



City of Fargo Land Development Code Diagnostic Report

Public Review Draft

June 05, 2020



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Executive Summary

The objectives of the Land Development Code Diagnostic Report are to analyze the Land Development Code (LDC) based on its effectiveness as tool to achieve the land use and development goals expressed in Fargo's Comprehensive Plan, *Go2030*, whether it provides a user-friendly set of regulations that provide clear direction about the City's expectations, a predictable development review process, legal consistency with relevant State and Federal laws, how it could impact City finances, and to assess its ability to facilitate the development of quality projects that advance City goals while offering best practices as models.

This Report has two purposes. First, it analyzes existing challenges and shortfalls with Chapter 20 (Land Development Code) of the City of Fargo Code of Ordinances (Municipal Code), considering zoning districts, development regulations, organization, form, and style. Second, it helps prepare the City to evaluate alternatives, develop appropriate recommendations, and establish clear priorities for future LDC revisions or amendments.

The Report identifies several issues with the existing LDC that need to be addressed. The issues range from the Code having certain identified conflicts and ambiguities including a lack of available up-to-date information; an unpredictable discretionary application process; inclusion of subjective standards; and, not being coordinated with the City's *Go2030* Comprehensive Plan Vision for future development. As part of the overall analysis, LWC was tasked with providing an analysis of the economic and fiscal implications of the existing Code. The diagnostic review found that the current Code inhibits the development of economically productive spaces within Fargo. Further, the LDC does not take advantage of the opportunity to produce dense urban spaces that are more efficient in terms of their use of infrastructure or the delivery of public services. Additionally, the lack of suitable land use designations that support mixed-use or denser projects can be seen as discouraging the private investment that would be required to meet the goals of the *Go2030* Comprehensive Plan.

Key takeaways to expand upon include:

- Absence of built-form standards
- Parking and building location (Creating a pedestrian friendly streetscape)
- Parking regulations
- Infill development
- Paving standards in industrial areas
- Creation of new parks, public spaces, and open spaces
- Mixed-use and affordable housing development
- Landscaping standards

- Subdivision regulations
- Lack of graphics and diagrams
- Zoning Map discrepancies
- Planned Unit Development and Conditional Overlay approval processes
- Residential Protection Standards
- Discretionary review process
- Availability of information (Zoning Map, Site Plan Application etc.)
- Subdivision Parkland Dedication
- Sign Code
- Economic and fiscal implications of LDC policies.

As the next step, LWC and City staff will work together to create a list of alternative actions to address the issues identified within the LDC. In coordination with the City planning staff, Planning Commission, Board of City Commissioners, residents, and stakeholders, LWC will create preferred alternatives for how the LDC may be updated, as well as a work plan for implementation.

Section 1 Introduction

Subsections:

- 1.1 Summary of the Project
- 1.2 What are Land Development Codes
- 1.3 Why Analyze the Land Development Code
- 1.4 Overview of this Report
- 1.5 Next Steps

1.1 Summary of the Project

The City of Fargo (City) hired Lisa Wise Consulting, Inc. (LWC) to evaluate the City's Land Development Code (LDC) and related ordinances, document any deficiencies or opportunities for improvement, and develop a preferred alternative to remedying any noted deficiencies. The Land Development Code Diagnostic Report is the first step in this project.

This Report has two purposes. First, it analyzes existing challenges and shortfalls with [Chapter 20 \(Land Development Code\)](#) of the City of Fargo Code of Ordinances ([Municipal Code](#)), considering zoning districts, development regulations, organization, form, and style. Second, it helps prepare the City to evaluate alternatives, develop appropriate recommendations, and set clear priorities for future LDC revisions or amendments. The topics covered in this report were borne out of conversations with City officials, City staff, stakeholders, residents, and industry best practices based on LWC's experience writing Code Diagnosis reports for cities and towns throughout the country.

1.2 What are Land Development Codes?

While *Go2030* establishes a wide-ranging and long-term vision for the City, the LDC specifies how each individual property can be used to achieve those objectives. Land development codes are the body of rules and regulations that control what is built on the ground, as well as what uses can occupy buildings and sites.

The use regulations and development standards established in land development codes provide adjacent and nearby property owners with assurance of which land uses are permitted and the scale to which they may be developed. Developers benefit from knowing exactly what they can build. City staff benefit too since the need for case-by-case discretionary review of development applications is reduced.

1.2.1 What Land Development Codes Can Do.

Land development codes implement the community goals expressed in a Comprehensive Plan and other long-term policy documents. Land development codes include the following:

- **Development and Design Standards.** Land development codes reflect the desired physical character of the community by providing development standards that control the height and bulk of buildings, building placement on a lot, and landscaping and open space requirements. Land development codes can also provide design, streetscape, building frontage, and building form standards.
- **Use Regulations.** Land development codes specify which uses are permitted, prohibited, or require specified standards or limitations. In this way, land development codes determine the appropriate mix of compatible uses.
- **Performance Standards.** Land development codes often include standards that control the “performance” of uses to ensure land use compatibility between new and existing neighborhoods or uses. Performance standards typically address items such as noise, glare, vibration, and stormwater runoff.
- **Review Procedures.** Land development codes identify the level of review required for project approval, including the required number of hearings with the Planning Commission and/or City Commission.
- **Subdivision Regulations.** Subdivision and public improvement standards can also be included in Land Development Codes to capture all forms of development in one place within the Municipal Code.

1.2.2 What Land Development Codes Cannot Do.

There are things that land development codes typically cannot do. However, issues not addressed in a land development code are usually addressed by other planning tools, such as master plans and design guidelines. The land development code will not do the following:

- **Dictate Architectural Style.** Although land development codes can improve the overall physical character of the community, they typically focus on objective, quantifiable criteria when it comes to design. The architectural style of individual projects is usually addressed in master plans, neighborhood plans, historic guidelines, and design guidelines adopted separate from the land development code.
- **Dictate Market Demand.** Land development codes cannot create a market for new development. For example, they cannot determine the exact mix of tenants or number of units in a private development or require a grocery store to be built on a vacant lot. They can, however, create opportunities in the real estate market by removing barriers such as onerous review processes and offering incentives for desirable uses.

- **Establish Land Use Policy.** Land development codes are a tool for implementing land use policy, not setting it. As such, land development codes are not the appropriate means for planning analysis. Land development codes are informed by the policy direction in the *Go2030* and other relevant plans and policies.

1.3 Why Analyze the Land Development Code

Before beginning any updates or revisions to the LDC, it is important to first document its issues or deficiencies. This allows the City to understand the extent of the potential modifications to existing regulations, and to develop an approach in response that is most effective and efficient. The Land Development Code, [Chapter 20](#) of the Municipal Code, was last comprehensively updated 20 years ago. While it has been amended numerous times, including significant revisions in 1999, the LDC does not reflect best practices in the field of planning and development regulation. A thorough assessment will highlight opportunities for the City to improve the LDC, keep up with national trends and best practices, and more effectively implement *Go2030*.

Furthermore, the LDC may not completely align with current City goals or priorities. *Go2030* provides a vision for the future, establishes a framework for how the City should grow and change over the next decade, and addresses all aspects of City growth and development including economic development, housing, education, environmental sustainability, and transportation, among other topics. *Go2030* emphasizes:

- High quality, mixed-use and infill development in the downtown area;
- The preservation and enhancement of residential neighborhoods;
- The creation of open space and resource protection;
- A vibrant local economy; and
- A community with a variety of housing options.

This Report observes and identifies areas of the LDC which are inconsistent with or ineffective in achieving the vision articulated in *Go2030*.

1.4 Overview of this Report

This Report documents the LDC's ability to achieve the type of development the City desires with the effective implementation of *Go2030* policies (see Section 2). Additionally, the report summarizes the principal findings and conclusions of an assessment of existing regulatory tools across a variety of topics based on best practices and discussions with code users and City staff (see Sections 3 through 6). Some topics, such as infill development, are addressed in more than one section.

The findings in this Report cover the following topics:

- Implementing the *Go2030* Comprehensive Plan;
- Land Development Code Overview and Analysis;
- Administration and Procedures;
- Legal Compliance; and
- Economic and Fiscal Implications.

1.5 Next Steps

The conclusions and recommendations included in this Report will be presented at a virtual work session of the Planning Commission to which members of the City Commission will be invited. The work session will focus on the major issues identified with the current regulations, review *Go2030's* direction for new/modified regulations, and any other key issues that need to be addressed. After the work session and a call with City staff to discuss alternative approaches to the identified issues, the LWC team will prepare a memo summarizing up to three primary alternative approaches to addressing issues identified within the LDC Diagnosis Report. This memo will eventually lead to another work session with the Planning Commission and City Commission to develop a preferred alternative and work plan.

Section 2 Implementing the Comprehensive Plan

Subsections:

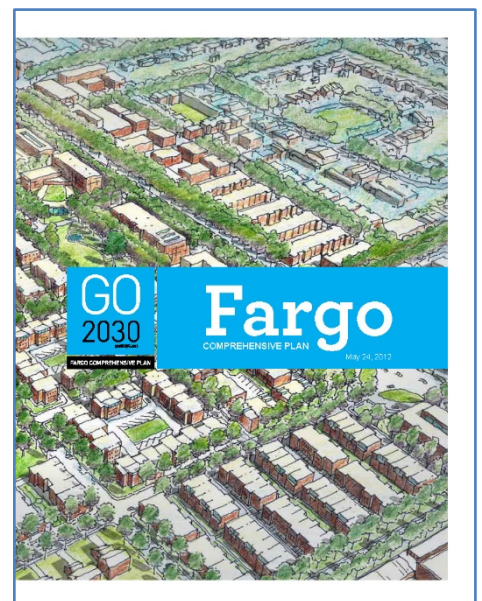
- 2.1 Comprehensive Plan Overview
- 2.2 Other Policies Overview
- 2.3 Effectiveness in Policy Implementation

2.1 Comprehensive Plan Overview

2.1.1 Comprehensive Plan Policy Objectives

[Go2030](#) is Fargo's current Comprehensive Plan that was adopted in 2012. It covers a wide range of elements that guide how the City should grow and change through the year 2030. These elements are called "guiding principles" and build on the Plan's vision. The guiding principles listed below demonstrate the comprehensive nature of the Plan:

- Water and Environment
- Energy
- Arts and Culture
- Health
- Transportation
- Economy
- Neighborhoods, Infill, and New Development
- Education
- Safety.



Go2030 Comprehensive Plan

Each guiding principle is described in a chapter of the Plan and includes multiple initiatives with recommendations on how to implement each initiative.

Go2030 does not include a stand-alone guiding principle or chapter focused solely on land use policy. Rather, *Go2030* integrates land use policy throughout all the guiding principles, where applicable. The guiding principle that provides the most direction to the City's land use policy is Neighborhoods, Infill, and New Development. Example initiatives that follow from this guiding principle and most impact land use policy include the following:

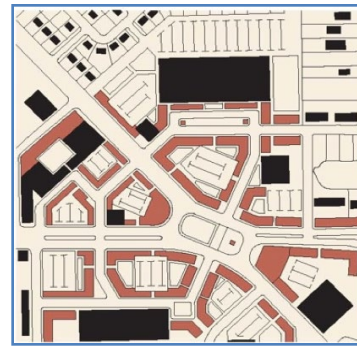
- **Promote Infill** - Develop policies to promote infill and density within areas that are already developed and are protected by a flood resiliency strategy. Control sprawl and focus on areas outside of the floodplain.

- **Design Standards** - Develop a Commercial Design Zone District and continue to follow the [Design Guidelines for Growth Areas of the City of Fargo](#) (2007) for infill and new residential development. Improve quality of new housing by fostering strong relationships with the development and building community to promote dense, walkable communities with neighborhood centers.
- **Quality New Development** - Support homebuilders and developers that construct high quality, energy efficient buildings, and require new development to meet site design standards that result in well-designed new neighborhoods.

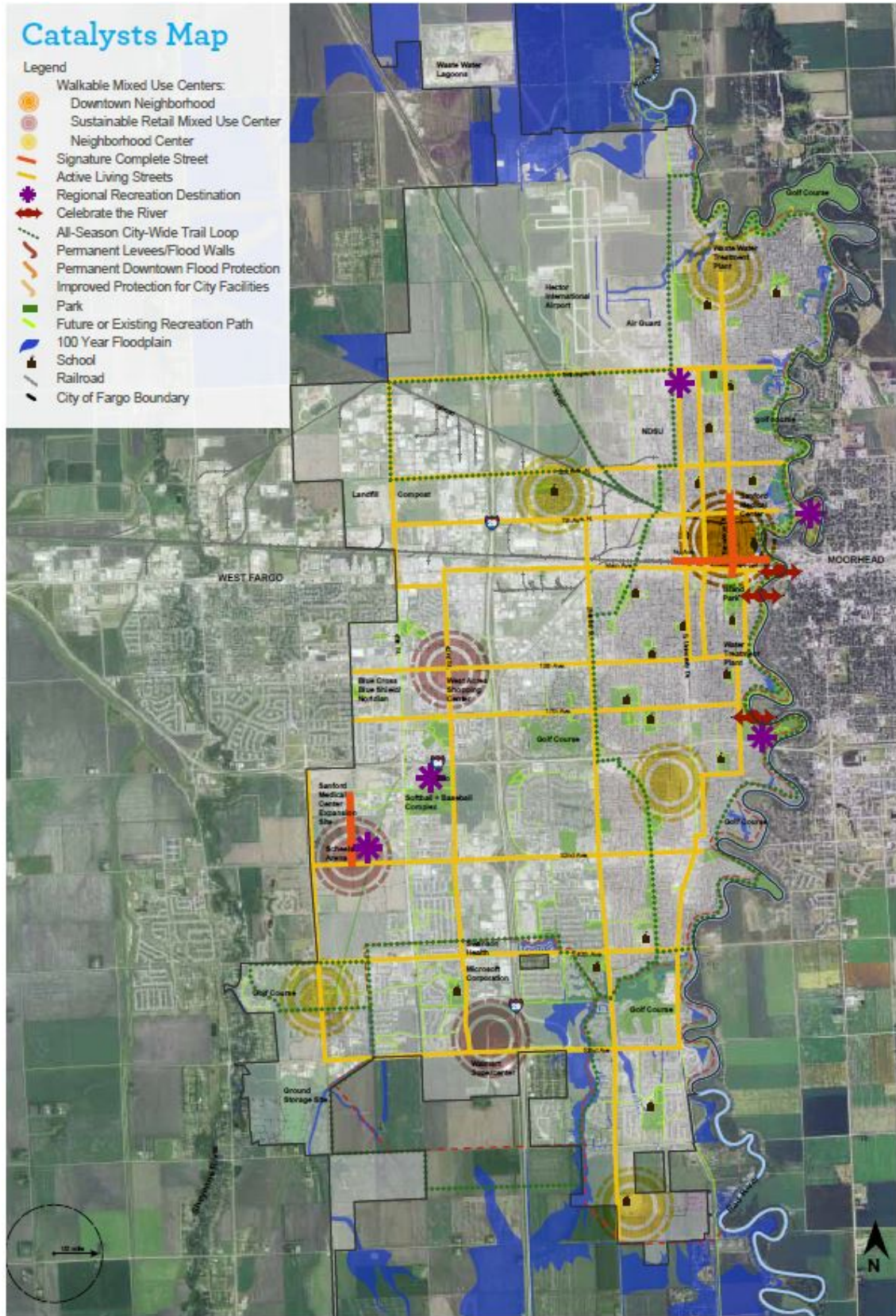
Land use policy in the Plan is also envisioned through many of the “catalysts.” The catalysts are ideas that “...have the biggest potential to impact Fargo as it continues to grow and develop.” (pg.33). The catalysts are visually established in the Catalysts Map below, showing the areas of the City where these catalysts should be applied. Some of the catalysts that most impact land use policy includes walkable mixed-use centers, signature streets, and active living streets. “Walkability” is a key term used throughout *Go2030* as a strategy create a vibrant pedestrian realm and its associated positive effects of increased retail sales due to patrons spending more time in commercial areas, lessening automobile traffic, increasing overall public health. A walkable area has wide-ranging effects on its population and the land use goals in *Go2030* are centered on this as a driving force in new development. *Go2030* also indicates which catalysts are tied to the initiatives. For example, the Design Standard initiative of the Neighborhoods, Infill, and New Development guiding principle can be applied through the mixed-use centers



Automobile-Oriented Development



Walkable, Mixed-Use Development



Catalysts Map (Go2030 Comprehensive Plan, Page 33)

2.2 Other Policies Overview

In addition to the *Go2030 Comprehensive Plan*, there are several other policies and plans which define the long-term vision for Fargo. These include:

Downtown InFocus

Downtown InFocus is an implementation-focused plan for the revitalization of Downtown Fargo. The plan lays out seven specific goals with multiple strategies to accomplish each goal. Specifically, the City wants Downtown to become an active neighborhood beyond the normal weekday business hours and a cultural destination in the region, particularly for the arts. To turn Downtown into a true neighborhood, the Plan focuses on housing and transportation, all through the lens of an inclusive development process that limits displacement and gentrification. In addition, creating a vibrant sense of place is key to the long-term success of Downtown which can be achieved through investments in streetscape improvements, new parks/public spaces, and high-quality development that accentuates the pedestrian experience by creating attractive storefronts, ground-floors, and building façades.

The Plan also highlights the need for middle-income housing due to the dominating presence of both affordable housing and expensive housing. Various plans and studies from years prior were utilized to inform the overall strategies including the *Go2030 Comprehensive Plan*, 2015's *Riverfront Design Study*, 2015's *Fargo Housing Study*, 2016's *Bicycle and Pedestrian Plan*, among others. Overall, the Plan serves as a guidebook for the community's vision of a future Downtown and how to make that vision a reality.

Fargo/West Fargo Parking & Access Plan

The *Fargo/West Fargo Parking & Access Plan* assesses existing conditions in terms of development patterns, roadway classifications, zoning procedures, parking utilization, and incorporating stakeholder feedback. The Plan establishes seven different street types that take a holistic view of the factors that must be incorporated into a street such as land use, pedestrian crossings, and speed limits. The goal in creating these street typologies is to align the street design with the surrounding land uses. The study lays out a number of achievable goals as next steps for both cities which include a more in-depth look at parking minimums and maximums along with the associated land uses, promoting alternative modes of transportation by requiring more pedestrian amenities, Transportation Demand Management plans for new developments, exploring a fee in-lieu of parking programing, and shared parking provisions for new developments. The Plan creates a path for establishing development typologies based on land use (e.g. commercial, mixed-use, or residential) that have best practices associated with connectivity, parking ratios, building orientation, and traffic flow.

[Public Art Master Plan](#)

The City of Fargo's Arts and Culture Commission completed a *Public Art Master Plan* that provides action items for the City and its residents to foster its growing arts scene. The Plan enables the *Go2030* goal of more art and culture in the City and to use art to transform public spaces as well as increase public gathering and community interaction. The Arts and Culture Commission identifies public art not only as a cultural benefit but also an economic benefit for the City's ability to attract and retain professionals, students, and creative talent.

[Fargo-Moorhead Metropolitan Council of Government's Bicycle and Pedestrian Plan](#)

In 2016, the City of Fargo participated in the creation of a Plan to develop action items which will foster an increase in bicycle and pedestrian activity throughout the City. The Plan is a vital element in the overall land use and transportation planning process for the City and will ensure that transportation-related bicycle and pedestrian needs are considered eligible for future federal funding. The Bicycle and Pedestrian Plan is intended to enhance the bicycling and pedestrian experience in the metropolitan area and improve the health, safety, and quality of life for all citizens.

[Roosevelt/NDSU Neighborhood Plan](#)

The City of Fargo's Planning Commission and Community Development Committee together with the citizens of the Roosevelt Neighborhood and NDSU completed the Roosevelt/NDSU Neighborhood Plan in 2004. The purpose of the Plan was to bring residents of the area together to discuss shared concerns and develop shared goals for the neighborhood. Primary goals developed in the Plan include stabilizing the neighborhood housing stock, making the neighborhood a safe place to live, and preserving the neighborhood's rich history and overall quality of life. In addition, the City is currently in the process of creating a new plan that will encompass the City's Core Neighborhoods, including the Roosevelt Neighborhood.

[City's Analysis of Impediments to Fair Housing Choice](#)

In 2010, the City prepared this document to fulfill a HUD requirement to certify compliance with the Consolidated Plan Final Rule. It serves several purposes: as a housing and community development document; a strategy to help carry out HUD programs; an action plan providing the basis for assessing performance; and as an

application for a variety of HUD grant programs. The Analysis of Impediments document is used by HUD to establish the measure of fair housing for CDBG grantees such as the City of Fargo.

2.3 Effectiveness in Policy Implementation

2.3.1 - Initiatives: Promote Infill

Overview

Go2030 identifies the following initiatives related to infill.

1. *Promote Infill.* Develop policies to promote infill and density within areas that are already developed and are protected by a flood resiliency strategy. Control sprawl and focus on areas outside of the floodplain.
2. *Promote Connections and Infill within Strip Commercial Developments.* Direct future development around strip commercial areas to increase the amount of retail space, density, and promote walkability to increase the competitiveness of these shopping destinations.

Related Initiatives

In addition to *Go2030*, the City's *Analysis of Impediments to Fair Housing Choice* (2010) includes an initiative focused on infill:

- Review zoning to determine the effect on housing affordability and new neighborhood development.
 - Examine zoning requirements for the redevelopment of “non-conforming” infill residential land.

The *Fargo-Moorhead Metropolitan Council of Government's Bicycle and Pedestrian Plan* (2016) also includes initiatives focused on infill:

- **Improve bikeability/walkability within the region.**
 - Promote infill, increase density, and enhance urban design in order to encourage livability and more bicycle and pedestrian use.
- **Urban Design/Planning.**
 - Local jurisdictions should revisit current planning standards to allow and encourage more density, mixed-use developments, infill, and complete streets to encourage livability and encourage more bicycle and pedestrian use.

Analysis/Findings

Recognition and direction on how infill lots can be developed helps to promote infill. The term “infill” is only used once in the LDC where it is not used as a descriptor of any type of development but rather in the description of a type of design standard.

In addition to not addressing infill directly, the Code includes a limited set of zoning-related tools to promote infill in developed portions of the City. Two zoning districts, Downtown Mixed Use (DMU) and University Mixed Use (UMU), provide considerable flexibility that has proven to promote and facilitate development on older City lots in Downtown and south of North Dakota State University (NDSU). Outside of both the DMU and UMU districts, residential, commercial, and industrial district regulations provide little if any flexibility to develop older lots. With the lack of flexibility, developers are forced to request zoning changes, density modifications, and variances to setbacks, lot coverage, and parking. Many developers have relied upon negotiated zoning (Planned Unit Development and Conditional Overlay Zoning) to secure needed flexibility, density, and protections often necessary to develop on older lots. For more detail, see Section 3.4.3 (Land Use & Housing Development).

The LDC’s subdivision regulations can also create impediments to the infill process. Unwritten Engineering Department standards not listed in the Code (or provided with a link/reference to another document), such as utility placement requirements ([Section 20-0608.A](#)), can also pose challenges to the development of infill lots that may be smaller or shaped differently than conventional suburban lots. Infill development that proposes to create lot sizes and associated rights-of-way similar to historic development in the City core may not be feasible using existing subdivision standards. For example, traditional residential development with alley access poses challenges with current right-of-way standards and easements requirements. For more detail, see Section 3.4.4 (Subdivisions).

As envisioned in *Go2030*, infill is also an opportunity within suburban strip commercial development. Commercial retail parking requirements are high, especially for big box retail and shopping centers. These uses are grouped under “All other Retail Sales & Service uses not specifically listed” in [Section 20-0701.B.1](#), requiring one space per 250 square feet. A reduction in parking requirements for retail commercial uses such as big box retail and shopping centers could open parking lots within strip commercial areas of the City to infill opportunities.

2.3.2 - Initiatives: Design Standards and Quality New Development

Overview

The *Go2030* Comprehensive Plan highlights the desire for design standards for new development as well as standards that produce high quality new development. The intent of new standards would be to improve the quality of housing and also create well-designed, higher intensity, and walkable communities with neighborhood centers.

Analysis/Findings

The majority of the LDC's base zoning districts do not include design standards intended to control building form (i.e. the standards pertaining to the building envelope, including features such as materials, transparency, and overall building articulation), which leads to unpredictable built results throughout most of the City. The two districts that do include building form standards are the Downtown Mixed-Use (DMU) and University Mixed Use (UMU). See also 3.4.2 (Development Standards) for more details. In addition, the use of Planned Unit Developments (PUD) and Conditional Overlays (CO) also add a layer of unpredictability to development in the City. PUDs and COs have an equal number of examples that either show developers requesting changes to certain LDC provisions or adding provisions to support their development, such as design standards. For example, PUD's can be used by a developer to make sure that all aspects of approval are to benefit them or to add additional design provisions that are not reflected in the LDC.

Similarly, COs are utilized to add certain protections to mitigate impacts on surrounding properties, such as design provisions or Residential Protection Standards. See also Section 3.4.1 (Zoning Districts) and Section 4.1 (Legal Compliance) for more information.

Furthermore, when Conditional Use Permits (CUPs) are approved with conditions recommended by staff and approved as part of a CUP the conditions often include standards intended to control site design and/or building form. While there are no City-wide or neighborhood-specific design standards, CUPs tend to be used as a tool to implement design standards. Since CUPs are approved on a case-by-case basis, design standards included as conditions tend to be subjective and vary from one development to another. Given the lack of codified design standards, CUPs are a convenient way to bridge the gap where the existing Code's standards do not meet the needs of a project.

2.3.3 – Initiative: Historical Preservation

Overview

Go2030 identifies one initiative related to historic preservation.

- *Historical Preservation*. Strengthen historical preservation incentives.

Related Initiatives

In addition to *Go2030*, the City's Roosevelt-NDSU Neighborhood Plan (2004) includes a goal related to historic preservation:

- *Goal 3 – Quality of Life*: Preserve the neighborhood's rich history and general quality of life.

Analysis/Findings

The LDC supports a well-established historic preservation program. The Code establishes the [Historic Preservation Commission \(Section 20-0804\)](#) to oversee the program for the preservation, protection, and regulation of historic properties and to serve other functions related to historic preservation. Historic Overlay Districts are also in place as a zoning tool [\(Section 20-0305\)](#) requiring additional effort in conserving historic structures and the historic character of designated areas.

Multiple financial incentives are available and promoted by the City for historic preservation incentives. These include: Federal Historic Tax Credits (20 percent credit), Fargo Renaissance Zone (property and state income tax exemptions), and Residential Remodeling program (tax exemption). Another incentive not specifically tied to the structure's historic qualities but that is available for existing housing stock is the Neighborhood Revitalization Initiative which provides low-interest loans. The LDC itself does not provide financial or non-financial incentives. For more details, refer to Section 5 (Economics and Fiscal Implications).

2.3.4 – Initiative: Housing

Overview

Go2030 identifies two initiatives related to housing.

- *High Quality Affordable Housing Near NDSU*. To develop higher quality affordable housing near the North Dakota State University campus.

- *Housing for Workforce and Low-Income Residents*. To pursue strategies to increase access to housing for workforce and low-income residents.

Related Initiatives

In addition to *Go2030*, the City has other policies regarding housing, including the following from the *City's Analysis of Impediments to Fair Housing Choice* (2010):

- Study how regulations, such as zoning regulations, may cause impediments to fair housing.
- Review zoning to determine the effect on housing affordability and new neighborhood development.
 - Examine zoning requirements for the redevelopment of “non-conforming” infill residential land.
 - Make allowances in the City Code for mixed density/mixed income residential developments.
 - Actively promote creative use of the LDC to facilitate affordable and diverse housing development,

The *Roosevelt-NDSU Neighborhood Plan* (2004) includes policies regarding housing particularly for the neighborhood area:

- Promote improved landlord and tenant behaviors.
- Facilitate the maintenance and rehabilitation of existing housing units.
- Address parking concerns associated with neighborhood housing.
- Develop planning policies that encourage a balanced mix of quality housing.

The *Downtown InFocus Plan* (2018) includes policies regarding housing particularly for the Downtown area:

- Encourage a mix of housing types for a range of price points.
- Preserve existing single-family housing in near neighborhoods.
- Provide a range of housing options within Downtown, at a range of price points.

Analysis/Findings:

The LDC does not allow for high-quality affordable housing near North Dakota State University (NDSU) in a straightforward manner. Some zoning districts, such as University Mixed Use (UMU), allow a certain degree of design flexibility and density for projects that can provide high quality, affordable housing units. Other districts that allow multi-family housing near NDSU limit development opportunities due to suburban-style dimensional standards on lots originally designed to accommodate narrower buildings with less restrictive dimensional

standard constraints (in an area platted prior to the advent of conventional suburban development and zoning control). For more details, refer to Section 3.4.1 (Zoning Districts) and Section 3.4.2 (Development Standards).

The LDC provides a straightforward and predictable path for the review and approval of multi-family and small lot single-family housing (including housing for workforce and low-income residents) in new parts of the City outside of Downtown and the core neighborhoods through the provision of base zoning districts planned in accordance with a future land use map and lot sizes that conform to base zoning districts. As a result, the need for negotiated zoning through tools such as PUD or CO zoning is greatly diminished, and the approval process is generally predictable.

However, in regard to housing in the older parts of the City where there is a demand for redevelopment or infill projects (such as in the Core Neighborhoods), the LDC does not provide a straightforward or predictable path for multi-family and small lot single-family development. In older residential neighborhoods there are many cases where lot sizes do not easily accommodate the standards of the existing base zoning districts. As a result, many multi-family and small lot single-family projects have relied upon negotiated zoning tools such as PUD or CO zoning. For more details, refer to Section 3.4.1 (Zoning Districts).

Regarding negotiated zoning tools, the negotiations required to effectuate a PUD, for example, require a protracted process between the developer and the neighborhood. The process is unpredictable for all parties involved and does not always lead to a satisfactory outcome. Based on stakeholder feedback, neither the developers nor the residents see this method as an effective tool for development.

The LDC lacks any mandates or incentives for new development to provide affordable housing. The Bonus Density provision ([Section 20-0505 \(Bonus Density\)](#)) allows added density but includes qualifying standards, such as a minimum open space requirement of 40 percent and requiring that 70 percent of the building footprint contain tuck-under or underground parking. These requirements may be counterproductive to increasing development density and the potential for affordable housing. For more details, refer to Section 3.4.2 (Development Standards).

Setback constraints, both through district standards and easement constraints increase development cost and ultimately housing affordability by increasing the minimum lot size needed to accommodate housing. Comments from stakeholders often noted that minimum

setback regulations in residential districts, especially in South Fargo, are too large. Unique to Downtown, constraints associated with the accommodation of utilities can impact opportunities for affordable housing. Housing cost can be impacted in many cases where utilities along the edge of the right-of-way requires the use of expensive shoring techniques. In many cases, it is more cost effective to move back the building façade and to build less than the code allows. For more details, refer to Section 3.4.2 (Development Standards).

City staff and stakeholders noted an increasing market demand for smaller single-family housing types that offer more affordable home ownership options. This has resulted in the use of PUD and CO zoning to accommodate housing types and associated neighborhood design that do not fit the design parameters established by the City's base zoning districts. The market demand for housing compatible in scale with detached single-family housing, often referred to as "missing middle housing", is not directly or easily allowed by the LDC. For more details, refer to Section 3.4.1 (Zoning Districts).

"Missing Middle Housing" is defined as lower-scale housing development such as a duplex, triplex, or fourplex that are generally affordable to most income groups. These low-unit multi-family structures can seamlessly integrate into most neighborhood types without the impacts associated with high-rise multi-family developments. The "missing" refers to the fact that this type of housing is not being coded for or developed in today's housing market. Most housing being is either low-income, affordable housing or high-end, luxury housing. The graphic below illustrates how "missing middle housing" integrates into the built environment within the overall spectrum of housing types.



Missing Middle Housing Types

It is also important to weigh the impact of other LDC have on housing cost and affordability. Parking, subdivision, and other “ancillary standards” can increase development and associated housing cost. For more details, refer to Section 3.4.2 (Development Standards).

It is also important to weigh the impact other LDC standards on housing cost and affordability. Parking, landscaping, subdivision, and other “ancillary standards” can increase development and associated housing cost. For more details, refer to Section 3.4.2 (Development Standards).

2.3.5 - Initiative: Parking

Overview

Go2030 identifies one initiative related to parking.

- *Parking.* Pursue creative parking strategies to fund and activate parking structures, explore reducing minimum parking standards, and share parking between daytime and nighttime uses.

Related Initiatives

In addition to *Go2030*, the Fargo-Moorhead Metropolitan Council of Governments has established the following parking recommendations from the *Fargo/West Fargo Parking and Access Study* (2018):

- Adopt parking maximums in combination with minimum requirements.
- To provide parking above the maximum requirement, development should provide a Transportation Demand Management (TDM) or shared parking analysis to prove the need for additional parking.
- To provide parking below the minimum requirement, development should provide a fee-in-lieu of parking to fund alternative transportation initiatives, creating additional shared parking supply, or upgrading existing parking assets.
- Take steps that encourage the use of shared parking including variance alterations, establishing parking management districts around key commercial nodes, and encouraging the use of on-street parking.

The *Roosevelt-NDSU Neighborhood Plan (2004)* includes policies regarding parking particularly for the neighborhood area:

- Address parking concerns associated with neighborhood housing.

The *Downtown InFocus Plan (2018)* includes policies regarding parking particularly for the Downtown area:

- Create a tiered parking management approach.
- Advocate for metered parking.
- Make it easy for visitors to park once, when spending the day in Downtown.
- Make desirable parking spaces available to customers, even at night.
- Pursue a shared parking model.
- Work with willing local employers to incentivize alternative modes of commute.
- Create an on-street parking permit for Downtown employees.
- Consider implementing parking maximums.
- Beautify parking lots.

Analysis/Finding

The LDC is not effective in implementing parking-related initiatives from *Go2030*, the *Fargo/West Fargo Parking & Access Plan*, and related policy documents. The off-street parking tables for parking space requirements ([Section 20-0701.B \(Off-Street Parking Schedules\)](#)) only include minimum space requirements and do not include maximum requirements. Also, the minimum parking requirements have not been reduced or adjusted since the adoption of the LDC, and they do not reflect current trends and practices. Interviews with City staff and community stakeholders revealed that some land uses have a minimum parking requirement that is too high (e.g. large retail stores) and other uses (e.g. offices) may have a minimum parking requirement that is too low. Also, parking needs vary geographically or within different contexts. For more details, refer to Section 3.4.2 (Development Standards).

The LDC does provide a limited degree of flexibility from the minimum parking requirements. The “Alternative Access Plans” provision ([Section 20-0701.E \(Alternative Access Plans\)](#)) lists several methods to achieve a reduction in required parking, including Transportation Demand Management (TDM), off-site parking, shared parking, bicycle parking, and valet parking. “Schedule C” is another tool available ([Section 20-0701.B \(Off-Street Parking Schedules\)](#)) for uses that “have widely varying parking demand characteristics” where a parking study can be used to determine parking needs. City staff and stakeholders have noted that this tool has been widely used in recent years, but some have questioned whether there may be a better option to determining parking needs for unique uses. Input from stakeholders indicated that the Alternative Access Plan provision for large parking facilities ([Section 20-0701.E](#)) was less utilized due to the requirement to obtain a Conditional Use Permit, which adds additional time and cost to gain approval. For more details, refer to Section 3.4.2 (Development Standards).

The application of maximum parking requirements in addition to minimums could have the effect of forcing some uses to apply alternative strategies as allowed by the Alternative Access Plan provision. Maximum parking requirements may increase the use of alternative parking strategies as envisioned in *Go2030* and related policy documents.

A pattern of development that has continued to promote an auto-centric environment, especially in newer parts of Fargo, has been how off-street parking has been incorporated into development site design. For example, some recent mixed-use development in South Fargo includes parking located between the building and the street, degrading the pedestrian realm in favor of automobiles. Concerns were expressed by City staff and stakeholders that existing regulations do not provide guidance to best locate off-street parking within a site, creating the potential to impede City initiatives focused on creating active, walkable, or multi-modal environments. For more details, refer to Section 3.4.2 (Development Standards).

Despite the promotion of funding and activating parking structures identified in *Go2030*, the LDC does not provide design guidance for parking structures, such as how they should interface with the street or required placement to maximize use. For example, the DMU district already includes several parking structures, with the potential for more as growth and activity increases in Downtown Fargo. However, the DMU district provides no standards on the preferred location of parking structures and adjacent uses. While [Section 20-0212 \(DMU, Downtown Mixed-Use\)](#) does include a section on screening of parking lots and structures, the standards are minimal and could produce different results per project due to lack of design specificity. For more details, refer to Section 3.4.2 (Development Standards).

2.3.6 – Initiatives: Trees, Landscaping, and Green Stormwater Infrastructure

Overview

Go2030 identifies one initiative related to landscaping and the LDC.

1. *Tree Canopy*. Increase the amount of trees in Fargo by preserving and planting new trees in new developments, planting trees in parks, and increasing the number of street trees along Fargo's main corridors.

Related Initiatives: In addition to *Go2030*, the Downtown InFocus Plan (2018) includes policies regarding parking particularly for the Downtown area:

- Beautify parking lots.

Analysis/Finding:

The LDC includes clear but inconsistent requirements for providing trees and landscaping in greenfield developments, adaptive reuse sites, and for infill projects. The Code stipulates requirements for trees and landscaping along streets, for open space areas in most zoning districts, and in parking lots ([Section 20-0705 \(Trees and Landscaping\)](#)). City staff and stakeholders noted that tree and landscaping planting requirements were satisfactory and supported city initiatives for a greater tree canopy. However, stakeholders noted that tree and associated landscaping requirements were not right-sized to appropriate zoning districts and areas of the City with unique needs. Stakeholders also highlighted a lack of functionality/practicality with the application of some landscaping and tree requirements. For more detail, please see Section 3.4.2 (Development Standards).

2.3.7 - Initiatives: Parks, Public Gathering Spaces, Festivals and Events

Overview

Go2030 identifies three initiatives related to parks, events, and open space:

- *Parks, Open Space, and Habitat.* To ensure all neighborhoods have access to safe and well-maintained neighborhood parks, improve quality and amenities of parks, and protect habitat and open spaces.
- *Public Gathering Spaces.* To develop space for public gathering or neighborhood centers.
- *Festivals and Cultural Events.* To develop space for festivals and events.

Analysis/Findings:

The LDC is not effective in implementing the parks, open space, and habitat initiative as well as the public gathering spaces initiative. The LDC defines 'open space' as "an outdoor, unenclosed area, located on the ground or on a roof, balcony, deck, porch or terrace designed and accessible for outdoor living, recreation, pedestrian access or landscaping, but not including roads, parking areas, driveways, or other areas intended for vehicular travel" while it does not have specific definitions for parks, habitats, or public gathering spaces. Through discussions with City staff, there is a parkland dedication procedure in all subdivision applications, but this process is not codified in the LDC. While the creation of parkland in subdivision developments is a viable way of creating new park space in the city, it is not standardized and done on an ad hoc basis. Also, there are codified open space requirements and habitat protection provisions, they are only required in very specific circumstances such as a new cluster development or a multi-family development utilizing the [Bonus Density](#) program. In addition, there are no

requirements for the creation or development of public gathering spaces within the LDC. For more details, refer to Section 3.4.2 (Development Standards).

While the LDC does not specifically address the development of space for festivals and cultural events, the City does have permit applications for "[General Special Permit/Street Closing/Block Party Request](#)" and "[Outdoor Amplified Sound Permit Request](#)" available on the website. These permit applications are not Planning Department initiatives and they are managed by either the Engineering Department or the Police Department, respectively. Existing right-of-way sidewalk space and streets can be utilized for events via the "General Special Permit/Street Closing/Block Party Request" permit. While the existence of these processes does not guarantee there will be more festivals and cultural events, the fact that the City has official processes set up to make them happen, is notable. For more details, refer to Section 3.4.2 (Development Standards).

2.3.8 - Catalyst: Walkable Mixed-Use Centers

All walkable mixed-use centers are defined by:

- A pedestrian-oriented streetscape with wide sidewalks, street furniture, appropriately scaled lighting, amenities such as bicycle parking etc.
- A density of destinations with a range of uses including residential, commercial, and office.
- Block sizes ranging between 200 and 400 feet to keep walking distances short, creating a streetscape for pedestrians with smaller storefronts. Ideally, pedestrians would encounter a different storefront every 40 feet.
- Transparent storefronts with minimal blank walls.
- Building orientation standards that ensure walkability by building to the sidewalk or a very low setback and locating any parking lots behind buildings or within them rather than in front.
- Requiring public spaces to be constructed with new developments, for more people-oriented spaces along the street that encourage walking such as pocket parks.
- Connecting these mixed-use centers to greenspace, such as Island Park or Pioneer Prairie, providing pedestrians with open space and recreation space within walking distance of their residence.

Analysis/Findings:

The characteristics listed above are only possible within the Downtown Mixed-Use (DMU) district and the University Mixed-Use (UMU) district. Many stakeholders expressed the desire for more walkable mixed-use centers, but these are hard to develop given the limitations of

the base zoning districts outside of the DMU and UMU zones. Other than the two mixed-use zones, the only way to achieve these goals would be with a PUD rezoning. For more analysis on the zoning tools to achieve walkability and the challenges of mixed-use development outside of downtown and the UMU district, see Section 3.4.1 (Zoning Districts) and Section 3.4.2 (Development Standards).



Typical Urban Mixed-Use Building



Typical Walkable, Mixed-Use Neighborhood (Credit: CNU-Atlanta)

Section 3 Land Development Code Overview and Analysis

Subsections:

- 3.1 LDC Organization and Structure
- 3.2 Zones Overview
- 3.3 Standards and Allowed Uses Overview
- 3.4 Diagnosis and Findings

3.1 LDC Organization and Structure

The LDC consists of 13 Articles (see Table 3-1 (Land Development Code Articles)). Each Article is divided into Sections and Subsections for an overall hierarchy as shown below:

Chapter > Article > Section > Subsection

The Chapter number is the first number to appear in the titling sequence. Articles are numbered sequentially in increments of one. (e.g. Article 20-01, Article 20-02). Sections are also numbered sequentially, with the two-digit section number added to the article number (e.g. Section 20-0101, Section 20-0102, etc.).

Table 3-1 – Land Development Code Articles	
Article	Title
20-01	General Provisions
20-02	Base Zoning Districts
20-03	Overlay and Special Purpose Districts
20-04	Use Regulations
20-05	Dimensional Standards
20-06	Subdivision Design and Improvements
20-07	General Development Standards
20-08	Review and Decision-Making Bodies
20-09	Development Review Procedures
20-10	Nonconformities
20-11	Violations and Enforcement
20-12	Definitions
20-13	Fargo Sign Code

The LDC is a traditional use-based, or “Euclidean”, code. Use-based codes, which originated in the early twentieth century out of a need for cities to protect public health, welfare, and safety by regulating incompatible uses, are characterized by an emphasis on separation of uses. While use-based codes regulate building form to some degree (e.g. with setbacks, FAR, lot coverage, and building height), the use inside the building is prioritized over the shape or size of the building. By focusing on use regulations rather than the built form and development pattern, communities often struggle to achieve predictable built results that better respond to changing market trends.

3.2 Zones Overview

[Article 20-02 \(Base Zoning Districts\)](#) establishes 20 unique use-based base zoning districts for the City. The following sixteen sections in the [Article \(20-0201 – 20-0216\)](#) contain descriptions of each zoning district, references to the allowed use table for each district, and references to the standards within [Article 20-05 \(Dimensional Standards\)](#). The base zoning districts include 10 residential districts, five commercial districts, two mixed-use districts, two industrial districts, and one agricultural district. [Article 20-03 \(Overlay and Special Purpose Districts\)](#) establishes three overlay and two special districts along with their respective applicability, use regulations, and dimensional standards.

3.2.1 Base Zoning Districts

Table 2-3 (Base Zoning Districts) lists the purpose and intent for each base zoning district organized by the overall zoning district category.

Table 3.2.1 (Base Zoning Districts)		
Zoning District		Purpose and Intent
Agricultural Zoning District		
AG	Agricultural District	The AG District is intended to accommodate agricultural land uses and provide an interim zoning classification for lands pending a determination of an appropriate permanent zoning designation
Residential Zoning Districts		
SR-O, SR-1, SR-2, SR-3, SR-4, SR-5	Single-Dwelling Residential	The SR Districts are intended to preserve land for housing and to provide housing opportunities for individual households. The regulations are intended to create, maintain, and promote single-dwelling neighborhoods. The regulations accommodate a variety of single-dwelling housing styles and residential densities. The dimensional standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.
MR-1	Multi-Dwelling District	The MR-1 District is primarily intended to accommodate household living in detached houses, attached houses, duplexes and small multi-dwelling structures. The district allows up to 16 dwelling units per acre

Table 3.2.1 (Base Zoning Districts)

Zoning District		Purpose and Intent
		of land. Development within the district will be characterized by one- and two-story buildings with relatively low building coverage.
MR-2	Multi-Dwelling District	The MR-2 District is primarily intended to accommodate household living in detached houses, attached houses, duplexes and multi-dwelling structures. The district allows up to 20 dwelling units per acre of land. Development within the district will be characterized by one- to three-story buildings with slightly higher building coverage than in the MR-1 district.
MR-3	Multi-Dwelling District	The MR-3 District is primarily intended to accommodate household living in detached houses, attached houses, duplexes and multi-dwelling structures. The district allows up to 24 dwelling units per acre of land. Development within the district will be characterized by one- to five-story buildings with higher building coverage than in the MR-2 district.
MHP	Mobile Home Park District	The MHP District is intended to accommodate mobile home park developments.
Commercial Zoning Districts		
NO	Neighborhood Office District	The NO District is primarily intended to accommodate very low-intensity office uses on small sites in or near residential areas or between residential and commercial areas. The district regulations are intended to ensure that allowed uses do not adversely affect nearby neighborhoods. Development is intended to be of a scale and character similar to nearby residential areas in order to ensure compatibility.
NC	Neighborhood Commercial District	The NC District is primarily intended to accommodate small retail sales and service uses on small sites in or near residential neighborhoods. Uses are restricted in size to promote a local orientation and to limit adverse impacts on nearby residential areas. Development is intended to be compatible with the scale of nearby residential areas.
GO	General Office District	The GO District is primarily intended to accommodate office development. The GO district regulations help to prevent the appearance of strip commercial development by allowing office uses but not other commercial uses.
LC	Limited Commercial District	The LC District is primarily intended to accommodate low-intensity office and retail sales and service uses.
GC	General Commercial District	The GC District is primarily intended to accommodate commercial uses. It allows a full range of retail, service, office, and commercial uses.
Mixed-Use Zoning Districts		
DMU	Downtown Mixed-Use District	The DMU district is intended to preserve and enhance the City's downtown area. The district allows a broad range of uses in order to enhance downtown Fargo's role as a commercial, cultural, governmental, and residential center. Development is intended to be

Table 3.2.1 (Base Zoning Districts)

Zoning District		Purpose and Intent
		pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.
UMU	University Mixed-Use District	<p>The UMU district is intended to provide for the location and grouping of compatible uses. The appropriate location for this district will meet three factors. 1) The location will be in close proximity to a university or campus setting. The term campus includes large medical or business settings. 2) The location will have access to public transportation routes and alternative transportation corridors. 3) The location will be in a setting where the neighborhood is in transition from owner-occupied housing to rental housing or where blighted conditions are present.</p> <p>The objective of the zoning district is to encourage high-quality, durable, and long-lasting investments in order to enhance the quality of life and discourage blight. To achieve this objective, the University Mixed-Use zoning district allows higher overall residential density and limited commercial uses while incorporating design standards to achieve quality housing. Development is intended to be pedestrian oriented and neighborhood friendly.</p>
Industrial Zoning Districts		
LI	Limited Industrial District	The LI District is primarily intended to accommodate manufacturing, wholesale, warehousing, and distribution related uses.
GI	General Industrial District	The GI district is intended to serve as an exclusive industrial district and to protect manufacturing and industrial operations from encroachment by lower intensity, incompatible uses.

3.2.2 Overlay and Special Purpose Districts

[Article 20-03 \(Overlay and Special Purpose Districts\)](#) establishes five unique overlay and special purpose zoning districts for the City. Given the nature of these districts, they have separate and distinct applicability, land use, development, and approval requirements. Noteworthy is [Section 20-0303 \(C-O Conditional Overlay\)](#) which allows limited modification and restriction of the standards of the underlying base zone. While the P/I (Public and Institutional) zoning district is listed as a Special Purpose District within Article 20-03, City staff have indicated that it is considered as a base zoning district.

Table 3-3 (Overlay and Special Purpose Districts) lists the purpose and intent for each overlay and special purpose district.

Table 3.2.2 (Overlay and Special Purpose Districts)

Zoning District		Purpose and Intent
Overlay Districts		
H-O	Historic Overlay	The H-O district may be applied in areas of historic or cultural significance that have been designated by the U.S. Department of the Interior, the North Dakota State Historical Society, or the Board of City Commissioners.
HIA-O	Hector International Airport Overlay	The HIA-O, Hector International Airport Overlay district is intended to reduce airport hazards that endanger the lives and property of users of the Hector International Airport and of occupants of land in its vicinity
C-O	Conditional Overlay	By providing for flexible use or property development standards tailored to individual projects or specific properties, the C-O, Conditional Overlay district is intended to: <ul style="list-style-type: none"> - Ensure compatibility among incompatible or potentially incompatible land uses; - Ease the transition from one zoning district to another; - Address sites or land uses with special requirements; and guide development in unusual situations or unique circumstances
Special Purpose Districts		
P/I	Public and Institutional	The P/I, Public and Institutional district is intended to accommodate uses of a governmental, civic, public service or quasi-public nature, including major public facilities. It offers an alternative (versus residential) zoning classification for public and institutional uses, thereby increasing development predictability within residential neighborhoods.
PUD	Planned Unit Development	The PUD, Planned Unit Development district is an overlay zoning district that permits greater flexibility of land planning and site design than conventional zoning districts.

3.3 Standards and Allowed Uses Overview

[Article 20-04 \(Use Regulations\)](#) and [Article 20-05 \(Dimensional Standards\)](#) specify development standards and permitted use regulations for each individual base zoning district.

3.3.1 - Land Uses

The LDC includes 39 use categories that are organized in five groups, including residential, commercial, institutional, industrial, and other uses.

The land use table in [Section 20-0401\(Use Table\)](#) establishes permit requirements for each land use, by zoning district, regulated as follows:

P - Permitted By-Right

C - Conditional Uses

/C - Uses Subject to Specific Conditions

-- Uses Not Allowed

See [Article 20-09 \(Development Review Procedures\)](#) for more information on review and approval procedures

Some uses (e.g., Adult Entertainment Center, Household Living/Group Living, and Bed and Breakfast) are subject to additional requirements established in [Section 20-0402 \(Use Standards\)](#).

3.3.2 – Zoning District Standards

[Article 20-05 \(Dimensional Standards\)](#) establishes development standards for residential uses (Table 20-0501) and nonresidential uses (Table 20-0502), including standards for height, setbacks, minimum lot size, density, building coverage, open space, and floor area ratio. These standards vary by zoning district and apply to any development or use located within the given zoning district.

3.3.3 – Citywide Standards

[Article 20-07 \(General Development Standards\)](#) establishes development standards applicable to uses and zoning districts Citywide. The standards include parking and loading, roadway access and driveways, residential protection standards, trees and landscaping, and corner visibility.

3.4 Diagnosis and Findings

3.4.1 – Zoning Districts

Findings from the review and analysis include:

- The Code does not have the right zoning tools to implement *Go2030*;
- The City relies on negotiated zoning (PUDs, COs, etc.) for flexibility, increased density, additional protections, etc.; and
- There is a limited applicability of the UMU and DMU zones.

Achieving the goal of walkable mixed-use centers is only possible through the University Mixed-Use (UMU) and the Downtown Mixed-Use (DMU) districts. The UMU and DMU are only applied in a very limited area of the City. The land area these districts represent is roughly one square mile out of an estimated 48 square miles throughout the entire City. Eventually, these two districts will be fully built-out and there will not be opportunities to create these centers in

the remaining 47 square miles of the City. See Section 3.4.2 (Development Standards) below for details on LDC regulations that help create walkable mixed-use centers.

PUDs are frequently utilized to provide flexibility that does not normally exist within the LDC because the base zoning districts make it difficult to achieve walkable neighborhoods. The negotiations required to effectuate a PUD, for example, require a protracted process between the developer and the neighborhood. The process is unpredictable for all parties involved and does not necessarily always end up with the desired result. Based on stakeholder feedback, neither the developers nor the residents see this approach as an effective tool for development.

3.4.2 – Development Standards

Absence of built-form standards

The LDC does not contain many built-form standards, such as building and frontage requirements. Two base zoning districts, out of 21 (including the Public and Institutional Zone), contain some standards that would ordinarily produce more predictable results in terms of how the building will integrate into the existing urban fabric, i.e. the DMU district and the UMU district. The DMU district incorporates no minimum front setback, specific facade materials, ground-floor transparency standards, while the UMU incorporates building orientation standards, specific facade materials and articulation standards, and ground-floor articulation standards.

Most of the City contains no built-form standards to promote walkability, especially within the residential neighborhoods. *Downtown InFocus* specifically highlights a goal to “Tweak the DMU” by developing form-based requirements that guide the placement of buildings, parking, and other key design considerations of for Downtown (Page 35, [Downtown InFocus](#)). This goal is detailed by including recommendations for standards such as transparency, pedestrian access, height, parking, setbacks, and street trees. Lastly, there is also a proposed Build-to-Zone (BTZ) in with

City of Las Vegas Form Based Code 19.09.050.E.012 T5 Main Street Zone (T5-M5)

Diagram illustrating building placement and form standards. The left diagram shows a building footprint on a lot with setbacks from the front, side, and rear streets. The right diagram shows a cross-section of a building with various height and setback parameters labeled with letters (A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z).

Key for Diagrams

- Lot Line
- Buildable Area
- Building Setback Line
- Facade Zone

E. Building Placement					
Setback Distance (Distance from ROW/Lot Line)	Front ^{1,2}	Corner Side ^{1,2}	Interior Side	Rear	
	L	M	N	O	
Primary Building					
Min.	10 ft	10 ft	0 ft ³	10 ft	
Max.	20 ft	20 ft	--	15 ft	
Primary Building Facade within Facade Zone					
Front (min.)	70%				
Side Street (min.)	60%				
Miscellaneous					
A building form with a chamfered corner is only allowed on corner lots and only if a corner entry is provided.					
Notes:					
¹ Additional setback and/or easement may be required where street ROW or utility easement is needed.					
² Setbacks must be identified into the setback areas to meet the building.					
³ Buildings and structures located 5 feet from a property line must comply with all applicable Building and Fire Code requirements.					

F. Building Form Standards			
Building Height	Stories	P	
Primary Building	2 min. - 7 max.		
Accessory Building	2 max.		
Primary Building			
Ground Floor Finish Level ^{1,2}			Q
Height above curb			
Residential	1.50 ft min.		
Service or Retail uses	0.50 ft max.		
Ground floor lobbies and common areas in multi-unit buildings may have a ≤ 0.50 ft ground floor finish level.			
Floor-to-Ceiling			
Ground floor	14 ft min.		R
Upper floors	9 ft min.		S
Footprint			
Lot coverage	70% max.		
Depth			
Ground floor space	30 ft min.		T
Notes:			
¹ Buildings existing at the time of adoption of the Form Based Code and additions to those buildings that are less than 50% of the existing gross floor area are exempt.			
² Many buildings located on lots sloping down and away from the street are exempt.			

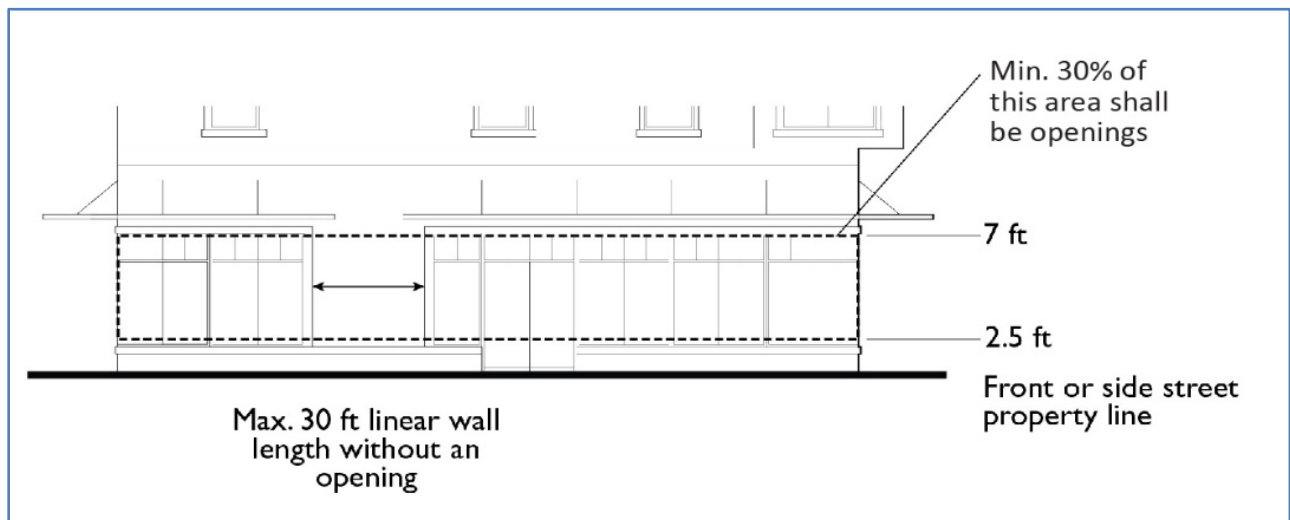
Key for Tables

- No Requirement

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An Example of a Page From a Form-Based Code

a percentage of the façade must be located along primary (and secondary) streets, establishing a maximum setback to ensure that buildings are placed closer to the sidewalk edge, and establish guidelines for parking location in the rear or side of the lot. These proposed regulations are in line with form-based best practices and could solve the problem of a lack of built-form standards in the LDC.



A Typical Building Transparency Diagram

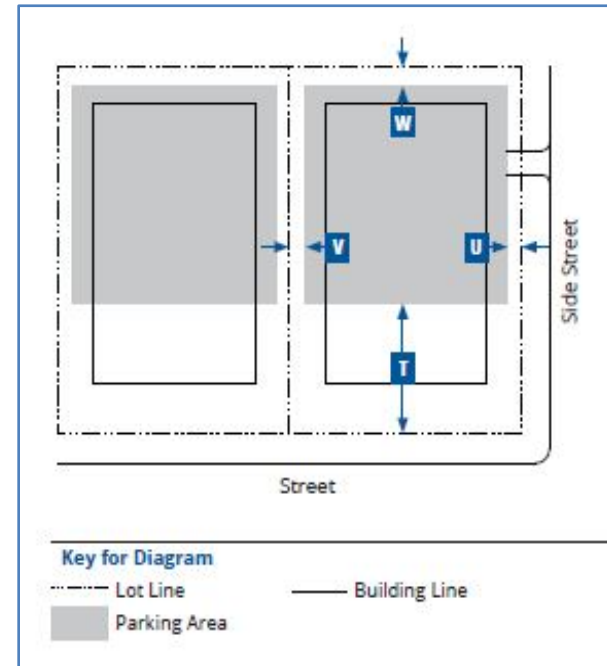
Even in the DMU district and the UMU district regulations are difficult to implement. For example, stakeholder feedback indicated that, new developments in the DMU are rarely built to the sidewalk edge, due to challenges with utility placement and access. As the requirements for utilities are typically inflexible, buildings tend to be pushed away from the street which further erodes the potential for a quality pedestrian-friendly environment that the standards intend to promote. While coordination between the Planning Department and the Engineering Department to find a solution to the utility placement issue would need to occur, best practices dictate that the base zoning districts, for example, include requirements for buildings to be placed at the sidewalk edge and to integrate similar built-form standards, (e.g. ground-floor transparency standards), into the other commercial districts outside of downtown and the University area. Fostering walkable commercial areas through built-form standards can be achieved by adding these types of regulations.

Parking and Building Location (Impact on Pedestrian Friendly Streetscape)

Many stakeholders and residents reported that the current regulations create large expanses of surface parking in nonresidential areas. While the LDC's minimum required parking standards are one factor, the required placement of parking on the site is also an issue. The required large front setbacks typically tend to influence the placement of parking in front of

buildings along the fronting street. Parking placed in front of buildings severely limits an area's walkability due to the distance of the buildings from the street and the prioritization of automobiles over pedestrians.

[Section 20-0701 \(Parking and Loading\)](#) does not apply any standard for parking location relative to the primary building. One exception is within [Section 20-0701.D \(Location of Required Parking\)](#) which has a parking location requirement within Single-Family Districts. The combination of large minimum setbacks ([Section 20-0502](#)), high minimum parking standards ([Section 20-0701](#)), and the lack of parking location standards leads to an unfriendly pedestrian streetscape with large parking lots occupying most of the properties. As mentioned in the previous section, *Downtown InFocus* recommends establish guidelines for parking location in the rear or side of the lot. Best practices to remedy the issue include requiring parking to be located behind buildings or to the side of a building when possible or establishing a maximum front setback. Either of these regulations would reduce the negative impact of parking lots on the pedestrian streetscape.



A Typical Building and Parking Area Location Diagram from a Form-Based Code

Parking Regulations

The existing parking regulations do not account for how parking needs might vary based on location or context within the City. Instead, uniform requirements are provided. For example, the restaurant parking requirement of 1 space per 75 square feet for “Restaurant, General, Bars, Taverns and Lounges”) near NDSU where a range of transportation options are viable should not be the same as the amount of parking for a restaurant on the southern suburban fringe adjacent to Interstate 29 where driving is the most viable option of transport ([Section 20-0701.B.1 \(Parking and Loading\)](#)). Some areas, such as adjacent to NDSU and other areas where the existing land use context promotes walkability and other viable forms of transportation, the demand for off-street parking may be lower than for other more auto-centric parts of the City.

The increasing use of “Schedule C” to identify alternative parking requirements indicates that the listed requirements (Schedules A and B) may not be adequate and that other alternatives

to the parking requirements may be needed. The original intent of the provision documented in [Section 20-0701.B.3 \(Parking and Loading\)](#) is for “uses that have widely varying parking demand characteristics, making it impossible to specify a single off-street parking standard.” Heavy use of Schedule C shows that the listed parking requirements do not reflect the current (and possibly the projected) development market. Overuse of Schedule C creates an added administrative burden on City staff and adds time and cost to development proposals.

Regarding the location of off-street parking within a development site, design guidance is lacking in zoning districts where the City has planned for active streets, or in other words, a walkable environment. “Walkable Mixed-Use Centers” are envisioned in *Go2030* throughout the City and the same concept is promoted throughout Downtown as documented in the *Downtown InFocus Plan*. In the absence of design criteria to better locate off-street parking on a development site, off-street parking has the potential to degrade walkability in Downtown Fargo or impede the creation of a more walkable environment in areas where *Go2030* envisions a walkable mixed-use center.

Challenges in Residential Compatibility (Standards and Consistency in Application)

[Section 20-0704 \(Residential Protection Standards\)](#) includes an extensive list of Residential Protection Standards that apply to all multi-dwelling developments located within 150 feet of any SR or MHP zoning districts and all nonresidential development when the development occurs on a site located within 150 feet of any SR, MR or MHP zoning districts.

The standards consist of additional setback provisions, screening, building height, landscape buffers, operating hours, lighting, and odors. Each standard is based on distances from the nearest residentially zoned property and can change depending on how close the development is to residential base zoning districts. [Section 20-0704.I \(Waivers\)](#) provides flexibility to reduce or waive one or more of the Residential Protection Standards. If any reductions or waivers are issued, a notice is sent to all properties within 300 feet of the development. Lastly, the LDC has a provision for residents to appeal the waiver. The appeal may be heard by either the Planning Commission or the City Commission.

Based on stakeholder and community feedback, it is evident that the Residential Protection Standards have been utilized frequently, especially due to the amount of new multi-family structures and industrial parcels within close proximity to single-family residential base zoning districts. Many stakeholders were split on the issue of Residential Protection Standards, either because they are not adhered to and developers consistently sought waivers, or the standards are too rigid and need to be better defined.

Infill Development

Infill is promoted in the City of Fargo through the application of two zoning districts, Downtown Mixed Use (DMU) and University Mixed Use (UMU). Key elements of both districts that promote infill that are unique from the rest of the LDC's base zoning districts include:

- DMU: The district allows 100 percent lot coverage and does not have any lot size, setback, or height requirements ([Section 20-0502 \(Nonresidential District Standards\)](#)).
- UMU: In comparison to the Code's other residential districts, UMU has the smallest minimum lot size requirement, some of the smallest setback requirements, has the greatest lot coverage allowance, and the greatest height allowance ([Section 20-0501 \(Residential District Standards\)](#)).

Other than DMU and UMU, all the LDC's base districts make development difficult on most infill lots in the City's core areas. The dimensional standards for the other districts are crafted for conventional suburban development ([Sections 20-0501 \(Residential District Standards\)](#) and [20-0502 \(Nonresidential District Standards\)](#)). For example, many existing lots in the Horace Mann neighborhood are approximately 40 feet by 140 feet and are zoned SR-2. The SR-2's district dimensional standards result in many existing lots in core neighborhoods being nonconforming. In addition, many existing homes and accessory structures in core neighborhoods do not meet current setback standards. Therefore, it is difficult for any property owner or developer to develop a vacant, nonconforming lot and to meet all current dimensional standard requirements to simply create development consistent with what currently exists throughout much of the neighborhood. As a result, many property owners/developers resort to negotiated zoning and related tools, such as variances, Planned Unit Development zoning, or Conditional Overlay zoning. Whether or not the use of negotiated zoning tools to allow infill development is the appropriate path the City should provide, a roadmap that explains how to successfully present an infill development project is missing from the Code or from general policy guidance provided by the City online or otherwise. An infill development "roadmap" is especially lacking for the City's core neighborhoods outside of the DMU and UMU districts.

Paving Standards in Industrial Areas

Multiple stakeholders commented on the paving requirements as being very costly, and potentially rendering projects infeasible. The stakeholders agreed that there should be more flexibility for allowing alternative materials, such as gravel or crushed concrete.

[Section 20-0701.G \(Parking and Loading\)](#) states that in the Limited Industrial district and the General Industrial district, "... rear yard vehicular circulation area, not including parking spaces, may be crushed concrete or similar material as approved by the Zoning Administrator." The key is that the parking areas may not be crushed concrete or another material, and the City is requiring it to be an "All Weather Surface", which consists of concrete, asphalt, paving blocks, brick etc. In addition, [Section 20-0704.3 \(Residential Protection Standards\)](#) states that any structural alteration of an existing building that increases the building footprint by more than 1,000 square feet or increases the height by 10 percent requires the property to come into full zoning compliance. These two standards have the effect of making some industrial-specific improvement projects financially infeasible. Industrial-zoned sites in Fargo tend to be much larger than almost all other properties in the City. The required paving of parking areas in industrial districts, rather than gravel or a similar material, has been a challenge for many business owners and could result in fewer properties being improved due to these regulations.

Inadequate Provisions to Create New Parks, Public Spaces, Open Spaces and to Protect Existing Habitats

Parks and Open Areas, defined in [Section 20-1203 \(Use Categories\)](#) as "natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares" are a land use allowed throughout the City except in the University Mixed Use (UMU) and General Industrial (GI) districts. However, neither parks nor open areas appear in [Article 20-12 \(Definitions\)](#). Further, there are no design or development criteria for parks to ensure adequate size, access, or amenities, and, the LDC does not include a requirement for parkland dedications within large developments or new subdivisions. City staff have confirmed that an unwritten process for requiring parkland dedications is utilized for these projects. Best practices going forward would be to codify the parkland dedication process as a part of subdivision approvals in order to ensure that new parkland will be created with each application and to provide clear requirements for applicants. [Section 20-0705 \(Trees and Landscaping\)](#) contains tree planting requirements based on the size of the lot (e.g. 3 plantings per 1,000 square feet of lot area). While these requirements ensure trees and shrubs are incorporated throughout a site, these regulations do not guarantee dedicated area for usable open space, recreation, or public gathering.

The LDC contains provisions for the creation of open space and the protection of existing habitats but only in limited circumstances. [Section 20-0302.F.3 \(PUD, Planned Unit Development\)](#) states that at least 10 percent of the gross land area in PUDs must consist of open space. The next provision, in [Section 20-0302.F.3](#) states that a PUD must preserve natural

features such as mature trees, vegetative cover, watercourses, and other natural site features “... to the greatest extent possible.” The question regarding the open space and natural features protection policies is how often developers seek and are granted waivers from this provision.

Uses such as religious institutions and schools are required to provide minimum of 35 percent of the site area as landscaped open space. Only the multi-family residential base zoning districts (MR-1, MR-2, MR-3) include Minimum Open Space requirements, as a percentage of the lot, at a minimum of 35 percent. The Bonus Density program contains the most stringent minimum open space requirement of 40 percent of the lot area as one of three standards for which compliance is needed in order to allow a maximum density of 30 dwelling units per acre.

[Section 20-0506 \(Alternative Residential Development Options\)](#) contains provisions for Open Space requirements, but only regarding Cluster Developments. In general, Cluster Developments are subject to the minimum on-site open space standards of the base zoning district. The Section contains separate requirements for Common Open Space which is defined as, “Open space within a development, not in individually owned lots or dedicated for public use, but which is designed and intended for the common use or enjoyment of the residents or occupants of the development. Common Open Space does not include areas used for streets, alleys, driveways, or off-street parking or loading areas. However, the area of recreational activities such as swimming pools, tennis courts, shuffleboard courts, etc., may be counted as common open space.” This provision represents a very specific case of open space being required for a new development but likely on a limited scale.



Typical Common Open Space in a Cluster Development

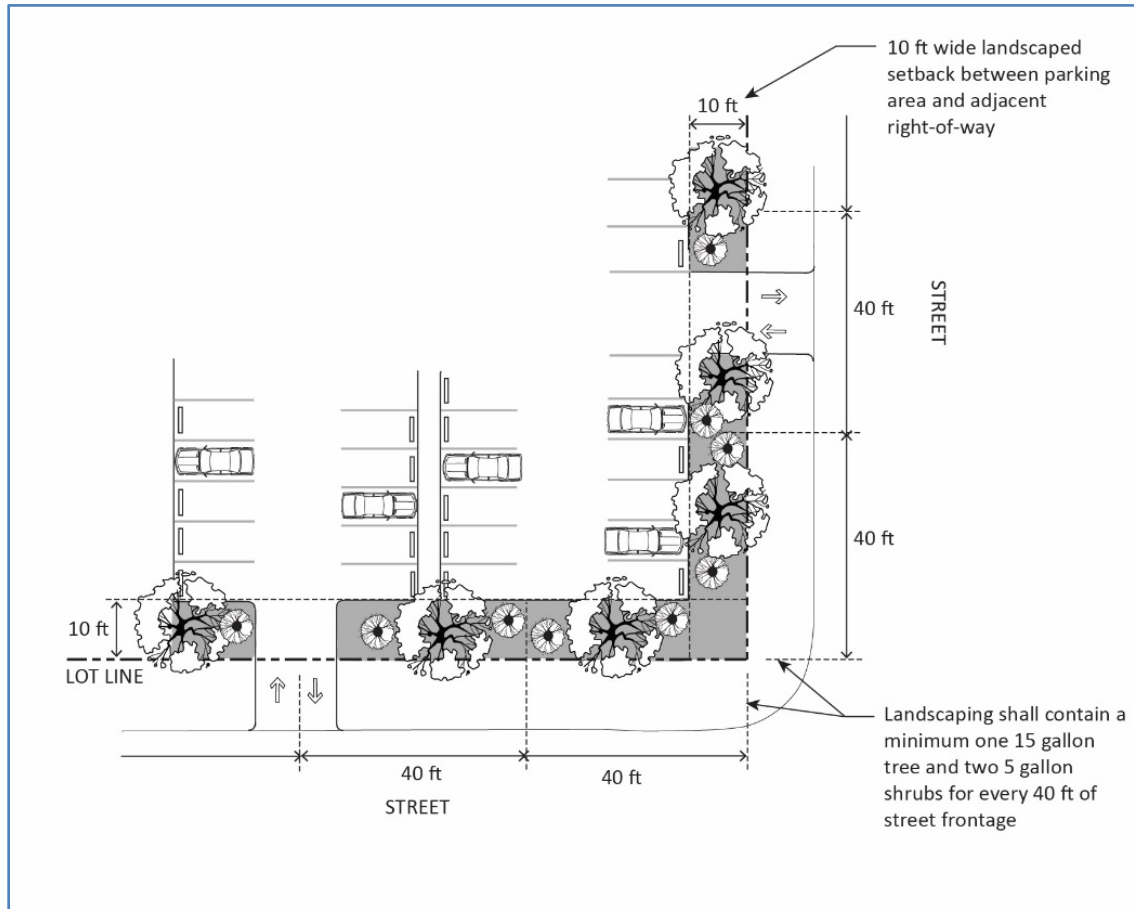
Inflexible Landscaping Standards

The Land Development Code’s tree and landscaping requirements for new commercial and residential development in greenfield areas are robust and understood through stakeholder and City staff input to work well and to result in high quality development. However, the tree and landscaping requirements lack flexibility when it comes to infill and adaptive reuse projects in older parts of the City. [Section 20-0705 \(Trees and Landscaping\)](#) of the Code contains one set of requirements for all new development in the City whether it is an infill,

greenfield, or adaptive reuse project. [Section 20-0705](#) does include some exemptions that are effective. Yet the flexibility afforded by these exemptions is limited when it comes to infill and adaptive reuse development outside of the University Mixed Use (UMU) district. Exemptions include development in the UMU district and improvements to existing development that does not involve more than 1,000 square feet or ten percent of the building, whichever is greater. Two examples regarding the Code's lack of flexibility pertaining to Section 20-0705 are outlined below:

- Trees and landscaping required through [Section 20-0704 \(Residential Protection Standards\)](#) cannot be counted toward the total tree and plant units required in [Section 20-0705](#). Since the Residential Protection Standards are often triggered with infill or adaptive reuse projects, this can have the effect of limiting development, especially those on smaller lots in the older parts of the City. The Code lacks a comprehensive recognition of the total planting requirements placed on a single development, based on all the individual standards that require landscaping.
- The required location of planting units can also limit development on smaller or irregularly shaped lots in older parts of the City. [Section 20-0705.C.4](#) requires a minimum of 70 percent of the required plant units to be installed along the development's street frontage. Such a high percentage may work well on wide suburban lots but presents significant challenges for older narrow lots common throughout the City's core.

Since much of [Section 20-0705 \(Trees and Landscaping\)](#) concerns spatial requirements (e.g. the location of required planting units, buffer standards, etc.), the lack of illustrations presents a challenge to the layperson, especially to those new to the Land Development Code.



A Typical Parking Area Landscaping Diagram

With regard to industrial development, especially large industrial sites involving expansive parking, loading, and circulation areas, stakeholders generally noted that the Land Development Code's requirements pertaining to landscaping and the improvement of parking/circulation areas were not practical and made some new development and additions cost-prohibitive. Since large industrial sites are typically planned and zoned to be located away from high-visibility corridors (such as arterial routes) and do not cater to the general public, some Code requirements for industrial development should not be the equivalent of requirements for commercial development. Outlined below is an assessment of how landscaping and parking requirements compare for new industrial and commercial development:

- Tree and Landscaping Requirements. [Section 20-0705.D](#) includes planting requirements for the parking lot perimeter that are the same for commercial and industrial development ([Section 20-0705.D](#)). However, [Section 20-0705.C](#) does require a lesser amount of planting units in industrial districts than for commercial districts.

- Parking and Loading Area Surfacing Requirements. [Section 20-0701.G](#) allows the rear yard circulation area in the Light Industrial and General Industrial Districts to be crushed concrete or similar material. Depending on development location and the context (i.e. existing buffers or landscaping), practical factors that may allow for crushed concrete or a similar material for industrial development are not considered in the section. Considerations for dust control and the mitigation of storm water runoff are also missing from the section.

3.4.3 – Housing Development

The LDC’s predominant multi-family housing zoning districts are MR-1, MR-2, and MR-3. These districts are intended to allow development on large suburban lots. For example, front setback requirements are 25 feet and building coverage requirements range from 35 to 37.5 percent ([Article 20-05 \(Dimensional Standards\)](#)). Such restrictive dimensional standards push up development costs by requiring the use of larger lots and making infill or redevelopment in older portions of the City more difficult where smaller lots predominate. As a result, these restrictive requirements decrease the affordability of multi-family housing.

New multi-family housing development on infill or vacant property that requires a zone change or Conditional Use Permit is benefited in areas where the City has identified a future land use designation for the site. However, many developed areas of the City outside of the boundaries of the *Downtown InFocus Plan* and the *Roosevelt-NDSU Neighborhood Plan* do not have an adopted future land use map in place to guide zoning decisions. Therefore, in cases where applicants are seeking to develop higher density housing where a zone change or Conditional Use Permit is necessary, approval cannot be based on a future land use map. This lack of development predictability can easily jeopardize housing projects (such as multi-family and/or affordable housing) that are often supported by complex financing arrangements dependent upon certainty in local land use policies and regulations. The recent Craig’s Oak Grove Second Addition proposal including townhomes and an apartment building is a good example of a situation where there was no future land use designation to help guide the proposed change in zoning. While the subdivision and zone change request was approved in late 2019 (for more information, refer to Planning Commission staff report and minutes from September 3, 2019), the lack of future land use direction added a substantial burden on the applicant to prove consistency with *Go2030*. The City is presently moving to provide future land use and policy direction for the City’s Core Neighborhoods with the current development of the Core Neighborhoods Plan.

City staff and stakeholders noted the success of the UMU district in providing housing for the NDSU student population. As provided in [Section 20-0501 \(Residential District Standards\)](#), the UMU district allows multi-family housing without less restrictive dimensional standards than

the MR zones (10-foot front setback and 75 percent maximum building coverage). These standards provide an opportunity to create affordable units through development savings on lot size requirements, in addition to less restrictive parking requirements. However, areas zoned UMU are close to build-out, and the district is limited in its application throughout the City to areas “in close proximity to a university or campus setting” ([Section 20-0216 \(UMU, University Mixed Use\)](#)).

The Bonus Density provision ([Section 20-0505 \(Bonus Density\)](#)) as an incentive to increase density and the potential for affordable housing has less potential due to overly restrictive qualifying standards. The qualifying standards include requirements for tuck-under parking, provision of minimum open space of 40 percent, and no allowance for a height increase above the district standards. Combined, the standards have the potential to increase the necessary lot size to earn the added density and, thereby, significantly to increase development costs. The standards also limit the geographical application of the provision to properties large enough to accommodate these standards, making infill and redevelopment difficult.

Other ancillary standards have an impact on the potential for housing affordability. The cost of on-site parking should be considered as part of the cost of the associated housing. The UMU district stands out from other zoning districts that allow multifamily housing, as the district allows a 38 percent reduction in required off-street parking ([Section 20-0701 \(Parking and Loading\)](#)). Comments from City staff and stakeholders were generally positive about the functionality of the UMU district, including parking. Subdivision regulations can also have a considerable impact on housing cost. Stakeholder comments related to the development of more affordable single-family housing noted that regulations pertaining to right-of-way improvement standards ([Section 20-0611 \(Streets\)](#)) create cost concerns and impediments to the design of smaller lot, higher density single family residential neighborhoods. As a result, some recent subdivisions have relied on private streets and alternative zoning mechanisms such as PUD or Conditional Overlay zoning.

3.4.4 – Subdivisions

Infill developments that involve a subdivision application to create new lots and rights-of-way in any of the City’s core neighborhoods, are subject to similar limitations noted with the LDC’s zoning regulations. The Code’s street standards ([Section 20-0611 \(Streets\)](#)) allow for a range of local street cross sections, but do not include allowances for alleys, or at least a right-of-way cross section similar to existing alleys in the City’s core neighborhoods. Another element critical to right-of-way cross sections is utility placement. City staff noted that utilities are typically placed in a corridor ten feet in width beginning on the outside edge of the sidewalk. The concern is that utility placement requirements are not referred to directly in the Code.

Rather, the City Engineer is referenced as providing utility “standards and requirements” ([Section 20-0608 \(Utilities\)](#)).

To modify subdivision requirements like the street and utility requirements, some projects in South Fargo have utilized Planned Unit Development (PUD) zoning and private access easements. Infill developers would be expected to use similar tools for subdivision development. The LDC lacks mechanisms that could better facilitate small lot subdivisions, such as greater right-of-way and utility placement flexibility. This flexibility would not only benefit greenfield development in South Fargo but also infill projects in the core neighborhoods.

3.4.5 – Code Usability and Format

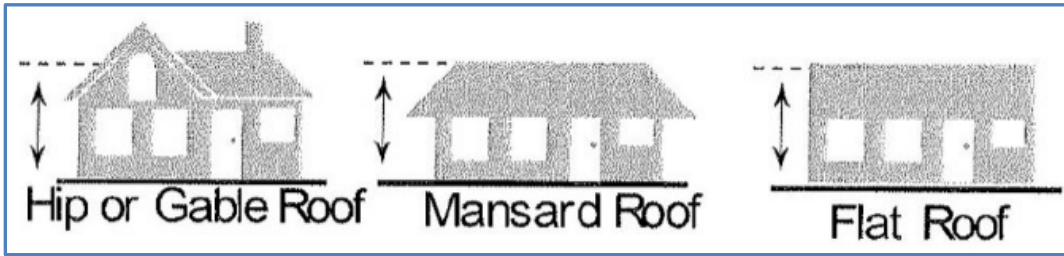
The ability to use and navigate a zoning code is vital to its effectiveness. Easy-to-use and understand land development codes are well organized and formatted, provide necessary cross-references, and utilize tables, graphics, and illustrations. This subsection provides a summary of the usability and format issues which are potential barriers to understanding and using the LDC.

Submittal Requirements on Application Forms

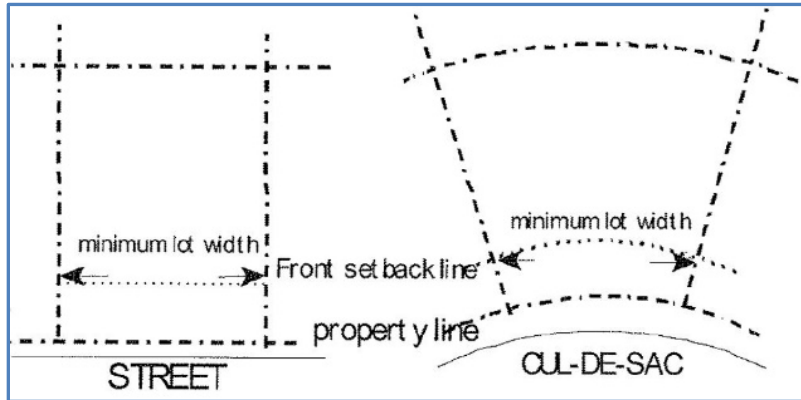
While [Article 20-09 \(Development Review Procedures\)](#) does not include specific submittal requirements for each application type, [Article 20-13 \(Fargo Sign Code\)](#) includes specific application requirements in [Section 20-1303 \(General Standards\)](#). An applicable best practice is to include all submittal requirements on applicable permit/application forms. The advantage of this approach is that if the submittal requirements change they can be adjusted administratively. However, if submittal requirements are included in the LDC, then any change to the requirements will require approval of a text amendment by the City Commission, a process that can be time consuming.

Need for More Graphics and Diagrams

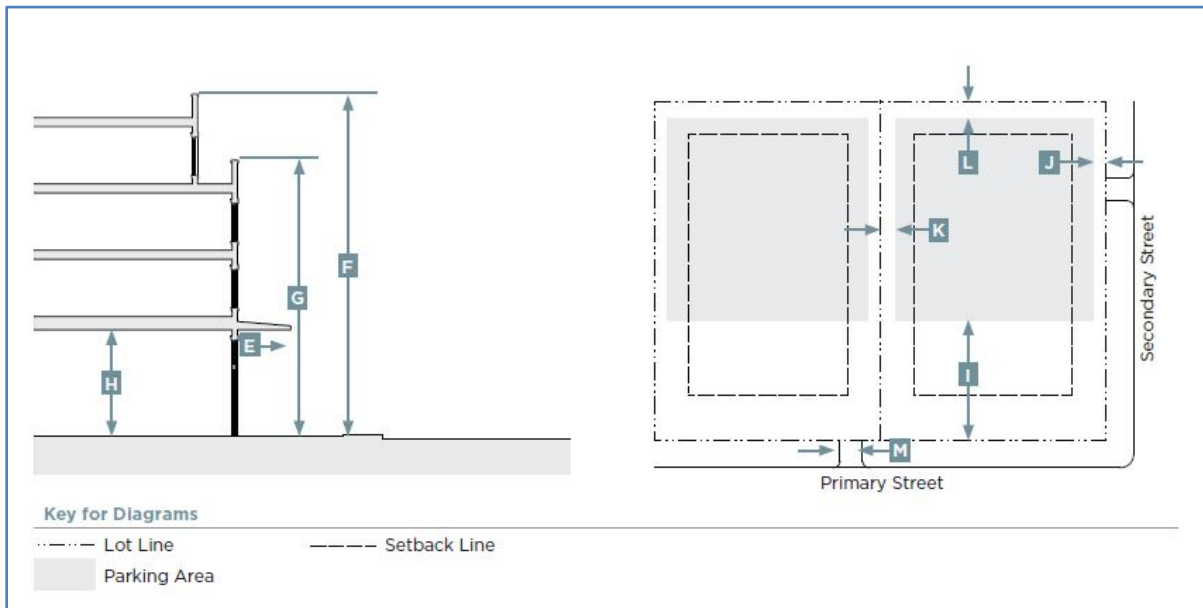
The LDC lacks graphics and diagrams to illustrate and explain its regulatory intent, particularly with dimensional regulations. While [Article 20-05 \(Dimensional Regulations\)](#) includes two graphics for lot width and building height (see diagrams below from [Section 20-0504](#)), it does not include any graphics for other standards such as setbacks and building coverage. Graphics or diagrams are important to illustrate how a setback is measured or how a single-family home can occupy only 25 percent of lot and must comply with minimum setbacks. Land development codes that include clear user-friendly diagrams frequently result in fewer calls to City staff by people seeking clarification of otherwise written code standards.



Building Height Diagram from the Fargo LDC



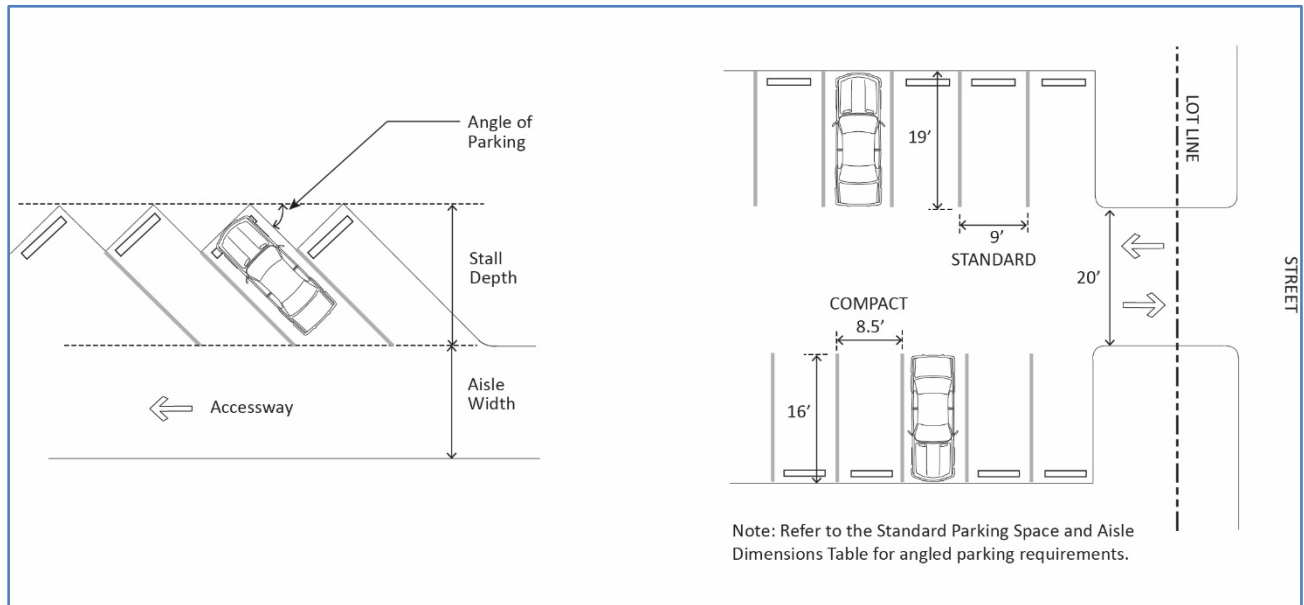
Lot Width Diagram from the Fargo LDC



A Typical Building Height and Setback Diagram

Another Article that would benefit from graphics and/or diagrams is [Article 20-07 \(General Development Standards\)](#). Like [Article 20-05 \(Dimensional Regulations\)](#), development standards tend to be inherently visual concepts such as the design and layout of an off-street parking lot. A scaled diagram for the off-street parking could display the dimensional requirements of each space, how a lot could conform to the vehicle stacking area requirements, the parking lot

landscape requirements by showing the dimensional areas that would require planting, and the corner visibility requirements for entry and exit in relation to the required landscaping.



A Typical Off-Street Parking Diagram

Section 4 Administration and Procedures

Subsections:

- 4.1 LDC Administration and Development Review Procedures
- 4.2 Diagnosis and Findings

4.1 Administration and Procedures

4.1.1. Permits and Approvals

The LDC establishes several procedural requirements that applicants must follow depending on the proposed use, configuration, site design, or if a variance or other exceptions are requested. Procedures include legislative processes, such as rezoning and LDC amendments, and administrative processes such as planning permits and approvals. Certain projects must undergo Site Plan Review in compliance with [Section 20-0910 \(Site Plan Review\)](#). The threshold for Site Plan Review varies by project type (e.g. residential, commercial, industrial) and other factors, such as the size or location of the development.

Table 4-1 (Permits and Approvals) identifies the responsible review authority and noticing and hearing requirements for all types of LDC procedures.

Type of Procedure	Review Authority					Notice Required	Hearing Required	Article/Section
	Staff	HPC	BOA	PC	BCC			
LDC Text Amendments	Review	-	-	Review	Decision	Yes	Yes	Article 20-09 (Section 20-0904)
Area Plan	Review	-	-	Review	Decision	Yes	Yes	Article 20-09 (Section 20-0905)
Zoning Map Amendments	Review	Review	-	Review ¹	Decision	Yes	Yes	Article 20-09 (Section 20-0906)
Subdivision								Article 20-09 (Section 20-0907)
Minor	-	-	-	Review	Decision	Yes	Yes	
Major	Review	-	-	Review	Decision	Yes	Yes	
Planned Unit Developments								Article 20-09 (Section 20-0908)
Master Land Use Plan	Review	-	-	Review	Decision	Yes	Yes	
PUD Rezoning	Review	-	-	Review	Decision	Yes	Yes	
Final Development Plan	Review	-	-	Decision	Appeal	Yes	Yes	
Conditional Use Permit	Review	-	-	Decision	Appeal	Yes	Yes	Article 20-09 (Section 20-0909)

Table 4.1.1 – Permits and Approvals

Type of Procedure	Review Authority					Notice Required	Hearing Required	Article/Section
	Staff	HPC	BOA	PC	BCC			
Site Plan Review	Decision	-	-	Appeal	Appeal ²	No	No	Article 20-09 (Section 20-0910)
Institutional Master Plan	Review	-	-	Decision	Appeal	Yes	Yes	Article 20-09 (Section 20-0911)
Certificates of Appropriateness	Review & Decision ³	Decision & Appeal ³	-	-	Appeal ²	No	No	Article 20-09 (Section 20-0912)
Building Permits/Certificates of Occupancy	Decision	-	Appeal	-	-	No	No	Article 20-09 (Section 20-0913)
Variances	-	-	Decision	-	Appeal	Yes	Yes	Article 20-09 (Section 20-0914)
Written Interpretations	Decision	-	Appeals	-	-	No	No	Article 20-09 (Section 20-0915)
Appeals of Administrative Decisions	-	-	Decision	-	Appeal	Yes	Yes	Article 20-09 (Section 20-0916)

Key:

HPC – Historic Preservation Commission;
 BOA – Board of Adjustment;
 PC- Planning Commission;
 BCC- Board of City Commissioners

Notes:

- 1) Historic Preservation Commission is involved only on H-O District applications, pursuant to Section 20-0305
- 2) Appeals are not required to go to Planning Commission and Board of City Commissioners. Board of City Commissioners acts as appellate body only if the Planning Commission's decision is appealed.
- 3) Review, Decision Making and Appeals process is different depending on nature of request. See Section 20-0912

4.1.2. Review Process

The Fargo Planning Department manages the review process from application submission until the review authority's final decision. All applications must be on a form required by the Department and accompanied by applicable fees. Detailed review procedures are established for each permit or approval type, ([Sections 20-0904 - 20-0916](#)), and include information regarding application requirements, review and approval criteria, and any post decision procedures such as appeals and expiration.

Apart from a Site Plan application, the City's website offers all applications regarding land use and zoning, variances, subdivisions, and administrative review along with their associated fees.

4.2 Diagnosis and Findings

4.2.1 Zoning Map Discrepancies

The City's website contains two different zoning maps, one is a PDF that was last updated in May of 2017 and the other is an interactive GIS map that seems to be updated regularly. While neither the North Dakota Century Code nor the LDC contain any specific requirement for an 'up-to-date and accurate zoning map', keeping only one zoning map on the website will provide more clarity to residents visiting the website. It is a common best practice to have a single zoning map on a City's website that can be updated regularly with ease, not only with new property information but new layers such as Planned Unit Development designations and Renaissance Zones, which is a State program that incentivizes development in certain areas via tax credits. Given that the interactive GIS map contains much more information and is up to date, it would be advantageous to eliminate the May 2017 PDF zoning map from the website entirely to avoid confusion.

4.2.2 Predictability and Clearer Thresholds in the PUD Approval Process

Many stakeholders commented on the unpredictability of the PUD approval process for both developers and residents. Some residents contend that the use of PUDs is too widespread and that they are not being implemented with the neighborhood context in mind. Residents also assumed that PUDs are a tool for developers to be able to build what they want, without having to follow the standards in the established base zoning district. Some of the recent PUDs were approved after lengthy negotiations with neighborhood groups, but this important part of the process is not reflected in the LDC. On the other hand, some developers said that the PUD allows them to build denser, mixed-use developments with abundant on-site parking, and that the approval process is lengthy, contentious, and political. Both groups agreed that the process does not work for either side; residents feel that PUDs erode their neighborhood character while developers see it as the only tool to build denser residential or mixed-use buildings outside of the UMU and DMU districts. Despite disagreement on the use of PUDs, both sides agree that the process is inherently unpredictable and there are no discernable thresholds within the LDC when utilizing the PUD process as a zoning tool.

4.2.3 Consistency in Implementation of Residential Protection Standards

Like PUD's, stakeholders identified the Residential Protection Standards as needing more clarity, not only in the approval process but also with enforcement. Residents stated that the standards are not being followed and developers regularly obtain waivers for some standards.

On the other hand, developers said that the standards are not clear enough, which presents issues with interpreting the regulations, and they do not have enough built-in flexibility.

[Section 20-0704 \(Residential Protection Standards\)](#) of the LDC lays out all the additional standards for non-residential properties adjacent to residential zoning districts. These standards serve as buffers between the residential and non-residential properties in addition to the setback required by the property's base zoning district. The Residential Protection Standards consist of requirements for additional setbacks, visual screening of dumpsters and outdoor storage areas, building height, landscape buffers, additional light and odor provisions, and reduced operating hours for refuse and loading. Each standard has a level of specificity that would make it difficult for every project to be fully compliant without a waiver. For example, "Residential Protection Landscape Buffers must be installed or preserved along lot lines adjacent to any SR-, MR-, or MHP-zoned property. Plantings in Residential Protection Landscape Buffers are not counted toward the plant unit requirements of the Open Space Landscaping Requirements of [Section 20-0705.C.](#)" The Landscape Buffer standards, in addition to the Landscaping Requirements, may make compliance difficult due to several limiting factors including lot sizes, lot occupation, setbacks, and cost. As a result, an applicant is forced to abide by two sets of standards, which opens the door for inconsistency in implementation. The Residential Protection Standards make the base zoning district standards seem inadequate or irrelevant in many parts of the City. In addition, if waivers are being granted on a consistent basis, it is indicative that many of these standards cannot be practically applied in the way they were intended.

4.2.4 Transparency with the Creation and Management of Conditional Overlays

Conditional Overlays (CO) are a zoning tool intended to provide additional protections to properties to ensure compatibility among incompatible uses, ease the transition between zoning districts, address sites or uses with special requirements, and to aid development in unique circumstances. While COs can act as a safety-net for some projects, many stakeholders feel that the process to approval is arduous and can yield some unwanted results. [Section 20-0303](#) contains six specific standards for which restrictions and conditions could be imposed:

- Prohibiting otherwise permitted or conditional uses and accessory uses or making a permitted use a conditional use;
- Decreasing the number or average density of dwelling units that may be constructed on the site or limiting the size of nonresidential buildings that may be placed on a site;
- Increasing minimum lot size or lot width;
- Increasing minimum yard and setback requirements;

- Restricting access to abutting properties and nearby roads; and
- Creating and enhancing design standards, landscaping requirements, and pedestrian and vehicular traffic guidelines and standards for development within the district.

As part of the approval of a Conditional Overlay, a new allowable use that was otherwise prohibited may not be allowed nor can a CO reduce dimensional standards, such as a setback; Similarly through a CO, standards may only be increased and not decreased. Additionally, the [Section 20-0303.C](#) clearly states that “requirements of a C-O district are in addition to and supplement all other applicable standards and requirements of the underlying zoning district”. The concern with Conditional Overlays is that they inherently treat similarly situated properties differently and it can be hard to find a rational basis for the variation in applied standards. Conditional Overlays are often included as part of a negotiation between a property owner/developer and nearby residents in a zoning case in which the property owner receives the rezoning in return for agreeing to certain conditions, such as a prohibition of certain uses or a height limit on the building(s).

Despite how specific standards in a CO may be, many stakeholders felt a sense of an overall lack of transparency with how the CO standards are created and how they are enforced once a project is completed. In addition, CO’s are sometimes a request made by the City to an applicant, usually to implement design standards in commercial districts. According to City staff, most design standards are created without any references to the Code or based on any approved guidelines.

Typical best practices suggest that when a tool such as a CO is used to establish, for example, design standards in commercial districts, then it is preferred to adopt design standards for those commercial districts and to include them in the Code. Under this approach, all developments in commercial districts would be subject to the same standards and the need for COs would be eliminated, with the added benefits of reducing costs to both the City and developers, providing certainty for all parties, and consistency in the application of design standards.

4.2.5 Clear Thresholds for Discretionary Review

Both City staff and stakeholders expressed concern with unclear review processes, particularly with vague language embedded into approvals. One example is that Historic Overlay approvals frequently contain vague conditions such as, “... [buildings] must match the original building in design, dimension, detail, texture, and pattern.” None of the terms listed are defined in an objective way and are enforced subjectively as a result. The approval of a building in this

Historic Overlay could become confusing for an applicant given there are no specifically defined parameters for approval.

Similarly, many of the CO districts contain subjective design language that is difficult to enforce and vague for any potential applicant. For example, “All primary buildings shall be constructed or clad with materials that are durable, economically maintained, and of a quality that will retain their appearance over time...”. Terms such as ‘durability’ and ‘quality’ are subjective in nature and can only be determined by the Planning Director or his/her designee, leading to project approvals based on opinion-driven design decisions. Similarly, attempts to dictate the color of buildings by saying, “Color schemes shall tie building elements together, relate pad buildings within the same development to each other, and shall be used to enhance the architectural form of a building” are inherently subjective. This regulation attempts to address cohesion and a unified rhythm to a building façade but without any sort of dimensional requirement or enforceable provision. While the idea of the Conditional Overlay is to provide more protections where they are necessary, they frequently result in widespread subjective approvals that are unlikely to be enforced later due to vague regulatory language.

4.2.6 Availability of Information

Official Zoning Map

As noted above, the City’s discrepancy between the PDF Zoning Map and the GIS Zoning Map could potentially be a source of confusion for applicants given that the PDF version has not been updated with the same regularity as the GIS version.

The location of the two Zoning Maps on the City website is also a noted issue for applicants or other members of the public. Ordinarily, zoning maps are located on the Planning Department page due to their departmental relevance. The City of Fargo’s website has a dedicated page labeled as “City Maps” that is meant to be a one-stop-shop for all City maps. Once on that page, it is not immediately clear where the zoning map would be located. A user must first assume that it would be found in the “PDF Maps” page and then find a link labeled “Fargo Property Zoning”. In addition, there are no other external links to the Zoning Map within the other pages of the website, and it can only be accessed through the City Maps page which is only on the front page of the website. City staff have mentioned the amount of public inquiries they receive regarding the location of the Zoning Map, which is likely due to its unapparent location within the website.

Site Plan Application

The internal practice of “Site Plan Applications” within the Planning Department is a crucial missing piece in information available to the public on processes and procedures. While, in [Section 20-09 \(Development Review Procedures\)](#), the LDC calls out Site Plan Review as one facet of the City’s Development Review Procedures, the Site Plan Application form is not available on the Land Use & Zoning Applications & Requests page. In addition, there is no physical Site Plan Application that is processed by the Planning Department as Site Plan Review is based on Building Permit Applications routed to the Planning Department after a discretionary decision that the application requires Site Plan Review. Although the LDC does establish thresholds for applications that require Site Plan Review in [Section 20-0910 \(Site Plan Review\)](#), it is unclear whether these are strictly adhered to. This is just one example of an established internal process that is not reflected in the LDC or any other available public document.

Subdivision Parkland Dedication

The Subdivision Park District dedication practice is another example of a process that is not codified. The subdivision regulations within the LDC do not require parkland dedication for each approval yet staff as an internal practice recommends the applicant negotiate with the Fargo Park District, which is a separate taxing entity not affiliated with the City, to dedicate parkland. An average of 8 percent of land ends up dedicated to parkland. In addition, an uncodified option allows an applicant to pay an in-lieu fee for parkland dedication.

Section 5 Legal Compliance

A review of the LDC, supplemented by information provided by City staff (Memorandum: Legal Considerations for Fargo Land Development Code Diagnostic, February 5, 2020) yielded some potential legal concerns relevant to the LDC Diagnostic Report. Important topic areas are identified in the narrative below that warrant further review and discussion with the City Attorney's office to ensure any update to the LDC is consistent with state and federal law.

5.1.1 Compliance with *Reed v. Town of Gilbert*

The City's sign regulations are located in [Article 20-13 \(Fargo Sign Code\)](#). In June 2015, the U.S. Supreme Court decision in *Reed v. Town of Gilbert* (No. 135 S.Ct. 2218, 2015) affirmed that sign regulations generally must be "content-neutral" to survive a legal challenge. Content-based regulations are subject to what is called a "strict scrutiny" standard – that is, a compelling governmental interest must be demonstrated, and regulations must be narrowly tailored to serve that interest.

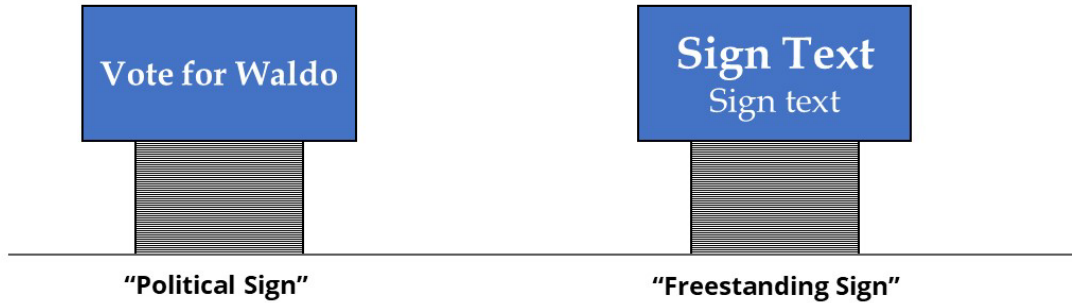
Since the *Reed* decision, several lower courts have invalidated content-based regulations of noncommercial speech, particularly those relating to political signs (*Marin v. Town of Southeast*). The lower courts have also upheld several examples of content-neutral time, place, and manner regulations, including restrictions on painted wall signs (*Peterson v. Village of Downers Grove*), murals (*Kersten v. City of Mandan*), and a New York City prohibition on illuminated signage extending more than 40 feet above curb level (*Vosse v. City of New York*). In *Central Radio, Inc. v. City of Norfolk*, the lower court looked unfavorably at incomplete exemptions for artwork, and flags of certain jurisdictions.

"Time, place, and manner" restrictions, as the name suggests, limit the length of time, the manner, and place or location of a sign. As an example, well-written sign regulations may include a limitation on the length of time the sign may be displayed, especially for portable or temporary signs, such as A-frames or banner signs; restrictions on the total area, maximum height, or illumination of a sign; and where the sign may be placed (i.e. so as not to encroach within the public right-of-way)

Content-Based Regulations vs. Content-Neutral Regulations

- What does sign say?
- Message determines if it stays up or down, or applicable regulations

- Time
- Place
- Manner



The Distinction Between a Content-Based and Content-Neutral Sign

5.1.2 Conditional Overlays

See Section 4.2 (Diagnosis and Findings) for more on Conditional Overlays.

Conditional Overlays are used in a number of US cities of all sizes, yet there is growing concern that while conditional overlays are a tool to promote development, and potentially to allow surrounding property owners to be involved in the development to ensure they too benefit from it.

It is recommended that further discussions with City staff and the City Attorney's office should be conducted to determine how best to address those Conditional Overlays that are already approved and in place, and whether Conditional Overlays should be allowed in the future.

5.1.3 Exactions for the Dedication of Parklands

See Section 4.2 (Diagnosis and Findings) for more on Exactions for the Dedication of Parklands.

It is recommended that the LDC include a new section that specifically authorizes and establishes procedures for the dedication of parkland and circumstances and procedures for the payment of in-lieu fees.

5.1.4 Increasing the Notification Boundary Beyond 300 Feet

The LDC (e.g. [Article 20-09.F \(Notices\)](#)) requires that letters be sent to owners of property within 300 feet of the boundary of a new development that may be subject to, for example, development review, conditional use permit approval, or a zone change. Like most jurisdictions, City staff will increase this boundary when deemed appropriate to ensure that additional property owners are notified, especially in rural locations where the parcel size is large or when a development application is expected to be controversial so that as many people as possible may be informed.

It is recommended that the noticing section of the LDC include specific language that grants the Director of Planning & Development authority to expand the notification boundary subject to specific conditions and/or criteria. This is a typical best practice utilized by many planning jurisdictions across the country.

5.1.5 Telecommunications Regulations

The Telecommunications Act of 1996 as amended (47 U.S.C. § 332(c)(7)(B)) limits state or local governments' authority to regulate the placement, construction, and modification of personal wireless service facilities. State or local governments must not unreasonably discriminate against the providers of functionally equivalent services and not prohibit or effectually prohibit the use of personal wireless devices. Further, state or local governments must not regulate the placement, construction, and modification of personal wireless service facilities based on the environmental effect of radio frequency emissions, to the extent that such facilities comply with FCC regulations. With regard to development applications for telecommunication facilities, state or local governments must act on applications within a reasonable time. If the application is denied, the reason(s) for the denial must be in writing supported by substantial evidence.

It is recommended that a thorough review of the LDC existing provisions for telecommunications facilities ([Section 20-0402.N \(Telecommunications Facilities\)](#)) be conducted to ensure that all new requirements are included in the Code, including for example, for small cell wireless (which may be located in the City's Public Works or Engineering Standards instead) and any updated notification procedures.

5.1.6 Zoning of State and Federal Land

In most US states, local zoning regulations, such as the City's LDC, do not apply to land owned and managed by the state or the federal government. It is our understanding that this is also true in North Dakota. Therefore, while agreements may be established between federal agencies such as the US Post Office or state agencies such as North Dakota State University, that permit the City to apply all or a portion of its zoning regulations on these properties, technically they are exempt from zoning regulation.

The applicability chapter of the LDC should include a statement(s) clarifying the applicability of the City's zoning regulations on federal and state lands.

5.1.7 Overly Vague Language in Conditional Overlays

City staff have identified some provisions in the Historic Overlay and Conditional Overlay Districts that are overly vague, subjective, and difficult to apply. This is typical of many older zoning codes like the Fargo LDC that has received many incremental updates over time. And as noted previously, one of the concerns with Conditional Overlays is that they may impose similar yet varying requirements (e.g. design standards) from one property to another.

5.1.8 Overly Vague Language in Historic Districts

It is recommended that all design standards must be reviewed and updated using established best practices to ensure that they are written as objectively as possible. Statements like "...additions over XX square feet must match the original building ..." can be rewritten as "...additions over XX square feet must be designed using the same materials, form, window treatments, and architectural details of the original building ..."

Section 6 Economic and Fiscal Implications

6.1.1 Introduction

As part of the overall analysis of the LDC, LWC has been asked to provide information on economic and fiscal implications of the existing development code. As specific recommendations for modifications to the Code will be provided after the diagnostic phase of this assignment, it is useful to contextualize the economic and fiscal implications of the typologies that are identified in *Go2030* and its implementing documents. This section provides overview information about the economic performance of urban design standards and the creation of walkable mixed-use developments and districts from a general perspective.

6.1.2 Benefits of Urban Design

A comprehensive and balanced approach to urban design can produce a number of benefits for a community. In general, spaces that are conducive to longer term use and convivial public life can create several economic benefits, namely, the desire for people to congregate in pleasing and comfortable spaces leads to an increased length of stay within a district. The extended stay results in economic premiums for businesses and residents located within these areas. Overall, desirable spaces create economic returns. Beyond increased rents, land values and economic activity, many other kinds of 'value', both tangible and intangible, can be considered including environmental, social, or cultural benefits. The benefits of good urban design often accrue to the wider community; therefore, many stakeholders have an interest in what takes place at both the scale of an individual project and the scale of the community's over all distribution of land use. This logic is supportive of the goals of the North Dakota Main Street Program that seeks to assist economic competitiveness by creating spaces in communities that will be attractive to new investment and employment.

Experience in communities throughout the United States and internationally lead to some broad conclusions that are relevant for Fargo. Examples that illustrate the opportunities and benefits that can come from integrated mixed-use approaches are described below.

The Aksarben village neighborhood in Omaha, NE was developed between 2006 and 2010. This mixed-use neighborhood integrates a variety of residential typologies along with commercial uses. The community was an infill project that reused the site for a former horse racing track.

Aksarben Village has evolved into a major employment center and is the locations of the headquarters for Blue Cross Blue Shield of Nebraska, First Data, a leading Omaha based technology firm, and several other key professional service companies. Within the village itself



Aksarben Village - Mixed-Use Buildings and Public Plaza (Credit: Lamp Ryneason)

Aksarben Village has evolved into a major employment center and is the locations of the headquarters for Blue Cross Blue Shield of Nebraska, First Data, a leading Omaha based technology firm, and several other key professional service companies. Within the village itself there are multifamily residential buildings that are integrated into the overall site plan of the district. Other amenities within the Arksarben development include a Marriott Hotel, and a multiplex cinema. The University of Nebraska-Omaha is also a major presence within the neighborhood having contributed a student housing and an arena to the site. The development has been an important catalyst in the overall growth and development of Omaha.

Stapleton, CO in Denver, is seen as a national model for an integrated, mixed-use approach to community development. Located on the site of Denver's former international airport, the community's design standards focused on creating a walkable mix of energy-efficient residential neighborhoods, retail districts, schools, offices connected by a network of parks and open spaces. Stapleton has seen some of the fastest appreciation for real estate in the metropolitan area since its development and has served as a model for Denver's approach of integrated neighborhood development.



Stapleton, CO - Walkable, Mixed-Use Development (Credit: Great American Country)

The experience of developments such as Aksarben and Stapleton have illustrated the following general themes:

- Good urban design integrates a mix of uses. This can offer significant benefits to the community in terms of economic returns, stability and improved adjacencies and synergies.
- Integrated mixed-use development approaches can sometimes require greater capital investment than conventional development. While this may be true at the level of the individual building, often it is a matter of intelligently considering the placement of structures on a development site, considering the relationships to the street and neighboring buildings or simply thinking creatively about the use of space within a project. In general, a well-produced project will generate better returns over the long run that will offset some initial costs that may be incurred. In addition, careful consideration of how sites are used can lead to a reduction in long-term costs.
- Communities tend to value the better quality of life that good urban design can deliver.

- Urban design can help make communities safer and more secure by creating active public spaces.

Urban design that promotes a higher density of buildings and public spaces (in conjunction with other conditions, such as mixed use, good building design and adequate open space) can:

- Provide cost savings in terms of land, infrastructure requirements and energy use.
- Reduce opportunity costs associated with congestion and additional vehicle trips.
- Support spaces for higher value economic activities, including retail districts and higher value employment spaces.
- Promote social connectedness and vitality.

Synergies can be created that offer increasing returns and create premium rents and land values stemming from increased economic performance. The performance increase can come through internalizing consumer expenditures within a mixed-use district from residents, employees, and visitors.

LDC issues

The current LDC does not allow Fargo to take advantage of the economic benefits that accrue from good urban design. The LDC's base zoning districts, other than DMU and UMU, do not include any reference to design standards. The approach of including design standards in a flexible and strategic manner can be an important feature that would be supportive towards the implementation of the goals that are included in *Go2030*. These development standards, when clearly articulated, can serve to support economic development by promoting higher quality development that is best suited to produce external benefits to the district and community at large while producing space that meets the requirements of the development program on site.

6.1.3 Benefits of Walkable Mixed-Use Districts

Walkable and mixed-use districts in urban centers have repeatedly been shown to lower some costs of local government associated with capital costs for infrastructure and service delivery. Mixed use and denser walkable cores are almost always linked to greater land values due to fundamental land use economics. When zoning allows for more programming to be placed in the same space, the underlying value of the land increases. The increase can establish a self-reinforcing system where higher land costs encourage greater density and compact development within urban nodes.



Typical Walkable, Mixed-Use Neighborhood (Credit: PlaceMakers)

Since the 1970s, significant research has studied the relationship between compact development and infrastructure costs. A series of reports by the federal government, including the seminal Cost of Sprawl report published in 1974 by the Real Estate Research Corporation, found that water, sewer, and road infrastructure cost was reduced on a per capita basis in denser developments. Later independent research has corroborated these findings. In general, a consensus has developed that compact development patterns substantially reduce infrastructure costs across a range of services including transportation capital investment, utilities, and infrastructure maintenance. Maintenance of existing infrastructure is also reduced in a compact development scenario.

Walkable Mixed-Use Centers can have the following benefits:

- Dense development lowers infrastructure costs because each mile of road or sewer line serves more development. Mixing uses also creates infrastructure efficiencies because it eliminates the need to provide parallel infrastructure systems to residential and nonresidential areas.
- In addition to lower infrastructure costs, dense, mixed-use development generates more revenue and fewer costs for the City budget. Multifamily housing produces more tax

revenue and requires less infrastructure and service costs per unit. Denser retail and office developments also produce more property and sales tax revenue.

- Dense development consumes less land and saves open space for agriculture and habitat. Studies from around the country have found that dense development alternatives consume between 10-40 percent less land.
- Higher density, mixed use areas are more aesthetically pleasing than homogenous, low density areas. Walkable mixed-use centers support promoting and cherishing places with distinct identities, character, and appearance.
- It has been well documented that a community viewed as having a high quality of life will attract and retain population and households within the City, which is in line with the goals of the North Dakota Main Street initiatives. Additionally, walkable mixed-use centers provide a greater range of local services and amenities and encourage people to walk, shop, and consume a meal.
- Denser areas are better able to support entertainment uses or cultural institutions. Savings on infrastructure and development costs leave more resources to invest in public art and cultural amenities.
- Dense, mixed use areas have more eyes on the street, which reduced opportunities for crime.

LDC Issues

Within the current LDC, mixed-use development is only envisioned as occurring within the Downtown Mixed-Use (DMU) and University Mixed Use (UMU) zones. This kind of space can also be produced through the use of Planned Unit Developments (PUD), Conditional Overlays (CO) and Conditional Use Permits (CUP). However, the application of these two tools have the possibility of creating irregular and uneven development standards and can introduce additional uncertainties and costs for a project. The lack of certainty within the LDC serves to disincentivize the production of walkable mixed-use projects.

6.1.4 Potential Economic Barriers

Although popular with many stakeholders and increasingly common in cities across the US, there are certain barriers to implementation for walkable mixed-use developments. Some of these barriers are related to inadequate or antiquated land use regulations but others are result of the financial and investment climate. The financing of mixed-use development can be more complicated than if each individual program element was to be developed independently. Lenders have been slow to accept the important change in the design and approach to mixed-use development especially in secondary markets, although an established track record of success can lead to increased investor interest. Lending institutions typically tend to overlook the unique circumstances of pedestrian-friendly projects and for these institutions, high parking requirements are typically a precondition of financing. Further

complicating this is the tendency for developers to concentrate on specific programs. For example, residential developers are often unfamiliar with the requirements for commercial projects and the same is true for developers who specialize in commercial projects. Similarly, a division exists between developers and investors who favor new greenfield sites as opposed to those comfortable working in an infill or redevelopment context. The recruitment and attraction of experienced developers can be a significant impediment to the successful implementation of walkable mixed-use projects.

Related to financing, capital construction costs can also be an issue. The main savings from the investment side in producing a mixed-used development project comes from the reduction in parking requirements. Structured parking, which is often required when projects are developed at urban destinations, can be prohibitively expensive. Shared parking programs, internal trip capture, and a reduction in off street parking requirements are often required as part of any strategy to produce mixed use projects. Other capital costs can increase as projects become denser. Projects that need to shift from a modified Type V construction to Type I construction can be difficult to develop due to increased construction costs. When projects are developed at on an infill or redevelopment site, retrofitting of existing infrastructure or off-site improvements may be required. These costs can add to the complexity of successfully developing these projects. However, costs for new infrastructure improvements to the public realm and off-site requirements can be mitigated through public private partnerships and development agreements where there are opportunities for appropriate public investments.

Finding an appropriate tenant mix can also be a challenge within mixed-use development projects. Correctly sizing the retail and commercial mix to overall market demand can be a critical factor of success with these projects. Often, development codes can require more retail space than can be supported by the market. Allowing flexibility in programming within development codes can serve as an incentive for developers by allowing them to react more specifically to highly local conditions or in reaction to the competitive market. Development codes that focus on the form and performance of mixed-use developments tend to yield better results than codes that are focused on specific targets or requirements of specific program elements. For example, ground-floor retail requirements have been found to inhibit successful implementation of mixed-use projects particularly in contexts with height limitations or for projects that are located away from commercial areas. Smaller amounts of retail development can be successful in these contexts when they largely serve to amenitize the residential component. Codes that allow for live/workspace, commercial office, or other types of program on the ground floor can help encourage the production of mixed-use projects.

Related to issues of program mix within projects, is the need to identify suitable sites for walkable mixed-use projects. These projects typically require sites with high visibility and accessibility. Often, the best sites for these types of projects and districts require a redevelopment approach. This approach can include the need to assemble parcels to establish a site with enough scale to support a meaningful walkable mixed-use development project redevelop or an infill approach to insert the project within the existing urban fabric. This is less of an issue in greenfield development sites on the margins of an urban area, however frequently the most attractive locations for these types of projects require a level of urban intensity that is associated with existing commercial corridors and districts. The ability to assemble large enough sites to develop supportable projects along with the need to coordinate development with the needs of complex field of existing stakeholders and neighbors can also serve as an impediment towards implementation.

6.1.5 Summary and conclusions

The desire to create walkable mixed-use urban projects and districts within Fargo is likely to produce an increase in economic vitality, reduction in service delivery costs, and increasing returns on investment for successful projects. In order to realize these benefits, it is important to develop supportive policies that leverage the inherent advantage of mixed-use development programs within Fargo's development codes. Potential policies could include a strategy that recognizes the need to reduce the provision of structured parking spaces, opportunities to increase overall site density and flexibility on program within the building envelope. Additional supportive policies can include public-private partnerships for the provision of infrastructure and improvements to the public realm and where appropriate assistance with site assembly or redevelopment of existing property.

Developers face challenges with walkable mixed-use projects due to the complex nature and program mix. Communities generally find it is not enough to change development codes to attract this kind of investment. Additional supportive policies are a critical factor in success for implementation of these types of projects. Appropriate sites and districts must be identified that are suitable for higher intensity development with land use controls that allow for flexible and dynamic approach to market in order to attract the interest of investors.

The existing LDC can be modified to address the regulatory impediments to producing mixed use projects. Areas of particular concern include limited locations where these projects are clearly allowed as of right and the need to engage in an uncertain or lengthened process for CO or PUD based approvals. Beyond land use designations, future revisions to the Code should allow for value capture that can come from this type of development via reduced infrastructure costs—particularly for parking. Shared parking and reduced parking

requirements that recognize internal trip capture can serve as an incentive to develop these types of projects. Amending the LDC to provide a dependable and favorable regulatory framework will be required in order to allow for the production of the types of projects identified in *Go2030*.

Section 7 Conclusion

This Diagnostic Report evaluates the City of Fargo's Land Development Code and highlights problem areas. Diagnostic reports serve as a foundation for short-term and long-term revisions to the LDC, not only to fix issues that are uncovered, but also they provide a framework for updating and modernizing regulatory standards. Overall, the LDC fails to implement the goals of the *Go2030* Comprehensive Plan in certain key areas. For example, the goal of creating walkable, mixed-use centers is only possible in a small portion of the City whereas *Go2030* strives to make this possible in areas outside of downtown.

Moving forward, LWC and City staff will work together to create a list of alternative actions to address the issues identified within the LDC. In coordination with the City planning staff, Planning Commission, Board of City Commissioners, residents, and stakeholders, LWC will create preferred alternatives for how the LDC may be updated, as well as a work plan for implementation.

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