

CHAPTER 6

ZONING

ARTICLE 1 – Planning and Zoning Board

- 6.0101 Planning Board Created
- 6.0102 Terms, Compensation, Meetings

ARTICLE 2 – Definitions

- 6.0201 Definitions

ARTICLE 3 – Establishment of Districts

- 6.0301 Use and Area Districts Established
- 6.0302 Maps and Boundaries
- 6.0303 Annexed Property

ARTICLE 4 – Extraterritorial Zoning Authority

- 6.0401 Extension of Zoning Authority
- 6.0402 Zoning Scheme in Unincorporated Territory
- 6.0403 Building Code in Unincorporated Territory

ARTICLE 5 – Application of Regulations

- 6.0501 Application of Regulations

ARTICLE 6 – Non-Conforming Uses

- 6.0601 Non-Conforming Uses

ARTICLE 7 – Use Districts

- 6.0701 Use Districts
- 6.0702 R-1 – Residential Districts – Single – Family
- 6.0703 R-2 – Residential Districts – Two - Family
- 6.0704 R-3 – Residential Districts – Multi - Family
- 6.0705 Accessory Uses in Residential Districts
- 6.0706 Commercial District
- 6.0707 I – Industrial
- 6.0708 T-Trailer Parks

ARTICLE 8 – Area Districts

- 6.0801 Area Regulations – Residential Districts

ARTICLE 9 – Yard Regulations

- 6.0901 Yard Regulations

ARTICLE 10 – Enforcement

- 6.1001 Administrative Official

ARTICLE 11 – Board of Adjustment

- 6.1101 Creation of Board
- 6.1102 Amendments
- 6.1103 Enforcement

ARTICLE 12 – Annexations to City of Hettinger

- 6.1201 Tract of land lying in S1/2NW1/4 and N1/2N1/2SW1/4 of Section 12-129-96

6.1202 Tract of land lying in N1/2N1/2SW1/4 of Section 12-129-96

6.1203 Tract of land lying in NE1/4 of Section 14-219-96W

6.1204 Tract of land lying in NW1/4 and SW1/4 of Section 12-129-96 AND a tract of land lying in the N1/2N1/2S1/4 and the S1/2S1/2N1/4 of Section 12-129-96

ARTICLE 13 – Medical Marijuana Dispensary and Cultivation Moratorium

6.1205 Medical Marijuana Dispensary and Cultivation Moratorium

**CHAPTER 6
ZONING – LAND USE PLANNING**

ARTICLE 1 – Planning and Zoning Board

6.0101 Zoning Board

There is hereby created a Zoning Board consisting of 5 members from within the city limits to be appointed by the governing body of the city plus a sixth member appointed by the Board of County Commissioners, which said sixth person shall reside within the unincorporated territory over which the city of Hettinger has exercised its zoning authority. The Zoning Board shall replace and perform the duties of both the Zoning Commission and the Board of Adjustment. The Zoning Board shall elect a chairman from its membership, shall appoint a secretary and shall prescribe rules for the conduct of affairs. The Zoning Board shall assume all duties and responsibilities formerly held by the Zoning Commission and the Board of Adjustment. Further, all North Dakota Statutes applying to the Zoning Commission and Board of Adjustment shall apply to the Zoning Board established hereby. All references in the ordinances of the city of Hettinger and North Dakota Statutes which refer to the Zoning Commission and the Board of Adjustment shall apply to the Zoning Board established hereby.

6.0102 Terms, Compensation, Meetings

The members of the Zoning Board shall be appointed for staggered three year terms and members of the board may serve successive terms. Compensation, and meetings shall be as provided by Chapter 40-48 NDCC.

ARTICLE 2 – Definitions

6.0201 Definitions

For the purposes of this chapter the following words and phrases shall have the meanings herein given:

1. “Accessory Use or Building” is a subordinate use or building customarily incident to and located on the same lot with the main use or building.
2. “Alteration” as applied to a building or structure, is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.
3. “Building” is a structure designed, built, or occupied as a shelter or roofed enclosure for persons, animals, or property, including tents, lunch wagons, dining cars, camp cars, trailers, and other roofed structure on wheels, or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, education, or recreational purposes. For tile purposes of this definition “roof” shall include all awnings or other similar covering, whether or not permanent in nature.
4. “Building Line” is the line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level. The building line is considered a vertical surface intersecting the ground on such line.
5. (a) “Dwelling” is a building designed or used as the living quarters for one or more families.

(b) A mobile home or modular structure shall be considered a dwelling provided it has been converted to a permanent residence with all conveniences and attributes of a modern one-family dwelling, has been placed on a permanent foundation, connected to sewage, water, and electric lines, which has a metal or other adequate strip around the base thereof concealing

the void space between the dwelling and the ground. Said mobile home or modular dwellings shall conform to all other requirements of this ordinance regarding floor space any other specifications.

6. "Dwelling House" is a detached house designed for and occupied exclusively as the residence of not more than two families each living as an independent housekeeping unit.
7. "Dwelling unit" is one or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping and eating.
8. "Dwelling, Multi-Family", is a dwelling or group of dwellings on one plot containing separate living units for three or more families, but which may have joint services or facilities for both.
9. "Family" is a single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking, and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage, or other domestic bond as distinguished from a group occupying a board house, lodging house, club, fraternity or hotel.
10. "Fences" will be constructed as fences, whether they are retaining walls or walls intended as fences or plantings intended as a property divider for the purpose of enclosing, make private, defining property lines or beautification along property lines.
11. "Garage, Private" is a building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.
12. "Lot" is a parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.
13. "Non-conforming Use" is a building, structure or use of land existing at the time of the enactment of this chapter, and which does not conform to the regulations of the district in which it is located.
14. "Setback Building Line" is a building line back of the street line.
15. "Structure" is anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.
16. "Use" is the purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.
17. "Yard" is an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.
18. "Yard, Front" , is an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot.

19. "Yard, Rear" , is an open unoccupied space on the same lot with the building between the rear line of the building and rear line of the lot and extending the full width of the lot.
20. "Yard, Side" , is an open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a lot line.

ARTICLE 3 – Establishment of Districts

6.0301 Use and Area Districts Established

For the purposes of this chapter, the City is hereby divided into use districts and area districts as provided hereafter.

6.0302 Maps and Boundaries

The boundaries of these districts are hereby established as shown on a map entitled "The Zoning Map of the City of Hettinger" which is on file in the office of the City Auditor, which map with all explanatory matter thereon shall be deemed to accompany, be, and is hereby made a part of this Chapter.

6.0303 Annexed Property

Property which has not been included within a district and which has become a part of the City by annexation shall automatically be classified as lying and being in the Hettinger residential district until such classification has been changed by an amendment to the Zoning Ordinances as prescribed by law.

ARTICLE 4 – Extraterritorial Zoning Authority

6.0401 Extension of Zoning Authority

6.0402 Zoning Scheme in Unincorporated Territory

Replaced 6/12/13 See Ordinance No. 2013-02

6.0403 Building Code in Unincorporated Territory

The building code for the city of Hettinger, in its entirety, as specified in Chapter 15, Article 1, of the Ordinances of the City of Hettinger, shall apply to all unincorporated territory over which extraterritorial zoning authority has been authorized pursuant to NDCC 40-47-01.1.

ORDINANCE NO. 2010-03

AN ORDINANCE TO AMENDING AND RE-ENACTING SECTIONS 6.0402 OF THE CITY CODE OF THE CITY OF HETTINGER, NORTH DAKOTA RELATING TO ZONING SCHEME IN UNINCORPORATED TERRITORY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HETTINGER, NORTH DAKOTA AS FOLLOWS:

Section 1: Section 6.0402 entitled “Zoning Scheme in Unincorporated Territory” is hereby amended and re-enacted as follows:

~~The zoning scheme in all unincorporated territory described in Section 6.0401 above shall be that zoning scheme specified by the Board of Commissioners for Adams County, North Dakota, in Adams County Zoning Resolution No. 1, and all amendments or additions thereto, all of which are incorporated herein by reference; and the City Zoning Administrator and the Board of Adjustments shall enforce said county zoning scheme in all such unincorporated territory. Building permit requirements, procedures for appeal and review, dealing with non-compliance with the county zoning scheme, and all such matters, shall be pursuant to applicable provisions of the zoning ordinances of the City of Hettinger.~~

The provisions of this chapter shall be applicable to all property within the corporate limits of the city of Hettinger and its extra-territorial jurisdiction as provided by Chapters 40-47 of the North Dakota Century Code. In addition to zoning regulations, the application of municipal building and property maintenance codes, basic housing codes, subdivision regulations, special use licensing and fire district codes shall be enforced in the extraterritorial zoning area as well as in the incorporated area of the municipality.

Section 3: Repeal of Ordinances in Conflict. All Ordinances and part of Ordinances in conflict herewith are hereby repealed.

Section 4: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 5: Effective Date: This Ordinance shall be in full force and effect from and after final passage.

Steve Turner, Mayor
City of Hettinger

ATTEST:

Patricia Carroll, City Auditor

First Reading: October 13, 2010
Second Reading: November 10, 2010
Final Passage: November 10, 2010

ORDINANCE NO. 2013-02

AN ORDINANCE TO AMENDING AND RE-ENACTING SECTION 6.0401 OF THE CITY CODE OF THE HETTINGER, NORTH DAKOTA, RELATING TO ZONING JURISDICTION.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF HETTINGER, NORTH DAKOTA, AS FOLLOWS:

Section 1: Section 6.0401 of the City Code of the City of Hettinger is hereby amended and re-enacted as follows:

Section 6.0401 Extension of Zoning Authority

Pursuant to NDCC 40-47-01.1, the zoning authority of the City of Hettinger shall extend to each quarter section of unincorporated territory, the majority of which is located within one ~~half~~ mile of the city limits of the City of Hettinger in any direction.

Section 2: Repeal of Ordinances in Conflict. All Ordinances and part of Ordinances in conflict herewith are hereby repealed.

Section 3: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 4: Effective Date: This Ordinance shall be in full force and effect from and after final passage.

Steve Turner, Mayor
City of Hettinger

ATTEST:

Patricia Carroll, City Auditor

1st Reading: May 8, 2013
2nd Reading: June 12, 2013
Final Passage: June 12, 2013

ORDINANCE NO. 2012-02

AN ORDINANCE TO ENACTING SECTION 6.0502 OF THE CITY CODE OF THE CITY OF HETTINGER, NORTH DAKOTA RELATING TO CREW HOUSING FACILITIES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HETTINGER, NORTH DAKOTA, AS FOLLOWS:

Section 1: Section 6.0502 of the City Code of the City of Hettinger, entitled “Crew Housing Facilities Prohibited” is hereby enacted as follows:

6.0502 CREW HOUSING FACILITIES PROHIBITED

1. As used in this Chapter:
 - a. “Crew housing facilities” means one or more lodging units or skid units, ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis, which are not real property, as defined in NDCC 57-02-04, and are not mobile homes, as defined in NDCC 57-55-01. A group of crew housing facilities that are connected physically or by common ownership may be treated as a single crew housing facility for purposes of imposition of crew housing permit fees imposed under this chapter.
 - b. “Crew housing permit” means a right granted by a city or county to locate crew housing facilities on property within the jurisdiction of the city or county under this Chapter and to enjoy attendant services and facilities provided by the city or county.
 - c. “Skid unit” means a structure or group of structures, either single or multisectional, which is not built on a permanent chassis and is ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis.
2. Pursuant to its power, granted by the North Dakota State Legislature, to grant or deny permits related to the location and reporting requirements for crew housing facilities within the jurisdiction of the City; and pursuant to its Home Rule Authority to, among other things, “fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers” and “provide for zoning, planning, and subdivision of public or private property within the city limits” and to “provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law”; and further pursuant to such other powers it may possess as a Home Rule City under the law of the State of North Dakota, the City of Hettinger hereby finds that crew housing facilities are inappropriate for any location within the zoning jurisdiction of the City of Hettinger for any zoning designation, and that such crew housing facilities would cause a detriment to the health, safety, morals or general welfare of the community.
3. Accordingly, the City of Hettinger hereby prohibits any crew housing facility within the jurisdiction of the City of Hettinger or its extra-territorial zoning jurisdiction.

Section 2: Repeal of Ordinances in Conflict. All Ordinances and part of Ordinances in conflict herewith are hereby repealed.

Section 3: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 4: Effective Date: This Ordinance shall be in full force and effect from and after final passage.

Steve Turner, Mayor

ATTEST:

Patricia Carroll, City Auditor

First Reading: March 14, 2012
Second Reading: April 11, 2012
Final Passage: April 11, 2012

ARTICLE 5 – Application of Regulations

6.0501 Application of Regulations

Except as provided in this Chapter:

1. **Conformity of Buildings and Land.** No building, structure, or premises shall be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged, or altered except in conformity with the regulations herein specified for the district, as shown on the official map, in which it is located.
2. **Conformity of Buildings.** No building structure or premises shall be erected, altered or used so as to produce smaller yards or less unoccupied area, and no building shall be occupied by more families than prescribed for such building, structure or premises for the district in which it is located.

3. Conformity of Open Spaces. No yard, court or open space, or part thereof, shall be included as a part of the yard, court or open space similarly required for any other building, structure or dwelling under this chapter.

ARTICLE 6 – Non-Conforming Uses

6.0601 Non-Conforming Uses

The lawful use of any building, structure, or land existing at the time of the enactment of this Chapter may be continued, although such use does not conform with the provisions of this chapter, provided the following conditions are met:

1. Alterations. A non-conforming building or structure may be altered, improved or reconstructed provided such work is not to an extent exceeding \$500.00 value, unless the building or structure is changed to a conforming use.
2. Extension. A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building or structure which existed prior to the enactment of this ordinance shall not be deemed the extension of such non-conforming use.
3. Changes. No non-conforming building, structure or use shall be changed to another non-conforming use.
4. Abandonment. A non-conforming use of a building or premises which has been abandoned shall not thereafter be returned to such non-conforming use.
5. Unlawful Use Not Authorized. Nothing in this Chapter shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of this Chapter.
6. Certificate of Non-Conforming Use. Upon the effective date of this Chapter the City of Hettinger shall issue a “Certificate of Non-Conforming Use” to all owners of property, the use of which does not conform to the provisions of the use zone in which the property is located.
 - a. In accordance with the provisions of this section no use of land, buildings, or structures shall be made other than that specified on the “Certificate of Non-Conforming Use”, unless said use shall be in conformity with the provisions of the use zone in which the property is located.
 - b. A copy of each “Certificate of Non-Conforming Use” shall be filed with the office of the City Auditor. No permit or license shall be issued to any property for which a “Certificate of Non-Conforming Use” has been issued until said permit or license has been approved.
7. District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any non-conforming uses existing therein.
8. Exception, Consent Required by Adjacent Property Owners. An exception shall be allowed in non-conforming uses only whenever written consent of 75% of the owners of record of lands of neighbors within 300 feet of the proposed dwelling or structure is filed with the application for a permit.

ARTICLE 7 – Use Districts

6.0701 Use Districts

The City is hereby divided into the following Use Districts to be known as:

- R-1 Residential Districts, Single-Family
- R-2 Residential Districts, Two-Family
- R-3 Residential Districts, Multi-Family
- A Accessory Uses in Residential Districts
- C Commercial Districts
- I Industrial Districts
- T Trailer Parks

6.0702 R-1 – Residential Districts – Single – Family

In a single-family district the following buildings and uses are permitted:

1. Dwellings houses occupied by not more than one family.
2. Publicly owned and operated buildings.
3. Churches and parish houses.

6.0703 R-2 – Residential Districts – Two – Family

In a two-family district the following buildings and uses are permitted:

1. Dwellings houses each occupied by not more than two families. Each family shall not be allowed more than two roomers or boarders per family.
2. All other uses permitted in an one-family district.

6.0704 “R-3” – Residential Districts – Multi – Family

In a multi-family district the following buildings and uses are permitted:

1. All uses permitted and as regulated in a two-family district and single-family district.
2. Multi-family dwellings.
3. Private clubs.
4. Nursing and rest homes.
5. Homes for the aged.
6. Hospitals.
7. Lodges or social buildings.
8. Hotels, motels, tourist camps.

6.0705 “A” Accessory Uses in Residential Districts

The following accessory uses and buildings are permitted in residential districts:

1. Professional office for a physician, clergyman, architect, engineer, attorney, or similar professional person residing in such main building.
2. Home Occupation. Customary home occupation for gain carried on in the main building or a building accessory thereto requiring only home equipment and employing no non-resident help, and no trading in merchandise is carried on.
3. Agricultural uses, gardens.
4. Private garages.
5. Any other accessory use customarily incident to a use authorized in a residential district.

6.0706 “C” Commercial District

The following buildings and uses are permitted in the commercial district:

1. Retail stores and shops.
2. Service establishments.
3. Business and professional offices.
4. Eating Establishments.
5. Funeral homes and mortuaries.
6. Transportation services.
7. Amusements and recreation.
8. Wholesale businesses.
9. Storage buildings and warehouses.
10. Any other buildings of use similar to the uses herein listed in the type of services or goods sold.
11. Any accessory use customarily incident to a use herein listed.

6.0707 I – Industrial

The following buildings and uses are permitted in the industrial district:

The compounding, assembly, treatment, manufacture, processing and packing of articles or materials shall be permitted in the industrial district.

1. Uses permitted. All uses permitted in the industrial district.

2. Uses prohibited. Dwelling or dwelling unit.

6.0708 “T” Trailer Parks

In a trailer park district, the following buildings and uses are permitted:

North Dakota licensed trailer parks.

ARTICLE 8 – Area Districts

6.0801 Area Regulations – Residential Districts

In any use district no residence building shall hereafter be erected, established or altered on a lot having a lot area of not less than the square feet required as follows:

1. One-family---not less than 7,000 sq. ft. (Plot pre-recorded 4, 500 sq. ft.)
2. Two-family-----not less than 10,000 sq. ft.
3. Multi-family ---not less than 10,000 sq. ft., and the following minimum lot widths:
 - a. One-family---not less than 75 feet of lot width measured along the front building line (Plot prerecorded, 50 feet)
 - b. Two-family---not less than 75 feet of lot width measured along the front building line.
 - c. Multi-family---not less than 100 feet of lot width measured along the front building line.

and the following minimum floor area ratios:

- a. One family --- not over 25% of the lot area and not less than 950 feet.
 - b. Two family ----not over 25% of the lot area, per story.
 - c. Multi-family-----not over 35% of the lot area, per story.
4. All construction shall be of such quality as to conform with the present buildings in said area.
 5. Accessory buildings. Attached garages or accessory buildings connected with the main building by a breeze-way or other permanently constructed connection shall be construed to be part of the main building. All other accessory buildings shall be at least twenty (20) feet from any dwelling; provided, however, that all accessory buildings located not less than twenty (20) feet to the rear of the main buildings may be erected not less than five (5) feet from a side lot line except on corner lots, provided that it will not be less than twenty (20) feet distant from any existing residence. An accessory building is a subordinate building customarily incident to and located on the same lot with the main building. Said building must be fifteen feet from rear lot line.
 6. Consent Required of Adjacent Property Owners. No structure, whether a mobile home, modular structure, or any other type of structure shall be placed on a lot or lots as a dwelling

without the written consent of 51% of the owners of record of lands of neighbors within 300 feet of the proposed dwelling. If 51% of such neighbors fail to give written consent of the proposed dwelling, then upon appeal to the Board of Adjustment. The Board of Adjustment may determine whether or not the failure of the written consent of such neighbors was exercised with reasonable consideration with a view to conserving the value of buildings and encouraging the appropriate use of land throughout the city.

ARTICLE 9 – Yard Regulations

6.0901 Yard Regulations

1. In any use district no residence building shall hereafter be erected, established or altered on a lot and shall conform to yard regulations as follows:
 - a. In one-family districts there shall be:
 - i. A front yard of not less than 25 feet in depth.
 - ii. A side yard on each side of not less than 12% of lot width.
 - iii. A rear yard of not less than 25% of lot depth.
 - b. In two-family districts there shall be:
 - i. A front yard of not less than 25 feet in depth.
 - ii. A side yard on each side of not less than 12% of lot width.
 - iii. A rear yard of not less than 25% of lot depth
 - c. In multi-family districts there shall be:
 - j. A front yard of not less than 25 feet in depth.
 - iv. A side yard on each side of not less than 12% of lot width.
 - v. A rear yard of not less than 25% of lot depth
2. Sidewalk Regulation: Boulevard sidewalk construction shall not be less than 5 feet in width and adjacent to the curb. All curb to be of roll type construction. All lead-in sidewalks shall be not less than 3 feet in width.
3. Fences and Walls used as fences: Fences, walls constructed as fences and plants planted as borders or barriers may be constructed or planted within one (1) foot of the owners “side” of the property line with signed permission of their neighbor on both sides. If the property is a corner lot, they must also observe the maximum height and taper it down on the corner.
 - a. Fences may be no more than eight (8) feet tall on the side and rear property lines.
 - b. Fences may be no more than four (4) feet tall on the front property line.
 - c. Corner lot fences must be tapered down to four (4) feet or dropped down to four (4) feet at least fifteen (15) feet back from the corner.
 - d. Fences and walls that are decorative only on one side must be placed in such a way as to have the decorative side facing out away from the property owner constructing the fence and the owner must maintain it in good condition over the years.
 - e. A surveyor’s certificate by a qualified engineer will be required in addition to a building permit if any one of the following circumstances exist:
 - i. Property owner’s inability to identify property boundaries
 - ii. Plantings at maximum growth may exceed owner’s boundary.
 - iii. Inability to obtain adjoining property owner’s acknowledgement and consent of a planned project because they do not mutually agree on adjoining property lines.

ARTICLE 10 – Enforcement of Zoning

6.1001 Administrative Official

1. Administrative Official. Except as otherwise provided herein, the zoning administrator shall administer and enforce the provisions of this chapter, including the receiving of applications, the inspection of premises and the issuing of building permits. No building permit or certificate of occupancy shall be issued by him except where the provisions of this chapter have been complied with.
2. Building Permit Required. No building or structure shall be erected, added to, or structurally altered, in the amount exceeding \$500.00 value, until a building permit therefore has been issued by the zoning administrator. All applicants for such permits shall be in accordance with the requirements herein and, unless upon written order of the Board of Adjustment, no such building permit or certificate of occupancy, shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this chapter.
 - a. Matter accompanying application. There shall be submitted with all applications for building permits two copies of a layout or plot drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on tile lot of the building and necessary to determine and provide for the enforcement of this ordinance.
 - b. Payment of Fee. One copy of such layout or plot plan shall be returned when approved by the zoning administrator together with such permit to the applicant upon payment of a fee set by the City Council.
3. No building permit shall be issued for any construction, alteration, or addition, within the City of Hettinger or within its Extra-territorial Area, except as provided in Article 5, Non-Conforming Use, of the Hettinger Zoning Ordinance, unless the land upon which the construction, alteration, or addition is to occur, is part of a subdivision plat approved by the City Council of the City of Hettinger pursuant to applicable City and State laws and has been zoned pursuant to the City of Hettinger Zoning Ordinance. **(The adoption of this paragraph is considered to be an interim measure until the Comprehensive Plan for the City of Hettinger is completed and a revision of the zoning ordinance and preparation of a subdivision ordinance plan be completed).**
4. Penalty for Failure to Obtain Building Permit. In the event that any landowner fails to apply for and obtain a building permit as required by the ordinances of the City of Hettinger prior to the commencement of construction requiring the acquisition of a building permit, then the landowner upon which such unauthorized construction was commenced shall be required to pay a penalty in the amount of \$500.00 prior to the issuance of a permit for said construction. In the event that a landowner fails to obtain a building permit and further fails to pay the penalty assessed, then in that event the City of Hettinger shall have all enforcement remedies provided for elsewhere within city ordinances dealing with zoning, including but not limited to the section 6.1103 of the City of Hettinger Zoning Ordinance.

Further, the erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure, or the use of any building, structure, or land, in violation of the zoning ordinances of the City of Hettinger, or of any regulation, order, requirement, decision or determination made under authority conferred by the zoning

ordinances of the city of Hettinger, shall constitute the maintenance of a public nuisance and any appropriate action or proceeding may be instituted by the city, through any administrative officials, department, board or bureau charged with the enforcement of this article. The term "appropriate action" includes all of those remedies provided for in section 6.1103 of the City of Hettinger Zoning Ordinance, and also includes those provisions for dealing with a public nuisance as provided in Chapter 12 of the Ordinances of the City of Hettinger.

ARTICLE 11 – Board of Adjustment

6.1101 Creation of Board

1. **Creation, Appointment and Organization.** A Board of Adjustment is hereby created. Said Board shall consist of five members for three year terms. The Board shall elect a chairman from its membership, shall appoint a secretary, and shall prescribe rules for the conduct of its affairs.
2. **Appeal to Board of Adjustment.** An appeal to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the city. The appeal shall be taken within 30 days from any order, requirement, decision, or determination made by tile administrative officer charged with the enforcement under this ordinance. Upon appeal the administrative officer forthwith shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance, or to effect any variation in such ordinance.
3. **Hearing of Appeal.** The Board of Adjustment shall fix a reasonable time for the hearing of the appeal and shall give due notice thereof to the parties. It shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The Board may reverse or affirm, in whole or in part, or may modify, the order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end, tile Board shall have all the powers of the administrative officer from whom tile appeal is taken. Where there is practical difficulty or unnecessary hardship in the way of carrying out the strict letter of the ordinance, the Board, in passing upon an appeal, may vary or modify any of the regulations or provisions of this ordinance relating to the use, construction, or alteration of buildings or structures or the uses of lands so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
4. **Effect of Appeal.** An appeal to the Board of Adjustment stays all proceedings in furtherance of the action appealed from unless tile officer from whom tile appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay, in its opinion, would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by a restraining order which may be granted by the Board of Adjustment or by a court of record on application and on due cause shown after notice to tile officer from whom tile appeal is taken.
5. **Determination of Board of Adjustment Reviewable by Certiorari.** Every decision of tile Board of Adjustment shall be subject to review by certiorari. The application for a writ of certiorari shall be made to the District Court of Adams County, North Dakota,

within fifteen (15) days after notice of the decision of the Board, and such writ shall be returnable within twenty (20) days after the rendition of such decision.

6.1102 Amendments

1. Regulations, restrictions, and boundaries may be emended, supplemented, changed, Modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by tile owners of twenty percent or more:
 - a. Of the area of the lots included in such proposed change; or
 - b. Of the area adjacent, extending 150 feet from the area to be changed, excluding the width of streets, the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of the city.
2. Public Hearing. No change or amendment to any regulation, restriction, or boundary shall become effective until after a public hearing between thereon at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of tile time and the place of such hearing shall be published in the official newspaper of the city, and such notice shall contain a description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.

6.1103 Enforcement

The erection, construction, reconstruction, alteration, repair conversion of maintenance of any building or structure, or the use of any building, structure or land, in violation of this article, or of any regulation, order, requirements, decision or determination made under authority conferred by this article, shall constitute the maintenance of a public nuisance and any appropriate action or proceeding may be instituted by the city, through any administrative official, department, board or bureau charged with the enforcement of this article:

1. To prevent such unlawful erection, construction, reconstruction alteration, repair, conversion, maintenance or use;
2. To restrain, correct or abate such violation;
3. To prevent the occupancy of the building, structure or land; or
4. To prevent any illegal act, conduct, business or use in or about such premises.

A violation of any provision of this article or a violation of or refusal or failure to comply with any regulation, order, requirement, decision or determination made under authority conferred by this article shall be punishable by a fine not exceeding \$100.00 or by imprisonment in a jail for a period not exceeding 90 days. Each day any violation shall exist shall constitute a separate offense.

ARTICLE 12 – Annexations to City of Hettinger

6.1201 Tract of land lying in S1/2NW1/4 and N1/2N1/2SW1/4 of Section 12-129-96

1. The City Council hereby determines that a written petition signed by owners of not less than three-fourths in assessed value of the following described property which is

contiguous to the City of Hettinger and not embraced within the limits thereof, has been filed with the City Auditor of the City of Hettinger:

A tract of land lying in the S1/2NW1/4 and N1/2N1/2SW1/4 of Section 12-129-96, Adams County, North Dakota, more particularly described as follows, to-wit:

Beginning at a point on the east line of said N1/2N1/2SW1/4, said point of beginning being 62.5 feet south of center of said Section 12, thence in a westerly direction on a bearing of N 89° 58'30" W a distance of 1680.6 feet, thence in a northerly direction on a bearing of due north a distance of 1169.9 feet, thence in an easterly direction on a bearing of S 89° 54' E a distance of 1677.8 feet, to a point on the east line of said S1/2NW1/4, thence in a southerly direction on a bearing of S 0° 09' E a distance of 1167.5 feet to the point of beginning; EXCEPT the following described real estate:

Starting at a point 968 feet east and 62.5 feet south of the southwest corner of the NW ¼ of Section 12-129-96, thence at a right angle north a distance of 445 feet, thence east at a right angle a distance of 195 feet, thence south at a right angle a distance of 445 feet, thence west at a right angle a distance of 195 feet to the point of beginning. Said tract contains 2.0 acres more or less. Tract for annexation contains a total of 43.05 acres more or less.

2. The corporate limits of the City of Hettinger are hereby extended and increased so as to include and embrace within the corporate limits of the City of Hettinger the territory described in Section One hereof, and such territory is hereby annexed and declared to be a part of the City of Hettinger.
3. The map or plat attached to this ordinance is an accurate map of the territory annexed, and the same is hereby adopted as the official map and plat of the territory hereby annexed, which map and plat show the legal boundaries thereof, together with the avenues, streets, alleys, and lanes and the locations thereof, and the same are hereby dedicated to public use for the purposes designated on the map or plat.
4. The Mayor of the City of Hettinger is hereby authorized and directed to certify that the map is an accurate map of the territory annexed under the provisions of this ordinance and copy of said ordinance with an accurate map of the annexed area shall be filed and recorded with the Adams County Register of Deeds, whereupon annexation shall than be effective.
5. On the filing and recording of the copy of this ordinance, together with the attached map, in the office of the Adams County Register of Deeds, the fee of all avenues, lanes, streets, highways, roads, and alleys shown in and on the map and plat shall vest in the City of Hettinger.
6. If any provision of this ordinance shall be held invalid, its invalidity shall not affect any other provisions of this ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this ordinance are hereby declared to be severable.

6.1202 Tract of land lying in N1/2N1/2SW1/4 of Section 12-129-96

1. The City Council hereby determines that a written petition signed by owners of not less than three-fourths in assessed value of the following described property which is contiguous to the City of Hettinger and not embraced within the limits thereof, has been filed with the City Auditor of the City of Hettinger:

Starting at a point 1113' north of the southwest corner of the N1/2N1/2SW1/4 of Section 12-129-96, Adams County, North Dakota, thence north on the section line 658', thence east 968', thence south 658', thence west 968' to the starting point. EXCEPT that portion described as follows, to-wit:

Starting at a point 1621' north of the southwest corner of the N1/2N1/2SW1/4 of Section 12-129-96, Adams County, North Dakota, thence east 200', thence north 150', thence west 200', thence south 150' to the starting point. Said tract contains 13.9 acres more or less.

2. The corporate limits of the City of Hettinger are hereby extended and increased so as to include and embrace within the corporate limits of the City of Hettinger the territory described in Section One hereof, and such territory is hereby annexed and declared to be a part of the City of Hettinger.
3. The map or plat attached to this ordinance is an accurate map of the territory annexed, and the same is hereby adopted as the official map and plat of the territory hereby annexed, which map and plat show the legal boundaries thereof, together with the avenues, streets, alleys, and lanes and the locations thereof, and the same are hereby dedicated to public use for the purposes designated on the map or plat.
4. The Mayor of the City of Hettinger is hereby authorized and directed to certify that the map is an accurate map of the territory annexed under the provisions of this ordinance and a copy of said ordinance with an accurate map of the annexed area shall be filed and recorded with the Adams County Register of Deeds, whereupon annexation shall then be effective.
5. On the filing and recording of the copy of this ordinance, together with the attached map, in the office of the Adams County Register of Deeds, the fee of all avenues,

lanes, streets, highways, roads, and alleys shown in and on the map and plat shall vest in the City of Hettinger.

6. If any provision of this ordinance shall be held invalid, its invalidity shall not affect any other provisions of this ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this ordinance are hereby declared to be severable.

6.1203 Tract of land lying in NE1/4 of Section 14-219-96W

1. The City Council hereby determines that a written petition signed by owners of not less than three-fourths in assessed value of the following described property which is contiguous to the City of Hettinger and not embraced within the limits thereof, has been filed with the City Auditor of the City of Hettinger, North Dakota:

All that portion of the NE1/4 of Section 14, Township 129N, Range 96W, 5th P.M., lying northeasterly of a strip of land 150.0 ft. wide, located on the northeasterly side of and measured at right angles to and parallel with the following described highway centerline as surveyed and staked:

Beginning at a point west along the section line 1686.1 ft., more or less, from the northeast corner of said NE1/4, said point being the true point of beginning, thence running S 64° 08' E 819.8 ft., thence along a 300 ft. spiral of a 2° 30' curve to the left 300.0 ft., thence along a 2° 30' curve to the left 697.5 ft., more or less, until said strip crosses the east line of said NE1/4.

Excepting all that portion lying southwesterly of a line located 30.0 ft. northeasterly of and parallel with the following described centerline as surveyed and staked:

Beginning at a point west along the section line 1686.1 ft., more or less, from the northeast corner of said NE1/4, thence S 64°08' E 819.8 ft., thence along a 300 ft. spiral of a 2° 30' curve to the left 300.0 ft., thence along a 2° 30' curve to the left 300.0 ft., more or less, from the northeast corner of the NE1/4, said point being the true point of beginning, thence running N 14° 37' E 35.0 ft., thence N 23° 45' W 100.0 ft., thence N. 32° 29' W 100.0 ft., thence N 38° 28'W until said line crosses the north line of said NE. Tract contains 4.85 acres, more or less.

2. The corporate limits of the City of Hettinger are hereby extended and increased so as to include and embrace within the corporate limits of the City of Hettinger the territory described in Section One hereof, and such territory is hereby annexed and declared to be a part of the City of Hettinger.
3. The map or plat attached to this ordinance is an accurate map of the territory annexed, and the same is hereby adopted as the official map and plat of the territory hereby annexed, which map and plat show the legal boundaries thereof, together with the

avenues, streets, alleys, and lanes and the locations thereof, and the same are hereby dedicated to public use for the purposes designated on the map or plat.

4. The Mayor of the City of Hettinger is hereby authorized and directed to certify that the map is an accurate map of the territory annexed under the provisions of this ordinance and a copy of said ordinance with an accurate map of the annexed area shall be filed and recorded with the Adams County Register of Deeds, whereupon annexation shall then be effective.
5. On the filing and recording of the copy of this ordinance, together with the attached map, in the office of the Adams County Register of Deeds, the fee of all avenues, lanes, streets, highways, roads, and alleys shown in and on the map and plat shall vest in the City of Hettinger.
6. If any provision of this ordinance shall be held invalid, its invalidity shall not affect any other provisions of this ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this ordinance are hereby declared to be severable.

6.1204 Tract of land lying in NW1/4 and SW1/4 of Section 12-129-96 AND a tract of land lying in the N1/2N1/2S1/4 and the S1/2S1/2N1/4 of Section 12-129-96

1. The City Council hereby determines that a written petition signed by owners of the following described property which is contiguous to the City of Hettinger and not embraced within the limits thereof, has been filed with the City Auditor of the City of Hettinger, North Dakota:

A tract of land with portions located in the Northwest Quarter (N1/4) and the Southwest Quarter (SW1/4) of Section Twelve (12), Township One Hundred Twenty-Nine (129), Range Ninety-six (96), Adams County, North Dakota, and is more particularly described as follows:

Starting at a point 968 feet east and 62.5 feet south of the southwest corner of the NW1/4 of Section Twelve (12), 129-96, thence at a right angle, north a distance of 195 feet, thence south at a right angle a distance of 445 feet, thence west at a right angle a distance of 195 feet to the point of beginning. Said tract contains 2.0 acres more or less.

AND

A tract of land situated in the N1/2N1/2S1/4 and the S1/2S1/2N1/4 of Section Twelve (12), Township One Hundred Twenty-Nine (129), Range Ninety-six (96) West, Adams County, North Dakota, and no more particularly described as follows:

Starting at a point 164.5 feet north of the southwest corner of the Northwest Quarter (NW1/4) of Section Twelve (12), Township One Hundred Twenty-nine (129) North, Range Ninety-six (96) West, which is the point of beginning; thence East at a right angle a distance of 288 feet; thence South at a right angle a distance of 227 feet; thence east at a right angle a distance of 680 feet; thence North at a right angle a distance of 455 feet; thence West at a right angle a distance of 968 feet; thence South at a right angle a distance of 228 feet; to the point of beginning. Said tract contains 8.5 acres, more or less.

2. The corporate limits of the City of Hettinger are hereby extended and increased so as to include and embrace within the corporate limits of the City of Hettinger the territory described in Section One hereof, and such territory is hereby annexed and declared to be a part of the City of Hettinger.
3. The map or plat attached to this ordinance is an accurate map of the territory annexed, and the same is hereby adopted as the official map and plat of the territory hereby annexed, which map and plat show the legal boundaries thereof, together with the avenues, streets, alleys, and lanes and the locations thereof, and the same are hereby dedicated to public use for the purposes designated on the map or plat.
4. The Mayor of the City of Hettinger is hereby authorized and directed to certify that the map is an accurate map of the territory annexed under the provisions of this ordinance and a copy of said ordinance with an accurate map of the annexed area shall be filed and recorded with the Adams County, North Dakota, Register of Deeds, whereupon annexation shall then be effective.
5. On the filing and recording of the copy of this ordinance, together with the attached map, in the office of the Adams County, North Dakota, Register of Deeds, the fee of all avenues, lanes, streets, highways, roads, and alleys shown in and on the map and plat shall vest in the City of Hettinger.
6. If any provision of this ordinance shall be held invalid, its invalidity shall not affect any other provisions of this ordinance that can be liven effect without the invalid provision, and for this purpose the provisions of this ordinance are hereby declared to be severable.

ARTICLE 13 – Medical Marijuana Dispensary and Cultivation Moratorium

6.1205 Medical Marijuana Dispensary and Cultivation Moratorium

1. Purpose and Intent.

The purpose of this article is to temporarily preserve the status quo and enable sufficient time to review, study, hold public hearings, and prepare, adopt, and amend the City Ordinance relating to appropriate locations for medical marijuana dispensing facilities and cultivation. To accomplish the above stated objectives and to ensure that the placement, construction, or cultivation for medical marijuana complies with all applicable federal and state laws, the City of Hettinger adopts this single, comprehensive moratorium.

By enacting this Ordinance, it is the city's intent to not take any action on any application that would have the effect of allowing or permitting the development of medical marijuana dispensing facilities or cultivation. It is not the city's intent to permanently deny development orders and permits for other uses that are permitted by right or conditional use permit and comply with all applicable local, state, or federal codes, ordinances, regulations, and policies

2. Findings and Declarations

The City of Hettinger's City Council makes the following findings in support of the enactment of this interim moratorium:

- a. Pursuant to chapter 40-47-01 of the North Dakota Century Code (NDCC), the City of Hettinger may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
- b. The federal Controlled Substance Act (21 U.S.C. Section 801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana and defines it as drug paraphernalia.
- c. The North Dakota Uniform Controlled Substances Act (NDCC 19-03.1) currently recognizes marijuana as a Schedule 1 Controlled Substance and varies in penalties dependent upon . amount and number of offenses.
- d. On November 8, 2016, North Dakota voters approved Initiated Statutory Measure 5, the North Dakota Compassionate Care Act. The intent of the initiative was to support the legalizing of medical marijuana to treat defined debilitating medical conditions, such as cancer, AIDS, hepatitis C, ALS, glaucoma, and epilepsy, and to develop certain procedures for regulating medical marijuana growing, dispensing, and usage.
- e. The North Dakota Legislature is currently in session and lawmakers have proposed

amendments to the approval initiative. The proposed Senate Bill 2344 would provide more restrictions on cultivation provisions, define acceptable distances for dispensaries, and outline the role of local zoning authority. This pending legislation leaves many uncertainties for local jurisdictions to make decisions in the event applications are submitted.

- f. Without sufficient regulations, standards, procedures, and thresholds which are enforceable at both the state and local level, there is a current and immediate threat to the public health, safety and welfare regarding Medical Marijuana Dispensing Facilities and cultivation.
- g. Crop production is allowed in the A-Agricultural District without the need for a use permit and is intended to apply to activities that primarily involve raising, producing, or keeping plants. The current city land use regulations related to crop production do not adequately address the unique legal, land use, environmental, and public health, safety, and welfare issues and impacts associated with cultivating marijuana.
- h. A temporary moratorium on Medical Marijuana Dispensing Facilities and cultivation of marijuana is necessary to provide time for the state legislature to study and develop appropriate regulations that will apply to local jurisdictions.
- i. A temporary moratorium on Medical Marijuana Dispensing Facilities and cultivation of marijuana is also necessary to provide time for the city to study and develop appropriate regulations that are consistent with state and federal law.
- j. This Ordinance is adopted as an urgency ordinance and shall be effective for a period of one (1) year from this passage. Based on the findings set forth above in this section of the Ordinance, the City Commission finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive ordinance and/or code amendment addressing marijuana dispensaries and cultivation within the city's zoning jurisdiction.

3. Applicability

This moratorium shall be applicable to all lands with the City of Hettinger's zoning jurisdiction including both city boundaries and extraterritorial area.

4. Definitions

For the purposes of this Ordinance, the following definitions apply:

- a. Cultivation: The planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.
- b. Drug Paraphernalia: All equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of chapter NDCC 19-03.1 (NDCC 19-03.4).
- c. Marijuana: All parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of

the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalk, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination (NDCC, 19-03.1).

d. Medical Marijuana Dispensing Facility: Any establishment where low-THC or medical cannabis is permitted to be dispensed by an approved dispensing organization pursuant to the North Dakota Century Code.

5. **Effective Date**

This moratorium shall become effective as provided by law The moratorium shall terminate one (1) year from the effective date of this ordinance unless the City Council rescinds or extends the moratorium by subsequent ordinance.

6. **Zoning in Progress**

The City of Hettinger hereby recognizes the city staff intend to study and prepare regulations that will result in the regulation of medical marijuana dispensing facilities and cultivation. These regulation, if adopted, will amend the City's Ordinance. All affected property and business owners are placed on notice with respect to these pending regulations and the action being taken by the appropriate departments within the city.

7. **Imposition of Temporary Moratorium**

The City of Hettinger hereby imposes a temporary moratorium on the acceptance of applications for, the processing of, and the issuance of development permits, development orders or any other official action of the City of Hettinger permitting or having the effect of permitting Medical Marijuana Dispensing Facilities or cultivation, except as provided in this ordinance, for a period of one (1) year following the effective date of this ordinance. Further, the review of any applications for Medical Marijuana Dispensing Facilities pending upon the effective date of this ordinance shall be abated.

8. **Prohibition on Cultivation**

Cultivation of marijuana is prohibited in all land use categories and zoning districts within the City of Hettinger's zoning jurisdiction. The city shall not permit, allow, or process applications for land use entitlements for, the use of real property for the cultivation of marijuana.

9. **Submittal of Applications**

Initiating from the effective date of this moratorium, an applicant for any development permit, development order, or any other official city action which would facilitate the establishment of a Medical Marijuana Dispensing Facility or cultivation of medical marijuana shall be required to disclose its intention with its application for a permit or approval. In the event it is determined by the city that an applicant for a permit or approval has failed to disclose its intend to establish a Medical Marijuana Dispensing Facility or cultivation of medical marijuana, the city shall be authorized to enforce the article by the methods set forth in Section X.

10. **Penalties**

This moratorium may be enforced by the following methods of enforcement:

- a. Revocation or temporary suspension of necessary development permits, development orders, and/or certificates of occupancy and/or licenses; or

- b. By an injunctive relief, civil penalties or both, through a court of competent jurisdiction; or
- c. By any other process permitted by law or equity.

11. **Severability**

If any section, subsection, sentence, clause, phrase, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall be construed to render the remaining provisions of this moratorium invalid or unconstitutional.

12. **Conflict with State Law**

Nothing in this moratorium is intended to conflict with the provisions of the North Dakota Century Code. In the event of a direct and express conflict between this moratorium and the North Dakota Century Code, then the provision of the North Dakota Century Code takes precedence.

FLOODPLAIN ORDINANCE

AN ORDINANCE ENACTING ARTICLE 13 OF CHAPTER 6 OF THE CITY CODE
OF THE CITY OF HETTINGER, NORTH DAKOTA RELATING TO FLOODPLAIN

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HETTINGER, NORTH DAKOTA,
AS FOLLOWS:

Section 1: Article 13 of Chapter 6 entitled "Floodplain Ordinance" is hereby amended and re-enacted as follows:

FLOODPLAIN ORDINANCE

SECTION 1.0

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

6.1301 STATUTORY AUTHORIZATION

The Legislature of the State of North Dakota has in North Dakota Century Code Chapters 40-47, 11-33, and 58-03, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the City Council of the City of Hettinger, North Dakota, does ordain as follows:

6.1302 FINDINGS OF FACT

- (1) The special flood hazard areas of the City of Hettinger are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

6.1303 METHODS OF REDUCING FLOOD LOSSES

In order to limit and prevent flood damages in the City of Hettinger, this ordinance has provisions for restricting, prohibiting, and guiding development activities that can be subject to flood damage.

6.1304 DISCLAIMER

This ordinance shall not create liability on the part of the City of Hettinger, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

6.1305 DEFINITIONS

“Base flood or 100-year flood” means the flood having a one percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation” (BFE) means the height of the base flood or 100-year flood usually in feet above mean sea level.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Best Available Data” (BAD) means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).

“Conveyance or hydraulic conveyance” means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

“Flood Insurance Rate Map” (FIRM) means the official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zone A.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or from the unusual and rapid accumulation or runoff of surface waters from any source.

“Floodproofing” (Dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

“Floodway or regulatory floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

“Lowest floor” means the lowest floor of a structure including the basement.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”, but does include “mobile home”.

“Manufacture Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“New construction” means structures of which the “start of construction” commenced on or after the effective date of this ordinance.

“Reasonably safe from flooding” means base flood waters all not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

“Recreational vehicle” means a vehicle which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck;
- (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
- (e) travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.

“Special Flood Hazard Area” (SFHA) means an area of land that would be inundated by a flood having a one-percent chance of occurring in any given year.

“Start of construction” includes a substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

“Structure” means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

6.1305 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all special flood hazard areas within the jurisdiction of the City of Hettinger as identified by the Federal Emergency Management Agency in its latest Flood Insurance Rate Map, dated _____, and all subsequent revisions thereto. This map is adopted by reference and declared to be a part of this ordinance. It is on file at the City Auditor's office.

SECTION 2.0

PERMIT PROCEDURES

6.1321 PERMITS

Before any construction or development begins within a special flood hazard area, a permit shall be obtained from the CITY AUDITOR, hereinafter referred to as the responsible person. The permit shall include:

- (1) Elevation in relation to mean sea level, of the lowest floor (including basement) of all proposed structures;
- (2) Elevation in relation to mean sea level to which any structure will be floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 3.2(2); and
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

6.1322 USE OF OTHER BASE FLOOD DATA

When base flood elevation data has not been provided in accordance with Section 1.6, LANDS TO WHICH THIS ORDINANCE APPLIES, the responsible person shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, (known as best available data) in order to administer this section, Section 3.1, GENERAL STANDARDS, and Section 3.2, SPECIFIC STANDARDS.

3.1323 PERMIT REVIEW

All permit applications shall be reviewed (using the best available base flood elevation data from any federal, state, or local source) to: (a) assure sites are reasonably safe from

flooding; (b) determine that all necessary permits have been obtained from those federal, state, local agencies from which prior approval is required; and (c) to determine if the proposed development adversely affects the flood carrying capacity of a flood-prone area. For the purposes of this ordinance, “adversely affects” means damage to adjacent properties because of rises in flood stages attribute to physical changes of the channel and the adjacent overbank areas.

- (1) If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further considerations.
- (2) If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer) for the proposed development shall be required.
- (3) If the proposed development is a building, then the following provisions of this ordinance shall apply.

SECTION 3.0

STANDARDS

6.1331 GENERAL STANDARDS

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

- (1) Anchoring
 - (a) All new construction and substantial improvements (including additions) shall be anchored to prevent flotation, collapse or lateral movement of the structure.
 - (b) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- (2) Construction Materials and Methods
 - (a) All new construction and substantial improvements shall be constructed using methods and with materials and utility equipment that resist or minimize flood damage.
 - (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
 - (c) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (3) Utilities

- (a) All new and replacement water supply systems and sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- (c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) Subdivision Proposals

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

(5) Encroachments

Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.

3.1332 SPECIFIC STANDARDS

(1) Residential Construction

- (a) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation.
- (b) Manufactured homes shall be placed so that the lowest floor is elevated on fill to at least one foot above the base flood elevation.

(2) Nonresidential Construction

New construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities shall:

- (a) Be adequately floodproofed up to an elevation no lower than two feet above the base flood elevation.
- (b) Be floodproofed so that below the two feet above the base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design methods of construction are in accordance with accepted standards of practice.
- (c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (d) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the responsible person as set forth in Section 4.1.

SECTION 4.0

ADMINISTRATIVE REQUIREMENTS

6.1341 INFORMATION TO BE OBTAINED AND MAINTAINED

The responsible person shall:

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, whether or not the structure contains a basement.
- (2) For all new substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed.
 - (b) Maintain the floodproofing certifications required in Section 3.2(2).
- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

6.1342 ALTERATION OF WATERCOURSES

The responsible person shall:

- (1) Notify nearby communities, water resource districts and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and

- (3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

6.1343 PENALTIES FOR NON-COMPLIANCE

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$500 or by imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
- (2) Nothing herein contained shall prevent the City of Hettinger from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 2: ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH ARE HEREBY REPEALED.

Section 3: EFFECTIVE DATE: THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER FINAL PASSAGE.

John Wolfe, Mayor

ATTEST:

Patricia Carroll, City Auditor

First Reading: 3-10-04
Second Reading: 4-14-04
Final Passage: 4-14-04