



## Community Development Department

**DATE:** July 6, 2022  
**FROM:** Ben Ehreth, AICP, Community Development Director  
**ITEM:** Agency Foster Home for Adults – Zoning Ordinance Text Amendment

### **REQUEST:**

The Community Development Department is initiating a zoning ordinance text amendment to include provisions to allow agency foster care for adults as a permitted use in the R5 – Residential and R10 – Residential zoning districts. The North Dakota Century Code and North Dakota Administrative Code were recently modified to add agency foster care for adults as a licensing class under the North Dakota Department of Human Services. As our current definition of family foster home for adults specifically states the care would be provided by the owner or lessee of the private residence, rather than by professional staff, an ordinance amendment to add this new category is required. The definition of foster care for adults will also be amended to mirror the current language used in Chapter 50-11 of the North Dakota Century Code.

Please place this item on the July 12, 2022, and July 26, 2022 City Commission meeting agendas.

### **BACKGROUND INFORMATION:**

The Planning & Zoning Commission held a public hearing on this request on June 22, 2022.

No residents spoke at the public hearing.

At the conclusion of the public hearing, and based on the findings contained in the staff report, the Planning & Zoning Commission unanimously recommended approval of the zoning ordinance text amendment relating to agency foster homes for adults.

### **RECOMMENDED CITY COMMISSION ACTION:**

July 12<sup>th</sup> meeting of the Board of City Commissioners – consider the request for a zoning ordinance text amendment as outlined in Ordinance 6513 and call for a public hearing on this item for the July 26<sup>th</sup> meeting.

July 26<sup>th</sup> meeting of the Board of City Commissioners – hold a public hearing on the zoning ordinance text amendment as outlined in Ordinance 6513 and take final action of the request.

**STAFF CONTACT INFORMATION:**

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Kim Lee, AICP | Planning Manager | 355-1846 | [klee@bismarcknd.gov](mailto:klee@bismarcknd.gov)

ORDINANCE NO. 6513

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND SECTIONS 14-02-03, 14-04-03 AND 14-04-06 OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO FOSTER CARE FOR ADULTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amend. Section 14-02-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Definitions, is hereby amended to read as follows:

Section 14-02-03 Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

...

Agency Foster Home for Adults: A a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation that is licensed by the State of North Dakota.

...

Family Foster Home For Adults: An occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof of the residence, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation that is licensed by the State of North Dakota.

...

Foster Care For Adults: The provision of food, shelter, security and safety, guidance, and comfort on a twenty-four hour per day basis, in the residential home of a caregiver or agency, to a ~~person~~ an individual age eighteen or older, who is unable, neglects, or refuses to provide for the ~~person's~~ individual's own care.

...

Section 2. Amend. Section 14-04-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the R5 Residential zoning district, is hereby amended to read as follows:

14-04-03. R5 Residential District. In any R5 residential district, the following regulations shall apply:

...

2. Uses permitted. The following uses are permitted:
  - a. Single family dwelling.
  - b. Education group.
  - c. Public recreation group.
  - d. Family foster home for adults.
  - e. Agency foster home for adults.
  - ef. Family child care.

...

Section 2. Amend. Section 14-04-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to the R10 Residential zoning district, is hereby amended to read as follows:

14-04-06. R10 Residential District. In any R10 residential district, the following regulations shall apply:

...

2. Uses permitted. The following uses are permitted:
  - a. Single-family dwelling.
  - b. Two-family dwelling.
  - c. Education group.
  - d. Public recreation group.

e. Row house.

...

f. Family foster home for adults.

g. Agency foster home for adults.

gh. Family child care, when located in a detached single family dwelling.

...

Section 4. Repeal. All ordinances or parts of ordinances in conflict with this ordinance area hereby repealed.

Section 5. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

DRAFT



# STAFF REPORT

Application for: **Zoning Ordinance Text Amendment**

Project ID: **ZOTA2022-002**

## Project Summary

<i>Title:</i>	Agency Foster Home for Adults
<i>Status:</i>	Planning & Zoning Commission – Public Hearing
<i>Project Contact:</i>	Kim L. Lee, AICP, Planning Manager
<i>Section(s) Amended:</i>	Section 14-02-03 (Definitions), Section 14-04-03 (R5 Residential District) and Section 14-04-06 (R10 Residential District) of the City Code of Ordinances
<i>Request:</i>	Add provisions to allow agency foster care for adults as a permitted use in the R5 – Residential and R10 – Residential zoning districts as requested by the North Dakota Department of Human Services

## Staff Analysis

The Community Development Department is initiating a zoning ordinance text amendment to include provisions to allow agency foster care for adults as a permitted use in the R5 – Residential and R10 – Residential zoning districts.

The Bismarck Planning & Zoning Commission considered this zoning ordinance text amendment at the May 25, 2022 meeting and called for a public hearing.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on June 10th and June 17<sup>th</sup>.

### Background

The North Dakota Century Code and North Dakota Administrative Code were recently modified to add agency foster care for adults as a licensing class under the North Dakota Department of Human Services. As our current definition of family foster home for adults specifically states the care would be provided by the owner or lessee of the private residence, rather than by professional staff, an ordinance

amendment to add this new category is required. The definition of foster care for adults will also be amended to mirror the current language used in Chapter 50-11 of the North Dakota Century Code.

Agency foster home for adults would be defined as:

*“A residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation that is licensed by the State of North Dakota.”*

This category would complement the City’s current definition for family foster home for adults:

*“An occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation that is licensed by the State of North Dakota.”*

(continued)

**Required Findings of Fact** (relating to land use)

1. The proposed text amendment would not adversely affect the public health, safety or general welfare;
2. The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance;
3. The proposed text amendment is consistent with the general intent and purpose of the zoning ordinance; and
4. The proposed text amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice.

**Staff Recommendation**

Based on the above findings, staff recommends approval of the zoning ordinance text amendment for Section 14-02-03 (Definitions), Section 14-04-03 (R5 Residential District) and Section 14-04-06 (R10 Residential District) of the City Code of Ordinances, as presented in the draft ordinance attached to the staff report.

**Attachments**

1. Draft zoning ordinance amendment
2. Letter from ND Department of Human Services

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*Staff report prepared by:* Kim L. Lee, AICP, Planning Manager  
701-355-1846 | [klee@bismarcknd.gov](mailto:klee@bismarcknd.gov)

April 13<sup>th</sup>, 2022

Kim Lee, Planning Manager  
221 N. 5<sup>th</sup> St.  
Bismarck, ND 58501

To Whom it May Concern:

I am writing on behalf of the North Dakota Department of Human Services Aging Services Division to respectfully request an amendment to the definition of family foster home for adults to include agency foster home for adults in the Bismarck R5 and R10 zoning districts. A group home and an Agency Foster Home for Adults (AFHA) are similar models. The AFHA is licensed by the Department of Human Services Aging Services Division, and the law was updated in 2019 to include this model. Please refer to the citations listed below.

**N.D. Century Code 50-11-00.1 Definitions.**

1. Agency foster home for adults means a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

**N.D. Administrative Code 75-03-21.1-01 Definitions.**

3. Agency foster home for adults means a residential home in which foster care for adults is regularly provided exclusively to Medicaid waiver recipients by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

Sincerely,



Erica Reiner  
AFHA Program Administrator  
Aging Services Division

**AGING SERVICES DIVISION**

1237 W Divide Ave Suite 6 | Bismarck ND 58501

ND Aging & Disability Resource-LINK Toll Free 855.462.5465 | Fax 701.328.8744 | 711 (TTY) | [www.nd.gov/dhs](http://www.nd.gov/dhs)