

ORDINANCE NO. 1728

**AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 39 OF THE
CITY CODE OF THE CITY OF DICKINSON, NORTH DAKOTA,
RELATING TO DEFINITIONS IN THE ZONING CODE**

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

Section 1: Section 39.02.004 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.004 **Definitions**

Section 39.02.004 **A**

1. **Abutting:** Having lot lines or district boundaries in common, including property separated by a public street or alley. Used interchangeably with adjacent.
2. **Accessory Dwelling Unit:** A subordinate permanent independent dwelling which has its own cooking, sleeping, and sanitation facilities and which is:
 - a. Within or attached to a single-family residential building; or
 - b. Within a detached accessory structure associated with a single-family dwelling that is smaller than the primary structure, on a permanent foundation, and is not a recreational vehicle; or
 - c. As an apartment either attached to or within an existing commercial structure for use on a temporary basis by an employee of the specific business.
3. **Accessory Structure:** A structure which is incidental to and customarily associated with a specific principal use or building on the same site.
4. **Accessory Use:** A use which is incidental to and customarily associated with a specific principal use on the same site.
5. **Addition:** Any construction which increases the size of a building or structure in terms of site coverage, height, length, width, or gross floor area.
6. **Adult Establishment or Adult Entertainment Center.** An adult bookstore, an adult cabaret, an adult motion picture theater, or an adult mini-motion picture theater, all as defined in Chapter 3 of this Code, or any other business the preponderance of whose activities or sales are designed to display, show, perform or depict specified sexual activities or specified anatomical areas as defined in this section, or which may otherwise be designed to sexually arouse any member of the public. Any establishment or center that displays or sells sexually oriented devices as herein defined as a preponderance of its business is also an adult entertainment center or adult establishment within the meaning of Chapter 3 of this Code.
7. **Agent of Owner:** Any person showing written verification that he/she is acting for, and with the knowledge and consent of, a property owner.
8. **Alley:** A public right of way which is used as a secondary means of access to abutting property.
9. **Alteration:** Any construction or physical change in the internal arrangement of spaces, the supporting members, the positioning on a site, or the appearance of a building or structure.
10. **Antenna:** A device used to transmit and/or receive radio or electromagnetic waves for the provision of communication services including, but not limited to, cellular, paging, personal communications services and microwave communications. Such devices include, but are not limited to small wireless facility antennas, small cell antennas, remote radio heads, directional antennae; omnidirectional antennae; and wireless access points (Wi-Fi), including strand-mounted wireless access points.
11. **Apartment:** A housing unit within a building designed for and suitable for occupancy by only one family. Apartments are generally located within multi-family residential buildings.
12. **Applicant:** The party applying for a permit under this article.
13. **Attached:** Having one or more walls in common with a principal building or connected to a principal building by an integral architectural element, such as a covered passageway; facade wall extension; or archway.
14. **Attachment:** Includes any wireless communication facility affixed to, contained in, or placed on or in a structure within the city's public right-of-way.

Section 2: Section 39.02.006 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.006 **Definitions**

Section 39.02.006 **C**

1. **Certificate of Occupancy:** An official certificate issued by the Building Official, Planning Director, or his/her designee, upon finding of conformance with the Unified Building Code, and upon receipt of a Certificate of Zoning Compliance.

2. **Certificate of Zoning Compliance:** An official certificate issued by the Building Official or his/her designee, which indicates that the proposed use of building or land complies with the provisions of the Zoning Ordinance.

3. **Change of Use:** The replacement of an existing use by a new use.

4. **Cluster:** A development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.

5. **City:** The City of Dickinson, North Dakota.

6. **City Commission:** The City Commission of Dickinson, North Dakota.

7. **City Engineer:** The Dickinson City Engineer or their designee.

8. **City-Owned Structure:** An existing structure owned by the city that is located in the city's public right-of-way. It does not mean State, County or other government entity owned infrastructure within the public right-of-way. It does not mean infrastructure owned by a public utility. It does not mean infrastructure located outside of the public right-of-way or on right-of-way which the city does not control.

9. **Collector Street:** A street connecting neighborhoods within the same communities, designed to carry traffic from local to arterial streets.

10. **Collocation:** The mounting or installation of new wireless communication facilities on or within an existing wireless support structure.

11. **Common Area:** An area held, designed, and designated for common or cooperative use within a development.

12. **Common Development:** A development proposed and planned as one unified project not separated by a public street or alley.

13. **Common Open Space:** Land within or related to a development that is not individually owned or dedicated for public use, designed and generally intended for the common use of the residents of the development.

14. **Communications Tower:** A structure situated on a nonresidential site that is intended for transmitting or receiving television, radio, or telephone communications, excluding those used exclusively for dispatch communications.

15. **Compatibility:** The degree to which two or more different land use types are able to exist together in close proximity, with no one use having significant negative effects on any other use.

16. **Comprehensive Plan:** The duly adopted Comprehensive Development Plan of the City of Dickinson.

17. **Condominium:** A real estate ownership arrangement that combines fee simple title to a specific unit and joint ownership in common elements shared with other unit owners. Types of units may include dwelling units, parking spaces, office spaces, or commercial spaces.

18. **Conservation Development:** A development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.

19. **Conservation Subdivision:** Wholly or in majority, a residential subdivision that permits a reduction in lot area, setback, or other site development regulations, provided 1) there is no increase in the overall density permitted for a conventional subdivision in a given zoning district, and 2) the remaining land area is used for common space.

20. **Construction Plan:** A written plan, and a collection of documents, for construction that: (i) demonstrates to the satisfaction of the city engineer that the aesthetic impact and physical structure of the wireless communication facility is comparable to prevailing standards of similar structures in the immediate area; (ii) includes the identity and qualifications of each person directly responsible for the design and construction; (iii) includes signed and sealed documentation to proportional scale from a professional engineer licensed in North Dakota describing the proposed wireless communication facilities in detail, including (a) the proposed location of the wireless support structure and all easements, property boundaries, and existing structures within on the

same side of the roadway and within fifty (50) feet of such wireless facility or wireless support structure unless a different distance is specified by the city engineer; (b) a structural, loading, and wind-speed analysis for existing, proposed, and reserved loading, and (c) a schematic describing the communications properties of the facility, including EMF and RF propagation and off-site data connections; and (iv) includes such other information as the city engineer may require.

21. Conventional Subdivision: A subdivision which literally meets all nominal standards of the City's zoning and subdivision ordinance for lot dimensions, setbacks, street frontage, and other site development regulations.

22. County: Stark County, North Dakota.

23. Court: An approved private right-of-way which provides access to residential properties and meets at least three of the following conditions:

- (a) Serves twelve or fewer housing units or platted lots.
- (b) Does not function as a local street because of its alignment, design, or location.
- (c) Is completely internal to a development.
- (d) Does not exceed 600 feet in length.

24. Courtyard: An open, unoccupied space, bounded on two or more sides by the walls of the building. (Ord. No. 1171 § 1. Ord. No. 1610 § 1)

Section 3: Section 39.02.008 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.008 **Definitions**

Section 39.02.008 **E**

1. Easement: A privilege or right of use granted on, above, under, or across a particular tract of land for a specific purpose by one owner to another owner, public or private agency, or utility.

2. EMF: Electromagnetic frequency.

3. Enclosed: A roofed or covered space fully surrounded by walls.

4. Equipment: Accessory equipment serving or being used in conjunction with an antenna or wireless communication facility. Equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables and conduit, equipment buildings, cabinets, storage sheds, shelters, and vaults.

5. Existing Height: The height of a structure, including wireless communications facilities, as originally approved or as of the most recent approved modification. Height shall be measured from natural grade to the top of all appurtenances.

6. Existing Structure: A structure located in the public right-of-way and capable of supporting wireless communication facilities, erected prior to the application for collocation or substantial modification under this article. An existing structure includes a replacement of an existing structure that is proposed to accommodate the collocation of a wireless communication facility, as long as the replacement structure is substantially similar in appearance to the existing structure and is no taller than the existing height of the structure to be replaced.

7. Extraterritorial: Within the zoning or subdivision jurisdiction of the City of Dickinson, but outside its corporate limits. The Extra-territorial jurisdiction of Dickinson extends for two miles beyond its corporate limits. (Ord. No. 1171 § 1.)

Section 4: Section 39.02.010 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.010 **Definitions**

Section 39.02.010 **G**

1. Grade: The surface of the ground, court, lawn, yard, or sidewalks adjoining a building, with the established grade being one fixed by the city and which established grade shall also constitute the natural grade and the finished grade.

2. Gross Floor Area: The total enclosed area of all floors of a building, measured to the inside surfaces of the exterior walls. This definition excludes the areas of basements, elevator shafts, airspaces above atriums, and enclosed off-street parking and loading areas serving a principal use. (Ord. No. 1171 § 1)

3. Ground Mounted Equipment: Any equipment that is affixed to the ground and extends above the natural grade.

4. Guidelines or Wireless Facility Guidelines: Any procedure or description from the city engineer and the city planning director, which may be modified and amended from time to time, concerning wireless facility application process and siting requirements. Any such Wireless Facilities Guidelines shall be consistent with this article.

Section 5: Section 39.02.012 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.012 **Definitions**

Section 39.02.012 **I**

1. Impervious coverage: The total horizontal area of all buildings, roofed or covered spaces, paved surface areas, walkways and driveways, and any other site improvements that decrease the ability of the surface of the site to absorb water, expressed as a percent of site area. The surface water area of pools is excluded from this definition. (Ord. No. 1171 § 1.)

2. Interference: Any material and harmful impairment, physically or electronically of the operation, views, signals or functions of city property or third party property.

3. Installation Permit Holder: Any person that has obtained permission through the issuance of an installation permit from the city under this article to locate, install or place wireless facilities in the public right-of-way.

Section 6: Section 39.02.015 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.015 **Definitions**

Section 39.02.015 **L**

1. Landscaped Area: The area within the boundaries of a given lot, site or common development consisting primarily of plant material, including but not limited to grass, trees, shrubs, vines, ground cover, and other organic plant materials; or grass paver masonry units installed such that the appearance of the area is primarily landscaped.

(a) Perimeter Landscaped Area: Any required landscaped area that adjoins the exterior boundary of a lot, site or common development.

(b) Interior Landscaped Area: Any landscaped area within a site exclusive of required perimeter landscaping.

2. Laws: Any and all applicable federal and state laws and applicable local ordinances, resolutions, regulations, administrative orders or other legal requirements.

3. Loading Area: An off-street area used for the loading or unloading of goods from a vehicle in connection with the use of the site on which such area is located.

4. Lot: A parcel of property with a separate and distinct number or other identifying designation which has been created, assigned and recorded in the Office of the -- County Register of Deeds, as provided for by the North Dakota Century Code. Each individual lot is subject to the provisions of a particular base Zoning District, and shall have a minimum frontage of 20 feet, except as provided in an approved Planned Unit Development and/or Creative Subdivision.

(a) Corner Lot: A lot located at the junction of at least two streets, private ways or courts or at least two segments of a curved street, private way or court, at which the internal angle of intersection is no greater than 135 degrees.

(b) Double Frontage Lot: A lot, other than a corner lot, having frontage on two streets, private ways or courts. Primary access shall be restricted on a double frontage lot to the minor of the two streets or to the front line as determined at time of platting or as defined by this ordinance. (Also known as a Through Lot).

(c) Interior Lot: A lot other than a corner lot.

(d) Common Development Lot: When two or more contiguous lots are developed as part of a single development, these lots may be considered a single lot for purposes of this ordinance.

5. Lot Area: The total horizontal area within the lot lines of a lot.

6. Lot Depth: The mean horizontal distance measured between the front and rear lot lines.
7. Lot Line: A property boundary line(s) of record that divides one lot from another lot or a lot from the public or private street right-of-way or easement.
- (a) Front Lot Line: The lot line separating a lot and public or private street right-of-way or easement.
 1. For an interior lot, the lot line separating the lot from the right-of-way or easement.
 2. For a corner lot, ordinarily the shorter of the lot lines abutting a public or private street or easement. The owner and Building Official may agree to designate any lot line abutting a public street or otherwise noted on a final plat as the Front Lot Line.
 3. For a double frontage lot, the lot lines separating the lot from the right-of-way or easement of the more minor street. In cases where each street has the same classification, the front lot line shall be determined by the Building Official at the time of application for the original building permit for the lot, or as may be noted on the final plat.
 - (b) Rear Lot Line: The lot line which is opposite and most distant from the front line.
 - (c) Side Lot Line: Any lot line that is neither a front or rear lot line. A side lot line separating a lot from a street, private way or court is a street side lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.
 - (d) Rear Lot Lines for Corner Lots: On corner lots, the Building Official may designate the rear lot line, provided that such lot line does not define a Street Yard.
8. Lot Width: The horizontal distance between the side lot lines at the minimum required front yard setback. Lot width is measured by determining the length of a line drawn parallel to the front lot line set back at the required minimum front yard setback. (Ord. No. 1171 § 1.)

Section 7: Section 39.02.016 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.016 Definitions

Section 39.02.016 M

1. MAA: A master attachment agreement between the city and a lessee that defines the general terms and conditions which govern their relationship with respect to particular sites at which the city agrees to permit lessee to install, maintain, and operate communications equipment on existing or new city-owned infrastructure. A map of all of the lessee's desired locations shall be submitted as part of the MAA application.
2. Manufactured Home Dwelling or Class A Mobile Home: A factory built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site; does not have permanently attached to its body or frame any wheels or axles; bears a label certifying that it was built in compliance with the National Manufactured Home Construction and Safety Standards promulgated by the US Department of Housing and Urban Development; and which complies with the following architectural and aesthetic standards:
 - (a) The home shall have at least 900 square feet of floor area;
 - (b) The home shall have an exterior width of at least 20 feet;
 - (c) The roof shall be pitched with a minimum pitch of 4:1.
 - (d) The exterior material shall be or have the appearance of being wood siding or masonry, but shall not be sheet siding with a vertical orientation;
 - (e) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock;
 - (f) Permanent utility connections shall be installed in accordance with local regulations;
 - (g) The home shall have all wheels, axles, transporting lights, and towing apparatus removed; and

(h) The home shall be installed upon a permanent foundation that is constructed and built in accordance with local regulations.

3. Mixed Use Building: A building or structure that incorporates two or more use types within a single building or structure, provided that each use type is permitted within the individual Base Zoning District in which the building or structure is to be located.

4. Mixed Use Development: A single development which incorporates complementary land use types into a single development.

5. Mobile Homes: A building type designed to be transportable in one or more sections, constructed on a permanent chassis or undercarriage, and designed to be used as a dwelling unit or other use with or without a permanent foundation when connected to the required utilities; or not otherwise satisfying the definition of Manufactured Home Dwellings.

6. Mobile Home Park: A unified development under common ownership, developed, subdivided, planned, and improved for the placement of mobile home units for non-transient use. Mobile Home Parks include common areas and facilities for management, recreation, laundry, utility services, storage, storm shelter, and other services; but do not include mobile home sales lots on which unoccupied mobile homes are parked for the purposes of display; inspection, sale, or storage.

7. Mobile Home Subdivision: A development subdivided, planned, and improved for the placement of mobile home units on lots for uses by the individual owners of such lots. Mobile Home Subdivisions may include common areas and facilities for management, recreation, laundry, utility services, storage, storm shelter, and other services; but do not include mobile home sales lots on which unoccupied mobile homes are parked for the purpose of display, inspection, sale, or storage. (Ord. No. 1171 § 1.)

Section 8: Section 39.02.019 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.019 **Definitions**

Section 39.02.019 **P**

1. Parking Facility: An area on a lot and/or within a building, including one or more parking spaces, along with provision for access circulation, maneuvering, and landscaping, meeting the requirements of this Zoning Ordinance. Parking facilities include parking lots, private garages, and parking structures. Vehicle storage is distinct from parking, and is regulated by provisions in Sections 39.03.070, 39.03.080, 39.03.090's, Table 4-2. Vehicle storage is also governed by provisions of Article 39.09 Parking Regulations.

2. Parking Spaces: An area on a lot and/or within a building, intended for the use of temporary parking of a vehicle. This term is used interchangeably with "parking stall". Each parking space must have a means of access to a public street by way of a driveway, access easement, or other connection. Tandem parking stalls in single-family detached, single family attached, and townhome residential uses shall be considered to have a means of access to a public street.

3. Paved: Permanently surfaced with poured concrete, concrete pavers, or asphalt.

4. Permitted Use: A land use type allowed as a matter of right in a zoning district, subject only to special requirements of this Zoning Ordinance.

5. Person: Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

6. Planning Commission: The Planning Commission of the City of Dickinson, as authorized pursuant to Chapters 40-47 of the North Dakota Century Code.

7. Planned Unit Development: A development of land which is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open spaces, and other site features and improvements.

8. Porch, Unenclosed: A roofed or unroofed open structure projecting from an exterior wall of a building and having no enclosed features more than thirty-six (36) inches above its floor other than wire screening and a roof with supporting structure.

9. Premises: A lot, parcel, tract or plot of land, contiguous and under common ownership or control, together with the buildings and structure thereon.

10. Private Garage: A building for the storage of motor vehicles where no repair service facilities are maintained and where no motor vehicles are kept for rental or sale.

11. Property Line: See “Lot Line.”

12. Public Right-of-Way: The area on, below, or above a public roadway, highway, street, cart way, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Section 9: Section 39.02.021 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.021 **Definitions**

Section 39.02.021 **R**

1. Recreational Vehicle: A vehicle towed or self-propelled on its own chassis or attached to the chassis of another vehicle and designed or used for temporary dwelling, recreational, or sporting purposes. Recreational vehicles include, but are not limited to, travel trailers; campers; motor coach homes; converted buses and trucks, boats, and boat trailers.
2. Regulation: A specific requirement set forth by this Zoning Ordinance which must be followed.
3. Remote Parking: A supply of off-street parking at a location not on the site of a given development.
4. RF. Radio Frequency

Section 10: Section 39.02.022 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.022 **Definitions**

Section 39.02.022 **S**

1. Screening: The method by which a view of one site from another adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, or other features as may be permitted by the landscape provisions of this ordinance.
2. Setback: The distance, as required by the minimum setback(s) which establishes the horizontal component(s) of the building envelope.
3. Sign: A symbolic, visual device fixed upon a building, structure, or parcel of land, which is intended to convey information about a product, business, activity, place, person, institution, candidate, or political idea.
4. Site: The parcel of land to be developed or built upon. A site may encompass a single lot; or a group of lots developed as a common development under the special and overlay districts provisions of this ordinance.
5. Site or Premises: In the context of 39.06.012, means the area occupied by the wireless support structure, the wireless communications facility, accessory equipment, ground-mounted equipment, and the path of the wire or conduit connecting to an off-site network.
6. Site Plan: A plan, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses, and principal site development features proposed for a specific parcel of land; and any other information that may reasonably be requested by the City in order that an informed decision can be made on the associated request.
7. Special Permit Use: A use with operating and/or physical characteristics different from those of permitted uses in a given zoning district which may, nonetheless, be compatible with those uses under special conditions and with adequate public review. Special permit uses are allowed in a zoning district only at the discretion of and with the explicit permission of the City Commission, upon the recommendation of the Planning Commission.
8. State: The State of North Dakota.
9. Story: The portion of a building included between the surface of any floor and the surface of the next floor above it; if there is no floor above it, the space between such floor and the next ceiling above it. A half story under a sloped roof, the wall heights of which on at least two opposite, exterior walls are less than four feet.
10. Street: A right of way, dedicated to public use, which affords a primary means of access to the abutting property. This definition is intended to be inclusive of the term as defined in North Dakota statute.

11. Street, Intersecting and Principal: In regard to a site, the principal street shall be the street to which the majority of lots on a blockface are oriented; the intersecting street shall be a street other than a principal street.

12. Street, Local: A street which is used primarily for access to the abutting properties.

13. Street, Major: A street carrying traffic between neighborhoods, connecting neighborhoods with major activity centers, or accommodating major through traffic. Major streets are designated as collectors, arterials, or expressways by the Comprehensive Development Plan.

14. Street Yard: The area of a lot or parcel which lies between any street property line and the fronting walls of any building or buildings on the parcel. The street yard follows all irregularities or indentations in the building, excluding minor irregularities such as porches or steps.

15. Structure: Any object constructed or built, the use of which requires location on the ground or attachment to something located on the ground. (Ord. No. 1171 § 1.)

Section 11: Section 39.02.026 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 39.02.026 **Definitions**

Section 39.02.026 **W**

1. Wireless Communication Facility: Any fixed tangible asset usable for the purpose of providing wireless transmission of voice, data, images or other signals or information including, but not limited to, telecommunications, cellular telephone service, personal communications service and paging service. A wireless communications facility includes antennas and accessory equipment. A wireless communications facility does not include an underlying wireless support structure.

2. Wireless Support Structure: Any fixed, above-grade structure in the public right-of-way used to house or support wireless communications facilities and equipment.

Section 12: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 13: 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 14: Effective Date: This Ordinance shall be in full force and effect from and after the final passage.

Scott Decker, President
Board of City Commissioners

ATTEST

Brian Winningham, City Administrator

First Reading: September 21, 2021
Second Reading: October 5, 2021
Final Passage: October 5, 2021