

CHAPTER XVII.

CITY PLANNING AND ZONING

ARTICLE I. PLANNING COMMISSION

17-101. PLANNING COMMISSION, CREATION. There is hereby created, pursuant to laws of the State of North Dakota, a body to be known as the Planning Commission of the City of Gwinner.

17-102. MEMBERS, APPOINTMENT, TERM. Said Planning Commission shall consist of 5 members, who shall be appointed as hereinafter provided, and in addition thereto 3 members, namely, the Mayor, the City Engineer and the City Attorney, who shall act as ex-officio members of said Planning Commission. The ex-officio members shall serve during and for their respective terms for which they are elected or appointed, and the Mayor shall appoint members of said Planning Commission who shall be residents of the City of Gwinner, and such appointments shall be members for a term of five years. The Mayor shall submit to the City Council at the next meeting after making such appointments, the names of the persons appointed and the length of their terms and the City Council shall by a majority vote confirm or reject such appointments. If such appointments are rejected the said Mayor shall make other appointments for such appointees as may be rejected, which said appointments shall be approved or rejected in like manner.

17-103. MEETINGS, PLACE, TIME. The commission so appointed shall meet at such times the Mayor deems necessary. All meetings shall be held at the City Auditor's office in the City of Gwinner.

17-104. POWERS, COMPENSATION. The said Planning Commission shall have such powers and shall perform such duties as may now or hereinafter be provided by law and shall receive no compensation except that they may be allowed actual expenses for traveling as provided by law.

ARTICLE II. ZONING

17-201. DEFINITIONS. For the purpose of this ordinance words used in the present tense include the future, singular words include the plural. The word "building" includes a meaning of words "structure", the word "person" includes "corporation", "co-partnership", or any form or organization, the word "used" includes the meaning of the words "arranged", "designed", and "intended to be used", and the use of the word "shall" shall be deemed to be mandatory and not directory. Certain other terms and words as used herein are defined as follows:

(1) "Accessory Building" means a portion of a main building, or a subordinate building located on the same premises with the main building intended for a use customarily incident to the main use of the premises;

(2) "Alley" means any public way intersecting a city block or portion thereof;

(3) "Building" means any structure for the support, shelter, or enclosure of persons, chattels or property of any kind; when such structure is divided by a party wall or by a division wall made without openings and extending from foundation to roof, then each portion of such structure so separated shall be deemed a separate building;

(4) "Building Area" means the maximum projected area of a building and its accessories, excluding steps, porches, terraces, and cornices;

(5) "Community Garage" means a group of private garages located jointly on any lot or premises or two or more adjacent premises and having no shop or service in connection therewith, with a total capacity of not more than four motor vehicles; provided that a community garage may exceed four motor vehicle storage spaces if the lot on which said building is located includes at least two hundred fifty square feet for each motor vehicle storage space;

(6) "Curb Level" means the level established for curb in front of a building, measured at the center of such front, and where no curb level has been established the city engineer shall establish such curb level or its equivalent for the purpose of this ordinance;

(7) "Depth of Rear Yard" refers to the mean distance between the rear line of the building and the center line of the alley, if any alley exists, otherwise to the rear lot line;

(8) "Depth of Lot" refers to the mean distance between the front street line and the rear lot line;

(9) "Family Hotel" means a place where food and lodging are provided for transients or transient guests and having less than ten sleeping rooms;

(10) "Front Yard" means an open, unoccupied place or space between the front line of the building proper and the street line;

(11) "Garage" means any premises used for the housing or storage of motor vehicles or where such vehicles are equipped for operation, repaired or kept for hire or sale, not including show rooms for the display of cars;

(12) "Grade" means the surface of the ground, court, lawn, yard or sidewalks adjoining a building; the established grade is the grade of the street curb lines fixed by the City of Gwinner; the natural grade is the undisturbed natural surface of the ground; the finished grade is the surface of the ground, court, lawn, or yard, after filling or grading to desired elevation or elevations below the level of the adjoining street, the established grade shall be deemed the finished grade;

(13) "Half Story" means the portion of a building immediately under a sloping roof which has the point of intersection of the top line of the rafters and the face of the walls not to exceed three feet above the top floor level;

(14) "Height of Building" means the vertical distance from the top of the curb at the middle of the building or the ground level at the front of the building to the average height of the roof, in case of a flat roof, to the top of the highest enclosure wall; in case of a mansard roof, to the top of the deck;

(15) "Height of Court or Yard" means the vertical distance from the lowest level of such court or yard to the highest point of any bounding wall;

(16) "Hotel" means a building where food and lodging are provided for transient guests and having ten or more sleeping rooms;

(17) "Inner Court" means an open, unoccupied space surrounded on all sides by walls and a lot line;

(18) "Length of Outer Court" refers to the mean distance between the open and closed ends of the court.

(19) "Lodging House" means a place where lodging is provided for compensation for more than five persons;

(20) "Lot" means the land bounded by definite lines and occupied or to be occupied by a building and its accessory buildings and including the open spaces required under this ordinance and regulations; a lot may or may not be the land so recorded;

(21) "Lot, Corner" means a lot fronting on a street line of a street or streets having a width or length from the point of angle in one direction along said line or lines of not more than fifty feet, and in the other direction along said line or lines a depth or length from the point of angle of not more than 150 feet; any part of a lot fronting on such street line or lines which is in excess of an area of seven thousand five hundred square feet shall be treated as a corner lot;

(22) "Lot, Inside" means a lot other than a corner lot;

(23) "Lot, Through" means an inside lot having frontage on two streets;

(24) "Non-Conforming Use" means a use of building or premises other than that permitted within the use district in which it is situated;

(25) "Outer Court" means a court extending to a street, alley or yard;

(26) "Private Garage" means a garage other than a public garage or community garage;

(27) "Private Stable" means a stable with a capacity of not more than three horses;

(28) "Rear Yard" means an open space between the rear line of the building and the rear lot line for the full width of the lot, unoccupied except by accessory buildings not exceeding twenty five percent of the area of the rear yard;

(29) "Side Yard" means an open unoccupied space on the same lot with a building and between the building and the side line of the lot for the full depth of the lot;

(30) "Street" means a public highway designated as a street, avenue, boulevard, place, court or road on the official records and maps;

(31) "Structural Alteration" means any change in the supporting members of a building such as bearing walls or partitions, columns, beams, or girders, excepting such alteration as may be required for the safety of the building.

17-202. DIVISION INTO DISTRICTS. For the purpose of regulating, classifying and restricting the location of buildings designed, erected or altered for specified uses, and limiting the height and bulk of such buildings and the use of lot areas and regulating and determining the percentage of lot occupancy and the area of the yards and courts and other open spaces within and surrounding buildings hereafter erected, and preventing additions to and alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations contained in this ordinance, the City of Gwinner is hereby divided into three districts known as Commercial and Industrial District, and Residential District.

17-203. RESIDENTIAL DISTRICT BOUNDARIES. The boundaries at the Residential District are defined as follows: All of the City of Gwinner specifically including any lands located outside the City limits which by operation of law as codified in the North Dakota Century Code which the City may exercise zoning authority and does hereby exercise said authority excepting therefrom the following areas:

See Attached City Map.

17-204. COMMERCIAL AND INDUSTRIAL DISTRICT BOUNDARIES. The boundaries of the Commercial and Industrial District are defined as follows: all that part of the City of Gwinner except those portions included in the Residential District and so indicated in 17-203.

17-205. DISTRICT BOUNDARIES, WHEN QUESTIONABLE, HOW DETERMINED. Where uncertainty exists with respect to the boundaries of the various districts hereby established and as shown on the maps and made a part of this ordinance, the following rules shall apply;

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

(2) Where the district boundaries are not center lines of streets or alleys and where the land has been or may hereafter be divided into lots or block and lots, the district designations on the maps accompanying and made a part of this ordinance indicating the various districts are approximately bounded by lot lines, the nearest lot line shall be construed to the boundary of such district.

(3) Where land has not been subdivided into lot or blocks and lots, the district boundary lines on the official zoning map, which is made a part of this ordinance, shall be determined by the use of the scale of measurement shown on such map.

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

17-206. RESIDENTIAL DISTRICT, REGULATIONS. In the Residential District the regulations shall be as follows:

(1) Height. No building shall exceed more than forty feet in height.

(2) Area. The minimum dimensions of yards and courts and the maximum building area shall be as follows:

A. Front Yard. There shall be a front yard having a depth of not less than ten percent of the lot depth; the depth of the yard, however, need not exceed fifteen feet, nor shall it be less than ten feet.

B. Rear Yard. On corner lots there shall be a rear yard having a depth of not less than ten feet nor less than twenty percent of the height of the building. On inside lots there shall be a rear yard having a depth of not less than ten feet nor less than equal to twenty five percent of the height of the building; provided, that where alleys are established, ten feet may be deducted from the said required depths;

C. Side Yard. There shall be a side yard on each side of the building, each yard having a width of not less than ten percent of the lot width; the width of such yard, however, need not exceed six feet; provided, its width shall not be less than equal to one-eighth of the height of the building.

D. Outer Court. An outer court shall be not less than seven feet wide, nor less than equal to one-sixth of the height of the building, nor less than equal to one-sixth of its length.

E. Inner Court. An inner court shall have a width equal to not less than one-third of the height of the building, nor less than eight feet, nor shall its area be less than twice the square of its required least dimension.

(3) Building Area. No building with its accessories shall occupy in excess of fifty percent of an inside lot, nor in excess of sixty percent of a corner lot.

(4) Use. Except as otherwise provided in this ordinance, all new buildings, and alterations of existing buildings, shall be exclusively constructed, designed and arranged for, and all buildings and premises or parts thereof shall be used exclusively for one or more of the following purposes:

- A. One-family dwellings;
- B. Two-family dwellings;
- C. Apartment houses, including the usual accessories to these various buildings located on the same lot, not involving the conduct of a business but including a community garage;
- D. Churches and schools;
- E. Parks and playgrounds;
- F. Nurseries and greenhouses, but not including any sales rooms or other buildings used primarily for the sale or products thereof.

17-207. COMMERCIAL AND INDUSTRIAL DISTRICT, REGULATIONS. In the Commercial and Industrial District the regulations shall be as follows:

- (1) Height. No building shall exceed sixty feet or four stories in height.
- (2) Side Yard. Side yards shall not be less than five feet in width, nor less than one-seventh of the height of the building.
- (3) Use. Except as otherwise provided in this ordinance, all new buildings, and alterations of existing buildings shall be exclusively constructed, designed and arranged for, and all buildings and premises or parts thereof shall be used exclusively for one or more of the following purposes;
 - A. Any use permitted in the Residential District.
 - B. Institutions of an educational, philanthropic or charitable nature;
 - C. Clubs and lodges;
 - D. Hospitals;

- E. Boarding Houses;
- F. Family Hotels;
- G. Hotels and rooming houses;
- H. Retail and wholesale establishments;
- I. Manufacturing, except manufacturing of explosives, acids, or fat rendering plants;
- J. Railroad yards, storage and round houses;
- K. Dry cleaning and pressing establishments and tailor shops;
- L. Lumber yards, gasoline stations for retail, and bulk storage stations for petroleum products;
- M. Garages, repair shops, creameries, cheese factories, hatcheries and poultry buying offices;
- N. Junk yards, including storage of bones but excepting the storage of green bones; coal yards, grain elevators, offices and halls;
- O. Storage warehouses, laundries, stock yards and sales yards;
- P. Tourist courts or tourist cabins. All buildings located within the fire limits, as defined by ordinance, shall conform to the construction as prescribed in said ordinance.

17-208. CERTIFICATE OF OCCUPANCY. No person or persons shall hereafter occupy or use any vacant lot or land, and no building hereafter erected or altered shall be occupied until a certificate of occupancy shall have been issued by the Building Inspector or the City Auditor. Such certificate of occupancy shall state that the building, or proposed use of a building or land, complies with all of the requirements of the building and health ordinances and laws and with the provisions of this ordinance.

17-209. NON-CONFORMING USE.

(1) Any lawful use existing at the time of the adoption of this ordinance of any building or premises may be continued subject to the provisions hereof, although such use does not conform to the provisions of this ordinance for the district in which such use is situated. It shall be unlawful to enlarge the area occupied by a non-conforming use, whether by enlarging the building for the purpose of extending such area or by extending the area of such use within a building already partially occupied by a non-conforming use.

(2) A building designed, arranged, intended or devoted to a use not permitted by this ordinance in the district in which such use is located may be repaired, or reconstructed without structural alteration, to any extent not greater than fifty percent of the assessed value of the building exclusive of foundations, for the purpose of continuing therein without an extension thereof a use existing therein at the time this ordinance took effect, though such use does not conform to the regulations relating to such district; provided, however, that the combined cost of alterations and repairs in any ten year period shall not exceed the assessed valuation of the building at the time the last allowable building permit was applied for.

(3) If a non-conforming use is discontinued, any future use of such building or premises shall conform to the provisions of this ordinance. If a building housing non-conforming use is destroyed to the extent of fifty percent or more of its assessed value, such use shall be discontinued.

(4) A non-conforming use shall not be changed except to a higher use, and a non-conforming use in the Residential District shall not be changed except to a conforming use. When a non-conforming use of a building or premises has been changed to a conforming use or a more restricted use, such use shall not thereafter be changed to a less restricted use.

17-210. SAME: CERTIFICATE OF OCCUPANCY FOR. Any person operating or maintaining any lawful non-conforming use on the date this ordinance becomes effective shall, upon receipt of notice of this provision or within thirty days thereafter, obtain from the Building Inspector or City Auditor a certificate of occupancy designating the location, nature and extent of said non-conforming use and the name of the person responsible therefor.

17-211. HEIGHT REGULATION, EXCEPTION. This ordinance shall not be deemed to limit or restrict the height of aeroplane land towers, belfries, chimneys, clock towers, cooling towers, elevator bulkheads, fire towers, gas tanks, grain elevators, stack, sugar refineries, tanks, water towers, flag poles, ornamental towers, pent houses, spires, or wireless towers, but these structures shall be subject to such restrictions and regulations as may be imposed by ordinance. Towers may be erected to any height provided the same shall not exceed in area 25% of the area of the lot upon which the building to which said tower is an appurtenance is erected, and shall not exceed 2,500 square feet in area and shall be distant at every point at least 25 feet from any adjoining property line. Churches, public or semi-public buildings, hospitals, sanitariums or schools may exceed the height restrictions of the district; provided, such structures shall have side yards on both sides complying with the area district regulations, and in addition the side yards shall be increased 1 foot in width for each 5 feet the building exceeds the height regulations of the district.

17-212. AREA REGULATIONS, EXCEPTIONS TO. The foregoing requirements in the various districts shall be subject to the following exceptions to the regulations:

1. A building, except buildings for human habitation, upon a through lot, may waive the requirements for a rear yard; provided, however, that when such a building is located between lots either or both of which require rear yards, such building on the through lot shall provide a court on the side or sides on which the adjoining lots are required to provide a yard or court.

2. In computing the depth of the front yard in the Residential District, in portions which have been partly built up, where the average established depth of front yards fronting on one side of any given street between two cross streets exceeds the requirements under this ordinance, the depth of the front yards of future building fronting on side streets as required under this ordinance shall be increased to conform with such average. If the average established depth of front yard is less than that required under this ordinance, the depth of the front yard may be decreased to conform to such average, which shall in no case be less than 10 feet. No existing building shall be altered to decrease the further fall below the requirements of this section for future buildings.

3. In the Residential Districts no building on a corner lot shall have a side yard on the side streets less than 10 feet in width, and a porch for this purpose shall be deemed a part of the building property.

4. In the Residential District, in portions which have been partly built up no building constructed or altered on a corner lot shall be so constructed or altered that the front yard or said yard facing on the street or avenue lying along the shorter side of the originally platted lot of which such corner lot forms a part of the whole thereof, shall be less than the average established depth of front yards fronting on said street or avenue between the two cross streets within which said building is located and fronting on the same side of said street; nor shall any such front yard or side yard be less than 10 feet.

5. Every part of a required yard or court shall be open from its lowest level to the sky unobstructed, except for the ordinary projections of skylights above the bottom of such yard or court and except for the projections of sills, belt courses, cornices, and ornamental features not to exceed 6 inches. Provided, that open or lattice-enclosed fire escapes, fireproof outside stairways and solid floored balconies opening upon fire towers, projecting into a yard not more than 5 feet or into a court not more than 3k feet, and ordinary projections of chimneys and flues, may be permitted where so placed so not to obstruct light and ventilation.

6. All rooms in which persons live, sleep, work or congregate shall have a window or skylight opening directly upon a street, alley, court or yard, conforming to the requirements of this ordinance. Said window or skylight shall have a net area of glass of at least 10 per cent of the floor area of such rooms, provided that if it be practical to provide such windows as aforesaid, such rooms shall, in lieu of such windows, be ventilated by an approved mechanical system which shall effect at least 6 complete changes of air per hour during occupancy; provided further, that the provisions of this section shall not apply to rooms in which the unoccupied space exceeds 1,000 cubic

feet for each occupant; and provided further that the provisions of this section shall not apply when the introduction of such light or ventilation would prove injurious to the manufacture or storage of any article or commodity.

7. In the case of a church, educational institution or school located in the Residential District, no part of which is used as a place of habitation, the rear yard requirement of this section shall be waived and the building permitted to occupy 75 per cent of a corner lot, or 65 per cent of an inside lot, under such conditions that no wall of the building shall be nearer the rear line of the lot than 6 feet, and that side yards other than one adjoining a street or alley be provided having a width of not less than 10 per cent of the width of the lot and provided that no side yard shall be required to exceed 8 feet in width.

8. In the Residential District, the requirements for side yards may be waived for private garages, provided the adjoining property owner consents to such waiver.

17-213. CONSTRUCTION OF BUILDINGS IN THE RESIDENTIAL DISTRICTS. All new buildings and alterations of existing buildings in the Residential District shall have a foundation wall built of stone, brick, concrete, or some other equally good permanent substance, under the whole building, shall have the sidewalls either sided and painted, or shingled, or stuccoed, or of some other equally good, permanent finish construction and shall be connected with the city waterworks and sewage, provided the city water mains and sewage mains, respectively, are within 200 feet of the lot line of the lot on which such building is built, and said building shall also have an inside toilet connected with the city sewer system, provided the sewer system mains are laid within 200 feet of the said lot line.

17-214. GASOLINE FILLING STATIONS AND BULK STATIONS. It shall be unlawful for any person, firm or corporation to erect, construct or maintain and operate any retail gasoline filling station or bulk oil or gasoline station where petroleum products are sold or handled within 150 feet of any block in the City of Gwinner whereon there is located any public or parochial school.

17-215. SAME: DEEMED HEALTH MENACE AND PUBLIC NUISANCE, WHEN. All gasoline stations for selling gasoline and petroleum products at retail and all bulk or wholesale stations for the handling of gasoline and all other petroleum products are hereby declared to be dangerous instrumentalities, and when located or to be located within the territory described in Section 17-214 are hereby declared to constitute a menace to public health and safety and to be a public nuisance.

17-216. SAME: APPLICATION OF SECTIONS 17-214 AND 17-215. Sections 17-214 and 17-215 shall not be construed to apply to any retail gasoline filling station or bulk oil or gasoline station handling petroleum products that may have been in existence or operation prior to taking effect of this ordinance.

17-217. BUILDING PERMITS: REQUIREMENTS OF. The Building Inspector of the City of Gwinner shall not issue any permit for the erection, construction, establishment,

alteration or enlargement of any building, structure or improvement in any of the districts herein defined contrary to the provisions of this ordinance. Every application for a building permit shall state therein the purpose for which the proposed building, structure, alteration or improvement is intended to be used.

17-218. SAME: PLATS AND FEES TO ACCOMPANY APPLICATION. All applications for building permits shall be accompanied by a plat, in duplicate, drawn to scale, showing the actual dimensions of the recorded lot to be built upon, all existing buildings upon said lot, the size of the building to be erected and such other information as may be necessary to provide for the enforcement of this ordinance. Further, a fee of \$1.00 per \$1,000.00 of improvement cost up to a maximum of \$30.00 shall be charged.

17-219. BUILDING INSPECTOR, DUTIES OF. This ordinance shall be enforced by the Building Inspector of the City of Gwinner. It is the intent hereof to empower the Building Inspector to administer this ordinance in conjunction with the administration of the building ordinance or code in such a manner as to facilitate their joint administration, and for this purpose the authority vested in him under such building regulations is hereby declared to be vested in him under this ordinance. For any violation of the provisions of this ordinance or of the rules and regulations adopted thereunder, the owner, general agent or contractor, lessee or tenant of a building either entire or in part, of premises either entire or in part, in or on which such violation has been committed or shall exist, shall be liable to the same legal procedure and the same penalties as are prescribed in any law, statute or ordinance for violation of the building ordinance or code and for such violation the same legal remedies shall be had and, it shall be prosecuted in the same manner as is prescribed in any law or regulations in case of violation of such building regulations.

17-220. BOARD OF ADJUSTMENT. There is hereby created a Board of Adjustment consisting of five members, each to be appointed by the City Council for three years. Upon the taking effect of this ordinance, the City Council shall appoint two members of the Board of Adjustment to serve for one year, two members to serve for two years, and one member to serve for three years; thereafter each member of such Board shall be appointed for the full term of three years. The Board of Adjustment shall have all the of the powers and duties imposed upon it by the statutes of the State of North Dakota and the ordinances of the City of Gwinner.

17-221. PETITIONS FOR AMENDMENTS, REPEALS OR CHANGES IN ZONING DISTRICTS. Whenever the owners of fifty percent or more of the frontage on any street in any district, or part thereof shall present a petition duly signed and acknowledged to the City Council of the City of Gwinner requesting an amendment or repeal of the regulations prescribed for such district, or part thereof, such petition shall be referred to the Board of Adjustment, which shall make a careful investigation of such proposed amendment or change and file the report thereon within thirty days after the same has been referred. The City Council shall hear all persons and all objections and recommendations relative to such proposed amendment, change or repeal, and

thereupon action shall be taken upon such ordinance by said City Council and such action shall be final and conclusive as to all matters and things involved in said petition.

17-222. INTERPRETATION AND APPLICATION OF REGULATIONS. In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum for the promotion of the public safety, health, convenience, comfort, property and general welfare. It is not intended by these provisions to interfere with or abrogate or annul rules or permits previously adopted according to the law relation to the use of buildings or premises, nor to interfere with, abrogate or annul any easements, covenants or agreements between parties; provided, however, that Where these provisions impose greater restrictions as to use or require larger open spaces or less height than are required by such rules or permits or by easements, covenants or agreements, the provisions of this ordinance shall control.

17-223. SAVING CLAUSE. If any section, subsection, sentence, clause or phrase of the above ordinance is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected.

17-224. PENALTY. Any person, firm or corporation violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine of not more than Five Hundred (\$500.00) Dollars or imprisonment in the city jail for not more than Thirty (30) Days, or by both such fine and imprisonment. Each and every day that a violation of this chapter shall be continued shall constitute and be considered a separate offense.