rivers, lakes, streams, and 100 year Flood plain elevation as required by the North Dakota Century Code.
19. Restrictive covenants noted on the plat.
20. Legal certifications by county and city officials.
21. Statement dedicating all easements as follows: easements for installation and maintenance of utilities and drainage facilities are reserved over, under, and along the

- strips marked "utility or drainage easements."
22. Statement dedicating all highways, streets, roads, alleys, and other public areas not previously dedicated as follows: Roads, alleys, and other public areas shown on this plat and not heretofore dedicated to public use are hereby so dedicated.
 23. Location and widths of all proposed access easements.

6.0305 Preliminary Plat information required

The preliminary plat shall contain the following information:

1. Except where different standards are listed below, all information required for final plats.
2. Abstract of Title or registered property certificate.
3. Date of preparation.
4. Name and address of all abutting land owners must be attached to plat.
5. Total acreage.
6. Location and dimensions of existing and approximate proposed utilities and utility easements.
7. Location, approximate size, and purpose for all dedicated land.
8. Location and approximate size of all parks, playgrounds and school sites.
9. Locations and preliminary plans for safe and potable water, sewage disposal, drainage and flood control.
10. Preliminary street grades and drainage plan to be shown on a contour map. (Contours 2' interval maximum or spot elevations to be shown on a 50' grid.)
11. Location of prominent natural features, (i.e. rock outcropping, woodlands, steep slopes).
12. Existing and proposed zoning (if re-zoning is necessary).
13. Proposed restrictive covenants must be attached to the plat. (n.-o. to be provided as needed)
14. Soil erosion and sediment control plan including gradient of waterways and design of erosion control.
15. Vegetation preservation and protection plan.

6.0306 Flood Hazard Reduction

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 5 lots or 5 acres (whichever is less).

6.0307 Utility Requirements

1. The purposes of these requirements are to minimize long term public expense in the development of land in the Casselton planning jurisdiction while maintaining a high degree of public safety and a high quality visual image for the City.
2. All plats located in areas zoned or planned as residential uses shall be required to install all utilities below ground.
3. Utility easements shall be reviewed by the City Engineer, and any utility proposed to provide service to the development, including but not limited to, electric utilities, gas utilities, water service providers, telephone companies, and cable television providers.
4. All above ground utility accoutrements shall be placed where they do not obstruct potential sightlines for any traffic or persons gaining access on a private or public roadway.
5. All above ground utility accoutrements shall be protected from possible snow removal activities, flooding, or tampering.

6.0308 Roadway Classification and Standards

1. The purposes of these classifications and standards are:
 - a. To provide an adequate roadway system to move goods and people in safety and ease with minimum interference to residents and activities.
 - b. To develop a street system which will integrate with the regional highway system while encouraging the separation of local and through traffic.
 - c. To develop a street system which will provide adequate internal circulation for the city now and in the distant future when a much more expansive system is needed
 - d. To minimize pedestrian-vehicle conflicts.
2. All roadways within the Casselton planning jurisdiction, whether public or privately owned, shall be classified and shall be regulated as one of four types:
 - a. Arterial
 - b. Collector
 - c. Local
 - d. Private Drive

3. All arterial and collector roadways shall be designed and constructed according to the following standards:
 - a. There shall be at least one collector roadway transversing every quarter section.
 - b. There shall be no direct driveways or accesses onto arterial roadways.
 - c. There shall be only three roadways intersecting with an arterial roadway within any section and these shall have a minimum spacing with any other intersection along the arterial of at least 600 feet.
 - d. The roadways intersecting arterial roads shall align so as to create four-way intersections except where a natural feature of the land prevents a reasonable road layout.
 - e. Collector roadways may be designed and constructed as rural sections with ditches. If so constructed, they must provide right-of-way for the entire section (road top, inslopes, and backslopes).
 - f. The minimum requirements for collector roadways with rural sections include: 5:1 slope for inslopes and backslopes, 4 foot shoulders, 14 foot driving lanes.
 - g. Collector roads shall connect to either other collector roads or arterial roads at their termini.
 - h. Collector and arterial roadways shall not have any residential drives accessing them, nor shall any residential parcels front on them.
4. All local roads and private drives shall be designed and constructed according to the following standards:
 - a. Cul de sacs shall not be allowed.
 - b. Local streets shall be designed so as to carry only traffic having an origin or destination on the street.
 - c. All local streets shall intersect at 90 degree angles and shall maintain a perpendicular street segment at least 150 feet from the intersection.
 - d. All local streets shall be designed with sufficient width to allow at least two 12-foot driving lanes and one 8-foot parking lane.
 - e. All local streets shall be designed and constructed as urban sections with appropriate curb and gutters.

f. All local streets shall be constructed in accordance with current AASHTO standards. The City Engineer shall determine if any street as platted and designed is in accordance with current AASHTO standards.

g. All private drives shall be constructed not less than 14 feet wide with two-foot shoulders.

h. All private drives shall not be longer than 400 feet from a public right-of-way.

6.0309 Lot and Block Standards

The purpose of establishing lot and block standards is to assist the city in reviewing proposed development, and in establishing new development which will be easy to provide public services, and which will promote continuity and clarity in the function of uses within zoning districts.

1. The following Block Standards must be met by any plat proposal in order to be considered for approval by the City:
 - a. When a block is not designed to be surrounded on all sides by a public right-of-way it will be designated a Designer block and shall be subject to additional requirements. Blocks surrounded on all sides by a public right-of-way shall be designated Standard blocks.
 - b. All blocks shall be not more than 1400 feet in their longest axis and 600 feet in their greatest axis perpendicular to their longest axis.
 - c. All blocks which have their longest axis more than 600 feet shall abut collector or arterial roadways on at least one side.
 - d. All contiguous Designer blocks shall not collectively exceed the axial standards for all blocks.
 - e. All blocks shall be designed so that continuity of connecting collector and arterial roadways is maintained except as included in the Master Street Plan.
2. The following Lot Standards must be met by any plat proposal in order to be considered for approval by the City:
 - a. Lots must contain at least 50 feet of front lot line which abuts a public right-of-way. The public right-of-way abutting the lot must be no less than 60-feet in width or a private drive approved by the City.
 - b. Lots shall be at least as large as the minimum lot size for the zoning district in which they are located.

6.0310 Developments

1. A performance bond is required to be provided by the developer when any plat is proposed within the City's land use jurisdiction and includes any of the following eventual improvements: any public right-of-way or private drive, any public water or sewer lines, any change or improvement in existing drainage systems, or any installation of gas, electrical, or telephone service lines. Such performance bond shall be in the form of an irrevocable letter of credit or another form which will provide the City with a certain means of payment should the developer not install all improvements as established by the plat.
2. A special assessment district may be created by the City. The City may require a performance bond or promissory note as a condition of means to pay for improvements established by a plat. Such a district must be established in a manner which ensures a minimum of five years to recoup costs for improvements.
3. No plat shall be approved by the City unless a clear fee simple title is granted to the City of all rights-of-way proposed for dedication by the plat.
4. No lots shall be improved until the following have been provided for:
 - a. Water mains properly connected with the public water supply system provided to insure adequate water flow for fire protection, and fire hydrants. Fire hydrants shall be marked with metal flags not less than five feet in height from ground level, in a manner approved by the fire chief.
 - b. A sanitary sewer system properly connected with the existing system in accordance with standard specifications governing sanitary sewer construction and in accord with requirements of the State Health Dept.
 - c. Streets graded to the full-required roadway width and paved and to the established grade.
 - d. Developer to provide adequate surface water drainage for the area to be drained.
 - e. Must comply with the Forestry Ordinance.

All such facilities shall be installed according to the plans and specifications of the City and approved by the City Engineer and City Council.

6.0311 Open Space and Recreation

1. All plats approved by the City Council after the effective date of this ordinance shall have open space dedicated to the City Park District by fee simple title. The City may elect to require cash in lieu of the open space dedication. The amount of cash in lieu

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

2. If a plat is proposed and approved as a planned unit development, deeds shall convey a responsibility for maintenance of the open space by a homeowner's association or condominium association. Alternatively, if the City Park District accepts title to the open space, the City Park District shall maintain the open space.
3. The minimum amount of open space dedicated for public use by a proposed development shall be equal to the number of residential units planned for the platted area multiplied by 250 square feet. If the developer provides improvements acceptable to the City Park District, which is in place at the time the plat is finally approved by the City Council, the minimum amount of open space may be reduced by 25 percent.
4. In so far as possible, open space dedications shall be designed to serve as drainage ways and retention areas for the platted area.

6.0312 Drainage Requirements

1. The purpose of these requirements is to protect the long-term feasibility of cost effective storm water management while providing for the maximum feasible level of compact development adjacent to the existing developed areas of the City.
2. Before any new plat is approved by the City Planning Commission, the plat shall have been reviewed by the City Engineer to ensure adequate drainage has been included to provide for 500 year flood events and 100 year precipitation events for a full development scenario within the quarter section.
3. Any proposed plat application must show the existing drainage patterns and demonstrate that all water which passes through the proposed development will not be impeded by the proposed development plans.
4. Any proposed plat which contains a natural drainage swale must provide a permanent easement to allow all drainage which uses the swale to be maintained.
5. If the plat applicant wishes to revise the existing drainage pattern, a drainage plan must be approved by the County Water Resource District, the City Planning Commission and all affected property owners. Such plan must demonstrate how all water flowing across the plat can be re-routed without adversely affecting any other property owner.

6.0313 Amenities Requirements

1. The owner of any lot or parcel of land adjoining any street or avenue in the City shall reconstruct and maintain in good repair such sidewalks as have been previously

constructed and must construct such sidewalks when so ordered by resolution of the City Council. Sidewalks must be constructed in accordance with all of the requirements of this ordinance. Notice of such order to construct shall be given in accordance with Chapter 40-29 of the North Dakota Century Code.

2. A developer, at the time of platting a new subdivision or replatting a subdivision, must submit a sidewalk plan for approval by the Planning Commission and the City Council. The plan must comply with the provisions of this ordinance unless the City Council, for good cause shown, waives the requirement for sidewalks on both sides of all streets and within cul-de-sacs.
3. All new sidewalk construction within the City must conform to the building code as adopted by the City, and the Americans with Disabilities Act standards as adopted by the City which are available at the office of the City Engineer. All public sidewalks constructed within the City must be built on the line and grade set by the City Engineer or his designee. All sidewalks constructed or reconstructed must be no less than four (4) feet in width or no less than the width of the existing or adjoining sidewalk prior to reconstruction and so laid so that the inner edge shall be one and one-half (1½) feet from the property line except as otherwise designated by the City Council.
4. Every person, firm or corporation, before undertaking any sidewalk construction, reconstruction or repair, must request line and grade and obtain from the City Engineer or his designee a written permit. The fee for a permit to construct, reconstruct or repair a public sidewalk shall be established by resolution of the City Council. No permit will be required for sidewalks constructed or reconstructed under a City contract.
5. No person shall damage, tear up or remove any public sidewalk without first obtaining the written permission of the City Council. Anyone damaging, tearing up or removing a public sidewalk must promptly repair or replace such sidewalk as provided in this ordinance.
6. Any commercial plat application or building permit must provide an amenities plan which identifies all proposed access points onto public right-of-way or adjoining property, and identifies proposed traffic patterns within and adjacent to the plat, and which provides a detailed landscaping plan.
7. The landscaping plan shall identify the location of signs, drainage patterns, pedestrian and vehicular traffic patterns, surface materials, and existing and proposed vegetation.
8. All commercial plats must include vegetation equivalent to standards established by the Planning Commission.
9. All new construction requires an erosion control plan approved by the public works supervisor prior to the granting of a building permit.

10. Sidewalk specifications and requirements can be obtained from the public works supervisor.

6.0314 Buffer Strip

Where a use shall be contemplated with the following districts and the rear or side lot lines abut any residential district as defined in this chapter:

- (1) agriculture commercial;
- (2) highway commercial;
- (3) Light Industry; or
- (4) Heavy Industry.

The council may require that the owner maintain a buffer strip ten feet wide upon which shall be planted a suitable vegetation of no less than eight feet in height along the entirety of that rear or side yard boundary which adjoins the residential district.

6.0315 Vehicular Access

Where, in the judgment of either the building inspector or public works director/city engineer, the public good shall be served, such official may require that the developer of any proposed use within the following districts:

- (1) general commercial;
- (2) highway commercial;
- (3) central business district;
- (4) high density residential;
- (5) mobile home park;
- (6) light industry;
- (7) heavy industry; or
- (8) Agriculture Commercial.

Prepare a plot plan showing contemplated means of egress and ingress onto a public dedicated roadway, said plan thereafter bearing the approval or disapproval of the commission prior to the issuance of a zoning permit.

ARTICLE 4 Administration and Enforcement

6.0401 Planning and Zoning Commission

1. There shall be a Planning and Zoning Commission consisting of nine members. Eight members shall be appointed by the Mayor with the approval of the City Council, and shall reside within the corporate limits of the city. One shall be appointed by the County Board of Commissioners, and shall reside within the city's area of extraterritorial subdivision and zoning authority.

2. Planning and Zoning Commission members shall be appointed for five-year staggered terms.
3. Members may be appointed to successive terms without limit.
4. The Planning and Zoning Commission shall elect its president for a term of one year from among the appointed members as the first order of business at its first meeting after appointment of members each year.
5. The Planning and Zoning Commission shall meet as necessary.
6. The Planning and Zoning Commission shall have the following duties and powers:
 - a. Make, adopt, recommend and amend a master plan, and parts of a master plan, for the physical development of the City and such land outside the city's municipal boundaries as deemed appropriate.
 - b. Prepare and recommend to the City Council zoning regulations and zoning district maps, and amendments thereto.
 - c. Prepare and recommend to the City Council such other policies and plans as are useful for managing the growth, development and redevelopment of the City.
 - d. Hear and recommend actions to the City Council regarding applications for conditional uses and zoning district map amendments.
 - e. Approve or disapprove such plats as are presented to the Commission for review.
 - f. Such other actions as are allowed by law.
7. Procedures for reviewing plat applications shall be as follows:
 - a. Any person wishing to divide a parcel of land or for any other reason wishing to cause a plat to be prepared (hereinafter called the plat applicant) shall obtain an application packet from the administrative official.
 - b. The plat applicant shall review the application packet and clarify with the administrative official any questions regarding the necessity and procedures for completing the plat application.
 - c. The plat applicant shall submit the plat application and obtain the services of a registered surveyor or engineer to prepare a draft plat, which shall be presented for review to the administrative official.

- d. The administrative official shall review the plat application and draft plat for completeness and consistency with the platting regulations of this city.
 - e. After verifying the application and draft plat are complete, the administrative official shall place the plat on the Planning Commission agenda for review and approval.
 - f. The Planning Commission shall approve the plat only in the case that the plat is found to be consistent with the zoning regulations, master street plan, and the platting regulations of the City. If the Planning Commission finds accordingly, in the case of major subdivisions the plat shall be forwarded to the City Council for final plat approval. If the plat is a minor subdivision, the approval of the Planning Commission shall constitute final plat approval.
 - g. Upon approval by the appropriate body, the plat applicant shall present the approved final plat together with all necessary copies of the plat to the administrative official within 30 days of the final plat approval.
 - h. Upon receipt of the final plat and all necessary copies, the administrative official shall file same at the Cass County Register of Deeds.
8. Procedures for hearing and reviewing applications for zoning district map amendments and conditional uses shall be as follows:
- a. Persons wishing to obtain a conditional use or a change in a zoning district map shall obtain an application from the administrative official.
 - b. The application shall be completed and returned to the administrative official who shall review the application for completeness and shall then schedule an appropriate hearing at the Planning Commission meeting.
 - c. The administrative official shall cause a notice of the hearing to be published 10 or more days before the hearing shall take place, and shall mail notices to all adjoining property owners and all occupants located within 400 feet of the boundaries of the land for which the application has been submitted.
 - d. The Planning Commission shall conduct a public hearing in accordance with all applicable regulations, and the Planning Commission shall approve the application only in the case that the application is found to be consistent with the zoning regulations, master street plan, and the platting regulations of the City. If the Planning Commission finds accordingly, the application shall be forwarded to the City Council for final approval. The City is not required to publish or give notice of the city council hearing for final review of conditional uses or zoning district map amendments.

6.0402 Board of Adjustment

1. There shall be a Board of Adjustment consisting of five members. The members shall be appointed by the City Council from among the Planning Commission members.
2. Board of Adjustment members shall be appointed for three-year staggered terms. Members may be appointed to successive terms without limit. If a vacancy occurs other than by expiration of a term, it shall be filled by appointment for the un-expired portion of the term.
3. The Board of Adjustment shall have the following duties and powers:
 - a. Hear and decide appeals from any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any of the zoning provisions of this ordinance.
 - b. Any reversal of any order, requirement, decision, or determination made by above noted administrative official must be by four-fifths vote.
 - c. Hear and decide requests for variances from these regulations.
 - d. Hear and decide all matters referred to it or upon which it is required pass under any this ordinance.
 - e. Such other actions as are allowed by law and are not contrary to this ordinance.
4. Procedures for hearing appeals from determinations of the administrative official shall be as follows:
 - a. Any person who wishes to file an appeal from a determination of the administrative official shall obtain an appeals form from the City Auditor.
 - b. The appeals form shall be completed and returned to the City Auditor who shall verify the appeals form has been completed, give notice to the administrative official of the appeal, and place the appeal on the agenda of the Board of Adjustment.
 - c. The submission of the appeal to the City Auditor shall have the effect of staying the results of the determination of the administrative official, which is being appealed, unless in the opinion of the administrative official, the staying of such action shall result in a real potential danger to any person.
 - d. The Board of Adjustment shall meet to review and act on the appeal within 30 days of the date the appeal was submitted to the City Auditor.
 - e. The Board of Adjustment shall make reasonable efforts to follow quasi-judicial

hearing procedures when reviewing any appeal including those outlined in Section 6.0405 regarding Procedures for Hearings.

5. Procedures for hearing variance requests shall be as follows:
 - a. The person wishing to obtain a variance from the zoning provisions of the land use regulations shall obtain a variance request form from the administrative official.
 - b. The variance request form shall be completed and returned to the administrative official, who shall verify the variance request form has been completed and place the variance request on the Board of Adjustment agenda.
 - c. The Board of Adjustment shall meet to review and act on the variance request within 30 days of the date the request was submitted to the administrative official.
 - d. The Board of Adjustment shall make reasonable efforts to follow quasi-judicial hearing procedures when reviewing any variance request including those outlined in Section 6.0405 regarding Procedures for Hearings.
 - e. The Board of Adjustment shall not grant approval of any variance request unless it finds that each of the following criteria are true:
 - i. The circumstances, which are the reason for the request for variance, are not self-created.
 - ii. The circumstances, which are the reason for the variance, are unique within the zoning district in which the variance will be applied if granted.

6.0403 City Council

1. The City Council shall amend this Ordinance in accordance with all applicable state and city laws. If there is a conflict between state and city law, city law shall prevail.
2. The City Council shall review recommendations of the Planning and Zoning Commission and determine final approval for conditional uses or zoning district map amendments.
3. The City Council shall hear any appeals from a decision of the Board of Adjustment.
4. Procedures for hearing appeals from a decision of the Board of Adjustment shall be as follows:
 - a. The person wishing to file an appeal from a decision of the Board of Adjustment shall file an appeal with the city auditor within fifteen days after notice of the decision of the Board of Adjustment.

- b. The City Council shall set a time to hear the appeal within thirty days of the filing of appeal, and shall notify the parties involved in the decision of the Board of Adjustment of the time and place of the hearing.
- c. The City Council may continue the hearing but must decide the appeal within sixty days of the date of hearing.
- d. A decision of the City Council on the appeal may be appealed to the district court in the manner provided in NDCC section 28-34-01.

6.0404 Administrative Official/Permit Officer

- 1. The City Council shall appoint a person or persons to fulfill the duties of the administrative official and permit officer as established by this ordinance.
- 2. The administrative official and permit officer shall have the following duties and powers:
 - a. Receive applications for building permits and approve said permits.
 - b. Receive applications for conditional use permits, zoning district map amendments, and subdivision plat review, verify their completeness, and initiate or coordinate such actions as are identified in this Ordinance for review and decision by the appropriate agency of the City of Casselton.

6.0405 Procedures for Hearings

There are two types of hearings, which shall be held by appropriate agencies of the City of Casselton: administrative hearings and quasi-judicial hearings.

- 1. Administrative hearings are those in which the agency is acting in a legislative capacity, and include hearings on zoning district map amendments, zoning regulation text amendments, conditional use permits, subdivision regulation text amendments, and other planning policy decisions.
- 2. Quasi-judicial hearings are those in which a judgment regarding findings of fact will be required, and care must be taken to ensure due process. These hearings include appeals, show-cause hearings and variances.

6.0406 Municipal Code Enforcement

1. Administration

Authority and powers, right of entry.

- (a) *Authority and powers.* The code enforcement officer or designee shall have the authority and powers necessary to gain compliance with this Code. These powers include issuing violation notices and citations, inspecting public and private property and using whatever administrative and judicial remedies are available under this Code or state and federal law.
- (b) *Right of entry.* The code enforcement officer or designee is authorized to enter any building or premises for the purpose of inspection or to enforce any ordinance, subject to constitutional limitations.

2. Areas of responsibility.

The code enforcement program is responsible for the enforcement of those requirements of this Code deemed appropriate by the city administrator and city council in order to ensure the protection of the public's health, safety, welfare, and quality of life. The code enforcement officer shall work with department directors to develop an enforcement procedure in the following areas of responsibility:

- (1) Municipal nuisance,
- (2) Building and property maintenance,
- (3) Zoning and land use,
- (4) Public places and rights-of-way .

Duties.

(a) *Investigation and action.*

- (1) The code enforcement officer or designee shall investigate complaints received by the city concerning potential violations on public or private property. If a violation is found, the code enforcement officer or designee shall notify the violator and grant reasonable time to correct the violation.
- (2) The code enforcement officer or designee shall monitor activity within the city and, if a possible violation is identified, verify the validity of the violation. Once the violation has been verified, the code enforcement officer or designee shall take appropriate action to correct the violation.
- (3) Depending on the nature of the violation, the code enforcement officer or designee shall issue a notice of violation and demand for corrective action for a non-criminal violation or issue a citation into municipal court for a criminal violation of city code. The code enforcement officer or designee may also seek a civil

penalty or other judicial relief to recoup city costs for mitigation of the violation or to obtain a court order to force the property owner to mitigate the violation.

- (4) Should a violation present an immediate threat to public health or safety or when there is a declared emergency, the code enforcement officer or

designee may take immediate action to mitigate any threat to public health or safety caused by the violation.

(b) *Notification.* Notification of violation shall be delivered in person or by regular mail, unless otherwise stated in this code or state or federal law, rule or regulation. The letter shall indicate:

- (1) Location of the violation,
- (2) Nature of the violation,
- (3) Reference to applicable code,
- (4) Time in which to correct the violation,
- (5) How to request a reasonable extension of time to correct the violation,
- (6) Potential penalties for noncompliance.

3. Enforcement

Options.

(a) *Selection.* The code enforcement officer or designee may enforce this code through administrative, criminal or civil processes. The code enforcement officer shall use discretion in determining the appropriate course of enforcement and shall, whenever possible, attempt to obtain compliance through personal contact and explanation of the issue before resorting to issuance of a formal notice of violation.

(b) *Administrative.* The code enforcement officer or designee is authorized to enforce provisions of this Code by initiating administrative proceedings to correct a violation.

- (1) The code enforcement officer or designee may issue a notice of violation and order the correction of the violation by a specified date. The person to whom the notice of violation is being directed may be contacted by any means available including personal contact, email, social media account, telephone, posting a notice on the property or mailing a notice utilizing the United States Postal Service. The date specified for correction of the violation shall be reasonable based on the nature and severity of the violation. Violations that present an imminent threat to public health or safety may be ordered to be corrected within as short a period as several hours. Violations that do not present an imminent threat to public health or safety shall be given at least five days to be corrected. A notice to the effect that daily penalties of up to \$500.00 per day may be assessed if compliance is not accomplished within the time specified and that any penalty can be assessed against the property if unpaid.
- (2) Except for violations that present an imminent threat to public health or safety, the person receiving the notice of violation may contact the code

enforcement officer or designee and request an extension of time to mitigate the violation or file a written appeal challenging the order citing the specific grounds for reversal or modification of the order. A request for a time extension or an appeal must be filed with the code enforcement officer or other designated city representative before the date of compliance specified in the notice of violation. In the absence of a timely appeal, the findings of the code enforcement officer or designee contained in the notice of violation shall be deemed true and final.

- (3) When a request for more time to comply is received, the code enforcement officer or designee may either grant or deny the request for an extension of time. Should the request for an extension of time be denied, the person who received the notice of violation may appeal to the appeals board within 15 days of the denial of a request for time extension.
 - (4) If the violation is not corrected within the specified time, the code enforcement officer or designee shall issue a second notice of violation and specify that after the period allowed for compliance that a penalty of up to \$500.00 a day will be imposed for each day any violation is permitted to exist beyond the time for compliance. The code enforcement officer or designee may extend the time of compliance stated in the first notice of violation or state that daily penalties will commence on the date of issuance of the second notice of violation. The code enforcement officer shall also record a notice with the Cass County Recorder's Office of a pending action against the property.
 - (5) Failure of the person issued a notice of violation to comply within the time specified may result in the city, at its option, taking action to mitigate the violation or referring the matter to municipal court.
 - (6) If the city elects to take direct action to correct the violation the person will be billed for the actual costs incurred by the city plus administrative overhead and a penalty amount equal to the per day penalty assessment. Any bill remaining unpaid shall be assessed against the property in the manner used by the city for other unpaid bills.
- (c) *Criminal.*
- (1) *City options.* Depending on the seriousness of the violation, the city may seek corrective action and penalties in any court of competent jurisdiction.
 - (2) *Term of violation.* Each day that a violation is allowed to continue shall constitute a separate violation that may be cited and prosecuted as a separate action before the court.
 - (3) *Prosecution of criminal violation.* At the request of the code enforcement officer or designee, the city prosecutor or designee shall bring action in any court of competent jurisdiction to charge the violator and mitigate the violation.
- (d) *Civil.* In addition to the authority to commence administrative proceedings for the purpose of imposing civil penalties, a judicial action seeking a civil penalty may be commenced by the city attorney, who may also seek any other relief available to the city. Any judicial action for a civil penalty may seek an award

for attorney's fees, costs, expenses and disbursements.

Court action.

- (a) Taking any action to mitigate the violation using city resources or city contractors shall not preclude the city from taking any other action concurrently.
- (b) When a judgment is obtained by the city in an action for civil penalties, in addition to the appropriate methods of enforcement of the judgment established in the North Dakota Century Code and North Dakota Rules of Civil Procedure, such judgment for penalties shall be assessed and collected in the same manner as other unpaid bills or assessments.
- (c) The city attorney may maintain an action in a court of competent jurisdiction to compel compliance with this Code or to restrain by injunction the violation of this Code.

4. Modifications to Notice of Violation

Time extension.

- (a) The person receiving a notice of violation may request and the code enforcement officer or designee may grant a time extension for compliance during the period of compliance specified in the first notice of violation.
- (b) Once the deadline for compliance stated in the first notice of violation or any extension granted by the code enforcement officer or designee has passed, no additional time extension may be granted unless authorized by the board of appeals after hearing an appeal.

Appeal.

- (a) *Stay of enforcement.* Unless there is an imminent threat to public health or safety, receipt of an appeal shall stay any enforcement action by the city.
- (b) *Action by code enforcement officer.* Upon receipt of an appeal, the code enforcement officer or designee shall forward the appeal to the chairman of the board of appeals.
- (c) *Action by the board of appeals.* Upon receiving an appeal from the code enforcement officer or designee, the board of appeals shall schedule a hearing on the appeal. The hearing shall be held, and a decision rendered no later than 30 days after receipt of the appeal by the Board of Appeals. Scheduling of the hearing shall be coordinated with the person filing the appeal. If the board of appeals fails to act within 30 days, the appeal shall be forwarded to the board of city council for action.

Board of appeals.(Board of Adjustment)

- (a) *Composition.* The board of appeals shall consist of five members appointed for three-year terms with the initial appointments staggered so individual member's terms expire in different years. The mayor shall recommend appointments to the board of appeals. The board of city council shall appoint the members of the board of appeals. Members of the board of appeals shall be selected from people who submit applications to be appointed to the board of appeals. Members of the board of appeals must be city residents and may be a member of another appointed board, committee, or commission within city government. Members of the board of appeals may not be elected officials or city employees.
- (b) *Powers and duties.*
 - (1) The board of appeals shall address all questions of interpretation and enforcement of city code arising from violation issued by the code enforcement officer or designee.
 - (2) The board of appeals shall adopt rules necessary to the conduct of its affairs.
 - (3) Meetings shall be held at the call of the chairman or acting chairman.
 - (4) Meetings shall be open public meetings.
 - (5) Minutes shall be kept that record all actions taken by the board of appeals. The minutes shall document how each board member voted on any action taken. The minutes shall be open to public inspection.
 - (6) The board of appeals, at its discretion and based on the nature of the violation, may individually notify neighboring property owners or others of the appeal hearing.
 - (7) The board of appeals, at its discretion, may call expert witnesses to address technical issues regarding the notice of violation being appealed.
 - (8) The board of appeals, at its discretion, may allow neighbors or other residents of the city to speak at the hearing.
 - (9) The person filing the appeal may have legal and technical representation at the hearing. Those persons shall be allowed to speak at the hearing.

Appeal board decisions reviewable.

A decision of the board of appeals may be appealed to the City Council by either the aggrieved applicant or by any officer, department, or board of the city. The appeal must be filed with the city administrator within 15 days after notice of the decision of the board of appeals. The board of city council shall fix a time, within 30 days, for the hearing of the appeal and shall give due notice of the hearing to the parties. The board of city council shall decide the appeal within a reasonable time. Any party may appear in person or by agent or by attorney at the hearing of the board of city council on the appeal. The board of city council may reverse the decision of the board of appeals, in whole or in part, or modify the order, decision, or determination appealed.

APPROVED:

Michael Faught, Mayor

ATTEST:

Sheila Klevgard, City Auditor

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