

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

1 AN ORDINANCE AMENDING SECTIONS 20-0501, 0502, 0503 AND 0610  
2 AND ENACTING SECTION 20-0508 OF ARTICLES 20-05 AND 20-06  
3 OF CHAPTER 20 OF THE FARGO MUNICIPAL CODE  
4 (LAND DEVELOPMENT CODE) REGARDING  
5 DIMENSIONAL STANDARDS AND SUBDIVISION  
6 DESIGN AND IMPROVEMENTS (RIVER SETBACK PROVISIONS)

7 WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in  
8 accordance with Chapter 40-05.1 of the North Dakota Century Code; and

9 WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that  
10 the City shall have the right to implement home rule powers by ordinance; and

11 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that  
12 said home rule charter and any ordinances made pursuant thereto shall supersede state laws  
13 in conflict therewith and shall be liberally construed for such purpose; and

14 WHEREAS, the Board of City Commissioners deems it necessary and  
15 appropriate to implement such authority by the adoption of this ordinance;

16 NOW, THEREFORE,

17 Be it ordained by the Board of City Commissioners of the City of Fargo:

18 Section 1. Amendment.

19 Sections 20-0501, 20-0502 and 20-0503 of Article 20-05 of Chapter 20 of the  
20 Fargo Municipal Code (Land Development Code) are hereby amended as follows:

21 **§20-0501 Residential District Standards**

22 The dimensional standards of Table 20-0501 apply to all development in MR-3 and more  
23 restrictive zoning districts.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

**Table 20-0501**

Dimensional Standard	Zoning District										UMU
	AG	SR-0	SR-1	SR-2	SR-3	SR-4	SR-5 <sup>[9]</sup>	MR-1	MR-2	MR-3	
<b>Maximum/Minimum Density</b> (UPA - Units per Acre)	0.1 Max.	1.0 Max.	2.9 Max.	5.4 Max.	8.7 Max.	12.1 Max.	14.5 Max.	16.0 Max.	20.0 Max.	24.0 <sup>[1]</sup> Max.	18.0 Min.
<b>Minimum Lot Size</b>											
Area (Sq. Ft.)	10 Ac	1 Ac <sup>[2]</sup>	15,000	8,000	5,000	3,600	3,000	5,000	5,000	5,000	2,420
Width (Ft.)	200	120	80	60	50 <sup>[3]</sup>	34 <sup>[3]</sup>	25	50 <sup>[3]</sup>	50 <sup>[3]</sup>	50 <sup>[3]</sup>	50 <sup>[3]</sup>
<b>Minimum Setbacks (Ft.)</b>											
Front	50 <sup>[4]</sup>	50	35	30	20	15 <sup>[5]</sup>	15 <sup>[5]</sup>	25	25	25	10
Interior Side <sup>[6]</sup>	25	25	15%/15	10%/10	10%/10	4	4	15%/25	15%/25	10	5
Street Side	25 <sup>[7]</sup>	25	17.5	15	12.5	10	10	12.5	12.5	12.5	10
Rear	50	50	25	25	15	15	15	20	20	20	15
Watercourse Setback	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]	[10]
<b>Max. Building Coverage</b> (Pct. of Lot)	NA	25	25	30	35	45	50	35 <sup>[8]</sup>	35 <sup>[8]</sup>	35 <sup>[8]</sup>	75
<b>Minimum Open Space</b> (Pct. of Lot)	NA	NA	NA	NA	NA	NA	NA	35	35	35	NA
<b>Maximum Height (Ft.)</b>	35	35	35	35	35	35	35	35	45	60	60

[1] Higher densities may be allowed in accordance with the Bonus Density provisions of Sec. 20-0505.

[2] SR-0 minimum district size is 20 acres. See Sec.20-0203-A.

[3] Minimum lot width subject to limitation of access as provided in Sec.20-0702.

[4] Minimum 100 feet from right-of-way on Arterial or section line road.

[5] Minimum 20-foot setback shall be provided between front-entry garages and nearest edge of sidewalk crossing plate.

[6] #/# = Percent of Lot Width/Feet (whichever is less).

[7] Minimum 75 feet from right-of-way on Arterial or section line road.

[8] Maximum of 37.5 percent of building coverage shall be allowed if site amenity is provided in accordance with Sec. 20-0403.B.7. If the amenity is contained within the footprint of one primary structure, the floor area of that amenity is counted as open space, but is not subtracted from the area of the building.

[9] The SR-5 zoning district is limited to a maximum size of 21,000 square feet, but may exceed 21,000 square feet, up to a maximum of two acres provided the district is within 600 feet of a private or public dedicated open space feature, such as a public park, private park, school yard or playground that is accessible to residents of the SR-5 district, any of which shall be a minimum of two acres or more in size. For purposes of identifying a single SR-5 zoning district, parcels adjacent to one another that are, or will be, the same

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

zoning classification shall be deemed to be within the same zoning district and, therefore, shall be subject to the maximum size limitation.

[10] Watercourse setbacks for all residential, nonresidential and overlay/special zoning districts are as set forth in Section 20-0508.

**§20-0502 Nonresidential District Standards**

The dimensional standards of Table 20-0502 apply to all development in nonresidential zoning districts.

**Table 20-0502**

Dimensional Standard						
	GO	LC	DMU	GC	LI	GI
<b>Minimum Lot Size</b>						
<b>Minimum Setbacks (Ft.)</b>						
Front	20	10	0	20	20	50
Interior Side	5	5	0	5 <sup>[1]</sup>	10 <sup>[1]</sup>	20 <sup>[1]</sup>
Street Side	20	10	0	20	20	50
Rear	15	15	0	15	20	20
Watercourse Setback	[3]	[3]	[3]	[3]	[3]	[3]
<b>Maximum Building Coverage (Pct. of Lot)</b>	65	55	100	85	85	85
<b>Maximum Height (Ft.)</b>	60	35/60 <sup>[2]</sup>	None	None	None	None

[<sup>1</sup>] No setback required when adjacent to DMU.

[<sup>2</sup>] The 35 foot height restriction applies whenever residential protection standards apply, or when the Limited Commercial parcel is within 300 feet of SR zoning. Otherwise, the height limit shall be 60 feet in Limited Commercial zoning districts.

[<sup>3</sup>] Watercourse setbacks for all residential, nonresidential and overlay/special purpose zoning districts are as set forth in Section 20-0508.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

1       **§20-0503 Overlay/Special Purpose Zoning District Standards**

2       The dimensional standards that apply within overlay and special purpose zoning districts  
3       can be found in the following sections:

4

PUD, Planned Unit Development	Sec. 20-0302 <sup>[3]</sup>
C-O, Conditional Overlay	Sec. 20-0303 (no set standards) <sup>[3]</sup>
P/I, Public and Institutional	Sec. 20-0304 <sup>[3]</sup>
H-O, Historic Overlay	Sec. 20-0305 (no dimensional standards) <sup>[3]</sup>
HIA-O, Hector International Airport Overlay	Sec. 20-0306 <sup>[3]</sup>
NO, Neighborhood Office	Sec. 20-0208 <sup>[3]</sup>
NC, Neighborhood Commercial	Sec. 20-0209 <sup>[3]</sup>

5  
6  
7  
8

9  
10  
11       Section 2. Enactment.

12       Section 20-0508 of Article 20-05 of Chapter 20 of the Fargo Municipal Code  
(Land Development Code) is hereby enacted to read as follows:

13  
14       **§20-0508 Watercourse Setbacks - Restrictions and Exceptions.**

15       A. No building or structure may be erected, constructed, enlarged or altered within the  
16       Minimal Disturbance Zone Setback or within the Limited Disturbance Zone Setback  
unless such building or structure conforms to the regulations in this section.

- 17       1. a. **MDZS—Red River and Wild Rice Rivers.** The Minimal Disturbance  
18       Zone Setback (“MDZS”) for properties near the Red River of the North or the  
19       Wild Rice River shall be the greater distance of (a) 350 feet from the center  
20       line of the river and (b) the floodway whichever distance creates the greater  
21       amount of setback from the center line of the river.  
22       b. **MDZS—Sheyenne River.** For parcels that are near the Sheyenne River,  
23       the Minimal Disturbance Zone Setback (“MDZS”) shall be the greater  
distance of (a) 175 feet from the center line of the river and (b) the floodway  
whichever distance creates the greater amount of setback from the center line  
of the river.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

- 1           2. **LDZS.** The Limited Disturbance Zone Setback (“LDZS”) shall begin at the  
2           outer edge of the Minimal Disturbance Zone Setback and extend an additional  
3           one hundred (100) feet on the same line as for the MDZS.

3           For purposes of determining of the disturbance zone setbacks, distances shall be  
4           measured horizontally and perpendicular from the tangent of the center line of the  
5           applicable water course. For purposes of this ordinance, “floodway” means the channel  
6           of a river or other watercourse and the adjacent land areas that must be reserved in order  
7           to discharge the base flood without cumulatively increasing the water surface elevation  
8           more than a stated amount, as the same has been formally adopted either by the board of  
9           city commissioners, by the Federal Emergency Management Agency (FEMA) on a Flood  
10          Insurance Rate Map (FIRM), or by both the board of city commissioners and FEMA. To  
11          the extent the board of city commissioners and FEMA have adopted different floodways,  
12          the floodway most recently adopted shall be deemed to be the floodway for purposes of  
13          this ordinance.

14          **B. Disturbing Land Prohibited.** No person, firm, corporation or other entity shall  
15          engage in any man-made change to improved or unimproved real estate, including but not  
16          limited to, buildings or other structures, mining, dredging, filling, grading, paving  
17          excavation or drilling operations within the MDZS or the LDZS unless such development  
18          conforms to the regulations in this section. Such man-made changes shall include,  
19          without limitation, any development as the same is described in Fargo Municipal Code  
20          Article 21-06.

21          **C. Minimal Disturbance Zone Setback.** All property within the MDZS  
22          calculated in accordance with this section shall conform to the following regulations:

- 23           1. No permanent structures shall be allowed except the following:

          (a) Stairways, Lifts and Landings - Stairways and lifts are the preferred  
          alternative to major topographic alterations for achieving access up and  
          down steep slopes to watercourses. Stairways and lifts must meet the  
          following design requirements:

          (i) Stairways and lifts shall not exceed four (4) feet in width on residential  
          lots and eight (8) feet in width for commercial properties or public  
          open-space recreational properties. Residential lots are  
          permitted one stairway or lift and one facility to provide watercourse  
          access for the physically challenged. The number of

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

1 accesses for commercial or public open-space shall be  
2 determined on a case-by-case basis by the board of city  
3 commissioners.

4 (ii) Landings for stairways and lifts on residential lots shall not exceed  
5 thirty-six (36) square feet in area. Landings no larger than sixty-four  
6 (64) square feet shall be used for commercial properties, public open-  
7 space recreational properties.

8 (iii) Canopies or roofs shall not be allowed on stairways, lifts, or landings.

9 (iv) Where reasonably possible, stairways, lifts and landings shall be  
10 constructed above the ground on posts or pilings. Stairways, lifts and  
11 landing may be placed into the ground, provided they are designed and  
12 built in a manner that ensures control of soil erosion.

13 (v) Facilities such as ramps, lifts or mobility paths for the physically  
14 challenged to achieve watercourse access shall not exceed four (4) feet  
15 in width for residential lots and eight (8) feet in width for  
16 commercial properties or public open-space recreational  
17 properties.

18 (vi) Stairways, lifts and landings shall not prevent or limit the use of  
19 public paths or public or private non-motorized vehicle lanes  
20 or any other easements.

21 (b) Roads, bridges, trails, storm drainage, stormwater management  
22 facilities and utilities are permitted within the minimal disturbance zone  
23 provided that an alternatives analysis has clearly demonstrated that no  
other feasible alternative exists and that minimal disturbance will take  
place. These structures shall be located, designed, constructed  
and maintained to provide maximum erosion protection, to have the least  
adverse effects on wildlife, aquatic life and their habitats and to maintain  
hydrologic processes and water quality. Following any disturbance, the  
impacted area shall be restored.

(c) Bike paths, walking trails, or other multi-use paths.

(d) A public rest room or a public facility that is open on all sides and

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

functionally related to a designated open space or recreational use.

- 1 2. No additional fill shall be allowed.
- 2
- 3 3. No grading shall be allowed, except grading for bank restoration in areas  
experiencing bank slumping.
- 4
- 5 4. No excavating shall be allowed.
- 6
- 7 5. On-site septic systems and drain fields shall not be permitted.
- 8
- 9 6. Irrigation systems shall not be permitted.
- 10
- 11 7. Notwithstanding the foregoing restrictions or prohibitions, permanent flood  
protection levees or walls may be constructed within the MDZS or LDZS  
provided the soil is determined, in the opinion of the city engineer, to be  
sufficiently stable to support the proposed flood protection structure without  
slumping or shifting.

12 D. **Limited Disturbance Zone Setback.** With respect to all property within the  
13 LDZS calculated in accordance with this section, the regulations with respect to  
14 the said 100-foot setback of the LDZS shall be the same as the regulations for the  
MDZS (Subsection C), except as follows:

- 15 1. In the Limited Disturbance Zone Setback, one accessory building not to exceed  
16 One Hundred Twenty (120) square feet shall be allowed.

17 E. **Transitional Provisions to Watercourse Setback Restrictions.** To the extent  
18 that land within either the MDZS or LDZS was platted prior to the effective date  
of this ordinance, the following additional regulations shall apply:

- 19 1. **Exemptions--existing parks and golf courses; lots across street from river.**  
20 Golf courses that exist as of the effective date of this ordinance and park land  
21 of the city or of the Park District of the City of Fargo shall be exempt from the  
22 provisions of this ordinance except with respect to permits that would  
23 otherwise be required by law other than this ordinance and that are related to  
buildings or structures within the MDZS or the LDZS. With respect to parcels  
that have been platted prior to the effective date of this ordinance that are

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

1 within the MDZS or LDZS, to the extent that a permanent flood protection  
2 structure is able to be constructed on the side of the street nearest the river to  
3 the elevation established by city policy by motion, resolution or ordinance of  
4 the board of city commissioners said parcels shall be exempt from the  
5 provisions of this section and building permits may be issued for said parcels.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
2. Previously Platted Lands (and not built upon).

Building permits may not be issued for new buildings or structures within either the MDZS or LDZS for parcels that have been platted prior to the effective date of this ordinance and have not been previously built upon unless a waiver is obtained from the board of city commissioners. A parcel shall be considered built upon if a valid building permit has been issued prior to the effective date of this ordinance or if a bona fide application for a building permit has been received by the Building Official prior to the effective date of this ordinance. An applicant shall only be eligible to receive such a waiver if the requested building permit is for a proposed building or structure that will be located no nearer than 100 feet from the nearest floodway. In reviewing an application for a waiver of this prohibition, the board of city commission shall consider the following factors:

- (a) The extent to which the subject property is already protected from the risk of flooding.
- (b) The extent to which the soil is sufficiently stable to support the proposed building or structure without slumping or shifting of soil.
- (c) The extent to which the proposed building or structure may be elevated to such a level as to mitigate against the risk of flooding.
- (d) The adequacy of area available to install emergency flood protection if the proposed building or structure were in place.
- (e) If the proposed building or structure is accessory to a principal building or structure, the extent to which the accessory building or structure to either be constructed to an elevation to appropriately minimize risks of flooding or, in the alternative, or be designed and constructed so as to tolerate being flooded.

3. Previously Platted Lands (and built upon). With respect to applications in which a permit is requested related to a parcel within either the MDZS or LDZS that has been platted prior to the effective date of this ordinance but has already been built upon, such building permit may be issued for a building or structure as follows:



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

- 1 (a) Enlargement or alteration of existing principal buildings or structures shall  
2 be allowed so long as the proposed enlargement or alteration does not  
3 extend the building or structure closer to the river; and,
- 4 (b) Interior remodeling of an existing building or structure is allowed.
- 5 (c) To the extent said parcel contains one or more principal buildings or  
6 structures lying, in whole or in part, within the MDZS, the LDZS, or both,  
7 and in the event any of such buildings or structures is damaged or  
8 destroyed by any means, to the extent of more than 50 percent of its  
structural value prior to the damage, that building or structure may be  
restored, repaired or rebuilt in its entirety in accordance with the  
provisions in the Land Development Code regarding non-conforming  
structures (See generally LDC §20-1004).

9 F. **Conflict with Other Regulations.**

- 10 1. Where the standards and management requirements of this setback are in  
11 conflict with other laws, regulations, ordinances or policies regarding streams,  
12 steep slopes, erodible soils, wetlands, floodplains, timber harvesting, land  
13 disturbance activities or other environmental protective measures,  
the more restrictive requirements shall apply.
- 14 2. Nothing herein shall be interpreted to abrogate or limit the applicability of any  
15 other local, state or federal law, including without limitation the floodplain  
16 management regulations of the Federal Emergency Management Agency of  
the United States of America.
- 17 3. Nothing herein shall be interpreted to abrogate or limit the applicability of any  
18 substantial improvement provisions of the floodplain management regulations  
as identified in article 21-06 of the Fargo Municipal Code, as the same may be  
amended from time to time.

19 **Section 3. Amendment.**

20 Section 20-0610 of Article 20-06 of Chapter 20 of the Fargo Municipal Code  
21 (Land Development Code) is hereby amended to read as follows:  
22  
23

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818

1 **§20-0610 River Easements and Watercourse Setbacks**

- 2 A. Maintenance easements shall be established on all land within 40 feet of the Mean  
3 High Water Line of all rivers and legal drains. Improvements shall be allowed  
4 within such maintenance easements, provided that the City shall be granted  
5 authority to temporarily occupy such easements when necessary to conduct  
6 maintenance work on the adjacent river or drain.
- 7 B. All Final Plats prepared for recording shall:
- 8 1. Show the extent of any minimal or limited disturbance zone setbacks on the  
9 subject property by metes and bounds and be labeled as "Minimal  
10 Disturbance Zone Setback" or "Limited Disturbance Zone Setback"
  - 11 2. Provide a note to reference the minimal or limited disturbance  
12 zone setbacks stating, "There shall be no clearing, grading, construction  
13 or disturbance of soil and/or native vegetation except as permitted by the  
14 ordinances of the city of Fargo"
  - 15 3. Provide a note to reference any protective covenants governing all  
16 minimal or limited disturbance zone setbacks, "Any minimum or limited  
17 disturbance zone setbacks shown hereon are subject to protective  
18 covenants which may be recorded in the Office of the Recorder for Cass  
19 County and which restrict disturbance and use of these areas."
- 20 C. All minimal or limited disturbance zone setbacks must be protected during  
21 development activities. Prior to the initiation of development activities, the  
22 minimal and limited disturbance zone setbacks shall be surveyed and iron pins set  
23 in the ground on side lot lines and adequate visibility of the minimal or limited  
disturbance zone setbacks shall be provided by staking and flagging.
- D. Minimal or limited disturbance zone setbacks shall be established and  
maintained through a declaration of protective or restrictive covenant, which  
must be submitted for approval by the board of city commissioners. The  
covenant shall be recorded in the Office of the Recorder for Cass County and  
shall run with the land and continue in perpetuity and may not be amended or  
terminated without approval of the city.
- E. All lease agreements pertaining to parcels with MDZS areas, LDZS areas, or both

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 4818 \_\_\_\_\_

1 areas, must contain a notation regarding the presence and location of  
2 protective covenants for minimal or limited disturbance zone setbacks,  
3 and must contain information on the management and maintenance requirements  
4 for the minimal or limited disturbance zone setbacks for the tenant.

5 F. No subdivision may be approved without a notation and delineation of an area  
6 One Hundred Seventy-Five (175) feet from the centerline of any legal drain and  
7 the applicant for subdivision approval will be required to dedicate such areas to  
8 the public for purposes of such drain.

9 Section 4. Penalty.

10 A person who willfully violates this ordinance is guilty of an infraction. Every  
11 person, firm or corporation violating an ordinance which is punishable as an infraction  
12 shall be punished by a fine not to exceed \$500.00; the court to have power to suspend  
13 said sentence and to revoke the suspension thereof.

14 Section. 5. Effective Date.

15 This ordinance shall be in full force and effect from and after its passage,  
16 approval and publication.

17   
18 \_\_\_\_\_  
19 Dennis R. Walaker, Mayor

20 (SEAL)

21 Attest:

22   
23 \_\_\_\_\_  
Steven Sprague, City Auditor

First Reading: 04-16-2012  
Second Reading: 04-30-2012  
Final Passage: 04-30-2012  
Publication: 05-14-2012