

ARTICLE 5. ADMINISTRATION

Sec. 5-1 Roles and Responsibilities

Roles and responsibilities for reviewing certain applications and rendering a decision are distributed as follows:

Application Type	Section	Planning and Zoning Director	Planning Commission	Board of County Commissioners
Zoning Ordinance Text Amendment	5-7	Recommend Action	Recommend Action	Decide
Zoning Map Amendment	5-8	Recommend Action	Recommend Action	Decide
Variances	5-9	Recommend Action	Recommend Action	Decide
Major Subdivision	5-10	Recommend Action	Recommend Action	Decide
Minor Subdivision	5-11	Recommend Action	Recommend Action	Decide
Lot Line Adjustments, Lot Splits, and Lot Mergers	5-12	Recommend Action	Recommend Action	Decide
Conditional Use Permit	5-13	Recommend Action	Recommend Action	Decide
Temporary Use Permits	5-14	Decide *	Report Issuance/Appeal	Appeal
Administrative Permit	5-16	Decide*	Report Issuance/Appeal	Appeal
Administrative Decision	5-17	--	--	Appeal
Building Permit & Building Permit/Inspection Waivers	5-20	Decide	--	Appeal

*Planning and Zoning Director may refer application to Planning Commission

Sec. 5-2 Board of County Commissioners

5-2-1 Authority

The Board of County Commissioners is authorized to regulate the use of property through zoning and has final responsibility for the preparation of this

Ordinance, the County Zoning Map, and the administration thereof, under North Dakota Century Code.

5-2-2 Duties

- (A) The Board of County Commissioners shall review and take action on all proposed amendments to this Ordinance.
- (B) The Board of County Commissioners shall review and decide all applications for Zoning Map amendments and all proposed Ordinance text amendments.
- (C) The Board of County Commissioners shall hear and decide all requests for variances or other relief from the provisions of this Ordinance.
- (D) The Board of County Commissioners shall review all applications for conditional use permits.
- (E) The Board of County Commissioners shall hear and decide all appeals of decisions of the Planning Commission or the Planning and Zoning Director.
- (F) The Board of County Commissioners shall investigate all violations of these regulations and shall determine and take appropriate remedial action.
- (G) The Board of County Commissioners shall, when required by state law, appoint members of the Planning Commission.
- (H) The Board of County Commissioners shall appoint the Planning and Zoning Director.

Sec. 5-3 Planning Commission

5-3-1 Authority

The Planning Commission is created by the Board of County Commissioners in accordance with the North Dakota Century Code.

5-3-2 Duties

- (A) The Planning Commission shall hold public hearings on all proposed amendments to this Ordinance and make written recommendations to the Board of County Commissioners with respect to such proposals.
- (B) The Planning Commission shall hold public hearings on applications for Zoning Map amendments and make written recommendations to the

Board of County Commissioners for the approval or denial of such applications.

- (C) The Planning Commission shall hold public hearings on applications for conditional use permits and make written recommendations to the Board of County Commissioners for the approval, denial, modification, and/or the imposition of conditions upon such applications.
- (D) The Planning Commission shall hold public hearings on applications for variances from the provisions of this Ordinance and make written recommendations to the Board of County Commissioners for the approval, denial, modification, and/or the imposition of conditions upon such applications.
- (E) The Planning Commission shall make recommendations to the Board of County Commissioners for appropriate action on zoning violations. .
- (F) The Planning Commission or its designee shall, as required by law, publish notice of public hearings. The Planning Commission shall also post notice of each proposed Zoning Map amendment on the affected property.
- (G) The Planning Commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

Sec. 5-4 Planning and Zoning Director

5-4-1 Authority

The Board of County Commissioners shall appoint a Planning and Zoning Director to carry out the directives and duties as assigned by the Planning Commission. The Planning and Zoning Director shall report directly to the Board of County Commissioners.

5-4-2 Duties

- (A) Attend all public zoning hearings.
- (B) Maintain updated copies of the Ordinance and district zoning map.
- (C) Keep copies of all records of the Planning Department.
- (D) Post notice of zoning hearings as prescribe by North Dakota Century Code.

- (E) Make inspection of land and/or structures to determine compliance with the provisions of this Ordinance and investigate reports of noncompliance received from the public.
- (F) Carry out any other duties assigned by the Planning Commission or Board of County Commissioners.
- (G) Grant building permits upon receipt of a complete application and application fee.
- (H) Grant administrative permits as allowed by the Board of County Commissioners.
- (I) Prepare materials and make recommendations on all applications submitted to the Planning Commission.

Sec. 5-5 Board of Adjustment

5-5-1 Authority

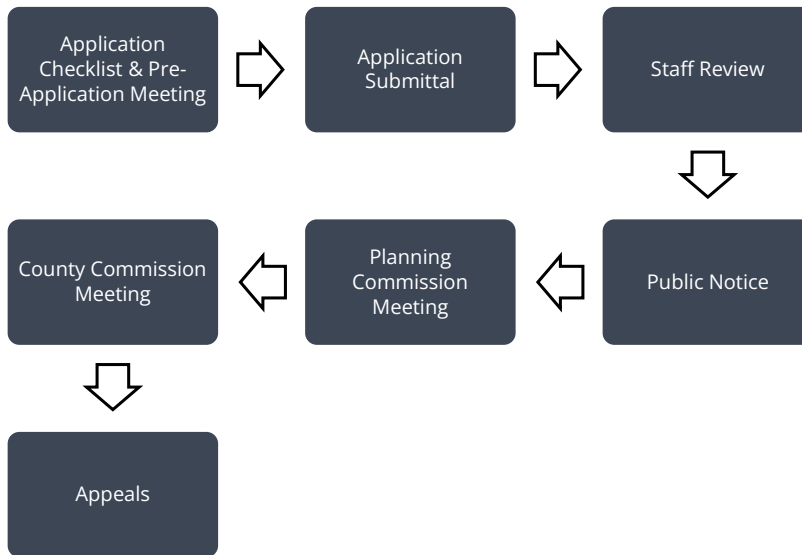
The Board of County Commissioners shall act as a Board of Adjustment until such time that they appoint members.

5-5-2 Duties

- (A) The Board of County Commissioners shall hear appeals from any person, party, firm, or organization aggrieved by the actions or decisions of the Planning Commission.
- (B) The Board of Adjustment shall upon recommendation from the County Planning Commission authorize a variance from the terms of this Ordinance when the literal enforcement of the provisions of this Ordinance would result in unnecessary hardship and said variance will not be contrary to the public interest.

Sec. 5-6 Permits, Procedures, and Fees

Procedural steps, requirements, and review criteria that are common to most land development applications are outlined below:



- (A) **Application Checklist & Pre-Application Meeting.** The purpose is to provide an applicant and the County an opportunity to discuss the development proposal to discuss the application checklist, estimated time frame, and appropriate application materials.
- (B) **Application Submission, Related Contents, and Fees.** Application may be made by the landowner or their approved representative. In addition, the County Commission, Planning Commission, or Director may also file an application. The fees are non-refundable.
- (C) **Staff Review and Recommendations.** The Planning and Zoning Director and staff will review the proposed application for completeness, legal sufficiency, consistency with the adopted 2025 McKenzie County Comprehensive Plan, and compliance with stated requirements in the Ordinance. The Director shall schedule the application for consideration on the next regular meeting agenda, or as soon as meeting agendas allow. A written staff report and recommendation shall be prepared.
- (D) **Public Notice.** Pursuant to ND Century Code Section 11-33-08, the Planning Commission shall hold a public hearing and the interested

parties and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, before the proposed hearing date.

- (E) **Action by Planning Commission.** The Planning Commission may act on an application by approving, approving with conditions, tabling, remanding for further information or study, or denying the application. The applicant shall have the right to withdraw an application at any time prior to action at a public hearing. The applicant shall request the withdrawal in writing to the Director. The applicant is responsible for being present at the public hearing.
- (F) **Decision by County Commission.** The action taken by the Planning Commission is forwarded as a recommendation to the Board of County Commissioners at their next meeting, or as soon as practicable. The County Commission's decision is final.
- (G) **Appeals.** Pursuant to North Dakota Century Code: Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto may, within thirty (30) days after the first publication of such resolution or amendment, petition for a separate hearing thereon before the Board of County Commissioners. The petition shall be in writing and shall specify in detail the grounds of the objections. The petition shall be filed with the county auditor. Appeals may also be made to the District Court following established procedures.

Sec. 5-7 Ordinance Text Amendments

5-7-1 Authority

- (A) The Board of County Commissioners may amend this Ordinance by supplementing, modifying, or repealing any of the regulations, restrictions, or provisions herein.
- (B) A proposed amendment may be initiated by the Board of County Commissioners upon its own motion, upon request by the Planning Commission, or upon petition from any interested person(s) or their agent(s).

5-7-2 Report

All proposed amendments to the Ordinance shall be documented in a report, to be submitted by the Planning Commission to the County Board of Commissioners before acting thereon.

5-7-3 Public Hearing

- (A) The Planning Commission shall hold a public hearing on the proposed amendment(s), at which any person or party in interest shall have an opportunity to be heard.
- (B) Notice of the public hearing with the Planning Commission shall be given in accordance with provisions of the North Dakota Century Code.
- (C) The Planning Commission shall determine whether the proposed amendment is consistent with the goals and objectives of the Comprehensive Plan, or otherwise promotes the general health, safety, or welfare of McKenzie County residents.
- (D) The final report of the Planning Commission shall be submitted to the Board of County Commissioners within ninety (90) days after the proposal is referred to the Planning Commission unless the Board of County Commissioners agrees to an extension.

5-7-4 Board of County Commissioners

- (A) After receipt of the final report on any proposed amendment to the Ordinance, the Board of County Commissioners may adopt the proposed amendment, with such changes as it may deem advisable.
- (B) The decision and all supporting statements shall be recorded in the official records of the Board of County Commissioners and published in accordance with laws established by the North Dakota Century Code.
- (C) Any adopted amendment may be modified or repealed by the Board of County Commissioners following the procedures described in **Section 5-7** of this Ordinance.

Sec. 5-8 Zoning Map Amendments

5-8-1 Authority

- (A) Amendments to the McKenzie County Zoning Map are legally equivalent to Ordinance amendments because the Zoning Map is incorporated into this Ordinance under **Section ____**. A Zoning Map amendment may be

initiated by the Planning Commission or the Board of County Commissioners, or by another applicant following the procedures of **Section 5-8**.

5-8-2 Approval Criteria

- (A) Proposed zoning districts shall follow existing property boundaries or property boundaries that will be created on or before the effective date of the Zoning Map amendment.
- (B) Zoning Map amendments shall be consistent with the goals and objectives of the McKenzie County Comprehensive Plan.

5-8-3 Zoning Map Amendment with Subdivision

- (A) An applicant may seek approval for a Zoning Map amendment and a subdivision during the same public hearing(s). A fee must be paid for each request.
- (B) If a Zoning Map amendment is approved with a subdivision, it shall not take effect until the subdivision is recorded with the McKenzie County Recorder.

5-8-4 Application

- (A) The applicant shall submit a completed application for Zoning Map Amendment to the Planning and Zoning Director at least twenty-one (21) days prior to the Planning Commission meeting at which the item will be considered.
- (B) The application shall be submitted with:
 - (1) Payment of a nonrefundable fee in the amount established by resolution of the Board of County Commissioners.
 - (2) A map or legal description of the area proposed for a zone change, unless the application is accompanied by a plat that shows the area.

5-8-5 Public Hearing

- (A) All requests for a Zoning Map amendment shall require one (1) public hearing before the Planning Commission.
- (B) Notice of the public hearing with the Planning Commission shall be given in accordance with North Dakota Century Code. The Planning Department shall notify by mail all property owners within one-half (1/2)

mile of the area for which the Zoning Map amendment is requested. The notice shall state the name of the applicant, the land use type that the applicant proposes, the location of the proposed zone change, and the date, time, and location of the scheduled public hearing. This requirement is considered met if reasonable effort is made to contact applicable property owners, even if some are inadvertently omitted from notification.

- (C) At the public hearing, the Planning Commission shall hear testimony and comments regarding the request for Zoning Map amendment. The applicant or a designated representative is encouraged to attend the public hearing to provide additional information on the request.
- (D) After the public hearing is closed, the Planning Commission shall make one of the following decisions, to be recorded in its official records with any supporting statements:
 - (1) Recommend approval of the Zoning Map amendment to the Board of County Commissioners.
 - (2) Recommend disapproval of the Zoning Map amendment to the Board of County Commissioners, stating findings of fact to justify the rationale for disapproval.
 - (3) Conduct a second public hearing to review the Zoning Map amendment during the next regularly scheduled meeting of the Planning Commission, requesting from the applicant any additional information necessary to reach a decision.
- (E) If the Planning Commission recommends disapproval of the Zoning Map amendment request, the applicant may submit a revised proposal and supporting documents to the Board of County Commissioners at least ten (10) days prior to the Board of County Commissioners meeting at which the Zoning Map amendment will be reviewed.

5-8-6 Board of County Commissioners

- (A) After the Planning Commission has made a recommendation, the Board of County Commissioners shall consider the Zoning Map amendment at its next regularly scheduled meeting, unless the applicant and the Planning and Zoning Director agree to defer to a later meeting, and make one of the following decisions:
 - (1) Approve the Zoning Map amendment.

- (2) Disapprove the Zoning Map amendment, stating the reason(s) for disapproval.
 - (3) Refer the request back to the Planning Commission. The Board of County Commissioners shall only exercise this option if it finds that there is substantial additional information relating to the request for Zoning Map amendment that was not presented to the Planning Commission.
- (B) The decision and all supporting statements shall be recorded in the official records of the Board of County Commissioners. If the request is not approved, the decision shall also be communicated in writing to the applicant.

5-8-7 Zoning Map Revisions

The official Zoning Map of McKenzie County shall be updated and republished on a regular basis to reflect approved amendments.

Sec. 5-9 Variances

5-9-1 Authority

The Board of Adjustment may adjust any regulation in this Ordinance for a specific application of the regulation if unique circumstances meet the criteria of this section. Any adjustments of enforcement, pursuant provisions established by the North Dakota Century Code., will be made through the variance process.

5-9-2 Approval Criteria

During the review of a request for a variance, the Planning and Zoning Commission and the Board of Adjustment shall consider the following criteria:

- (A) Strict compliance with the regulations of this Ordinance would result in extraordinary hardship to the landowner, adversely affect the public welfare, or obstruct the goals and objectives of the Comprehensive Plan.
- (B) The hardship motivating the request for variance is related to the size, shape, or topography of the lot or tract or some other physical feature that deprives the landowner of a reasonable use of property. The hardship is not a result of the actions of the applicant or the applicant's predecessor-in-interest.

- (C) The special conditions and circumstances motivating the request for variance are unique to the property in question and are not a common condition experienced by other landowners in the same district.
- (D) The literal interpretation of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the district.
- (E) Granting the variance would not confer any special privilege on the applicant that is denied by the Ordinance to others in the same district.
- (F) Any variance granted shall be no more than the minimum easing of the regulation necessary to alleviate the hardship.
- (G) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

5-9-3 Application

- (A) The applicant shall submit a completed application for variance to the Planning and Zoning Director at least twenty-one (21) days prior to the meeting of the Planning Commission at which the variance is to be considered.
- (B) The application shall be submitted with:
 - (1) Payment of a nonrefundable fee in the amount established by resolution of the County Board of Commissioners.
 - (2) A written letter describing the nature of the hardship and the reason for the variance request.
 - (3) A copy of a site plan or operations plan, if applicable, in a format requested by the Planning and Zoning Director.

5-9-4 Public Hearing

- (A) All variance requests shall require one (1) public hearing before the Planning Commission.
- (B) Notice of the public hearing shall be given in accordance with regulations established by the North Dakota Century Code.
- (C) The Planning Department shall notify by mail all property owners within one-half (1/2) mile of the area for which the application is requested. The notice shall state the name of the applicant, the regulation from which the variance is sought, the location of the property for which the

- variance is sought, and the date, time, and location of the scheduled public hearing. This requirement is considered met if reasonable effort is made to contact applicable property owners, even if some are inadvertently omitted from notification.
- (D) At the public hearing, the Planning Commission shall hear testimony and comments regarding the variance request. The applicant or a designated representative is encouraged to attend the public hearing to provide additional information on the request.
 - (E) After the public hearing is closed, the Planning Commission shall make one of the following decisions, to be recorded in its official records with any supporting statements:
 - (1) Recommend approval of the variance to the Board of County Commissioners.
 - (2) Recommend conditional approval of the variance to the Board of County Commissioners, stating the recommended conditions to be attached to the variance.
 - (3) Recommend disapproval of the variance to the Board of County Commissioners, with findings of fact to justify the rationale for disapproval.
 - (4) Conduct a second public hearing to review the variance request during the next regularly scheduled meeting of the Planning Commission, requesting from the applicant any additional information necessary to reach a decision. The Planning Commission shall not conduct more than two public hearings on the same variance request.
 - (F) If the Planning Commission recommends conditional approval or denial of the variance request, the applicant may submit a revised proposal and supporting documents to the Board of County Commissioners at least ten (10) days prior to the Board of County Commissioners meeting at which the variance request will be reviewed.

5-9-5 Board of County Commissioners

- (A) After the Planning Commission has made a recommendation, the Board of County Commissioners shall consider the variance at its next regularly scheduled meeting, unless the applicant and the Planning and Zoning Director agree to defer to a later date.

- (B) The Board of County Commissioners shall make one of the following decisions:
 - (1) Approve the variance.
 - (2) Approve the variance with any terms and conditions deemed necessary to protect surrounding areas or McKenzie County in general.
 - (3) Disapprove the variance, stating the reason(s) for disapproval.
 - (4) Refer the request back to the Planning Commission. The Board of County Commissioners shall only exercise this option if it finds that there is substantial additional information relating to the request for variance that was not presented to the Planning Commission.
- (C) The decision and all supporting statements shall be recorded in the official records of the Board of County Commissioners. If the variance request is approved, the variance shall be filed at the office of the Planning and Zoning Director, and a copy shall be mailed to the applicant. If the variance request is denied, the decision shall also be communicated in writing to the applicant.

Sec. 5-10 Major Subdivisions

Major subdivisions require a public hearing for both the preliminary plat and the final plat. Any subdivision that does not meet the criteria of a minor subdivision (see [Section 6-5](#)) or exemption from platting requirements (see [Section 6-2](#)) shall be classified as a major subdivision.

5-10-1 Approval Criteria

During review of a major subdivision, the Planning Commission and County Board of Commissioners will consider the following:

- (A) The proposed subdivision satisfies all applicable provisions of this article.
- (B) The proposed development is consistent with the Comprehensive Plan.
- (C) The proposed development is consistent with the official Zoning Map or the applicant has applied for a Zoning Map amendment.
- (D) The proposed subdivision satisfies all requirements of the corresponding zoning district(s). All land can be safely and reasonably developed for its intended use under the requirements of this Ordinance.

- (E) All necessary utilities, facilities, and services have been or will be provided to the subdivision (see **Subsection 6-4-4**, Improvement Plans).

5-10-2 Consultation and Application

- (A) Prior to preparing a preliminary subdivision plat, a prospective applicant is encouraged to consult with the Planning and Zoning Director and such other advisory personnel as the Planning Director may direct to review the proposal in relation to existing conditions, planned development, and public facilities, utilities, and services. The purpose of this consultation is to ensure an efficient platting process and avoid unnecessary costs to the applicant. There is no fee for the pre-application meeting.
- (B) The applicant is encouraged to provide a sketch plan that shows existing and proposed development, the general arrangement of streets and lots, tentative lot sizes, and any additional information which may be requested of the applicant.
- (C) The applicant shall submit a completed application for Major Subdivision to the Planning and Zoning Director at least twenty-one (21) days prior to the meeting of the Planning Commission at which the application is to be considered. The application must include the application form, the required nonrefundable fee, as determined by resolution of the County Board of Commissioners, a digital copy of the preliminary plat in portable document format (pdf), and any supporting documents as may be required by this Ordinance or requested by the Planning and Zoning Director.
- (D) Prior to the Planning Commission meeting, the Planning and Zoning Director shall distribute the preliminary plat for comment from the County Engineer, the County Emergency Manager, the rural fire district, impacted utilities, and other agencies/departments as applicable.
- (E) An application is not considered complete until the application is signed by all property owners and representatives, all fees are paid, and all required attachments are included.

Commented [DS1]: The Planning Department should take responsibility for this task. That's why they pay the application fee.

5-10-3 Preliminary Plat

- (A) The preliminary plat shall be prepared by a registered land surveyor and shall meet all technical specifications listed within the application checklist.

- (B) One (1) public hearing before the Planning Commission is required for preliminary plat review.
- (1) Notice of the public hearing shall be given in accordance with North Dakota Century Code.
 - (2) The Planning Department shall notify by mail all property owners within one half mile ($\frac{1}{2}$ mile) of the proposed subdivision. The notice shall state the name of the applicant, the proposed name of the subdivision, the number of lots proposed, the location of the proposed subdivision, and the date, time, and location of the scheduled public hearing.
 - (3) At the public hearing, the Planning Commission shall hear testimony and comments regarding the preliminary plat. The applicant or a designated representative is encouraged to attend the public hearing to provide additional information on the proposed subdivision, as requested by the Planning Commission.
 - (4) After the public hearing is closed, the Planning Commission shall make one of the following recommendations:
 - (a) Tentatively approve the preliminary plat.
 - (b) Tentatively approve the preliminary plat with conditions. The Planning Commission shall clearly state the nature and extent of any such conditions or modifications that must be met before a final plat is submitted for review and approval.
 - (c) Disapprove the preliminary plat, stating the reason for disapproval.
 - (d) Conduct a second public hearing to review the preliminary plat during the next regularly scheduled meeting of the Planning Commission, requesting from the applicant any additional information necessary to reach a decision.
 - (5) Tentative approval of a preliminary plat by the Planning Commission is not an acceptance of the subdivision plat for record but is rather a general expression of approval of the preliminary plat as a representation of the forthcoming final plat. The Planning Commission may require the applicant to submit a revised preliminary plat before the applicant proceeds with preparation of the final plat. Once the preliminary plat has been tentatively

Commented [DS2]: Again, I think it would be more efficient for staff to do this. This is why they pay the application fee.

approved, the applicant may proceed with preparing improvement plans (see [Section 6-4-4](#)).

5-10-4 Improvement Plans

- (A) **Technical Review.** All improvement plans shall be reviewed by the Planning and Zoning Director and the County Engineer. The County Engineer shall perform a technical review of the improvement plans and provide comments and required revisions as necessary. The County Engineer may require changes to the preliminary plat design to achieve acceptable engineering practices. Upon acknowledgement from the County Engineer that the plans are acceptable, the applicant may prepare the final plat.
- (B) **Submittal Period.** The applicant shall have six (6) months from the date the preliminary plat is approved to complete the improvement plans unless the Planning and Zoning Director grants an extension period. If the improvement plans have not been submitted for review within six (6) months or the agreed-upon extension period, the preliminary plat must be resubmitted to the Planning Commission.
- (C) **Developer Agreement.** McKenzie County may require the developer to enter an agreement or provide a construction bond to ensure the completion of any public improvements.
- (D) **Improvement Plan Requirements.** All Improvement Plans shall be prepared and signed by a professional engineer certified in the State of North Dakota, shall follow County design standards as described in [Section 6-9](#) of the Ordinance, and shall consist of the following:
 - (1) **Grading Plan.** A grading permit shall be obtained from the County Engineer if more than one (1) acre is to be disturbed. The grading plan shall follow County standards for erosion control (see [Section 6-7.2](#)) and include the following:
 - (a) Existing and proposed contours for all graded areas, with a minimum interval of two (2) feet.
 - (b) Location of site water retention.
 - (c) All proposed surface features necessary to complete the project design, including catch basins, culverts, grated inlets, inverts, railroad tracks, sidewalks, driveways, trees, utility structures, manholes, curb and gutter, water valves, monuments, centerline ties, and other features as necessary.

Commented [DS3]: Above is sufficient.

- (c) Dust control plan.
- (d) Site restoration plan.
- (2) **Paving Plan.** The paving plan shall include the following:
 - (a) Three profiles of existing ground elevation – one at the roadway centerline and one on each side of the right-of-way, fifty (50') feet beyond the right-of-way lines.
 - (b) A centerline profile of proposed design elevation.
 - (c) Striping plan.
 - (d) Acceleration and deceleration lanes as needed.
- (3) **Utility Plan.** The utility plan shall include the following:
 - (a) The location of existing utilities within or adjacent to the plat.
 - (b) The location of proposed utilities (water, sewer, electric, gas, and other) within the subdivision, and interconnections to existing systems.
 - (c) Easements required to accommodate utilities or utility maintenance.
 - (d) A letter from the water provider stating that adequate water supply is available.
 - (e) Proposed water well locations, if necessary.
 - (f) Proposed sewer or septic system information, as necessary.
- (4) **Fire Prevention Plan.** The fire prevention plan shall include the following:
 - (a) Location of proposed fire hydrants or water tanks for firefighting.
 - (b) Location, size, and operating capacity of all pipes, pumps, and equipment to achieve fire flow for a minimum of two (2) hours.
- (5) **Traffic Impact Study.** A Traffic Impact Study may be required if the County Engineer determines that impacts to the road system require further study. The traffic impact study shall detail improvements and recommendations to ensure safe and efficient access to the development.

- (6) **Stormwater Management Plan:** See **Section 6-11** for stormwater management requirements.
- (7) Additional plans as required by the County Engineer.

5-10-5 Final Plat

- (A) **Application.** The applicant shall submit a completed application to the Planning and Zoning Director at least twenty-one (21) days prior to the meeting of the Planning Commission at which the application is to be considered. The application must include the application form, the required nonrefundable fee, as determined by resolution of the County Board of Commissioners, a digital copy of the final plat in portable document format (pdf), and any supporting documents as may be required by this Ordinance or requested by the Planning and Zoning Director.
- (B) **Plat Requirements.** All content requirements for final plats are listed on a platting checklist maintained by the Planning Department. The final plat shall be prepared by a professional engineer or land surveyor registered in the State of North Dakota.
- (C) **Township Review.** In accordance with North Dakota Century Code the Board of Township Supervisors shall be notified by certified mail that an application for final plat has been filed, and that the Board of Township Supervisors is requested to make a recommendation on the application. The recommendations by the Board of Township Supervisors shall not be binding on the Board of County Commissioners. If the Board of County Commissioners does not receive, by certified mail, a recommendation by the Board of Township Supervisors within sixty (60) days after notification, it may take final action on the application for plat approval.
- (D) **Public Hearing.** One (1) public hearing before the Planning Commission is required for final plat review.
 - (1) Notice of the public hearing shall be given in accordance with regulations established by the North Dakota Century Code.
 - (2) The Planning Department shall notify by mail all property owners within one half mile (½ mile) of the proposed subdivision. The notice shall state the name of the applicant, the proposed name of the subdivision, the number of lots proposed, the location of the

Commented [DS4]: Again, I think it would be more efficient for staff to do this. This is why they pay the application fee.

proposed subdivision, and the date, time, and location of the scheduled public hearing.

- (3) At the public hearing, the Planning Commission shall hear testimony and comments regarding the final plat. The applicant or a designated representative is encouraged to attend the public hearing to provide additional information on the proposed subdivision, as requested by the Planning Commission.
 - (4) The Planning Commission shall determine whether the final plat conforms substantially to the preliminary plat and may review any improvement plans required as a condition of subdivision approval. After the public hearing is closed, the Planning Commission shall decide to recommend approval or disapproval of the final plat. If the plat is not approved, the reason for disapproval shall be stated. The decision and all supporting statements shall be recorded in the official records of the Planning Commission.
- (E) **Board of County Commissioners Meeting.** After the Planning Commission has made a recommendation, the Board of County Commissioners shall consider the final plat at its next regularly scheduled meeting and shall approve or disapprove the final plat, stating any reason for disapproval. The decision and supporting statements shall be recorded in the official records of the Board of County Commissioners.
- (F) **Signatures.** If the plat is approved by the Board of County Commissioners the applicant shall provide the plat on Mylar with all covenants, signature blocks, acknowledgments, and certifications required for recording. The County Auditor shall have the plat signed as required by State law.
- (G) **Plat Recording.**
- (1) After the plat has been signed and certified, the applicant shall file the plat for recording with the County Recorder within ninety (90) days. One (1) copy shall also be filed with the Planning and Zoning Director.
 - (2) If the plat is not recorded within ninety (90) days of approval the plat shall be null and void without further action.

Commented [DSS]: This text relocated to general provisions.

Sec. 5-11 Minor Subdivisions

5-11-1 Purpose

The purpose of the minor subdivision procedure is to simplify the requirements and review process for qualifying minor subdivisions. Minor subdivisions are exempt from the preliminary plat process but require one (1) public hearing with the Planning Commission to review the final plat.

5-11-2 Minor Subdivision Criteria

- (A) Any subdivision that meets the following criteria may be platted as a minor subdivision:
- (1) The subdivision does not require the dedication of public rights-of-way or the construction of new streets;
 - (2) The subdivision does not require new utility easements or public improvements;
 - (3) The subdivision contains four (4) lots or fewer and the lots will be used for agricultural or residential purposes only;
 - (4) The subdivision does not landlock any property;
 - (5) The land proposed for subdivision has not been previously subdivided within two (2) years of the date of application submittal.
 - (6) The subdivision does not violate any local, state, or federally adopted law or this Ordinance.

5-11-3 Requirements

- (A) Minor subdivisions shall be subject to all requirements and procedures for final plats (see *Section 5-10-5*).

Sec. 5-12 Lot Line Adjustments, Lot Splits, and Lot Mergers

- (A) **Purpose.** The purpose of this section is to provide for the administrative approval of common lot modifications.
- (B) **Application Submittal.**
- (1) Any person with a legal interest in the property may file an application for a lot line adjustment, lot split, or lot merger. Such application requires an affidavit of consent from all affected property.

- (2) All applications for lot splits, lot combinations, and lot mergers shall be submitted to the Planning and Zoning Director, along with the nonrefundable application fee, as determined by resolution of the County Board of Commissioners; a certificate of survey prepared by a registered land surveyor showing all affected parcels, the proposed modification, and all existing structures; the legal description of the original parcel(s); and the legal description of the resulting parcel(s).
- (C) **Technical Review.** All applications for lot splits, lot line adjustments, and lot mergers shall be reviewed by the Planning and Zoning Director in consultation with the County Engineer. No public hearing or review by either the Planning Commission or the Board of County Commissioners is necessary.

Sec. 5-13 Conditional Use Permits

5-13-1 Purpose

To carry out the purposes of this Ordinance, the Board of County Commissioners finds that certain uses may be permitted only with the Board's discretionary approval. Such uses may be necessary or desirable in a particular zoning district but deserve special consideration due to their unusual size, infrequent occurrence, effect on surrounding areas, impact on public facilities, or other unique characteristics.

5-13-2 Authority

- (A) To promote and protect public health, safety, and the general welfare of the community, the Board of County Commissioners may stipulate conditions and restrictions upon the establishment, location, construction, and operation of any proposed conditional use.
- (B) In all cases in which conditional uses are granted, the Planning and Zoning Director may require evidence of compliance with these provisions and with the conditions set forth.

5-13-3 General Provisions

- (C) A conditional use permit (CUP) shall be required for uses identified within each zoning district as a conditional use according to **Table 3-X in Section 3-X.**

- (D) The Board of County Commissioners shall not authorize a conditional use in any zoning district from which it is prohibited.
- (E) No building permit or certificate of occupancy shall be issued by McKenzie County until the application for a required conditional use permit has been approved by the Board of County Commissioners.
- (F) Conditional uses are considered to be permanent unless otherwise indicated in this Ordinance or as a condition of approval.
- (G) Applicants shall be in good standing. Any existing violation on the subject property must be remedied or a violation bond must be posted prior to application submittal.

5-13-4 Approval Criteria

- (A) During review of a request for a conditional use permit, the Planning Commission and County Board of Commissioners shall consider the following criteria:
 - (1) The proposed conditional use shall not adversely affect public health and safety.
 - (2) The proposed conditional use shall not impede the normal use or development of adjacent properties.
 - (3) The proposed conditional use will comply with all applicable regulations of the zoning district in which it is located.
 - (4) The proposed conditional use will comply with any regulations established by *Article 4, Special Use Standards*.

Commented [DS6]: "comfort" is subjective and high bar to clear

Commented [DS7]: Consider deleting. "enjoyment" is subjective and diminished value may be difficult to quantify.

Commented [DS8]: Not specific to conditional uses - applies to all development.

Commented [DS9]: Not specific to conditional uses - applies to all development.

5-13-5 Conditional Use Permit with Zoning Map Amendment

The applicant may seek approval for a conditional use permit and a Zoning Map amendment and/or subdivision at the same hearing. A fee must be paid for each request.

5-13-6 Application

- (A) The applicant shall submit a complete application for conditional use permit at least twenty-one (21) days prior to the meeting of the Planning commission at which the permit will be considered.
- (B) The application shall be submitted with:
 - (1) Payment of a nonrefundable fee in the amount established by resolution of the County Board of Commissioners.

- (2) A copy of the site plan or operations plan, if applicable, in the format and scale requested by the Planning and Zoning Director.
- (3) Any additional application requirements for the proposed use stipulated by *Article 4, Special Use Standards*.
- (4) Any other information relevant to the need for the proposed use, siting constraints, or the expected effects of the proposed use on surrounding areas and McKenzie County in general, as requested by the Planning and Zoning Director or the Planning Commission.

5-13-7 Public Hearing

- (A) The Planning Commission shall hold a public hearing on the conditional use permit application, at which any person or party of interest shall have an opportunity to be heard.
- (B) Notice of the public hearing with the Planning Commission shall be given in accordance with provisions established by the North Dakota Century Code.
- (C) The Planning Department shall notify by mail all property owners within one half (1/2) mile of the property in question. The notice shall state the name of the applicant, the proposed use for which the conditional use is required, the location of the proposed use, and the date, time, and location of the scheduled public hearing. This requirement is considered met if reasonable effort is made to contact applicable property owners, even if some are inadvertently omitted from notification.
- (D) At the public hearing, the Planning Commission shall hear testimony and comments regarding the request for conditional use permit. The applicant or designated representative is encouraged to attend the public hearing to provide additional information, as requested by the Planning Commission.
- (E) After the public hearing is closed, the Planning Commission shall make one of the following decisions, to be recorded in its official records with any supporting statements:
 - (1) Recommend approval of the conditional use permit to the Board of County Commissioners.
 - (2) Recommend conditional approval of the conditional use permit to the Board of County Commissioners, stating the recommended terms and conditions to be attached to the permit.

- (3) Recommend disapproval of the conditional use permit to the Board of County Commissioners, stating findings of fact to justify the rationale for disapproval.
- (4) Conduct a second public hearing to review the conditional use permit during the next regularly scheduled meeting of the Planning Commission, requesting from the applicant any additional information necessary to facilitate the body's decision. No more than two (2) public hearings may be conducted for any proposed conditional use.
- (F) If the Planning Commission recommends approval with conditions or disapproval of the conditional use permit, the applicant may submit a revised proposal and supporting documents to address statements made by the Planning Commission at least ten (10) days prior to the Board of County Commissioners meeting at which the conditional use permit will be reviewed.

5-13-8 Board of County Commissioners

- (A) After the Planning Commission has made a recommendation, the Board of County Commissioners shall consider the conditional use permit at its next regularly scheduled meeting, unless the applicant and the Planning and Zoning Director agree to defer to a later meeting.
- (B) The Board of County Commissioners shall make one of the following decisions:
 - (1) Approve the conditional use permit.
 - (2) Approve the conditional use permit with any terms and conditions deemed necessary to protect surrounding areas or McKenzie County in general.
 - (3) Disapprove the conditional use permit, stating the reason(s) for disapproval.
 - (4) Refer the request back to the Planning Commission. The Board of County Commissioners shall only exercise this option if it finds that there is substantial additional information relating to the request for conditional use permit that was not presented to the Planning Commission.
- (C) The decision and all supporting statements shall be recorded in the official records of the Board of County Commissioners. If the request is

not approved, the decision shall also be communicated in writing to the applicant.

- (D) If the conditional use permit is approved, the permit shall be filed at the office of the Planning and Zoning Director, and a copy shall be mailed to the applicant.

5-13-9 Cessation of Permit

Upon the cessation or abandonment for a period of one (1) year of any use for which a conditional use permit has been issued, the conditional use permit will be terminated and any future use of the land, structure(s) or premises shall require a new conditional use permit.

5-13-10 Renewal of Permit

Conditional uses do not have a specified time period for operation unless so indicated in this ordinance or as a condition of approval. If a conditional use permit expires, it may be extended upon written application of the owner of the property or authorized representative provided that the extension is for the same use as specified in the original permit and that the applicant is in compliance with the terms and conditions specified in the original permit. Additional conditions may be imposed by the Board of County Commissioners.

5-13-11 Monitoring

Where practical, approved conditional use permits shall be monitored by staff. The frequency of permit review shall be identified within the conditions of approval.

5-13-12 Amendment to Permit

- (A) When an applicant applies and acquires an initial conditional use permit subsequent changes, any modification to that approved conditional use permit shall be considered an amendment to the original conditional use permit. Previously approved conditional use permits that are in good standing with their conditions and have no violations may qualify for amendment.
- (B) The Planning and Zoning Director shall review the application for amendment and determine if the amendment can be processed administratively or if it needs go through the public hearing process. Activities that require the public hearing process include but are not limited to:

- (1) A change in use.
- (2) Enlargement of gas and oil storage.
- (3) Increased traffic.
- (4) Any permit that has been cited with a violation since the last review.
- (5) Any application where the original conditions are inadequate with the proposed amendment.
- (6) Any other amendment determined by Planning and Zoning Director to require a public hearing.

5-13-13 Revocation of Permit

- (A) The Board of County Commissioners may review the status of any conditional use permit issued pursuant to this Ordinance and take appropriate action to suspend or revoke the same if there is any violation of the conditions of the permit or the requirements of this Ordinance, the Building Code, and/or the Fire Code.
- (B) Where the construction for a granted conditional use has not been commenced, or the construction has not been *substantially completed* [definition to be added: less than 50% completed] within one (1) year of Board of County Commission approval or an extension granted by the Planning and Zoning Director, for no more than one (1) year, the permit shall be null and void without further action of the Planning Commission or the Board of County Commissioners.
- (C) When any permit is revoked or suspended for any reason, no portion of the permit fee shall be returned to the applicant.
- (D) **Exception to Revocation for Single Family Home.** An approved conditional use permit for a single-family home structure cannot be revoked or rescinded once a building permit is issued. Any violation after issuance of the conditional use permit shall require remedy as defined in **Section X**, but in no case shall the available remedy include revocation of the permit or removal of the home.

5-13-14 Application Requirements when Violations Exist

- (A) When an application is received for a property or land use that is in violation of this Ordinance, the application shall not be approved until the following conditions are fulfilled:

- (1) The applicant posts a violation bond as outlined in **Section 2-13** of this Ordinance.
 - (2) The applicant executes an easement entitling the County, a party contracted by the County, and the agents of either of them to enter the land and remedy the violation by direct action if the application is denied. Once the violation is remedied the easement becomes null and void.
 - (3) If the violation relates to a facility subject to state or federal regulations under which the County or other third parties are prohibited from taking corrective action, then the applicant shall provide a binding consent to immediate and unconditional injunctive relief being entered to require corrective action in lieu of the required easement.
 - (4) The applicant shall release the County and its agents, successors, and assigns from all claims, liability, and damages that are caused by the County's entrance to the land and activities thereon as well as for any liability for damages caused to the applicant or any others as a result of the County's termination of the violation and indemnifying the County and its agents for any liability to others for such damages.
 - (5) The applicant shall show proof of insurance naming the County as an additional insured to cover such damages with coverage of no less than one million dollars per incident and no less than one million dollars per person for any liability and damages caused to the applicant or any others due to the County's termination of the violation.
- (B) The application shall be reviewed by the Planning and Zoning Director and, as necessary, placed on the Planning Commission's agenda for a hearing.
- (C) Once the violation is remedied and conditions have been met the Planning and Zoning Director may release the applicant of the bond and the additional insured requirements.

Sec. 5-14 Temporary Use Permits

5-14-1 Authority

The Planning and Zoning Director may authorize certain uses of property in permitting zoning districts for a temporary duration by means of a temporary use permit, according to **Table X of Section X**.

5-14-2 Approval Criteria

During review of a request for a temporary use permit, the Planning and Zoning Director shall consider the following criteria:

- (A) The use is allowed in the zoning district of the proposed location.
- (B) The proposed timeline of the use complies with the maximum allowable duration provided in **Table X of Section X**.
- (C) The use will not create a burden on public facilities which serve or are proposed to serve the area.
- (D) The use will not impede the normal use or development of adjacent properties. The Planning and Zoning Director may define restrictions on the hours of operation, lighting, and noise levels, as necessary.
- (E) Adequate measures have been taken to minimize traffic congestion, provide adequate ingress and egress to the site, and provide on-site parking, as necessary.
- (F) Adequate water supply, individual sewage treatment facilities, erosion control, and stormwater management are provided, as necessary.
- (G) All applicable permits, licenses, and/or certifications required for the operation of the use have been acquired.
- (H) There is a plan to return the site to its original condition. Remediation, if necessary, shall be complete by the date specified on the temporary use permit. Planning and Zoning Director may authorize an extension to the remediation period, but extensions may not be granted beyond ninety (90) days in total.
- (I) The use otherwise complies with the requirements of the zoning district.

5-14-3 Application and Approval

- (A) The applicant shall submit a complete temporary use application to the Planning and Zoning Director at least twenty-one (21) days prior to the initiation of the proposed use.

- (B) The application shall include the following:
 - (1) Payment of a nonrefundable fee in the amount established by resolution of the Board of County Commissioners.
 - (2) Any additional information requested by the Planning and Zoning Director.
- (C) A reclamation bond shall be required as outlined in this Ordinance, if applicable.
- (D) The Planning Department shall notify by mail all property owners within one half mile (½ mile) of the proposed temporary use. The notice shall state the name of the applicant, the proposed use for which the temporary use is required, the location of the proposed use, Planning Department contact information, and the date by which comments must be received.
- (E) The Planning and Zoning Director shall review the application in consultation with relevant McKenzie County staff and area service providers and shall issue permits for all applications that meet the approval criteria set forth in this Ordinance. Permits shall state the following conditions:
 - (1) The date on which the temporary use may be initiated.
 - (2) The date on which the temporary use must be terminated.
 - (3) The date on which any remediation of the site must be completed.
 - (4) Any reasonable conditions on the use necessary to meet the requirements of this Ordinance.
- (F) The Planning and Zoning Director shall report the issuance of a permit at the next regularly scheduled meeting of the Planning and Zoning Commission.

Commented [DS10]: Again, I think it would be more efficient for staff to do this. This is why they pay the application fee.

5-14-4 Revocation of Permit

A temporary use permit is revocable with or without cause upon thirty (30) days' notice to the permittee, unless there is an imminent threat to public health or safety, in which case the permit will be immediately revoked.

5-14-5 Permit Expiration and Renewal

When the stated duration of the permit has expired, a permittee must apply for a Conditional Use Permit, following procedures of Section 5-10, to continue

operation for any additional duration, even if the nature of the use has not changed.

Sec. 5-15 Administrative Permit

5-15-1 Specific Uses Allowed with an Administrative Permit

The Planning and Zoning Director is authorized to administratively approve the following uses via an administrative permit:

- (A) Communication towers
- (B) Electrical substations
- (C) Electrical transmission lines
- (D) Temporary freshwater pipelines

5-15-2 Administrative Permit Requirements

- (A) A complete application for an administrative permit shall be submitted to the Planning Department with a nonrefundable fee as established by the Board of County Commissioners. No application will be processed until the application is complete and the required fee has been paid.
- (B) The application for an administrative permit shall contain the same information required for a conditional use permit.
- (C) The Planning and Zoning Director may require submittal of additional items as deemed necessary.
- (D) Except for temporary freshwater pipelines, the Planning Department shall notify by mail all property owners within one half mile ($\frac{1}{2}$ mile) of the proposal. The Planning Department shall notify by mail all property owners within one half mile ($\frac{1}{2}$ mile) of the proposed use. The notice shall state the name of the applicant, the proposed use for which the administrative permit is required, the location of the proposed use, Planning Department contact information, and the date by which comments must be received.
- (E) If the Planning and Zoning Director denies the approval of the administrative permit the applicant may appeal the decision following the provisions of this Ordinance.
- (F) The application may not be approved unless the Planning and Zoning Director finds that the proposed project complies with all applicable provisions of this Ordinance and with all adopted plans and policy

documents of the County. The Planning and Zoning Director may grant approval with conditions only to the extent that such conditions are in compliance with this Ordinance, adopted plans, policies and procedures of the County.

5-15-3 Extension of Approval Period

- (A) After consultation with other departments whose services, facilities, or plans for future services and facilities may be affected, the Planning and Zoning Director may grant an extension of an approval period up to twelve (12) months for good cause.
- (B) All requests for extensions shall be submitted to the Planning and Zoning Director in writing at least thirty (30) days prior to the expiration of approval.
- (C) An extension request shall include payment of required fees and a narrative stating the reasons for the applicant's inability to comply with the specified deadlines, listing any changes in the character of the neighborhood, any changes to the Comprehensive Plan or this Ordinance that have occurred since approval of the permit/plan as these changes affect the permit/plan, and the anticipated time schedule for completing the review project and/or the specific project.
- (D) Any denial of the extension may be appealed to the Planning Commission. If the extension is denied, the applicant may re-submit a new application, subject to the fees and regulations in effect at the time of re-submittal, for the same project.
- (E) One (1) additional extension may be granted by the Board of County Commissioners upon review by the Planning and Zoning Director and Planning Commission.

Sec. 5-16 Appeals

5-16-1 Request for an Appeal Hearing

- (A) Any person may file a petition for a separate hearing before the Board of County Commissioners if aggrieved by any of the following:
 - (1) Any amendment to this Ordinance, within thirty (30) days after the first publication of the enactment of such amendment.

- (2) Any decision made by the Board of County Commissioners regarding a previous application or petition, within thirty (30) days after the public meeting in which the decision was made.
 - (3) Any administrative decision made by any officer, board, or agent of McKenzie County, within thirty (30) days after the decision was communicated either verbally or in writing.
- (B) All petitions for appeal shall be filed with the McKenzie County Auditor.

5-16-2 Procedures for an Appeal Hearing

- (A) The Board of County Commissioners shall conduct a public hearing on the matter no sooner than the next available Board of County Commissioner meeting after the filing of petition with the McKenzie County Auditor, who shall notify the appellant of the time and place of the hearing.
- (B) Notice of the public hearing shall be given in accordance with provisions established by the North Dakota Century Code.
- (C) At the public hearing, the Board of County Commissioners shall consider any relevant provisions from this Ordinance or from the Comprehensive Plan and shall render a decision on the matter. The Board shall notify the petitioner, by certified mail, what actions it proposes to take on the matter, if any.

5-16-3 Appeal to District Court

Any person or persons aggrieved by a decision of the Board of County Commissioners may appeal to District Court in the manner provided for in the North Dakota Century Code.

Sec. 5-17 Violations and Penalties

Each violation of any regulation or restriction of this Ordinance, the Building Code or the Fire Code, by any person shall constitute the maintenance of a public nuisance and shall, pursuant to the provisions set forth by the North Dakota Century Code, be a Class B misdemeanor. Each day that a violation occurs shall be considered a separate punishable offense.

5-17-1 Violation Procedures

- (A) If any land use, structure, or development activity violates this Ordinance, or if an alleged violation has occurred, any person may file a

complaint with the Planning and Zoning Director. Such complaints must state with specificity the causes and basis thereof.

- (B) The Planning and Zoning Director shall follow these procedures:
 - (1) Inspect the affected site or structure.
 - (2) Notify the person causing the violation and owner of the property. Such notification shall be sent by certified mail.
 - (3) Outline the findings and explain what actions the violating party must take to correct the violation and the timing of any correction. Such actions may include a cease-and-desist notice, stop work order, or legal remedy afforded by the law.
 - (4) If the violation immediately jeopardizes public health or safety, the Planning and Zoning Director may request that the court enter an injunctive relief. If injunctive relief is requested the Planning and Zoning Director shall present the matter to the Planning Commission.
- (C) The violation must be corrected, or a violation bond must be in place prior to the Planning Department processing any further application(s) for the site.

5-17-2 **Reimbursement of Legal Expenses**

- (A) No person may be issued any conditional use permit, building permit, or certificate of occupancy if a civil action has been commenced against that person or his predecessors in interest relating to a violation of this Ordinance and the County has not yet been reimbursed for its actual legal expenses, including such costs and disbursements and reasonable attorney fees as were incurred in preparing, commencing, and prosecuting the action.
- (B) Upon completion of all other requirements for issuance of the conditional use permit, building permit, or certificate of occupancy such that the alleged violation has been abated, the applicant for the same shall be given notice of the legal expenses incurred and shall reimburse McKenzie County for the same within thirty (30) days of such notice. If the reimbursement in full has not been made within thirty (30) days of notice, the conditional use permit, building permit, or certificate of occupancy shall be denied, and all application fees forfeited. In the event of a dispute as to the actual legal expenses incurred by McKenzie

County, the matter shall be resolved by submitting the issue to the North Dakota District Court in and for McKenzie County.

- (C) McKenzie County shall be entitled to reimbursement of its actual legal expenses pursuant to this section and may claim the same in addition to its damages in civil action brought to enforce this Ordinance.

Sec. 5-18 County Fire Official

5-18-1 Authority

The Board of County Commissioners may appoint a Fire Official to carry out the directives and duties as assigned by the Board of County Commissioners. The Fire Official shall be independent in his authority to interpret and enforce the Fire Code. Decisions may be appealed to the Board of Appeals. If the Board of Appeals is other than the Board of County Commissioners the decision of the Board of County Commissioners shall be final.

5-18-2 Duties

The duties of the County Fire Official shall include but not be limited to the following:

- (A) As directed by the State Fire Marshal:

- (1) Conduct investigations, surveys, or inspections.
- (2) Enforce compliance where violations are discovered.
- (3) Review building plans, prepare materials and make recommendations on all building applications.
- (4) Attend hearings as needed.
- (5) Keep copies of all records for building plan review, fire inspections, fire investigations and fire permits.
- (6) Make inspections of land and/or structures to determine compliance with the provisions of this Ordinance and investigate reports of noncompliance received from the public.
- (7) Carry out duties of the Fire Code Official as outlined in the International Fire Code or other duties assigned by the Planning and Zoning Director.
- (8) Grant fire permits in coordination with the Upper Missouri District Health Unit.

5-18-3 Fire Code

McKenzie County has the right to enforce the International Fire Code and adopt and revise the deleted exceptions. The County may further rely upon the State Fire Marshals office to assist with Fire Code compliance. The following sections to the State Fire Code are hereby modified:

- (1) **Section 103 Division of Fire Prevention:** The Division of Fire Prevention is established as a division under the Department of Planning and Zoning.
- (2) **Section 105 Permits:** Section 105 with all subsections as in the current International Fire Code.
- (3) **Section 108 Board of Appeals:** The Board of County Commissioners shall serve as the Board of Appeals for the Fire Code or until such time as they appoint a Board of Appeals.
- (4) **Section 109 Violations:**
 - (a) Persons who violate a provision of this code or fail to comply with any of the requirements thereof or who erect, install,

alter, repair or do work in violation of the approved construction documents or directive of the fire code official, has active knowledge of violations or unlawful action of the Fire Code or of a permit or certificate used under provisions of this code, shall be guilty of a class B misdemeanor.

- (b) Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint with the fire code official and/or Planning and Zoning Director. Such complaint must state with specificity the causes and basis thereof.
 - (c) Each violation of any regulation or restriction of this Ordinance by any person shall constitute the maintenance of a public nuisance and shall, pursuant to the provisions of North Dakota Century Code, be a class B misdemeanor. Each day that a violation occurs shall be considered a separate punishable offense.
- (5) **Section 113 Fees:** A schedule of fees shall be approved and amended from time to time by the Board of County Commissioners.
- (B) A schedule of fees shall be approved and amended from time to time by the Board of County Commissioners.

Sec. 5-19 Building Permit

5-19-1 Purpose

No land within the jurisdiction of this Code shall be built upon and no structure shall be structurally altered or moved until a permit has been obtained from the Planning Department.

- (A) Any building permit issued must be in accordance with this Code.
- (B) No permit is required for maintenance of any structure which does not structurally alter the building.
- (C) If no construction takes place within a year of the issuance of a building permit, the permit shall expire.
- (D) The building permit process is outlined below:
 - (1) All applicants who wish to build or alter any structure as defined in this Code must apply to the Planning Department for a permit.

- (2) If the applicant's plans meet district regulations as prescribed in this Code, the Planning Department shall collect the fees and issue the building permit, if applicable.
- (3) If the applicant's plans do not comply with district regulations, the amendment, variance, conditional use or the appeals procedures shall be implemented. All applicable nonrefundable permit fees shall be submitted to the Planning Department.

5-19-2 Adoption of State Building Code

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area, and maintenance of buildings or structures in McKenzie County shall meet with the provisions of the rules and regulations of the North Dakota State Building Code, which includes the International Building Code (IBC), the International Residential Code (IRC), the International Mechanical Code (IMC), and the International Fuel Gas Code (IFGC) as adopted by the State of North Dakota. Any future updates and amendments to the North Dakota State Building Code and its adopted incorporated codes will be held on file with the County Building Official.

5-19-3 Amendments to State Building Code

Pursuant to the North Dakota Century Code, McKenzie County amends the State Building Code as follows:

- (A) Building permits and/or inspections may be waived for structures that are built on-site for gas and oil processing and storage.
- (B) Waivers of building permits and/or inspections may only be given in writing.
- (C) Each request for a waiver of building permits and/or inspections must include the legal description of the location of the structure and a description of the structure for which a waiver is requested. Each waiver is specific to the structure described therein and does not apply to replacements, expansions, changes in use, or major alterations to the structure.
- (D) Waivers of building permits and/or inspections shall be granted by the Planning and Zoning Director when the Planning and Zoning Director determines that the structure's safety is adequately regulated by other government agencies, whose enforcement authority and execution the Planning and Zoning Director deems sufficient, and that the structure is

not designed to be occupied regularly by persons (e.g. as an office or housing facility, whether on a temporary or permanent basis).

- (E) Waivers of building permits and/or inspections do not exempt the structure from fire and safety inspections. A fire and safety inspection is required prior to commencement of operations within the structure and thereafter on an annual basis or as requested by the County Fire Inspector or Planning and Zoning Director.
- (F) Prior to commencement of operations the facility operator shall certify in writing that American Petroleum Institute construction, safety and operational standards and procedures have and shall be maintained.
- (G) The Planning and Zoning Director's decision to deny a waiver of building permits and/or inspections may be appealed to the Board of County Commissioners.
- (H) This amendment in no way alters or amends any zoning requirement. Prior to any construction, alteration, or development of a facility the applicant must meet with the Planning and Zoning Director to determine the extent of the exception. It is further the intent of this amendment to limit the number of buildings to which this applies.

5-19-4 Authority

The Planning and Zoning Director shall appoint the Building Official to carry out the directives and duties as assigned. The Building Official is granted the authority to interpret and enforce the Building Code. Decisions may be appealed to the Planning and Zoning Director. Decisions may also be appealed to the Board of County Commissioners. The decision of the Board of County Commissioners shall be final.

5-19-5 Exemptions

- (A) Pursuant to the North Dakota Century Code the following buildings are exempt from the Building Code:
 - (1) Buildings which are neither heated nor cooled.
 - (2) Buildings used whose peak design rate of energy usage is less than one watt per square foot or three and four-tenths British thermal units an hour per square foot of floor area.
 - (3) Restored or reconstructed buildings deliberately preserved beyond their normal term of use because of historical associations, architectural interests, or public or buildings otherwise qualified as

a pioneer building, historical site, state monument, or other similar designation pursuant to state or local law.

- (4) Any building which is not a place of human habitation and is used solely for agricultural purposes is exempt from this chapter.
- (B) However, an application must still be submitted to the Planning Department so that the intended building use can be reviewed and verified that it is an allowed use in the zoning district. The applicant shall provide a notarized affidavit that the structure is included in one of the above exemptions.

Sec. 5-20 Manufactured Homes Installation Program

- (A) All first-time installations of manufactured homes must comply with the North Dakota Administrative Code.
- (B) Manufactured homes within McKenzie County's jurisdiction must be installed by a State-approved, licensed installer, and inspected by a State-certified inspector. However, a person who owns the manufactured home and the real property upon which the manufactured home is installed may install the manufactured home without registering as an installer, provided that the person complies with all provisions of the North Dakota Administrative Code.
- (C) An owner or licensed installer applying to install a used manufactured home must submit a Manufactured Home Permit application to the Planning Department. New manufactured homes are permitted by the State of North Dakota.
- (D) No work shall begin prior to the issuance of the Manufactured Home Permit by the Planning Department or State of North Dakota.