

## MEMO

TO: Three Forks Planning Board

FROM: Lee Nellis, FAICP

DATE: December 4, 2024

**RE: Fourth Procedural Chapter**

First, thanks to all for a good November meeting. Chapter 4 establishes the permit requirements that make Three Forks' land use regulations effective. In so doing, it addresses numerous details and raises questions about exactly how the city wants to administer its land use regulations.

**Exemptions?** Several questions about potential exemptions from the requirement for a permit are raised below. Exemptions do not change the rules, just the requirement for a permit. The goals of the exemptions are 1) clarity and 2) to moderate the workload for the Staff and property owners by not requiring a permit for minor, noncontroversial work.

**CUP Procedure?** A major question is whether the city wants to simplify its procedures by having the PBZC's action on a conditional use permit stand unless it is appealed. This is a common practice because it reduces Staff and Council workloads for noncontroversial projects. Making this change would raise a second question. Should an appeal of a CUP go to the Council or to the Board of Adjustment? The statutes establish the BOA as an appeals board and we think that it is preferable if the appeal of a CUP goes there, but it could also go to the Council.

**Expiration?** The draft chapters have been revised so that permits expire in one year and can be automatically renewed for six months. A new permit would be necessary after that. We think that reflects recent discussion, but want to affirm (or not).

## Chapter 4 – Permits

**11-4-1 What is the purpose of this chapter?** This chapter requires a permit for all development that is not specifically exempted from the requirement for a permit, defines development, and establishes the types of permits used to ensure compliance with these regulations. Application, review, and appeal procedures for each type of permit are found in Chapters 5-7.

**11-4-2 Is a permit required for development in the City of Three Forks?** Yes. A permit to proceed in compliance with these regulations is required for all development that is not exempted by 11-4-5.

### 11-4-3 What is development?

- A. Development includes land divisions that create new lots or rights-of-way (subdivisions); grading, including clearing, excavation, and fill; the construction, reconstruction, installation, enlargement or relocation of any building or structure; the placement of a sign; and/or any change in the use of a lot, building, or structure. 11-4-3.B-E answer common questions about the definition of development.

*It doesn't seem that hard to write a usefully clear definition of development. But people bring so many preconceptions to their reading of the word "development" that questions arise anyway. Please review these and then tell us if there is yet another question about what constitutes development.*

- B. Is a permit required for putting a new use in a building or structure without making changes in the size of that building or structure? Yes.
- C. Is a permit required for temporary uses and structures? Yes, though some temporary uses and structures are exempt from the requirement for a permit. Please see 11-4-5.H.
- D. Is a permit required for outdoor sales and storage? Yes. Outdoor sales and storage require a permit if they are not exempted by 11-4-5.G.

*Many people assume that development involves a building. But it doesn't have to. Someone could park a food truck on a vacant lot, right? And we'd all go get tacos. But its a licensed vehicle, not a building. Requiring a permit for outdoor sales can address issues like safe access, parking, litter, and signs. Outdoor storage without a structure is also common. But shouldn't it be within the setbacks for its zoning district? And could it need buffering or screening in some locations? Again, requiring a permit can address real issues.*

- E. Is a permit required for changes in exterior building materials? New siding, roofing, doors, windows, and other changes that do not alter a building's dimensions generally do not require a permit, but there is a possible exception to this rule. Compliance with these regulations could be conditioned on the use of a particular type of building material. Where such a condition of approval has been imposed, exterior changes require a permit.

*Compliance with a compatibility performance standard like those being considered in the draft KRZD could be conditioned on the use of certain materials or types of materials. For example, the city might require the use of non-reflective building materials where a commercial structure is adjacent to residential uses.*

**11-4-4 When must a permit be obtained?** A permit must be obtained before new lots are created; before a site is cleared or any earth moved; or before any building materials and/or equipment are moved onto the site; **before any work of any type begins.**

**11-4-5 Are any types of development exempt from the requirement for a permit?** Yes, the exemptions are listed here. These are not exemptions from compliance with these regulations, just from the requirement to obtain a permit.

- A. Land divisions defined as exempt by MCA 76-3-201, et seq, do not require a permit.
- B. Continuing agricultural activities, including irrigation, the planting and harvest of crops, and grazing do not require a permit.
- C. Maintenance or repair of existing uses, buildings, or structures does not require a permit.
- D. Interior changes in existing or approved buildings or structures do not require a permit.
- E. Most changes to the exterior of existing or approved buildings or structures do not require a permit. A possible exception to this rule is explained in 11-4-2.D.

**F. Accessory buildings and structures? Minor site work?**

*Three Forks currently requires a zoning permit for **all** new structures. This is unusual because of the workload entailed in issuing minor permits. It is typical to exempt accessory structures, especially those on residential premises, including tool sheds, greenhouses, and the like. I usually exempt structures that are 10 feet or less in height and cover no more than 120 SF, but there are many variations on those numbers that we could discuss. It is also common to exempt minor (up to 1000 SF?) site work like the installation of a patio or sidewalk. Not requiring a permit does not change the rules: everything must still comply with setbacks, lot coverage, etc.*

**G. A permit is not required for temporary uses and associated structures used for events that last no more than four days, including set-up and tear-down, like a farmer's market, a rodeo, a "sidewalk sale," or a garage or yard sale.**

*This would be a big exemption if it wasn't strictly time limited. If you don't want to exempt these activities, we can talk about temporary use permits.*

- H. A permit is not required for the onsite storage and staging of building materials or equipment while construction proceeds in compliance with an approved permit.
- I. A permit is not required for the posting or placement of advisory or directional signs of less than four square feet.

*Can you think of other potential exemptions?*

**11-4-5 What types of permits are required by these regulations?** These regulations establish two types of permits: discretionary and administrative.

- A. Discretionary permits are required for any land division that is not exempted by state law and for the conditional uses that are allowed in some zoning districts or by 11-2-7.B for changes in nonconforming buildings and structures. Please see Chapters 11-5 and 11-6 for the application, review, and appeal procedures for discretionary permits.
- B. An administrative permit is required for all other development. Application, review, and appeal procedures for administrative permits may be found in Chapter 11-7.

**11-4-6 Are there fees for permits?** Yes, permit application fees are established by the Mayor and Council as provided in 11-3-5.D. The required fee must accompany the application for a permit. Note also that impact fees required by CITATION must be paid before an administrative permit is issued.

**11-4-7 Do permits expire?** Yes. Please see the chapter establishing each type of permit.