

**Foster County**

**North Dakota**

**2018**

**Zoning Regulation**

**\*\*Any wording in orange print is a pending change in the Zoning Regulation**

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## ARTICLE 1 INTRODUCTION

### 1.1 Title

1.1.1 This Ordinance, its regulations, and the County zoning map shall be known and cited as the Foster County Zoning Ordinance.

### 1.2 Purpose and intent

1.2.1 To protect human life and public health, safety, prosperity, and general welfare of Foster County, North Dakota.

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

The purpose of this Ordinance is to promote the health, safety, and welfare of the people of Foster County. It is intended that the establishment of this Ordinance will promote orderly and non-conflicting uses of land and property, minimize expenditure of public money for costly flood control projects, minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public, minimize prolonged business interruptions, minimize damage to public facilities and utilities, maintain a stable tax base by providing for the second use and development of special flood hazard areas to minimize future flood blight areas, ensure potential buyers are notified that property is in a special flood hazard area, ensure those who occupy special flood hazard areas assume responsibility for their actions, protect property rights, ensure the provisions of adequate public services, and promote conservation of land, water, and other natural resources to assist in the realization of goals and objectives of the County Comprehensive Plan and subsequent amendments thereto.

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

### 1.3 Authority

1.3.1 This Zoning Ordinance is developed and enacted under authority granted to Foster County in North Dakota Century Code (NDCC) Chapters 40-47, 11-33, and 58-03 to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry (see also Section 5.7.1).

### 1.4 Jurisdiction

#### 1.4.1 General

1.4.1.1 This Ordinance shall affect all unincorporated territory over which the County Commissioners have jurisdiction in Foster County, North Dakota except as indicated below.

#### 1.4.2 Extraterritorial areas

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

### 1.5 Interpretation

1.5.1 These regulations shall be held to be minimum requirements adopted for promotion of purposes cited in Section 1.2. Whenever the requirements of these regulations are at variance with the requirements

of other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive shall govern unless otherwise specifically stated.

1.6 Severability

1.6.1 If any part, section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this Ordinance shall not be affected thereby and shall remain in full force.

1.7 Effective date

1.7.1 These regulations shall be effective upon adoption by the County Commissioners as provided by the NDCC.

1.8 Non-restriction of farming

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

1.9 Disclaimer

1.9.1 This Ordinance shall not create liability on the part of Foster County, any officer or employee thereof, or the Federal Emergency Management Agency (FEMA), for any damage, including flood damage, that results from reliance on this Ordinance or any administrative decision lawfully made there under. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damage. This Ordinance does not imply total flood protection. This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this Ordinance imposes a greater restriction, the provisions of this Ordinance map shall control.

ARTICLE 2 RULES AND DEFINITIONS

2.1 Rules

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

2.1.2 Words used in present tense shall include the future.

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

2.1.4 Shall is a mandatory word and not discretionary.

2.1.5 May is a permissive word.

2.2 Definitions

2.2.1 The definition of specific terms used in this Ordinance follows. When a term is defined in the following list, it will not be defined in the document other than at its first appearance.

2.2.2 "Accessory building and uses" means a subordinate building or portion of the main building the use of which is clearly incidental to and serves exclusively the principal building or principal use. The accessory building or use shall be located on the same zoning lot and it is established to contribute to the comfort, convenience, or necessity of occupants of the principal building or principal use.

2.2.3 "Adjoining properties" means properties contiguous with the wind energy facility perimeter and external to such perimeter

2.2.4 "Agriculture (farming, ranching)" means the art or science of cultivating the soil and activities incidental thereto; cultivating land for production of agricultural crops or livestock raising, feeding, or producing

livestock, poultry, milk, or fruit. The term shall include incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of vehicles by customers shall be furnished off the public right-of-way. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies, provides grain, harvesting grain, or other farm services. See also NDCC 11-33-02.

- 2.2.5 “Airport” means any area designated for the landing and takeoff of aircraft and any appurtenant areas that are used or intended for use for airport buildings and structures including runways, taxi-ways, aircraft storage and tie-down areas, hangars and other related facilities and open spaces other than landing strips used for family purposes.
- 2.2.6 “Alternate livestock type” means any livestock other than those listed in Section 6.9.2.1.
- 2.2.7 “Animal feeding operation” means a place where livestock have been, are, or will be confined, concentrated and fed for 45 (forty five) or more days in any 12 (twelve) month period; pasture, crops or other vegetation are not normally managed or sustained for grazing during the normal grazing season; and animal waste or manure accumulates. This term does not include an animal wintering operation. Two or more feeding operations under common ownership shall be considered a single animal operation, if they use a common system for manure handling.
- 2.2.8 “Animal hospital or kennel” means a building or premises set up for treatment and boarding of domestic animals including veterinary facilities.
- 2.2.9 “Animal wintering operation” means the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include breeding operations of more than 1,000 (one thousand) animal units or weaned offspring that are kept longer than 210 (two hundred and ten) days and that are not retained for breeding purposes.
- 2.2.10 “Appeal” means a request for a review of Foster County’s interpretation of any provision of this ordinance or a request for a variance.
- 2.2.11 “Applicant” means an individual, corporation, group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of 1 (one) or more animal feeding operations.
- 2.2.12 “Aquifer” means a geologic formation, group of formations, or part of a formation capable of storing and yielding ground water to wells and springs.
- 2.2.13 “Base flood” or 100-year (one hundred-year) flood means the flood having a 1 (one) percent chance of being equaled or exceeded in any given year.
- 2.2.14 “Base flood elevation” means the height of the base flood or 100-year (one hundred-year) flood usually -measured in the same datum (NAVD88 or NGVD29) as the flood insurance rate map.
- 2.2.15 “Basement” means any area of the building having its floor subgrade (below ground level) on all sides.
- 2.2.16 “Best available ~~data~~” information means water elevation information from any source used to estimate or determine a base flood elevation (i.e., high-water mark).
- 2.2.17 “Building” means any structure designed or intended for shelter, housing, business, office, and accommodation of persons, animals, chattels, or property.
- 2.2.18 “Building area” means that portion of the zoning lot that can be occupied by the principal use, excluding the front, rear, and side yards.
- 2.2.19 “Building height” means vertical distance from the grade to the highest point of the roof.
- 2.2.20 “Building line” means a line establishing the minimum distance that structures may be placed from the

lot lines or highway right-of-way. For the purposes of these regulations, the building line is the same as the setback line.

- 2.2.21 “Building, principal” means a building, the principal use of which is single family and multi-family dwellings, and offices, shops, stores, and other uses.
- 2.2.22 “Certificate of site compatibility” means a certificate of site compatibility within the meaning of the NDCC 49.22 or successor statute.
- 2.2.23 “Channel” means a natural or man-made water course for conducting the flowing water.
- 2.2.24 “Closure” means taking of those actions to close and reclaim a feedlot. Closure actions may include, but are not limited to, cleaning of buildings, disposal of manure, and demolition and/or removal of all manure storage structures.
- 2.2.25 “Club or lodge” means a private club or lodge that is a nonprofit association of persons for the purpose of gatherings and entertaining members including consumption of food and beverage.
- 2.2.26 “Community” means any political subdivision that has the authority to zone or any Indian tribe or authorized tribal organization that has the authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.
- 2.2.27 “Comprehensive plan” means a guide for management of the physical resources and development of the County as adopted by the County Commission.
- 2.2.28 “Concentrated animal feeding operation” means a place that meets the regulatory definition of an animal feeding operation and has greater than 1000 (one thousand) animal units or is a medium animal feeding operation or small animal feeding operation and meets one of the following criteria (called discharge criteria): a man-made ditch, pipe, or similar device that carries manure or process wastewater from the operation to surface water or the animals come into contact with surface water that runs through the area where they are confined.
- 2.2.29 “Conditional use” means use of a special nature not automatically permitted in a zoning district and that requires review and approval of the Zoning Commission after a public hearing.
- 2.2.30 “Conforming building or structure” means a building or structure that complies with all requirements of these regulations and other regulations adopted by the County.
- 2.2.31 “Conveyance or hydraulic conveyance” means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
- 2.2.32 “Development” means any man-made change to improved or unimproved real estate, including but not limited to ~~the construction of~~ buildings or other structures, mining, ditching, lagoon making, dredging, filling, grading, paving, excavating, and drilling.  
~~special flood hazard area~~
- 2.2.33 “Development plan” means a document including maps and data for physical development of an area as provided by these regulations.
- 2.2.34 “Due process” involves two essential elements notice and an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.
- 2.2.35 “Dwelling” means any building or portion thereof, used exclusively for human habitation including single-family and multiple-family units but not including hotels or motels.
- 2.2.36 “Dwelling, multiple-family” means a single building or portion thereof containing two (2) more dwelling units.
- 2.2.37 “Dwelling, single-family” means a building containing one dwelling unit only.

- 2.2.38 “Encroachment” means any fill, building, structure, or use including accessory use projecting into the required yard areas or public or private property.
- 2.2.39 “Established residence” means any residence established by a personal presence in a fixed and permanent dwelling with intent to remain there.
- 2.2.40 “Establishment” means a place of business for processing, production, assembly, sales, or service of goods and materials.
- 2.2.41 “Existing” means an animal unit handling facility in place on the date this Ordinance is effective.
- 2.2.42 “Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.2.2.49
- 2.2.43 “Expansion to an existing manufactured home park or subdivision” means the preparation additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- 2.2.44 “FAA” means the Federal Aviation Administration.
- 2.2.45 “Farm” means a tract of land not less than five (5) acres that is devoted to agricultural activities.
- 2.2.46 “Farming”; see Agriculture (farming, ranching).
- 2.2.47 “FEMA” means Federal Emergency Management Agency.
- 2.2.48 “Flood insurance rate map” means the official map issued by FEMA where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30, or A-99.
- 2.2.49 “Flood Insurance Study” means the official report provided by FEMA that includes flood profiles, the flood insurance rate map, and the water surface elevation of the base flood.
- 2.2.50 “Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or; from the unusual and rapid accumulation or runoff of surface waters from any source.
- 2.2.51 “Floodplain” means lowland and relatively flat areas adjoining inland and coastal water that are inundated by a flood having a 1 (one)-percent chance of being equaled or exceeded in any given year.
- 2.2.52 “Floodproofing” (dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two (2) feet above the base flood elevation measured in the same datum (NAVD88 or NGVD29 as the flood insurance rate map.  
with walls that are substantially impermeable to the passage of water.
- 2.2.53 “Floodway or regulatory floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than 1 (one) foot.
- 2.2.54 “Frontage” means the front part of a lot abutting a public right-of-way, road, or highway.
- 2.2.55 “Grade” means the land elevation at the horizontal intersection of the ground and the building.
- 2.2.56 “Ground water” means water below the land surface in a geological unit in which soil pores are filled with water and the pressure of the water is equal to or greater than atmospheric pressure.
- 2.2.57 “Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- 2.2.58 “Home occupation” means any occupation carried on in a dwelling unit by a member or members of the family and that meets these requirements:

- 2.2.58.1 The occupation is conducted within the principal building and not in an accessory building.
- 2.2.58.2 No stock-in-trade is kept or commodities sold other than those produced on the premises.
- 2.2.58.3 No more than twenty-five (25) percent of the floor area of the dwelling is devoted to such home occupation.
- 2.2.59 "Hotel or motel" means a building in which lodging accommodations, with or without meals, are provided for compensation.
- 2.2.60 "Hub height" means, when referring to a wind turbine, the distance measured from the ground level to the center of the turbine hub.
- 2.2.61 "Junk or salvage yard" means an open area where waste or scrap material, including parts of used motor vehicles, appliances, and farm implements are bought, sold, exchanged, stored, baled, parked, disassembled, or handled.
- 2.2.62 "Kennel, animal" means any premises where dogs, cats, and other household pets are boarded, bred, and maintained for compensation.
- 2.2.63 "Lagoon" means an impoundment made by excavation or earth fill for biological treatment of animal or other agricultural wastes. Lagoons can be aerobic, anaerobic, or facultative, depending on their loading and design.
- 2.2.64 "Livestock" means any animal raised for food, raw materials, or pleasure, including but not limited to beef and dairy cattle, bison, sheep, swine, poultry, and horses. Livestock also includes fur animals raised for pelts.
- 2.2.65 "Lot" means a piece, parcel, lot or area of land of continuous assemblage established by survey, plat, or deed.
- 2.2.66 "Lot lines" means the property lines bounding the lot.
- 2.2.67 "Lot width" means the horizontal distance between the side lot lines of a lot measured at the front building setback line.
- 2.2.68 "Lot, zoning" means a single lot, parcel, or tract of land within a zone zoning district developed or to be developed.
- 2.2.69 "Lowest floor" means the lowest floor of a structure including the basement.
- 2.2.70 "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle but does include "mobile home".
- 2.2.71 "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into 2 (two) or more manufactured home lots for rent or sale.
- 2.2.72 "Manure" means fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater, or snow melt that comes in contact with fecal material or urine.
- 2.2.73 "Marijuana" means any species in the genus *Cannabis*, including but not limited to *Cannabis sativa*, *Cannabis indica*, and *Cannabis ruderalis*. Means all parts of the plant of the genus *Cannabis*; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.
- 2.2.74 "Medical marijuana" means a product intended for human consumption or use which contains cannabinoid concentrate containing, derived from, or containing a derivative of marijuana in any form, including but not limited to plants, seeds, and resins or any medical marijuana product.
- 2.2.75 "Medical marijuana manufacturing center" means an entity or facility registered with the North Dakota

Department of Health for the cultivation, growing, cloning, manufacturing, acquiring, possession, storage, delivery, transfer, transport, sale, supply of medical marijuana or related products to a North Dakota-registered medical marijuana distribution center.

- 2.2.76 “Medical marijuana registered designated caregiver” means an individual who is registered with the North Dakota Department of Health who agrees to manage the well-being of a medical marijuana qualifying patient with respect to the medical marijuana qualifying patient's medical use of marijuana.
- 2.2.77 “Medical marijuana qualifying patient” means a person who has been diagnosed with a debilitating medical condition by a physician licensed to practice medicine in the State of North Dakota and who has in that person’s possession a current, valid photo identification issued by the State of North Dakota or the United States of America and a current, valid document issued by the North Dakota Department of Health to that person and authorizing that person to possess and use medical marijuana.
- 2.2.78 “MET tower” means temporary and permanent meteorological towers used for the measurement of wind speed.
- 2.2.79 “Mobile home” means a manufactured trailer intended for family residential occupancy.
- 2.2.80 “Mobile home park” means a parcel of land for which a detailed plan indicating the location of lots, blocks, streets, facilities, and utilities exist.
- 2.2.81 “NDCC” means North Dakota Century Code.
- 2.2.82 “New construction” means structures for which the "start of construction" commenced on or after the effective date of this Ordinance.
- 2.2.83 “New manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.
- 2.2.84 “Nonconforming building” means any building that does not comply with any or all of these regulations.
- 2.2.85 “Nonconforming use” means any principal use of land or building that does not comply with any or all of these regulations.
- 2.2.86 “Nursing home or convalescent home” means a home for the aged or infirm in which unrelated persons are accommodated for compensation.
- 2.2.87 “Nutrient management plan” (applicable to cattle-feeding operations with 1000 [one thousand] head) means a written description of the equipment, method(s), and schedule(s) by which
- 2.2.87.1 Manure, litter, and process wastewater is beneficially reused in an environmentally safe manner such as being applied to land at appropriate agronomic rates a nutrients or fertilizers, and
- 2.2.87.2 Water pollution and air pollution (including odors) are controlled sufficiently to protect the environment and public health.
- 2.2.88 “Occupied structures and facilities” mean any occupied dwelling, commercial building, or publicly used structure or facility.
- 2.2.89 “Operator” means an individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling 1 (one) or more animal feeding operations or animal wintering operations.
- 2.2.90 “Permitee” means an individual, group of individuals, corporation, partnership, joint venture, owners, or any other business entity, or combination thereof, that leases or owns the wind rights, wind turbines and associated improvements, and all subsequent assignees and/or transferees of these rights, and that submits a wind energy facility siting permit application, develops the wind energy facility, and

subsequently operates such facility.

- 2.2.91 “Permitted uses” means those uses, buildings or structures that comply with the provisions of specific zones because of the similarities in nature and relationship to each other. Permitted uses are distinct from conditional uses that are authorized only if certain requirements of these provisions are met after a public hearing and approval by the Zoning Commission.
- 2.2.92 “Person” means any person, association, firm, corporation, partnership, limited liability company, agency, or any other private or government organization, which includes any agency of the United States, a state agency, or any political subdivision of the State.
- 2.2.93 “Planned development” means a grouping of buildings and structures on a site of 5 (five) or more acres in single ownership that is not limited by the yard or building height limitations but is based on a detailed development plan and recorded in the office of the county code administrator upon approval by the County Commission.
- 2.2.94 “Pollution, air” means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal, or plant life or that unreasonably interferes with life or property.
- 2.2.95 “Pollution, water” means manmade or man-induced alteration of the physical, chemical, or biological integrity of any waters of the State.
- 2.2.96 “Public roadway or public way” means any dedicated and recorded right-of-way including alleys, sidewalks, streets, roads, or highways.
- 2.2.97 “Reasonably safe from flooding” means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
- 2.2.98 “Recreational vehicle means” a vehicle which is
- 2.2.98.1 Built on a single chassis
- 2.2.98.2 400 (four hundred) square feet or less when measured at the largest horizontal projection
- 2.2.98.3 Designed to be self-propelled or permanently towable by a light duty truck
- 2.2.98.4 Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.
- 2.2.99 “Regional flood” means a flood determined by the State and FEMA that is representative of large floods known to have occurred in the County.
- 2.2.100 “Rotor diameter” means the diameter of the circle formed by the swept area of the wind turbine’s blades.
- 2.2.101 “Sensitive waters” includes Pipestem Creek, Dry Lake, Juanita Lake, James River, Kelly Creek, Baldhill Creek, Jack Lake, and others as deemed sensitive by the Foster County Zoning and Planning Board.
- 2.2.102 “Service station” means any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.
- 2.2.103 “Shall” means that the requirement is mandatory, rather than optional.
- 2.2.104 “Sign” means any emblem, name, identification, description or illustration that is used for outdoor advertising having permanent location on the ground or attached to or painted on a building including bulletin boards, billboards and poster boards, but excluding real estate for sale signs, political campaign signs, public information and traffic signs.
- 2.2.105 “Site plan” means a detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in these regulations.

- 2.2.106 “Small animal feeding operation” means under 300 (three hundred) animal units.
- 2.2.107 “Source-water protection area” means a boundary that defines the surface and subsurface areas surrounding a water well or a well field that supplies a public water system and through which contaminants are likely to move toward and reach such water well or field.
- 2.2.108 “Special flood hazard area” means an area of land that would be inundated by a flood having a 1-percent (one-percent) chance of being equaled or exceeded in any given year.
- 2.2.109 “Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement occurred within ~~1 (one) year~~ 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
- 2.2.110 “Stream” means any running body of surface water that ordinarily flows within a channel. This includes both perennial and intermittent streams.
- 2.2.111 “Structural alterations” means any change in the supporting elements of a building or structure including load-bearing elements, partitions, columns, beams, girders, roofs, exterior walls and embankment.
- 2.2.112 “Structure” means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.
- 2.2.113 “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- 2.2.114 “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 (fifty) percent of the market value of the structure either
- 2.2.114.1 Before the improvement or repair is started or
- 2.2.114.2 If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether that alteration affects the external dimensions of the structure. The term does not, however, include either
- 2.2.114.2.1 Any project for improvement of a structure to comply with existing State or local Health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions
- 2.2.114.2.2 Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- 2.2.115 “Surface water” means water of the State located on the ground surface such as lakes, reservoirs, rivers, and creeks.
- 2.2.116 “Total height” means, when referring to a wind turbine, the distance measured from the ground level to the blade extended at its highest point.
- 2.2.117 “County” means Foster County.

- 2.2.118 “Utilities” means installations for conducting water, sewage, gas, electricity, television, storm water, and similar facilities providing service to and used by the public.
- 2.2.119 “Variance” means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.
- 2.2.120 “Violation” means the failure of a structure or development to be fully compliant with Foster County’s flood plain management regulations. A structure or other development without an elevation certificate, other certifications, or other evidence of compliance required by Foster County’s floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.
- 2.2.121 “Watercourse” means only the channel and banks of an identifiable watercourse, and not the adjoining floodplain areas. The flood-carrying capacity of a watercourse refers to the flood-carrying capacity of the channel, except in the case of alluvial fans, where a channel is not typically defined. The definition of watercourse in NDCC § 61-01-06 is not applicable in this ordinance.
- 2.2.122 “Waters of the state” means all waters within the jurisdiction of this State, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State, except those private waters that do not combine or affect a junction with natural surface or underground waters just defined.
- 2.2.123 “Wind energy facility” means a facility directly generating electricity or indirectly generating electricity or energy through production of hydrogen, compressed air or other energy carrier from conversion of wind to energy and consisting of one or more wind turbines under common ownership or operating control, and includes substations, temporary and permanent MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity directly, or through wind energy conversion to another form of energy, to off-site customer(s).
- 2.2.124 “Wind energy facility perimeter” means the boundary of the wind energy facility as defined by the external property lines of landowners who have a contractual relationship with the Permittee and who will receive wind turbine compensation-type payments or other forms of revenue derived from wind turbines sited within such wind energy facility.
- 2.2.125 “Wind energy facility siting permit” means a construction and operating permit granted in accordance with the provisions of this Ordinance.
- 2.2.126 “Wind turbine” means a wind energy conversion system that converts wind energy into electricity, hydrogen, compressed air, or some other energy carrier and includes the turbine, blade, tower, base and pad transformer, if any, provided that such a system shall only be a wind turbine for the purposes of a wind energy facility (Section 6.11), if it has a nameplate capacity of 100 (one hundred) kilowatts or greater. Wind turbines of less than 100 (one hundred) kilowatts nameplate capacity will be regulated pursuant to Section 6.7.
- 2.2.127 “Yard” means an open space on the zoning lot which is unoccupied or unobstructed by any portion of a structure from the ground upward.
- 2.2.128 “Zone” means a section or sections of the County for which regulations governing the use of building and premises, the building heights, size of yards, lot area, and lot width are uniform.
- 2.2.129 “Zoning Commission” shall mean a body consisting of no more than 9 (nine) members. The membership is appointed yearly by the County Commission’s December meeting. At least 1 (one) member (at large member) must be appointed from each district; at least 2 (two) (at large members)

must be from the governing body of the city that is the County seat; and at most, 2 (two) members may be from the County Commissioners (ex officio members). Ex officio members' terms of office on the Zoning Commission shall coincide with their terms of office. Three (3) at large members shall be appointed for a 2 (two)-year term and 2 (two) at large members shall be appointed for a 4 (four)-year term. All subsequent appointments shall be for a 4 (four)-year term. Appointments to fill shall be for the unexpired portion of the term. (Approved 12/12/2017 Planning and Zoning meeting kle)

### ARTICLE 3 GENERAL PROVISIONS

#### 3.1 Compliance

- 3.1.1 No person, firm, or corporation shall erect, construct, make structural changes or move any structure without first obtaining a building permit. Application for a building permit shall be made to the county code administrator, who may issue said permitted-use permit. Permits other than permitted-use permits shall be brought to the Zoning Commission for action. No building permit shall be issued if the actions described in the application would constitute a violation of this Ordinance.
- 3.1.2 If, for any reason, a permitted-use building permit is initially denied by the county code administrator, the applicant shall be informed within seven days of the date of application. The applicant may then request a hearing before the Zoning Commission to appeal for a reversal of such denial or may reapply after making whatever changes in the application deemed necessary by the county code administrator. If, for any reason, a building permit is initially denied by the Zoning Commission, the applicant shall be informed within seven days of the date of application. The applicant may then reapply after making whatever changes in the application deemed necessary by the Zoning Commission or appeal to a court of law.
- 3.1.3 The fee schedule for a building permit available on the County webpage ([www.fostercounty.com](http://www.fostercounty.com)) or from the county code administrator at the County Courthouse.  
(Approved 12/12/2017; Planning and Zoning meeting kle)
- 3.1.4 Building height, lot area, and yards
- 3.1.4.1 No building shall exceed the height, occupy larger part of lot area, and no lot shall be created smaller than the requirements of these regulations.
- 3.1.5 Substandard lot
- 3.1.5.1 All existing lots at the date of adoption of these regulations shall be deemed buildable unless for reasons of land suitability, flooding, and other physical limitations contrary to the purpose of these regulations.
- 3.2 Amendments
- 3.2.1 The County Commission may, from time to time, amend, supplement, or repeal any part of these regulations after a public notice and hearing.
- 3.3 Comprehensive Plan
- 3.3.1 These regulations are administered and enforced to implement the County Comprehensive Plan, a document adopted by the County Commission as a policy guide for protection of the County's natural resources and accommodating the type of development deemed appropriate including but not limited to the following objectives.
- 3.3.1.1 To conserve the taxable value of land and buildings in the County.
- 3.3.1.2 To encourage the most appropriate use of land in the County.
- 3.3.1.3 To protect the character and maintain the stability of farming activities and production.

- 3.3.1.4 To regulate and restrict the location and intensity of use of buildings and land not related to farming.
- 3.3.1.5 To facilitate traffic movement and promote development of compatible uses.
- 3.4 Non-conforming uses
- 3.4.1 The lawful use of a building or premises existing at the date of adoption of these regulations may be continued. Where a non-conforming use is discontinued for a period of more than twelve consecutive calendar months any subsequent use or occupancy of such premises shall conform to these regulations. Whenever a building is destroyed or damaged by fire or other casualty to the extent of more than 60 (sixty) percent of its market value it shall not be restored unless said building shall conform to the provisions of the zone in which it is located. Non-conforming uses shall not be expanded to occupy a larger area of land than existed at the date of adoption of these regulations unless approved by the Zoning Commission after a public hearing.
- 3.5 Land suitability
- 3.5.1 No land shall be used for a purpose that is held unsuitable for the reason of flooding, soil limitations, inadequate drainage, incompatibility with adjoining uses, or any condition likely to be harmful to the health, safety, or the welfare of the people in the area. The Zoning Commission may require information and data to determine the land suitability. The County may consult with County and State agencies to assist in its determination.
- 3.6 Conditional uses
- 3.6.1 Where a use is classified as a conditional use under these regulations and exists at the date of adoption of these regulations, it shall be considered a permitted use. Where a use is not allowed as a conditional use or permitted use, under these regulations, and exists at the date of adoption of these regulations, it shall be considered non-conforming and shall be subject to the non-conforming buildings and use provisions.
- 3.7 Road and highway access
- A permit for access to the County roads is required by the County Commission. In granting the access permit to the County roads, the County Commission may adopt rules and regulations as to the number of access points per mile, the width, construction, and other features of the access to the adjoining properties. The County Commission may place conditions when granting a road access permit. Farm driveways and field access points are exempt from these provisions. Contact Foster County Highway Department (Nate Monson, Superintendent; [nmonson@daktel.com](mailto:nmonson@daktel.com); 701-652-3926) when access or approach is needed. All approaches must have a culvert. The Foster County Highway Department Supervisor will provide the details for the access or approach.
- 3.8 Road and highway setbacks
- 3.8.1 All buildings and structures shall be placed at least 100 (one hundred) feet from the center of County and State roads and highways for the purpose of preventing hazardous accumulations of snow and to allow for future widening of public right-of-way. Tree plantings and shelterbelts shall be planted at least 100 (one hundred) feet from center of all roads.

#### ARTICLE 4 ZONING BOUNDARIES AND MAP

- 4.1 Zoning
- 4.1.1 To carry out the purposes and provisions of these regulations, the following zones are hereby established.
- 4.1.1.1 Agricultural zone
- 4.1.1.2 Rural residential zone
- 4.1.1.3 Residential community zone
- 4.1.1.4 Commercial zone
- 4.1.1.5 Industrial zone
- 4.1.1.6 Recreation/open space zone
- 4.1.1.7

## 4.2 Zoning map

- 4.2.1 The location and boundaries of the zones are hereby established as shown on the Zoning map on file in the office of the county code administrator. The zoning maps, together with all information shown thereon and all amendments thereto, shall be an integral part of these regulations.
- 4.2.2 Public roads and highways as boundary
- 4.2.2.1 Where zoning ~~district~~ boundary lines are indicated as following roads and highways or extensions thereof, such boundary lines shall be construed to be the center line of said roads and highways or extension thereof unless clearly shown to the contrary.
- 4.2.3 Property line as boundary
- 4.2.3.1 Where a zoning ~~district~~ boundary line coincides approximately but not exactly with the property line, the zoning boundary shall be construed to be the lot line at that location. All section lines, quarter-section lines, and quarter-quarter-section lines may be construed as the property lines.
- 4.2.4 Zone description for lands not subdivided
- 4.2.4.1 For lands that are not subdivided, zoning ~~district~~ boundaries are determined by a mete and bounds description or by a legal description as deemed necessary.
- 4.2.5 Vacated areas
- 4.2.5.1 Where a public road or highway is vacated by the official action of the County Commission, the zoning ~~district~~ boundaries shall be extended to the center of the vacated public road or highway.
- 4.2.6 Zoning boundary interpretation
- 4.2.6.1 Where any uncertainty exists as to the exact location of the zoning ~~district~~ boundary lines, the County Commission shall determine the location of such boundary lines.
- 4.2.7 Certification
- 4.2.7.1 The official zoning map shall bear a certificate with the signature of the County Commission and certification of the County Clerk and date of adoption of the zoning map as an integral part of these regulations.

## ARTICLE 5 ZONING REGULATIONS

### 5.1 Agricultural zone

#### 5.1.1 Purpose

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

#### 5.1.2 Permitted uses

- 5.1.2.1 All types of farming and ranching operations including dairying, livestock and poultry raising, apiaries, fur farming, and harvesting and selling crops and forest products.
- 5.1.2.2 Accessory buildings and structures
- 5.1.2.3 Churches
- 5.1.2.4 Home occupations
- 5.1.2.5 Parks, playgrounds, and conservation/recreation areas
- 5.1.2.6 Public and private schools
- 5.1.2.7 Public buildings and facilities including County garages
- 5.1.2.8 Single-family non-farm residential units subject to the details in these regulations
- 5.1.2.9 Stock piling of sand and gravel for road construction and maintenance
- 5.1.2.10 Utility lines and pipelines including substations for transformers, pumping stations, and lift stations
- 5.1.2.11 Wind energy facility with one (1) or more wind turbines of 100 (one hundred) kilowatts nameplate capacity or greater subject to the provisions of Section 6.11
- 5.1.2.12 Veterinary clinics, animal hospitals, live and domestic animal kennels not nearer than 500 (five hundred) feet from any residence except the residence of the owner or operator.

#### 5.1.3 Conditional uses

- 5.1.3.1 Livestock sales arenas, concentrated animal feeding operations, slaughterhouses, as previously defined, provided that no livestock sales arena, feedlot, or slaughterhouse is located within 2,640 (two thousand six hundred and forty) feet of any natural surface water body that contains water on an average of more than 2 (two) months of any given year
- 5.1.3.2 Commercially operated air landing strip and accessory buildings
- 5.1.3.3 Concentrated animal feeding operations that are subject to these regulations
- 5.1.3.4 Voltage transmission lines and accessory structures
- 5.1.3.5 Manufacturing and processing of agricultural products produced in the area
- 5.1.3.6 Radio, TV stations and towers
- 5.1.3.7 Sale and services of agricultural equipment and machinery
- 5.1.3.8 Salvage and junk yards subject to provisions of Section 6.6
- 5.1.3.9 Sanitary landfills subject to the provisions of Section 6.5
- 5.1.3.10 Sewage lagoons and wastewater treatment facilities
- 5.1.3.11 Golf courses
- 5.1.3.12 Grain elevators and accessory structures
- 5.1.3.13 Cemeteries
- 5.1.3.14 Storage of farm-related chemicals
- 5.1.3.15 Mining of sand and gravel subject to provisions of Section 6.4
- 5.1.3.16 Mobile homes
- 5.1.3.17 Public and non-profit wildlife management areas
- 5.1.3.18 Skeet, trap, and rifle ranges if not nearer than 1,000 (one thousand) feet from any residence
- 5.1.3.19 Medical marijuana manufacturing center and medical marijuana distribution center subject to the provisions of Section 6.12
- 5.1.4 Regulations
  - 5.1.4.1 For non-farm residential uses the lot area shall not be less than 5 (five) acres
  - 5.1.4.2 For non-residential uses the lot area shall not be less than 5 (five) acres
  - 5.1.4.3 The lot width for any use in the agricultural zone ~~district~~ shall not be less than 250 (two hundred fifty) feet
  - 5.1.4.4 Minimum setback of non-farm structures shall be 100 (one-hundred) feet from the center of any public road and 50 (fifty) feet from any lot line of any lot of record
- 5.2 Rural residential zone
  - 5.2.1 The intent and purpose of the rural residential zone is to allow the development of moderate-density residential areas in a manner that does not interfere with farming and business activities and is not unduly destructive to the infrastructure or environment of the County.
  - 5.2.2 Permitted uses
    - 5.2.2.1 Agricultural
    - 5.2.2.2 One- and two-family residences
    - 5.2.2.3 Schools, churches, and cemeteries
    - 5.2.2.4 Public parks, playgrounds, and open spaces
    - 5.2.2.5 Community meeting halls
  - 5.2.3 Conditional uses
    - 5.2.3.1 Medical care facilities and nursing homes
    - 5.2.3.2 Mobile home courts
    - 5.2.3.3 Animal hospitals or clinics
    - 5.2.3.4 Commercial dog kennels
    - 5.2.3.5 Government administrative, maintenance, or research facilities
    - 5.2.3.6 Campgrounds
    - 5.2.3.7 Water treatment facilities, sewage lagoons, and sediment ponds provided that written proof

that all water treatment facilities, sewage lagoons, and sediment ponds meet or exceed the approval criteria set forth by any and all State agencies or officials. This documentation shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

- 5.2.4 Regulations
- 5.2.4.1 The minimum size of a rural residential zone shall be 10 (ten) acres
- 5.2.4.2 Minimum lot size shall be 20,000 (twenty thousand) square feet for lots served by public water or sewer and 3 (three) acres for lots not served by public water or sewer
- 5.2.4.3 Minimum setback of any structure shall be 100 (one hundred) feet from any right-of-way and 50 (fifty) feet from any lot line.
- 5.2.4.4 Any structure exceeding 35 (thirty five) feet in height shall require a conditional use permit with the exception of metal towers such as windmills and antennas
- 5.2.4.5 The maximum intensity of buildings or other structures on any lot shall be 30 (thirty) percent of the lot area
- 5.2.4.6 Any 2 (two)-family residential structures shall include off-street parking space for at least 2 (two) full-size automobiles
- 5.2.4.7 Points of ingress and egress from any public road shall be limited to 1 (one) per  $\frac{1}{4}$  (one-quarter) mile in or from any rural residential zone property. A frontage road shall be constructed as necessary to allow access to public roads via the allowable points of ingress and egress
- 5.2.4.8 Minimum setback of any non-farm vegetation exceeding 48 (forty eight) inches in height that is left standing after November 1st of any year shall be 100 (one hundred) feet from any public right-of-way
- 5.3 Residential community zone
- 5.3.1 The intent and purpose of the residential community zone is to preserve the integrity and character of rural residential areas and incorporated or unincorporated cities and small towns in the County.
- 5.3.2 Permitted uses
- 5.3.2.1 Agriculture
- 5.3.2.2 Single-family residences
- 5.3.2.3 Multi-family residences containing four units or less
- 5.3.2.4 Public parks, playgrounds, and open spaces
- 5.3.3 Conditional uses
- 5.3.3.1 Campgrounds
- 5.3.3.2 Keeping of livestock on lots of 30,000 (thirty thousand) square feet or more
- 5.3.3.3 Water treatment facilities, sewage lagoons, and sediment ponds provided that written proof that all proposed water treatment facilities, sewage lagoons, and sediment ponds meet or exceed the approval criteria set forth by any or all State agencies or officials shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.
- 5.3.4 Regulations
- 5.3.4.1 **The minimum size of a residential community zone shall be 40 (forty) acres**
- 5.3.4.2 **Minimum lot size shall be 5,000 (five thousand) square feet for lots served by public water or sewer and 20,000 (twenty thousand) square feet for lots not served by public water or sewer**
- 5.3.4.3 Minimum setback of any structure shall be 25 (twenty five) feet from any public right-of-way and 10 (ten) feet from any lot line

- 5.3.4.4 Any structure exceeding 35 (thirty five) feet in height shall require a conditional use permit with the exception of metal towers such as windmills and antennas
- 5.3.4.5 The maximum intensity of buildings or other structures on any lot shall be 40 (forty) percent of the lot area
- 5.3.4.6 Any residential structures for two or more families shall include off-street parking space for at least one full-size automobile per housing unit
- 5.4 Commercial zone
  - 5.4.1 The intent and purpose of the commercial zone is to provide areas in the County in which commercial sales and service establishments may be situated such that they complement the surrounding land uses, economy, and social structure.
  - 5.4.2 Permitted uses
    - 5.4.2.1 Agriculture including any permitted use in the agricultural zone as listed in Section 5.1
    - 5.4.2.2 Retail business
    - 5.4.2.3 Auction houses or stores, excluding livestock sales
    - 5.4.2.4 Automobile, motorized vehicle, boat, motor home, and implement sales including repair and storage facilities
    - 5.4.2.5 Business, professional, and government offices
    - 5.4.2.6 Repair shops, upholstery shops, auto body shops, and equipment retail shops
    - 5.4.2.7 Hotels, motels, and seasonal campgrounds less than 1 (one) acre in size
    - 5.4.2.8 Lodges, clubs, fraternal, and community meeting halls
    - 5.4.2.9 Warehousing not to include any outside storage
    - 5.4.2.10 Fabrication and manufacturing enterprises occupying not more than 100,000 (one hundred thousand) square feet of floor space
    - 5.4.2.11 Commercial eating and drinking establishments
    - 5.4.2.12 Racetracks, drive-in theaters, movie houses, gun clubs, carnivals, circuses, and other similar entertainment enterprises
    - 5.4.2.13 Animal hospitals or clinics
    - 5.4.2.14 Governmental research or maintenance facilities
    - 5.4.2.15 Communication towers, lines, equipment, maintenance facilities, and offices
  - 5.4.3 Conditional uses
    - 5.4.3.1 Residential dwellings of not more than 4 (four) housing units
    - 5.4.3.2 Commercial dog kennels
    - 5.4.3.3 Medical care facilities and nursing homes
    - 5.4.3.4 Water treatment facilities, sewage lagoons, and sediment ponds provided written proof that all water treatment facilities, sewage lagoons, and sediment ponds meet or exceed the approval criteria set forth by any and all State agencies or officials shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.
  - 5.4.4 Regulations
    - 5.4.4.1 Minimum lot size shall be 20,000 (twenty thousand) square feet for lots served by public water and sewer and 1 (one) acre for lots not served by public water and sewer
    - 5.4.4.2 Minimum setback of any structure shall be 100 (one hundred) feet from any public road right-of-way and 10 (ten) feet from any lot line

- 5.4.4.3 Any structure exceeding 35 (thirty five) feet in height shall require a conditional use permit with the exception of metal towers such as windmills and antennas
- 5.4.4.4 Off-street parking shall be provided at the minimum rate of 2 (two) spaces per management employee on the premises
- 5.4.4.5 All loading docks, truck bays, etc., shall be located in such a manner that no public right-of-way is wholly or partially blocked during normal cargo loading or unloading procedures
- 5.4.4.6 Minimum setback of any non-farm vegetation exceeding 48 (forty eight) inches in height that is left standing after November 1<sup>st</sup> of any year shall be 33 (thirty three) feet from any public road right-of-way
- 5.5 Industrial zone
  - 5.5.1 The intent and purpose of the industrial zone is to allocate specific locations for large-scale manufacturing, and processing and/or related enterprises where such enterprises may utilize natural and manmade resources to their benefit while imposing minimal adverse effects on surrounding uses.
  - 5.5.2 Permitted uses
    - 5.5.2.1 Agriculture
    - 5.5.2.2 Processing of food, fiber, agricultural products, petroleum, and mineral resources
    - 5.5.2.3 Manufacturing and fabrication enterprises
    - 5.5.2.4 Railroad yards, including maintenance, storage, repair facilities, and offices
    - 5.5.2.5 Communication towers, lines, equipment, maintenance facilities, and offices
    - 5.5.2.6 Water treatment facilities, sewage lagoons, and sediment ponds, provided that written proof that all water treatment facilities, sewage lagoons, and sediment ponds meet or exceed that approval criteria set forth by any and all State agencies or officials shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative
    - 5.5.2.7 Rock, sand or gravel excavation, crushing, and handling
    - 5.5.2.8 Truck and freight terminals, warehousing, and bulk terminals involving dry, liquid and gaseous substances
    - 5.5.2.9 Concrete and concrete product plants
  - 5.5.3 Conditional uses
    - 5.5.3.1 Single-family residential dwellings
    - 5.5.3.2 Temporary work camps, provided that such camps shall provide occupancy only for those persons directly involved in the construction of industrial facilities during such construction. No such camp shall be in existence for more than 18 (eighteen) months. All such camps must be approved prior to occupancy by the county sanitarian.
    - 5.5.3.3 Electrical generation facilities with greater than 5 (five megawatt [5 MW]) rate output
    - 5.5.3.4 Livestock slaughter and meat processing operations only when written proof is provided to the Zoning Commission that any livestock slaughter and/or meat processing operations meet or exceed State Health Department standards. Approval of the county sanitarian shall be furnished prior to commencement of any such operations
    - 5.5.3.5 Wrecking, junk, and salvage yards
    - 5.5.3.6 Medical marijuana manufacturing center and distribution center
  - 5.5.4 Regulations
    - 5.5.4.1 All enterprises in the industrial zone shall comply with all regulatory and legislative requirements set forth by any and all federal, state and local government agencies and offices.

Written verification of such compliance shall be submitted to the Zoning Commission prior to commencement of operations

- 5.5.4.2 Minimum lot size in the industrial zone shall be 25,000 (twenty-five) square feet
- 5.5.4.3 Minimum setback shall be 50 (fifty) feet from any lot line and 100 (one-hundred) feet from any public road right-of-way
- 5.5.4.4 Minimum setback of any non-farm vegetation exceeding 48 (forty-eight) inches in height that is left standing after November 1<sup>st</sup> of any year shall be 100 (one-hundred) feet from any public road right-of-way

5.6 Recreation/open space zone

5.6.1 The intent and purpose of the recreational/open space zone is to encourage the conservation of public and private lands to be used for outdoor recreation and to preserve natural features and wildlife habitat.

5.6.2 Permitted uses

- 5.6.2.1 Agriculture
- 5.6.2.2 Harvesting of natural crops
- 5.6.2.3 Raising game animals, fowl, and fish
- 5.6.2.4 Public parks, recreation areas, playgrounds, picnic areas, and natural preserves
- 5.6.2.5 Flood water management structures
- 5.6.2.6 Historical structures and monuments
- 5.6.2.7 Structures and facilities used directly for the administration and/or management of lands in the recreation/open space zone ~~district~~

5.6.3 Conditional uses

- 5.6.3.1 Residential dwellings either seasonal or permanent
- 5.6.3.2 Commercial retail businesses related to recreation, such as marinas, bait shops, and souvenir shops
- 5.6.3.3 Private docks, ramps, and boat houses
- 5.6.3.4 Campgrounds

5.6.4 Regulations

- 5.6.4.1 The building height for residential buildings shall not exceed 2 ½ (two and one-half) stories or 35 (thirty five) feet except for farm buildings and structures
- 5.6.4.2 The building heights for manufacturing of agricultural products and for construction and maintenance of livestock and agricultural waste systems shall be determined by the County Commission
- 5.6.4.3 The building height, except for radio and TV towers, MET towers, wind turbines, and church steeples, shall not exceed 35 (thirty five) feet.
- 5.6.4.4 For non-farm uses, the parking requirements shall be subject to the provisions of Section 6.2 of these regulations
- 5.6.4.5 Sign requirements shall be subject to the provisions of Section 6.3 of these regulations

5.7.1 Purpose

5.7.1.1 The purpose of this section is to establish and preserve areas for developed recreational activity and residency in a flood plain wherein development is controlled to maintain the quality of the environment. In addition, this Ordinance’s purpose is to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to

- 5.7.1.1.1 Protect human life and health
- 5.7.1.1.2 Minimize expenditure of public money for costly flood control projects
- 5.7.1.1.3 Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public
- 5.7.1.1.4 Minimize prolonged business interruptions
- 5.7.1.1.5 Minimize damage to public facilities and utilities
- 5.7.1.1.6 Maintain a stable tax base by providing for the second use and development of special flood hazard areas to minimize future flood blight areas
- 5.7.1.1.7 Ensure potential buyers are notified that property is in a special flood hazard area
- 5.7.1.1.8 Ensure those who occupy special flood hazard areas assume responsibility for their actions
- 5.7.2 Methods of reducing flood losses
  - 5.7.2.1 To accomplish its purposes, this ordinance includes methods and provisions for
    - 5.7.2.1.1 Restricting or prohibiting uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion or in flood heights or flood velocities
    - 5.7.2.1.2 Requiring that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction
    - 5.7.2.1.3 Controlling the alteration of natural floodplains, stream channels, and natural protective barriers that help accommodate or channel flood waters
    - 5.7.2.1.4 Controlling filling, grading, degrading, and other development that may increase flood damage
    - 5.7.2.1.5 Preventing and regulating the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards in other areas
- 5.7.3 Permitted uses at Juanita Lake
  - 5.7.3.1 Cabins
  - 5.7.3.2 Mobile homes
  - 5.7.3.3 Seasonal homes
  - 5.7.3.4 Churches
  - 5.7.3.5 Boathouses or storage buildings
  - 5.7.3.6 Public picnic areas and playgrounds
  - 5.7.3.7 Outdoor recreation facilities
  - 5.7.3.8 Fences
  - 5.7.3.9 Utility lines and pipelines as requested to provide services
  - 5.7.3.10 Permanent residences
  - 5.7.3.11 Docks
- 5.7.4 Conditional uses
  - 5.7.4.1 Places of amusement
  - 5.7.4.2 Refreshment stand
  - 5.7.4.3 Commercial campground
  - 5.7.4.4 Recreational vehicle park
  - 5.7.4.5 Roads

- 5.7.5 Regulations for Juanita Lake
- 5.7.5.1 Setbacks
- 5.7.5.1.1 Residential building 50 (fifty) feet from shoreline
- 5.7.5.1.2 Non-residential building 50 (fifty) feet from shoreline
- 5.7.5.1.3 Decks are not subject to any setback or minimum sea level elevation requirements
- 5.7.5.2 Yards
- 5.7.5.2.1 Side; no structure closer than 6 (six) feet
- 5.7.5.2.2 33 (thirty three) feet from County and Township roads
- 5.7.5.3 Residential lots (minimum)
- 5.7.5.3.1 Width; 50 (fifty) feet
- 5.7.5.3.2 Depth; 100 (one hundred) feet
- 5.7.5.4 Building height (maximum)
- 5.7.5.4.1 Residential; 35 (thirty five) feet
- 5.7.6 Elevation
- 5.7.6.1 No structure shall be set below the base flood elevation-measured in the same datum (NAVD88 or NGVD29) as the flood insurance rate map.
- 5.7.6.2 Any improvements or alterations after adoption of this Ordinance will be required to follow the new Ordinance.
- 5.7.7 Sanitation
- 5.7.7.1 A holding facility is required for all new construction
- 5.7.7.2 Any improvements to existing sewer systems require the installation of a holding tank system
- 5.7.8 Structure replacement
- 5.7.8.1 Replacement of any structure must abide by all regulations of this Ordinance.
- 5.7.9 Change of ownership
- 5.7.9.1 New owners will not be required to comply with this Ordinance at the time of sale, but must comply for improvements
- 5.7.10 Statutory authorization
- 5.7.10.1 The Legislature of the State of North Dakota has in NDCC (Abbreviation or written out?) 40-47, 11-33, and 58.03 delegated the responsibility to County governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County Board of Foster County, North Dakota does ordain as follows:
- 5.7.11 Findings of fact
- 5.7.11.1 The special flood hazard areas of Foster County are subject to periodic inundation that can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety and general welfare.
- 5.7.11.2 Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.
- 5.7.12 Methods of reducing flood losses
- 5.7.12.1 To limit and prevent flood damage in Foster County, this Ordinance has provisions for restricting, prohibiting, and guiding development activities that can be subject to flood damage.

- 5.7.13 Disclaimer
- 5.7.13.1 This Ordinance shall not create liability on the part of Foster County, any officer or employee thereof, or FEMA, for any flood damage that results from reliance on this Ordinance or any administrative decision lawfully made thereunder. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of Foster County, any officer or employee thereof, or FEMA, for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.
- 5.7.14 Lands to which this Ordinance applies
- 5.7.14.1 This Ordinance shall apply to all special flood hazard areas within the jurisdiction of Foster County as identified by FEMA.
- 5.7.15 Basis for establishing the special flood hazard areas
- 5.7.15.1 The special flood hazard areas identified by FEMA in a scientific and engineering report entitled “The Flood Insurance Study for Foster County, North Dakota, dated January 31, 2025,” with an accompanying flood insurance rate map is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the office of the Foster County Auditor, 1000 5<sup>th</sup> Street North, Carrington, North Dakota 58421.
- 5.7.16 Permit procedures
- 5.7.16.1 Administration
- 5.7.16.1.1 Establishment of development permit
- 5.7.16.1.1.1 A development permit shall be obtained before construction or development begins within any special flood hazard area.
- Application for a development permit shall be made on forms furnished by the county code administrator and may include, but not be limited to
- 5.7.16.1.1.1.1 Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question
- 5.7.16.1.1.2 Existing or proposed structures, fill storage materials, and drainage facilities
- 5.7.16.1.1.3 Location of the foregoing.
- 5.7.16.1.2 Specifically, the following information is required
- 5.7.16.1.2.1 Elevation in the same datum (NAVD88 or NGVD29 as the flood insurance rate map, of the lowest floor of all structures
- 5.7.16.1.2.2 Elevation in the same datum (NAVD88 or NGVD29 as the flood insurance rate to which any structure has been floodproofed
- 5.7.16.1.2.3 Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5.7.2.
- 5.7.16.1.2.4 Description of the extent to which any watercourse will be altered or relocated as a result of proposed development
- 5.7.16.1.3 Designation of local administrator
- 5.7.16.1.3.1 The county code administrator is hereby appointed to administer and implement this ordinance by granting or denying development permit

applications in accordance with its provisions. The county code administrator will review permit application and grant or deny administrative approval pending approval by the Foster County Planning and Zoning Board and the Foster County Commissioners. Duties of the county code administrator shall include, but not be limited to permit review

- 5.7.16.3.1.1 Review all development permits to determine that the permit requirements of this ordinance have been satisfied
- 5.7.16.3.1.2 Approve or deny all applications for development permits required by adoption of this ordinance.
- 5.7.16.3.1.3 Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required
- 5.7.16.3.1.4 Review all development permits to determine if the proposed development is located in a floodway. If located in the floodway, assure that the encroachment provisions of Section 5.7.16.8 are met.

5.7.16.4 Permits

5.7.16.4.1. Before any construction or development begins within a special flood hazard area, a Foster County building permit application form and the floodplain development application and permit form shall be obtained from the county code administrator in the Equalization Office. The portion of the permit referring to the flood hazard area will be reviewed by the Emergency Manager, the local flood plain administrator, hereinafter referred to as the responsible person. County code administrator shall assure that all other State and Federal permits are obtained. The permit shall include:

- 5.7.16.4.1.1 Elevation in relation to ~~mean sea level~~, base flood elevation of the lowest floor (including basement) of all proposed structures
- 5.7.16.4.1.2 Elevation in relation to ~~mean sea level~~-base flood elevation-to which any structure will be floodproofed
- 5.7.16.4.1.3 Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5.7.2 and the regulations for Juanita Lake in Section 5.7.3.
- 5.7.16.4.1.4 Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

5.7.16.5 Use of other base flood data

- 5.7.16.5.1 When base flood elevation data has not been provided in accordance with Section 5.7.15, the responsible person shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any other Federal, State, or other source, (known as best available information) as criteria for requiring that new construction, substantial improvements, or other development in the floodplain is administered in accordance with Section 5.7.16.
- 5.7.16.5.2 In Zone A, in the absence of FEMA base flood elevation data and floodway data, the responsible person shall obtain, review, and reasonably utilize other base

flood elevation data as a basis for elevating residential structures to or above the base flood level, and for floodproofing or elevating non-residential structures to or above the base flood level.

- 5.7.16.6 Information to be obtained and maintained
- 5.7.16.6.1 Obtain and record the actual elevation (in the same datum [either NAVD88 or NGVD29] as the flood insurance rate map), to which the structure has been floodproofed
- 5.7.16.6.2 Maintain required floodproofing certifications
- 5.7.16.7 Interpretation of flood insurance rate map boundaries
- 5.7.16.7.1 Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (i.e., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 5.15.15.
- 5.7.16.8 Encroachment analysis
- 5.7.16.8.1 When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's floodplain insurance rate map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood elevation more than 1 (one) foot at any point within the community.
- 5.7.16.8.2 Under provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's floodplain insurance rate map that increases the water surface elevation of the base flood by more than 1 (one) foot, provided the community first applies for and receives a conditional letter of map revision (CLOMR) through FEMA.
- 5.7.16.9 Permit review
- 5.7.16.9.1 All permit applications shall be reviewed (using the best available base flood elevation information from any Federal, State, or Local source) to
- 15.7.16.9.1.1 Assure sites are reasonably safe from flooding
- 15.7.16.9.1.2 Determine that all necessary permits have been obtained from those federal, state, or local agencies from which prior approval is required and
- 5.7.16.9.1.3 Determine if the proposed development adversely affects the flood carrying capacity of a flood-prone area. For the purposes of this Ordinance, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas.
- 5.7.16.9.2 If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further considerations.
- 5.7.16.9.3 If it is determined that there is an adverse effect, then technical justification

(i.e., a registered professional engineer) for the proposed development shall be required.

5.7.16.9.4 If the proposed development is a building, then the following provisions of this Ordinance shall apply.

## 5.8 Standards for flood hazard reduction

### 5.8.1 General standards

5.8.1.1 In all special flood hazard areas, the following standards are required

#### 5.8.1.1.1 Anchoring

5.8.1.1.1.1 All new construction and substantial improvements (including additions) shall be anchored to prevent flotation, collapse or lateral movement of the structure.

5.8.1.1.1.2 All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

#### 5.8.1.2 Construction materials and methods

5.8.1.2.1 All new construction and substantial improvements shall be constructed using with materials and utility equipment that are resistant to flood damage.

5.8.1.2.2 All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

5.8.1.2.3 All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

#### 5.9.1.3 Utilities

5.9.1.3.1 All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

5.9.1.3.2 New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

5.9.1.3.3 On-site waste disposal systems shall be located to avoid impairment to the system or contamination from them during flooding.

#### 5.10.2 Subdivision proposals

5.10.2.1 All subdivision proposals and other development, including manufactured home parks or subdivisions, shall be reviewed to determine whether such proposals will be reasonably safe from flooding.

5.10.2.2 All subdivision proposals shall be consistent with the need to minimize flood damage

5.10.2.3 All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage

5.10.2.4 All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage

5.10.2.5 All subdivision proposals shall have new and replacement water supply and sanitary

- sewage systems designed to minimize or eliminate infiltration.
- 5.10.2.6 All subdivision proposals shall have onsite waste disposal systems designed to avoid impairment or contamination.
- 5.10.2.7 Base flood elevation data shall be provided for subdivision proposals and other proposed developments that contain at least 50 lots or 5 acres, whichever is less.
- 5.10.2.8 All subdivision proposals shall require new and replacement water supply and sanitary sewage systems to be designed to minimize or eliminate infiltration.
- 5.11.4 Specific standards
- 5.11.4.1 In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 5.7.15 Basis for establishing the special flood hazard areas or Section 5.7.16.5 Use of other base flood data the following provisions are required.
- 5.11.4.1.1 Residential construction
- 5.11.4.1.1.1 New construction and substantial improvement of any residential structure within Zones A1-30, AE, and AH Zones, shall have the lowest floor, including basement, elevated ~~on fill~~ to at least 1 (one) foot above the base flood elevation unless granted a residential basement floodproof exception. In Zone AO, new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, to or above the highest adjacent grade at least as high as the flood insurance rate map's depth number.
- 5.11.4.1.1.2 Manufactured homes shall be placed so that the lowest floor is elevated to at least 1 (one) foot above the base flood elevation.
- 5.11.4.2 Nonresidential construction
- 5.11.4.2.1 New construction and substantial improvement of any nonresidential structure within Zone A1-30, AE, and AH shall
- 5.11.4.2.1.1 either have the lowest floor, including basement, elevated or floodproofed to at least 2 (two) foot-above base flood elevation
- 5.11.4.2.1.2 Be floodproofed ~~up~~ to at least 2 (two) feet above the base flood elevation, such that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.
- 5.11.4.2.1.3 In Zone AO, new construction and substantial improvement of any nonresidential structure shall have the lowest floor, including basement, to or above the highest adjacent grade at least as high as the flood insurance rate map's depth number.
- 5.11.4.2.1.4 Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- 5.11.4.2.1.5 Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the responsible person as set forth in Section 5.7.16.
- 5.11.4.3 Manufactured homes
- 5.11.4.3.1 Require all manufactured homes placed within Zone A shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist

flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to the applicable State and local anchoring requirements for resisting wind forces.

- 5.11.4.3.2 Require all manufactured homes placed or substantially improved within Zones A1-30, AH, or AE on sites
- 5.11.4.3.2.1 outside of a manufactured home park or subdivision,
  - 5.11.4.3.2.2 in a new manufactured home park or subdivision.
  - 5.11.4.3.2.3 in an expansion to an existing manufactured home park or subdivision,
  - 5.11.4.3.2.4 in an existing manufactured home park or subdivision that has incurred substantial damage
    - 5.11.4.3.2.4.1 be elevated on a permanent foundation so the lowest floor of the manufactured home is at or above the base flood elevation or the chassis is supported by reinforced piers and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- 5.11.4.3.3 Require that manufactured home placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, or AE not subject to other requirements of this section be elevated so that either the lowest floor of the manufactured home is elevated 1 (one) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. or the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- 5.11.4.4 Recreational vehicles
- 5.11.4.4.1 In Zones A1-30, AH, and AE, all recreational vehicles to be placed on a site must
- 5.11.4.4.1.1 Be elevated and anchored to meet the requirements in Section 5.8.1.1.1 or
  - 5.11.4.4.1.2 Be on the site for less than 180 (one hundred and eighty) consecutive days and be fully licensed and highway ready
- 5.12.5 Floodways
- 5.12.5.1 Located within the special flood hazard areas established in Section 5.7.15 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, the following provisions apply
- 5.12.5.1.1 Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. Any increase, as is used in this section means any modeled impact greater than 0.00 (zero. zero zero) feet.

- 5.12.5.1.2 If the above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction requirements of this ordinance.
- 5.12.5.1.3 Under provisions of 44 CFR Section 65.12 of the National Flood Insurance Program regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided the community first applies for and receives a Conditional Letter of Map Revision (CLOMR) through FEMA.
- 5.12.5.1.4 A regulatory floodway will be designated that will not increase the base flood level more than 1 (one) foot. In a regulatory floodway, any encroachment is prohibited unless hydrologic and hydraulic analyses prove that the proposed encroachment will not cause an increase in flood levels during the base flood discharge. No encroachment may increase the base floodplain elevation more than 1 (one) foot. In Zones AO and AH, drainage paths are required around structures on slopes to guide water away from structures.
- 5.13.6 Enclosures
- 5.13.6.1 New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria
- 5.13.6.1.1 A minimum of 2 (two) openings having a total net area of not less than 1 (one) square inch for every square foot of enclosed area subject to flooding shall be provided
- 5.13.6.1.2 The bottom of all openings shall be no higher than 1 (one) foot above grade
- 5.13.6.1.3 Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they allow the automatic entry and exit of floodwaters.
- 5.14.7 Administrative requirements
- 5.14.7.1 Information to be obtained and maintained
- 5.14.7.2 The responsible person shall:
- 5.14.7.2.1 Obtain and record the actual elevation (in relation to base flood elevation) of the lowest floor (including basement) of all new or substantially improved structures, whether or not the structure contains a basement.
- 5.14.7.2.2 For all new or substantially improved floodproofed structures
- 5.14.7.2.2.1 Obtain and record the actual elevation (in relation to base flood elevation) to which the structure has been floodproofed.
- 5.14.7.2.2.2 Maintain the floodproofing certifications required in Section 5.7.16.1
- 5.14.7.2.2.3 Maintain for public inspection all records pertaining to the provisions of this Ordinance.
- 5.14.7.2.2.4 In Zone A, for new and substantially improved construction, obtain and maintain records of the lowest floor and floodproofing elevations.
- 5.14.8 Alteration of watercourses
- 5.14.8.1 The responsible person shall

- 5.14.8.1.1 Notify nearby communities, water resource districts and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
- 5.14.8.1.2 In riverine areas, notify adjacent communities of watercourse alterations and relocations.
- 5.14.8.1.3 Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and
- 5.14.8.1.4 Notify the appropriate water resource district prior to removal or placement of fill within 200 (two hundred) feet of the bank of a body of water during normal flow or stage.

5.14.9 Compliance

5.14.9.1 No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

5.14.10 Greater restrictions

5.14.10.1 This ordinance is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5.14.11 Penalties for non-compliance

5.14.11.1 Violation of the provisions of this Ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$500 (five hundred) or by imprisonment not to exceed 30 (thirty) days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense and shall pay costs and expenses involved in the case.

5.14.11.2 Violations must be addressed by submitting a plan to mitigate the violation within 90 (ninety) days. The plan must include a completion date. Failure to correct the violation by the completion date stated in the plan shall be considered a separate offense.

5.14.11.3 Nothing herein contained shall prevent Foster County from taking such other lawful action as is necessary to prevent or remedy any violation.

5.14.12 Interpretation

5.14.12.1 In the interpretation and application of this ordinance, all provisions shall be

5.14.12.1.1 Considered as minimum requirements

5.14.12.1.2 Liberally construed in favor of the governing body

5.14.12.1.3 Deemed neither to limit nor repeal any other powers granted under State statutes

5.14.13 Warning and disclaimer of liability

5.14.13.1 This Ordinance shall not create liability on the part of Foster County, any officer or employee thereof, or FEMA, for any damage, including flood damage, that results from reliance on this Ordinance or any administrative decision lawfully made thereunder. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does

not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of Foster County, any officer or employee thereof, or FEMA, for any flood damage that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

5.14.14 Severability

5.14.14.1 If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

5.15.15 Variance procedure

5.15.15.1 Appeal board

5.15.15.1.1 The "appeal board" as established by Foster County shall hear and decide appeals and requests for variances from the requirements of this ordinance.

5.15.15.1.2 The appeal board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the "local administrator" in the enforcement or administration of this ordinance.

5.15.15.1.3 Those aggrieved by the decision of the appeal board or any taxpayer, may appeal such decision to the District Court, as provided in NDCC §§40-47-11, 11-33-12, or 58-03-14. In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance and

5.15.15.1.3.1 The danger that materials may be swept onto other lands to the injury of others

5.15.15.1.3.2 The danger to life and property due to flooding or erosion damage

5.15.15.1.3.3 The susceptibility of the proposed facility and its contents to flood damage

5.15.15.1.3.4 The effect of such damage on the individual owner

5.15.15.1.3.5 The importance of the services provided by the proposed facility to the Community

5.15.15.1.3.6 The necessity to the facility of a waterfront location, where applicable

5.15.15.1.3.7 The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage

5.15.15.1.3.8 The compatibility of the proposed use with existing and anticipated development

5.15.15.3.9 The relationship of the proposed use to the comprehensive plan and floodplain management program for that area

5.15.15.3.10 The safety of access to the property in times of flood for ordinary and emergency vehicles

5.15.15.3.11 The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site

5.15.15.3.12 The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges

5.15.15.4 Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre to less in size contiguous to

and surrounded by lots with existing structures constructed below the base flood level, providing the items in Section 5.15.15.1.3 have been fully considered. As the lot size increases beyond one-half (1/2) acre, the technical justification required for issuing the variance increases.

5.15.15.5 Upon consideration of the factors of Section 5.15.15.1.3 and the purposes of this Ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

5.15.15.6 The county code administrator shall maintain the records of all appeal actions and report any variances to FEMA upon request.

5.15.15.7 Conditions for variances

5.15.15.7.1 Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section

5.15.15.7.2 Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.

5.15.15.7.3 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

5.15.15.7.4 Variances shall only be issued upon

5.15.15.7.4.1 A showing of good and sufficient cause

5.15.15.7.4.2 A determination that failure to grant the variance would result in exceptional hardship to the applicant

5.15.15.7.4.3 A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 5.15.15 or conflict with existing local laws or ordinances.

5.15.15.7.5 Any applicant to whom a variance is granted shall be given a written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

ARTICLE 6 SPECIAL PROVISIONS

6.1 Additional use provisions, restrictions, and requirements

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

6.2 Off-street parking

6.2.1 Purpose

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

6.2.1.1.1 Increase the safety and capacity of public roads by requiring off-street parking or off-street loading facilities

6.2.1.1.2 Minimize adverse effects of off-street parking and off-street loading facilities on the adjacent properties

- 6.2.1.1.3 Lessen congestion and prevent the overtaxing of public roads by regulating the location and capacity of off-street parking or off-street loading facilities
- 6.2.2 General requirements
  - 6.2.2.1 An off-street automobile parking space shall be at least 9 (nine) feet wide and 20 (twenty) feet long exclusive of access drives or ramps
  - 6.2.2.2 All open off-street parking areas with 4 (four) or more spaces and all loading berths shall be graded to dispose of all surface water run-off but not to be diverted to adjoining properties
- 6.2.3 Special Requirements
  - 6.2.3.1 No building shall be erected or enlarged without meeting the following parking requirements
    - 6.2.3.1.1 Business buildings, professional or public office buildings, studios, banks, medical or dental clinics shall have 3 (three) parking spaces plus 1 (one) additional space for each 400 (four hundred) square feet of floor area over 1,000 (one thousand) square feet
    - 6.2.3.1.2 Hotels and motels shall have 1 (one) parking space for each room plus 1 (one) space for each 200 (two hundred) square feet of eating and drinking establishments or restaurants
    - 6.2.3.1.3 Private club or lodge shall have 1 (one) parking space for each 200 (two hundred) square feet of service area
    - 6.2.3.1.4 Restaurant, eating, and drinking establishments shall have 1 (one) parking space for each 100 (one hundred) square feet of floor area
- 6.3 Signs
  - 6.3.1 Purpose
    - 6.3.1.1 The purposes of regulating signs in the County is to provide for a visually pleasant environment and minimize potentially unsafe conditions for all age groups yet offer opportunities for public and private information and advertising.
  - 6.3.2 General Requirements
    - 6.3.2.1 No sign shall be located, erected, moved, reconstructed, extended, enlarged, or structurally altered without obtaining a permit from the county code administrator
    - 6.3.2.2 Signs shall not be permitted within 300 (three hundred) feet of any road crossing that is measured from the point of intersection of the road center lines. For State and Federal highways, the State and Federal sign requirements shall apply
    - 6.3.2.3 Directory signs shall not be larger than 20 (twenty) square feet in area for permitted uses
    - 6.3.2.4 Directory signs for conditional uses shall not be larger than 40 (forty) square feet
    - 6.3.2.5 Advertising signs shall not be larger than 96 (ninety-six) square feet
- 6.4 Mining of sand and gravel excavation
  - 6.4.1 Purpose
    - 6.4.1.1 The purpose of these provisions is to provide for mining and extraction of sand and gravel for commercial uses, to protect and preserve agricultural land by guiding such operations, and to minimize the traffic, noise, dust, fumes, and vibration impact on the adjoining uses and the road network.
  - 6.4.2 Site approval requirements
    - All sand and gravel mining and excavation sites require approval by the County excepting those related to farming and County road maintenance

- 6.4.3 Data submission requirements
  - 6.4.3.1 A site plan for operation and reclamation of the mined land including maps showing location of the land to be mined and location of roads and points of access to the site and maps showing the existing and proposed contours after the land is mined, and a timetable for operation of the site
  - 6.4.3.2 A guarantee that reclamation of the site be completed within 1 (one) year of closure of the operation of the site
  - 6.4.3.3 Proof of compatibility with the existing landform including the vegetation and the surface and ground water resources
- 6.4.4 Proximity to existing uses
  - 6.4.4.1 The operation of sand and gravel sites shall not be nearer than 500 (five hundred) feet to any residential uses or 300 (three hundred) feet to non-residential uses
- 6.4.5 Permit requirements
  - 6.4.5.1 Any person who operates a sand and gravel operation shall obtain a permit from the County before resuming any mining or excavation of the sand and gravel sites
- 6.5 Sanitary landfills and solid waste sites
  - 6.5.1 Compliance with North Dakota State laws and rules
    - 6.5.1.1 Any person who operates a sanitary landfill or solid waste site shall comply with all North Dakota State laws and administrative rules set forth by the state agencies.
  - 6.5.2 Compliance with County Ordinances and procedures
    - 6.5.2.1 Where a County solid waste ordinance exists, any person who operates a sanitary landfill or solid waste site shall comply with the County Ordinance, rules, and procedures.
  - 6.5.3 County Ordinance and procedures
    - 6.5.3.1 The County hereby adopts solid waste provisions subject to the provisions of NDCC 11-33-20 to assure meeting the purposes of these regulations and the County Comprehensive Plan.
  - 6.5.4 Purpose
    - 6.5.4.1 The purpose of these provisions is to protect public health and ground and surface water, to prevent conflict with present land uses, and to preserve and protect natural resources in the County.
  - 6.5.5 Site approval requirements
    - 6.5.5.1 All solid waste sites require approval by the Zoning Commission
  - 6.5.6 Locational standards
    - 6.5.6.1 No landfill or incinerator shall be located within 1,000 (one thousand) feet of a residential use or within 500 (five hundred) feet of commercial buildings and structures
    - 6.5.6.2 No landfill shall be located in areas where due to high water table, flooding, or soil conditions, its location may affect the quality of surface and ground water
    - 6.5.6.3 No landfill operation shall be located nearer than 200 (two hundred) feet of all road and highway rights-of-way
  - 6.5.7 Data submission requirements
    - 6.5.7.1 Maps of the area showing existing features such as roads, highways, vegetation cover, water courses, drainage way, soils, topography, depth of water table, wetlands, sloughs, existing uses, and buildings and structures including the existing utility lines
    - 6.5.7.2 A plan for operation of the site including a descriptive text explaining consistency or inconsistency with the natural or manmade environment

- 6.5.7.3 Records of data and information submitted to the appropriate agencies of the State of North Dakota and the County as a part of application for State and County permits
- 6.5.7.4 The Zoning Commission may require additional information if it deems it necessary
- 6.5.8 Statement of findings
- 6.5.8.1 Upon public notification and after a public hearing, the Zoning Commission shall determine whether the proposed site meets the requirements of these regulations. The Zoning Commission may place conditions for approval of the site.
- 6.6 Junk or Salvage Yards
  - 6.6.1 Purpose
    - 6.6.1.1 The purpose of these requirements is to preserve and protect the visual and other environmental amenities of the rural areas while allowing the salvage or junk yards as business places.
  - 6.6.2 Site approval requirements
    - 6.6.2.1 All sites for salvage and junk yards require approval by the Zoning Commission.
  - 6.6.3 Locational Standards
    - 6.6.3.1 No salvage or junk yard shall be located within 500 (five hundred) feet of a residential zone district and 200 (two hundred) feet of commercial buildings and structures.
    - 6.6.3.2 No salvage or junk yard shall be located in areas which due to high water table, flooding and soil conditions may affect the quality of surface and ground water.
    - 6.6.3.3 No salvage or junk yard shall be located nearer than 200 (two hundred) feet of all road and highway rights-of-way.
    - 6.6.3.4 All salvage yards and operations shall be screened from the public view unless the salvage material is placed 500 (five hundred) feet away from any highway right-of-way and screened by natural vegetation, building and landform.
- 6.7 Utilities
  - 6.7.1 Purpose
    - 6.7.1.1 The purpose of these provisions is to encourage orderly development of utilities in relationship to the agricultural and nonagricultural uses and to provide for the safety of the County residents.
  - 6.7.2 General Requirements
    - 6.7.2.1 The utilities include but not limited to electric power, electrical transmission lines, electrical towers and substations, natural gas pipelines, the petroleum product pipelines, water and sewer lines, telephone lines and other above ground or underground communication and energy transfer lines and pipelines.
    - 6.7.2.2 All new utility lines and pipelines require a permit from the Zoning Commission.
    - 6.7.2.3 All new utility lines and pipelines are considered conditional uses and shall conform to the provisions of Section 8.2 of these regulations.
    - 6.7.2.4 All pipelines, natural gas, petroleum pipelines and other energy transfer lines shall be placed deep enough in the ground so as not to interfere with or become hazardous to normal farming operations.
    - 6.7.2.5 Excavation for tunneling of any pipelines under roads, farm drains, group drains, and local drains shall be done by the company owning or leasing said pipelines and the cost of said excavation and damages be borne by the said company.
- 6.8 Public and non-profit wildlife management areas

## 6.8.1 Purpose

6.8.1.1 These provisions are designed to address the need for public wildlife management areas and at the same time preserve and protect the interest of the County for its tax lease and investment in construction and maintenance of public roads.

## 6.8.2 General requirements

6.8.2.1 All publicly owned and non-profit agency wildlife management areas established after adoption of these regulations require a conditional use permit subject to the provisions of Section 8.2.

6.8.2.2 If the area is leased for this purpose, the public agency is required to provide the following as a part of the petition for a conditional use permit

6.8.2.2.1 A road maintenance agreement specifying duties and responsibilities of the owner/lessee for access and through roads.

6.8.2.2.2 Duties and responsibilities of the owner/lessee for the control of noxious weeds in the wildlife management area.

6.8.2.3 If the land is purchased by a public agency or a nonprofit entity for such a purpose, the public agency shall arrange for compensating the County for the loss of the property tax.

6.8.2.4 When a County road provides access to the wildlife management area, a road maintenance agreement specifying the duties and responsibilities of the public agency shall be a part of the conditional use permit.

## 6.9 Animal feeding operations

### 6.9.1 Purpose

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

### 6.9.2 General provisions

#### 6.9.2.1 Equivalent animal numbers

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

Livestock Type	Animal Unit (AU) Equivalent	Equivalent Numbers of the Livestock for Four Sizes of Animal Feeding Operations			
		300 AUs	1,000 AUs	2,000 AUs	5,000 AUs
1 horse	2.0	150 head	500 head	1,000 head	2,500 head
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef	1.0	300	1,000	2,000	5,000
1 beef feeder - Finishing	1.0	300	1,000	2,000	5,000
1 beef feeder - Backgrounding	0.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine, > 55 lbs	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 swine, nursery	0.1	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	500,000

- 6.9.3 Environmental protection
- 6.9.3.1 The operator of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The operator of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each operator shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department. An operator is responsible for applying best management practices to ensure compliance with the requirements of this Ordinance and the permit and to prevent pollution of waters of the state. The best management practices used shall be included in the operation and maintenance plan.
- 6.9.4 Enforcement
- 6.9.4.1 In the event of a violation of this Ordinance or a judgement on a civil action by the North Dakota Department of Health, the local unit of government, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the operator corrects or abates the cause(s) of the violation. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the local unit of government, the permit may be revoked.
- 6.9.5 Severability
- If any section, clause, provision, or portion of this ordinance is adjudged-unconstitutional or invalid by a court of law, the remainder of this Ordinance shall not be affected and shall remain in full force.
- 6.9.6 Setback requirements
- 6.9.6.1 Water resource setbacks
- 6.9.6.1.1 The operator of a new animal feeding operation that has more than 1,000 (one thousand) animal units, or is defined as a concentrated animal feeding operation, shall not locate or establish that operation
- 6.9.6.1.1.1 Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the surface-water intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface-water's shoreline.
- 6.9.6.1.1.2 Within 1,200 (one thousand two hundred) feet (365.6 [three hundred sixty five and 6/10ths]meters) of a private ground water well which is used for domestic use only and not owned by the operator or within 1,500 (one thousand five hundred) feet (457.1 [four hundred fifty seven ad 1/10<sup>th</sup>] meters) of a public ground water well that does not have a delineated source water protection area.
- 6.9.6.1.1.3 Within 1,000 (one thousand) feet (304.7 [three hundred four and 7/10ths] meters) of surface water that is not included in a source water protection area.
- 6.9.6.1.1.4 Within the extra-territorial jurisdiction of any incorporated city.
- 6.9.6.1.1.5 A local unit of government may, upon recommendation of the Zoning Commission, increase or decrease a setback distance for a new animal feeding

operation after consideration of the proposed operation’s plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health, environmental or public welfare concerns.

6.9.7 Odor setbacks

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

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

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

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

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

6.9.8 Conditional uses

6.9.8.1 Permit procedures

6.9.8.1.1 Applicability

6.9.8.1.1.1 The operator of a new livestock facility or an existing livestock facility, which meets the definition of an animal feeding operation and that is a conditional (or special) use of land as listed below, shall apply for and obtain a conditional (or special) use permit.

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

6.9.8.1.1.3 An existing animal feeding operation that expands to handle more than 1,000 (one thousand) animal units is a conditional use of land.

- 6.9.8.1.1.4 Whenever the capacity of an animal feeding operation is expanded to handle more than 2,000 (two thousand) or 5,000 (five thousand) animal units, the operator shall apply for a new conditional use permit.
- 6.9.8.2 Procedure
  - 6.9.8.2.1 The local unit of government may practice any or all of the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.
  - 6.9.8.2.2 Application for a conditional use (or special use) permit shall be submitted to the local unit of government for tentative approval. The designated form for making application to the local unit of government shall be the same form that is utilized by the North Dakota Department of Health. The local unit of government shall notify the Department of Health that it has received such an application.
  - 6.9.8.2.3 The local unit of government shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new animal feeding operation. This notification must occur within 21 (twenty one) days of receiving the application. The approval process utilized by the local unit of government may include at least 1 (one) advertised public hearing.
  - 6.9.8.2.4 Following tentative approval or denial of the application by the local unit of government, the applicant shall be notified by letter of the decision, including conditions imposed, if any.
  - 6.9.8.2.5 The applicant shall then forward its application for a conditional use permit, together with the tentative approval by the local government, to the North Dakota Department of Health.
  - 6.9.8.2.6 Following a review by the Department of Health of the operator’s application for a state permit, the Department of Health will notify the local unit of government of its decision.
  - 6.9.8.2.7 The conditional use permit will become final following the granting of a permit by the Department of Health.
  - 6.9.8.2.8 A conditional use permit granted to the operator of a new animal feeding operation shall be put into use within 24 (twenty-four) months, or the permit shall lapse and the operator may re-apply.
- 6.9.8.3 Application requirements
  - 6.9.8.3.1 The application for a conditional use or a special use permit to operate a facility for an animal feeding operation shall include a scaled site plan. If the facility will handle more than 1,000 (one thousand) animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The local unit of government may require any or all the following elements, or require additional elements, in its site plan review process when needed to determine the nature and scope of the animal feeding operation.
    - 6.9.8.3.1.1 Proposed number of animal units
    - 6.9.8.3.1.2 Total acreage of the site of the facility
    - 6.9.8.3.1.3 Existing and proposed roads and access ways within and adjacent to the site of the facility
    - 6.9.8.1.1.4 Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 (one thousand) animal units

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

6.9.8.1.1.6 A copy of the nutrient management plan

6.9.8.1.1.7 Payment of an application fee of \$0.50 per animal unit

6.9.9 Ownership change

6.9.9.1 An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the local unit of government of the sale, or the transfer of the ownership of that operation. If a facility ceases operation for longer than one hour, the facility must reapply for a permit subject to denial or approval.

6.9.10 Operating change

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

6.10 Geophysical exploration requirements

6.10.1 Any persons intending to carry out geophysical (including seismic) exploration activities in Foster County shall obtain a geophysical exploration permit at least 2 (two) weeks prior to commencement of such activities. In addition, a copy of the surety bond filed with the North Dakota Industrial Commission shall be affixed to the permit. Only the Zoning Commission may issue a geophysical exploration permit, it may also at its discretion suspend or revoke said permit, with or without prior notice to the permit holder or other parties.

6.10.2 The fee for geophysical exploration shall be as follows

6.10.2.1 Geophysical exploration permit.....\$50.00

6.10.2.2 Drilling fee

6.10.2.2.1 First 10 holes.....\$25.00 per hole

6.10.2.2.2 Eleven or more holes.....\$10.00 per hole

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

6.10.4 Geophysical exploration activities are further required to be conducted in compliance with all State and Federal laws and regulations relating thereto, including but not limited to those summarized in Appendix I.

6.11 Wind energy facility

6.11.1 Purpose

6.11.1.1 The purpose of the Ordinance is to provide a regulatory framework for the siting, construction and operation of wind energy facilities in the County, subject to reasonable restrictions, which will preserve the safety and well-being of the residents, while fostering equitable and orderly development of wind energy facilities.

- 6.11.2 Regulatory framework
  - 6.11.2.1 Zoning
    - 6.11.2.1.1 Wind energy facilities may be constructed within the County, subject to the restrictions and conditions of this Ordinance.
  - 6.11.2.2 Principal or accessory use
    - 6.11.2.2.1 A different existing use or an existing structure on the same parcel shall not preclude the installation of a wind energy facility or a part of such facility on such parcel. Wind energy facilities that are constructed and installed in accordance with the provisions of this Ordinance shall not be deemed to constitute expansion of a nonconforming use or structure.
  - 6.11.2.3 Applicability
    - The requirements of this Ordinance shall apply to all wind energy facilities with one or more wind turbines rated at 100 (one hundred) kilowatts nameplate capacity or larger constructed after the effective date of this Ordinance. No operation of an existing wind energy facility shall be allowed without full compliance with this Ordinance and its wind energy facility siting permit, and no modification or alteration of an existing wind energy facility shall be allowed without issuance of a new wind energy facility siting permit pursuant to Section 6.11.3.
- 6.11.3 Wind energy facility siting permit
  - 6.11.3.1 Application for permit
    - 6.11.3.1.1 No work, except for wind monitoring, soil testing and other survey work, may commence to construct a wind energy facility until a County wind energy facility siting permit has been issued by the County Commission.
    - 6.11.3.1.2 The prospective Permittee shall submit an application for said permit to the Zoning Commission.
    - 6.11.3.1.3 The application shall include
      - 6.11.3.1.3.1 The signature of an authorized representative of the prospective Permittee
      - 6.11.3.1.3.2 A fee of \$1,000 plus \$250 for each proposed wind turbine up to a total amount of no more than \$10,000
      - 6.11.3.1.3.3 The complete name, legal address and phone number of the prospective Permittee and responsible contact person.
      - 6.11.3.1.3.4 A United States Geological Survey topographical map of the wind energy facility and 500 (five hundred) feet of all adjoining properties along the wind energy facility perimeter that shows all existing features, including property boundaries, structures, improvements, roads, utility lines, public facilities and natural features. The map shall also show location of all proposed improvements for the wind energy facility, including wind turbines, MET towers, electrical lines and roads.
      - 6.11.3.1.3.5 A full description in technical detail for each proposed wind turbine including rotor diameter, model, and manufacturer and distances, measured in feet, from property lines and from existing improvements
      - 6.11.3.1.3.6 Details as to how the prospective Permittee will comply with each item in Section 6.11.4.

- 6.11.3.1.3.7 A schedule for the proposed start and completion of construction of the wind energy facility.
- 6.11.3.1.3.8 Copies or signed summaries of all leases and easements for wind turbines and associated equipment and infrastructure to be sited within the County and any written agreements between the prospective Permittee and affected parties holding associated wind rights on adjoining properties established for the purpose of seeking a setback variance(s) pursuant to Section 6.11.4.2.
- 6.11.3.2 Public Hearings
- 6.11.3.2.1 Upon receipt of the application, the Zoning Commission and any experts it may retain, shall review the application and, in its discretion, may hold a public hearing on the application within no more than 45 (forty-five) days from receipt of the application, providing at least 15 (fifteen) days' notice prior to the hearing in the official newspaper of Foster County and mailing written notice to property owners within 500 (five hundred) feet of the proposed wind energy facility.
- 6.11.3.3 Deliberation and decision
- 6.11.3.3.1 If the Zoning Commission finds that the prospective Permittee will comply with all requirements, it may, within no more than 30 (thirty) days after the hearing, issue a permit.
- 6.11.3.4 Demonstration of compliance
- 6.11.3.4.1 The permit issued pursuant to Section 6.11.3 shall be contingent upon the Permittee's final demonstration of compliance with the requirements of the Permit following completion of construction of the wind energy facility. Within 90 (ninety) days of wind energy facility construction, the Permittee shall submit to the Zoning Commission an updated and final United States Geological Survey topographical map, or survey if available, providing all information pursuant to Section 6.11.3.1.3.4 and demonstrating actual compliance with the requirements and conditions of the permit.
- 6.11.4 General Requirements for wind energy facilities
- 6.11.4.1 Appearance, lighting, facility footprint, agricultural operations, roads, and power lines
- 6.11.4.1.1 Wind turbines shall be painted a non-reflective, non-obtrusive color.
- 6.11.4.1.2 Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
- 6.11.4.1.3 Each wind turbine shall be marked with a visible identification number to assist with provision of emergency services, and the Permittee shall file with local fire departments, law enforcement and the County emergency management coordinator a wind energy facility map identifying wind turbine locations and numbers.
- 6.11.4.1.4 Wind turbines shall not be artificially lighted except to the extent required by the Federal Aviation Authority or other applicable authority.
- 6.11.4.1.5 At wind energy facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the wind energy facility to the natural setting and existing environment.
- 6.11.4.1.6 At wind energy facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the County.
- 6.11.4.1.7 The Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.

- 6.11.4.1.8 The Permittee shall ensure that, following completion of construction of a wind energy facility, County roads will be repaired or restored to a condition at least equal to the condition prior to construction of such facility.
- 6.11.4.1.9 The Permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
- 6.11.4.10 The Permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or the Permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public rights of way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the Permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.
- 6.11.4.2 Setbacks
- 6.11.4.2.1 The following setbacks and separation requirements shall apply to all wind turbines in a wind energy facility.
  - 6.11.4.2.1.1 Occupied structures and facilities
  - 6.11.4.2.1.1.1 Each wind turbine shall be set back from the nearest occupied dwelling, commercial building, or publicly-used structure or facility at a distance not less than 1.25 (one and one-quarter) times its total height or 750 (seven hundred and fifty) feet, whichever is greater. A variance may be granted if an authorized representative or agent of the Permittee and those affected parties on adjoining properties with associated wind rights sign a formal and legally binding agreement expressing all parties’ support for a variance that waives or reduces the setback requirement.
  - 6.11.4.2.1.2 Public roads and above ground communication and electrical lines
  - 6.11.4.2.1.2.1 Each wind turbine shall be set back from the nearest public road or above ground communication and electrical lines at a distance not less than 200 (two hundred) feet, determined at the center of the existing right-of-way.
  - 6.11.4.2.1.3 Wind energy facility perimeter
  - 6.11.4.2.1.3.1 Each wind turbine shall be set back from the wind energy facility perimeter at a distance not less than 5 (five) times the rotor diameter of the wind turbine. A variance may be granted if an authorized representative or agent of the Permittee and those affected parties on adjoining properties with associated wind rights sign a formal and legally binding agreement expressing all parties’ support for a variance that waives or reduces the setback requirement.
  - 6.11.4.2.1.4 Minimum ground clearance
  - 6.11.4.2.1.4.1 The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than 75 (seventy-five) feet.
  - 6.11.4.2.1.5 Restoration of property
  - 6.11.4.2.1.5.1 Within 180 (one hundred and eighty) days of termination or abandonment of leases or easements for a wind energy facility in the County, the Permittee shall

cause, at its expense, removal of all structures to a depth of 4 (four) feet below pre-construction grade.

6.11.4.3 Transfer of wind energy facility siting permit

6.11.4.3.1 In the event of a change in ownership or controlling interest in a wind energy facility and the transfer of the permit, any successors and assigns of the original Permittee shall comply with the requirements and conditions of such permit for the duration of operation of a wind energy facility permitted in the County. Within 30 (thirty) days of such change in ownership or controlling interest of any entity owning a wind energy facility, the parties to the transaction shall notify the Zoning Commission by letter and provide information pursuant to Section 6.10.3. The letter shall be signed by the authorized representatives or agents of both the original Permittee and the entity to which the permit is being transferred.

6.12 Medical marijuana

6.12.1 Purpose and intent

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

6.12.1.2 All persons, entities or organizations wishing to establish a medical marijuana manufacturing center(s) or distribution center(s) within the County must apply for and be granted a conditional use permit for said use.

6.12.1.2.1 The use, cultivation, manufacturing, production, distribution, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by both North Dakota and federal law

6.12.1.2.2 The County Commission does not have the authority to, and nothing in this chapter is intended to authorize, promote, condone or aid the production, distribution or possession of medical marijuana in violation of any applicable law.

6.12.1.2.3 The County Commission intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with the NDCC. The regulations are intended to apply to all medical marijuana operations in the County by any medical marijuana business permitted under State law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit State-licensed medical marijuana manufacturing center(s) or distribution center(s) where they will have a minimal negative impact.

6.12.1.2.4 To the extent that medical marijuana manufacturing center(s) or distribution center(s) are registered and authorized by the State of North Dakota to operate in the County, the Zoning Commission and the County Commission desire to provide for their licensing and regulation to protect the public health, safety and general welfare of the citizens of the County.

6.12.1.2.5 This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the County. There is no property right for an individual or business to have medical marijuana in the County; and medical marijuana is a heavily regulated industry in the State and County, and the County has a zero-tolerance policy for violations of this chapter.

6.12.1.2.5.1.1 The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the County by prescribing the manner in which marijuana businesses can be conducted in the County. Further, the purpose of this

chapter is to

- 6.12.1.2.5.2 Provide for a means of cultivating, manufacturing and distribution of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by State law.
- 6.12.1.2.5.3 Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
- 6.12.1.2.5.4 Impose fees to cover the cost to the County of licensing medical marijuana businesses in an amount sufficient for the County to cover the costs of the licensing program.
- 6.12.1.2.5.5 Create regulations that address the particular needs of the facilities, patients and residents of the County and comply with laws that may be enacted by the state regarding medical marijuana
- 6.12.2 Definitions
  - 6.12.2.1 Unless specified in this Ordinance in Section 2.2, all terms defined in NDCC 19-24-02 or successors to that statute shall have the definitions provided therein.
  - 6.12.2.2 Annual permit fee
    - 6.12.2.2.1 As authorized by the County Commissioners, the Zoning Commission is to establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and/or regulating medical marijuana facilities involved in the cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale or handling of medical marijuana.
  - 6.12.2.3 Conditional use permit requirements
    - 6.12.2.3.1 In addition to the requirements applicable to all conditional use permit applications, an application for a conditional use permit for a medical marijuana manufacturing center(s) or distribution center(s) must include the following:
      - 6.12.2.3.1.1 Proof of insurance (see Section 6.12.3 for insurance requirements).
      - 6.12.2.3.1.2 List of all persons and entities with an ownership interest in the manufacturing center(s) or distribution center(s) including all shareholders that hold any share in stock in the manufacturing center(s) or distribution center(s).
      - 6.12.2.3.1.3 A security plan depicting the location and configuration of security cameras and surveillance equipment.
      - 6.12.2.3.1.4 A complete description of the products and services to be produced or sold by the medical marijuana manufacturing center(s) or distribution center(s).
      - 6.12.2.3.1.5 A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota and the laws and regulations of the County applicable thereto concerning the operation of medical marijuana manufacturing center(s) or distribution center(s). The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the County, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any proceeding relating to such medical marijuana manufacturing center(s) or distribution center(s) by federal authorities, may render the license subject to immediate suspension or revocation.
      - 6.12.2.3.1.6 A notarized statement that the applicant will hold harmless, indemnify, and defend the County against all claims and litigation arising from the issuance of license and/or a conditional use permit including any claims and litigation arising from the

- manufacturing center(s) or distribution center(s), operation or ownership of the medical marijuana manufacturing center(s) or distribution center(s).
- 6.12.2.3.1.7 A notarized acknowledgement that the applicant is seeking a medical marijuana manufacturing center(s) or distribution center(s) conditional use permit and that the applicant understands and acknowledges that the burden of proving qualifications to receive such a conditional use permit is at all times on the applicant; that the granting of a conditional use permit for a medical marijuana manufacturing center(s) or distribution center(s) is at the discretion of the County Commission; and that the applicant agrees to abide by the decision of the County Commission.
- 6.12.2.3.1.8 The Zoning Commission may require additional plans, documents or other information prior to deeming the application complete.
- 6.12.2.3.1.9 A medical marijuana manufacturing center(s) or distribution center(s)' conditional use permit shall be reviewed annually by the County Commission for renewal.
- 6.12.2.3.1.10 If the State of North Dakota or its electorate repeals the Compassionate Care Act or the Act is otherwise declared void, all medical marijuana manufacturing center(s) or distribution center(s)' conditional use permits issued by the County Commission will be deemed to have immediately expired.
- 6.12.2.3.11 Once a conditional use permit is obtained for a medical marijuana manufacturing center(s) or distribution center(s), any change in operation of the facility or in ownership shall require prior approval of the County Commission.
- 6.12.2.3.12 Any building modifications or alterations must be approved by the Zoning Commission.
- 6.12.3 Medical marijuana insurance and bond requirements
- 6.12.3.1 The minimum amount of third-person insurance coverage for a medical marijuana manufacturing center(s) or distribution center(s) shall be \$1,000,000.00 (one million dollars) per occurrence, \$2,000,000.00 (two million dollars) general aggregate for bodily injury and property damage arising out of licensed activities and \$1,000,000.00 (one million dollars) products and completed operations aggregate, commercial automobile coverage in a minimum of \$1,000,000.00 (one million dollars ) and excess liability in a minimum of \$3,000,000.00 (three million dollars).
- 6.12.3.2 The County shall be named as an additional insured on all general liability, umbrella, and excess insurance policies required under this section. All insurance policies required under this section shall be primary over any other valid and collectible insurance.
- 6.12.4 Medical marijuana design standards
- 6.12.4.1 Each medical marijuana manufacturing center(s) or distribution center(s) must be located in a separate, permanent, stand-alone structure and have a minimum 6 (six) foot high perimeter fence encompassing the parcel boundary.
- 6.12.4.2 Each medical marijuana manufacturing center(s) or distribution center(s) must be located a minimum of 2,640 (two thousand sixty four) feet from a public or private preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, youth center, or place of worship. The distance shall be measured from the exterior fence of the medical marijuana manufacturing center(s) or distribution center(s) to the property line of the protected use.
- 6.12.4.3 Each medical marijuana manufacturing center(s) or distribution center(s) must be located a minimum of 500 (five hundred) feet from any residential zone, or

any residential dwelling, trailer, recreational vehicle or recreational zone. The distance shall be measured from the exterior fence of the medical marijuana manufacturing center(s) or distribution center(s) to the property line or dwelling of the protected use.

- 6.12.4.4 No medical marijuana dispensary shall have operating hours earlier than 8:00 AM or later than 7:00 PM.
- 6.12.4.5 The entire perimeter of a medical marijuana manufacturing center(s) or distribution center(s) structure must be well lit to prevent concealment in shadows around the structure for a minimum of 15 (fifteen) feet around each structure that is part of the medical marijuana manufacturing center(s) or distribution center(s). Further, everything within the fenced area shall have 24 (twenty four) hour surveillance cameras depicting the entire exterior of the manufacturing center(s) or distribution center(s) as well as cameras at the property entrance depicting vehicles and license plates of each vehicle entering the parking lot.
- 6.12.4.6 Each medical marijuana distribution center shall have at least 1 (one) parking space per 250 (two hundred and fifty) square feet of structure.
- 6.12.4.7 Each medical marijuana cultivation and/or manufacturing facility shall have at least 1 (one) parking space for every 1000 (one thousand) square feet of plant cultivation area and 1 (one) parking space for each 250 (two hundred and fifty) square feet of all other areas of the structure.
- 6.12.4.8 With the exception of the specific medical marijuana manufacturing center(s) or distribution center(s) approved as part of a conditional use permit, no other activity may occur within the facility or land parcel.
- 6.12.4.9 No outdoor storage on-site shall be permitted.
- 6.12.4.10 No drive-through, drive-up, or walk-up facilities shall be permitted.
- 6.12.4.11 Each medical marijuana manufacturing center(s) or distribution center(s) must ensure there is no emission of dust, fumes, vapors, or odors into the environment.
- 6.12.4.12 Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals, or window signage of any kind shall be strictly prohibited.
- 6.12.4.13 Each permittee shall obtain an inspection of the property from the Zoning Commission department or fire marshal prior to the annual renewal of the conditional use permit.
- 6.12.4.14 All applicable state standards and requirements shall apply in the design and operations of any manufacturing center(s) or distribution center(s).
- 6.12.5 Serviceability, exclusions, and exceptions:
- 6.12.5.1 The provisions of this chapter do not waive or modify any other provision of this Ordinance with which medical marijuana manufacturing center(s) or distribution center(s) is required to comply. Nothing in this section is intended to authorize, legalize or permit the manufacturing center(s) or distribution center(s), operation or maintenance of any facility, building or use which violates any County Ordinance or statute of the State of North Dakota regarding public nuisances, medical marijuana, or any federal regulations or statutes relating to the use of controlled substances.
- 6.12.5.2 This chapter shall be null and void if any determination is made, after the adoption of the Ordinance enacting this chapter, by any court of competent jurisdiction, that NDCC 19-24, is invalid, or shall be null and void to the extent any portion of such section is held invalid.

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

## ARTICLE 7 ADMINISTRATION AND ENFORCEMENT

### 7.1 Organization

- 7.1.1 Administration of this ordinance including floodplain enforcement provisions is hereby vested in 3 (three) offices of Foster County:

7.1.1.1 County code administrator

7.1.1.2 Zoning Commission

7.1.1.3 County Commission

### 7.2 Code administrator

- 7.2.1 The code administrator is a duly appointed official authorized by the County Commission and is responsible to assist and make recommendations to the Zoning Commission, to the County Commission and to the Township Supervisors on any matter related to planning for and development of the County

### 7.2.2 Duties and Responsibilities

- 7.2.2.1 The code administrator shall be specifically responsible for the administrative responsibilities of the Zoning Commission and the County Commission.

7.2.2.1.1 Issue, upon approval by Zoning Commission, all zoning certificates and maintain records thereof.

7.2.2.1.2 Issue, upon approval by Zoning Commission, all building and repair permits

7.2.2.1.3 ~~Issue~~ May issue, upon approval by Zoning Commission, all certificates of occupancy for all buildings including mobile homes and manufactured homes.

7.2.2.1.4 Maintain zoning related records and zoning ~~district~~ map including records of all amendments, conditional uses and variances.

7.2.2.1.5 Receive, file and forward to the Zoning Commission all applications for zoning amendments and conditional uses.

7.2.2.1.6 Receive, file and forward to the County Commission all appeals for variances and special use permits.

7.2.2.1.7 Forward all recommendations of the Zoning Commission to the Township Supervisors for final action.

7.2.2.1.8 The Foster County Auditor shall serve as secretary for the Zoning Commission and the County Commission.

### 7.3 The Zoning Commission

- 7.3.1 The Zoning Commission, a citizen body, appointed by the County Commission, is hereby vested with authority and jurisdiction to administer the Ordinance, Subdivision Regulations, Building Code and Housing Code. Upon appeals or other duties of the County Commission, the Zoning Commission shall assist and make recommendations to the County Commission and to the County Commission on any matter related to planning for and development of the township.

### 7.3.2 Membership

7.3.2.1 NDCC 11-33-04 County Zoning states that for counties with 5 (five)-member boards of County Commissioners, the Zoning Commission shall consist of no more than 9 (nine) members. The membership is appointed yearly by the County Commission at the December meeting. At least 1 (one) member (at large member) must be appointed from each district; at least 2 (two) (at large members) must be from the governing body of the city that is the County seat; and at most, 2 (two) members may be from the County Commission (ex officio members). Ex officio members’ terms of office on the Zoning Commission shall coincide with their terms of office. Three (3) at large members shall be appointed for a 2 (two)-year term and 2 (two) at large members shall be appointed for a 4 (four)-year term. All subsequent appointments shall be for a 4 (four)-year term. Appointments to fill vacancies shall be for the unexpired portion of the term.

7.3.3 Duties and responsibilities

- 7.3.3.1 The Zoning Commission shall interpret and enforce this Ordinance including the issuance of building permits, upon approval by County Commission.
- 7.3.3.2 Recommend for approval all zoning certificates and maintain records thereof.
- 7.3.3.3 Recommend for approval all building and repair permits
- 7.3.3.4 May recommend for approval all certificates of occupancy for all buildings including mobile homes and manufactured homes.
- 7.3.3.5 May inspect all buildings, structures and use of land to determine compliance with these and other applicable regulations of the County.
- 7.3.3.6 Notify, in writing, the property owner or user upon finding violation of this Ordinance and cite the nature of violation clearly and require compliance within a reasonable time. If the notification is not replied to or steps are not taken to correct the violations within 30 (thirty) days, the Zoning Commission shall make a report of the findings to the County Attorney and County Commission.
- 7.3.3.7 Maintain zoning related records and zoning district map including records of all amendments, conditional uses and variances.
- 7.3.3.8 To hear and act on all applications for amendments to zones and make recommendations to the County Commission for approval, denial or approval with modification.
- 7.3.3.9 To hear and act on all applications for conditional uses in the manner prescribed in this Ordinance and make recommendations to the County Commissioner for approval or denial.
- 7.3.3.10 To hear and act on all other matters referred to by the County Commission
- 7.3.3.11 To study, examine and make recommendations to the County Commission regarding comprehensive planning for the future development of Foster County.

7.3.4 Officers

7.3.4.1 The Zoning Commission shall elect its own officers and may establish rules and procedures for all cases before it.

7.3.4.2 Notice of hearings

7.3.4.2.1 The Zoning Commission shall fix a reasonable date for hearing of applications for zone, conditional use permits and other matters before it, give public notice thereof in the official newspaper of the County at least one (1) week prior to the hearing. The notices shall state the purpose of the hearing and that the applications and supporting documents for zone amendments and conditional use permits are available for public inspection in the office of and/or designated place of businesses of the code

administrator during normal working hours.

### 7.3.4.3

#### Meetings

#### 7.3.4.3.1

Meetings of the Zoning Commission shall be held at the call of its Chairperson and at such other times as the Zoning Commission may determine. All meetings shall be open to the public and any person may testify for or against a petition.

### 7.3.4.4

#### Interpretation of regulations

#### 7.3.4.4.1

All questions of interpretation of this Ordinance shall be first presented to the Code Administrator, who shall forward the question to the Zoning Commission and that such questions shall be presented to the County Commission only on appeal from the decision of the Zoning Commission.

### 7.3.4.5

#### Building permit application

#### 7.3.4.5.1

Any person or persons intending to construct or reconstruct or relocate a building or structure or make alteration shall, before proceeding with the work, obtain a permit from the Zoning Commission. All mobile homes and manufactured homes are required to comply with the Manufactured Housing and Building Code and are required to obtain a permit from the Zoning Commission for placement and relocation thereof.

#### 7.3.4.5.2

Each application for a building permit shall be accompanied by a legal description and a map showing the actual dimension of the lot to be built upon, the size, shape and location of the building for observing the yard requirements of this Ordinance.

#### 7.3.4.5.3

The application shall specify the type of the building, structure, material of which it is composed, the part or portion of the lot to be occupied by the principal building and accessory buildings and the probable building cost, together with such additional plans and specifications as may be required by the code administrator.

#### 7.3.4.5.4

The edition of the Uniform Building code as published by the International Conference of Building Officials and adopted by the County Commission, together with any amendments made hereafter are incorporated and made a part of this Ordinance. In the event there is a conflict between the Uniform Building Code and the regulations, this Ordinance shall supersede.

### 7.3.5

#### Building permit

#### 7.3.5.1

Upon approval by the County Commission, the Zoning Commission shall issue a building permit if the proposed building or structure conforms to zoning and building provision of this Ordinance.

#### 7.3.5.2

#### Building permit fees

#### 7.3.5.2.1

The code administrator shall charge and collect a fee according to the resolution of fees and schedules established by the County Commission.

### 7.3.5.3

#### Certificate of occupancy

#### 7.3.5.3.1

The Zoning Commission may issue a certificate of occupancy upon inspection of the completed building, including placement of mobile homes and manufactured homes and assurance that all provisions and conditions set forth by the authority of this Ordinance are met. In the event the Zoning Commission finds violations and deviations from the terms and condition of this Ordinance, they shall make a report and recommendation for action to the County Commission.

- 7.3.5.4 Conditional use permit
  - 7.3.5.4.1 The code administrator shall issue a conditional use permit upon approval of the application by the County Commission in which all conditions shall be stipulated subject to the provisions of Section 8.2 of this Ordinance.
- 7.3.5.5 Variances
  - 7.3.5.5.1 The code administrator shall issue the appropriate permit if the County Commission so approves. The terms of the variance shall be stipulated subject to the provisions of Section 8.3 of this Ordinance.
- 7.4 County Commission
  - 7.4.1 The County Commission is vested with authority and jurisdiction regarding the interpretation and restrictions of this Ordinance. The County Commission shall review and act upon all applications.
  - 7.4.2 Duties and responsibilities
    - 7.4.2.1 To hear and decide all matters referred by the Zoning Commission
    - 7.4.2.2 To hear other matters related to the interpretation and administration of this Ordinance
  - 7.4.3 Notice of hearings
    - 7.4.3.1 Hearings will be held during regularly scheduled County Commission meetings with meeting notices following State open meeting laws.
  - 7.4.4 Meetings
    - 7.4.4.1 All meetings of the County Commission are open to the public and anyone may testify for or against the application.
- 7.5 Violations and penalties
  - 7.5.1 Violations of this Ordinance may be reported to the code administrator. Complaints referring to such violations shall be filed in written form and shall state fully the causes and basis thereof. The code administrator shall record properly said complaint, notify the Zoning Commission, and make an inspection of the affected site.
  - 7.5.2 Remedies for violations shall be in accordance with NDCC 11-33-17 and 11-33-21 as follows
    - 7.5.2.1 NDCC 11-33-17. Violation of zoning regulations and restrictions - remedies. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or if any building, structure or land is used in violation of this chapter, the proper County authorities or any affected citizen or property owner, in addition to other remedies may institute any appropriate action or proceedings.
      - 7.5.2.1.1 To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.
      - 7.5.2.1.2 To restrain, correct or abate such violations.
      - 7.5.2.1.3 To prevent the occupancy of the building, structure or land.
      - 7.5.2.1.4 To prevent any illegal act, conduct, business or use in or about such premises.
    - 7.5.2.2 NDCC 11-33-21. General penalties for violation of zoning regulation and restriction. A violation of any provision of this chapter or the regulations and restrictions made there under shall constitute the maintenance of a public nuisance and shall be a Class B misdemeanor.
    - 7.5.2.3 Each day that a violation of this Ordinance exists may be considered as a separate offense.
    - 7.5.2.4 In relation to feed lot zoning, the County Commission may impose a temporary suspension of a permit and/or civil fees in the form of monetary sanctions.
- 7.6 Certificate of compliance
  - 7.6.1 Every application for building construction shall be reviewed for zoning compliance. Upon successful review, authorization to begin construction will be given.

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

### 8.1 Zoning ~~district~~ amendments

#### 8.1.1 Public hearing notice

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

8.1.1.1.1 The time and place of hearing

8.1.1.1.2 A description of the property by street address for platted lands and a clearly identifiable location for the unplatted lands

8.1.1.1.3 The proposed use and requested zoning district change

8.1.1.1.4 The time and place for public inspection of the documents in the county offices before the hearing.

#### 8.1.2 Public hearing

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

#### 8.1.3 Data submission requirements

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

8.1.3.1.1 Legal description of the area proposed to be rezoned, the name and addresses of all owners of property lying within such area.

8.1.3.1.2 A map showing the existing land uses and zoning district classification of the area.

8.1.3.1.3 A site plan showing buildings and uses in the zoning district proposed to be changed and the requested zoning district classification.

8.1.3.1.4 A fee shall be paid in accordance with the schedule established by the County Commission.

#### 8.1.4 Deliberation and decision

8.1.4.1 Following the hearing, the Zoning Commission, upon due deliberation, shall make a recommendation on the proposed amendment within 30 (thirty) days after the hearing. In making its finding, the Zoning Commission shall ascertain that the proposal for zone amendment is consistent with the County Land Use Plan and meets all requirements of this Ordinance and other regulations of the county. The Zoning Commission will forward its recommendation to the County Commission, who will act on the request during its next scheduled meeting.

### 8.2 Conditional use permits

#### 8.2.1 Purpose

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

- 8.2.2 Public hearing notice
- 8.2.2.1 Shall be the same as the provisions set forth for public hearing for zone amendments in Section 8.1.1.
- 8.2.3 Public hearing
- Shall be the same as the provisions set forth for public hearing for zone amendments in Section 8.1.2.
- 8.2.4 Data submission requirements
- Shall be the same as the provisions set forth for data submission requirements for zone amendments in Section 8.1.3.
- 8.2.5 Deliberation and decision
- Shall be the same as the provisions set forth for data submission requirements for zone amendments in Section 8.1.4.
- 8.2.6 Standards
- 8.2.6.1 No application for conditional use shall be recommended for approval unless the Zoning Commission finds that all the following conditions are present
- 8.2.6.1.1 That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.
- 8.2.6.1.2 That the uses, value of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
- 8.2.6.1.3 That the establishment of the conditional use will not impede the development and improvement of the surrounding property for uses permitted in the zone.
- 8.2.6.1.4 That adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided.
- 8.2.6.1.5 That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public street.
- 8.2.6.1.6 That the conditional use shall substantially conform to all applicable regulations of the zone in which it is located.
- 8.2.7 Conditions and guarantees
- 8.2.7.1 Prior to the decision on any conditional use, the County Commission may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in Section 8.2.6. In all cases in which conditional uses are granted, the County Commission shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.
- 8.2.7.2 No alteration of a conditional use shall be permitted unless approved by the County Commission. Where the County Commission has approved or conditionally approved an application for a conditional use, such approval shall become null and void within twelve (12) months of the date of the County Commission action unless the use is commenced, construction is underway or the current owner possesses a valid building permit.
- 8.3 Variances
- 8.3.1 Variance from the terms of this Ordinance shall be granted provided that the applicant establishes proof

of practical difficulty or undue hardship.

- 8.3.2 Public hearing notice
  - 8.3.2.1 The Zoning Commission shall hold a public hearing, a notice of which shall be published at least 1 (one) week prior to the hearing in the official newspaper of the County. The notice of hearing shall include
    - 8.3.2.1.1 The time and place of hearing
    - 8.3.2.1.2 Description of the property by street address for platted lands and clearly identifiable location for unplatted lands
    - 8.3.2.1.3 The proposed use and requested zone change
    - 8.3.2.1.4 Time and place for public inspection of the documents in the County offices before the hearing
- 8.3.3 Public hearing
  - 8.3.3.1 The Zoning Commission at the hearing shall listen to all persons who may speak in support of or in opposition to the proposal. Upon the completion of its review, the Zoning Commission will recommend to the County Commission to approve, deny or modify the proposal. The Zoning Commission may require additional information before it completes its findings and decision.
- 8.3.4 Data submission requirements
  - 8.3.4.1 Petitions for variances or special use permits shall be submitted with the following information
    - 8.3.4.1.1 Legal description of the area proposed to be rezoned, the name and addresses of all owners of property lying within such area.
    - 8.3.4.1.2 A map showing the existing land uses and zone classification of the area.
    - 8.3.4.1.3 A site plan showing the existing buildings and uses and the requested changes.
    - 8.3.4.1.4 A fee shall be paid in accordance with the schedule established by the County Commission.
- 8.3.5 Deliberation and decision
  - 8.3.5.1 In making its finding, the Zoning Commission shall ascertain that the request for variance is consistent with the County Land Use Plan and meets all requirements of this Ordinance and other regulations of the County.
- 8.3.6 Standards
  - 8.3.6.1 No application for variance or special use permit shall be approved unless the Zoning Commission finds that all of the following are present.
    - 8.3.6.1.1 That special conditions and circumstances exist that are peculiar to the premises and that are not applicable to other premises in the same zone.
    - 8.3.6.1.2 That literal interpretation of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zone.
    - 8.3.6.1.3 That the special conditions and circumstances have not resulted from actions of the applicant.
    - 8.3.6.1.4 That granting the variance requested will not confer upon the applicant any special privileges that are denied by this Ordinance to other premises.

- 8.3.7 Justification
- 8.3.7.1 That the reasons set forth in the application justify the granting of the variance.
- 8.3.7.2 The variance is the minimum, which would make possible a reasonable use of the premises.
- 8.3.7.3 That the granting of variance will be in harmony with the general purpose of this Ordinance and will not be injurious to the surrounding premises, neighborhood or the County and will not be contrary to the land use plan and the purposes of this Ordinance.
- 8.3.7.4 That there is practical difficulty or unnecessary hardship in use of the premises if the strict applications of the regulations were to be carried out.
- 8.3.8 Authorized variances
- 8.3.8.1 A variance may be granted for any yard or setback less than the yard or setback as required by this Ordinance.
- 8.3.8.1.1 To reduce not by more than 20 (twenty) percent the applicable requirements for lot area and lot width
- 8.3.8.1.2 To reduce the applicable off-street parking or loading facilities by no more than 50 (fifty) percent of the requirements
- 8.3.8.1.3 To permit the use of lot of record if it is smaller than the minimum size required by this Ordinance
- 8.3.8.1.4 To permit roof alterations to provide additional windows, headroom or area for occupancy of third level
- 8.3.8.1.5 To permit conversion of an existing building to a permitted residential use provided that it shall not conflict with the above standards cited in Section 8.3.6 and Section 8.3.7.
- 8.4 Amendments
- 8.4.1 Initiation of amendment
- 8.4.1.1 Amendments may be proposed by the Zoning Commission or any person, firm, corporation or organization which has a freehold interest or contractual interest in a building, structure, lot, or parcel of land.
- 8.4.2 Application for amendment
- 8.4.2.1 Application for an amendment shall be filed with the code administrator who shall forward all such applications to the Zoning Commission.
- 8.4.3 Notice of public hearing
- 8.4.3.1 Notice of hearing shall include time, place and purpose of such hearing and shall be published at least one week before the hearing in the official newspaper of the County.
- 8.4.4 Public hearing
- 8.4.4.1 At the public hearing before the Zoning Commission, the proposed amendment is discussed. Any person may express opposition to or support for the amendment at such hearing. The Zoning Commission will forward its recommendation onto the County Commission for final action.
- 8.4.5 Effect of denial of application
- 8.4.5.1 An application for an amendment to the zone map or conditional use permit that has been denied by the County Commission shall not be made for a period of 1 (one) year from the date of such denials, unless the new application is substantially different from the denied application.

9 RESOLUTION

9.1 Whereas, the Zoning Commission has approved this amended Zoning Ordinance, and recommends it adopted by the County Commission.

9.2 Now and therefore, be it resolved that the County Commission hereby adopts the Foster County Zoning Ordinance.

Karen Wan 2/25/25 Berlynn Hagedorn 2/25/25  
County Clerk Date Chairman Date

9.3 Permit fee schedule

9.3.1 The building permit fee schedule is not part of this document. It is available on the Foster County webpage ([www.fostercounty.gov](http://www.fostercounty.gov)) or from the Foster County Planning and Zoning Commission code administrator in the Foster County Courthouse.