

TITLE IV  
LAND USE ORDINANCE

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## **17.1 INTRODUCTION**

### **17.1.1 Title**

This chapter shall be known as the “Horace Land Use Ordinance” for the City of Horace, North Dakota.

### **17.1.2 Authority**

These regulations are adopted under the authority granted by Chapters 40-47, 40-48 and 40-50 of the North Dakota Century Code.

### **17.1.3 Purpose**

These regulations are adopted to promote the health, safety, morals, and general welfare of the people of the City of Horace.

### **17.1.4 Intent**

These regulations are adopted to implement the plans and policies of the City of Horace, regulate the use of land resources and minimize the cost of public services.

- (1) To promote orderly development of Horace and to prevent conflict among land uses and structures.
- (2) To secure safety from fire, panic, noxious fumes, and other dangers.
- (3) To facilitate development of water, sewerage, transportation and other customary municipal services cost effectively.
- (4) To regulate the use and division of land within the city and its extraterritorial jurisdiction, as authorized by North Dakota laws.
- (5) To regulate the proper arrangement of streets, alleys and roads for convenient and efficient access to the adjoining properties.
- (6) To protect the value of land and buildings and maintain harmony and consistency among land uses.
- (7) To protect the existing properties against nuisances that interfere with the use and enjoyment of property, endanger personal health or safety or is offensive to the senses, as provided under the City of Horace ordinances.

### **17.1.5 Jurisdiction**

These regulations shall apply to all lands within the corporate limits of the City of Horace, North Dakota and its extra territorial planning area authorized by the North Dakota Laws.

### **17.1.6 Interpretation**

These regulations shall be held to be the minimum requirements unless specifically noted. Whenever, these requirements are at variance with other requirements, rules, regulations, deed restrictions or covenants, adoption by the City of Horace, the most restrictive shall govern, unless otherwise specifically stated. The City Council, the governing body of the City of Horace, may, from time to time, amend, supplement or repeal any part of this ordinance after a public hearing(s).

### **17.1.7 Severability**

If any part of these regulations is found invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected.

### **17.1.8 Exceptions**

These regulations shall not apply to the land and buildings for general agricultural uses, as herein defined.

### **17.1.9 Repeal**

The existing Land Use Ordinance is hereby repealed. Other ordinances or parts of ordinances of the City of Horace inconsistent or in conflict with these regulations, to the extent of inconsistency or conflict, are hereby repealed.

### **17.1.10 Effective Date**

This ordinance shall be effective upon adoption by the City Council of the City of Horace, as provided by the North Dakota Century Code.

## **17.2 RULES AND DEFINITIONS**

### **17.2.1 Compliance**

No structure, land and building shall be hereafter used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a zoning permit and shall be in compliance with this ordinance.

### **17.2.2 Word Use**

In the construction of this ordinance, the following words, rules, definitions shall be observed and applied except when the context clearly indicates otherwise.

- (1) Words used in one tense (past, present or future) shall include other tenses.
- (2) Words used in singular shall include the plural and the plural the singular.
- (3) Shall is a mandatory word and not discretionary.

- (4) May is a permissive word.
- (5) The word “lot” shall also mean “parcel,” “piece,” and “plat.”
- (6) The word “building” includes all structures and structure includes buildings.

**17.2.3 Definitions** (Source: Ord. 2015-12, Sec. 1; Ord. 2016-27, Sec. 1)

- (1) **“Access”** A way of approaching or existing a property. Access also includes ingress, the right to enter and egress, the right to leave.
- (2) **“Accessory Building and Uses”** A subordinate building, structure or portion of the principal structure the use of which is clearly incidental to and serves exclusively the principal building or principal use and shall be located on the same zoning lot. A detached garage is an accessory building.
- (3) **“Addition”** Any construction which increases the size of a building. It also means a plat of subdivision in numerical sequence.
- (4) **“Adult Entertainment Center”** An adult bookstore, adult cinema, adult entertainment facility, or any combination thereof. Source Ord. 2020-04
- (5) **“Agriculture”** The process of producing food and fiber customary to the family farming operation with a minimum of 40 acres in area, excluding commercial dairies, feed lots, processing and manufacturing of the farm-based products.
- (6) **“Alley”** A minor street providing access to the back or side of two or more parcels or lots.
- (7) **“Animal Hospital or Kennel”** A building or premises set up for treatment and boarding of domestic animals including veterinary facilities.
- (8) **“Apartment”** A suite or room in a multiple dwelling building designed to be occupied by a family, a person or group of persons.
- (9) **“Arterial, Major”** Roadways designed to accommodate long trips and connect various neighborhoods. Examples of arterial roadways are Cass County Highway 17, Cass County Highways 6 and 15, 64<sup>th</sup> Ave South, 76<sup>th</sup> Ave. South or other roadways placed at the section lines in north-south or east-west directions.
- (10) **“Arterial, Minor”** Roadways designed to accommodate intermediate trips and distribute traffic to collector/connector streets to serve individual properties including, houses, apartments and businesses. Minor arterials, where possible, will be located at one half (1/2) mile intervals between major arterials in a north-south or east-west direction.
- (11) **“Automobile Salvage Yard”** Any place where two or more motor vehicles, not in running condition, or bearing current North Dakota License Plats are stored in the open or land for the purpose of selling parts or just storage.

- (12) **“Basement”** A story, partly underground with more than one-half of its height below grade.
- (13) **“Base Setback Area”** The land lying between the edge of the existing street right-of-way and the base line of a building.
- (14) **“Bed and Breakfast Establishments”** A private residence used in whole or in part for the overnight lodging of guests for a fee.
- (15) **“Billboard, or Sign”** A sign which advertises products, services, announcements offered on or off the premises.
- (16) **“Building”** Any structure designed or intended for shelter, housing, business, office, and accommodation of persons, animals, chattels or property.
- (17) **“Building Area”** That portion of the zoning lot that can be occupied by the principal and accessory uses.
- (18) **“Building Height”** Vertical distance from the grade to the highest point of the roof.
- (19) **“Building Line”** A line establishing the minimum distance that structures may be placed from the lot lines or street right-of-way. For the purposes of this ordinance the building line is the same as setback line. Roof overhangs, basement window wells and steps leading to a five foot or less wide landing area by the front door, back door or side are permitted within the setback areas.
- (20) **“Building, Principal”** A building, the main use of which is single-family and multi-family dwellings, offices, shops, stores and other uses permitted in the appropriate zoning district.
- (21) **“Car Wash”** Any facility used for washing of motorized vehicles in an enclosed structure.
- (22) **“Channel”** A natural or man-made water course for conducting the flow of water.
- (23) **“Channeling”** The act of interconnecting two permanent or intermittent bodies of water including ditches and drains.
- (24) **“City Council”** The governing body of the City of Horace, North Dakota.
- (25) **“Club or Lodge”** A structure designed for a group of persons which is a nonprofit association of persons for the purpose of gatherings and entertaining members including consumption of food and beverages.
- (26) **“Collector Street”** Roadways which are designed to collect traffic from local streets and distributing it to and from major or minor arterial streets or highways.



(27) **“Compassion Center”** A medical marijuana manufacturing facility or dispensary. (Source: Ord. 2018-01)

(28) **“Comprehensive Plan” or “Horace 2045 Comprehensive and Transportation Plan”** A guide for management of the land and water resources for growth and development of the City of Horace. (Source: Ord. 2020-11)

(29) **“Conditional Use”** A use not automatically permitted in a zoning district and which requires review and approval of the City Council after a public hearing. It is a use which would not be appropriate in a particular zoning district, but which if controlled as to the number, location, or relation to the surrounding uses and the area, may be consistent with the purpose and intent of these regulations. A conditional use is permitted in a district specifically allowing it, subject to the approval of the City Council and only when the council finds that such use meets all of the requirements applicable to it as specified in the city ordinances including these regulations. When restrictions in the ordinance restrict the distance from a property to be granted a conditional use permit and another zoning district, the distance is measured from the nearest lot line to the nearest lot line. Requests for zoning changes will not be granted if a conditional use permit must be granted with the zoning change. (Source: Ord. 2018-02)

(30) **“Condominium”** The ownership of a single-family unit in a multiunit structure or building with more than one such unit where the land or other common areas and facilities are owned jointly.

(31) **“Conforming Building or Structure”** A building or structure which complies with all requirements of this ordinance and other regulations adopted by the City of Horace.

(32) **“Connector Street”** Roadways which are designed to connect local streets to collector streets and arterial streets.

(33) **“Conversion”** Any modification or change to an existing structure whether residential, commercial or industrial.

(34) **“Daycare Facility or Day Care Facility”** Any facility including single-family houses where children or adults, excluding members of the family, are watched or cared for. This definition shall not include hospitals, nursing homes, Sunday schools or convalescent homes or fraternal homes.

(35) **“Density”** The quotient of the total number of dwelling units divided by the site area.

(36) **“Developer”** The owner, or agent of land owner involved in land subdivision or development for a specific or aggregate of use(s).

(37) **“Development”** Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings, structures or accessory structures, the construction of additions or alternations to buildings or structures, ditching, lagooning, dredging, filling, grading, paving, excavation and drilling operations.

- (38) **“Development Plan”** A document including maps and data for physical development of an area as may be required by this ordinance.
- (39) **“Dispensary”** An entity registered by the North Dakota State Department of Health as a compassion center authorized to dispense usable marijuana to a registered qualifying patient and a registered designated caregiver. (Source: Ord.2018-01)
- (40) **“District Zoning”** A section or sections of Horace for which regulations governing the use of land, building, building heights, size of yards, lot area, lot width and the uses of land and buildings are set forth.
- (41) **“Ditching”** The process of excavation for the purpose of surface water drainage and removal.
- (42) **“Drain”** The surface ditch designed and maintained by a unit of government in Cass County, North Dakota.
- (43) **“Dwelling”** Any building or portion thereof, used exclusively for human habitation including single-family and multiple family units but not including hotels or motels, or vehicles designed for camping and other temporary occupancy such as recreational purposes.
- (44) **“Dwelling, Multiple Family”** A single building or portion thereof, containing two (2) or more dwelling units which share common entry and hallway(s).
- (45) **“Dwelling, Single-family Attached”** A building containing two or more dwelling units with separate entrances and identifiable yard areas.
- (46) **“Dwelling, Single-family Detached”** A separate building containing one dwelling unit only.
- (47) **“Easement”** A right to the use of land for a specific purpose, such as placing utility line, drainage way, or access to another property, such right being held by someone other than the owner who holds the title to the land.
- (48) **“Encroachment”** Any fill, building, structure or use including accessory uses projecting into the required yard areas of public or private property.
- (49) **“Essential Services”** Underground or overhead gas, electrical, steam, water, cable television, telephone, sanitary or storm sewer distribution systems, including poles, wires, pipes, conduits, cables and related accessory equipment, required for protection of the public health, safety and general welfare.
- (50) **“Establishment”** A place of business for processing, production, assembly, sales, service of goods and materials.

- (51) **“Extraterritorial Area”** Areas surrounding the City of Horace within a distance of the city corporate limits in all directions, where the city has zoning and platting jurisdiction under the provisions of the North Dakota Century Code.
- (52) **“Family”** An individual or a collective body of persons living together in a domestic relationship based on birth, marriage, guardianship or other domestic bond as distinguished from a group in a boarding house, lodging house, club or a hotel.
- (53) **“Family Child Care Home”** An occupied private residence in which early childhood services are provided under a valid state license for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-age children during the two hours immediately before and after the school day and all day, except Saturday and Sunday, when school is not in session during the official school year.
- (54) **“Feed lot”** An enclosed parcel of land which contains a commercial operation for feeding or raising of fifty (50) or more animals which is operated as a separate activity and not incidental to farming of the premises.
- (55) **“Final Plat”** The map, plan, or record of a subdivision and any accompanying material prepared in conformance with this ordinance.
- (56) **“Flood”** A temporary rise in stream flow or stage that results in water overtopping its banks and inundating areas adjacent to the channel.
- (57) **“Flood Fringe”** That portion of the flood plain outside the flood way which is covered by flood waters during a regional flood.
- (58) **“Flood Plain”** The land adjacent to a body of water which has been or may be covered by flood water, which includes flood way and flood fringe.
- (59) **“Flood Proofing”** A combination of structural provisions, changes or adjustments to properties and structures subject to flooding, in order to reduce or eliminate flood damage to properties, structures and their contents.
- (60) **“Flood Protection Elevation”** A point two and one half (2½) feet of freeboard above the water surface profile of the regional flood as recommended by the city engineer.
- (61) **“Floodway”** The channel of a stream and those parts of the flood plain adjoining the channel that carries and discharges the flood waters.
- (62) **“Floor Area”** The floor area of a building or structure including the gross horizontal areas of several floors measured from the interior faces of interior walls. Basement floor area is counted in the floor area calculation provided that at least half of the basement height is above the finished lot grade.
- (63) **“Frontage”** The front part of a lot abutting a public right-of-way, a private street, or road or highway. (Source: Ord. 2020-02)

- (64) **“Grade, Building”** The land elevation at the horizontal intersection of the ground and the building.
- (65) **“Home Occupation”** Any occupation which: (a) is carried on in a dwelling unit by members of the family; (b) is clearly secondary to the use of residential dwelling units; (c) does not create excessive noise, traffic or conflict with adjoining uses; (d) is conducted within the dwelling units and/or in an accessory building; (e) does not occupy more than twenty-five percent (25%) of the total dwelling unit; and (f) that such occupation shall not require internal or external alterations, or involve construction not customary in a dwelling unit.
- (66) **“Hotel or Motel”** A building in which lodging accommodations, with or without meals, are provided for compensation.
- (67) **“Improvements”** Street grading, surfacing, installations of sidewalks, curb, gutter, water, sanitary and storm sewer systems, culverts, bridges, trees, street lights as may be required by the City of Horace.
- (68) **“Industrial Park”** A special or exclusive type of area designed and equipped to accommodate a group of compatible industries in an attractive setting. All industrial uses shall be based on detailed site plan as provided in Sections 17.5.12 and 17.5.13 of this ordinance.
- (69) **“Intermediate Care Facility”** A health facility that provides medically related services to persons with physical or emotional medical conditions requiring institutional facilities but without the degree of care provided by a hospital or skilled nursing facility.
- (70) **“Junk or Salvage Yard”** 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.
- (71) **“Kennel, Animal”** Any premises where dogs, cats and other domesticated pets, but not including wild animals, are boarded, bred and maintained for compensation.
- (72) **“Landscaping”** The improvement of a lot, parcel or tract of land with grass, shrubs or trees. Landscaping may include pedestrian walks, flowerbeds, and ornamental objects such as fountains, artworks or monuments to produce an aesthetically pleasing environment.
- (73) **“Landscaping Plan”** A detailed drawing(s) of scale for placement of walks, flowers, trees, parking, shelters, seating and picnic areas.
- (74) **“Loading space”** A space or berth on the sale lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials and which abuts upon a street, alley, or other appropriate means of access.
- (75) **“Lot”** A piece, parcel, or area of land established by survey, plat, or deed that meets the yard requirements of this ordinance and fronts on a public street.

- (76) **“Lot, Corner”** A lot abutting two (2) or more public streets at their intersection.
- (77) **“Lot Coverage”** building area, the total surface area of a lot which may be used for permitted uses, excluding the yard areas.
- (78) **“Lot Depth”** The average horizontal distance between the front lot line and rear lot line.
- (79) **“Lot Lines”** The property lines bounding the lot.
- (80) **“Lot of Record”** A lot, which is a part of a subdivision or a parcel of land which has been recorded in the office of the Cass County Recorder’s Office.
- (81) **“Lot Width”** The horizontal distance between the side lot lines of a lot, measured at the front building setback line. For purposes of measuring the lot width of a cul-de-sac lot, an arc following the circumference of the cul-de-sac circle shall be drawn between the two intersecting points of the front setback line and the side lot lines, and the distance of said arc shall be the lot width.
- (82) **“Lot, Zoning”** A single lot, parcel, or tract of land within a zoning district.
- (83) **“Manufactured and Modular Homes”** Factory built dwelling units, transportable in one or more sections, with at least nine hundred (900) square feet of living space, which are designed as year-round dwelling units and shall be placed on a permanent foundation or basement. The manufactured dwelling units shall bear a label certifying that such units were built in compliance with the latest Manufactured Home Safety Construction and Safety Standards adopted by the U.S. Dept. of Housing and Urban Development for manufactured homes. The Uniform Building Code shall apply to modular homes.
- (84) **“Manufactured Home Park”** A parcel of land for which a detailed plan indicating the location of lots, blocks, streets, facilities and utilities, is prepared subject to the requirements of this ordinance to accommodate manufactured homes for rent or ownership.
- (85) **“Manufacturing”** The assembling, processing and converting of raw, unfinished or finished materials, products or parts into an article of different or new character.
- (86) **“Manufacturing facility”** An entity registered by the North Dakota State Department of Health as a compassion center authorized to produce, process, and sell usable marijuana to a dispensary. (Source: Ord. 2018-01)
- (87) **“Mini-storage facility”** A building or buildings in which storage space (also known as storage units) is rented to tenants, including businesses and individuals, usually on a short-term basis, such as month-to-month; such facilities are also known as self storage facilities.
- (88) **“Mobile Home”** Manufactured houses.

- (89) **“Nonconforming Building”** Any building or structure which does not conform to any or all of this ordinance but existed at the time of adoption of this ordinance.
- (90) **“Nonconforming Lot”** A lot which does not conform to the lot size and regulations of the district in which it is located, but existed before adoption of this ordinance.
- (91) **“Nonconforming Use”** Any principal use of land or building which does not conform with any or all parts of this ordinance but existed at the time of adoption of the ordinance.
- (92) **“Non-residential Plat”** A plat that has an intended use other than residential, such as commercial or industrial uses.
- (93) **“Noxious Matter or Materials”** Material that may cause injury to living organisms including plants, animals and humans.
- (94) **“Nuisance”** Anything that interferes with the use or enjoyment of public or private property, endangers personal health, safety or is offensive to the senses.
- (95) **“Nursery”** An area or buildings used to raise trees, flowers, shrubs or plants for sale.
- (96) **“Nursing, Elderly Care Facility”** A residential facility for the aged or infirm in which unrelated persons are accommodated for compensation.
- (97) **“Parking Lot”** An off-street area designated for parking of motor vehicles accessible from a public street or alley where each parking space shall not be less than nine (9) feet by twenty (20) feet for automobiles and larger spaces for trucks.
- (98) **“Parking space, off-street”** A space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room.
- (99) **“Permanent Foundation”** An extension of the outer walls of a building or structure made of solid materials such as concrete or treated wood and extended below the ground surface through the frost zone, or other depths as required by the city. Pilings shall not be accepted as permanent foundation.
- (100) **“Permitted Uses”** Those uses, buildings or structures which comply with the provisions of specific zoning districts because of the similarities in nature and relationship to each other. Permitted uses are distinct from conditional uses that are authorized only if certain requirements of this ordinance are met.
- (101) **“Person”** Any individual, firm, corporation, partnership or legal entity.

**(102) “Planned Unit Development”** A plan for grouping of buildings and structures on a site of five (5) or more acres in single ownership which is based on a detailed layout plan and recorded in the Office of Cass County Recorder’s Office upon approval by the City of Horace.

**(103) “Planning Commission”** A citizen group, including at least one person residing outside of the corporate limits of a city having a population of less than five thousand, appointed by the City Council under the authority of North Dakota Laws, as an advisory group only, except when it makes decisions on variance applications pursuant to Section 17.11.3 of this Horace Land Use Ordinance.

**(104) “Plat”** A map of a subdivision of land including lot splits and replats prepared according to the provisions of this ordinance.

**(105) “Preliminary Plat”** A map of a subdivision layout and any accompanying material prepared in accordance with the requirements of this ordinance.

**(106) “Public Water and Sewer”** Water and sewer system operated and managed by the City of Horace, and water system operated and managed by the Cass County Rural Water District.

**(107) “Public Way”** Any dedicated and recorded right-of-way including alleys, bikeways, sidewalks, streets, roads or highways.

**(108) “Regional Flood”** A flood determined by the State and Federal Emergency Management Agency and is representative of large floods known to have occurred in Cass County, North Dakota.

**(109) “Replat”** A change in an approved or recorded plat requiring changes in street layout, lot lines, or blocks.

**(110) “Retail”** A business use that involves the sale of goods to the public, such as general merchandise, food, liquor, hardware, furniture, and apparel stores; eating and drinking establishments; and drugstores.

**(111) “Riding Stable”** A building or structure used to accommodate horses and similar domestic animals, but not the predatory and wild animals, not permitted by the North Dakota laws or administrative rules.

**(112) “Right-of-Way”** A strip of land designated or dedicated for streets, sidewalks, railroads, electric transmission line, telephone and telegraph lines, oil or gas pipelines, sanitary, storm or public water systems.

**(113) “Road Side Stand”** A temporary structure for the seasonal display and sale of agricultural products to be removed when not in use.

**(114) “Sand and Gravel Operation”** The removal of rocks, gravel, sand, top soil or other natural material from the earth by excavating, stripping or other processes.

(115) **“Sanitary Landfill”** A type of land disposal operation for solid waste, including household and commercial wastes, under the provisions of North Dakota Century Code and Administration of rules of the North Dakota Department of Health. Inert landfills are not sanitary landfills, but also come under the jurisdiction of the North Dakota Department of Health.

(116) **“Service Station”** Any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.

(117) **“Setback”** The minimum horizontal distance between the building line and the related front, side, or rear property line. Roof overhangs, basement window wells and steps leading to a five (5) foot or less wide landing area by the front door, back door, side door are permitted within the setback area. Uncovered decks no more than five (5) feet wide are permitted in the front yard within the setback areas. Uncovered decks of no more than three (3) feet are permitted in the side yard within the setback area. If the setback area is larger than the requirements stipulated in these regulations, the width of uncovered deck may be increased up to the difference between the actual setback and the minimum required setback. There shall be no restriction for construction uncovered decks in the rear yards.

(118) **“Sign”** Any emblem, name, identification, description or illustration which is used for outdoor advertising having permanent location on the ground or attached to or painted on a building including bulletin boards, billboards and poster boards, but excluding real estate for sale signs, political campaign signs, public information and traffic signs.

(119) **“Site Plan”** A detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in this ordinance as required by Section 17.6.10 of these regulations.

(120) **“Solid Waste”** Garbage, refuse and other discardable or salvageable solid materials including commercial and industrial waste.

(121) **“Street”** A dedicated public way which affords traffic circulation and is a principal of access to abutting properties or a private street. (Source: Ord. 2020-02)

(122) **“Street, Line”** The outer boundary of a public way.

(123) **“Street, Local”** A public way intended for a low volume of traffic which provides access to individual properties.

(124) **“Street, Major”** A public way, arterial or collector streets, used for carrying a large volume of traffic, as defined by American Association of State Highway and Transportation Officials (AASHTO).

(125) **“Structural Alterations”** Any change in the supporting elements of a building or structure including bearing elements, partitions, columns, beams, girders, roofs, exterior walls and embankment.



(126) **“Structure”** Anything, built, constructed above or below ground, the use of which requires permanent location on or below the ground, including advertising signs, billboards, buildings, power lines and transmission lines, tunnels and pipelines.

(127) **“Subdivider”** Any person, group, corporation, entity or agency dividing or proposing to divide land so as to create a subdivision.

(128) **“Subdivision”** The division of a tract or parcel of land into lots for the purpose of sale or of building development including lot splits and replats.

(129) **“Telecommunication Facilities”** Includes all devices, equipment, machinery, structures or supporting elements necessary to produce electromagnetic radiation and operating as a unit to produce a signal or message. The structures may be self-supporting, guyed, mounted on poles, other structures, light posts, power poles or buildings. For the purpose of this ordinance the amateur radio towers are distinguished from the commercial and public broadcasting, radio/TV transmission tower and cellular phone towers.

(130) **“Traffic Lane”** A strip of roadway intended to accommodate a single line of moving vehicles.

(131) **“Turning Lane”** A traffic lane for connecting one arterial street to another arterial street, collector or connector or local street.

(132) **“Variance”** The relaxation of the dimensional terms of the zoning ordinance in relationship to building height, size of the front, rear and side yards, where the literal enforcement of this ordinance would create an undue hardship, but it is not contrary to the purposes of the most current comprehensive plan and this Ordinance. The variance shall not be contrary to the public interest. It shall not be interpreted for relaxation of the uses instead of rezoning. (Source: Ord. 2020-11)

(133) **“Vision Setback Area”** An unoccupied triangular space at the intersection of streets. The vision setback area for local connector streets is thirty (30) feet and for arterial or collector streets is fifty (50) feet.

(134) **“Yard”** An open space on a lot which is unoccupied or unobstructed by any portion of a structure from the ground upward.

(135) **“Yard, Front”** A yard that extends across the full width of the lot as the least distance between the front lot line and the front building line.

(136) **“Yard, Rear”** A yard that extends across the full width of the lot, as the least distance between the rear lot line and the rear building line.

(137) **“Yard, Side”** A yard between the front and rear yards, as the least distance between the side of the principal building and the side lot line.

(138) **“Zone”** An area of land within which certain uses of land and buildings are permitted and certain other uses are prohibited. Each zone, as provided for in this ordinance, requires certain lot area, building height limit, front, side and rear yards.

(139) “Zoning” The process of permitting certain uses in one area while prohibiting other uses.

## **17.3 GENERAL PROVISIONS**

### **17.3.1 Comprehensive Plan**

This ordinance is administered and enforced to implement the most current comprehensive plan of the City of Horace, a document adopted by the City Council as a policy guide to protect the city’s resources and accommodate the type of development deemed appropriate including but not limited to the following: (Source: Ord. 2020-11)

- (1) To preserve and enhance the taxable value of land and buildings, and to avoid land uses which pose negative impacts on one another.
- (2) To encourage the most appropriate use of land in the city.
- (3) To regulate and restrict the location and intensity of use of buildings and lands.
- (4) To separate and control unavoidable nuisance producing uses to minimize the adverse impacts on the surrounding areas or uses.
- (5) To facilitate traffic movement and promote development of compatible uses.
- (6) To guide placement and types of streets, water, sanitary and storm sewers.
- (7) To guide placement and development of public facilities, parks and other municipal facilities such as library, community center, indoor and outdoor recreational facilities.

### **17.3.2 Non-Conforming Uses**

The lawful use of a building or premises existing at the date of adoption of this ordinance 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 this ordinance. Whenever, a building is destroyed or damaged by fire or other casualty to the extent of more than fifty percent (50%) of its market value it shall not be restored unless said building shall conform to the provisions of the district in which it is located. Non-conforming uses shall not be expanded to occupy a larger area of land than existed at the date of adoption of this ordinance unless there is an undue hardship and is approved by the City Council.

### **17.3.3 Land Suitability**

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

### **17.3.4 Conditionally Permitted Uses**

Where a use is classified as a conditional use under this ordinance and exists at the date of adoption of this ordinance, it shall be considered a permitted use. Where a use is not allowed as a conditional use or permitted use, under this ordinance, and exists at the date of adoption of this ordinance, it shall be considered non-conforming and shall be subject to the non-conforming buildings and use provisions under Section 17.11.2.

### **17.3.5 Dedication of Land for Streets** (Source: Ord. 2020-02)

Whenever a parcel of land to be subdivided as a subdivision contains a street or public way, such a street or alley shall be dedicated to the city at the location and details shown on the final plat, unless it is a private street. Private streets will not require dedication, but must have location and details shown on the final plat.

### **17.3.6 Residential Development** (Source: Ord. 2020-02)

No single-family lot shall contain more than one principal single-family residential building, and no dwelling unit shall be built on a lot which does not abut a dedicated public street or private street. Multi-family residential uses may be permitted on a single zoning lot, provided that all requirements of this ordinance for area and setbacks are met.

### **17.3.7 Public Water and Sewer System** (Source: Ord. 2015-6, Sec. 4; Ord. 2015-12, Sec. 2)

To protect the public health, to control water pollution and to reduce nuisance and odor, all new development in R-1 to R-6, MH, commercial and industrial uses within the City of Horace shall be connected to the city water and sewer system, except where in the opinion of the City Council such connections are deemed impractical. Construction and use of septic tanks shall not be permitted within the city corporate limits of the City of Horace unless the lots are at least one acre in size and pass the required percolation test.

### **17.3.8 Accessory Uses**

- (1) Accessory uses and structures are subject to the same regulations as the principal uses and structures in each zoning district.
- (2) Accessory structures shall be constructed in conjunction with or after the principal building.
- (3) No accessory structure other than fence or wall shall be located in the front or street side setback.
- (4) No accessory structure shall be located within any recorded public or utility easement.
- (5) No accessory structure shall be taller than the principal structure. In R-1 to R-6 and MH residential districts, the accessory structure shall not be higher than fifteen (15) feet from the ground to the eve.

- (6) All accessory structures shall have a setback from the rear or side property line of eight (8) feet.

Source: Ord. 2015-6, Sec. 5; Ord. 2015-12, Sec. 3; Ord. 2016-27, Sec. 2; Ord. 2018-17

### **17.3.9 Building Characteristics**

All existing or new principal or accessory structures shall be in visual harmony with other structures in the area and ideals of the City of Horace. All mechanical equipment or structures shall be screened by hedges or fences from the public view. All structures shall be built, rebuilt and renovated in accordance with the requirements of the City Building Codes and ordinances that require protection and safety of the public, enhances the visual quality of the area and contribute to the property value and tax base in Horace.

## **17.4 ZONING DISTRICT BOUNDARIES AND MAP**

### **17.4.1 Zoning Districts**

The following zoning districts are hereby established to carry out the purposes of this ordinance:

- A Agricultural District**
- S-R Suburban Residential District**
- R-E Residential Estate District**
- R-1 Single-Family Residential District**
- R-2 Single-Family Residential District**
- R-3 Medium Density Residential District**
- R-4 Intermediate Density Residential District**
- R-5 Multiple Family Residential District**
- R-6 High Density Residential District**
- MH Mobile Home (Manufactured Home) Residential District**
- C-1 Neighborhood Commercial District**
- C-2 Town Center Commercial District**
- C-3 General Commercial District**
- I-1 Light Industrial District**

- I-2 General Industrial District**
- PUD Planned Unit Development Overlay District**
- FP Flood Plain District**
- PF Public Facilities District**
- MU Mixed Use District**

Source: Ord. 2015-6, Sec. 6; Ord. 2020-4

#### **17.4.2 Zoning District Map**

##### **(1) Zoning District Map**

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

##### **(2) Public Streets as Boundary**

Where zoning district boundary lines are indicated as following streets and public ways or extensions thereof, such boundary lines shall be construed to be the centerline of said streets or public ways or extension thereof unless clearly shown to the contrary.

##### **(3) Lot Line as Boundary**

Where a zoning district boundary line coincides approximately but not exactly with the lot 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) District Description for Unsubdivided Lands**

For unsubdivided property, zoning district boundaries may be determined by metes and bounds description or by a legal description.

##### **(5) Vacated Areas**

Where a street or public way is vacated by the official action of the City Council, the zoning district boundaries shall be extended to the center of the vacated street or public way.

##### **(6) Zoning District Boundary Interpretation**

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

**(7) Certification**

The official zoning map shall bear a certificate with the signatures of the Mayor, the Planning Commission Chairperson, the City Auditor and the date of adoption of the zoning map as an integral part of this ordinance.

**17.5 ZONING DISTRICT REGULATIONS**

**17.5.1 A Agricultural District**

**(1) Purpose**

The purpose of this district is to provide for preservation and protection of agricultural uses while in existence, in the city and its extra territorial planning area. For the purposes of this code the Agricultural District is used as a holding district until the area is ready for development. Any land zoned other than A-Agricultural, it shall revert to Agricultural District, if it is not planned and committed for development after 2 years. This provision does not apply to platted residential areas or areas under Planned Unit Development.

**(2) Permitted Uses**

The following uses and conditional uses may be connected to private water and sewer.

- (a)** All types of farming and ranching operations including dairying, but excluding feed lots, poultry, fish and fur farming.
- (b)** Accessory farm buildings and structures.
- (c)** Churches and cemeteries
- (d)** Golf courses, parks and play fields.
- (e)** Home occupations.
- (f)** Public and private schools, public buildings and facilities.
- (g)** Single-family Residential Units including manufactured homes and modular homes not exceeding one unit per 40 acres of land.
- (h)** Construction and maintenance of drainage systems to manage the water run-off and water reservoirs.
- (i)** General utility lines and pipe lines including substations for transformers, pumping stations and lift stations.

**(3) Conditional Uses**

The following uses shall be subject to the provisions of Section 17.11.2 and also Section 17.6 where appropriate.

- (a) Feed lots, poultry, fish and fur farming subject to provisions of Section 17.6.2.
- (b) High voltage transmission lines and accessory structures.
- (c) Manufacturing and processing of agricultural products produced in the area.
- (d) Mining of sand and gravel, subject to the provisions of Section 17.6.7.
- (e) Municipal and public water wells, treatment and storage facilities.
- (f) Communication facilities including radio, TV stations and towers and microwave and cellular phone towers and related communication facilities subject to the provisions of Section 17.6.1.
- (g) Sale and services of agricultural equipment and machinery.
- (h) Salvage and junk yards, subject to provisions of Section 17.6.4.
- (i) Sanitary landfills, subject to the provisions of Section 17.6.8.
- (j) Sewage lagoons and waste water treatment facilities.
- (k) Skeet, trap and rifle ranges not closer than one thousand (1,000) feet from residential areas.
- (l) Storage of farm related chemicals.
- (m) Veterinary clinics, animal hospitals and domestic animal kennels.

**(4) Lot Area and Lot Width**

- (a) For agricultural uses, the area shall not be less than forty (40) acres.
- (b) For non-farm residential uses, the lot area shall not be less than ten (10) acres with a maximum of four (4) lots per quarter section of land.
- (c) For non-farm non-residential uses, the lot area shall not be less than five (5) acres.
- (d) The lot width for any use in agricultural district shall not be less than two hundred fifty (250) feet.

**(5) Yard Requirements**

(a) The minimum front yard, measured from the front property line shall not be less than seventy-five (75) feet from all arterial and collector streets.

(b) The minimum rear yard, measured from the rear lot line shall not be less than fifty (50) feet.

(c) The minimum side yard, measured from the side lot line shall not be less than fifty (50) feet.

**(6) Building Height**

(a) The building height for residential buildings shall not exceed two and one half stories (2 1/2) or thirty-five (35) feet.

(b) The building heights for manufacturing of agricultural products shall be determined by the City Council, based on accepted standards used in the area. The height of radio, TV, microwave and cellular phone towers shall be subject to the provisions of Section 17.6.1.

(c) The building height, excepting the radio and TV, microwave and cellular phone towers and church steeples and agricultural uses shall not exceed thirty-five (35) feet.

**(7) Parking Requirements**

Parking requirements shall be subject to the provisions of Section 17.6.5.

**(8) Sign Requirements**

Sign requirements shall be subject to the provisions of Section 17.6.9.

**17.5.2 S-R Suburban Residential District**

The following uses and conditional uses may be connected to public water and sewer systems where feasible.

**(1) Purpose**

The S-R Residential District is primarily established to promote a suitable residential environment and to accommodate low density, detached single-family residential units uninterrupted by conflicting uses and incompatible activities.

**(2) Permitted Uses**

(a) Single-family detached residential uses with a minimum of 2,500 square feet of living space.



(b) Churches, schools and public facilities including parks, schools and golf courses.

(c) Accessory buildings and structures not to exceed 3% of the gross lot area.

(d) Home occupation.

Source: Ord. 2016-27, Sec. 3

**(3) Conditional Uses**

The following uses shall be subject to the provision of Section 17.11.2.

(a) Day care facilities.

(b) Municipal facilities such as libraries, water distribution systems, pumping stations and water wells.

(c) Horses and domestic animals, but not wild or prey animals. Boarding and maintenance of horses shall be limited to one animal per acre.

**(4) Lot Area, Lot Width and Coverage**

(a) The minimum lot area for single-family units shall be three (3) acres.

(b) The minimum lot width shall not be less than two hundred fifty (250) feet.

**(5) Yard Requirements**

(a) The minimum front yard setback, measured from the front lot line, is fifty (50) feet.

(b) The minimum rear yard setback, measured from the rear lot line, is fifty (50) feet.

(c) The minimum side yard setback, measured from the side lot line, is fifty (50) feet on each side of a lot.

Source: Ord. 2020-08

**(6) Building Height**

No building shall be more than two and one half (2½) stories or thirty-five (35) feet high, excepting church steeples.

**(7) Parking Requirements**

(a) There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.

(b) Parking for the conditional uses and non-residential uses shall be subject to the provisions of Section 17.6.5.

(c) All driveways shorter than seventy-five (75) feet shall be constructed with the concrete or asphalt.

**(8) Sign Requirements**

(a) There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area.

(b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

(c) Signs for non-residential uses shall be subject to the provisions of Section 17.6.9.

**17.5.3 R-E Residential Estate District**

The following uses may be connected to public water and sewer where feasible.

**(1) Purpose**

The R-E Residential Estate District is primarily established to promote a suitable residential environment and to accommodate low density detached single-family residential units uninterrupted by conflicting uses and incompatible activities.

**(2) Permitted Uses**

(a) Accessory buildings and structures not to exceed 3% of the gross lot area.

(b) Churches, schools and public facilities including libraries, parks, schools and golf courses.

(c) Home occupation.

(d) Single-family detached residential uses with a minimum of 2,000 square feet of living space.

Source: Ord. 2016-27, Sec. 4

**(3) Conditionally Permitted Uses**

The following uses shall be subject to the provision of Section 17.11.2:

(a) Day care facilities.

(b) Municipal public facilities including library, community center and water and service related facilities.

**(4) Lot Area, Lot Width and Coverage**

(a) The minimum lot area for single-family units shall be one acre.

(b) The minimum lot width shall be no less than one hundred fifty (150) feet. Maximum lot coverage shall be thirty per cent (30%).

**(5) Yard Requirements**

(a) The minimum front yard setback, measured from the front lot line, is fifty (50) feet.

(b) The minimum rear yard setback, measured from the rear lot line, is fifty (50) feet.

(c) The minimum side yard setback, measured from the side lot line, is twenty-five (25) feet on each side of a lot.

Source: Ord. 2020-08

**(6) Building Height**

No building shall be more than two and one half (2 1/2) stories or thirty five (35) feet high, excepting church steeples.

**(7) Parking Requirements**

(a) There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.

(b) Parking for the conditional uses and non-residential uses shall be subject to the provisions of Section 17.6.6.

(c) All driveways shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances, of concrete or asphalt.

**(8) Sign Requirements**

(a) There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.

(b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

- (c) Signs for non-residential uses shall be subject to the provisions of Section 17.6.9.

#### **17.5.4 R-1 Single-family Residential District**

##### **(1) Purpose**

The R-1 Residential District is primarily established to promote a suitable residential environment and to accommodate detached single-family residential units uninterrupted by conflicting uses and incompatible activities.

##### **(2) Permitted Uses**

The following principal uses must be connected to public water and sewer system.

- (a) Single-family detached residential uses with a minimum of 1,500 square feet of living space.
- (b) Churches, schools and public facilities including libraries, parks, schools and golf courses.
- (c) Home occupation.
- (d) Accessory buildings and structures are not to exceed 840 square feet provided that total area coverage shall not exceed forty percent (40%) of the lot.

##### **(3) Conditional Uses**

The following uses shall be subject to the provision of Section 17.11.2 and must be connected to a public water and sewer system.

- (a) Day care facilities.
- (b) Municipal facilities including city and county offices and facilities.

##### **(4) Lot Area, Lot Width and Coverage**

- (a) The minimum lot area for single-family units shall be fifteen thousand (15,000) square feet.
- (b) The minimum lot width shall be no less than one hundred (100) feet. Maximum lot coverage shall be forty per cent (40%).

##### **(5) Yard Requirements**

- (a) The minimum front yard setback, measured from the front lot line, is thirty (30) feet.

(b) The minimum rear yard setback, measured from the front lot line, is fifty (50) feet.

(c) The minimum side yard setback, measured from the front lot line, is ten (10) feet on each side of a lot.

Source: Ord. 2020-08

**(6) Building Height**

No building shall be more than two and one half (2½) stories or thirty five (35) feet high, excepting church steeples.

**(7) Parking Requirements**

(a) There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.

(b) Parking for the conditional uses and non-residential uses shall be subject to the provisions of Section 17.6.5.

(c) All driveways and parking areas shall be constructed in accordance with the requirements of the City of Horace of concrete or asphalt.

**(8) Sign Requirements**

(a) There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.

(b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

(c) Signs for non-residential uses shall be subject to the provisions of Section 17.6.9.

**17.5.5 R-2 Single-Family Residential District**

**(1) Purpose**

The R-2 single-family residential district is primarily established to promote a suitable residential environment and to accommodate detached single-family residential units uninterrupted by conflicting uses and incompatible activities.

**(2) Permitted Uses**

The following principal uses must be connected to public water and sewer system.

- (a) Single-family detached residential uses with a minimum of one thousand five hundred (1,500) square feet of living space.
- (b) Churches, schools and public facilities including libraries, parks, schools and golf courses.
- (c) Home occupation.
- (d) Accessory buildings and structures not to exceed 840 square feet provided that the total area coverage shall not be more than 45%.

**(3) Conditional Uses**

The following uses shall be subject to the provision of Section 17.11.2 and must be connected to public water and sewer system.

- (a) Day care facilities.
- (b) New manufactured homes or modular homes placed on permanent foundation or basement.
- (c) Municipal facilities, including city and county offices and facilities.

**(4) Lot Area, Lot Width and Coverage**

- (a) The minimum lot area for single-family units shall be eleven thousand and five hundred (11,500) square feet.
- (b) The minimum lot width shall not be less than seventy (70) feet. Maximum lot coverage shall be forty-five percent (45%)

**(5) Yard Requirements**

- (a) The minimum front yard setback, measured from the front lot line, is thirty (30) feet.
- (b) The minimum rear yard setback, measured from the rear lot line, is fifty (50) feet.
- (c) The minimum side yard setback, measured from the side lot line, is eight (8) feet on one side of a lot and twelve (12) feet on the other.

Source: Ord. 2020-08

**(6) Building Height**

No building shall be more than two and one half (2 1/2) stories or thirty-five (35) feet high, excepting church steeples.

**(7) Parking Requirements**

- (a)** There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.
- (b)** Parking for the conditional uses and non-residential uses shall be subject to the provisions of Section 17.6.5.
- (c)** All driveways and parking areas shall be constructed of concrete and asphalt.

**(8) Sign Requirements**

- (a)** There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.
- (b)** Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- (c)** Signs for non-residential uses shall be subject to the provisions of Section 17.6.9.

**17.5.6 R-3 Medium Density Residential District**

**(1) Purpose**

The R-3 medium density residential district is primarily established to promote a suitable residential environment to accommodate single-family and townhouse residential dwelling units on smaller lots.

**(2) Permitted Uses**

The following uses must be connected to public water and sewer system.

- (a)** Single-family detached dwelling units.
- (b)** New manufactured homes and modular homes placed on a permanent foundation or basement. In addition, all housing units shall meet the following requirements: (i) the main entrance shall face the street; (ii) the roof pitch shall not be less than four/twelve (4/12) ratio; (iii) each unit shall have space for at least a two (2) stall attached garage; (iv) modular homes and site built homes shall meet the requirements of International Building Code; (v) manufactured homes shall meet the latest HUD standards; (vi) each unit shall have at least nine hundred (900) square feet of living space; and (vii) each unit shall have appearance comparable to conventional site built homes in the vicinity.

- (c) Two family dwelling units and townhouses.
- (d) Churches, schools and day care facilities.
- (e) Home Occupation.
- (f) Accessory buildings and structures shall not be more than eight hundred and forty (840) square feet provided that the total area coverage is not over 45%.
- (g) Parks, playgrounds and recreational open spaces.

**(3) Conditional Uses**

The following uses shall be subject to the provisions of Section 17.11.2 and must be connected to public water and sewer.

- (a) Bed and breakfast establishments.
- (b) Manufactured home parks, where public water and sewer are available, with the following requirements:
  - (i) A site plan showing location of streets, utilities, off-street parking, driveways walkways blocks, lots, playground and park area.
  - (ii) The manufactured housing park shall contain a minimum of five (5) acres of land. No unit more than ten (10) years old shall be placed in the park.
  - (iii) Each manufactured home shall be placed on a lot at least seventy (70) feet wide with a minimum lot area of nine thousand five hundred (9,500) square feet.
  - (iv) Each unit shall be placed on a permanent foundation or basement.
  - (v) Each unit shall have a minimum front yard setback of thirty (30) feet within the private park or from local public streets. It shall be seventy-five (75) feet from collector or arterial streets.
  - (vi) Each unit shall have a minimum side yard of eight (8) feet and a rear yard of thirty (30) feet except it shall be seventy-five (75) feet if located on collector or arterial streets.
  - (vii) The design and construction of the private streets within the park shall conform to the design standards of the City of Horace.
  - (viii) All units shall be served by underground utilities.
- (c) Hospitals, medical clinics, short or long term care homes.



- (d) Multi family dwelling units of three to four per structure.
- (e) Public and private utilities and structures.

**(4) Lot Area, Lot Width and Coverage**

- (a) The minimum lot area for single-family units shall be nine thousand five hundred (9,500) square feet.
- (b) For twin homes, the minimum lot width shall be five thousand (5,000) square feet per unit. For three-four residential units the lot area shall be five thousand square feet per unit.
- (c) The minimum lot width for single-family detached units shall not be less than seventy (70) feet. For twin homes and 3-4 residential units, the lot width shall be forty (40) feet per unit for one story structures and seventy (70) feet for two story structures. The area coverage shall not exceed 45%.

**(5) Yard Requirements**

- (a) The minimum front yard setback, measured from the front lot line, is thirty (30) feet.
- (b) The minimum rear yard setback, measured from the rear lot line, is thirty (30) feet.
- (c) The minimum side yard setback, measured from the side lot line, is eight (8) feet on one side of a lot and twelve (12) feet on the other side for a single-family and ten (10) feet for two (2) or more units per side.

Source: Ord. 2020-08

**(6) Building Height**

No building shall be more than two and one half (2 1/2) stories or thirty five (35) feet high, excepting church steeples.

**(7) Parking Requirements**

- (a) There shall be a minimum of two (2) stall garages for each residential dwelling unit including manufactured and modular houses.
- (b) Parking for the conditional uses and non-residential uses shall be subject to the provisions of Section 17.6.5.
- (c) All driveways shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances and shall be made of concrete or asphalt.

**(8) Sign Requirements**

(a) There shall be no more than one identification sign per residential detached dwelling structure and one sign for multi-family units not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.

(b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

(c) Non-residential and conditionally permitted uses shall be subject to the provisions of Section 17.6.9.

**17.5.7 R-4 Intermediate Density Residential District**

**(1) Purpose**

The R-4 intermediate density residential district is primarily established to promote a suitable residential environment to accommodate duplexes, town houses and small apartment buildings with five to eight units per structure.

Source: Ord. 2015-12, Sec. 4

**(2) Permitted Uses**

The following uses must be connected to public water and sewer.

(a) Single-family houses.

(b) New manufactured homes and modular homes placed on a permanent foundation or basement. In addition, all housing units shall meet the following requirements: (a) the main entrance shall face the street; (b) the roof pitch shall not be less than four/twelve (4/12) ratio; (c) each unit shall have space for at least a two (2) stall attached garage; (d) modular homes and site built homes shall meet the requirements of International Building Code; (e) manufactured homes shall meet the latest HUD standards; (f) each unit shall have at least nine hundred (900) square feet of living space; and (g) each unit shall have appearance comparable to conventional site built homes in the vicinity.

(c) Two to eight family dwelling units, including duplexes town houses, garden apartments not exceeding eight units per building in one or two story structures.

(d) Home occupation.

(e) Accessory buildings and structures not to exceed eight hundred forty (840) square feet, provided that the area coverage shall not exceed 45% of the lot.

- (f) Parks and playgrounds, golf courses, and outdoor sport facilities.
- (g) Churches and related buildings
- (h) Day care facilities.

Source: Ord. 2016-20, Sec. 1

**(3) Conditional Uses**

The following uses are subject to the provisions of Section 17.11.2 and must be connected to public water and sewer.

- (a) Bed and breakfast establishments.
- (b) Hospitals, medical clinics, short or long-term care homes.
- (c) Manufactured home parks as provided in Section 17.5.6(3)(b).
- (d) Public and private utilities and structures.

**(4) Lot Area, Lot Width and Lot Coverage**

- (a) For single-family units and new manufactured houses the minimum lot area shall be eight thousand four hundred (8,400) square feet with a minimum of seventy (70) feet of width.
- (b) For duplexes, town houses and small apartment buildings (3-4 units), the minimum lot area shall be four thousand (4,000) square feet per unit.
- (c) For larger apartment complexes of 5-8 units the minimum lot area shall be thirty-five hundred (3,500) square feet per unit.
- (d) The minimum lot width shall be fifty (50) feet per unit for two attached units and forty (40) feet per unit for three to eight dwelling units if built on one floor and one hundred and fifty feet (150) feet for 5-8 units if in two story units.
- (e) Maximum lot area coverage shall be 50%.

**(5) Yard Requirements**

- (a) The minimum front yard setback, measured from the front lot line, is thirty (30) feet.
- (b) The minimum rear yard setback, measured from the rear lot line, is thirty (30) feet. This includes manufactured and modular houses inside or outside of a park.

- (c) The minimum side yard setback, measured from the side lot line, is eight (8) feet on one side of a lot and twelve (12) feet on the other side for single-family and ten (10) feet on each side of the lot for two (2) or more units.

Source: Ord. 2020-08

**(6) Building Height**

No building shall be more than two and one half (2 1/2) stories or thirty-five (35) feet high, excepting church steeples.

**(7) Parking Requirements**

- (a) There shall be two (2) stall garages for each detached residential dwelling unit including manufactured homes and townhouses. There shall be a minimum of two (2) off-street parking spaces for each residential unit for 2-8 residential units.

- (b) Parking for conditional uses and non-residential uses shall be subject to the provisions of Section 17.6.5.

- (c) All driveways shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances and shall be constructed of concrete or asphalt.

**(8) Sign Requirements**

- (a) There shall be no more than one identification sign per residential dwelling structure not exceeding twelve (12) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.

- (b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

- (c) Signs for non-residential uses shall be subject to the provisions of Section 17.6.9.

**17.5.8 R-5 Multiple Family Residential District**

**(1) Purpose**

The R-5 multiple-family residential district is primarily established to promote a suitable residential environment and to accommodate higher density residential development to meet the needs of various income and age groups in the City of Horace.

**(2) Permitted Uses**

The following uses must be connected to public water and sewer.

- (a) Multiple-family dwelling units up to fourteen (14) units per acre including duplexes, town houses and garden apartments.
- (b) Home occupation.
- (c) Accessory buildings and structures.
- (d) Parks and playgrounds, golf courses and outdoor sport facilities.
- (e) Municipal facilities such as city hall, fire station, police station, library, and museum.
- (f) Churches and related buildings
- (g) Day care facilities.

**(3) Conditional Uses**

The following uses are subject to the provisions of Section 17.11.2 and must be connected to public water and sewer.

- (a) Bed and breakfast establishments.
- (b) Clinics and hospitals.
- (c) Nursing homes.
- (d) Public and private schools.
- (e) Group homes, group quarters, lodging houses and rooming houses.
- (f) Professional offices.
- (g) Private clubs and fraternal organizations.

**(4) Lot Area, Lot Width and Lot Coverage**

- (a) The minimum lot area for each dwelling unit in a multiple family structure of more than five (5) units shall be three thousand (3,000) square feet. For two to four dwelling units the minimum lot area shall be four thousand (4,000) square feet per unit.

(b) The minimum lot width in the R-5 multiple family residential district, for two to eight family units, shall be forty (40) feet per unit if built on one floor. The minimum lot width in the R-5 multiple-family residential district for five or more units shall be one hundred fifty (150) feet if built on two (2) levels provided that all setbacks and yard requirements are met.

(c) Maximum lot area coverage shall be 50%.

**(5) Yard Requirements**

(a) The minimum front yard setback, measured from the front lot line, is fifty (50) feet from local streets.

(b) The minimum rear yard setback, measured from the rear lot line, is thirty (30) feet.

(c) The minimum side yard setback, measured from the side lot line, for two to eight units is ten (10) feet and for nine (9) and more residential units is fifteen (15) feet.

Source: Ord. 2015-12, Sec. 5; Ord 2020-08

**(6) Building Height**

(a) No residential building shall be more than two and one half (2 1/2) stories high for buildings with less than five dwelling units and three (3) stories or forty-five (45) feet high for buildings with five (5) or more units.

(b) Non-residential buildings shall not be no more than three (3) stories or forty-five (45) feet high excepting church steeples and similar structures.

**(7) Parking Requirements**

(a) There shall be two (2) surfaced off-street parking spaces for each residential dwelling unit. For efficiency apartments there shall be at least one space per dwelling unit.

(b) There shall not be less than one off-street parking space for each five (5) beds in the nursing homes and group homes.

(c) Non-residential and conditional uses shall be subject to the provisions of Section 17.6.9.

(d) All driveways and parking areas shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances and constructed of concrete or asphalt.

**(8) Sign Requirements**

(a) There shall be no more than one identification sign per residential dwelling structure not exceeding twelve (12) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.

(b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

(c) Signs for Non-residential and conditional uses shall be subject to the provisions of Section 17.6.9.

**17.5.8.1 R-6 High Density Residential District** (Source: Ord. 2015-6, Sec. 1)

**(1) Purpose**

The R-6 High Density Residential District is primarily established to promote a suitable residential environment to accommodate single-family dwelling units, duplexes, and twin homes on smaller lots.

**(2) Permitted Uses**

(a) Single-family detached dwelling units.

(b) New manufactured homes and modular homes placed on a permanent foundation or basement. In addition, all housing units shall meet the following requirements: (a) the main entrance shall face the street; (b) the roof pitch shall not be less than four/twelve (4/12) ratio; (c) each unit shall have space for at least a two (2) stall attached garage; (d) modular homes and site built homes shall meet the requirements of International Building Code; (e) manufactured homes shall meet the latest HUD standards; (f) each unit shall have at least nine hundred (900) square feet of living space; and (g) each unit shall have appearance comparable to conventional site built homes in the vicinity.

(c) Duplexes and twin homes.

(d) Family child care homes and day care facilities.

(e) Parks, playgrounds, and recreational facilities.

(f) Schools, churches, religious institutions and places of worship

(g) Essential services and public buildings.

(h) Accessory buildings and structures not more than five hundred (500) square feet in area.

- (i) Home occupations.

Source: Ord. 2016-20, Sec. 2

**(3) Conditional Uses**

The following uses shall be subject to the provisions of Section 17.11.2 and must be connected to a public water and sewer system. All conditional use applications shall be accompanied by a site plan as required by Section 17.6.10.

- (a) Hospitals, medical clinics, short or long term care homes.
- (b) Multi-family dwelling units of three to four units per structure.
- (c) Public and private utilities and structures.

**(4) Lot Area, Lot Width and Lot Coverage**

- (a) The minimum lot area for single-family dwelling units shall be four thousand (4,000) square feet. For duplexes and twin homes, the minimum lot area shall be three thousand (3,000) square feet per unit.
- (b) The minimum lot width for single-family dwelling units shall not be less than forty (40) feet. For duplexes and twin homes, the lot width shall not be less than thirty (30) feet per unit for one story structures and forty (40) feet per unit for two story structures.
- (c) Maximum lot coverage shall not exceed fifty percent (50%).

**(5) Yard Requirements**

- (a) The minimum front yard setback, measured from the front lot line, is twenty (20) feet.
- (b) The minimum rear yard setback, measured from the rear lot line, is fifteen (15) feet.
- (c) The minimum side yard setback, measured from the side lot line, is five (5) feet on each side of the lot.

Source: Ord. 2020-08

**(6) Building Height**

No building shall be more than two and one half (2 ½) stories or thirty-five (35) feet high, excepting church steeples.



**(7) Parking Requirements**

- (a) There shall be a minimum of two (2) surfaced off-street parking spaces for each residential unit.
- (b) Parking for conditional uses shall be subject to the provisions of Section 17.6.5.
- (c) All driveways and parking areas shall be constructed of concrete or asphalt in accordance with the requirements of the City of Horace.
- (d) Driveways shall not exceed fifty percent (50%) of the front lot width measured at the setback line. All driveway plans must be submitted for approval.

**(8) Sign Requirements**

- (a) There shall be no more than one identification sign per dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.
- (b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- (c) All signs shall be subject to the provisions of Section 17.6.9.

**17.5.8.2 MH Mobile and Manufactured Home Residential District**

(Source: Ord. 2015-6, Sec. 2)

**(1) Purpose**

The MH Mobile and Manufactured Home Residential District is primarily established to promote a suitable residential environment to accommodate mobile homes and manufactured homes as single-family dwelling units.

**(2) Permitted Uses**

- (a) Single-family detached dwellings, including mobile homes.
- (b) New manufactured homes and modular homes placed on a permanent foundation or basement. In addition, all housing units shall meet the following requirements: (a) the main entrance shall face the street; (b) the roof pitch shall not be less than four/twelve (4/12) ratio; (c) each unit shall have space for at least a two (2) stall attached garage; (d) modular homes and site built homes shall meet the requirements of International Building Code; (e) manufactured homes shall meet the latest HUD standards; (f) each unit shall have at least nine hundred (900) square feet of living space; and (g) each unit shall have appearance comparable to conventional site built homes in the vicinity.

- (c) Family child care homes.
- (d) Parks, playgrounds, and recreational facilities.
- (e) Schools, churches, religious institutions and places of worship.
- (f) Essential services and public buildings.
- (g) State-licensed group homes serving six or fewer developmentally disabled persons.
- (h) Accessory buildings and structures not more than five hundred (500) square feet in area, provided that the total lot area coverage is not more than forty five percent (45%).
- (i) Home occupations.

Source: Ord. 2016-20, Sec. 3

### **(3) Conditional Uses**

The following uses shall be subject to the provisions of Section 17.11.2 and must be connected to a public water and sewer system. All conditional use applications shall accompany a site plan as required by Section 17.6.10.

- (a) Child care facilities in single-family homes with eight (8) to twelve (12) children.
- (b) Private non-commercial recreational or cultural facilities, when the following conditions are met:
  - (i) The proposed site for any of the uses permitted herein which would attract persons from, or are intended to serve, areas beyond the immediate neighborhood shall have at least one property line abutting a major thoroughfare, either existing or proposed, and the site shall be planned so as to provide all ingress and egress directly onto or from said major thoroughfare.
  - (ii) Front, side and rear yards shall be at least sixty (60) feet wide and shall be landscaped in trees, shrubs, and grass. All such landscaping shall be maintained in a healthy condition. There shall be no parking or structures permitted in these yards, except required entrance drives and those walls used to obscure the use from abutting residential districts.
- (c) Retirement, nursing or convalescent homes not to exceed a height of two (2) stories, when the following conditions are met:

(i) The site shall be so developed as to create a land-to-building ratio on the lot or parcel whereby for each one (1) bed in the convalescent home there shall be provided not less than fifteen hundred (1,500) square feet of open space. The 1,500 square feet of land area per bed shall provide for landscaped setting, off-street parking, service drives, loading space, yard requirements and space required for accessory uses. The 1,500 square feet requirement is over and above the building area.

(ii) No building shall be closer than forty (40) feet from any property line.

**(4) Lot Area, Lot Width and Lot Coverage**

(a) The minimum lot area for single-family dwelling units shall be six thousand (6,000) square feet.

(b) The minimum lot width shall not be less than sixty (60) feet.

(c) Maximum lot coverage shall not exceed forty five percent (45%).

**(5) Yard Requirements**

(a) The minimum front yard, measured from the front lot line, shall not be less than twenty-five (25) feet.

(b) The minimum rear yard, measured from the rear lot line, shall not be less than twenty (20) feet.

(c) The minimum side yard, measured from the side lot line, shall not be less than ten (10) feet on each side of the lot.

**(6) Building Height**

No building shall be more than two and one half (2 ½) stories or thirty-five (35) feet high, excepting church steeples.

**(7) Parking Requirements**

(a) There shall be a minimum of two (2) surfaced off-street parking spaces for each single-family dwelling unit.

(b) Parking for conditional uses shall be subject to the provisions of Section 17.6.5.

(c) All driveways and parking areas shall be constructed of concrete or asphalt in accordance with the requirements of the City of Horace.

**(8) Sign Requirements**

(a) There shall be no more than one identification sign per dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.

(b) Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

(c) All signs shall be subject to the provisions of Section 17.6.9.

**(9) Other Applicable Regulations**

(a) All manufactured homes must meet, at a minimum, the Manufactured Home Construction and Safety Standards Act provisions as adopted by the Department of Housing and Urban Development (HUD) in 1974 (24 CFR 3280), which became effective June 15, 1976, and bear a date plate certifying that it was built in compliance with said Act.

(b) No manufactured home may be built, constructed, or otherwise assembled or placed without the owner thereof having obtained a building permit from the office of the Building Administrator for which a fee shall be calculated in the same manner for which other fees are calculated within the City of Horace.

(c) All manufactured homes shall be placed on permanent foundations which are protected from frost and meet HUD, FHA, and manufacturer's foundation specifications, or other foundations which are approved by the Building Administrator. Foundation skirting around the perimeter of the manufactured home shall consist of material made from concrete or masonry products, or an approved material by the Building Administrator that is consistent in appearance and quality with products used in the area and which color and texture will be consistent with surrounding structures.

**17.5.9 C-1 Neighborhood Commercial District**

All uses in this district must be connected to public water and sewer system.

**(1) Purpose**

The C-1 neighborhood commercial district is primarily established to accommodate the concentration of commercial and related uses to serve neighborhoods and smaller areas of Horace. Commercial uses must be compatible with adjoining uses and shall not negatively affect the adjoining properties because of noise, traffic or general appearance.

**(2) Permitted Uses**

(a) Accessory buildings and uses.

- (b) Amusement places including bowling alleys, athletic clubs and health clubs.
- (c) Banks and financial institutions and real estate offices.
- (d) Bed and breakfast establishments.
- (e) Fraternal and philanthropic organizations.
- (f) Multiple family dwelling units and residential units of 5-14 units.
- (g) Professional offices for businesses and services without limitation.
- (h) Public buildings and facilities.
- (i) Retail stores of all types including food, drug, clothing, and the like.
- (j) Other: Uses not listed, but similar to the permitted uses above and consistent with the stated purpose of this district. (Source: Ord. 2018-02)

**(3) Conditional Uses**

The following uses are subject to the provisions of Section 17.11.2 and must be connected to public water and sewer systems.

- (a) Boarding and rooming houses for the aged including nursing homes if compatible with the surrounding area.
- (b) Hotels and motels if compatible with the surrounding area.
- (c) Restaurant including eating and drinking establishments.
- (d) Gas stations/C stores, auto repair shops and car washes.
- (e) Mini-storage facilities with an office; mini-storage facilities without an office are not required to be connected to public water and sewer systems. (Source: Ord. 2016-27, Sec. 5)

**(4) Lot Area and Lot Width**

- (a) The minimum lot area for commercial use shall be twenty thousand (20,000) square feet for commercial uses. For multiple-family the minimum lot area shall be the same as R-5 Residential District.
- (b) The minimum lot width for commercial district shall be one hundred (100) feet. It shall be the same as R-5 residential district for multiple family uses.
- (c) The maximum lot coverage shall be sixty percent (60%).

**(5) Yard Requirements**

- (a) The minimum front building line, measured from the front lot line, is thirty (30) feet.
- (b) The minimum rear building line, measured from the rear lot line, is thirty (30) feet.
- (c) The minimum side building line, measured from the exterior side of the lot is ten (10) feet.

Source: Ord. 2018-02; Ord. 2020-08

**(6) Building Height**

The building height requirements in the neighborhood commercial district shall not be more than sixty (60) feet.

**(7) Parking Requirements**

- (a) For commercial uses, the front or rear yard spaces may be used for parking with a minimum of ten (10) feet of buffer from the property line.
- (b) For commercial uses, parking shall be subject to the provisions of Section 17.6.5.
- (c) For residential uses, there shall be two (2) off-street parking spaces for each dwelling unit.
- (d) All driveways and parking areas shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances and shall be of concrete or asphalt.

**(8) Sign Requirements**

For uses in commercial district, the provisions of Section 17.6.9 shall apply.

**17.5.10 C-2 Town Center Commercial District**

All uses in this district must be connected to public water and sewer system. The City of Horace requires that all development in this district shall be based on a planned unit development, although the development may be carried in phases.

**(1) Purpose**

The C-2 Town Center Commercial District is primarily established to provide for concentrated uses as a center for shopping, retail services and recreation and entertainment requires direct access, large number of parking spaces, and separation from other uses because of the intensity and frequency of consumer travel. All rezoning applications to C-2 Commercial District shall accompany a detailed site plan, as provided in Section 17.6.10.

**(2) Permitted Uses**

- (a)** Accessory uses.
- (b)** Advertising signs subject to Section 17.6.9.
- (c)** Amusement places such as bowling alleys, athletic clubs, pool halls, theaters, miniature golf courses and similar outdoor and indoor facilities.
- (d)** Animal hospitals and clinics, kennels excluding outdoor dog runs or exercise pens.
- (e)** Art galleries and museums.
- (f)** Bakeries and confectioneries.
- (g)** Banks, insurance, financial institutions and real estate offices.
- (h)** Battery and tire sales and service conducted indoors.
- (i)** Building material and supply establishments in enclosed buildings.
- (j)** Carpet and rug stores.
- (k)** Catering businesses.
- (l)** Churches and religious institutions.
- (m)** Department stores.
- (n)** Doctor and Dentist offices and clinics.
- (o)** Dry cleaning establishments and Laundromats.
- (p)** Express parcel delivery establishments.
- (q)** Furniture and refinishing and upholstering.
- (r)** Garages for repair and service of motor vehicles including towing and wrecker service but not salvage operations.

- (s) Hotels and Motels.
- (t) Intermediate care facilities.
- (u) Libraries, community center, city-county offices and facilities.
- (v) Medical clinics and pharmacies.
- (w) Mini-storage facilities.
- (x) Motor vehicle sales and rental.
- (y) Multi-family housing units of 8-14 units.
- (z) Office and supply stores and business machine sales and services.
- (aa) Parks and Open spaces.
- (ab) Pet stores.
- (ac) Radio, television, and electronic equipment sales and service.
- (ad) Restaurants including all types of eating and drinking establishments.
- (ae) Retail establishments of all types.
- (af) Shopping malls including retail services.
- (ag) Sporting goods stores.
- (ah) Taverns and liquor stores.
- (ai) Other: Uses not listed, but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 2016-27, Sec. 6; Ord. 2018-02

### **(3) Conditional Uses**

All conditional uses must be connected to public water and sewer system. Conditional uses shall not be located less than two hundred (200) feet from a residential district and shall be subject to the provisions of Section 17.11.1. All conditional use applications shall accompany a site plan.

- (a) Elderly care facilities but not nursing homes.
- (b) Funeral homes.



- (c) Gas stations and minor repair conducted indoors.
- (d) Schools and daycare facilities.

**(4) Lot Area, Lot Width and Lot Coverage**

- (a) The minimum lot area for C-2 commercial district shall be five (5) acres.
- (b) The minimum lot width for C-2 commercial district shall be three hundred (300) feet.
- (c) The maximum lot coverage shall be seventy percent (70%) including parking areas.

**(5) Yard Requirements**

- (a) The minimum front building line, measured from the front lot line, is thirty (30) feet.
- (b) The minimum rear building line is thirty (30) feet.
- (c) The minimum side building line, measured from the exterior side of the lot, is ten (10) feet.

Source: Ord. 2018-02; Ord. 2020-08

**(6) Building Height**

The building height requirements in C-2 commercial district shall not exceed sixty (60) feet.

**(7) Parking Requirements**

- (a) The front yard space may be used for parking, provided there is a minimum of ten (10) feet of buffer between the parking area and lot line.
- (b) Parking shall be subject to the provisions of Section 17.6.5.
- (c) All driveways shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances and shall be of asphalt or concrete.

**(8) Sign Requirements**

Signs in C-2 commercial district shall be subject to the provisions of Section 17.6.9.

## **17.5.11 C-3 General Commercial District**

### **(1) Purpose**

The C-3 general commercial district is primarily established to accommodate those commercial uses which by nature and operational characteristics such as direct access, large number of parking spaces, require separation from other uses because of the intensity and frequency of consumer travel. All applications for rezoning to C-3 Commercial shall accompany a site plan as described in Section 17.6.10.

### **(2) Permitted Uses**

All uses in this district must be connected to public water and sewer system.

- (a)** Accessory uses.
- (b)** Advertising signs and billboards, subject to Section 17.6.2.
- (c)** Amusement places such as bowling alleys, athletic clubs, pool halls, theaters, miniature golf courses and similar outdoor or indoor facilities.
- (d)** Animal hospitals and kennels excluding outdoor dog runs or exercise pens when located not less than two hundred (200) feet from any residential district.
- (e)** Bakeries and confectioneries.
- (f)** Banks, insurance and financial institutions.
- (g)** Battery and tire service establishments.
- (h)** Churches and religious institutions.
- (i)** Dry cleaning establishments and Laundromats.
- (j)** Express parcel delivery establishments.
- (k)** Feed and seed stores.
- (l)** Frozen food lockers, but not slaughtering on the premises.
- (m)** Fuel sales establishments.
- (n)** Funeral homes.
- (o)** Furniture and refinishing and upholstering.
- (p)** Garages for repair and service of motor vehicles including towing and wrecker service but not salvage operations.

- (q) Green houses and landscaping businesses.
- (r) Hardware stores and building supply uses contained in buildings.
- (s) Highway maintenance shops.
- (t) Machinery and equipment sales and service including farm machinery and accessories.
- (u) Marine vehicle sales and service.
- (v) Meat produce sales and locker rentals.
- (w) Mini-storage facilities.
- (x) Monument sales.
- (y) Motels and Hotels.
- (z) Motor vehicle sales and rental including cars, trucks and water crafts.
- (aa) Recreational vehicles sales and service.
- (ab) Restaurants including all types of eating and drinking establishments.
- (ac) Retail uses and services.
- (ad) Sporting goods stores and bait shops.
- (ae) Taverns and liquor stores.
- (af) Other: Uses not listed, but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 2016-27, Sec. 7; Ord. 2018-02

### **(3) Conditional Uses**

All uses in this section must be connected to public water and sewer system. Conditional uses shall not be located less than two hundred (200) feet from a residential district and shall be subject to the provisions of Section 17.11.2. All applications for conditional use permit shall accompany a site plan as described in Section 17.6.10.

- (a) Contractors yard, provided that the storage area is fenced and not visible from the street.
- (b) Packing and crating operation
- (c) Plumbing shops and yards.

(d) Lumber yards with outside storage.

**(4) Lot Area, Lot Width and Lot Coverage**

(a) The minimum lot area for C-3 commercial district shall be one (1) acre.

(b) The minimum lot width for C-3 commercial district shall be two hundred (200) feet.

(c) The maximum lot coverage shall be 70%.

**(5) Yard Requirements**

(a) The minimum front building line, measured from the front lot line, is thirty (30) feet.

(b) The minimum rear building line is thirty (30) feet.

(c) The minimum side building line, measured from the exterior side of the lot, is ten (10) feet.

Source: Ord. 2018-02; Ord. 2020-08

**(6) Building Height**

The maximum building height requirement in C-3 general commercial district shall be sixty (60) feet.

**(7) Parking Requirements**

(a) The front yard, side yard, and rear yard setbacks may be used for parking, provided that a ten (10) foot buffer/landscaping area adjoining the street right-of-way is maintained.

(b) Parking in C-3 commercial district, shall be subject to the provisions of Section 17.6.5.

(c) All driveways and parking areas shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances and shall be made of concrete or asphalt.

**(8) Sign Requirements**

For signs in C-3 commercial district shall be subject to the provisions of Section 17.6.9.

## **17.5.12 I-1 Light Industrial District**

### **(1) Purpose**

The I-1 Light Industrial District is primarily established to accommodate light industrial and manufacturing uses and facilities appropriate to the City of Horace. It is planned to encourage grouping of related industrial uses for preventing intrusion on other uses specifically residential areas and to maintain an orderly, functional and efficient industrial land use system. I-1 Industrial District is mainly to accommodate wholesaling and distribution related uses. Because of the limitation of water resources, no water consumptive industry is permitted in Horace. All applications for rezoning to I-1 Industrial District shall accompany a site plan as required by Section 17.6.10. All uses and conditional uses must be placed in industrial park setting.

### **(2) Permitted Uses**

All uses and conditional uses in this district must be connected to public water and sewer system. A site plan is required for all uses in this district.

- (a)** Accessory uses.
- (b)** Any industrial or manufacturing operation provided that dust, fumes, odors, smoke, vapor, noise, lights and vibration producing operations shall be enclosed in a building(s) within the premises.
- (c)** Assembly of parts or machinery performed inside of building(s).
- (d)** Building material and supply establishments.
- (e)** Contractors' yards and construction shops.
- (f)** Electric power production and substations.
- (g)** Fuel sales establishment including bottle gas.
- (h)** Mini-storage facilities.
- (i)** Public utility buildings including water and waste water facilities and accessories.
- (j)** Other: Uses not listed, but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 2016-27, Sec. 8; Ord. 2018-02

**(3) Conditional Uses**

The following uses shall be subject to the provisions of Section 17.11.2 and must be connected to public water and sewer. All conditional use applications shall accompany a site plan required by Section 17.6.10. Conditional uses shall not be located nearer than five hundred (500) feet from any residential area.

- (a) Agricultural related material processing and production.
- (b) Local and regional sanitary landfills, compost sites and incinerators.
- (c) Communication tower including radio, TV, microwave, cellular phone towers, microwave relay towers and related facilities.
- (d) Compassion centers as described further in Section 17.6.11.

**(4) Lot Area, Lot Width and Coverage**

- (a) The minimum lot area for I-1 Industrial District shall be two (2) acres.
- (b) The minimum lot width for I-1 Industrial district shall be two hundred (200) feet.
- (c) The maximum lot coverage, including parking area, shall be seventy percent (70%).

**(5) Yard Requirements**

- (a) The minimum front building line, measured from the front lot line, is thirty (30) feet.
- (b) The minimum rear building line, measured from the rear lot line, is thirty (30) feet.
- (c) The minimum side building line, measured from the interior side of the lot, is ten (10) feet.

Source: Ord. 2018-02; Ord. 2020-08

**(6) Building Height**

The building height requirement in I-1 Industrial District shall not be more than sixty (60) feet.

**(7) Parking Requirements**

- (a) Parking in the I-1 Industrial District, shall be subject to the provisions of Section 17.6.5.

(b) All driveways and parking areas shall be constructed in accordance with the requirements of the City of Horace Municipal Ordinances and shall be made of concrete or asphalt.

**(8) Sign Requirements**

Signs in the I-1 Industrial District shall be subject to the provisions of Section 17.6.9.

**17.5.13 I-2 General Industrial District**

**(1) Purpose**

The I-2 general industrial district is primarily established to accommodate industrial uses and facilities appropriate to the City of Horace. It is planned to encourage grouping of related industrial uses for preventing intrusion on other uses specifically residential areas and to maintain an orderly, functional and efficient industrial land use system. Because of the limitation of water resources, no water consumptive industry is permitted in Horace. Due to the nature of this district all future uses shall be contiguous in an Industrial park. All applications for I-2 Industrial uses shall accompany a site plan as required by Section 17.6.10.

**(2) Permitted Uses**

All uses in this district, including conditional uses, must be connected to public water and sewer and shall not be closer than one thousand (1,000) feet from residential area.

- (a) Accessory uses.
- (b) Agricultural chemical production and storage.
- (c) Agricultural products and processing of non-water consumptive nature.
- (d) Any industrial or manufacturing operation provided that dust, fumes, odors, smoke, vapor, noise, lights and vibration producing operations shall be enclosed in buildings within the premises.
- (e) Assembly of parts or machinery performed inside of buildings.
- (f) Building material and supply establishments.
- (g) Contractors' yards and construction shops.
- (h) Electric power production and substations.
- (i) Fuel sales establishment including bottle gas.
- (j) Mini-storage facilities.

(k) Public utility buildings including water and waste water facilities and accessories.

(l) Other: Uses not listed, but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 2016-27, Sec. 9; Ord. 2018-02

### **(3) Conditional Uses**

The following uses shall be subject to the provisions of Section 17.11.2, Conditional Uses. All conditional use applications shall accompany a site plan required by Section 17.6.10 and shall not be located nearer than one thousand (1,000) feet from any residential area.

(a) Agricultural related material production including fertilizer plants, propane gas storage, gasoline storage and the like.

(b) Local and regional sanitary landfills, compost sites and incinerators.

(c) Compassion centers as described further in Section 17.6.11.

### **(4) Lot Area, Lot Width and Coverage**

(a) The minimum lot area for I-2 Industrial District shall be five (5) acres.

(b) The minimum lot width for I-2 Industrial District shall be three hundred (300) feet.

(c) Maximum lot area coverage shall be 70%.

### **(5) Yard Requirements**

(a) The minimum setback from all public streets shall be one hundred (100) feet.

(b) The minimum rear building line from all public streets shall be one hundred (100) feet.

(c) The minimum side building line shall be seventy-five (75) feet.

### **(6) Building Height**

The building height requirement in I-2 Industrial District shall not be more than sixty (60) feet.



**(7) Parking Requirements**

(a) Parking in the I-2 Industrial District, shall be subject to the provisions of Section 17.6.5.

(b) All driveways shall be constructed in accordance with the requirements of the City of Horace and shall be of concrete or asphalt.

**(8) Sign Requirements**

Signs in the I-2 Industrial District shall be subject to the provisions of Section 17.6.9.

**17.5.14 PUD District – Planned Unit Development Overlay District**

**(1) Purpose** (Source: Ord. 2020-11)

The PUD District, a planned unit development overlay district, is designed to accommodate development projects that bring significant public benefit, achieve more advantageous and efficient use of sites and infrastructure through the location and arrangement of structures, circulation, parking, and open space, and comply with the intent and purpose of this ordinance, other related City ordinances, and the most current comprehensive plan.

A PUD District may be overlaid on any of the zoning districts as established by this ordinance. A PUD District is distinguished from the traditional and separate process of zoning and land subdivision and approaches a site holistically and is only achievable through a number of technical deviations from the standard zoning categories. The density, bulk, height, minimum lot size, and use of property may be altered by agreement between a developer and the City of Horace. To finalize an agreement, the developer must demonstrate that the proposal is unique to the site, the area, and the City of Horace, and meets the standards set forth by this ordinance, other City ordinances, and the most current comprehensive plan. The benefits of the PUD District must be significant to warrant any modifications of standards required under any district regulations by the City of Horace.

A PUD District is not intended as a short cut in the approval process, nor is it to be construed as a means of relaxing or circumventing regulations without ample justification and benefit to the City of Horace.

**(2) Permitted Uses**

(a) All uses in PUD District must be connected to public water and sewer system.

(b) Any use that is permitted by this ordinance within any zoning district is permitted within a PUD District, provided there is distinct compatibility and harmony among the uses of the PUD District and adjoining districts, with no adverse effects on the uses in adjoining districts.

**(3) Restrictions**

- (a)** Special assessments cannot be used to finance the development of a PUD District, including but not limited to, streets, street lights, water, sanitary sewer, storm sewer, sidewalks and pedestrian spaces, any other utilities, landscaping, or the engineering, design, or labor involved in the construction thereof, within the PUD District.
- (b)** A PUD District will not be considered if it provides for intensity, appearance, and arrangement for use of space(s) that:

  - (i)** Adversely affect the economic prosperity of the City of Horace or its extra-territorial area;
  - (ii)** Are incompatible with the existing physical nature of the site or area;
  - (iii)** Are a burden on existing City of Horace services and utilities;
  - (iv)** Creates traffic or parking demands incompatible with the existing or proposed facilities;
  - (v)** Would be a financial burden or development burden on the City of Horace; or
  - (vi)** Make no distinct difference if a proposal is carried out through standard rezoning, conditional use permit, or land subdivision process.
- (c)** Uses will not be permitted in the PUD District except in conformity with the most current comprehensive plan and the detailed development plan prepared to meet the requirements of this ordinance. (Source: Ord. 2020-11)
- (d)** The PUD District proposed plan must include assurances that the PUD District project will be completed in a manner that will not adversely affect the City of Horace or the extra-territorial area as a result of termination. The terms of the assurances must address financial and development considerations in sufficient detail as required by the City of Horace.

**(4) Site Requirements**

The minimum land parcel for a PUD District is two (2) acres and the maximum land parcel for a PUD District is forty (40) acres. Areas of less than two (2) acres may qualify as a PUD District if the developer can show that waiving this requirement is in the public interest and that at least one (1) of the following conditions is met:

- (a) Unusual physical features of the site or the surrounding neighborhood are such that development under a different zoning district does not conserve the unique physical features of the site or allow functional or environmental compatibility with the surrounding neighborhood;
- (b) The site is adjacent to an area which has been developed under the provisions of a PUD District and will contribute to the amenity and functionality of the neighborhood; or
- (c) The site is part of an urban redevelopment renewal program, provided it does not conflict with the nature of the surrounding neighborhood.

**(5) Application Requirements**

An application for a PUD District must contain the following:

- (a) Legal description of the proposed PUD District;
- (b) A statement describing the general character of the intended development and why a PUD District is proposed;
- (c) Detailed development plan as described in the following section;
- (d) Proof of financial ability of the owner(s)/developer(s) to carry out the project;
- (e) Analysis of economic impacts for a 10-year period which details anticipated sales tax revenue, property tax revenue, and the marginal social benefit to the public;
- (f) An outline of the anticipated schedule and sequence of development if the development will be completed in phases for the total PUD District;
- (g) A description of all anticipated municipal services and utilities together with a description of easement or access rights necessary to provide municipal services and utilities;
- (h) A preliminary subdivision plat meeting the requirements of this ordinance for traditional platted subdivisions; and
- (i) Any agreements, by-laws, provisions, and covenants that insure the timely and satisfactory completion of the project without posing a burden on the City of Horace or adjoining properties.

**(6) Development Plan**

A detailed development plan must contain the following:

- (a) Location of existing property lines, buildings, drives, streams, wooded areas, and other significant natural features;
- (b) Detailed layout of proposed streets and location of blocks for designated uses, including the right-of-way widths and street names;
- (c) Location of open spaces and facilities for public uses;
- (d) Existing drainage pattern based on the current topographic information and the location of land to be dedicated for parks,-playgrounds, and/or open spaces. A detailed drainage plan drawn on contour maps of no less than one (1) foot contour interval and delineates water retention area(s);
- (e) The detailed development plan must be drawn at a scale of one (1) inch equaling two hundred (200) feet or less;
- (f) Three-dimensional drawings showing location, height, and bulk of buildings based on the buildings' footprints;
- (g) Other engineering or financial information required by the City of Horace;
- (h) For proposed mixed use, commercial, or industrial PUD Districts, the location, number, and configuration of parking spaces;
- (i) The location, type, and size of signs; and
- (j) Concrete or asphalt driveways and parking areas constructed in accordance with City of Horace standards.

**(7) Coordination with Platting Regulations**

It is the intent of this ordinance that platting review be carried out simultaneously with the review of the PUD District and that the development plans submitted under this ordinance be submitted in a form that will satisfy the requirements of the subdivision control regulations for preliminary and final plats.

**(8) Review and Approval Procedure**

The review and approval of a PUD District is as follows:

- (a) The developer must participate in a pre-application consultation meeting with the City's Planning Department to discuss ideas and alternatives for a PUD District, discuss the financial ability of the developer, and determine if the proposed plan meets the requirements of the City of Horace.
- (b) The developer must file an application for a PUD District with the City of Horace, including all information required by this ordinance, and pay a filing fee as set forth in a fee schedule established by resolution of the City Council.

(c) Upon receipt of the filing fee and completed application for a PUD District, the application will be reviewed by the City's Planning Department to determine if the application contains all prerequisites necessary for an application for a PUD District. If acceptable, the application will be referred to the Planning Commission and its staff for review. After the Planning Commission's review of the application, the Planning Commission may give preliminary agreement to the concept of a PUD District for the total area of the proposed PUD District or such lesser area as is deemed appropriate. The Planning Commission may require additional information from the developer and may propose modifications to the proposed plan for the PUD District before holding a public hearing.

(d) After the Planning Commission gives preliminary agreement to the concept of the PUD District, the developer will work with City staff to develop a PUD District agreement. The PUD District agreement contains terms, provisions, and conditions that apply specifically to the PUD District. The PUD District agreement is considered an ordinance of the City of Horace, and, as such, the PUD District agreement will follow the standard procedure to adopt an ordinance.

(e) Upon completion of the initial PUD District agreement, the Planning Commission will hold a public hearing on the PUD District agreement and the application. After the public hearing, the Planning Commission may act on the PUD District agreement and application for the PUD District setting forth all areas of agreement with the developer's proposed plan, as modified during the process of investigation and inquiry, and identifying the position(s) of the Planning Commission on those areas of disagreement with the developer's proposed plan for the PUD District. The Planning Commission may then request additional information or recommend approval, conditional approval, or denial of the PUD District agreement and application to the City Council.

(f) The City Council will then hold a public hearing and may act upon the PUD District agreement and application or hold additional deliberation or public hearings, after which the City Council may request additional information, approve, conditionally approve, or deny the PUD District agreement and application. The developer is responsible for all costs associated with advertising the public hearings and technical advice incurred by the City Council and Planning Commission during consideration of the PUD District agreement and application.

(g) If the City Council denies the application, the developer may appeal the decision to the Cass County District Court, as permitted by law.

(h) Upon approval or conditional approval by the City Council and delivery of all signed documents deemed necessary to meet the terms of the PUD District agreement, the final plat will be recorded with the Cass County Recorder's office. Thereafter, building permits will be issued only if the application for building permit complies with the terms and conditions allowable for the PUD District. A separate building permit fee is required according to the fee schedule established by resolution of the City Council.

(i) If the developer fails to develop the PUD District as planned, the PUD District automatically terminates two (2) years after the approval of the PUD District by the City Council, unless (i) renewed for another two (2) years by affirmative vote of the City Council, and (ii) the developer's payment of an additional administrative fee as set forth in a fee schedule established by resolution of the City Council. Building permits may not be granted after termination of the PUD District.

**(9) Amendments**

Any change in the PUD District agreement will first be submitted for recommendation to the Planning Commission, and if, in the opinion of the Planning Commission, such change constitutes substantial alteration of the original plan, especially with regards to a change in land use or an increase in development density or intensity, the Planning Commission may recommend approval, conditional approval, or denial of the PUD District amendment to the City Council. The City Council may then request additional information, hold a public hearing, approve, conditionally approve, or deny the PUD District amendment.

**(10) Penalty**

Failure of the developer to comply with the PUD District agreement may result in termination of the PUD District. If the PUD District is terminated, the land and structures will be rezoned to the City of Horace zone that most closely resembles the PUD District. The City of Horace may also prohibit the developer from initiating another PUD District for a five (5) year period following termination.

Source: Ord. 2017-38, Sec. 1; Ord. 2019-7, Sec.1

**17.5.15 FP FLOOD PLAIN DISTRICT**

The FP Flood Plain District, as an overlay district, consists of the land which has been or may be covered by flood water as delineated for the City of Horace and Cass County, North Dakota and approved by FEMA Federal Emergency Management Agency for administration of the National Flood Insurance Program or other maps and documents provided by the State of North Dakota. The provisions of this shall apply to all flood lands and zoning districts in Horace and its extra-territorial planning area.

**(1) Purpose**

The FP Flood Plain District is primarily established to designate those areas which need to accommodate the run-off water and to protect the public and private property from the adverse effects of flooding by prohibiting development on the lands prone to flooding.

**(2) Permitted Uses**

(a) Agricultural uses including general farming, pasture, grazing and related uses provided that the buildings and structures for human habitation are flood proofed.

(b) Non-structural uses including storm water retention ponds and treated waste water effluent storage.

(c) Public utilities including railroads, streets, bridges, channels, and pipelines.

(d) Outdoor recreational uses including golf courses, bicycle trails, picnic areas if cost effective.

**(3) Conditional Uses**

Temporary buildings and structures not related to flood control and farming such as stands, fences, shelters, temporary signs and temporary parking. These uses shall be subject to the provisions of Section 17.11.2.

**(4) Building Height**

No structure shall be more than thirty-five (35) feet high excepting farm silos.

**(5) Sign Requirements**

Temporary signs shall be no larger than thirty (30) square feet in area and shall be removed in sixty (60) days from the date of installation.

**17.5.16 PF Public Facilities District** Source: Ord. 2015-6, Sec. 3; Ord. 2018-17

**(1) Purpose**

The PF Public Facilities District is primarily established to promote the development, maintenance, use, and identification of land and structures utilized for municipal or public purposes.

**(2) Permitted Uses**

(a) Facilities including City Hall, libraries, other municipal buildings, open space, parks, golf courses, and other publicly owned athletic or recreational facilities.

(b) Essential services.

(c) Public utilities.

(d) Public schools.

- (e) Educational offices.
- (f) Hospitals.
- (g) Museums.
- (h) Community theatres.
- (i) Art centers.
- (j) Other: Accessory uses and activities not listed, but similar to the permitted uses above and consistent with the stated purpose of this district.

Source: Ord. 2020-10

**(3) Conditional Uses**

The following uses shall be subject to the provisions of Section 17.11.2. All conditional use applications shall be accompanied by a site plan required by Section 17.6.10.

- (a) Off site signs. In granting such a conditional use, the City may impose height and other requirements, as well as other requirements deemed necessary by the City to have such signs fit into the area in which they are proposed to be established.

**(4) Yard Requirements**

None, except if the property abuts another zoning district, buildings and other structures must be set back at a minimum the same distance as is required in the abutting district.

**17.5.17 MU Mixed Use District** Source: Ord. 2020-04

All uses in this district must be connected to public water and sewer systems.

**(1) Purpose**

The MU Mixed Use District is primarily established to promote a suitable environment to accommodate mixed use development and avoid conflicted land uses. The MU Mixed Use District allows a broad range of uses in order to enhance the City of Horace's mixed use areas as a commercial, cultural, governmental, and residential center. In recognition of existing public facility capacity and planning goals, very intensive development is allowed, with high building coverage, large buildings, and buildings placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.

**(2) Uses Not Permitted**

The following uses are not permitted in the MU Mixed Use District:



- (a) Adult Entertainment Centers.
- (b) Advertising signs and billboards, subject to Section 17.6.2.
- (c) All types of farming and ranching operations.
- (d) Any industrial or manufacturing operations that result in dust, fumes, odors, smoke, vapor, noise, and vibration producing operations.
- (e) Assembly of parts or machinery performed inside of building(s).
- (f) Automobile salvage yards.
- (g) Building material and supply establishments.
- (h) Car washes.
- (i) Communication towers including radio, TV, microwave, cellular phone towers, microwave relay towers, and related facilities.
- (j) Compassion Centers.
- (k) Contractor yards and construction shops.
- (l) Dwellings, single-family attached.
- (m) Dwellings, single-family detached.
- (n) Feed lots.
- (o) Fuel sales establishments including bottle gas.
- (p) Garages for repair and service of motor vehicles including towing and wrecker service but not salvage operations.
- (q) Gas stations and minor repair conducted indoors.
- (r) Golf courses.
- (s) Industrial parks.
- (t) Junk or salvage yards.
- (u) Kennels, animal.
- (v) Local and regional sanitary landfills, compost sites, and incinerators.
- (w) Manufactured and modular homes.

- (x) Manufactured home parks.
- (y) Mini-storage facilities.
- (z) Mobile homes.
- (aa) Motor vehicle sales and rentals.
- (bb) Public utility buildings including water and wastewater facilities and accessories.
- (cc) Riding stables.
- (dd) Sand and gravel operations.
- (ee) Service stations.
- (ff) Smoke shops.

**(3) Conditional Uses**

There are no conditional uses for the MU Mixed Use District.

**(4) Lot Area and Lot Width**

- (a) There is no minimum lot area; however, the minimum floor area ratio for new development must be 1:0. There is no maximum floor area ratio.
- (b) There are no minimum or maximum lot width requirements.

**(5) Design Standards**

**(a) General Design Standards**

**(i) Intent** - The MU Mixed Use District Design Standards are intended to create and maintain a general visual quality and appearance that will be appealing to people who live or work in the MU Mixed Use District and to those who come to the area for goods, services, entertainment, or leisure. The regulations are also intended to stimulate and protect investment in the MU Mixed Use District through the establishment of high standards with respect to materials, details, and appearance.

**(ii) Applicability** - The MU Mixed Use District Design Standards of this subsection apply throughout the MU Mixed Use District, unless otherwise expressly stated.

**(iii) Review Procedure** - Review for compliance with the Design Standards of this subsection are carried out in accordance with the site plan review procedures of Section 17.6.10.

**(iv)** Building Permit applications for development in the MU Mixed Use District are subject to all requirements of Section 17.8.12, Design Review.

**(b)** Demolition

**(i)** The standards of this subsection apply in the event of building demolition.

**(ii)** Exposed Walls. Any building walls left exposed as a result of demolition must be given a finished architectural appearance that is similar to the front facade of the subject building. At the applicant's option, a false infill facade may be used as an alternative to refinish the exposed wall. The wall treatment must be in place within sixty (60) days of the date of demolition, unless a longer time period is approved at the time of approval of the demolition plans. Prior to approval of the demolition plans, the applicant must provide a letter of credit, a paid-in-full receipt from a contractor, a performance bond, or escrow deposit in an adequate amount to ensure that the proposed wall treatment will be completed. The amount of the financial guarantee must be equal to at least one hundred percent (100%) of the estimated total cost (labor and materials). The City is authorized to use such financial guarantee to complete the work if the required wall treatment is not in place by the date stated on the approved financial guarantee form.

**(iii)** Vacant Lots. Any lots left vacant after demolition must be paved or landscaped to ensure a dust-free surface. The paving or landscaping must be in place within thirty (30) days of the date of demolition, unless a longer time period is approved at the time of approval of the demolition plans. Once installed, the landscaping or paving must be continuously maintained in serviceable condition. Prior to approval of the demolition plans, the applicant must provide a letter of credit, a paid-in-full receipt from a contractor, a performance bond, or escrow deposit in an adequate amount to ensure that the proposed landscaping or paving will be completed. The amount of the financial guarantee must be equal to at least one hundred percent (100%) of the estimated total cost (labor and materials). The City is authorized to use such financial guarantee to complete the work if the required paving or landscaping is not in place by the date stated on the approved financial guarantee form. Landscaping or paving required by this subsection must be maintained in serviceable condition.

**(iv)** Maintenance. Any lots left vacant after demolition must be continuously maintained and kept free of debris and litter. Failure to maintain will result in the City maintaining the lot and assessing the actual costs of maintenance to the property.

(v) Screening. A fence, wall, or landscape buffer must be provided to partially screen vacant lots from view of adjacent property, including sidewalks and public rights-of-way. The required screen must have a minimum height of two and one-half (2 ½) feet and a maximum height of three (3) feet. Screens may exceed three (3) feet in height if they are at least fifty percent (50%) transparent.

(c) Building Siting and Design

(i) The standards of this subsection apply to all development in the MU Mixed Use District.

(ii) Materials Required. Walls that front a public street must be finished with materials such as brick, glass, stone, ceramic, stucco, precast panels, exterior insulation finish systems (e.g. dryvit), or curtain walls. When the MU Mixed Use District development is detached/attached single-family or small-scale multi-dwelling in nature, typical residential structure exterior materials may be accepted (e.g. residential grade vinyl siding, composite brick, architectural grade steel siding).

1. Additional exterior materials may be required by the Planning Commission during the design review process of Section 17.8.12.

(iii) Materials Prohibited. The following materials must not be used on walls that are visible from the street: non-architectural grade metal siding; non-residential grade wood-based materials; asphalt; concrete blocks or cinder blocks; provided, that use of architectural metal panels and metal panels for enclosure of mechanical equipment shall be permitted, and use of wood-based materials for architectural treatment is permitted. Concrete block may be used only if it is burnished, standing flute, or sculptured. Mirrored glass or one-way glass with a reflectance of greater than forty percent (40%) is prohibited from covering more than forty percent (40%) of the exterior walls. Residential grade metal siding and wood-based materials are prohibited on all MU Mixed Use District development.

(d) Ground-Floor Transparency

(i) At least thirty-five percent (35%) of the ground-floor facade of buildings along sidewalks must be comprised of windows, doors, and other transparent elements (e.g. glass block) that allow views into buildings, plazas, or arcades. Calculations are based on the linear footage of the ground floor and the transparent elements must be a minimum of four (4) feet in height.

1. Existing buildings along sidewalks to which interior renovations or structural improvements are proposed are excluded from this requirement only if they do not already meet the thirty-five percent (35%) transparency requirement. In those cases, the transparency requirement must meet or exceed the percentage of ground floor transparency provided by the existing structure.

2. The Code Administrator has the authority to allow less than thirty-five percent (35%) ground floor transparency adjacent to sidewalks, provided that the subject wall of the structure includes architectural features that offer visual relief from a blank wall through the use of texture, recessed patterns, or other design features that add visual relief. The decision of the Code Administrator may be appealed to the Planning Commission within thirty (30) days of the decision.

3. Residential development, where dwelling units occupy the first floor, are excluded from these requirements.

(e) Landscaping

(i) Landscape standards of Section 17.8.8 do not apply.

**(6) Yard Requirements**

(a) The maximum front yard setback, measured from the front lot line, is ten (10) feet.

(b) There is no minimum rear yard setback.

(c) One side yard may have a zero (0) foot setback and the other may be setback up to a maximum of seventy (70) feet.

(d) If the property abuts a residentially zoned property, the side yard setback is required to be a minimum of ten (10) feet with a minimum eight (8) foot wide landscape buffer of one (1) perennial shrub per four (4) linear feet.

(e) The MU Mixed Use District is exempt from Section 17.8.2(12) regarding setbacks from public right of way.

(f) The MU Mixed Use District is exempt from Section 17.8.4(10) regarding setbacks from arterial and collector streets.

**(7) Building Height**

(a) The building height requirement in the MU Mixed Use District may not be less than two (2) stories or thirty-five (35) feet and may not exceed eighty (80) feet. Mezzanine floors will not constitute a second floor. A second floor is required for all structures.

(b) Within twenty-five (25) feet of a property line, no point on a newly constructed structure may exceed twenty (20) feet in height if that structure is within two hundred (200) feet of a residential structure with a building height under thirty-five (35) feet.

**(8) Parking Requirements**

(a) For residential living units the following off-street parking spaces are required:

- (i) Efficiency Units - One (1) space per unit
- (ii) 1 Bedroom Units - One and a half (1.5) spaces per unit
- (iii) 2 Bedroom Units - Two (2) spaces per unit
- (iv) 3 Bedroom Units - Three (3) spaces per unit

(b) Parking for all other uses permitted in the MU Mixed Use Zoning District not listed in this section are subject to the provisions of Section 17.6.5.

(c) Parking ratios may be amended by the Planning Commission during the design review process of Section 17.8.12 based on a parking study provided by the applicant.

(d) A fence, wall, or landscape buffer must be provided to partially screen surface level parking lots from public rights-of-way, excluding alleys. Fences or walls must be constructed with materials and details similar to or compatible with those of the structures in the surrounding area. The required screen must have a minimum height of two and one-half (2½) feet and a maximum height of three (3) feet. Screens may exceed three (3) feet in height if they are at least fifty percent (50%) transparent.

**(9) Sign Requirements**

Signs in the MU Mixed Use District are subject to the provisions of Section 17.6.9(b).

**(10) Subdivision and Dedication of Land for Public Purposes**

Land dedication requirements of Section 17.8.10 are required. All development proposals will need to dedicate land at a four percent (4%) rate of the gross area of the property or provide a fee-in-lieu of land dedication at a rate of eighty percent (80%) of the current commercial rate.

## **17.6 SPECIAL PROVISIONS**

### **17.6.1 Communication Structures and Facilities**

#### **(1) Purpose**

- (a)** to guide and regulate placement of commercial/radio/TV towers and antennas, cellular phone towers, microwave towers, relay towers and the like.
- (b)** to assure that public health and safety is protected.
- (c)** to assure that conflict in land uses is avoided.
- (d)** to assure that commercial communication towers are located in areas with the least environmental impact on adjoining uses.

#### **(2) General Requirement**

- (a)** Amateur radio and ham radio towers are permitted in all zoning districts as a conditional use subject to the provisions of Section 17.11.2
- (b)** Amateur radio and ham radio towers' height shall not exceed two times the maximum height of the structure on which to be placed but not to exceed forty (40) feet whichever is smaller.
- (c)** Commercial telecommunication towers may be permitted as a conditional use in A-Agricultural district and I-1 and I-2 Industrial Districts. Such towers are not permitted in residential and commercial districts.
- (d)** Cellular phone towers may be permitted as antenna attachments to church steeples provided that there is sufficient proof for the load bearing capacity of the steeple and sufficient distance from the public streets and residential areas in the event, the steeple or the antenna attachment collapses.

#### **(3) Special Requirements**

- (a)** A site plan showing the location of adjoining uses, location, description including the type and height of the communication tower as provided in Section 17.6.10.
- (b)** Commercial communication towers shall not be higher than two hundred (200) feet measured from the base of the tower.
- (c)** Evidence of ownership of property or option for the land with sufficient space for the main tower and supporting cables/guy wires and related structures.
- (d)** Setbacks equal to one hundred ten percent (110%) of the height of the tower.

(e) Secure fencing of the site not to exceed eight (8) feet high chain-link fences to avoid unauthorized climbing.

(f) Landscaping of the perimeter of the site to create a visually pleasing environment.

**(4) Review and Approval Procedure**

(a) The developer/owner arranges for a pre-consultation meeting with the Code Administrator and the Planning Commission to determine the feasibility and applicability of the proposed commercial communication tower.

(b) An application form together with supporting data described under general and special requirements mentioned above and other financial, engineering and environmental data that the Planning Commission requires.

(c) An application fee as set forth in a fee schedule established by the City Council.

(d) The Planning Commission sets a date for public hearing, the notice of which shall be published in the official newspaper of Horace. All property owners within one hundred fifty (150) feet of the proposed site, excluding the public rights-of-way are to be notified by mail of the date of the public hearing.

(e) After the hearing, the Planning Commission shall make its recommendations to the City Council for approval, conditional approval or denial.

(f) The City Council, after a public hearing and review of the submitted documents including the comments of the public, shall make a decision for approving or denying a conditional use permit.

(Source: Ord. 2017-38, Sec. 2; Ord. 2018-02)

**17.6.2 Feed Lots**

**(1) Purpose**

These regulations are designed to allow feed lots for feeding of livestock, fur bearers and poultry at the same time protect the adjoining uses against odor, run off and other incompatible characteristics that may be associated with feed lots. All proposed feed lots shall be subject to the provisions of Section 17.6.10.

**(2) General Requirements**

(a) all feed lots as defined by this ordinance are only permitted as conditional uses subject to the provisions of this ordinance and the requirements of the North Dakota State Department of Health.



- (b) All feed lots shall be designed and constructed with all reasonable preventive measures to avoid surface run-off including construction of sealed collection and retention ponds.
- (c) Where appropriate, there shall be sufficient drainage to avoid pollution of the ground water from the standing effluents.
- (d) Feed lots shall not be placed in a Flood Plain.
- (e) The applicant, as a part of site approval application, shall submit a plan for removal and disposal of the liquid and solid waste generated by the feed lot.
- (f) An application fee as set forth in a fee schedule established by the City Council.

Source: Ord. 2017-38, Sec. 3

**(3) Proximity to Existing Uses**

No feed lot shall be located nearer than one thousand (1,000) feet from a residential development in the extra territorial area or corporate limits of the City of Horace.

**17.6.3 Fences and Hedges**

Fences are structures constructed of any material including wood, metal and plastics for the purpose of providing privacy, safety and protection of a property.

- (1) In residential districts, fences may be erected directly on the property line.
  - (a) In residential district for the front yards, the height of the fences or hedges shall not exceed three (3) feet.
  - (b) For the side and rear yards, the height of the fence, hedges and plants shall not exceed six (6) feet, so long as a vision triangle near the street intersection is maintained.
- (2) In commercial and industrial districts, the height of the fence shall not exceed eight (8) feet, and that such a fence shall not obstruct the view of the motorist within fifty (50) feet of an intersection. Fences may be installed on the property line.
- (3) All fences require a permit from the Code Administrator of the City of Horace, except temporary fences for construction and snow fences.
- (4) The finished side of fences that are installed must face the outside of the property of which the fence is installed.

**17.6.4 Junk or Salvage Yard**

- (1) **Purpose**

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

**(2) Site approval Requirements**

All sites for salvage and junk yards application shall be subject to the provisions of Section 17.6.10. An application fee, as set forth in a fee schedule established by the City Council, is required.

Source: Ord. 2017-38, Sec. 4

**(3) Location Standards**

**(a)** No salvage or junkyard shall be located within five hundred (500) feet of a residential district and two hundred (200) feet of commercial buildings and structures.

**(b)** No salvage or junkyard shall be located in areas, which due to high water table, flooding and soil conditions may affect the quality of surface and ground water.

**(c)** No salvage or junkyard shall be located nearer than one hundred (100) feet of all public streets and highway rights-of-way.

**(d)** All salvage yards and operations shall be screened from the public view unless the salvage material is placed five hundred (500) feet away from any highway right-of-way and screened by natural vegetation fences, building and land form.

**17.6.5 Off-Street Parking and Loading Regulations** (Source: Ord. 2016-27, Sec. 10)

**(1) Automobile Parking Space Required**

No building shall be erected, enlarged to the extent of increasing the floor area, or changed in use unless there is provided on the lot, space for parking of automobiles as specified below. When sufficient off-street parking cannot be provided on the same lot or a lot contiguous to the principal use because of unique circumstances, and arrangements can be made to provide off-street parking on a noncontiguous lot, such parking arrangements shall be considered by the Planning Commission on a case-by-case basis. The Planning Commission may grant permission to provide parking on a noncontiguous lot provided traffic or land use problems are not created, and a long-term agreement can be negotiated so the required off-street parking is maintained as long as the principal use exists.

The Planning Commission may allow sharing of required off-street parking by two (2) separate uses provided the normal peak parking times of the two (2) uses do not coincide.

Only the off-street parking spaces not normally used by the off-peak use shall be counted as off-street parking for the peak use. Each use shall have the total required off-street parking available during their respective periods of peak parking use. A long-term agreement shall be negotiated whereby both uses are bound to the establishment and maintenance of the shared off-street parking.

If it can be demonstrated by the property owner through market studies or other means that the required off-street parking is excessive and/or a lower parking is supported by the most recently published Institute of Traffic Engineers Parking Generation manual, or the Urban Land Institute Shared Parking guide, and a lesser requirement is justifiable, the City Council may reduce the number of required parking spaces by passage of a resolution approved by a majority of the members of the City Council. (Source: Ord. 2019-7, Sec. 2)

Parking areas shall be so designed that vehicles may enter, circulate, park and exit in a convenient and orderly fashion. Required off-street parking shall be provided in such a manner that vehicles do not encroach on a public right-of-way. The minimum size of each parking stall shall be nine (9) feet by twenty (20) feet, exclusive of aisle width. For any parking area except for single, two-family, and three to four (3-4) unit townhome dwellings, a suitable means of turnaround must be provided at maximum design capacity so no vehicle shall back onto public streets or alleys. Where this cannot be accomplished for parking lots of five (5) or fewer vehicles, the Planning Commission may consider an alternative design as a conditional use.

Reference herein to “employee(s) on the largest shift” means the maximum number of employees employed at the facility regardless of the time period during which this occurs and regardless of whether any such person is a full-time employee. The largest shift may be a particular day of the week or a lunch or dinner period in the case of a restaurant.

The term “capacity,” as used herein, means the maximum number of persons which may be accommodated by the use as determined by its design or by building or fire code regulations, whichever is greater.

Any use not specifically mentioned below shall meet the requirements for uses most clearly related as determined by the Code Administrator.

The number of off-street parking spaces which shall be required are as follows:

- (a)** Agricultural Support Uses - One (1) space per employee on the largest shift, plus one (1) space per two hundred (200) square feet of gross floor area provided for customer sales and service operations.
- (b)** Residential Uses:
  - (i)** Single-Family - Two (2) spaces per dwelling.
  - (ii)** Multiple Family Units - Two and one quarter (2 1/4) spaces per efficiency and two and one quarter (2 1/4) spaces per one (1) or more bedroom dwelling unit(s).

- (c)** Institutional, Recreational, and Special Residential Uses:
- (i)** Camps (Day or Youth) - One (1) space per employee on the largest shift, plus one (1) space per camp vehicle normally stored on the premises.
  - (ii)** Church - One (1) space per three (3) seats of maximum capacity.
  - (iii)** Community and Recreation Center - One (1) space per two hundred fifty (250) square feet of gross floor area, or one (1) space per four (4) patrons to the maximum capacity, plus one (1) space per employee on the largest shift.
  - (iv)** Day or Nursery School, Child Care Facility - One (1) space per teacher/employee on the largest shift, plus one (1) space per ten (10) students for loading and unloading.
  - (v)** Group Dwellings, Fraternity or Sorority, Boarding or Lodging Houses - One (1) space per bedroom or sleeping room, unless it can be demonstrated that the occupants will not be driving.
  - (vi)** Libraries and Museums - One (1) space per three hundred fifty (350) square feet of floor area or one (1) space per four (4) seats to the maximum capacity, whichever is greater, plus one (1) space per employee on the largest shift.
  - (vii)** Monasteries, Convents - One (1) space per six (6) residents, plus one (1) space per employee on the largest shift, plus one (1) space per five (5) chapel seats if the public may attend.
  - (viii)** Nursing Homes - One (1) space per six (6) patient beds, plus one (1) space per employee on the largest shift.
  - (vix)** Schools:
    - 1. Elementary and Junior High - One (1) space per teacher and staff member on the largest shift, plus one (1) space per fifteen (15) students.
    - 2. Senior High - One (1) space per teacher and staff member on the largest shift, plus one (1) space per five (5) students.
    - 3. College, Trade and Vocational - One (1) space per staff member on the largest shift, plus one (1) space per four (4) students of the largest class attendance period.
  - (x)** Swimming Facility - One (1) space per one hundred (100) square feet of gross water area, plus one (1) space per employee on the largest shift.

- (xi)** Tennis, Racquetball, Handball Courts - Two (2) spaces per court, plus one (1) space per employee on the largest shift.
- (xii)** Bowling Alley - Three (3) spaces per lane, plus one (1) space per employee on the largest shift.
- (xiii)** Miniature Golf - One (1) space per hole, plus one (1) space per employee on the largest shift.
- (xiv)** Outdoor Theater - One (1) space per four (4) patrons to the maximum capacity of the facility inclusive of both indoor and outdoor capacity.
- (xv)** Skating Rink, Ice or Roller - One (1) space per three hundred (300) square feet of gross floor area.
- (xvi)** Health Club - One (1) space per one hundred (100) square feet of gross floor area, plus one (1) space per employee on the largest shift.
- (xvii)** Golf Courses - Five (5) spaces per hole.
- (xviii)** Other Commercial Recreational Uses - One (1) space per four (4) patrons to the maximum capacity of the facility, or one (1) space per two hundred fifty (250) square feet of gross floor area, whichever is more appropriate.
- (d)** Commercial and Entertainment Uses, Except as Specifically Designated Below - One (1) space per two hundred fifty (250) square feet of gross floor area of customer sales and services, plus one (1) space per two hundred fifty (250) square feet of storage and/or office gross floor area.

  - (i)** Banks - One (1) space per two hundred (200) square feet of gross floor area.
  - (ii)** Eating and Drinking Establishments - One (1) space per four (4) patron seats or one (1) space per one hundred (100) square feet of gross floor area, whichever is greater, plus one (1) space per employee on the largest shift.
  - (iii)** Fast Food Establishments:

    1. With Seating - One (1) space per three (3) patron seats, plus one (1) space per employee on the largest shift.
    2. Without Seating - One (1) space per two hundred (200) square feet of gross floor area, plus one (1) space per employee on the largest shift.

- (iv)** Funeral Home - One (1) space per four (4) patron seats or twenty-five (25) spaces per chapel unit, whichever is greater.
- (v)** Grocery or Supermarket - One (1) space per two hundred (200) square feet of gross floor area or customer sales and service, plus one (1) space per two hundred (200) square feet of gross floor area of storage.
- (vi)** Hospital - One (1) space per three (3) patient beds, plus one (1) space per staff doctor and per employee on the largest shift.
- (vii)** Hotel or Motel - One (1) space per room or suite, plus fifty percent (50%) of the spaces otherwise required for accessory uses, e.g. restaurants and bars.
- (viii)** Private Clubs and Lodges - Required parking spaces are to be determined by the specific uses associated with the facility.
- (vix)** Repair Services - A minimum of three (3) spaces shall be provided for the first two thousand (2,000) square feet of gross floor area, plus one (1) additional space for each one thousand (1,000) square feet of gross floor area thereafter, plus one (1) space per employee on the largest shift.
- (x)** Furniture and Home Furnishing Stores - One (1) space per five hundred (500) square feet of customer sales, plus one (1) space for every one thousand (1,000) square feet of storage area.
- (xi)** Self-Service Laundry - One (1) space per three (3) machines.
- (xii)** Assembly or Exhibition Hall, Sports Arenas, Theaters and Auditoriums - One (1) space per five (5) seats based on maximum capacity.
- (xiii)** Taverns, Dance Halls, Night Clubs, and Lounges - One (1) space per fifty (50) square feet of gross floor area.
- (xiv)** Vehicle Sales - Six (6) parking spaces plus one (1) space per five hundred (500) square feet of gross floor area over one thousand (1,000) feet.
- (xv)** Vehicle Repair and Maintenance Services - One (1) space per four hundred (400) square feet of gross floor area, plus one (1) space per employee on the largest shift.
- (xvi)** Games of Chance Operations - One (1) space per three (3) patron seats.
- (xvii)** Mini Storage - One (1) space per one thousand (1,000) feet of gross floor area of sales and service and one (1) space per two thousand five hundred (2,500) feet of gross floor area of storage areas.

1. Parking spaces for non-sales and service area can be provided parallel along the front of storage units and do not require striping or a bumper guard if all the following conditions are met:

- a. Drive aisles abutting storage units have minimum widths of twenty-four (24) feet; and
- b. Storage units have a minimum dimensional width of nine (9) feet abutting drive aisles.

**(xviii) Vehicle Stacking Spaces.**

1. Minimum Number of Spaces. Off-street stacking spaces shall be provided as follows:

Activity Type	Minimum Spaces	Measured From
Bank teller lane	4	Teller or Window
Automated teller machine	3	Teller
Restaurant drive-through	6	Order Box
Restaurant drive-through	4	Order Box to Pick-Up Window
Car wash stall, automatic	6	Entrance
Car wash stall, self-service	3	Entrance
Gasoline pump island	2	Pump Island
Other	Determined by City Engineer based on Traffic Study	

2. Design and Layout. Required stacking spaces are subject to the following design and layout standards:

- a. Size - stacking spaces must be a minimum of eight (8) feet by twenty (20) feet in size.
- b. Location - stacking spaces may not impede on-site or off-site traffic movements or movements into or out of required off-street parking spaces.
- c. Design - stacking spaces must be separated from other internal driveways by raised medians if deemed necessary by the City Engineer for traffic movement and safety.

**(e) Offices Uses, Except as Specifically Designated Below - One (1) space per two hundred (200) square feet of gross floor area.**

- (i) Beauty and Barber Shops - Two (2) spaces per operator, plus one (1) space per employee on the largest shift.
  - (ii) Medical Offices and Clinics - Five (5) spaces per doctor, plus one (1) additional space per employee on the largest shift.
- (f) Industrial Uses, Except as Specifically Designated Below - One (1) space per employee on the largest shift, plus one (1) space per company vehicle regularly stored on the premises.
- (i) Veterinary Office - Three (3) spaces per doctor, plus one (1) space per employee on the largest shift.
  - (ii) Adult Entertainment Center - One (1) space per employee on the largest shift, plus one (1) space per one hundred fifty (150) square feet of gross floor area.
- (g) Nursery Uses - One (1) space per employee on the largest shift, plus one (1) space per five hundred (500) square feet of gross floor area of inside sales or display.
- (h) Handicapped Parking - All parking lots must be designed to provide handicapped parking spaces according to standards established under Americans with Disabilities Act (ADA).

**(2) Plans and Approval Required**

Plans for improved, new, or expanding private driveways and off-street parking spaces, shall be prepared and submitted to the Code Administrator for review and approval. Before approving any private driveway or parking layout, the Code Administrator must be satisfied that the driveway and/or spaces provided are usable and meet standard design criteria. All driveways and off-street parking spaces within the City limits shall be improved with a concrete or bituminous surface except for structures which are located on public roads or alleys that are graveled. In lieu of improving all driveways and off-street parking spaces in industrial areas, a property owner may submit a plan demonstrating that improved driveways and off-street parking spaces will, within reason, retain soils, mud, or other loose materials from being carried onto public streets by vehicles or equipment, i.e., by improving with concrete or bituminous surface fifty (50) feet or more of the area on the property where access to the public street(s) is gained. In addition to providing improved driveways and parking areas, industrial areas may need to expand those areas with gravel and/or crushed concrete to avoid carrying soils, mud, or other loose materials into the street(s). All required off-street parking spaces shall be clearly marked. All parking lots being hard surfaced must be designed and striped to meet the design standards according to Section 17.6.5(3).



### **(3) Design Standards**

- (a) In all residential districts, required parking spaces shall be located on the same premises as the use they serve. In other districts, they shall be located on the premises or within three hundred (300) feet distance.
- (b) Parking areas for one (1) or two (2) family dwellings shall be in the garage, in the rear or side yards, or on the driveway leading to the garage only.
- (c) Parking areas shall be used for automobile parking only, with no sales, dead storage, repair work, dismantling, or servicing of any kind permitted.
- (d) All uses, excluding one (1) and two (2) family residences, where parking or access facilities are located within twenty (20) feet of a one (1) or two (2) family property line shall be required to effectively screen their parking facility from the residential use. Screening may include a sight obscuring fence at least five (5) feet in height or plantings of sufficient type, density, and height so as to provide year-round screening. Before a building permit shall be issued, the Code Administrator shall approve the screening proposal.
- (e) Off-street parking areas shall be improved with a durable surface, afford adequate drainage and shall have bumper guards, unless the owner can establish to the satisfaction of the Code Administrator that such guards are not necessary.

### **(4) Required Off-Street Loading Spaces**

Commercial and industrial uses shall provide for loading areas on the property which do not affect traffic on public streets. Adequate space shall be provided on the property to allow for ingress into the property, circulation within the property, and egress from the property. Loading areas shall be shown on a site plan and approved by the Code Administrator as part of the building permit. Loading spaces required under this section shall be at least fifty (50) feet long and twelve (12) feet wide. Every lot used for commercial or industrial purposes and having a building or buildings with a total floor area of at least ten thousand (10,000) square feet and every lot used for office or research purposes on which there is a building or buildings having a total floor area of at least twenty thousand (20,000) square feet, shall be provided with an off-street loading space. An additional off-street loading space shall be required for lots used for commercial or industrial purposes where the floor area of all buildings exceeds one hundred thousand (100,000) square feet.

#### **17.6.6 Public Nuisances**

Public nuisances including but not limited to noxious weeds, smoke gases, radio interference, noise, accumulation of junk, trash, rubbish, automobiles, dead or diseased trees shall not be permitted and shall be subject to violation and penalties of Section 17.13 of this ordinance.

#### **17.6.7 Sand and Gravel Operations**

**(1) Purpose**

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

**(2) Site Approval Requirements**

All sand and gravel mining and stock piling excavation sites require approval by the City Council and shall be subject to the provisions of Section 17.6.10.

**(3) Data Submission Requirements**

- (a) A site plan for operation and reclamation of the mined land including maps showing location of the land to be mined, location of roads and points of access to the site, maps showing the existing and proposed contours after the land is mined and a time table for operation of the site.
- (b) A guarantee that the reclamation of the site be completed within one year of the closure of the operation of the site.
- (c) Proof of compatibility with the existing land form including the vegetation, surface and ground water resources.
- (d) The City of Horace maintains the authority to terminate the operation of the site if it determines violation of the City Ordinance and lack of compliance by the operator(s).
- (e) An application fee as set forth in a fee schedule established by the City Council.

Source: Ord. 2017-38, Sec. 5

**(4) Proximity to Existing Uses**

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

**(5) Permit Requirements**

Any person who operates a sand and gravel business shall obtain a permit from the Code Administrator and pay a filing fee, as set forth in a fee schedule established by the City Council, before starting any mining, excavation, stock piling and sale of the sand and gravel sites, and after approval by the City Council. The approval of the site plan for operation shall be null and void if the applicant does not proceed with extraction and compliance with this code within one year of permit issuance.

Source: Ord. 2017-38, Sec. 5

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

### **(1) Compliance with State Laws and Rules**

Any person who operates sanitary landfills, inert landfills or similar solid waste sites shall comply with all North Dakota state laws and administrative rules set forth by the North Dakota State Health Department.

### **(2) City Ordinances and Procedures**

The City of Horace hereby adopts solid waste provisions, subject to the Provisions of NDCC 11-33-20, to assure meeting the purposes of this ordinance and the most current comprehensive plan. (Source: Ord. 2020-11)

### **(3) Purpose**

The purpose of these provisions is to protect public health, ground and surface water resources, conflict with present land uses and preservation and protection of natural resources in the City of Horace and its extra-territorial planning area.

### **(4) Site Approval Requirements**

All solid waste sites require approval by the City Council and shall be subject to the provisions of Section 17.6.10.

### **(5) Locational Standards**

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

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

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

### **(6) Data Submission Requirements**

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

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

(c) Records of data and information submitted to the state of North Dakota appropriate agencies and the county as a part of the application of state and county permits.

(d) The City Council may require additional information if it deems it necessary.

(e) An application fee as set forth in a fee schedule established by the City Council.

Source: Ord. 2017-38, Sec. 6

**(7) Statement of Findings**

Upon the public notification and a public hearing before the Planning Commission, the City Council shall determine whether the proposed site meets the requirements of this ordinance and public health, safety and welfare.

**17.6.9 Sign Requirements**

**(1) Purpose**

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

**(2) General Requirements**

(a) Directory signs shall not be larger than twenty (20) square feet in area for permitted uses.

(b) Directory signs for conditional uses shall not be larger than forty (40) square feet.

(c) Billboards and large advertising signs along arterial and collector streets shall be subject to the requirements of Section 17.11.2, Conditional Use Permits and shall be set back seventy-five (75) feet.

(d) No sign shall be installed closer than five (5) feet to the property line.

(e) A permit fee is required. The City Council shall establish a fee schedule for a sign permit fee, and such permit fee shall be charged per square foot for each permanent sign. (Source: Ord. 2015-6, Sec. 7; Ord. 2017-38, Sec. 7)

### **(3) Special Requirements**

(a) Signs in the residential districts, particularly along local streets, shall be limited to: (i) One sign per dwelling structure not exceeding twelve (12) square feet in area which may be wall, pedestal, ground or projecting type; (ii) One temporary sign such as “For Sale”, “For Rent”, not exceeding twenty (20) square feet in area.

(b) Signs in the commercial and industrial districts shall be limited to: (i) One general identification sign per business not exceeding fifty (50) square feet in area which may be wall, pedestal, ground or projecting type. (ii) Temporary signs including “For Sale,” “For Rent;” political campaign signs, greeting signs and rally signs not exceeding fifty (50) square feet in area; (iii) Directory and advertising signs in agricultural, commercial, and industrial districts shall not be larger than fifty (50) square feet and not placed nearer than six hundred (600) feet apart.

(c) There shall be no more than one developer identification sign per development site not exceeding thirty-two (32) square feet in area. All developer identification signs must be removed within thirty (30) days after the development is completed.

(d) There shall be no more than one neighborhood identification sign per neighborhood or subdivision not exceeding fifty (50) square feet in area.

### **17.6.10 Site Plan Requirements**

Site plan is a physical development plan for a specific area of land consisting of map(s) and written material describing the nature of the proposed project. All conditional use permits require a site plan and other documents required for each zoning district. Application for permit for communication tower and facilities, feed lots, fences and hedges, junk and salvage yards, sand and gravel operations, sanitary landfills and signs require site plans.

#### **(1) Purpose**

The purpose of site plan is to provide a detailed study of the site proposed for rezoning and development of a parcel(s) of land to assist the City Council in the decision-making process.

#### **(2) General Requirements**

All multi-family uses, commercial and industrial uses for rezoning, conditional use applications require a site plan to accompany the documents submitted to the Code Administrator at least two (2) weeks before the public hearing before the Planning Commission. The Code Administrator has the authority to withhold the application until all required documents, including the site plan are submitted. The Planning Commission must review all commercial and industrial site plans.

### **(3) Data Submission Requirements**

The map(s) shall be drawn to a scale of one inch equaling two hundred (200) feet or smaller and shall include the following:

- (a) Location of all property lines, street, railroad rights-of-way for a distance of three hundred (300) feet.
- (b) A footprint of the building(s), location of parking areas and landscaping areas.
- (c) A drainage plan including the location of water retention and discharge areas.
- (d) Designating areas to be dedicated as public street rights-of-way, parks and open spaces, drainage and utility easements.
- (e) Designation of private drives, streets and common areas to be managed privately.
- (f) A statement guaranteeing that the development shall be carried out in a timely fashion unless there are financial difficulties or market influences delaying the development.
- (g) An application fee as set forth in a fee schedule established by the City Council.

Source: Ord. 2017-38, Sec. 8

### **(4) Review and Approval Procedure**

The Planning Commission shall hold a public hearing, the notices of which are published in the official newspaper of Horace. It receives comments from those in attendance and reviews written comments submitted to the Code Administrator.

- (a) If it finds that all requirements and the proposal is consistent with the purpose of this ordinance, it shall recommend approval to the City Council.
- (b) If it finds that the proposal, in part, is inconsistent with the purpose of this ordinance and the most current comprehensive plan, it may recommend conditional approval. The Planning Commission has the authority to require other information before it makes its recommendation. (Source: Ord. 2020-11)
- (c) If it finds that the proposal does not meet the purpose of the ordinances, plans and policies of Horace and does not serve public interest, it shall recommend denial of the application to the City Council.

(d) The City Council upon due public hearing may approve or deny the application.

(e) The City of Horace retains the right to withdraw the permit if the project does not begin in two (2) years from the date of approval.

### **17.6.11 Compassion Centers - Location Restricted**

Notwithstanding anything in this zoning title to the contrary, a compassion center shall be permitted only in the I-1 Light Industrial District and I-2 General Industrial District, no other district shall be permitted, and then only if the compassion center meets the following conditions:

(1) The compassion center is located no closer than one thousand two hundred fifty feet (1,250') from any pre-existing school, daycare facility, or any property zoned residential.

(2) The business premises of the compassion center which are generally open to its patrons are open equally at the same time to members of the County sheriff's department and the City Code Administrator who may wish to enter thereon provided the entry is in the course of the discharge of police duties and code administration duties.

Source: Ord. 2018-01

## **17.7 LAND SUBDIVISION**

### **17.7.1 Purpose**

(1) To insure the orderly development of the City of Horace

(2) To provide for proper arrangement of streets in relation to other existing and planned streets.

(3) To provide for adequate and convenient open spaces for traffic, utilities, fire fighting, recreation, light and air.

(4) To facilitate adequate provisions for access, placement of water and sewer systems, schools, and public open spaces.

(5) To avoid development of unsuitable areas because of soil, drainage and other physical limitations.

(6) To facilitate subdivision of larger parcels into smaller parcels and lots.

(7) To implement the most current comprehensive plan. (Source: Ord. 2020-11)

### **17.7.2 Preliminary Plat**

The preliminary plat shall be prepared by a registered engineer/land surveyor and shall be submitted to the Planning Commission for review and recommendation to the City Council. The preliminary plat shall cover the entire contiguous area owned or controlled by the subdivider up to eighty (80) acres even though only a small portion of it is proposed for the development at the time.

#### **(1) Pre-Application Consultation**

Prior to the submission of a preliminary plat, the subdivider shall consult the Code Administrator for assistance regarding the requirement of the City of Horace's Plans, Ordinances and Policies for subdividing any parcel of land. This step is intended to inform the subdivider of the importance of the plans, ordinances and policies to assist him/her in meeting the land subdivision requirements of the City of Horace.

#### **(2) Preliminary Plat Content**

The preliminary plat shall include the following requirements, data and information.

- (a) The preliminary plat shall be drawn at a scale of one inch representing one hundred (100) feet.
- (b) Name and location of the subdivision.
- (c) Date, graphic scale and north point.
- (d) Boundary line of the proposed subdivision indicated by a solid heavy line, accurately drawn to scale and showing distances and bearings.
- (e) Location, right-of-way, width and names of any existing or proposed streets, alleys, public ways, easement, railroad, utility rights-of-way, parks and other public open spaces and corporate boundaries and section lines within or adjacent to the subdivision.
- (f) Location of existing property lines, buildings, drives, streams, water courses, wooded areas and drainage ways.
- (g) Boundary line of adjacent tracts of land or lots showing owners' name.
- (h) Contour at vertical intervals of not more than two (2) feet.
- (i) Location and dimension of any site to be reserved or dedicated for public uses including drainage ways, parks and open spaces.
- (j) Layout of the proposed streets, alleys, crosswalks and easements, showing widths and street names.
- (k) Lay out, number and dimensions of all lots and blocks.



(l) Parcels of land intended to be dedicated or reserved for public use or set aside for the use of property owners within the subdivision including the park and open space land dedication.

(m) Building setback lines, showing dimensions.

(n) Lands along major and minor arterial streets shall include additional right-of way to provide at least one hundred (100) feet of right-of-way measured from the center line of the existing street or from the section line.

(o) The city may require additional right-of-way for collector and connector streets.

**(3) Preliminary Plat Submission Requirements**

(a) The subdivider shall apply on appropriate forms provided by the Code Administrator to the Planning Commission at least two (2) weeks prior to its regularly scheduled meeting.

(b) The subdivider shall submit seven (7) prints of the preliminary plat to the Code Administrator at the time the application is made. The plat shall comply with the provisions of this ordinance.

(c) The subdivider may submit any instrument and covenant whereby he/she proposes to restrict land use in the subdivision for protecting the proposed development.

(d) The subdivider shall provide other data related to drainage, soil suitability, financing of improvement and other related information.

(e) If all materials are submitted, the Code Administrator places notice of public hearing in the official city newspaper and sets date and time for public hearing and review by the Planning Commission and the City Council.

(f) The Code Administrator shall forward a print of the preliminary plat to the Cass County Engineer for coordination for appropriate right-of-way and access if the property is located on Cass County Highways 6, 14 or 17.

(g) The City Council shall establish a fee schedule for preliminary plat applications, and such application fee shall be charged per lot in the preliminary plat.

Source: Ord. 2017-38, Sec. 9

**(4) Development Plan**

Where a development plan is required for a tract of land, the following shall be included in the plan.

- (a) Location of existing property lines, buildings, drives, streams, wooded areas and other significant natural features.
- (b) General layout of proposed streets and location of blocks and intended uses.
- (c) Location of open spaces and facilities for public uses.
- (d) Existing and proposed drainage pattern.
- (e) The development plan shall be drawn at a scale of not larger than one inch representing two hundred (200) feet.
- (f) Soil and flood plain data
- (g) The Planning Commission may require other information as a part of the development plan.
- (h) The developer shall include all land under his/her control up to eighty (80) acres in area.

**(5) Preliminary Plat Review Process**

- (a) The Planning Commission, after a public hearing, shall review the preliminary plat and approve the plat out-right or with conditions. The Planning Commission may require additional information before it takes action.
- (b) The conditional approval of a preliminary plat shall clearly state the nature and extent of the conditions which shall be met before a final plat is submitted for review and approval. Preliminary approval of a plat by the Planning Commission is not an acceptance of a subdivision plat, but is an expression of approval of a general plat as a guide to preparation of a subdivision for final plat review and approval.
- (c) The Planning Commission may require the subdivider to submit a revised preliminary plat before the subdivider proceeds with the preparation of the final plat.
- (d) Approval of the preliminary plat shall be effective for a period of one (1) year within which a final plat shall be prepared. If the final plat is not submitted within this time period, the Planning Commission may require the subdivider to resubmit the preliminary plat for review and approval.

**17.7.3 Final Plat**

The final plat shall cover the area which is realistically designated for transfer or sale of lots.

- (1) Final Plat Content** (Source: Ord. 2015-12, Sec. 6)

The final plat shall conform to all provisions of this ordinance and conditions set forth by the City Council.

- (a) The final plat shall be drawn at a scale of one inch representing one hundred (100) feet.
- (b) Name and location of the subdivision.
- (c) Date, graphic scale and north point.
- (d) Boundary line of the proposed subdivision indicated by a solid heavy line, accurately drawn to scale and showing distances and bearings.
- (e) Location, right-of-way width and names of any existing or proposed streets, alleys, public ways, easement, public drain right-of-way, railroad, utility rights-of-way, parks and other public open spaces and corporate boundaries and section lines within or adjacent to the subdivision.
- (f) Location of existing property lines, buildings, drives, streams, water courses, wooded areas and drainage ways.
- (g) Boundary line of adjacent tracts of land or lots.
- (h) Location and dimension of any site to be reserved or dedicated for public uses including drainage ways, parks and open spaces.
- (i) Layout of the proposed streets, alleys, cross walks and easements, showing widths and street names including additional rights-of-way for arterial and collector streets.
- (j) Lay out, number and dimensions of all lots and blocks.
- (k) Parcels of land intended to be dedicated or reserved for public use within the subdivision.
- (l) Where required, detailed engineering drawings, cross-sections or profiles of streets, utility lines, catch basins or other installations of improvements as installed.
- (m) A drainage plan including retention area(s) and outlets.
- (n) Certification by registered surveyor to the effect that the plat represents a survey made by him, and that the monuments/pins shown thereon exist as located and that all dimensional and geodetic details are correct.
- (o) Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines and other improvements and of streets and other public areas.

(p) Appropriate place for signature by the property owner, city officials and Cass County officials.

**(2) Final Plat Submission Requirements**

The subdivider shall apply on appropriate forms to the Planning Commission for approval of the final plat, if he/she holds a valid approval of the preliminary plat.

(a) The subdivider shall submit the final plat to the Code Administrator at least two (2) weeks before the regularly scheduled meeting of the Planning Commission with sufficient time for giving a notice of public hearing.

(b) The final plat shall comply with all provisions of this ordinance and conditions and requirements set forth by the Horace City Council as a part of review and approval of the preliminary plat.

(c) The Planning Commission may require the subdivider to submit detailed drawings for grading of the lots, blocks, streets, detailed drawings for pavement, curb, gutter and sidewalk, drawings for installation of water, sanitary and storm sewer facilities.

(d) If all documents and materials submitted, the Code Administrator places the notice(s) of public hearing in the official city newspaper and sets time and dates for review by the Planning Commission.

(e) The City Council shall establish a fee schedule for final plat applications, and such application fee shall be charged per lot in the final plat.

Source: Ord. 2017-38, Sec. 10

**(3) Final Plat Review Process**

(a) If the Planning Commission, after a public hearing, finds the final plat in conformance with the requirements stipulated for approval of the preliminary plat, it shall recommend to the City Council for approval after a public hearing.

(b) If the Planning Commission finds discrepancies between the presented final plat and conditions placed on the Preliminary Plat, it shall not allow the plat to go forward to the City Council. It shall require the developer to redraw the final plat to meet all conditions and stipulations imposed by the City Council. The Planning Commission shall review the plat for compliance before it forwards its recommendations to the City Council.

(c) For subdivisions outside of the city corporate limits, a print of the final plat shall be submitted to the Cass County Planner. The approval of the County Commission is necessary for all plats outside of the city.

(d) The subdivider shall prepare an estimate of the cost of providing the required improvements based on the city design standards for street, curb, gutter, sidewalk, sanitary sewer, storm sewer and water lines.

(e) If all conditions and requirements have been met, the Planning Commission shall recommend approval of the final plat to the City Council.

(f) The City Council, after a public hearing, may approve, deny or modify the final plat.

**17.7.4 Lot Splits** (Source: Ord. 2017-36)

A lot split may be exempt from the platting requirements of this ordinance if the following conditions are met:

**(1) Conditions**

(a) That the lot split does not contain more than two lots.

(b) That the two lots conform to the requirement of the respective zoning district for width and area coverage of each lot.

(c) That any lot may be split only once under these provisions.

(d) That the lot split is not part of a continuing practice of lot splitting for a particular area to circumvent platting or replatting requirements of this ordinance.

(e) That the lot split does not violate any provisions of city ordinances, plans, or any other state and local ordinances.

**(2) Procedure**

An application for lot split shall be submitted to the Code Administrator. If the Code Administrator determines that conditions are met, he/she shall schedule a review/approval before a board represented by the Chair of the Planning Commission, the City Mayor, and the Code Administrator. Written notice of the application shall be sent to all property owners within 150 feet of the proposed lot, excluding street rights-of-way and publicly owned properties before the meeting. The board may approve, modify or deny the application for lot split. If approval is granted by the board, the Chair of the Planning Commission shall authorize such approval by signing a certificate of lot split approval which shall be filed by the Code Administrator, a copy of the certificate shall subsequently be given to the applicant.

**(3) Application**

The City Council of the City of Horace shall establish a fee schedule for lot splits, such application fee shall be charged per lot.

### **17.7.5 Transfer of Lots**

No owner, or agent of owner, shall transfer, sell or agree to sell any land before the lot split, replat, or plat is approved as provided under the requirements of this ordinance.

### **17.7.6 Amendment of the Comprehensive Plan**

Upon final approval of a subdivision involving the creation of new streets, the widening, decreasing or vacation of existing streets or alleys, or the creation, enlargement or decrease of other areas devoted to public use, the City Council shall, at the same time, and without further public hearing, approve such change in streets, alleys or public lands as an amendment to the most current comprehensive plan, if it finds appropriate. In the case of streets, alleys and public lands outside of the city corporate limits, notice of action of the City Council and appropriate recommendations shall be forwarded to the Cass County Commission and the respective township.

### **17.7.7 Filing of Subdivision Plat and Lot Split**

The subdivider, upon approval of the final plat or lot split, shall file the plat or lot split with the Cass County Recorder's Office. Sale of any lot prior to filing of the final plat is in violation of this ordinance.

## **17.8 DESIGN STANDARDS**

### **17.8.1 Conformance**

The subdivider shall prepare the preliminary and final plat in conformance with the standard set forth in this ordinance and the current standards carried out by Cass County Highway Department and guidelines of the American Association of State Highway and Transportation Officials (AASHTO).

### **17.8.2 Street Design**

- (1) The arrangement, character, classification, extent, width, grade, and location of all streets shall be designed in relation to existing and planned streets, topographic conditions, existing natural features, flood plain, public convenience and safety and the proposed uses of land served by such streets and to the most advantageous development of adjoining uses.
- (2) Where it is not shown on the most current comprehensive plan, the arrangement of streets in a subdivision shall either provide for the continuation or appropriate projection of existing streets in surrounding areas or conform to a plan approved by the Planning Commission to meet a particular situation. (Source: Ord. 2020-11)

- (3) Where a subdivision abuts or contains an existing or proposed major street or highway, the Planning Commission may require: (a) service streets, reverse frontage street with screen planting in a reservation strip along the rear property line; (b) deep lots with rear service alleys abutting the arterial and collector streets; and (c) additional highway right-of-way as may be necessary for adequate protection of residential properties and for separation of through and local traffic.
- (4) Where a subdivision borders on or contains a railroad right-of-way, a limited access highway right-of-way or other arterial highways, the Planning Commission may require a street approximately parallel to and on each side of the right-of-way, at a distance suitable for the appropriate use of the intervening land.
- (5) Reserve strips in private ownership controlling access to streets are prohibited. This causes problems for street improvement and widening.
- (6) Street jogs with centerline offsets of less than one hundred fifty (150) feet shall not be permitted.
- (7) A tangent at least one hundred (100) feet long shall be introduced between reverse curves on all arterial, collector and connector streets.
- (8) Streets shall be laid out so as to intersect as nearly as possible at right angles. To create a more attractive environment curvilinear streets are permitted.
- (9) Curb radii on all block corners shall be at least twenty (20) feet and a fifteen (15) foot radius shall be used at intersections of streets and alleys.
- (10) Street rights-of-way for construction of urban streets shall not be less than the following:
- (a) Major arterial streets, one hundred and fifty (150) feet;
  - (b) Minor arterials and collector streets, one hundred and twenty (120) feet;
  - (c) Collector and connector streets, one hundred (100) feet;
  - (d) Local streets, seventy (70) feet;
  - (e) Cul-de-sac, one hundred (100) feet in diameter for a suitable turnaround; and
  - (f) Alleys, residential district, thirty (30) feet.

Source: Ord. 2015-12, Sec. 7

- (11) All access points to minor and major arterial streets shall be via street intersection and no private driveways shall be permitted. The total number of access points for minor and major arterial shall be limited to eight (8) per side per mile. An existing driveway access point may be exchanged with a street access.

(12) The minimum setback or building line from all arterial and collector streets is an additional fifteen (15) feet from the respective zoning district's setback or building line. In the event that the public health, safety, or general welfare is put at risk due to a structure being built too close to the street or street right of way, the Planning Commission may recommend to the City Council that the setback be increased. The City Council has the sole discretion to approve, conditionally approve, or deny this recommendation based on comments provided by the property owner, Planning Commission, and City staff. Source: Ord. 2020-08

(13) Half streets are prohibited except where essential to the reasonable development of the subdivision and in conformity with the other requirements of this ordinance and where the City Council finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever an existing half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.

(14) Cul-de-sacs shall not be longer than five hundred (500) feet.

(15) Intersections of more than two (2) streets at a point less than ninety (90) degrees shall not be permitted.

(16) Dead-end streets shall have a cul-de-sac turnaround.

(17) In Suburban Residence and Residential Estate Districts where streets are built under rural design standards sufficient drainage ditches must be connected either to the Sheyenne River or Cass County Drain 27.

(18) For all other residential districts and commercial/industrial districts, storm sewer is required.

(19) All streets shall be constructed in accordance with the guidelines of the American Society of State Highway Officials (AASHTO) and Cass County urban highway standards.

(20) Private streets will be exempt from the requirements of Section 17.8.2; however, the Planning Commission maintains the authority to provide additional street design requirements during the plat application review process. (Source: Ord. 2020-02)

### **17.8.3 Block Design**

The length, width, and shape of blocks shall be suited to the planned use of land, zoning requirements, need for multi-modal connectivity, control of safety of street traffic, and the topographic conditions. Block design must meet these requirements:



(1) Residential zoned land block length may not exceed seven hundred (700) feet; however, residential zoned blocks up to one thousand four hundred (1,400) feet in length are permitted when the block directly on the opposite side of the street have a mid-block street “T” configuration intersection interruption that establishes blocks less than seven hundred (700) feet in length. Commercial, industrial, and public facilities zoned block length may not exceed one thousand four hundred (1,400) feet, except in cases where controlled automobile access standards apply, such as near roundabouts or on arterial streets. Block length is measured at the front yard setback line from one (1) end of the block to the other end of the block. The following are exempt from block length requirements:

(a) Agricultural zoned properties;

(b) Properties that abut a river, former or current railroad property, and/or drain; and

(c) Where controlled automobile access standards apply, such as near a roundabout or on arterial streets.

(2) Blocks are recognized as closed polygons, bordered by street right-of-way lines, addition lines, private street centerlines, or a combination of the two (2), unless an alley is desired, in which case a block may be comprised of two (2) closed polygons separated by the adjoining alley; and

(3) The width of blocks shall generally be sufficient to allow two (2) tiers of lots. Double frontage lots should be avoided.

(Source: Ord. 2019-7, Sec. 3; Ord. 2020-02)

#### **17.8.4 Lot Design**

(1) The shape, size, and orientation of the lots shall be appropriate for the location of the subdivision. For residential single-family a north-south lot orientation is encouraged. Residential lot dimensions within the city corporate limits shall be subject to the provisions of the appropriate zoning districts under Sections 17.5.2 through 17.5.8.

(2) Non-residential lots shall be subject to the provisions of commercial and industrial zoning districts stipulated in Sections 17.5.9 through 17.5.13.

(3) Residential lot dimensions within the extra territorial planning area in Agricultural District shall be subject to the provisions of Section 17.5.1.

(4) All lots shall front a public street. Easements unless with forty (40) feet of width for distances longer than one hundred and fifty (150) feet, shall not be acceptable as frontage or public street. Source: Ord. 2015-12, Sec. 8; Ord. 2020-08

(5) Residential corner lots shall have an extra width of ten (10) feet to permit adequate building setbacks from the side streets.

- (6) Lot lines shall follow the city corporate limits.
- (7) Double frontage lots shall be avoided except where essential to provide separation of development from arterial access streets. (Reverse frontage street)
- (8) Depth and width of lots reserved or laid out for commercial or industrial uses shall be adequate to provide for off-street parking and service facilities required by the type of use and development and the provisions of the appropriate zoning district and parking provisions of these regulations.
- (9) The minimum setback or building line from all arterial and collector streets is an additional fifteen (15) feet from the respective zoning district's setback or building line.

#### **17.8.5 Street Names**

- (1) The Planning Commission may disapprove the name of any street shown on the plat which has already been used elsewhere in the area, or because of similarity that may cause confusion.
- (2) Where a street maintains the same general direction, except for curvilinear changes for a short distance, the same name shall continue for the entire length of the street.
- (3) A name or number assigned to a street, which is not presently a through street, shall be continued as a part of a through street.

#### **17.8.6 Utility Easements**

- (1) Easements across lots or along rear or side lot lines shall be provided for utilities where necessary and shall be ten (10) feet wide on each side of the lot line or subject to the yard requirements set forth under Chapter 17.5 of Title IV of the Revised Ordinances of 2003 of the City of Horace, North Dakota, whichever is less, and shall be designated as "utility easement."

Source: Ord. 2016-27, Sec. 12

- (2) All lots shall be served by underground electric, cable television and telephone lines unless waived by the City Council due to topographic conditions or excessive costs.
- (3) All utility lines for electric power, cable television and telephone service carried overhead shall be placed in utility easement.
- (4) Utility lines installed in the utility easement shall not be closer than three (3) feet to any monument/pin or property line, unless waived by the City Council.

### **17.8.7 Drainage Way Easement/Watercourse Setback Zone**

Where a subdivision is traversed by a water course or drainage way, an adequate drainage way shall be provided. The location, width, alignment and grading of such easement shall be set by the City Council based on the recommendations of the City Engineer to accommodate the anticipated discharge from the property being subdivided and also the anticipated run-off from the adjoining properties.

No building or structure may be erected, constructed, enlarged or altered within the “Watercourse Setback Zone” which is defined as those lands within one hundred fifty (150') feet of the identified upper edge or bank of any stream, lake, pond, impounding reservoir, marsh, drain, watercourse, waterway, and all other bodies or accumulations of water on the surface of the earth, natural or artificial, public or private, without written authorization by the City Engineer and supported by evidence establishing the suitability of such use. This prohibition does not extend to bike paths, walking trails, multi-use paths, stairways, or fences so long as drainage is not adversely affected, nor does it apply to previously platted areas wherein lot sizes are insufficient to meet the one hundred fifty (150') feet Watercourse Setback standard. As to previously platted lands, the City Engineer will help identify an appropriate setback consistent with known soil conditions.

Source: Ord. 2013-1

### **17.8.8 Landscaping Standard**

Source: Ord. 2017-48

(1) Purpose: The preservation of existing trees and vegetation, as well as the planting of new trees and vegetation, can significantly add to the quality of the physical environment of the community. The regulations outlined herein are designed to provide for the health, safety, and welfare of the residents of the City of Horace.

(2) General Goals and Objectives for Landscaping Standards:

(a) Clearly define spaces, articulate use areas, and unify site elements through use of landscape materials by creating a distinction of natural planting areas and implemented landscaping.

(b) Use sustainable landscaping practices:

(i) Limit and control erosion throughout site.

(ii) Minimize use of non-sustainable fertilizers, herbicides, and pesticides.

(iii) Use plant material to reduce adverse climatic conditions such as heat, wind, and precipitation.

(iv) Guide future development toward sustainable and environmentally sound design through use of native and locally available plant material, reclaimed water irrigation, and other practices.

(v) Feature native plant material.

(vi) Reinforce a natural context of the site by simulating a natural type of planting.

(3) Applicability: The requirements of this section apply to all development within the City. All street boulevards are required to have boulevard trees unless the Code Administrator deems otherwise. Single-family, twin home, duplexes, and industrial properties are not required to meet proposed plant units for each lot, though they are encouraged to participate. Multiple family properties, commercial properties, and properties within any overlay district are required to adhere to the plant unit chart standards described in this chapter. All properties which require green areas (grassed) or landscaped open space, shall have the appropriate landscaping completed prior to the issuance of a certificate of occupancy. A temporary certificate of occupancy may be issued when weather and/or seasonal conditions do not allow the installation of landscaping with a schedule for completion as may be approved by the Code Administrator.

(4) Plant Standards:

(a) General Standards:

(i) Acceptable trees include, but are not limited to those identified as suitable for the intended use in the “Plant List” which shall be approved by resolution of the City Council and kept on file in City Hall. Acceptable vegetative ground cover consists of shrubs, grass, and native prairie grass.

(ii) Species of trees shall not be planted if the roots cause damage to public works, the branches are subject to a high incidence of breakage, or the fruit is considered a nuisance or high maintenance, as determined by the Code Administrator.

(iii) Trees shall be planted in good condition. Plant materials shall be nursery grown and root pruned stock free of insects, disease, and defects.

(iv) The developer shall plant or install, as appropriate, grass, tree grates, porous pavers, or similar pervious surfaces, which shall extend to twice the initial drip line of the newly planted tree. Minimum tree grate size shall be five (5) square feet.

(b) The City shall maintain a Plant List identifying plants compatible with local soils and climatic conditions including salt tolerance, sun and heat exposure, and mean low temperature. Required landscape plants must be selected from the Plant List. Plant material shall be selected that is best suited to withstand the soil and physical growing conditions on the project site. Plant species that are freeze and drought tolerant are preferred. Protection and preservation of native species and natural areas are encouraged.

**(5) Landscaping Material:**

**(a)** Where landscaping and associated landscape plans are required, the landscaping materials shall consist of the following:

**(i)** Walls shall be constructed of natural stone, brick, or other appropriate aesthetically pleasing decorative materials.

**(ii)** Retaining walls exceeding four feet (4') in height, including stage walls which cumulatively exceed four feet (4') in height, must be constructed in accordance with plans prepared by a registered engineer or landscape architect of brick, concrete, or natural stone. Artificial material may be approved if appropriate. A building permit is required.

**(b)** Earth berms shall be physical barriers, which block or screen the view similar to a hedge, fence, or wall. Mounds shall be constructed with proper and adequate plant material to prevent erosion.

**(c)** All plant materials shall be living plants; artificial plants are prohibited. Plants must be selected from the approved Plant List or as approved by the Code Administrator. Plant materials shall meet the following requirements:

**(i)** Deciduous trees shall be species having an average crown spread of greater than fifteen feet (15') and having a trunk which can be maintained with over five feet (5') of clear wood in areas which have visibility requirements, except at vehicular use area intersections where an eight foot (8') clear wood requirement will control. Trees having an average mature crown spread less than fifteen feet (15') may be substituted by grouping them together so as to create the equivalent of a fifteen-foot (15') crown spread. Trees must have a minimum of ten feet (10') overall height or minimum caliper [trunk diameter measured six inches (6") above the ground] of at least one and one-half inches (1 ½") immediately after planting. Trees of species whose roots are known to cause damage to public roadways or other public works shall not be placed closer than fifteen feet (15') to such public works, unless the tree root system is completely contained within a barrier for which the minimum interior containing dimensions shall be five feet (5') square and five feet (5') deep and for which the construction requirements shall be reinforced concrete four inches (4") thick.

**(ii)** Evergreen trees shall be a minimum of three feet (3') high with a minimum caliper of one and one-half inches (1 ½") when planted.

**(iii)** Shrubs and hedges shall be at least two feet (2') in average height when planted, and shall conform to the opacity and other requirements within four (4) years after planting. Evergreen shrubs shall be at least two feet (2') in average height and two feet (2') in diameter.

(iv) Vines shall be at least twelve inches (12”) high at planting, and are generally used in conjunction with walls or fences.

(v) Grass or ground cover shall be planted in species normally grown as permanent lawns, and may be sodded, plugged, sprigged, or seeded; except in swales or other areas subject to erosion, where solid sod, erosion reducing net, or suitable mulch shall be used, nurse-grass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Ground cover such as organic material shall be planted in such a manner as to present a finished appearance and seventy-five percent (75%) of complete coverage after two (2) complete growing seasons. In certain cases, ground cover also may consist of rocks, pebbles, sand, and similar materials if approved by the City Council.

(6) Material Specifications:

(a) A property owner should have a variety of trees on their property, this will allow the trees to be less prone to disease and have a healthy life. It is suggested that as many different tree species be placed on the site as possible but a minimum number of a variety of tree species shall be provided in accordance with the following table:

Number of Trees	Number of Species
1 - 3	1
4 - 6	2
7 - 9	3
10 - 12	4
13 - 15	5
16 - 18	6
19 - 21	7
22 - 24	8
25 +	9

(b) Residential and industrial districts are encouraged to follow the number of plant units for each lot as described below. Multiple family residential, commercial, and overlay zoning districts must have a minimum number of plant units on each lot. These standard plant units are (4) units for every one thousand square feet (1,000 sq/ft) of a lot. Only the plants on the owner’s property will be counted towards required total plant units. Garden plants will not count toward the plant units. Below is the equation of the plant units per square footage:

$$\frac{(\text{Square Footage of Lot})}{1,000} \times 4 = \text{Plant Units}$$

<b>PLANT UNITS CHART</b>		
<b>Type:</b>	<b>Size:</b>	<b>Number of Plant Units:</b>
Large, Mature Deciduous Tree	1.5 – 3 inch caliper → 30 foot mature height	10
Large, Mature Evergreen Tree	6 foot height (when planted) → 30 foot mature height	10
Small, Mature Deciduous Tree (Max. of 20% of plant units)	1.5 – 3 inch caliper → 12 – 30 foot mature height	7
Small, Mature Evergreen Tree (Max. of 20% of plant units)	3 foot height (when planted) → 12 – 30 foot mature height	7
Mature Shrub	2 gallon	5
Perennial Plants	2 gallon	3

(c) If an area where a wetland, bioswale, rain garden, or native prairie grass is designated for onsite retention, the square footage of that area will be excluded from the total lot area prior to calculation of plant units.

(7) Boulevard and Street Vegetation:

(a) Tree layouts shall be coordinated with existing corridor planting plans, subdivision street landscape plans, and other established landscape plans to provide the desired effect as determined by this standard and the Code Administrator. It is required by the City to have at least one (1) tree on all street boulevards every thirty-five feet (35'), unless the Code Administrator determines otherwise. Trees shall be planted ten feet (10') from driveways and alleyways. The spacing shall be at least twenty-five feet (25') from existing trees. On corner lots, trees shall be planted forty feet (40') from the point of intersection of the curbs. The Code Administrator shall have final approval of the location of the tree and have the right to approve alterations of the above requirements where conditions necessitate.

(b) No tree measuring less than one and one quarter inch (1 ¼") in diameter of trunk, measured one foot (1') above ground, may be planted on the City boulevard. The lowest branch shall be over nine and one half feet (9 ½') from the ground. The tree must be a single stem trunk and have a straight vertical line.

(8) Open Space Landscaping: All undeveloped areas of the site, excluding protected wetlands, river districts, and tree preservation areas, shall be seeded or sodded. Seeding includes native prairie grass. In addition, an appropriate mix of trees and other plant material shall be provided to create an aesthetically pleasing site.

(9) Parking Lot Landscaping Standards:

(a) When parking lot perimeters, including driveways and drive aisles, are not entirely screened visually by an intervening building or structure or land mass from any abutting right-of-way, there shall be provided landscaping designed to buffer direct views of cars and hard surface areas. The landscaping must break up expanses of hard surface areas, help to visually define boulevards and soften direct

views of parking areas, and provide for reforestation with trees from the Plant List or other species as approved by the Code Administrator.

(i) The perimeter of the parking lot will consist of an area ten feet (10') to the outside of the parking lot area in all directions where otherwise green space would be. Within this ten foot (10') dimension the following shall apply:

1. A six foot (6') minimum dimension to trees from the edge of pavement so that this would provide space to where vehicles overhang; and

2. A four-foot (4') minimum dimension where vehicles will not overhang for trees, perennials, and shrubs.

(b) Any open vehicular use areas containing more than six thousand square feet (6,000 sq. ft.) of area or twenty (20) or more vehicular parking spaces, shall provide interior landscaping in accordance with this section in addition to "perimeter" landscaping. Interior landscaping may be peninsular or island types. Landscaped area shall include all parking lot and drive islands and perimeter vegetative landscaping or green space. Required setback areas shall be excluded. There may not be more than twenty (20) continuous parking spaces [forty (40) back to back] in a continual row without providing an island or peninsular landscaping.

(c) Concrete curbing is encouraged to protect landscaped areas unless the area is implemented to be a rain garden or bioswale.

(d) All landscaping areas shall have the proper soil preparation to ensure the viability of the vegetation to survive. The landscaping plan shall provide specifications for proper soil preparation.

**(10) Landscape Aesthetics and Design Criteria:** Landscaping plans shall provide for an appropriate mix of plantings around the exterior footprint of all buildings. The intent of this section is to improve the appearance of the structures and, where necessary, break up large unadorned building elevations. These plantings are not intended to obscure views of the building or accessory signage.

(a) Landscape areas shall be designed with an emphasis on aesthetic appeal, function, safety, appropriateness to site conditions, and water conservation. The grouping of plants with similar water requirements is encouraged.

(b) Where overhead utility lines are located above landscaping, small ornamental trees that do not exceed the growth of fifteen feet (15') shall be substituted instead of large shade tree that will have to be trimmed after the tree has matured.



(c) Grass may be sodded, plugged, sprigged, or seeded, except that solid sod shall be used in swales or other areas subject to erosion. Slopes steeper than 10:1 shall be sodded. However, if natural prairie grass, cattails, or reeds are being implemented proper erosion control practices shall be engaged.

(d) All trees, shrubbery, ground cover, and vine planting beds shall be mulched with standard mulch materials such as shredded cypress bark, pine bark chips, pine straw, or decorative stone to prevent invasion of other plant species and weeds, to absorb and retain moisture for the benefit of the plants, to prevent erosion, to enrich the soil, to provide protection from maintenance equipment, and to present a neat and orderly appearance of the landscaped area.

**(11)** Existing Trees and Landscapes:

(a) Where the site contains existing trees, a special effort shall be made to preserve them in accordance with the following requirements:

(i) Trees in a healthy condition shall be protected and preserved.

(ii) Removal of unhealthy or diseased trees is mandatory. Tree replacement may be required.

(iii) Trees to be preserved shall be protected during construction operations by the use of barricades or fencing large enough to include everything inside the outer edge or drip line of the tree and conspicuous enough to be seen easily by operators of trucks and heavy equipment.

(iv) Tree roots shall be protected and preserved where possible. Tunneling shall be used to avoid damaging roots where construction in the immediate area is necessary. No trenching of tree roots within twenty feet (20') of the trunk shall be performed without approval of the Code Administrator.

(v) Chemical poisoning and run-off from petroleum products, lime and mortar, fertilizers, pesticides, soil sterilants, or washing of equipment designed to apply these materials shall be prohibited, within the dripline of trees to be preserved.

(vi) Agricultural tree rows (shelter belts) shall not be removed unless authorized by the Code Administrator or the City Council. These trees are not only an important part of the City's quality, but are needed to help control extreme winds and weather. Adequate measures shall be taken to mitigate any danger to the preservation or health of the tree rows. If agricultural tree rows (shelter belts) cannot be preserved, based upon the discretion from the Code Administrator stating that the trees are no longer in a healthy condition, the trees may be removed. Tree rows authorized for removal shall be replaced and/or additional landscape enhancement shall be provided as approved by the Code Administrator.

(b) Wooded Areas:

(i) Wooded areas with mature trees are to be preserved, at the applicants option, these trees may be included to meet all or part of the canopy requirements, provided the site plan identifies such trees and the trees meet the standards of size, health, placement, etc. set out in this section. The Code Administrator shall evaluate use of existing trees to ensure they have adequate health and strength to allow such use.

(ii) Existing trees in wooded areas designated to be included as part of these requirements should be protected during construction by fencing.

(12) Installation:

(a) All materials installed shall conform to the approved landscape plans. If any changes of materials are desired, amended plans must be submitted and approved before installation.

(b) Curb cuts and driveway aprons which are abandoned shall be removed and replaced with standard curbing and sod.

(c) During installation of landscaping, grassed areas off-site or within the public rights-of-way which have been disturbed by construction activity shall be cleaned of all debris, regraded to the proper elevations, and resodded or reseeded. Any preserved vegetation areas that have been damaged or removed shall be replanted and refurbished to restore the area as much as possible to its original condition.

(13) Maintenance:

(a) It shall be the duty of all persons, whether owners or tenants, to keep shade trees along public streets and avenues adjoining such property trimmed in such a manner that such trees shall not interfere with travel on said streets, avenues, and sidewalks.

(b) The property owner and tenant shall be jointly and severally responsible for **maintenance** of all required landscape, irrigation, and hardscape improvements as originally approved. This maintenance requirement shall carry with the land and shall be the responsibility of any subsequent owners and tenants of the property. It is the responsibility of the owner to notify any subsequent owners of the property of this responsibility.

(c) Landscape areas and site improvements shall be maintained in good condition for a healthy, neat, and orderly appearance and shall be kept free from weeds and debris. All plant materials shall be maintained in a healthy and vigorous condition through proper irrigation, fertilization, pruning, weeding, mowing, and other standard horticultural practices so as to grow to their normal shape, color, and height, and to fulfill the required functions of screening, shading, buffering, and aesthetic appeal set forth by the City. The hatracking of trees is

prohibited. All dead plants shall be replaced. All damaged plants including lawn grass shall be replaced or restored. Mulch shall be at the proper coverage and depth.

(d) Pavement, curbing, wheel stops, and other hardscape improvements shall be sound and in place. If it is determined by maintenance inspections that such curbs are insufficient to prevent vehicular encroachment, then installation of bollards or similar devices substantial enough to prohibit encroachment may be required. Any such fixtures shall be architecturally consistent with other site fixtures and structures for materials and colors.

(e) The City shall notify the property owner and tenant in writing of any maintenance violations. Upon notification of a maintenance violation, the property owner, tenant, or authorized agent shall correct the violation within thirty (30) days.

**(14) Replacement:**

(a) Tree replacement requirements:

(i) It is the policy of the City to preserve natural woodland areas throughout the City and with respect to specific site development to retain as far as practical, substantial tree stands which can be incorporated into the overall landscape plan.

(ii) The owner, tenant, and their respective agents shall be held jointly and severally responsible to maintain their property and landscaping in a condition presenting a healthy, neat, and orderly appearance and free from refuse and debris. Plants and ground cover which are required by an approved site or landscape plan and which have died shall be replaced within three (3) months of notifications by the City. However, the Code Administrator may extend the time for compliance up to nine (9) months in order to allow for seasonal or weather conditions.

(iii) No clear cutting of woodland areas shall be permitted, except if approved by the Code Administrator.

**(15) Plan Submission and Approval:** The property owner or developer is required to prepare a landscape plan drawn by a registered landscape architect or other professional acceptable to the City if deemed necessary by the Code Administrator. The City shall apply the following standards in reviewing the landscape plans including but not limited to:

(a) Landscape plan drawn to an easily readable scale, showing and labeling by name and dimensions, all existing and proposed property lines, easements, buildings, and other structures, vehicular use areas (including parking stalls, driveways, service areas, square footage), water outlets, and landscape material.

(b) Typical elevations and/or cross sections may be required in any landscape plan.

(c) Title block with the pertinent names and addresses (property owner and person drawing the plan), scale date, north arrow (generally orient plan so that north is to top of plan), and zoning district.

(d) Existing landscape material shall be shown on the required plan and any material in satisfactory condition may be used to satisfy this section in whole or in part.

(16) Approved Plant List:

(a) The list of boulevard trees and other species shall be adopted by resolution of the City Council and known as the Plant List.

### 17.8.9 Street Lights

Street lights, suitable for different uses and street type, and their location shall be in accordance with the minimum standards established by the City Council.

### 17.8.10 Dedication of Land for Public Purposes (Source: Ord. 2016-23, Sec. 1; Ord. 2018-11)

(1) Purpose. The City of Horace finds it is necessary and in the public interest to provide public spaces and recreational areas for its residents. This is caused, in part, by new development within the City and its extraterritorial area which increases population and/or demand upon public services. Accordingly, the City finds it shall be required that the owner or developer (the “Subdivider”) of every subdivision or resubdivision dedicate land for parks, playgrounds, public open space, public trails, municipal facilities, park facilities, and/or pay a fee in accordance with this section for the purpose of providing the above-mentioned public uses and facilities for existing and future residents of the community.

(2) Application. Except as provided in this section, the provisions of the public land dedication requirements shall apply to all residential, commercial, industrial and other subdivisions and shall include replats where land dedication and/or fee-in-lieu of land dedication have not been previously provided. Where landowners previously have dedicated land in advance of development, the Horace City Council will determine if a dedication will be required and what an equitable amount would be. Subdivisions or resubdivisions of properties which are partially or fully developed will only be required to provide for dedication on the undeveloped portion of the property being platted into lot(s).

(3) Procedure. Prior to submitting an application for subdivision or resubdivision, the Subdivider must obtain a letter from the Horace Park Board indicating its recommendation for land dedication and/or fee-in-lieu of land dedication. This letter of recommendation from the Park Board must be submitted with the Subdivider's application or the application will be considered incomplete. If the application is considered incomplete, the City will notify, and forward the subdivision information to,

the Park Board. The Park Board will be given thirty (30) days to review the subdivision information and provide a recommendation, whereupon the application will be considered complete and the City will proceed with platting procedures. The Horace Planning and Zoning Commission will consider the Park Board's recommendation in addition to public uses and facilities identified within the most current comprehensive plan and other City plans when formulating the Planning and Zoning Commission's land dedication recommendation to the City Council. The City Council will have final authority to determine whether land dedication and/or fee-in-lieu of land dedication will be accepted. (Source: Ord. No. 2020-11)

(4) Land Dedication. The amount of land required to be dedicated by the Subdivider pursuant to this section shall be based upon the type of development and shall be a percentage of the gross area of all property to be subdivided as follows:

- Residential Subdivision - 10%
- Commercial Subdivision - 5%
- Industrial Subdivision - 5%
- Other Subdivision - 10%

Where no proposed use is given for lots within the proposed subdivision, the City will base the required dedication on the future land use as shown in the Comprehensive Plan. The land area conveyed or dedicated to the City will not be used in calculating density requirements of the Comprehensive Plan.

(5) Land Suitability. Land to be dedicated shall be reasonably suitable for its intended use and shall be at a location convenient to the people to be served. In evaluating the adequacy of proposed land dedications, the City shall consider factors including size, shape, topography, geology, hydrology, tree cover, access, and location. Land will not be accepted as meeting the required dedication if it is encumbered with major utility easements, storm drains or retention areas, wetlands, or other features which make the property difficult to utilize for parks or other desired municipal or park facilities. The City may consider land for parks or open space that is located in the vicinity of areas for storm water retention, major drains, wetlands, or other natural features provided the dedication will further the interests of the City or Park District, as well as the City's Comprehensive Plan. The City Council will make the final decision whether land will be accepted for dedication.

(6) Timing and Maintenance. Prior to final plat approval by the City Council, the Subdivider shall denote on the plat the designated land for parks, playgrounds, public open space, public trails, municipal facilities, park facilities, and/or related facilities, or shall tender a deed of the dedicated land to the public entity that is to receive the land. The Subdivider shall pay all costs of transferring the dedicated land to the City, including the costs of:

- (a) Environmental clean-up, if necessary;
- (b) Title opinion;
- (c) Taxes prorated to the closing date;

- (d) Recording fees; and
- (e) Charges or fees collected by the title company.

If the Subdivider tenders a deed to the City and the plat is not approved, the deed shall be returned to the Subdivider. The transfer of the deed is only final upon final approval of plat. The public entity that receives the dedicated land shall be required to maintain such land.

(7) Fee-In-Lieu of Land Dedication. When it is determined that land dedication for parks, playgrounds, public open space, public trails, municipal facilities, park facilities, and/or related facilities is not desirable due to location, size, or other suitability factors, the City shall require, in lieu of land dedication, a cash dedication equal to a percentage of the fair market value of the property. Such percentage is based on the requirements identified in subsection (4) of this section. For the purposes of this section, fair market value shall be determined at the time of final plat approval in accordance with the following:

- (a) The City may establish by resolution of the City Council annually the acceptable value for residential, commercial and industrial designated land for consideration as the fair market value; or
- (b) The Subdivider may submit a copy of the purchase agreement and/or other pertinent information for which the City will take into account any and all concessions made and any improvements to said property to arrive at an agreed upon fair market value at the time of approval of plat; or
- (c) The fair market value may be based upon a current appraisal submitted to the City by the Subdivider at the Subdivider's expense. The appraisal shall be made by appraisers who are certified or licensed through the State of North Dakota.
- (d) If the City disputes each appraisal, the City may, at the Subdivider's expense, obtain an appraisal of the property by a qualified real estate appraiser, which appraisal shall be conclusive evidence of the fair market value of the land.

(8) Combined Land and Fee Dedications. The City may elect to receive a combination of fees and land as part of the land dedication requirements. In such cases, the percentage of land dedicated shall reduce the required fee percentage by an equal amount.

(9) Payment Time and Procedures. The Subdivider shall make payment to the City upon approval of the final plat. Funds received by the City shall be placed in a public improvement fund and in the discretion of the City Council, after consultation with the Park Board, be used to benefit the residents of the community. Public facilities constructed or improved with these funds shall be located in the general neighborhood if benefitting that subdivision, or elsewhere in the community if benefitting the community as a whole.

(10) Private Open Space/Parks. Where private open space for park and recreation purposes is provided in a proposed subdivision, such areas may be used for credit, at the discretion of the City Council, against the requirement of dedication for park and recreation purposes, provided the City Council finds it in the public interest to do so. Generally, however, land dedications for private parks will be discouraged.

### **17.8.11 Excavation**

All excavations shall be conducted in accordance with the requirements of the City of Horace Municipal Ordinances upon recommendation of the City Engineer.

### **17.8.12 Commercial Districts and Industrial Districts – Design Review**

Source: Ord. 2018-02; Ord. 2020-4

(1) Submission of Plans. Plans for construction and renovation of structures within Commercial Districts, Industrial Districts, and Mixed Use Districts shall be submitted to the Planning Commission for review. The owner of the property to be constructed upon or renovated shall submit two (2) full-sized and to-scale plans plus two (2) reduced copies of the necessary drawings to the Planning Commission. The Planning Commission shall have thirty (30) days to review the submission, hold a meeting, and approve, conditionally approve, or deny the proposed plans. Upon motion of the Planning Commission, the review period may be extended for an additional thirty (30) days or to a time mutually agreed upon by the Planning Commission and the applicant.

(2) Review Required. The Planning Commission shall conduct a design review of all additions, alterations, and improvements to buildings and of new buildings in the Commercial Districts, Industrial Districts, and Mixed Use Districts in order to improve the general standards of orderly development. In addition, the Planning Commission shall be responsible for review, approval, conditional approval, and denial of all elements of any proposed addition, alteration, and improvements to buildings and new buildings related to construction and renovation of structures in the Commercial Districts, Industrial Districts, and Mixed Use Districts, including but not limited to:

- (a) Building sites;
- (b) The sitting of any structure and property as compared to the sitting of other structures on abutting properties;
- (c) Building massing, proportion, materials, colors, exterior appearance, and details;
- (d) Size, location, and arrangement of parking and paved areas;
- (e) Ingress and egress points;
- (f) Landscaping;
- (g) Size, location, design, color, number, lighting, and materials of all signs and advertising structures. Each application for a sign subject to the provisions of

this section shall be accompanied by a scaled drawing depicting the requirements stated herein;

- (h) Windows and doors;
- (i) Awnings;
- (j) Fences;
- (k) Lighting;
- (l) Demolition; and
- (m) Other elements contained in any regulations or guidelines adopted by the Planning Commission and not listed above.

(3) Authority to Adopt Guidelines. In addition to the foregoing authority and responsibility, the Planning Commission shall have the power to adopt such guidelines, standards, policies, procedures, rules, regulations, conditions, and requirements as it may determine to be reasonably necessary or convenient to the exercise of the Planning Commission's authority and implementation of such guidelines, standards, policies, procedures, rules, regulations, conditions, and requirements to carry out the purposes of this section.

(4) Minimum Vote Required. Any action by the Planning Commission must be approved by simple majority of the voting members of the Planning Commission.

(5) Appeal.

(a) An owner or representative having submitted a request to the Planning Commission may appeal a decision of the Planning Commission to the City Council provided that such appeal is filed with the City Auditor within fifteen (15) days following any decision by the Planning Commission.

(b) An adjoining property owner objecting to a decision of the Planning Commission may appeal the Planning Commission's decision to the City Council provided that the notice of appeal is filed with the City Auditor within fifteen (15) days of the Planning Commission's action.

(6) Standards.

(a) Building Design.

(i) Building design shall incorporate materials to convey permanence, substance, timelessness, and restraint, with low maintenance. Each building shall be constructed with one (1) or more of the following material(s), with any exterior building wall visible from public street



frontage constructed with no less than fifty percent (50%) of one of the following materials:

1. Clay or masonry brick;
2. Customized concrete masonry with striated, scored, or broken faced brick type units (sealed) with color consistent with design theme;
3. Poured-in-place, tilt-up, or precast concrete. Poured-in-place and tilt-up walls shall have a finish of stone, a texture, or a coating;
4. Architectural flat metal panels or glass curtain walls;
5. Stucco or exterior finish insulation systems (EFIS).
6. Natural stone;
7. Residential-grade permanent siding provided that buildings are enhanced by the application of brick, decorative masonry, or decorative stucco surfaces in combination with decorative fascia, overhangs, and trim. Wooden siding may be used as a substitute for residential grade permanent siding; and/or
8. Additional materials may be approved by the Planning Commission provided that the substituted or additional materials meet the purpose and intent of this chapter and are similar in nature to those specified materials herein.

**(ii)** Decorative exposed concrete block buildings are prohibited.

**(iii)** Ground-floor building facades of commercial and office buildings shall have a minimum of twenty percent (20%) glass windows, unless otherwise required by the Planning Commission.

**(iv)** Any portion of a building facade that exceeds one hundred (100) feet shall incorporate windows or architectural and design elements to break up the expanse of wall. Examples include, but are not limited to, windows, lighting, material changes, articulated wall surfaces, architectural treatments such as sculptured wall features or shadow lines, vertical accents, texture changes, or color changes. Landscaping may be used in combination with the design elements listed above.

**(v)** Sloped roofs shall not exceed one hundred (100) feet without a change in roof plane, gable, or dormer.

**(vi)** Building design shall incorporate architectural characteristics that emphasize human-scale design features and minimize the mass and scale

of buildings through the use of features including, but not limited to: variation in the rooflines and form, designs that visually define “tops” and “bottoms” of buildings, use of protected or recessed entries, use of vertical elements on or in front of expansive blank walls, use of focal points, inclusion of windows on elevations facing identified corridors and pedestrian areas.

**(vii)** Building entrances, excluding emergency exits, shall be designed as focal points and shall be enhanced through the use of elements such as canopies, overhangs, peaked roofs, paving materials, planters, landscaping features, and outdoor seating areas.

**(viii)** Roof-mounted and ground-mounted mechanical equipment shall be fully screened from the identified corridor. Penthouses for mechanical equipment shall be incorporated into the building facade design, consistent with the exterior building design requirements.

**(ix)** Exterior mechanical equipment shall be shielded in a manner that protects adjacent properties from noise levels.

**(b)** Multi-Building or Mixed Use Projects.

**(i)** Prior to issuance of a building permit on a multi-building development, the applicant shall submit plans that demonstrate the use of consistent design elements throughout the project. Subsequent building permits shall conform to the design elements presented.

**(ii)** Multi-building developments shall include prominent focal points which shall include, but not be limited to, architectural structures, art, historical and/or landscape features. These features shall be located at, or visible from, vehicular and pedestrian entrances to the site.

**(iii)** Freestanding garage clusters of multiple-family residential sites shall not be placed along the main public street frontage.

**(c)** Site Design.

**(i)** Natural Features. Significant natural or existing features, such as drainage swales, existing trees, and shelterbelts, shall be incorporated into the site design to the extent that retention of the feature allows reasonable use of the site, as determined by the Planning Commission.

**(ii)** Functional Site Elements.

1. Trash enclosures and trash compactors shall be located such that they are not visible from the main public street frontage.

2. Outdoor storage shall be located such that it is not visible from the main public street frontage, by placing the outdoor

storage on the opposite side of the building from the main public street frontage, or by placing outdoor storage in an enclosed area that has the appearance of being integral to the building. All outdoor storage shall be fully screened from view through the use of an opaque decorative fencing material or architectural screen walls.

3. Loading and delivery areas shall not be located along the side of the building that fronts on the main public street frontage. Such areas shall be screened from view through the use of landscaping or architectural building elements that are consistent with the architecture and building materials used in the primary buildings.

4. Contractor yards, service yards, heavy equipment, salvage, and items of a similar nature shall be located away from public street frontages and shall be screened with opaque fencing.

5. Shopping cart drop-off sites shall be provided at regular intervals throughout parking lots of retail developments.

**(iii)** Pedestrian Accommodations.

1. Pedestrian walkways shall be provided between building entrances/exits and parking areas, and within parking areas to provide a designated walking area, especially where there is a need to connect dispersed buildings with parking areas.

2. Pedestrian walkways shall be provided between buildings and sidewalks or multi-use paths along adjacent streets.

3. On multi building sites and mixed use sites, the site design shall provide functional pedestrian spaces, plazas, and seating areas between or in front of buildings. Designs shall include some areas with weather protection, such as overhangs, awnings, and canopies to increase usefulness in a variety of weather conditions.

4. Canopy shade trees, landscape features, and seating, or other pedestrian amenities near colonnades, storefronts, and pedestrian routes shall be incorporated into the site.

**(iv)** Lighting.

1. Pedestrian-scale lighting fixtures shall be provided in areas designed for pedestrian activity (walkways, plazas, outdoor seating areas).

2. Lighting fixtures shall coordinate and complement the general architectural style of the development.

3. Lighting of an entire building face is prohibited. Lighting that accents entryways and other site focal points, such as significant architectural, landscaping, or artistic features shall be provided.

Source: Ord. 2018-02

## **17.9 REQUIRED IMPROVEMENTS**

Before installation of improvements in any subdivision, the City Council shall make a determination for improvements required, based on a schedule of improvements including the standards, and type of construction.

### **17.9.1 Completion Assurance**

To cover the cost of improvements, the City Council requires, the subdivider post a bond or submit a letter of credit from an acceptable financial institution in an amount sufficient to construct such improvements.

### **17.9.2 Survey Monuments/Pins**

The subdivider shall install survey monuments/pins in all lots and block corners in the subdivision in accordance with the requirements of the State of North Dakota.

### **17.9.3 Public Water** (Source: Ord. 2015-12, Sec. 9)

- (1) Where appropriate and practical, in the opinion of the City Council, water mains shall be installed so as to provide individual service to each lot within the subdivision.
- (2) Water mains shall extend to the boundary of the subdivision, except where in the opinion of the City Council, it is deemed impractical.
- (3) A rural water supply, storage and distribution system shall comply with the requirements of the City of Horace.

### **17.9.4 Sanitary Sewer**

- (1) All subdivisions shall be provided with sanitary sewers to each lot in all zoning districts, except where in the opinion of the City Council it is deemed impractical. Residential districts in S-R Suburban Residential and R-E Residential Estate because of the large lots may be excluded from this requirement.
- (2) Sanitary sewer shall be extended to the boundary of the subdivision, except where in the opinion of the City Council it is deemed impractical.
- (3) Sanitary sewer shall not be extended outside city limits. Property outside city limits must be annexed to Horace before it may be connected to the city's sanitary sewer system.

- (4) All lots in R-1, R-2, R-3, R-4, R-5, R-6, MH, C-1, C-2, C-3, I-1, I-2 and PUD shall be connected to public sewer, except where in the opinion of the City Council it is deemed impractical.

Source: Ord. 2015-6, Sec. 8; Ord. 2015-12, Sec. 10

### **17.9.5 Storm Sewer**

The storm sewer drainage facilities shall be installed in all residential lots in R-1 to R-6, MH, C-1 and C-2 Districts in accordance with the plans and specifications approved by the City Council. S-R Suburban Residential, R-E Residential Estate, C-3 Commercial, I-1 and I-2 Industrial Districts may use ditches, provided that C-3, I-1 and I-2 Districts have retention ponds to be approved by the City Engineer and the City Council subject to land suitability and drainage characteristics.

Source: Ord. 2015-6, Sec. 9

### **17.9.6 Grading and Drainage**

- (1) The subdivider shall provide a detailed grading and drainage plan showing the grades of streets and drainage improvements. The subdivider shall provide suitable drainage facilities for any surface run-off affecting the subdivision. The drainage facilities shall be located in street right-of-way or in drainage easements.
- (2) The drainage shall not discharge into any sanitary sewer facility.
- (3) The grading and drainage system shall be approved by the City Engineer in accordance with the plans and policies of the City of Horace.
- (4) Grading established in any subdivision shall not be changed without approval of the City Council.

### **17.9.7 Curbs, Gutters and Sidewalks**

- (1) Concrete curbs and gutters shall be installed in all subdivisions in R-1, R-2, R-3, R-4, R-5, R-6, MH, C-1, C-2, and MU Districts in accordance with the requirements of the City of Horace Municipal Ordinances.
- (2) Where the city requires construction of sidewalks in R-1, R-2, R-3, R-4, R-5, R-6, MH, C-1, C-2, and MU Districts, they shall be in accordance with the requirements of the City of Horace Municipal Ordinances, including those requirements set forth in Chapter 2-01 of the City of Horace Municipal Ordinances. All driveways shall be constructed of concrete or asphalt according to the requirements of the City of Horace.

Source: Ord. 2015-6, Sec. 10, Ord. 2015-12, Sec. 11; Ord 2020-4

### **17.9.8 Installation of Improvements**

Construction of all improvements is contingent on approval by the City Council. The subdivider shall be responsible for furnishing the necessary data and documents required for such approval.

## **17.10 ADMINISTRATION AND ENFORCEMENT**

### **17.10.1 Organization**

To administer this ordinance the following bodies are hereby vested with authority to act on behalf of City of Horace.

- (1) The City Code Administrator
- (2) The Planning Commission
- (3) The City Council

Source: Ord. 2017-41, Sec. 1

### **17.10.2 City Code Administrator**

The Code Administrator is a duly appointed city official authorized by the City Council and is responsible to administer this code, to assist the Planning Commission, and the City Council on any matter related to this ordinance.

#### **(1) Duties**

- (a) Issue all zoning certificates, permits and maintain records thereof.
- (b) Issue all building and repair permits.
- (c) Maintain zoning and platting related records including records of all amendments, conditional uses, variances and amendments to the most current comprehensive plan. (Source: Ord. No. 2020-11)
- (d) Receive, file and forward in behalf of the City Council to the Planning Commission all applications for rezoning, site approvals and conditional uses.
- (e) Receive, file and forward all variance related applications to the Planning Commission.
- (f) Prepare and publish notices and notify adjoining property owners. For all applications pertaining to zoning district changes, conditional uses and variances. A written notice shall be mailed to all property owners within one hundred fifty (150) feet of the subject land. This distance shall not include public lands such as parkland, street right-of-way, and any land owned by the city, county, state or federal government.(Source: Ord. 2018-02)
- (g) Notify, in writing, the property owner or user upon finding violation of this ordinance and cite the nature of violation clearly, require compliance and a submitted report of the findings to the City Council and the City Attorney

(h) Receive, file and forward to the Planning Commission and the City Engineer all applications for preliminary and final plats and the supporting documents.

(i) Report all zoning and land subdivision violations to the City Council and the City Attorney.

(j) All data and information required in application for zoning changes, conditional use permits, variances, preliminary and final plats shall be submitted to the Code Administrator before the notice of the public hearing is published. Failure to submit the required data and information at least two (2) weeks before the public hearing or regular meetings to be held by the Planning Commission or the City Council, shall result in delaying the action of the Planning Commission or the City Council.

(k) The Code Administrator shall require appropriate data and information from the applicant requested by the City Engineer, other city agencies, the Planning Commission and the City Council.

(l) The Code Administrator may develop a timetable for processing of each application for consideration by the Planning Commission and the City Council.

**(2) Interpretation of Regulations**

All questions of interpretation of this ordinance shall be presented to the City Council, if the interpretation of the Code Administrator is questioned.

**(3) Building Permit Applications**

Any person or persons intending to construct or reconstruct or relocate a building or make alteration, shall, before proceeding with the work, or commencing any excavation in connection with it, shall obtain a permit from the Code Administrator. These provisions shall also apply to manufactured and modular homes.

(a) 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 (foot print) of the building for observing the yard requirements of this ordinance.

(b) 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 building cost.

(c) The application must accompany a site plan for multi-family residential, commercial and industrial districts.

**(4) Building Permits**

The Code Administrator shall issue a building permit if the proposed building or structure conforms to zoning and building provision of this ordinance. If the Code Administrator denies a permit because of nonconformance with this ordinance, he/she shall inform the applicant of his/her right to request to the Planning Commission for a variance for dimensional restrictions.

**(5) Application and Permit Fees**

The Code Administrator shall charge and collect a fee for zoning applications, conditional use permits, variances, and preliminary and final plats in accordance with the fee schedule established by the City Council. These fees shall be sufficient in amount to cover the cost of notices and the time spent by the Code Administrator on each case. Updating the fee schedule must be done by an action of the City Council at any regular meeting.

**(6) Certificate of Occupancy or Use**

The Code Administrator shall inspect the completed building, including placement of manufactured and modular homes and assurance that all provisions and conditions set forth under this ordinance are met. In the event the Code Administrator find violations and deviations from the terms and conditions of this ordinance, he/she shall make a report and recommendation for action to the City Council and the City Attorney.

**(7) Conditional Use and Site Approval Permits**

The Code Administrator shall issue a conditional use or site approval permit upon approval of the application by the City Council subject to the provisions of Section 17.11.

**(8) Variances**

The Code Administrator shall issue a permit if the City Council approves the variance. The terms of the variance shall be stipulated in the permit, subject to the provisions of Section 17.11.

**(9) The Final Plat**

The Code Administrator shall place the final plat for the Mayor's signature, if the City Council has approved the final plat subject to the provisions of Sections 17.7, 17.8 and 17.9 of this ordinance.

Source: Ord. 2017-41, Sec. 2



### **17.10.3 Planning Commission**

The Planning Commission shall consist of at least five members appointed by the City Council. The Code Administrator may act as secretary of the Planning Commission. A representative of the extraterritorial area, appointed by the Cass County Planning Commission, shall serve on the Planning Commission as a voting member. The Planning Commission shall appoint its chair and vice-chair annually. In case of vacancies the City Council shall appoint new members to complete the unfinished term of a former member.

#### **(1) Duties**

(a) To hear and act on all applications for amendments to zoning districts, Land Use Ordinance, preliminary and final plats of subdivisions and take action for approval, denial or approval with modification and final recommendations to the City Council.

(b) To hear and act on all applications for conditional uses, variances, and site approvals in the manner prescribed in this ordinance and make recommendations to the City Council.

(c) The action of the Planning Commission is advisory to the City Council and all final decisions rest with the City Council.

#### **(2) Notice of Hearings**

The Planning Commission shall fix a reasonable date for hearing of applications for zoning district amendments, conditional use permits, variances, site approval and preliminary and final plat applications and other matters before it, give public notice thereof in the official newspaper of the city at least once a week for two consecutive weeks prior to the hearing. The notices shall give time and place of hearing and shall state the purpose of the hearing and that the applications and supporting documents for zoning district amendments and conditional use permits shall be available for public inspection by the Code Administrator. The Planning Commission may authorize the Code Administrator to place notices and communicate its decisions with the City Council and other city officials.

#### **(3) Meetings**

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

Source: Ord. 2017-41, Sec. 3

### **17.10.4 City Council**

The City Council maintains the authority for review, and acts on the recommendations of the Code Administrator, City Engineer and the Planning Commission.

**(1) Duties**

(a) The City Council is responsible for approval, modification or denial of amendments to the text of this ordinance.

(b) The City Council is responsible for approval, modification or denial of amendments to change the zoning district(s) boundaries.

(c) The City Council is responsible for granting conditional use permits, variances, final plat approval and establishing a fee schedule for all permits issued by the Code Administrator to cover the cost of notices of public hearing and staff time on the projects.

**(2) Notice of Hearing**

The City Council may hold hearing(s) as required by this ordinance and the laws of the State of North Dakota.

Source: Ord. 2017-41, Sec. 4-5

**17.11 PROCEDURES FOR AMENDMENTS, CONDITIONAL USES, PUD VARIANCES AND PLATS OF SUBDIVISION**

**17.11.1 Zoning District Amendments and PUD**

**(1) Public Hearing Notice**

The Planning Commission shall hold a public hearing, a notice of which shall be published at least once a week for two weeks prior to the hearing in the official newspaper of the city. The notice of hearing shall include: (a) the time and place of hearing for the Planning Commission and the City Council (b) description of the property by street address for platted lands and clearly identifiable location for the un-platted lands; (c) the proposed use, requested zoning district change; (d) time and place for public inspection of the documents submitted by the applicant before the hearing; and (e) notification to all property owners within 150 feet of the property in question excluding the street rights-of-way.

**(2) Public Hearings**

The Planning 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 Planning Commission shall make recommendation to the City Council. The Planning Commission may require additional information before it completes its findings and making its recommendations.

**(3) Data Submission Requirements**

Petitions for zoning district change, conditional uses, PUD project, preliminary and final plats and site plan approval shall be submitted to the Code Administrator with the following information:

- (a) Legal description of the area proposed to be rezoned.
- (b) A site plan showing buildings and uses in the zoning district proposed to be changed.
- (c) Information on drainage, floodplain, water, sewer, access to public streets and a schedule for construction.
- (d) A fee shall be paid in accordance with the schedule established by the City Council and other application fees required in this ordinance.

**(4) Deliberation and Decision**

Following the hearing, the Planning Commission, upon due deliberation, shall make a report of its findings and recommendations to the City Council.

**(5) Action of the City Council**

The City Council shall hold a public hearing and act on the recommendations of the Planning Commission. The City Council may approve the recommendations of the Planning Commission on all matters related to zoning district changes, ordinance amendments, conditional use permits, PUD projects, final plats and site plans.

**17.11.2 Conditional Use Permits**

**(1) Purpose**

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

**(2) Public Hearing Notice**

Public hearing notices and details shall be the same as the provisions set forth for public hearing notice for zoning district amendment in Section 17.11.1(1).

**(3) Public Hearings**

Shall be the same as the provisions set forth for public hearing for zoning district amendment in Section 17.11.1(2).

**(4) Data Submission Requirements**

Shall be the same as the provisions set forth for data submission requirements for zoning district amendment in Section 17.11.1(3).

**(5) Deliberation and Decision**

Shall be the same as the provisions set forth for deliberation and decision for zoning district amendment in Section 17.11.1(4).

**(6) Standards**

No application for conditional use shall be approved unless the City Council finds that all of the following conditions are present.

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

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

(c) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the district.

(d) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.

(e) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic impact on the area.

(f) That the conditional use shall conform to all applicable regulations of the district in which it is located.

**(7) Conditions and Guarantees**

(a) Prior to the decision on any conditional use, the Planning 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 city and

to secure compliance with the standards and requirements specified in Section 17.11.2(6).

(b) No alteration of conditional uses shall be permitted unless approved by the City Council

**17.11.3 Variances** (Source: Ord. 2016-27, Sec. 13; 2017-41, Sec. 6; Ord. 2018-02)

Variance from the dimensional standards of this ordinance may be granted provided that the applicant establishes proof of practical difficulty or undue hardship. Use variances shall be prohibited and variances shall be limited to height, bulk, and setback lines of the buildings and structures. Variances shall not be used to obtain a conditional use permit.

**(1) Public Hearing Notice**

The Planning Commission shall hold a public hearing, a notice of which shall be published at least once a week for two (2) consecutive weeks prior to the hearing in the official newspaper of the City. Additionally, the notice shall be mailed to the variance applicant or his/her agent and all property owners within one hundred fifty (150) feet of the property in question, excluding street rights-of-way and City-owned property, prior to the hearing. The notice of hearing shall include: (a) the time and place of the hearing before the Planning Commission; (b) the description of the property by street address for platted lands and clearly identifiable location for the un-platted lands; (c) the variance that is requested by the applicant; and (d) the time and place for public inspection of the documents submitted by the applicant before the hearing.

**(2) Public Hearings**

The Planning Commission, at the hearing, shall listen to all persons who may speak in support of or in opposition to the requested variance.

**(3) Data Submission Requirement**

Petitions for variances shall be submitted with the following information:

- (a) Legal description of the property.
- (b) A map showing the existing land uses and zoning district classification of the area.
- (c) The variance that is being requested and the reason for the variance request.
- (d) A proof of whether the hardship is unique to the applicant's property.
- (e) Any other information that the Planning Commission deems necessary.

**(4) Deliberation and Decision**

In making its recommendation, the Planning Commission shall ascertain that the requests for variance is consistent with the most current comprehensive plan and meets all requirements of this ordinance and other regulations of the City of Horace. The Planning Commission may recommend approval, conditional approval, or denial of said variance to the City Council. After the Planning Commission has had an opportunity to review the application and make its recommendation to the City Council, the City Council shall make a finding on the variance application. The City Council, at its next regular or special meeting, may approve, conditionally approve, or deny the variance. (Source: Ord. No. 2020-11)

**(5) Standards**

No application for variance shall be approved unless the City Council finds that all of the following are present:

- (a) That special conditions and circumstances exist which are peculiar to the premises and which are not applicable to other premises in the same zoning district.
- (b) That literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.
- (c) That the special conditions and circumstances have not resulted from actions of the applicant.
- (d) That granting the variance requested will not confer upon the applicant any special privileges that are denied by this ordinance to other premises.

**(6) Justification**

- (a) That the reasons set forth in the application justify the granting of the variance.
- (b) The variance is the minimum which would make possible a reasonable use of the premises.
- (c) 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 city and will not be contrary to the most current comprehensive plan and the purposes of this ordinance. (Source: Ord. No. 2020-11)
- (d) That there is practical difficulty or unnecessary hardship in use of the premises if the strict application of the regulations are to be carried out.

**(7) Appeal**

The decision of the City Council may be appealed to Cass County District Court under the laws of North Dakota.

#### **17.11.4 Plat Approval**

The procedure for approval of the preliminary and final plats shall be the same as the zoning district amendment procedure under Section 17.11 with the required data submission under Sections 17.7.1(3) for preliminary plats, Section 17.7.3(2) final plats and Section 17.7.4, lot splits.

#### **17.12 CITIZENS PROTEST** (Source: Ord. 2017-41, Sec. 7)

If a protest to amendments, conditional use permits, variances and subdivision plats is signed by owners of 20% or more of the area of the lots included in such proposed change, or of the area adjacent, extending one hundred fifty (150) feet from the property to be changed, the amendment shall not become effective except by a favorable vote of at least three-fourths (3/4) of the members of the City Council. For variance, a three-fourths (3/4) vote of the City Council is required.

#### **17.13 VIOLATIONS AND PENALTIES**

Anyone who violates the provisions of this ordinance or fails to comply with any of its requirements, upon conviction, shall be punished by a fine of no more than \$500.00 per day. Each day that a violation continues shall constitute a separate offense.

#### **17.14 ENACTMENT**

In order that all development, buildings and structures within the City of Horace and its extra territorial planning and zoning area, be properly guided in accordance with the requirements set forth herein, this Land Use Ordinance is hereby adopted.

#### **17.15 STORM WATER MANAGEMENT PLAN** (Source: Ord. 2018-03)

##### **17.15.1 Purpose**

Chapter 17.15 sets forth uniform requirements for storm water management systems within the City of Horace. In the event of any conflict between the provisions of this chapter or other regulations adopted by the City of Horace, Cass County, State of North Dakota, or Federal authorities, the more restrictive standard prevails.

The objectives of this section are as follows:

- (1) To promote, preserve, and enhance the natural resources within the City of Horace from adverse or undesirable impacts occasioned by development or other activities;
- (2) To protect and promote the health, safety, and welfare of the people and property through effective storm water quantity and quality management practices;
- (3) To regulate land development activity, land disturbing activity, or other activities that may have an adverse and/or potentially irreversible impact on storm water quantity, water quality, and/or environmentally sensitive lands, and to encourage compatibility between such uses;

- (4) To establish detailed review standards and procedures for land development activities throughout the City of Horace, thereby achieving a balance between urban growth, development, and the protection of water quality; and
- (5) To provide for adequate storm water system analysis and design as necessary to protect public and private property, water quality, and existing natural resources.

### **17.15.2 Definitions**

For the purpose of this chapter, the following terms, phrases, and words shall have the meaning provided below. Words used in the present tense include the future tense, words in the plural number include the singular number, singular include the plural number. The word “shall” is always mandatory and the word “may” is always permissive.

- (1) “Applicant” means a person that applies for a building permit, subdivision approval, zoning change, approach, excavation or special use permit, erosion and sediment control plan approval, erosion and sediment control permit, or any other permit which allows land disturbing activities. Applicant also means that person’s agents, employees, and others acting under this person’s direction. The term “applicant” also refers to the permit holder or holders and the permit holder’s agents, employees, and others acting under this person’s direction.
- (2) “Best Management Practices” (BMP) means the schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State, including treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage which are promulgated or approved and adopted by the City Engineer.
- (3) “City” means the City of Horace or its City Council.
- (4) “City Engineer” means the City Engineer of the City of Horace or his designee.
- (5) “Erosion and Sediment Control Permit” means a permit issued by the City in accordance with this chapter.
- (6) “Control measure” means a practice or combination of practices to control erosion and attendant pollution, see also “Best Management Practices.”
- (7) “Development” means land disturbing activity that changes the site’s runoff characteristics in conjunction with residential, commercial, or industrial construction or alteration.
- (8) “Developer” means a person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbing and/or land development activity.



- (9) “Discharge” means the release, conveyance, channeling, runoff, or drainage of storm water, including snow melt.
- (10) “Drainage easement” means a right to use the land of another for a specific purpose, such as a right-of-way, for the movement of water across or under the land surface or the storage of water.
- (11) “Dwelling unit” means a single unit providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- (12) “Erosion” means removing or wearing away of the surface of land by action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.
- (13) “Erosion and Sediment Control Plan” means a written description or plan indicating the number, locations, sizes, and other pertinent information about Best Management Practice methods designed to reduce erosion of the land surface and the deposition of sediment within a waterway. An Erosion and Sediment Control Plan is used in finalizing the State mandated Storm Water Pollution Prevention Plan (SWPPP).
- (14) “Erosion control” means methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover, and construction phasing.
- (15) “Exposed soil” means an area of the construction site where the vegetation (trees, shrubs, brush, grasses, etc.) or impervious surface has been removed thus rendering the soil more prone to erosion. This includes topsoil stockpile areas, borrow areas, and disposal areas within the construction site. It does not include temporary stockpiles or surcharge areas of clean sand, gravel, concrete, or bituminous, which have less stringent protection. Once soil is exposed, it is considered “exposed soil,” until it meets the definition of “final stabilization.”
- (16) “Final stabilization” means that disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of seventy percent (70%) of the native cover for unimproved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (17) “Hydric soils” means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.
- (18) “Hydrophytic vegetation” means macrophytic (large enough to be observed by the naked eye) plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

**(19)** “Impervious area” means a constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel parking lots and roads.

**(20)** “Land development activity” means the act of subdivision or platting properties for personal use, adding value, or for the purposes of resale. This includes the construction and/or demolition of buildings, structures, roads, parking lots, paved storage areas, and similar facilities.

**(21)** “Land disturbing activity” means land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands within the City’s jurisdiction, including construction, clearing and grubbing, grading, excavating, transporting, and filling of land. Within the context of this chapter, land disturbing activity does not mean:

**(a)** Minor land disturbing activities such as home gardens and an individual’s home landscaping, repairs, and maintenance work, which will not result in sediments entering the storm water system.

**(b)** Additions or modifications to existing single-family structures that result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.

**(c)** Construction, installation, and maintenance of trees, fences, signs, posts, poles, and electric, telephone, cable television, utility lines, or individual service connections to these utilities, which result in creating less than five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.

**(d)** Tilling, planting, harvesting, or customary field maintenance activities associated with agricultural, horticultural, or silvicultural (forestry) crops.

**(e)** Emergency work to protect life, limb, or property and emergency repairs, unless the land disturbing activity would have otherwise required an approved Erosion and Sediment Control Plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the City’s requirements as soon as possible.

**(22)** “Landowner” means a person holding title to or having a divided or undivided interest in land.

**(23)** “National Pollution Discharge Elimination System Permit” (“NPDES permit”) means a permit or requirement enforced pursuant to the United States Clean Water Act, as amended, for the purpose of regulating storm water discharge.

**(24)** “Noncompliance fee” means the administrative fee charged to offset the additional costs and oversight necessary for reinspection of a property which may be assessed to a permittee, land owner, developer, or their contractor(s) for noncompliance with the provisions and/or conditions of an approved storm water plan and/or permit or the violation of any other provisions contained in this storm water ordinance.

**(25)** “One or two dwelling unit building” means a building that contains one (1) or two (2) dwelling units used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied, or that are occupied for living purposes.

**(26)** “Outlet” means a discharge point, including storm sewers, into a watercourse, pond, ditch, river, or other body of surface or groundwater.

**(27)** “Operator” means the person, usually the general contractor, who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPP plan. The person must be knowledgeable in those areas of the permit for which the operator is responsible and must perform those responsibilities in a workmanlike manner.

**(28)** “Owner” means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity.

**(29)** “Permanent cover” means final stabilization. Examples include grass, gravel, asphalt, and concrete.

**(30)** “Permit” within the context of this chapter is an Erosion and Sediment Control Permit.

**(31)** “Permittee” means a person who applies for and receives approval of an Erosion and Sediment Control Plan and/or permit from the City.

**(32)** “Person” means a developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency, either public or private.

**(33)** “Prohibited discharge” (also known as an illicit discharge) means a discharge into the storm water system or river, stream, pond, channel, or ditch, including but not limited to:

**(a)** Dumping of debris or other materials such as grass clippings, vegetative materials, tree branches, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures.

**(b)** Connecting storm water collection systems, such as roof gutters, roof drains, drain tile and sump systems, or other such facility, with a municipal sanitary sewer system unless authorized under this section. The term municipal separate storm sewer system includes a storm sewer opening, a drainage ditch, waterway, or other storm water conveyance. A storm water collection system is

connected with a municipal separate storm sewer or sanitary system when storm water is allowed to be directly deposited into the municipal system.

**(c)** The disposal or misuse of chemicals or any other materials that would degrade the quality of waters within the system, including, but not limited to chemicals (fertilizers, herbicides, pesticides, etc.) or petroleum based products (gasoline, oil, fuels, solvents, paints, etc.).

**(d)** Erosion and sediment originating from a property and deposited onto City streets, private properties, or into the storm water conveyance system, including those areas not specifically covered under an approved Erosion and Sediment Control Plan or Erosion and Sediment Control Permit.

**(e)** Failure to remove sediments transported or tracked onto City streets by vehicles or construction traffic by the end of each work day, or as needed to prevent or minimize the transport of sediment to the storm sewer system.

**(f)** For the purposes of this ordinance, prohibited discharges do not include the following, unless information is available to indicate otherwise:

- (i)** Water line flushing;
- (ii)** Landscape irrigation;
- (iii)** Diverted stream flows;
- (iv)** Rising ground water;
- (v)** Uncontaminated ground water infiltration;
- (vi)** Uncontaminated pumped ground water;
- (vii)** Discharges from potable water sources;
- (viii)** Foundation drains;
- (ix)** Air conditioning condensate;
- (x)** Irrigation water;
- (xi)** Springs;
- (xii)** Water from crawl space pumps;
- (xiii)** Footing drains;
- (xiv)** Lawn watering;
- (xv)** Individual residential car washing;

- (xvi) Flows from riparian habitats and wetlands;
- (xvii) De-chlorinated swimming pool discharges;
- (xviii) Street wash water; and
- (xix) Sump pump connections properly connected to the storm sewer.

(34) “Public storm sewer” means a storm sewer located entirely within publicly-owned land or easements.

(35) “Runoff” means the rainfall, snow melt, dewatering, or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.

(36) “Sediment” means solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice and deposited at another location.

(37) “Sediment control” means the methods employed to prevent sediment from leaving the development site. Examples of sediment control practices include, but are not limited to, silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.

(38) “Site” means the entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed.

(39) “Stabilize” means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization.

(40) “Storm sewer” means a pipe or conduit for carrying storm waters, surface runoff, and drainage, excluding sewage and industrial wastes.

(41) “Storm water” means precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage.

(42) “Storm water detention” means temporary storage of storm water runoff in ponds, parking lots, depressed grassy areas, rooftops, buried underground tanks, etc., for future or controlled release, used to delay and attenuate flow.

(43) “Storm water management” means the planned set of public policies and activities undertaken to regulate runoff and reduce erosion, and maintain or improve water quality under various specified conditions within various portions of the drainage system.

(44) “Storm water management system” means physical facilities that collect, store, convey, and treat storm water runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.

(45) “Storm Water Pollution Prevention Plan” (“SWPPP”) means a joint storm water and Erosion and Sediment Control Plan that is written as a prerequisite to obtaining an NPDES Storm Water Permit for construction activity that, when implemented, will decrease soil erosion on a parcel of land and off-site non-point pollution and includes both temporary and permanent controls.

(46) “Structure” means anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

(47) “Subdivision” means a tract of land divided into building lots for private, public, commercial, and industrial development for the purpose of sale, rent, or lease, including Planned Unit Development.

(48) “Temporary protection” means short-term methods employed to prevent erosion. Examples of such protection are straw, mulch, erosion control blankets, wood chips, and erosion netting.

(49) “Undeveloped land” means land that, in its current state, has not been impacted by significant land disturbing activities annexed into the City or subdivided into multiple ownership lots and is typically zoned agricultural.

(50) “User” means a person who discharges, causes, or permits the discharge of storm water into the City's storm water management system.

(51) “Waters of the State” means surface waters that are contained in or flow in or through the State of North Dakota as defined in N.D.C.C. 61-28-02. This definition includes all water courses, even if they are usually dry.

(52) “Watercourse” means the natural path for the flow of water where there is sufficient natural and accustomed runoff to form and maintain a distinct and defined channel or an open channel facility that has been constructed for such purpose. This shall include easements obtained for the purposes of runoff conveyance.

(53) “Wetlands buffer area” means a protective vegetated zone located adjacent to a natural resource, such as a water of the State that is subject to direct or indirect human alteration. Such a buffer strip is an integral part of protecting an aquatic ecosystem through trapping sheet erosion, filtering pollutants, reducing channel erosion, and providing adjacent habitat.

(54) “Wetlands” means lands transitional between terrestrial and aquatic systems, excluding drainage ditch bottoms, where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three (3) attributes:

- (a) A predominance of hydric soils;
- (b) Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (c) Under normal circumstances, support the prevalence of such vegetation.

### **17.15.3 Waivers**

The City Engineer may waive requirements of this chapter upon making a finding that compliance with the requirement will involve an unnecessary hardship, and that waiver of such requirement is not contrary to the objectives of this chapter. The City Engineer may require as a condition of the waiver, a dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements. A waiver must be in writing to be valid.

### **17.15.4 Extraterritorial Zoning Jurisdiction**

This chapter is intended to be enacted as a zoning regulation and to apply to areas within the City's extraterritorial zoning jurisdiction as authorized by State law. This chapter shall, therefore, apply to the City's extraterritorial zoning jurisdiction and references in this chapter to violations occurring within the City shall be deemed to include the extraterritorial zoning jurisdiction of the City.

### **17.15.5 Permanent Storm Water Facilities Design – One and Two Dwelling Units Exempt**

An owner must submit to the City Engineer a plan for storm water management and control including detention and retention facilities. The plan shall be submitted, and approval obtained from the City Engineer prior to the owner (a) obtaining approval of an application for a plat pursuant to the Land Use Code of the City, or (b) engaging in land disturbing activity. Said plan may include, in the discretion of the City Engineer, arrangements for further planning and implementation of permanent facilities for storm water management and control by subsequent owners of the property being platted or by the current owner at a later time. Plans submitted for review shall at a minimum contain the total acreage of the development, total impervious area being added by the improvement, and a calculation showing the water detention/retention capacity of the facility. Construction of one (1) or two (2) dwelling unit buildings shall be exempt from the requirements of this chapter. Projects administered by the City engineering department that include storm water facilities shall be designed under the guidance of the City Engineer and shall be approved by a registered professional engineer, but shall be exempt from the requirements of this chapter.

### **17.15.6 Methodologies and Computations**

Storm water control facilities and erosion/sediment control features shall be designed in conformance with the City's storm water management and control policy approved by resolution of the City Council.

### **17.15.7 Operation, Maintenance, and Inspection**

Storm water management systems shall be designed to minimize the need for maintenance, to provide easy vehicle access, typically eight (8) feet or wider, and personnel access for maintenance purposes, and to be structurally sound. Storm water management systems shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in storm water runoff. The City Engineer may inspect public and private storm water management systems in accordance with this ordinance. Inspection records will be kept on file at the City Engineer's office. It shall be the responsibility of the applicant to obtain necessary easements or other property interests to allow access to the storm water management system for inspection and maintenance purposes.

### **17.15.8 Easements**

Easements may be required as conditions to the issuance of an Erosion and Sediment Control Permit. If a storm water management system involves directing some or all of the site's runoff to a drainage easement, the applicant or his designated representative shall obtain from the property owners necessary easements or other property interests concerning the flow of such water.

### **17.15.9 Record Drawings**

The owner shall provide the City Engineer notice, in writing, of changes or material modifications to the original permitted design in the form of as-built or record drawings. The record drawings shall contain the final configuration for improvements as constructed. A professional engineer registered in the State shall certify the record drawings. If no significant or material changes occurred between the approved plan and final construction, the record drawings need not be submitted to the City Engineer. The owner, however, is responsible to retain copies of said drawings and provide them to the City Engineer upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

### **17.15.10 Erosion and Sediment Control Permit**

Prior to engaging in any land disturbing activity, an owner shall first (a) submit, for review and approval, the owner's Erosion and Sediment Control Plan, and (b) obtain from the City Engineer an Erosion and Sediment Control Permit. The owner shall complete and file with the City an application for an Erosion and Sediment Control Permit in the form prescribed by the City Engineer and accompanied by a fee established by resolution of the City Council. No application for an Erosion and Sediment Control Permit may be considered unless the applicant has obtained from the North Dakota Department of Health an NPDES Permit. Projects administered by the City engineering department shall include Erosion and Sediment Control Plans that are designed under the guidance of the City Engineer and shall be approved by a registered professional engineer, but shall be exempt from the requirements of this chapter.



#### **17.15.11 One or Two Dwelling Unit Building – Exemption**

Construction of one (1) or two (2) dwelling unit buildings shall be exempt from the requirement of submitting or obtaining approval of a plan for permanent facilities for storm water management and control, as required in this chapter, and shall be exempt from the requirement of submitting for review and approval an Erosion and Sediment Control Plan as required by this chapter; however, said construction must comply with the requirement of obtaining an Erosion and Sediment Control Permit.

#### **17.15.12 Permit Delays**

The City Engineer may withhold granting approval of an Erosion and Sediment Control Permit until issues associated with the site are resolved to the satisfaction of the City Engineer. Permits may be conditioned with delays such that work cannot begin until a specified date or until after the site is inspected.

#### **17.15.13 Permit Conditions**

Permits are issued subject to provisions of this chapter and other applicable regulations, user charges, and fees established by the City Council. Permits may contain, but are not limited to, the following conditions:

- (1) Limits on the maximum rate of allowable storm water discharge;
- (2) Requirements for water quality of storm water discharge;
- (3) Requirements for the installation, operation, and maintenance of storm water facilities including detention/retention or other treatment facilities;
- (4) Requirements for erosion and sediment control, including measures to be implemented and other procedures necessary to protect the storm water system;
- (5) Compliance schedule;
- (6) Requirements for notification to and acceptance by the City Engineer of land disturbing activities which have the potential for increasing the rate of storm water discharge resulting in degradation of storm water quality;
- (7) Easements; and
- (8) Other conditions as deemed appropriate by the City Engineer to insure compliance with this chapter.

#### **17.15.14 Permit Duration**

Permits must be issued for a time period specified by the City Engineer. An extension of a permit may be granted, in the discretion of the City Engineer, upon application for such extension submitted in writing at least thirty (30) days prior to the expiration of the permit.

#### **17.15.15 Permit Modification**

The City Engineer is authorized to modify Erosion and Sediment Control Permits for cause. The City Engineer shall provide written notice of the modification to the permit, and state the cause therefore, at least thirty (30) days before the modified permit is to take effect. Written notice shall be deemed to be delivered upon mailing the notice to the address of the applicant and the owner as provided in the application or such other address as the applicant or owner may provide to the City Engineer in writing. Cause for modifying the permit shall include but not be limited to:

- (1) Promulgation of new federal, state, or local regulatory requirements;
- (2) Changes in the requirements of this chapter;
- (3) Changes in the process used by the permittee or changes in discharge rate, volume, or character; and
- (4) Changes in the design or capability of receiving storm water systems.

The City Engineer shall include within the modified permit a reasonable time schedule for compliance with the altered or added requirements in the modified permit.

#### **17.15.16 Permit Amendments**

Permits may be amended by the applicant or owner by a written request submitted to the City Engineer. This request shall contain the reason for the change and documentation related to additional impacts, which may result from amendment approval. Amendment requests submitted prior to issuance of a permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines used for the permit applications under this chapter. Depending on the extent of the amendment, the City Engineer may waive additional fees for a permit amendment review.

#### **17.15.17 Permit Transfer**

A permit runs with the property it covers, until the permitted activities are completed, and is transferable to new landowners in its entirety or by parcel, with each parcel being subject to the permit and conditions, which apply to that parcel. In the event land under such a permit is transferred or conveyed in fee, such transfer or conveyance must be reported in writing, to the City Engineer within seven (7) days of the transfer. This chapter refers to City issued permits and does not release the applicant or owner from transfer requirements of a NPDES permit including, but not limited to, permit transfers.

#### **17.15.18 Monitoring Facilities**

The City Engineer may require the owner to provide and operate, at the owner's expense, a monitoring facility to allow inspection, sampling, and flow measurements of each storm water system component. Where at all possible, the monitoring facility shall be located on the owner's property as opposed to being located on public rights-of-way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.

### **17.15.19 Inspection**

The City Engineer may inspect the storm water management system of a permittee to determine compliance with the requirements of this chapter. At reasonable times, the owner shall promptly allow the City and its authorized representatives, upon presentation of credentials to:

- (1) Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections, or surveys;
- (2) Bring such equipment upon the permitted site as is necessary to conduct such inspections, surveys, and investigations;
- (3) Examine and copy books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permitted site;
- (4) Inspect the storm water pollution control measures; and
- (5) Sample and monitor items or activities pertaining to storm water pollution control measures.

A temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The cost of providing such access shall be the responsibility of the owner.

### **17.15.20 Frequency of Inspections**

The owner shall be responsible for inspecting measures called for by the approved Erosion and Sediment Control Plan or in the owner's approved SWPPP, as applicable. From the date the permit is issued, during construction, and until final stabilization, inspections shall be done at least once every fourteen (14) days by the owner, and within twenty-four (24) hours after every storm or snow melt event large enough to result in runoff from the site, approximately 0.5 inches or more in twenty-four (24) hours. The owner shall be responsible for providing to the City Engineer, upon request, documentation of the inspections performed, and action taken in response to such inspections, as applicable.

### **17.15.21 Power and Authority of Inspectors – Right of Entry**

Where it is necessary to make an inspection to enforce the provisions of this chapter, or where the City Engineer has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this chapter which makes the structure or premises unsafe, dangerous, or hazardous, the City Engineer is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this chapter, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the City Engineer shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the City Engineer shall have recourse to the remedies provided by law to secure entry.

### **17.15.22 Construction Plans and Specifications**

The Erosion and Sediment Control Plan shall be submitted in a format acceptable to the City Engineer. The plan shall contain a drawing or drawings delineating the features incorporated into the SWPPP including details of perimeter protection, construction phasing, storm drain inlet protection, erosion control measures, temporary and final stabilization measures, and BMPs. In addition, the plan shall contain construction specifications containing technical provisions describing erosion, sedimentation, and water control measures to be utilized during and after construction as well as to define the entities responsible for the installation and maintenance of BMPs. The permittee shall notify the City Engineer, in writing, as to any changes or material modifications to the original permitted design. The permittee is responsible for retaining copies of said drawings and providing them to the City Engineer upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

### **17.15.23 Management of Site Vegetation**

Landowners shall provide for the installation and maintenance of vegetation on their property as follows, regardless as to whether or not an Erosion and Sediment Control Permit has been approved or is necessary under this chapter, failure to do so shall be a violation of this chapter. Unimproved areas shall be covered either by plants or vegetative growth or, in the alternative, by other means of storm water protection approved by the City Engineer. The term unimproved area means areas other than driveways, sidewalks, patios, areas occupied by structures, and landscaped areas.

### **17.15.24 Storm Water Violations and Reporting**

- (1)** Erosion and Sediment Control Plan, Erosion and Sediment Control Permit, and non-permit related storm water violations include, but are not limited to:
  - (a)** Commencing site grading or preparation work without first having obtained an NPDES storm water permit for construction activity, or an Erosion and Sediment Control Permit.
  - (b)** Noncompliance with the requirements or conditions attached to an approved SWPPP of an NPDES storm water permit for construction activity, Erosion and Sediment Control Plan, an Erosion and Sediment Control Permit, or other standards established by the City Engineer, under authority of the City.
  - (c)** The causing or allowing of an illicit discharge in the City storm water system, a natural watercourse, storm water easement, stream, or river.
  - (d)** Failure to remove sediments transported or tracked onto City streets by vehicles or construction traffic by the end of each working day.
  - (e)** Failure to install and maintain the erosion control measures (BMPs) on a construction site as outlined in the approved Erosion and Sediment Control Permit, SWPPP and its amendments, or other standards established by the City Engineer, under authority of the City.

(f) Other violations or issues as noted or described throughout this chapter.

(2) The City Engineer shall document the reporting of a violation in writing. Such violations may be obtained via a site inspection or a public complaint followed by a site inspection. At a minimum the complaint file shall contain the name and address of the owner, date, time, and nature of the violation as well as other information as deemed necessary to document site conditions, including photos and personal conversation records. In the case of a public complaint, the file shall also, if voluntarily provided, contain the name, address, and phone number of the individual filing the complaint. In addition, the complaint file shall contain records documenting subsequent site inspections, compliance actions, and a memo outlining the determination of the City Engineer and any enforcement action taken and/or any noncompliance fees levied.

#### **17.15.25 Emergency Suspension**

The City Engineer may, for cause, order the suspension of an Erosion and Sediment Control Plan, or an Erosion and Sediment Control Permit when the City Engineer determines that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons downstream, or substantial danger to the environment. If permits are suspended, work in the area covered by the permit shall cease immediately. If a person is notified of such suspension and then fails to comply voluntarily with the suspension order, the City shall commence whatever steps are necessary to obtain compliance. The City Engineer may reinstate the Erosion and Sediment Control Plan, or Erosion and Sediment Control Permit upon proof of compliance with all plan or permit conditions. The City Engineer may also order the immediate suspension of work if a person or entity is conducting an activity for which a permit is needed without first obtaining the appropriate permit. The suspension shall remain in effect until the required permit(s) is obtained.

Whenever the City Engineer orders the suspension of a plan or permit and/or orders work to stop pursuant to the emergency provisions of this chapter, the City Engineer shall serve notice on the landowner and/or permittee personally, or by registered or certified mail. The landowner and/or permittee has the right to an informal hearing before the City Engineer upon request made, in writing, and filed with the City Engineer. The informal hearing must be held within seven (7) days of the request. Following the hearing, the City Engineer may affirm, modify, or rescind the order.

A person dissatisfied with an order the City Engineer issued pursuant to this section may request a hearing pursuant to sections 17.15.27 and 17.15.28 by filing a written request for a hearing with the City Engineer, within fifteen (15) days of receipt of the order. A request for a hearing filed pursuant to this section does not stay the order while the hearing is pending.

#### **17.15.26 Non-Emergency Revocation of a Permit**

(1) An Erosion and Sediment Control Plan or Erosion and Sediment Control Permit may be revoked following notice. An opportunity for a hearing in accordance with sections 17.15.27 and 17.15.28 will be provided. The City Engineer may revoke a plan or permit for cause, including, but not limited to:

(a) Violation of terms or conditions of the applicable plan or permit;

- (b) False statements on required reports and applications;
- (c) Obtaining a plan or permit by misrepresentation or failure to disclose fully relevant facts; or
- (d) Any other violation of this chapter or related ordinance.

(2) The City Engineer may revoke an Erosion and Sediment Control Plan or Erosion and Sediment Control Permit and order a temporary work stoppage to bring a project into compliance. Notice of such an order shall be given and a hearing opportunity provided in accordance with sections 17.15.27 and 17.15.28. Under a revoked plan or permit no additional permit approvals (i.e., excavation, etc.) shall be issued for properties within the area included within the plan or permit boundaries until approved by the City Engineer. In addition, the City may deny new permits (i.e., stormwater, excavation, etc.) to the permittee or landowner in violation for projects in other locations until current permits are brought into compliance.

#### **17.15.27 Notification**

Whenever the City Engineer finds that a person has violated or is violating this chapter, Erosion and Sediment Control Plan, or Erosion and Sediment Control Permit and/or its conditions, or a prohibition, limitation, or requirement contained herein, the City Engineer shall serve upon such person a written notice stating the nature of the violation. Within seven (7) days of the date of the notice, unless a shorter time frame is set by the City Engineer due to the nature of the violation, a plan satisfactory to the City Engineer for correction thereof must be submitted to the City Engineer. If a satisfactory plan is not submitted in a timely manner, or the terms of such plan are not followed, the City Engineer may order work in the affected area to cease until submittal of such a plan and compliance with the plan is happening. If a person disagrees with the determination of the City Engineer, that person, within fifteen (15) days of the order of the City Engineer, may request a hearing as provided in section 17.15.28.

#### **17.15.28 Hearing**

If a person requests a hearing to contest the order of the City Engineer, a notice of hearing must be served on the person appealing the order, specifying the time and place of a hearing to be held in front of the City Council at its next regularly scheduled meeting, and directing the person appealing to show cause why the order of the City Engineer should not be upheld. Unless the City Engineer has suspended the permit or ordered work to stop pursuant to section 17.15.25, an order stopping work shall be stayed until after the hearing. The notice must be served personally or by registered or certified mail at least five (5) days before the hearing. The evidence submitted at the hearing shall be considered by the City Council, who then shall either uphold, modify, or rescind the order of the City Engineer. An appeal of the City Council's decision may be taken to the Cass County District Court, according to law. Provided, that if the City Council upholds the order stopping work, such work suspension shall not be stayed as a result of the appeal to the Cass County District Court.

### **17.15.29 Legal Action**

The discharge of deposited or eroded materials onto public rights of way or public storm sewer systems within the City shall be considered an offense and may result in an order to remove such materials. Removal of such materials shall be at the landowner's and/or permittee's expense based on the properties from which they originated. The landowner and/or permittee shall have three (3) days after receiving the notice to remove these materials. If such materials are not removed, others may remove them under the City Engineer's direction and any associated costs shall be the responsibility of the landowner or permittee and, if unpaid within ninety (90) days, may be recommended for assessment action by the City Council against property of the violator.

If a person commences land disturbing activities which result in increased storm water quantity or storm water quality degradation into the City's storm water management system contrary to the provisions of this chapter, federal or state requirements, or any order of the City Engineer, the City Attorney may commence action for appropriate legal and/or equitable relief including administrative or criminal penalties.

### **17.15.30 Enforcement – Non-Compliance and Re-inspection Fees**

A person who is found to have violated an order of the City Engineer made in accordance with this chapter, or who has failed to comply with any provision of this chapter and the orders, rules, regulations, and permits issued hereunder, is guilty of an offense. Each day on which a violation occurs or continues to exist shall be deemed a separate and distinct offense. A schedule for noncompliance and re-inspection fees, which may be imposed for violation of this chapter, may be approved by resolution of the City Council.

### **17.15.31 Other Powers**

In addition to the enforcement powers specified in this chapter, the City may exercise enforcement powers granted to them by North Dakota law.

### **17.15.32 Continuation**

Nothing in this chapter shall prohibit the continuation of previous enforcement actions undertaken by the City pursuant to previous and valid ordinances and laws.

### **17.15.33 Savings Clause – Conflict**

In the event that any provision, paragraph, or word of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, and words shall not be affected and shall continue in full force and effect; ordinances and parts of ordinances inconsistent or conflicting with this ordinance are hereby repealed to the extent of such inconsistency or conflict.